E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN CYPRUS IN 2004

submitted to the Network by **Achilleas DEMETRIADES**, Barrister, LLM
Leto CARIOLOU, Advocate, LLM
Theodora CHRISTODOULIDOU, Pupil advocate, PhD

on 3 January 2005

Reference: CFR-CDF/CY/2004

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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 (Lithuanie), 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), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), 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), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. 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, Freedom and Security), 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), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), 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), Pavel Sturma (Czeck Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.
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CHAPTER I : DIGNITY

Article 1. Human Dignity

Legislative initiatives, national case law and practices of national authorities

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 extent 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 Supreme Court while the case is currently pending before the ECtHR.

No cases have been reported during the period under scrutiny having as a legal basis the respect due to human dignity in order to protect the fundamental rights of the person.

Article 2. Right to life

Legislative initiatives, national case law and practices of national authorities

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

" 1. Every person has the right to life and Corporal integrity.

2. 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."

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.

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 the *Refugee Law (Amendment) 2003* [*Περί Προσφύγων (Τροποποιητικός) Νόμος N.53/03]* states that in order for a country to be labelled 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.

Euthanasia

Legislative initiatives, national case law and practices of national authorities

There is no specific provision within domestic legislation dealing with active or passive euthanasia. However Article 218 of the Criminal Code of Cyprus, Chapter 154, establishes assisted suicide as a crime punishable by ten years imprisonment. Article 218 reads: "The person who convinces someone to commit suicide, if the act is committed or attempted, as well as the person who assists someone to commit suicide is guilty of a crime punishable with ten years imprisonment." The said article was adopted in 1982 (Law 46/82), and still remains in force. Furthermore, it should be noted that it remains open to the Courts to treat relevant facts before them as premeditated murder under Article 203 of the Code.

The new bill safeguarding patients' rights which has been tabled to the House of Representatives entitled the Law on the Protection of the Rights of Patients [Ο περί της Κατοχύρωσης και της Προστασίας των Δικαιωμάτων των Ασθενών Νόμος του 2004] does not explicitly recognise any right of patients to euthanasia. Article 5 of the said Bill which guarantees the right of patients to dignified treatment at paragraph 3 provides: "The patient has the right to relief from pain in accordance with the available scientific knowledge and the relevant Regulations of the Medical Code of Practice within the boundaries of law and legal procedures." This provision was understood by its drafters as evidenced by the minutes of the Parliamentary Debate dated 9 November 2004, to eliminate the possibility of acceptance of euthanasia, based on a well-accepted reading of the Criminal Code as outlawing it altogether.

The Criminal Code does not specifically outlaw a practice of euthanasia and it thus may be argued that 'assisted suicide' is not simply synonymous. That coupled with the importance attributed to the protection of the Right to Life guaranteed both by the Constitution and by the relevant International Treaties incorporated into domestic law may invite the Courts to adopt a different approach from that of the drafters of the Law on the Protection of the Rights of Patients. The approach of the courts remains to be seen, as there have not been any cases so far involving alleged euthanasia, or assisted suicide.

Euthanasia as such still remains a topic outside the public debate concerned with the protection of fundamental rights.

Rules regarding the engagement of security forces

Legislative initiatives, national case law and practices of national authorities

The use of firearms by the police is regulated by the general provisions of the Police Law and use of force by the military forces is regulated by the National Guard Law.

For the purposes of harmonising the Cypriot legislation with Council Directive 91/477/EEC on the control and acquisition of weapons, Law 113 (I)/ 2004 on the Acquisition, Possession, Transfer and Import of Arms and related subjects Law (Περί Απόκτησης, Κατοχής, Μεταφοράς και Εισαγωγής Πυροβόλων Όπλων και μη Πυροβόλων και για Συναφή Θέματα Νόμος του 2004) was enacted. This law regulates the use of firearms by ordinary citizens. The main parameters of this law are: (a) it is prohibited to acquire, posses, transfer, manufacture, mend, rent, dispose in the market weapons; (b) anyone who wishes to acquire or sell such weapons must be given a permit from the police; (c) there are conditions regulating whether a permit to acquire or sell a weapon is given; (d) it is prohibited to transfer weapons from an EU country into the Republic, unless the person making the transfer has a permit from the country from where the weapon is sent; (e) when a weapon is transferred via the Republic for another destination, such transfer needs the approval of the police.

The fight against the trafficking in human beings (including the use of technical means to prohibit the illegal crossing of borders)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the Report of the monitoring mission (Peer Review Report) under Chapter 24 in the fields of Justice and Home Affairs in Cyprus (30 June- 2 July 2003) it was noted that there has been considerable improvement in of the existing structures and administrative procedures.

It was noted that : "On border controls Cyprus moved forwards and is making the relevant efforts to be ready for respecting Schengen requirements upon accession ….The implementation of the Schengen Action Plan is progressing according to schedule. The structures for border management are in place and the personnel responsible of border checks and surveillance is highly professional and motivated. However, purchase of equipment, in particular radars, helicopters and patrol boats, must be completed and a strategy to assure tactical co-ordination between all forces involved in border control duties assured."

It is crucial to note that the Peer Review Report did not touch issues relevant to the "green line", as a result of the agreement between the Government of Cyprus and the EU that issues relevant to the solution of the Cyprus problem are to be excluded from consideration in the context of the harmonisation process.

Legislative initiatives, national case law and practices of national authorities

An amendment to the Aliens and Immigration Law Cap. 105 in relation to Carriers Liability Law, subjects to a fine a person assisting the entry within the territory of Cyprus of illegal immigrants. This law has entered into force as of the 1 May 2004.

Positive aspects

The Republic has started a unilateral de-mining of the National Guard mines within the buffer zone. Mines from 27 fields will be removed in the areas of Kaimakli in Nicosia, Pyrgos Tyllirias on the island's north-west, Dhenia in the Nicosia district and at the Nicosia airport. A suspected site at the end of Ermou Street in the city centre will also be checked. De-mining

will probably take one year to be completed and it is funded by the EU Partnership for Peace. Unfortunately, Turkey has not agreed to de-mine its own landmines in the areas within her control. (*Cyprus Mail, 16 and 18 November 2004, Fileleftheros, 17 November 2004*).

Reasons for concern

The main infiltration of illegal immigrants is due to unsatisfactory patrolling of the "green line". The Government of Cyprus admits that it is facing a problem in this respect but no satisfactory measures to tackle this situation have been envisaged, pending the resolution of the Cyprus political problem.

Domestic violence

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The US Department of State, the Bureau of Democracy, Human Rights and Labour published a report on 25 February 2004 on human rights practices in Cyprus 2003. According to the report, "spousal abuse was a problem and continued to receive attention." "An NGO working with domestic abuse victims reported that the number of telephone calls to its hotlines had increased by 15.8 per cent."

The Commissioner for Human Rights Alvaro Gil-Robles' *Report on His Visit to Cyprus 25-29 June 2003* (released on 12 February 2004) noted in relation to domestic violence that "the authorities are aware that violence within families is a real problem. Vanquishing it necessitates co-ordinated action to punish violence while bringing about a change in attitudes. In that perspective, as early as 1994, Cyprus adopted an up-to-date *Act on the Prevention of Violence in the Family and the Protection of Victims,* revised in July 2002. Most significantly, it contains provisions on: authorising the recording of the victim's declarations by electronic audiovisual means and the production thereof in court, together with witness statements taken electronically so as to avoid confrontation with the accused; guaranteeing celerity of procedure and protection of witnesses from any harassment or intimidation; admissibility of the testimony of a medical practitioner who, during a consultation with a child patient, has heard disclosures of ill-treatment committed by any person, and the obligation for the spouse of the accused to testify (waiving the usual rules of criminal procedure); [and] the creation and operation of shelters of victims." Additionally, he noted: "Training programmes for judges and the law enforcement authorities have been introduced. Furthermore, the Council of Ministers has appointed an advisory committee on domestic violence responsible for monitoring the implementation of the legislation and reporting annually to the Council of Ministers. There measures are to be commended." (paragraph 39)

Legislative initiatives, national case law and practices of national authorities

The 2000 Law on the Prevention of Domestic Violence and the Protection of Victims was amended in 2004 [Νόμος που Τροποποιεί τον Περί Βίας στην Οικογένεια (Πρόληψη και Προστασία Θυμάτων) Νόμο, N. 212(I)/2004, 2 July 2004]. According to The Laws on Domestic Violence (Prevention and Protection of Victims) of 2000 and 2004, in the event of a complaint lodged by a victim of domestic violence, his/her testimony must be taken by a police official of the same sex as the victim, unless the said victim (or his/her guardian in case of a minor) wishes otherwise (section 9). Section 35 (1) of the above law as amended precludes the surrender, acquisition or publication of any visually recorded testimony of a victim or witness. Section 35 (2) as amended provides that a person giving a visually recorded testimony or an accused person, can upon their written application to this effect, be provided with a copy of the recorded testimony which is going to be admitted as evidence before the Court. The newly inserted Article 35 A provides that in the event of default of reporting of an

incidence of violence against a minor or a person of serious mental or psychiatric disability, an offence is committed punishable by up to two years imprisonment of or £1000 CYP fine or both.

Positive aspects

The 2004 amendment to the *Domestic Violence Law* marks a significant development to the protection of victims of domestic violence.

The Ministry for Labour and Social Affairs has announced that by the end of 2004 a centre will be established in Nicosia, which will deal with cases of domestic violence. The said centre will be used as a shelter for victims of domestic violence as well as forming a basis for educational initiatives in improving public awareness on issues of domestic violence and ways to deal with such issues. (*Fileleftheros, 15 October 2004*).

Reasons for concern

The implementation of Section 9 of the Law on Domestic Violence (Prevention and Protection of Victims) of 2000 and 2004 which provides that the testimony of the victim of domestic violence should be taken by a police official of the same sex as the victim, may prove problematic. This is so because the majority of police officials currently dealing with such instances are men. (Fileleftheros, 18 June 2004).

An NGO dealing with issues of domestic violence reported that within the three months of its operation, 200 women contacted the organisation seeking psycho-social help, legal aid and protection. (Antilogos, 30 October-5 November 2004).

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person

Legislative initiatives, national case law and practices of national authorities

The Republic of Cyprus has ratified the *Council of Europe Convention on Human Rights and Biomedicine* on 20 March 2002. It also ratified the *Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings* on 20 March 2002. However, it has not signed the *Additional Protocol to the Convention on Human Rights and Biomedicine concerning the Transplantation of Organs and Tissues of Human Origin* adopted at Strasbourg on 24 January 2002.

Rights of the patients

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In 2001 the World Health Organisation on the World Health Day published a report on Mental Health in Cyprus. The Report stated that "the legislation is in accord with the regulations proposed by WHO. The rights of people are fully covered. A supervising multidisciplinary team that includes lawyers, psychiatrists, psychologists, social workers, and so forth, has been appointed by the Ministerial Council. It will secure the rights of patients as well as the quality of the services offered. […] The Psychiatric Hospital now admits voluntary patients." (http://www.emro.who.int/mnh/whd/CountryProfile-CYP.htm)

Legislative initiatives, national case law and practices of national authorities

A new bill safeguarding patients' rights has been tabled to the House of Representatives entitled the *Law on the Protection of the Rights of Patients* [*Ο περί της Κατοχύρωσης και της Προστασίας των Δικαιωμάτων των Ασθενών Νόμος του 2004*] and is now being discussed. The approved bill was drafted on the basis of patients' rights and includes provisions for their protection. It has been drafted on the basis of international conventions in the area of health and patients' rights and on the basis of the *Charter of Patients' Rights* prepared by an NGO, the Cyprus Patients' Rights Movement (KIDDA). The Bill among others safeguards (a) the good quality and continuous care of health; (b) the choice of doctors and institutions; (c) treatment that does not violate the integrity of the person; (d) confidentiality; (e) protection of private life of the patient; (f) the right to adequate information; (g) consent.

It also provides for mechanisms monitoring the protection and respect of patients' rights. These mechanisms include (a) the establishment in every state hospital of an independent official (called "official for the protection of the rights of patients") who would be in charge of receiving complaints by patients and their families and of providing advice to patients concerning their rights; and (b) the establishment of a Patients' Complaint Committee which will look at patients' complaints after a referral by the official for the protection of the rights of patients. The Patients Complaint Committee will also deal with complaints on an appellate level.

Protection of persons in medical research.

Legislative initiatives, national case law and practices of national authorities

The said bill that is under discussion at the Parliament (Law on the Protection of the Rights of Patients) provides for the protection of patients in medical research. In particular, it provides the conditions under which the participation of a patient in medical research and experimental therapy is possible. Such participation is only possible when (a) there is no effectively alternative solution comparable; (b) the dangers in which the patient is under are not disproportionate to the possible gains; (c) the said research has been approved by the competent body for that; (d) the patient has been informed of his rights; (e) the patient gives his/her written consent.

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

Conditions of detention and external supervision of the places of detention

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to the *Report of the Commissioner for Human Rights of the Council of Europeof February 12, 2004* "the main prison in Nicosia (…) is in good condition. (…) The maximum security section, where persons serving long sentences are held, the women's wing and the semi-custodial department (whose cells are equipped with kitchens and air conditioning systems) demonstrate genuine concern for maintaining good living conditions" (paragraph 8). Additionally, "the staff's relations with the prisoners are also good" (paragraph 8). As regards the issue of overcrowding, the Commissioner has reported that "the inauguration of the new wing makes it possible to remedy the problems of overcrowding" (paragraph 8).

Regarding the conditions of medical treatment for detainees held at the Central Prison of Nicosia, the Commissioner noted that "some prisoners complained of the absence of proper medical attention" (paragraph 9).

In his Report he also mentioned the recent measures announced by the Ministry of Justice as a response to the recent criticisms by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [CPT/Inf(2003)]. These measures are: (a) the creation of a prison officers' college to improve professional standards among prison wardens; (b) introduction of training programmes for prisoners; (c) creation of separate places of confinement for young offenders and for persons sentenced to long terms of imprisonment; (d) establishment of a prisoners psychiatric treatment centre (paragraph 11).

Legislative initiatives, national case law and practices of national authorities

The Ombudsman in her annual report for 2003 published in July 2004 (*Επίτροπος Διοικήσεως, Ετήσια Έκθεση 2003*, p. 56), has identified the overcrowding of prisons as one of the main problems with the functioning of the institution.

There has been extensive debate at the Parliamentary Committee for Human Rights and has been agreed that a medical centre is to be established within the prison area. This medical centre will provide help to prisoners with psychological problems, toxic addictions and, in general, will deal with the mental health of prisoners (Discussion on 19 October 2004 at the Parliamentary Committee for Human Rights).

Regarding the external supervision of prisoners, the Prison Council is operating for its eighth year term. The Prison Council is responsible to receive complaints by the inmates and in fact checks as to whether the legislation regarding prisons is in operation or whether it has been violated. It also accepts applications and supervises the conditions of life, work and training of prisoners and submits reports to the minister in its effort towards better treatment of prison inmates. However, the Prison Council does deal and cannot receive complaints from those whose trial is pending or those waiting to be tried (Discussion on 19 October 2004 at the Parliamentary Committee for Human Rights). In addition, the *Laws on the Ombudsman* (*Οι Περί Επιτρόπου Διοικήσεως Νόμοι*) safeguard the right of direct access of prisoners for complaints to the Ombudsman, independent of the provisions of any other law or regulation. Indeed, according to the Ombudsman's annual report for the year 2003 (*Επίτροπος Διοικήσεως, Ετήσια Έκθεση 2003*), any restrictions on the correspondence of prisoners for security or any other reason, are not acceptable, if the correspondence is a complaint addressed to the ombudsman. (p. 61)

Among the complaints received by the Ombudsman deserving special attention is the complaint brought by a detainee (A/P 1355/2003) for extensively prolonged detention in complete isolation and the fact that his letter of complaint to the Ombudsman was forwarded by the Prison authorities to the Ministry of Justice and Public Order and not to the Ombudsman as was stated in the letter. The detainee was held in the high security ward for 47 days with one-hour permit to leave the room and with no right to communicate with other inmates. The Ombudsman has noted that the treatment of the detainee by the relevant authority may well constitute a violation of Prison Regulations of 1997, Article 8 of the Constitution of the Republic of Cyprus and Article 3 of the European Convention on Human Rights. (Report for 2003, p. 60)

Positive aspects

The decision for the establishment of a medical centre dealing primarily with the mental health of prisoners, including detoxification, is a major positive step, as it is often reported that many of the inmates are drug addicts. In fact, according to the Minister of Justice, over half of the inmates are drug addicts (*Cyprus Mail, 30 July 2004*) while preparations for the establishment of the centre are expected to begin shortly. (*Fileleftheros Newspaper, 19 October 2004*)

A Prison Theatre Society has been established which involves the presentation of a play by detainees with the guidance of an actress. The Society will subsequently perform a play at several councils and towns. This venture is partly funded by the Prison management. Several councils will give additional funds to the Prisoners' Welfare Fund so that citizens can attend the performances free of charge. (*Antilogos Newspaper, 9-15 October 2004)*.

It is expected that as of the 1 January 2005 implementation of the L. 571/92 will take place according to which convicted drug addicts will be placed at special rehabilitation centres and not in prison. (Fileleftheros Newspaper, 18 November 2004)

Good practices

In October 2004 a new ward for female inmates was opened at the Central Prisons in Nicosia. (*The Cyprus Weekly 22-28 October 2004*)

Reasons for concern

The Central prison in Nicosia is overpopulated, with a number of illegal immigrants being held in custody until they are deported, or other immigrants, as well as juvenile offenders and persons detained due to their inability to settle their debts. (*Sunday Mail, 4 July 2004*). Overcrowding puts inmates and staff at serious health risks. Among the prisoners there is a 40-year old man who has suffered a stroke leaving him partly disabled, another one who has recently had a kidney transplant, an AIDS patient and several cases of Hepatitis B and C and tuberculosis. (*Sunday Mail, 4 July 2004*)

An official visit of Members of the Parliamentary Committee of Human Rights to the Central Prisons in Nicosia on the 12th of November 2003 has shown that the living conditions of detainees is worrying. In particular it has been noted that within cells of 16 square meters up to 12 detainees are kept while convicted persons and accused persons are held together. It has been reported that some detainees have complained for an 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.

According to the Prison Regulations, a prisoner can be held incommunicado (in seclusion) when he proceeds to a hunger strike. The Ombudsman, following a complaint, criticised this regulation and concluded in her report that total isolation can be characterised as degrading treatment according to the European Court of Human Rights following the judgement in Ensllin, Baader, Raspe v. Federal Republic of Germany . (*Politis, 8 August 2004*)

Institutions for the detention of persons with a mental disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Commissioner for Human Rights has stated in relation to mentally ill detainees in paragraph 43 and 44 of his Report that "(t)he situation remains difficult as regards persons present in the Athalassa clinic even though they do not require psychiatric treatment but simply need permanent care because of major disability. The Ombudsman has condemned this situation and a solution will reportedly be envisaged when a new psychiatric complex is built." In regards to the psychiatric clinic in Limassol he noted that "I visited the psychiatric clinic of the hospital in Limassol, which receives patients only for fairly short periods not exceeding a few days or weeks. As I was able to observe, the doctors and staff run according to modern methods that are conducive to patients' integration in their family and social

environment and prevent as far as possible social marginalisation that may result from prolonged hospitalisations. These positive developments have been made feasible through the 1997 law on psychiatric treatment. This statute furthermore instituted a supervisory board consisting of seven members (two lawyers, two psychiatrist, a psychologist, a nurse, a welfare officer and a representative of an NGO active in the field of mental health), with authority to deal with patients' complaints."

In his Conclusions, the Commissioner recommended that an appropriate institution should be established for assisting persons in need of constant care because of major disability.

Legislative initiatives, national case law and practices of national authorities

Persons with mental disability can be institutionalised in the Athalassa clinic in Nicosia and in the various hospitals around the Republic, which possess psychiatric wards. The Athalassa clinic now has less than 100 patients, most of which are expected to be released. (Report of the Ombudsman concerning complaint number 763/2000 against the Ministry of Health, published on 31 August 2004, p. 5)

It has to be noted that since the 1980s there is a trend to deinstitutionalise persons with mental disabilities. Before returning back to the community there is a middle stage of rehabilitation. In this stage, patients stay in certain units. The purpose of these units is to occupy patients and teach them certain skills before they are considered fit to return to the community. Following that stage, there is constant monitoring of their progress through in-house visits of medical staff. Currently there are 60 medics providing their services to 1750 persons with mental disabilities through regular in-house visits ranging between once to three times per month. (Annual Report of the Ombudsman, p. 7).

Reasons for concern

According to the Ombudsman, who conducted an inquiry on the de-institutionalisation of persons with disabilities, "there is a lack of a clear legislative or normative frame" to deal with these situations (Annual Report of the Ombudsman, p. 11).

Moreover, the units for rehabilitation of patients are understaffed. For this reason, patients with mental disabilities after being discharged from Psychiatric clinics are sent to nursing homes for the elderly. This is usually the case due to the inability of the family of the patients to take care of them. (Annual Report of the Ombudsman, p. 9). This in effect is a re-institutionalisation of such persons to the most unsuitable places. The need for a different structural approach to this issue is imminent.

Centres for the detention of juvenile offenders

Legislative initiatives, national case law and practices of national authorities

The Ombudsman in her report for 2003 (p. 59) has noted that the lack of a special ward for juvenile offenders creates various problems and involves violations of human rights of such persons due to their vulnerable position. In the Ombudsman's opinion the creation of a special ward for juvenile offenders remains essential.

A proposal for the establishment of a separate ward for juvenile offenders was discussed before the Parliamentary Committee for Human Rights on 9 March 2004. This ward upon its institution is thought to act as a correctional institution for juvenile offenders serving their prison sentences. Unfortunately no further initiative from the part of the domestic authorities has been taken in this respect.

Reasons for concern

Currently a special ward for juvenile offenders is not in operation. As a result, juvenile offenders are detained in the same wards as the rest of the inmates with devastating effects on such persons.

An incident has been reported at the local press involving the detention of a 15 year old of British nationality arrested in connection of the alleged rape of another 15 year old. The boy was arrested and taken to court where bail was set at £10 000. The boy's family stated that they could not afford to pay the bail, and thus the 15 year old was taken to the central prisons pending his trial scheduled three months later. (Sunday Mail, August 1, 2004) According to statements of the General Prisons Governor the boy could not be isolated since there are no special wings for minors. "The boy is under close supervision in the under-21 section, but it's true that during his meals and time in the yard he is with criminals." The Chairman of the Organisation for the Protection of Human Rights was reported to be furious with the authorities for holding a minor in the central prisons. She found the behaviour of the authorities unacceptable in allowing a boy to live with criminals until his trial would take place in three months. The minor was later removed upon the interference of the Minister of Justice to a minimum security block still inside the Central Prison.

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Commissioner for Human Rights has noted that "the large numbers of foreigners serving sentences for illegal residence in Cyprus is a cause of anxiety. The overwhelming majority of prisoners in the new wing were in fact foreigners." (paragraph 13).

Legislative initiatives, national case law and practices of national authorities

Illegal immigrants are placed in custody until arrangements are made for their expulsion. Illegal entry and stay in Cyprus is considered an offence under the Aliens and Immigration Law Cap. 105 as amended until 2004.

Positive aspects

Following the criticisms of the Commissioner for Human Rights in relation to the prosecution of illegal immigrants the relevant authorities have established a new practice according to which illegal immigrants are no longer prosecuted solely for illegal entry or stay but instead they are being deported.

<u>Fight against the impunity of persons guilty of acts of torture</u>

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Within the Report of the US Department of State, *Bureau of Democracy, Human Rights and Labour* of 25 February 2004 it is stated that "there were reports that police has abused detainees." Two new cases of police brutality were brought before the courts and hearings were scheduled for the beginning of 2004.

The Commissioner for Human Rights in paragraph 34 of his Report has expressed his serious concern over information pointing to excessive use of force by the police against foreigners unlawfully entering or residing in Cyprus. The Commissioner has observed that "It is

nonetheless disturbing to find that there is still a rather timid official reaction to allegations of police misconduct, particularly in those cases detected by the independent national authorities. It is crucially important that no impression of toleration or impunity be conveyed in no way whatsoever. […] Improper treatment during police custody could be averted by certain procedures, as for example compulsory medical examination of persons arrested and held by the police to be undergone at the time of detention and release, and the mandatory presence of a lawyer as from the first police interview and the duty to inform the families or friends of the person under arrest. According to information received by the Ministry of Justice, a bill is in preparation to lay the burden of proof on the police in the event of injuries or other marks of violence found on the persons held." Unfortunately the completion and enactment of such bill remains to be seen.

Within the *Regional Report on Cyprus (January-June 2004)* of Amnesty International it is reported that on 20, 22, 24 of April and on 18 May, Greek-Cypriot policemen stripped and searched Turkish-Cypriots trying to cross the Ledra Palace checkpoint on the Green Line in Nicosia. On two of these occasions, Turkish-Cypriots were beaten and in one case the belongings of the individual in question were confiscated. It is important to note that on none of those occasions charges were pressed. Amnesty International has pointed out that if the allegations of a policy of harassing Turkish-Cypriots at the checkpoints with a view to deliberately humiliating them was verified, such a policy would constitute cruel and degrading behaviour and would be in violation of article 16(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (http://www.amnesty.org/library/index).

Legislative initiatives, national case law and practices of national authorities

National legislation

Article 8 of the Constitution provides that no person is to be subjected to inhuman or degrading treatment or punishment.

The Republic of Cyprus has ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* New York 18 December 2002 on 26 July 2004. This protocol creates obligations of the Republic to take measures for the prevention of torture and other forms of degrading treatment against institutions in which people are imprisoned or are deprived of their freedom.

A Bill has been put forward to the Parliament by the Ministry of Justice and Public Order according to which the Council of Internal Control for the Police (Συμβούλιο Εσωτερικού Έλεγχου) is to be established. This Council will investigate cases of corruption and violation of human rights in which members of the police are involved. The Parliamentary Legal Commission is said to be preparing changes to the said law proposal that will render the Council independent from the police and the government (i.e. the Council should not be comprised of policemen, its discussions should not be given to the Ministry of Justice and its administrative and other personnel should be independent from the Ministry of Justice so that its impartiality is not at stake). (Politis Newspaper, 8 October 2004).

Practice

The Ombudsman in her annual report (Επίτροπος Διοικήσεως, Ετήσια Έκθεση 2003, pp. 49-50) noted: "During the year 2003 there has been a raise in the complaints by civilians concerning ill-treatment by the police organs, lack of respect of their rights and degrading or inhuman treatment." The Ombudsman has concluded that police brutality still poses serious reason for concern. The Ombudsman's Report for 2003 refers to several cases of police brutality exercised against foreigners.

A series of complaints have been launched by the Representatives of the Greek-Pontian group for discriminatory treatment and other maltreatment against members of their community by the Police Force. It has been reported in the local press that a Pontian Greek living in Cyprus was badly bitten by the police. (*Sunday Mail, 2 July 2004*). The provocative comments of a high-ranking police officer have induced the Ombudsman to proceed to a condemnation of the incident since she concluded that the comments were capable of creating prejudice and racism targeted against members of the Greek-Pontian Group. The Ombudsman noted that such comments should in any case be avoided especially on the part of high-ranking officials. (Report of the Ombudsman dated 23 June, 2004 P.1/2004)

Positive aspects

The establishment of the Council of Internal Control is a positive step towards the effective protection of human rights of civilians, provided that it operates at a highly impartial and independent level.

Additionally, the Cyprus Police has established the European Union and International Police Co-operation Directorate in December 2003 at the Cyprus Police Headquarters. Among its offices is the Human Rights Office, which organises awareness lectures and press conferences concerning the protection of human rights.

Reasons for concern

The representative of the major local NGO "Action for Equality, Support and Antiracism" (KISA) has stated that there is evident institutionalised racism running through the police force that leads to the systematic abuse of asylum seekers and immigrants who are deported before they even get the chance to apply for asylum. (*Cyprus Mail, 17 September 2004*). The said behaviour, according to KISA amounts to degrading treatment (*Politis Newspaper, 17 September* 2004).

Speaking at a joint session of the Human Rights Committee at the Parliament, the Ombudsman has stated that "her office and the police do not cooperate perfectly". The Police justify non-compliance on the argument that the Ombusman's role is advisory, despite a directive by the President of the Republic urging full compliance of all authorities with the findings and decisions of the Ombudsman. (*Politis, 2 November 2004*)

Protection of the child against ill-treatment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The US Department of State, Bureau of Democracy, Human Rights and Labour in its report concerning Cyprus for 2004, has reported that there have been instances of child abuse. It noted that the Government has proceeded to prosecution of all cases of reported child abuse.

Legislative initiatives, national case law and practices of national authorities

The Protection of Young Persons at Work Law of 2001 provides for protection of children under 16 years of age that are being encouraged or allowed to be used for begging.

Positive aspects

It is important to note that the phenomenon of "street boys" does not exist in Cyprus.

Behaviour of security forces (including during demonstrations)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CAT in its report on Cyprus (1993 and 1997) noted 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 CoE Commissioner of Human Rights in his Report, paragraph 34, has expressed his serious concern over information pointing to excessive use of force by the police against foreigners unlawfully entering or residing in Cyprus.

An internal Police Control Board having the jurisdiction for investigating violations of human rights committed by the police is established. The Commissioner commented at para. 37 of his Report that it would be advisable "to greatly enhance the credibility and effectiveness of this apparatus if its composition could be extended to persons not answerable to the Government, particularly lawyers and/or representatives of NGOs."

The Commissioner observed that "It is nonetheless disturbing to find that there is still a rather timid official reaction to allegations of police misconduct, particularly in those cases detected by the independent national authorities. It is crucially important that no impression of toleration or impunity be conveyed in no way whatsoever. …Improper treatment during police custody could be averted by certain procedures, as for example compulsory medical examination of persons arrested and held by the police to be undergone at the time of detention and release, and the mandatory presence of a lawyer as from the first police interview and the duty to inform the families or friends of the person under arrest. According to information received by the Ministry of Justice, a bill is in preparation to lay the burden of proof on the police in the event of injuries or other marks of violence found on the persons held." The time of the completion of such bill and its enactment remains to be seen.

Legislative initiatives, national case law and practices of national authorities

A protestor submitted a complaint to the Ombudsman, relating to his arrest and maltreatment by the Police during a peaceful protest demonstration against the US attack in Iraq outside the US embassy in Nicosia. The protestor argued that he was in the course of peacefully expressing his opinion, while the police argued that their intervention was necessary for the restoration of public order. The Ombudsman after examining the case published her deliberations on the issue in question. She concluded that "the intervention of the police during the demonstration was not only unsuitable but also disproportionate. No other means of action were sought that would have restricted less the fundamental rights of the citizens." (p. 8). The Ombudsman also advised the Chief of the Police to give proper directions to the police so that in the future such incidents are avoided and to adopt an approach more in line with the rights and freedoms of citizens (A/Π 340/2003, *Έκθεση Επιτρόπου Διοικήσεως αναφορικά με το παράπονο με αρ. Α/Π 340/2003 κατά της Αστυνομίας*, published on 5 February 2004).

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.

Article 5. Prohibition of slavery and forced labour

Fight against the prostitution of others

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Commissioner for Human Rights of the Council of Europe has noted at paragraph 29 of his Report that: "It is not at all difficult to understand how Cyprus, given its remarkable economic and tourist development, has come to be a major destination for this traffic in the Eastern Mediterranean region. The absence of an immigration policy and the legislative shortcomings in that respect have merely encouraged the phenomenon." The Commissioner expressed his deep concern over the lack of efficient preventive measures to deal with this situation, and noted that "the number of young women migrating in Cyprus as nightclub artistes is well out of proportion to the population of the island."

In paragraph 30 of his Report it is noted that the authorities have responded mainly at the normative level. "The Act of 2000 (L. 3 (I)/2000) has established a suitable framework for the suppression of trafficking in human beings and sexual exploitation of children. Under the Act, any action identifiable as trafficking in human beings in the light of the Convention for the Suppression of Trafficking in Persons and of the Exploitation and Prostitution of Others, together with other acts of a similar nature specified by law, constitute an offence punishable by 10 years imprisonment, the penalty being increased to 15 years where the victim is under 18 years of age. The offence of sexual exploitation carries a 15-year prison sentence. If committed by persons in the victim's entourage or persons wielding authority or influence over the victim, the penalty is 20 years in prison. According to the provision of Article 4 using children for the production and sale of pornographic material is an offence. Article 7 grants State aid within reasonable limits to victims of exploitation; such aid comprises subsistence allowance, temporary accommodation, medical care and psychiatric support. Article 8 reaffirms the right to redress by stressing the power of the court to award punitive damages justified by the degree of exploitation or the degree of the accused person's constraint over the victim. A foreign worker lawfully present in Cyprus who is the victim of exploitation can approach the authorities to find other employment up until the expiry of the initial work permit (Article 9). Lastly, the Council of Ministers, under Article 10 appoints a guardian for victims with the principal duties of counselling and assisting them, examining complaints of exploitation, and having the culprits prosecuted, as well as for pinpointing any deficiency or loophole in the law and for making recommendations with a view to their removal."

It is further noted that: "At a practical level, the Government has made efforts to protect women who have laid a complaint against their employers by permitting them to remain in the country in order to substantiate the charges. In certain cases, the women have remained in Cyprus at government expense during the investigation."

It has further been noted that "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

Legislative initiatives, national case law and practices of national authorities

National Legislation

The relevant legislative framework to the combat against trafficking of human beings is based on the following: (a) The Constitution; (b) The Penal Code, Cap. 154; (c) The Criminal Procedure, Cap. 155; (d) Law 3(I)/2000 providing for the combating of Trafficking in Human Beings and Sexual Exploitation of Young Persons; (e) The Aliens and Immigration Law, Cap. 105; (f) The Children's Law, Cap. 352; (g) The Protection of Witness Law, L. 95(I)/2001; (h) The Obscene Publications Law, L. 35 (I)/1963; (i) The Prevention and Suppression of Money Laundering Activities Law, L. 61 (I)/1996; (j) The Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Other ratified by Law 57/1983; (k) The Convention on the Elimination of All Forms of Discrimination Against Women ratified by Law 78/1985; (l) The Convention of Cybercrime, (Child Pornography) ratified by Law 22 (III)/2004; (m) U.N. Convention on Organised Crime and its three Protocols ratified by Law 11 (III)/03; (n) Convention of Cybercrime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems, ratified by Law 26 (III)/04.

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) in its provisions relating to offences against morality, namely sections 144 to 177, regulates 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.
According to Sections 157 and 162 of the *Penal Code* living on the profits of prostitution, procurement and the illegal detention of a woman with the purpose of her sexual exploitation constitute criminal offences punishable by a sentence of imprisonment of up to 5 years.

The Childrens 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(I)/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. Section 8 stresses the power of a court to award punitive damages on the basis of the degree of exploitation or the degree of the accused person's constraint over the victim. Under s.9 a foreign worker lawfully within the Republic that has become the victim of such exploitation can see other employment for the period covered by the initial work permit. 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.

The Government of Cyprus in order to set up more a more effective framework for tackling the crime of trafficking has signed an agreement with the government of Bulgaria. The agreement was ratified by *Law 48 (III)/2004 Ratifying the Agreement of the Government of Cyprus and the Government of Bulgaria concerning Cooperation on Eliminating Transboundary Organised Crime, Terrorism, Trafficking of People and Illegal Movement of Drugs*. [*Νόμος που Κυρώνει τη Συμφωνία της Κυβέρνησης της Κυπριακής Δημοκρατίας και της Κυβέρνησης της Βουλγαρίας για Συνεργασία στην Καταπολέμηση του Διασυνοριακού Οργανωμένου Εγκλήματος, της Τρομοκρατίας, της Εμπορίας Προσώπων και της Παράνομής Διακίνησης Ναρκωτικών Ουσιών* N. 48(III)/2004, 16 July 2004].

The Government of Cyprus and the Government of Estonia have singed an *Agreement for the Cooperation of Organised Crime and other Forms of Crimes*. This agreement has been ratified by the Law 13(III)/2004 that Ratifies the Agreement between the Government of Cyprus and the Government of Estonia on the Fight against Organised Crime and other Forms of Crimes [*Νόμος που Κυρώνει τη Συμφωνία της Κυπριακής Δημοκρατίας και της Κυβέρνησης της Δημοκρατίας της Εσθονίας για την Καταπολέμηση του Οργανωμένου και Άλλων Μορφών Εγκλήματος.* N. 13(III)/2004, 26 March 2004]. This agreement includes cooperation for the fight against sexual exploitation of people [article 1(1)(16)].

The draft of the *New Aliens and Immigration Law* expected to be finalised and sent to the competent Ministers for their view by the end of January 2005, abolishes the so-called "artiste visa/permit". (*Measures taken by the Republic of Cyprus to Combat Trafficking of Human Beings, A note by the Ministry of Interior, 29 December 2004*)

National Case Law

The Supreme Court in the Criminal Appeal No. 7365 (decision of 2 March 2002) held that the Combating of Trafficking in Persons and Sexual Exploitation of Children Law 3(I)/2000 [Ο Νόμος 3(I)/2000 περί Καταπολέμισης της Εμπορίας Προσώπων και περί Σεξουαλικής Εκμετάλλευσης Ανηλίκων], prohibiting the sexual exploitation of persons is applicable to

cases where the exploitation occurs in relation to an isolated case in contrast to systematic exploitation.

In The Attorney General of the Republic v. Andrea Christophide (Criminal Appeal no. 7500, 8 March 2004), the defendant was convicted at first instance to 9 months imprisonment following a finding against him for living on profits from prostitution in accordance with Article 164 (1) of the Penal Code Cap.154. The Attorney General appealed against the sentence imposed. According to the findings of the Court the defendant had forced two women to prostitute themselves while he collected their earnings. It was observed that the defendant's behaviour was not only unacceptable but "barbarous" in physically assaulting the two women and keeping them imprisoned, while he had arranged for their arrival in Cyprus through misrepresentation for highly paid employment. The Court noted that in accordance with the last amendment of the Penal Code by Amendment Law 99 (I)/1996 the maximum sentence that can be imposed in such cases was increased to 5 years imprisonment. It was subsequently held that the imposed sentence of 9 months was not satisfactory and was increased to a sentence of two years imprisonment.

Positive aspects

The New Aliens and Immigration Law abolishing the so-called "artiste visa/permit" is an improvement in combating trafficking in human beings.

Reasons for concern

In accordance with Law 99 (I)/1996 the sentence applicable for living on earnings from prostitution is 5 years imprisonment. It is observed that the sentence imposed by the Supreme Court in the Attorney General v. Andrea Christophides (8 March 2004) case of 2 years imprisonment could be seen as lenient bearing in mind the facts of the case.

Trafficking in human beings (in particular for sexual exploitation purposes)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to the *US Trafficking in Persons Report of 2004* of the US Department of State, Cyprus is a destination country for women trafficked from Eastern Europe, primarily Ukraine, Romania, Moldova, Russia, Belarus, and Bulgaria. "Traffickers who forced women into prostitution generally recruited their victims to work as dancers in cabarets and nightclubs on short-term "artiste" visas, for work in pubs and bars on employment visas, or for illegal work on tourist visas."

The above Report states that the Government does not fully comply with the minimum standards for the elimination of trafficking, despite its "significant efforts" to do so. It invites the Government to focus specifically on understanding the nature of the problem better and develop a partnership with NGOs to improve victim identification and support.

In relation to Prosecution of related cases, it is noted within the Report that: "Cyprus' comprehensive anti-trafficking law prohibits trafficking in women and children across international borders for the purposes of sexual exploitation and prescribes punishment of up to 20 years' imprisonment. The law is gender-specific and does not address internal or labour trafficking. Officials pursued isolated cases of trafficking under forced prostitution and related crimes. In March, Cypriot courts convicted four individuals of forcing women in to prostitution and related crimes."

It is observed that "Anti-trafficking legislation provides protections for women and child trafficking victims, but such protections have rarely been mobilised. Anti-trafficking legislation designates the head of the Welfare Department as the "Guardian of Victims" but the Government did not identify specific resources for trafficking victims. During the reporting period, three victims were refereed to the Welfare Department, and were offered general assistance. Like other foreign workers, "artistes" are required to undergo a medical exam upon arrival and renewal of their visas, but "artistes" must additionally be tested for sexually transmitted diseases. Towards the end of 2003, Police began bringing "artistes" to distinct police stations for personal interviews without employers present and they increased checks on cabarets. Such efforts were intended to expand opportunities to this vulnerable group to file complaints that would enable the police to initiate investigations. The law provides victims the right to seek compensation, shelter and medical care, as well as to change employers or have a guardian appointed."

It is further noted in relation to preventive measures taking on the part of the Government that "the Government gave arriving "artistes" information sheets available in several languages, explaining their rights and obligations and providing emergency information, but it had no anti-trafficking programs targeting other vulnerable groups, nor the public at large. The Ombudsman's report generated brief media attention and some ongoing inter-ministerial dialogue. The Attorney General's office coordinated the work on the anti-trafficking Group of Experts, which included representatives for relevant ministries, police and NGOs. The group of Experts was formulating a national strategy for official approval."

The European Institute for Crime Prevention and Control affiliated with the UN published a report in 2003 entitled *Trafficking in women and children in Europe* by Martti Lehti (HEUNI Paper No. 18). It is repeated therein that the Republic of Cyprus constitutes a destination area for prostitution-related trafficking in women and children. The number of foreign prostitutes in the government-controlled area is estimated to be between 1000 and 10 000. According to the report a substantial proportion of the clients of prostitution are personnel of the foreign armed forces (British and Turkish).

According to the Human Rights Report on Trafficking of Persons, Especially Women and Children of March 2002 "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. " It should be noted in this respect that the Government rejects the allegation that Cyprus constitutes a transit country for trafficking of human beings.

Legislative initiatives, national case law and practices of national authorities

National legislation

The *Combating of Trafficking in Persons and Sexual Exploitation of Children Law* L. 3(I)/2000 [*Ο Νόμος 3(I)/2000 περί Καταπολέμισης της Εμπορίας Προσώπων και περί Σεξουαλικής Εκμετάλλευσης Ανηλίκων]* prohibits sexual exploitation of persons for profit if the exploitation is accomplished through the use of force, violence, threat or fraud or though "abuse of power of 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." [Section 3(1)(a)]. According to Section 5(1) of the said law, trafficking of persons is prohibited even in cases where consent or knowledge for the sexual exploitation is existent on the part of the victim. According to Section 3(2)(a), for the offence of sexual exploitation of persons the

sentence of 15 years imprisonment is provided for while Section 5(1) provides the sentence of 10 years imprisonment and/or £10 000 CYP for the offence of trafficking of persons.

A recent amendment of the *Law on Evidence Cap.9* by Law 32 (I) of 2004 [*Νόμος που Τροποποιεί τον Περί Αποδείξεως Νόμο*, N. 32(I)/2004] has allowed the investigation by the Police of cases of advertisement of "sexual services" via the internet. The Law on Evidence as it now stands allows for the submission of hearsay evidence in criminal proceedings, albeit in a limited way, since it is up to the discretion of the court not to accept it if it deems that this safeguards the correct administration of justice (article 24(2)).

According to information received by the Ministry of Interior, the government is in the process of drafting a New Law for the Trafficking in Human Beings. In the new legislation, the term "trafficking" will not only mean sexual exploitation of women and children, but also labour exploitation, slavery of human organs etc and will have clear provisions for the prevention of trafficking for the protection of the victims and for the prosecution of those involved. This legislation is expected to be completed within the first quarter of 2005. (*Measures taken by the Republic of Cyprus to Combat Trafficking of Human Beings, Note by the Ministry of Interior, 29 December 2004*).

According to information received from the Ministry of Interior (note dated 29 December 2004) the draft of the new Alien and Immigration Law is expected to be finalised and sent to the competent authorities for their views by the end of January 2005. "The new legislation which will replace the existing one, is in compliance with the European Acquis. It clearly defines the conditions of entry and employment for all third country workers, it includes the relevant conditions which need to be fulfilled for the granting of work permit for all categories of workers which need to be fulfilled for the granting of a work permit for all categories of workers and it abolishes the so-called "artiste visa/permit." It also covers provisions for the introduction of long-term consular visas for various categories of third country nationals (including for employment purposes) from specific countries, issued at Consular Offices of the Republic."

According to the same information, a new law for the trafficking of Human beings is also expected to be completed within the first quarter of 2005. "The scope of the new legislation is to harmonise the national legislation with the European Acquis and the Republic's international obligations and commitments. In the new legislation the term "trafficking" will not only mean sexual exploitation of women and children, but will have clear provisions for the prevention of trafficking, for the protection of the victims and for the prosecution of those involved in trafficking."

The relevant authorities in the same note have admitted that the legislation concerning private employment agencies currently in force has several weaknesses and needs to be amended in order to ensure its compatibility with the new law for trafficking of Human Beings. Accordingly "the amended legislation will set more clear criteria and prerequisites for working as an employment agent and also provide the mechanisms for checking whether Private Employment Agencies meet the relevant criteria."

Practice

The Ombudsman in her *Ex Officio* Report on the circumstances of entry and working conditions of foreign women classified as "artists" of 24 November 2003 noted that the mechanisms for victims support stand far from being satisfactory. According to the report, although the *Law on Combating of Trafficking in Persons and Sexual Exploitation of Children Law* L. 3(I)/2000 explicitly lays down the obligation on the part of the State to take measures to protect and support victims of trafficking, including arrangements for their temporary housing, medical treatment and psychological support, the means and the

allocation of responsibilities of execution within the relevant authorities through which such support is to take place were not provided for.

Within 2004 there have been approximately 11 arrests by the police on the basis of Law 3 (I)/2000.

According to information received by the newly established *Office for the Prevention and Combating of Human Trafficking* at the Cyprus Police, victims of trafficking "come mainly from poor countries, such as Belarus, Ukraine, Uzbekistan, Latvia, etc, and they are attracted to coming to Cyprus, due to the high standard of living and the money that they can collect and take back home." Off the Record interviews with such victims have shown that "some women knew that they would be prostituting themselves and they agreed to do so in order to collect money and return to their country of origin. But there are also women who were given false promises or never knew that they would have to practice prostitution in order to remain and work in Cyprus. […] During the investigation of these cases, it has been noticed, that certain girls had entered the country on a tourist visa. Most of these girls violated their visa entry and were prostituting themselves, either by their own, or with a pimp. Some of these girls came to the country just to prostitute themselves, collect thousands of pounds and return to their country, while others who had come into Cyprus with tourist visas had been promised that once in Cyprus their visas would be changed into working visas. They were deceived and forced into prostitution in order to pay back the "expenses" that the traffickers claimed from bringing them in Cyprus."

According to information received by the Ministry of Justice and Public Order (Note dated 13 December 2004) within December 2003 the Cyprus Police has established the European Union and International Police Co –Operation Directorate, under which the Office for the Prevention and Combating of Human Trafficking in Human Beings has started functioning in April 2004. The Office is staffed with two members of the Police, one Inspector Criminologist and one Acting Sergeant.-Interrogator. Both members of this Office are specialists and have been trained on issues pertaining to trafficking in human beings. The objectives of the said office are the following: (a) to collect, process and evaluate information regarding human trafficking; (b) to coordinate the operations of all District Offices and other related branches in the area of human trafficking; (c) to organise and participate in operations; (d) to maintain statistical information; (e) to follow on cases presented and pending in Courts; (f) to prepare reports on human trafficking; (g) to investigate the internet and watch out for child pornography pages; (h) to establish a strategic plan; (i) to cooperate with foreign related departments. The members of the Office participate in operations and they are take off the record interviews with the victims in order to improve the understanding of the circumstances of distinctive cases.

According to information received by the Office, an updated databank is maintained where information regarding suspicious premises is kept. This databank is used for the collection and analysis of intelligence information and to better prepare the operations that are carried out by the Police.

It is worth mentioning that in the course of the first 5 months of the operation of the Combating of Trafficking Office, the police have investigated 77 cases on sexual exploitation of women, trafficking in human beings, procurement and other related offences. Specifically, 6 of these cases investigated by the Police involved procurement, 13 cases involved the offence of living on the earnings of prostitution, 22 cases involved both of the latter offences while 36 cases involved the offence of sexual exploitation, procurement, living on earnings of prostitution, suppression of brothels and other related offences. There has been a significant increase in the investigation of related cases after the establishment of the Office. During the period of 1.1.2004 – 8.12.2004 there were 84 prosecutions with 178 people prosecuted in

comparison to the same period in 2003 where 10 prosecutions were recorded with only 26 people prosecuted.

Between the 1 May 2004 and the 30 September 2004 the police proceeded with 546 raids in order to eliminate human trafficking and bring offences before justice. In these raids numerous cabarets, nightclubs and other suspicious institutions were inspected. During the raids women employees were questioned in relation to their employment conditions and treatment in an effort to increase the chances of victims bringing complaints against their employers.

The Ministry of Justice and Public Order, holds the opinion that Cyprus cannot be characterised as a transit country for women trafficked from Eastern Europe for the purpose of sexual exploitation. According to the said Ministry, "we believe that the argument that Cyprus is a transit country is false. Based on statistical information gathered by the Cyprus Police Immigration Unit, for the period of 1/1/2002- 4/4/2004, the movement of foreign women who came to work in Cyprus on working visas for nightclubs/cabarets etc. had as follows:

CITIZENSHIP	REPATRIATED	DEPARTED TO LEBANON	DEPARTED TO SYRIA
Bulgarian	55	11	3
Belarus	400	14	2
Moldavian	1054	30	4
Romanian	650	28	10
Russian	1000	13	7
Ukrainian	1950	45	12
TOTAL	5109	141	38

The above information, when analysed, indicates that only 3.4% of foreign women do not return to their country of origin. This percentage is low and it should be stressed out that Cyprus should not be included in the category of transit countries."

According to information received by the Ministry of Justice and Public Order, the Cyprus Police is in close cooperation with International and European organisations in order to tackle effectively the problem posed by human trafficking. At present Cyprus Police co-operates with the United Nations, Interpol, Europol, International Centre for Migration Policy Development, Federal Bureau of Investigation and with Liaison Officers from various countries stationed in Cyprus.

The Police participate in international operations for the elimination of human trafficking, such as "The Falkon" operation under the auspices of Interpol, in cooperation with the United States Government. Furthermore it participates in international research programmes related to human trafficking such as "Red Routes" carried out by Interpol.

The Police have organised educational seminars for Police Officers who are appointed at the Criminal Investigation Department, Crime Intelligence Office and the Crime Prevention Squad on issues related to trafficking in human beings. The seminars took place during the weeks of 28 June until 9 July 2004 and more than 100 police officers participated. Awareness lectures and press conferences concerning the protection of human rights including trafficking in human beings are organised by the Cyprus Police Human Rights Office. The Office has proceeded to the translation from English to Greek of the following editions of the Council of Europe which have already been distributed to all members of the police and to the public: (a) Discussion Tools – Police and Human Rights Training Manual; (b) A Pamphlet for the Police

Human Rights and their Protection in International Law; (c) European Code of Police Ethics, Recommendation (2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001.

According to information received by the Ministry of Interior, in the context of an effort to upgrade the cabarets and minimise the financial dependency of the artistes on their employers, the Ministry of Labour and Social Insurance, has undertaken to examine the qualifications that an artist should possess in order to be granted work permit as a performer, and an increase in their wages. The Ministry has undertaken the responsibility to regulate the issue through the preparation of a model contract for employment.

Positive aspects

The establishment of the Office for Combating Trafficking in Human Beings constitutes a step forward in the combat against human trafficking since it allows for the centralisation within the police of intelligence information and actions.

The Ministry of Justice and Public Order has noted that according to statistical information of EuroPol concerning human trafficking presented in Germany on 24 May 2004, Cyprus is not to be considered as a high-risk country.

The Group of experts on trafficking, which was appointed by the Council of Ministers with its Decision no. 54.281 and date 19.9.2001, has undertaken to prepare an Action Plan for combating of trafficking and sexual exploitation of children. According to information released in the national media, an action plan to fight prostitution and trafficking in women was expected to be presented before the Ministerial Council in September 2004. *(Cyprus Weekly, 25 July 2004)*. It is expected that the action plan is to be presented in January 2005. Additionally, the Ministry of Interior has stated that action would be taken to improve the wages of the "artistes". (*Fileleftheros, 12 October 2004*).

The Minister of Interior has stated that a shelter for women victims of trafficking will be in operation in the city of Limassol as from the beginning of 2005. *(Politis Newspaper, 12 October 2004)*. It should be noted that a provision for the operation of a "centre for the protection of victims of trafficking" is included within the annual budget of 2005. The centre is expected to operate within the second semester of 2005. Currently, and until the centre is put into operation, the victims of trafficking are placed in nursing homes for the period of 3 weeks where their basic and special needs are covered.

According to information received by the Ministry of Interior (note dated 29 December 2004) "the Cyprus Observatory for Equality which is a non-governmental organisation, has prepared an information sheet in order to inform all the women from third countries coming to work as artists in cabarets in Cyprus, about their rights and obligations. The information sheet clearly states that employers do not have the right to hold their passports or their personal belongings, they do not have the right to keep them restrained during non working hours, or force them to escort customers in or out of the cabaret, or even force, or "encourage" them to prostitution. The sheet also contains information about the services provided by the Department of Social Welfare Services, which is the guardian of the victims of trafficking under the relevant Law, as well as useful phone numbers. The information sheet is prepared in Greek and will be translated into Russian, English, Bulgarian, and Rumanian and will be disseminated at the points of entry to all women coming to the Republic to work as artistes. The information sheet is expected to be ready for dissemination by February 2005."

Good practices

According to information received from the Ministry of Interior, (note dated 29 December 2004) "in cases where the trafficking victims are willing to co-operate with the Authorities of the Republic for the prosecution of the traffickers, the Civil Registry and Migration Department in co-operation with the Police, immediately provides them with residence permit as well as working permit at the same or other employment sector. In order to avoid any delay, a specific Officer of the Department has the responsibility for these cases. The Republic can also use the EU Special (short term) Residence Permit for victims of trafficking who are willing to testify against the traffickers."

Reasons for concern

A survey conducted by the Town Planning Department in co-operation with the Cyprus Tourism Organisation and the Union of Municipalities has shown that there are 80 cabarets in Cyprus, 66 of which are legally operating and 10 operating without a licence. The Planning Authorities have rejected planning permission for four cabarets, three of which had applied for planning permission in deviation from the provisions of the Town Planning Law and Town Plans while the fourth one is no longer in operation. The operation of illegal cabarets and cabarets that are not operating according to the terms of their permits needs to be closely monitored and the problems resulting from such operation need to be addressed.

Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights released its conclusions for Cyprus in 2004 for the rights forming the "hard core" provisions of the Charter. (http://www.coe.int) In relation to Article 7(10) of the Revised European Social Charter [protection against physical and moral dangers], the Committee concluded pending receipt of additional information requested, the situation in Cyprus is in conformity with Article 7(10) of the Revised Charter. Specifically the Committee noted that:

"In order to comply with Article 7(10), Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions."

"An effective policy against commercial sexual exploitation of children shall cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking in children. To implement such a Policy, Parties shall adopt legislation, which criminalise all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above."

"The Report indicates that two acts, The Combat of Trafficking in Persons and of Sexual Exploitation of Children Act 3 (I)/ 2000 and the Special Protection of Persons who have been victims of Sexual Exploitation and Relevant Issues Act of 2000 regulate the issue. The Committee notes from other sources that the Act 3 (I)/2000 criminalises sexual exploitation of children, i.e. of persons up to the age of 18 years old, and punishes it with imprisonment of up to 20 years. Sexual exploitation means inciting or compelling a child to participate in any sexual activity; exploiting a child for prostitution or participation in other sexual practices; and exploiting a child in pornographic shows and materials."

"Exploitation by pornography covers production, sale, distribution, and possession of such materials and is punishable by 10 years imprisonment. The Committee observes that, as regards child pornography, the reference in the Act 3 (1)/2000 to the use of "any means of publication for the facilitation of circulation or trading of indecent objects" covers new information technologies."

"Finally, the Act 3(I)/2000 prohibits trafficking of children for sexual exploitation and punishes it with imprisonment of up to 15 years and a fine. Both trafficking and sexual exploitation of children are offences subject to extra-territorial jurisdiction."

"As to the practice, the Committee notes from another source, that, in general, Cyprus does not face serious problems of children sexual exploitation, nor their use for pornographic readings or publications. It also notes that awareness activities are carried out in school."

In regards to the Protection of children in relation to other forms of exploitation, ill treatment and abuse, "the Committee notes that the Children's Act provides for child protection in case a child under 16 is encouraged or allowed to be used for begging."

"The Committee also notes that the Cypriot legislation on trafficking covers as yet only trafficking for sexual exploitation. It asks whether it is meant to extend its material scope to other forms of exploitation or if protection is afforded through other legal means."

"The (national) report indicates that a law dealing specifically with domestic violence and child abuse was adopted in 1994. Its aims condemn any act of violence within the family and provide protection to the victims. In 2000, a new act on Family Violence was adopted with a number of new provisions to better protect the victims. The SWS provide Child Protective services to children whose physical and psychological integrity are in danger due to inadequate family care, family violence and/or other factors. These services consist in information, counselling, financial and other practical assistance. The director of SWS is empowered by the legislation to assume parental rights and place the child in foster families or residential placements when needed. The report indicates that the incidence of family violence is steadily increasing (from 45 reported cases in 19991 to 436 reported cases in 2001)."

"The Committee asks whether corporal punishment outside the family is also explicitly prohibited by the existing legislation."

In relation to the protection against the misuse of information technologies, the Committee has noted that: "taking into consideration the spread of sexual exploitation of children through the mean of new information technologies, Parties should adopt measures in law and in practice to protect children from their misuse, such as unprotected access to morally dangerous websites, audiovisual; and print material."

"Since the Internet is becoming one of the most used tools for the spread of child pornography, the Committee considers that Internet service providers should be responsible for controlling the material they host, securing the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.)."

"The Committee observes that the Act 3 (I)/2000 appears to criminalise child pornography conducted through the means of Internet. It asks confirmation of this and also whether legislation, the adoption of codes of conduct by Internet service providers, the setting up of Internet hotlines, or other kinds of activities are foreseen to protect children from Internet – related risks of sexual exploitation."

"The Committee also asks information about existing rules protecting children and young people from access to morally dangerous audiovisual and print material."

Legislative initiatives, national case law and practices of national authorities

The Republic ratified the Council of Europe *Convention on Cybercrime singed in Budapest 23.22.01,* with the *Law 22(III)/2004 ratifying the Convention on the Convention on Cybercrime* [*Ο Περί Σύμβασης Κατά του Εγκλήματος Μέσω του Διαδυκτίου (Κυρωτικός) Νόμος του 2004,* 30 April 2004].

Article 9(1)(a) of the above Convention provides that states must adopt legislation that criminalises child pornography. In implementing this requirement, Article 11 of Law 22(III)/2004, criminalises child pornography via the internet and imposes as a penalty up to 10 years imprisonment or fiscal penalty of up to £25 000 CYP or both. The Convention entered into force on the 1 August 2004 in accordance with to s.20 of Law 22 (III)/2004 and Article 36 (4) of the Convention.

In accordance with Section 11 of Law 22 (III)/2004 any person who has intentionally and without right (a) produced child pornography for the purpose of its distribution through a computer system, (b) offered or made available child pornography through a computer system, (c) distributed or transmitted child pornography through a computer system, (d) procured child pornography through a computer system for oneself or for another person, (e) possesses child pornography in a computer system or on a computer-data storage medium, is conducting an offence punishable by imprisonment not exceeding 10 years or by a fine not exceeding £ 25 000 or both.

Section 11 goes on to incorporate Article 9(2) of Title 3 of the Cyber Convention and stipulates that the term "child pornography" shall include pornographic material that visually depicts a minor engaged in sexually explicit conduct, a person appearing to be a minor engaged in sexually explicit conduct and realistic images representing a minor engaged in sexually explicit conduct. Furthermore, it is stated that "sexually explicit conduct" includes copulation among minors, or between a minor and an adult, of the same or different sex, bestiality, masturbation, and sadistic or masochistic behaviour within the context of sexual intercourse.

Furthermore the Government of Cyprus and the Government of Estonia have singed an *Agreement for the Cooperation of Organised crime and other Forms of Crimes*. This agreement has been ratified by Ratifying *Law 13 (III)/2004* [*Νόμος που Κυρώνει τη Συμφωνία της Κυπριακής Δημοκρατίας και της Κυβέρνησης της Δημοκρατίας της Εσθονίας για την Καταπολέμηση του Οργανωμένου και Άλλων Μορφών Εγκλήματος*. N. 13(III)/2004, 26 March 2004]. Article 1(1)(17) of the agreement provides for cooperation against the production and circulation of pornographic material related to children.

The Protection of Young Persons at Work Act of 2001 provides for the minimum age for admission to employment. Article 5 of the Act sets 15 years as the minimum age for employment except in two specific cases. Article 6 permits children who have reached the age of 14 years and who have successfully competed compulsory school or who have been released from the obligation to attend school to be employed in a combined work-training scheme for the purpose of learning a vocation or occupation. In such cases permission must be sought from the Ministry of Education and Culture. Article 7 permits the employment of children under the age of 15 in cultural, artistic and sports activities. This law however does not apply to domestic service in a private household (Section 3(a)). The said law also prohibits the employment of young persons under the age of 18 in dangerous and unhealthy work (section 20(3)).

Positive aspects

It should be noted that Cyprus in the course of its ratification of the Cyber Convention, has adopted the highest threshold of protection provided for in the Convention. First, according to the Cypriot ratifying law (section 2 of Law 22(III)/2004), the term "minor" for the purposes of this law includes all persons under the age of 18. This is so despite the fact that article 9(3) of the Convention grants certain flexibility to each ratifying state in the interpretation of the term "minor". Second, Cyprus did not make any reservation in the ratification of article 9 of the Convention, although this option is provided for in the said article.

Reasons for concern

It is important to note that no national action plan against the sexual exploitation of children has yet been adopted. However, the Group of Experts on Trafficking, which was appointed by the Council of Ministers with its decision no. 54.281 dated 19/9/01 has undertaken to prepare an Action Plan for combating trafficking and sexual exploitation of children. The Action Plan is expected to be ready by January 2005.

Investigation of offences related to child pornography:

The situation prior to Law 22(III)/2004 ratifying the 2001 Convention on Cybercrime:
The relevant legislative framework was clearly unsatisfactory. There was no specific provision within the Penal Code or elsewhere creating relevant offences while investigations of suspects was tramped by the belief held by the prosecuting authorities that any interference would contradict Article 17 of the Constitution protecting the Right to Privacy and Secrecy of Correspondence. In 2001 there were at least 8 cases where the prosecuting authorities had reasonable grounds to believe that various offences had been committed relating to child pornography. While relevant information in relation to suspects was at times held by the authorities no prosecution took place.

According to national press releases of late July 2004, a 50 year old suspect for having committed various offences related to child pornography was arrested following a complaint made to the police. The allegation was that he was sending obscene messages to children through Internet chat rooms. Subsequently, he was released with no charges being brought against him. According to statements of the Deputy Chief of the Police to a local newspaper (*Cyprus Mail 30 July 2004*), despite the fact that child pornographic material was found in the suspect's possession, prosecution could not follow since Article 17 of the Constitution guaranteeing the Right to privacy and protecting the secrecy of correspondence and other communication, was taken as not to allow any realistic prospect of conviction. It was further emphasised that investigations in such cases is very problematic since investigators cannot have access to the suspect's telecommunications, including his computer.

The situation after the 1 August 2004 when the CyberCrime Convention came into force:
The situation regarding investigation of child pornography remains the same, despite the fact that the Cyber Convention is now in force.

Concerning the investigation of child pornography, the adoption of the Cyber Convention gives power to the prosecuting authorities to have access to one's computer system and data. Indeed, Article 19 of Title 4 of the *Cybercrime Convention* relating to the search and seizure of stored computer data. Article 19 provides that:
"1. Each party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:

a. a computer system or part of it and computer data stored therein; and
b. a computer data storage medium in which computer data may be stored in its territory.

2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or party of it, pursuant to paragraph 1 (1) and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expediously extend the search or similar accessing to the other system.

3. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 and 2. These measures shall include the power to:
a. seize or similarly secure a computer system or part of it or a computer data storage medium.
b. make and retain a copy of those computer data.
c. maintain the integrity of the relevant stored computer data.
d. render inaccessible or remove those computer data in the accessed computer system."

However, to the best of our knowledge, no such measures or legislative initiatives have been adopted.

For this reason, and within the context of an arrest of a suspect for various offences related to child pornography, the Deputy Chief of the Police has stated to the local press (*Cyprus Mail, 30 July 2004*) that: "This man has admitted to being a paedophile, and we can't do anything about it, because we are not allowed to access private telephony."

The basis for this view is the protection guaranteed by Article 17 of the Constitution of the Republic which reads: "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. 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 unconvicted prisoners and business correspondence and communication of bankrupts during the bankruptcy administration." According to the Deputy Chief's opinion Article 17 "has to be changed."

According to the prosecuting authorities and the police, a serious problem with the enforcement of the Cyber Convention is posed by Article 17 of the Constitution. The issue remains to be examined by the domestic Courts which constitute the only appropriate body capable of establishing whether indeed the effect of Article 17 is to render the relevant provision of the Convention inapplicable. The Courts may well adopt a different interpretation of Article 17 of the Constitution, one that balances differently Article 17 of the Constitution, other rights guaranteed by the Constitution and the Cyber Convention and one that, in effect, may shift the balance to the benefit of the prosecuting authorities and victims in general.

Exploitation of undocumented workers

Legislative initiatives, national case law and practices of national authorities

In *Police v. Ioannis Serafeimidis (decision of 22/7/2004)* an employer engaged in serious exploitation of an illegal immigrant working for him, specifically by giving him one plate of food each day as remuneration for his work. The Court convicted the defendant to four months imprisonment.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Council of Europe Commissioner for Human Rights has stated 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 his deep concern about the number of illegal immigrants that are being detained and the fact that persons are being imprisoned for civil debts. (Cyprus Mail, 29 June 2003).

In his Report released on 12 February 2004, (para.11) he welcomed the recent measures announced by the Ministry of Justice as a response to the recent criticisms by the CPT and noted that such actions "should be continued and get completed with all dispatch." These measures include educational programmes for prison officers, the introduction of training programmes for prisoners, the introduction of separate wards for juvenile offenders and for persons sentenced to long terms of imprisonment, and the establishment of a prisoners' psychiatric treatment centre.

Pre-trial detention

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the *Regional Report on Cyprus (January-June 2004)* of Amnesty International it was stated that : "Amnesty International wrote to the authorities seeking further information on the death in custody, which was subsequently clarified as suicide, of Ionis Ambrosiades, aged 29, on 12 May, while he was in custody at the Limassol police office. The organisation urged the authorities to conduct a thorough, prompt and impartial investigation to determine the full circumstances surrounding his death in custody, and to prevent future similar incidences."

It was further noted that "during the period under review legislation was before the Parliament on safeguarding the rights of people under arrest, including their rights to contact immediately – by phone, in person and in private- a lawyer of their own choice and any other person they may wish, to be medically examined in private by a doctor of their choice, and to be informed of their rights in a language they understand. Amnesty International welcomed the legislation as an improvement in terms of securing rights that previously had been lacking and asked the government to keep it informed regarding the progress of approval and implementation of this legislation."(http://www.amnesty.org/libray/index).

According to the Report of the US Department of State, Bureau of Democracy, Human Rights and Labour, published on 25 February 2004 "most periods of investigative detention did not exceed eight to ten days before formal charges were filed" (paragraph d).

Legislative initiatives, national case law and practices of national authorities

According to the law, no person may be detained for more than 24 hours without the examination of his case by the courts that may extend the period of his detention.

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:

(a) for the detention of a person after conviction by a competent court;

(b) for the arrest or detention of a person for non-compliance with the lawful order of a court;

(c) 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;

(d) 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;

(e) for the detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) 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."

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.

A Bill has been prepared by the Human Rights Department of the Legal Service regulating the right to access to legal assistance and Article 11 of the Constitution. It criminalises the deprivation of liberty by arrest/detention without a warrant, or in situations not falling within those permissible under Article 11. Additionally, "every person arrested, is afforded the right to contact a lawyer immediately by phone, in person, and in private, and to be informed of his right by the police in a language he understands." The person detention is also "afforded the right to be medically examined by a doctor of his own choosing and to contact him by phone, in person and in private and to be informed of this right by the police in a language he understands." "Medical examinations are to be carried out in private and out of hearing and view of the police. Any contravention with the above mentioned provisions is a criminal offence carrying a term of imprisonment." This Bill was approved by the Government and was tabled in the Parliament on the 27 December 2003. However, the Parliament requested the Legal Service to introduce additional provisions, which will widen the scope of the protection afforded during detention/imprisonment. The government is in the process of amending the Bill according to the amendments requested by the Parliament.

Detention following a criminal conviction (including the alternatives to the deprivation of liberty and the conditions for the access to release on parole)

The situation in relation to Life Sentence:

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the Ombudsman's Report in relation to the detention conditions at the Central prisons of Nicosia of 26 May 2004 (*Γραφείο Επιτρόπου Διοικήσεως, Αυτεπάγγελτη Έρευνα Επιτρόπου Διοικήσεως για το Σωφρονιστικό Σύστημα της Κύπρου και τις Συνθήκες Κράτησης Στις Κεντρικές Φυλακές,* 26 May 2004) the interpretation of the imposition of a life sentence as imprisonment for the rest of the convicted persons' life was heavily criticised. It was noted that in most other Council of Europe Member States life imprisonment does not mean imprisonment for the rest of the natural life of the convicted. (paragraph 69).

Legislative initiatives, national case law and practices of national authorities

According to the legislative framework currently in force as interpreted by the Supreme Court, a person convicted to life imprisonment is expected to remain imprisoned for the rest of his/her life. The Nicosia Assize Court has pronounced that a literal interpretation should be attributed to the term "life imprisonment" and therefore it should be explained as "imprisonment for the rest of the biological existence of the convicted." (The Republic of Cyprus v. Aristodimou, number 31175/87). This approach has been confirmed by the Republic of Cyprus v. Panayi (Kaukari), number 23069/87, 10 March 1989.

There are two persons serving a life sentence at the Central Prisons in Nicosia who were in fact convicted to a life sentence at a time when according to Article 4 of the General Prison Regulations of 1981 that were in force at the relevant time of conviction, "life imprisonment" constituted imprisonment for 20 years. The two convicted had received upon their arrival at the prison an F5 notice issued by the prison authorities, according to which a conditional date of release was stated. In the meantime the Supreme Court in its decision in *Hadjisavvas v. The Republic of Cyprus (1988)2 C.L.R. 37*, held that the aforementioned General Prison Regulations were unconstitutional. 4 years later the General Prisons (Disciplinary) Regulations, Cap. 286 were repealed and replaced by the Prison Law of 1996 (Law 62 (I)/96). The two convicted are still being detained under a dubious legal basis.

Panayiotis Kaukaris, one of the above-mentioned convicted persons, filed a Habeas Corpus application, which was rejected by the Supreme Court on 17 February 2004. An appeal to this decision was also rejected on 20 July 2004. Kaukaris has made an application to the European Court of Human Rights complaining that the retroactive increase of the duration of his sentence constitutes a violation of Article 3, 5 and 7 of the Convention taken alone and in conjunction with Article 14 of the Convention. The Application remains to be examined.

On a different note the Supreme Court in *Re the Application of Antonis Fanieros and the Director of Prisons (Civil Appeal No. 11918, 4 May 2004) (Πολιτική Έφεση Αρ. 11918, Όσον Αφορά την Αίτηση του Αντώνη Φανιέρου Από τη Λάρνακα και τώρα στα Κρατητήρια των Κεντρικών Φυλάκων και όσον αφορά το Διευθυντή Φυλακών, 4 Μάιου 2004)* identified a lacuna in the Cypriot legislation in relation to the adaptation to the sentence of imprisonment, in the case of a prisoner that needs to be transferred abroad to receive medical treatment. The current framework provides that in the event of a prisoner's hospitalisation in Cyprus any days spent in hospital would count as normal serving of his sentence while in the event of hospitalisation abroad the situation remains unclear.

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

The Ombudsman in her report for 2003 (p. 59) has noted that the lack of a special ward for juvenile offenders creates various problems and involves violations of human rights of such persons due to their vulnerable position. In the Ombudsman's opinion the creation of a special ward for juvenile offenders remains essential.

A proposal for the establishment of a separate ward for juvenile offenders was discussed before the Parliamentary Committee for Human Rights on 9 March 2004. This ward upon its institution is thought to act as a correctional institution for juvenile offenders serving their prison sentences. Unfortunately no further initiative from the part of the domestic authorities has been taken in this respect.

Reasons for concern

Currently a special ward for juvenile offenders is not in operation. As a result, juvenile offenders are detained in the same wards as the rest of the inmates with devastating effects on such persons. This practice disrespects both the nature and different needs of minor detainees, while jeopardises their successful reintegration back into society.

An incident has been reported at the local press involving the detention of a 15 year old of British nationality arrested in connection of the alleged rape of another 15 year old. The boy was arrested and taken to court where bail was set at £10 000. The boy's family stated that they could not afford to pay the bail, and thus the 15 year old was taken to the central prisons pending his trial scheduled three months later. (Sunday Mail, August 1, 2004) According to statements of the General Prisons Governor the boy could not be isolated since there are no special wings for minors. "The boy is under close supervision in the under-21 section, but it's true that during his meals and time in the yard he is with criminals." The Chairman of the Organisation for the Protection of Human Rights was reported to be furious with the authorities for holding a minor in the central prisons. She found the behaviour of the authorities unacceptable in allowing a boy to live with criminals until his trial would take place in three months. The minor was later removed upon the interference of the Minister of Justice to a minimum security block still inside the Central Prison.

Positive aspects

An amendment to the Law for the Rehabilitation of Convicted Persons [*Νόμος που τροποποιεί τους περί Αποκαταστάσεως Καταδικασθέντων Νόμου του 1981 και 1988*, N. 228 (I)/2004, Number 3888, 30/7/04] has been enacted. The aim of this law is to regulate the rehabilitation of prisoners and especially young prisoners. One of the parameters of this law is to expand the juvenile age for the purpose of rehabilitation from 18 years of age to 21 years of age. The rehabilitation period is reduced or rescheduled while provisions for direct rehabilitation for young offenders (below the 21st age) convicted to a fine are made. Further the rehabilitation period for persons convicted to imprisonment of 2-4 years, 8 years and 12 years has been reduced.

Deprivation of liberty for persons with a mental disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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.

Legislative initiatives, national case law and practices of national authorities

Section 38 *of the Psychiatric Care Law (1997/77, 2003/49)* [*Νόμος περί Ψυχιατρικής Νοσηλείας (1997/77, 2003/49),* grants the power to a court upon finding of a mentally disabled person guilty, to issue an order for the institutionalisation of such person for psychiatric care at 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 fact has consistently formed the subject of criticism in a series of decisions delivered by the domestic courts. (*see for example Panagi v Republic of Cyprus 6319/1997 and Republic of Cyprus v Agathokli Neokleous 463/98.*)

Deprivation of liberty for foreigners (in order to prevent their unauthorised entry on the territory with a view to their removal, including their extradition)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the Report of the CoE Commissioner for Human Rights of 12 February 2004 it is stated (para. 13) that "the large numbers of foreigners serving sentences for illegal residence in Cyprus is a cause of anxiety." It was further identified that "illegal entry or stay of an immigrant in any country is not a crime but an administrative violation" and suggested that the government should "consider rapidly the possibility of classifying foreigners' illegal entry to and residence in Cyprus as an infringement of regulations rather than as a criminal offence, […] particularly where they are willing to return home." (paragraph 28)

The Commissioner noted that 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*].

Legislative initiatives, national case law and practices of national authorities

Article 11 (2) (f) of the Constitution provides that derogation from the right to liberty and security of a person is allowed, in the case of an 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 in accordance with Article 14 of the Aliens and Immigration Law Cap. 105.

In the event of the arrest of an alien for the purpose of his deportation or extradition, the existence of a properly justified court order is not necessary. Such an order is necessary only in the event of an arrest associated with the committal of a criminal offence. (*Dogan v. The Police (1995) 1 A.D.D. 201, 308; Saab Abbas Nazar v. The Republic (Application 48/2003, decision of 10 June 2003)*).

According to the Aliens Law, Cap. 105, no foreigners are to be detained in the Republic except where deportation and detention orders are issued against them. In such cases they are detained either 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.

According to the Police Regulations in relation to conditions of detention, aliens 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.

The exclusive jurisdiction of the Supreme Court in relation to Habeas Corpus Applications is granted by Article 155 (4) of the Constitution of the Republic. This jurisdiction is to be distinguished from the jurisdiction of the Supreme Court in relation to judicial review of administrative actions granted by Article 146 (1) of the Constitution providing that " The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority in person."

Habeas Corpus Case Law

In Ignor Martinenko (Application No. 61/2002) the Applicant was of Ukranian origin and was arrested with the purpose of his extradition on the basis of offences committed by him in Ukraine. The Applicant claimed that his detention exceeding 8 days amounted to an infringement of his rights protected by Article 11.6 of the Constitution. It was held by the Supreme Court that article 11.6 is not applicable to such cases since it is restricted to cases of arrest for completion of an interrogation procedure. The Court relied on Article 16 of the European Convention on Extradition (as ratified by the Law 95/70). It was held that the detention period was lawful and the application for habeas corpus was rejected.

In Essa Murad Khlaieff v. The Republic of Cyprus [Application of 91/2003, 14 October 2003], the Applicant had been continuously detained for four months, for the purpose of his

deportation. The Applicant claimed that the provisions of Article 11 (6) of the Constitution should be applied in cases of detention for deportation purposes. The Supreme Court held that detention for the purpose of deportation cannot be infinite and 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.

Essa Murad Khlaieff v. The Republic of Cyprus was applied in Emmanuel Oktru v. The Republic of Cyprus (Application number 19/2004, 2 March 2004). This was another case where the Applicant was detained for a prolonged period of time due to the inability of execution of the deportation order issued against him. The Applicant alleged that he is a citizen of Sierra Leone. However his allegation was denied by the Embassy of Sierra Leone in the United Kingdom. The Applicant insisted on his allegation, while the execution of the deportation order against him became impossible due to the inability of the authorities to establish his country of origin.

The Supreme Court held that prolonged detention for the purpose of deportation becomes unjustified only where responsibility for the prolongation lays on the part of the authorities. On the facts of the case, the prolongation of the detention was caused by the behaviour of the Applicant. The Application was therefore rejected. In applying well established case-law to this effect it was further decided that judicial review of the order for detention for the purposes of deportation can only be examined in the context of the jurisdiction of the Court under Article 146 (1) of the Constitution since such an order befalls within the sphere of administrative law and as such its legality cannot be examined through an application for the award of a Habeas Corpus Order.

The above decision was reaffirmed in *Ali Sharif from Pakistan v. The Republic of Cyprus (Application number 23/2004, 12 March 2004).* In this case the Applicant had entered the Republic illegally without identification documents. He alleged that he had approached the Police Authorities where he stated his intent to apply for asylum protection. The Police arrested him for illegal entry into the Republic and for being without documents. The following day he was presented before the Larnaka District Court where he was convicted to four months imprisonment for illegal entry into the Republic. While he was detained at the Nicosia Central Prisons he submitted an asylum application without a specific date stated therein.

On the 12 February 2004 a deportation order was issued against the Applicant in accordance with Section 6 (1) (k) of the Aliens and Immigration Law, Cap. 105 and a detention order until the deportation order takes effect. The execution of the deportation order was suspended pending the examination of the asylum application while the Applicant continued to be detained.

The Applicant sought a Habeas Corpus order for his immediate release on the premise of the alleged illegality of the detention order issued against him. It was held that on the basis of well-established case-law, judicial review of the detention order is subject to the jurisdiction of the Supreme Court under Article 146 (1) of the Constitution and as such it cannot be examined on the basis of a habeas corpus application. Thus the Habeas Corpus application was rejected.

A different approach was followed in *Muhammed Hassan v. The Republic of Cyprus (Application number 24/2004, 12 March 2004)*. In this case Hadjihambis J. disagreed with the decision reached in *Ali Sharif from Pakistan v. The Republic of Cyprus (Application number 23/2004, 12 March 2004).* He observed that the Applicant was challenging the legality of his

detention through the Habeas Corpus Application. It was noted that the Applicant was being detained in view of the detention order issued with the purpose of the execution of the deportation order. Hadjihambis J. noted that since the deportation order has been suspended and the detention order that is depended upon it, the detention order cannot be said to exist in vacuum. The suspension of the deportation order has as a necessary consequence the suspension of the detention order. The Habeas Corpus Application was therefore allowed and the Applicant was released.

HadjiHambis J. further noted that an asylum applicant cannot be lawfully detained except as provided for by Article 4 of the Refugee Law. Such detention is only permissible once a Court order has been issued.

In *Re the Application for Habeas Corpus of Bilal Ahmed and The Republic of Cyprus (Application No.22/2004, 18 March 2004)* it was held that the suspension of the deportation order has rendered the detention order of no substance since the purpose of the said order has ceased to exist. The decision reached in *Essa Murad Khlaief v. The Republic, Application No.91/03, 14 October 2003* by Hadjihambis J. was upheld in that the legality of detention can be examined through an application for a Habeas Corpus, which should be granted if it is established that detention is not being based on a lawful basis. In such a case the Applicant should be released even though his detention prima facie derives legality from an administrative act. The Court upheld *Muhammed Hassan v. The Republic of Cyprus (Application number 24/2004, 12 March 2004)* and ordered the release of the Applicant.

In *Hassan Ibrar v. The Republic, Application No. 48/2004, 30 April 2004*, Hadjihambis J. reaffirmed his earlier position in *Muhammed Hassan v. The Republic of Cyprus (Application number 24/2004, 12 March 2004)* and held that given that the detention order cannot exist on its own but depends for its existence on the deportation order, the suspension of the deportation order has caused the suspension of the detention order. The Applicant's detention was held to be unlawful, a provisional order for Habeas Corpus was granted and the Applicant was released.

In *Re the Application for Habeas Corpus of Soharab Hossain Khan and the Republic of Cyprus, Application No. 44/2004, 20 May 2004* it was noted that according to section 18 (6) of Law 9 (I)/2004 that came into force on 6 February 2004, an asylum applicant can stay within the territory of the Republic until the decision of the Review Authority on his application is issued. Eliades J. held that issuing of the deportation and detention order while the asylum application was still pending was contrary to Article 18 (6) of Law 9 (I) of 2004 amending the Refugee Law as well as Article 14 of the Aliens and Immigration Law Cap. 105 that renders the exercise of the measures for deportation and detention subject to the provisions of the Refugee Law.

The Applicant therefore was held to be subject to unlawful detention which could be challenged in the course of a Habeas Corpus Application. Eliades J., noted that the crucial issue before him was whether the detention order could be challenged through a provisional order for Habeas Corpus bearing in mind the principle arising from the relevant case-law that issues arising from an arrest and detention of an alien befall within the sphere of administrative law. It was noted that the Applicant should be set free on the basis of Article 18 (6) of Law 9 (I)/ 2004 that provides that the Applicant has the right to remain within the territory of the Republic until the final decision on his asylum application.

Detention of a person that has submitted an asylum application is provided for by way of exception in Section 7 (4) and (6) of the Refugee Law and can only be allowed upon the grant of a judicial order to this effect either for the verification of his identity or nationality of such person or for the investigation of new evidence in support of the application, that is submitted subsequent to a dismissal of an application both at first instance and at an appellate level.

Such detention cannot exceed 8 days. The period of detention may be renewed by a Court order for a further period of 8 days provided that the overall period of detention does not exceed a period of 32 days. (Section 7 (6)).

Eliades J. concluded that the pending asylum application allowed the Applicant to rely on the provisions of the Refugee Law which grant him the right to remain within the territory of the Republic until a final decision on his application is reached. The suspension of the deportation order has suspended simultaneously the detention order, since detention was a necessary part of the deportation process. The application for provisional order was held to have succeeded and the Applicant was released.

The *Re the Application for Habeas Corpus of Elena Bondar and The Republic Of Cyprus (Application Number 160/2004, 15 October 2004)* case has marked a turn in the approach taken by the Supreme Court in its recent decisions in the *Muhammed Hassan*, *Bilal Ahmed, Hassan Ibrar* and *Soharab Hossain Khan* cases. In this case Papadopoulou J. held that since detention is based on the deportation order and not on the Applicant's application for asylum per se, and since the deportation order is still existing, the detention is lawful. It was emphasised that the legality of the deportation order which is an administrative act can only be examined through the judicial review procedure established under Article 146 of the Constitution, and not through an application for a provisional order.

Papadopoulou J. noted that the suspension of the deportation order does not necessitate an automatic suspension of the detention order as well, despite the fact that detention was ordered for the purpose of deportation. Since the deportation order has not been revoked altogether its legal existence is sustained despite its suspension. Therefore the detention still retained a lawful purpose, namely the execution of the still existing deportation order. The examination of the lawfulness of the deportation as well as the detention order falls within the jurisdiction of a judicial review procedure under Article 146 of the Constitution and not through a habeas corpus application.

It was further noted that the application for asylum does not rendered the provisions of the Aliens and Immigration Law Cap. 105 inapplicable altogether. This is supported by the fact that Article 7 (4) of the Refugee Law prohibits the detention of an asylum seeker based merely on the fact that he is an asylum seeker. Papadopoulou J. concluded that detention on the facts of the case had been ordered on the basis of other purposes and was subsequently suspended until examination of the asylum application. The Application was therefore rejected.

In the case of *Jamil Ahmed v. The Republic of Cyprus (Application No. 151/2004, 22 October 2004)* the Applicant had entered the Republic on a student visa. His college had informed the authorities that he did not renew his registration, and subsequently he was proclaimed as a "wanted" person. The Applicant was located by the authorities 14 months later, when an order for deportation was issued together with an order for his detention until the execution of the deportation order. Following his arrest, the Applicant had filed an application for asylum. In view of his asylum application, the execution of the deportation order was suspended pending a decision on the asylum proceedings, while the Applicant continued to be detained. The Applicant subsequently filed an application for habeas corpus seeking his release pending the examination of his application.

The Supreme Court noted that neither the deportation order nor the detention order was suspended, but only the execution of the deportation order was in effect suspended. This is highlighted by the fact that the suspension of the execution order was not for an unlimited period but was explicitly intended to have effect so long the asylum application was still

pending, taking into account the time limits laid down by the Refugee Law for completion of that procedure. The intention of the relevant authorities was held to be clearly that both the deportation order and the detention order remained in force. It was held that since the two orders remained in force the case could not fall within the jurisdiction for examination of a habeas corpus application conferred to the Court under Article 155 (4) of the Constitution since the illegality of the two orders can only be examined by an application for judicial review of an administrative act under Article 146 of the Constitution.

The Court further noted that the presumption that following the filing of an asylum application and pending its examination the Applicant cannot be detained in all circumstances is wrong. Article 7 (4) of the Refugee Law forbids detention of an asylum applicant on the grounds of his application per se. The Court noted that the circumstances of the case before it; the Applicant having entered the territory of the Republic on a legally valid student visa but remained within its territory illegally for 14 months, justified the issuing of the deportation and detention orders, especially since such issuing occurred before the filing of the asylum application.

In *Sarkisasvili Kaha v. The Republic of Cyprus, Application No. 180/2004, 6 December 2004* Eliades J. decided to change his approach taken in the above-mentioned *Soharab Hossain Khan* case. It was therefore held that detention for the purpose of deportation does not fall within the sphere of private law where it could be challenged through a habeas corpus application, but befalls within the jurisdiction of the revising jurisdiction of the Supreme Court as provided for in Article 146 of the Constitution. The application for habeas corpus was therefore rejected for lack of jurisdiction.

In *Re the application of Reffat Barquwi and the Republic of Cyprus* (*Application number 131/2003, 12 Januray 2004*) an asylum seeker whose asylum application had been rejected and who was detained for the purpose of deportation, applied several times for a *Habeas Corpus* order. The Supreme Court reaffirmed its earlier position that parallel applications for *habeas corpus* order on the same factual basis cannot be brought.

The situation in relation to the availability of the Habeas Corpus application mechanism to challenge the legality of detention of an asylum applicant on the basis of a deportation and detention order issued against him for a reason other than the asylum application per se, remains unclear. It is currently being examined by the Supreme Court in an application for judicial review under Article 146 of the Constitution, and a decision is expected in early January 2005.

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 flagrant illegality being successfully 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 definitely outside the scope of its powers.

Other relevant developments

The situation in respect of imprisonment for failure of settlement of debts

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the Report of the CoE Commissioner for Human Rights (paras.13-15) it is observed that the imprisonment for failure of settlement of debts is "alarming". The Commissioner commented that "admittedly, the law does not consider such detention as a penalty, but only as a measure of enforcement of obligations (private ones included), and imprisonment can be ordered only as a last resort by a court after a hearing and only if a judge is convinced that the person concerned is solvent but refuses to pay." He stated that "whatever the procedural guarantees surrounding the custodial measure, they in no way, mitigate its harshness. The gravity of the measure in fact means that it verges on a criminal sanction, and recourse to such methods in order to ensure compliance with obligations and security of transactions seems completely outmoded today." The Commissioner noted that the current practice seems to be disproportionate since there are other measures that could effectively be used to ensure compliance of a debtor's obligations, such as seizure and liquidation of assets. He observed that such imprisonment is of no benefit to the creditors or to the security of transactions, since a debtor's imprisonment deprives him of any medium-term prospect of earning any income. He concluded that "it is plainly necessary to review this question" while he specifically referred to Article 1 of Protocol No 4 of the European Convention of Human Rights.

Legislative initiatives, national case law and practices of national authorities

The current relevant legislation provides that a citizen for whom an imprisonment order is made by a Court upon his inability to repay his debts, may apply to the Court, using legal aid and 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 has introduced new ways of execution of decisions relating to civil debts and has amended the Court's examination procedures of judgement debtors. Non payment of the relevant monthly instalments as set up by a Court order can result in imprisonment of the debtor.

The procedure laid down in Law No. 134 (I)/1999 provides the judgement debtor with the right of examination by a Court of his/hers financial capability and settlement by a Court Order of the amount of the monthly instalments for the repayment of the debt. The said Law also provides for the procedure of obtaining from a Court annulment, suspension, or amendment 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 imprisonment 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 practice 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 opportunity 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 Section 91 of Cap. 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 became possible for the Court to join the examination of other orders, including imprisonment orders concerning the same debtor, in the said application so that they can all be suspended or amended accordingly.

The above amendment did not abolish the sentence for imprisonment for inability to repay debts. It merely established 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 prospect of imprisonment of a debtor due to his/hers inability to arrange for payment of the fixed monthly instalments, raises 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.

It has been noted in the local press that the new procedure that has been applied with the amendment of the relevant legislation concerning debtors, has not been successful since imprisonment of debtors continues. (Philelefttheros Newspaper page 32, 19/12/2003) The President of the Republic has expressed his concern about the continuing existence of the imprisonment sentence for debts. On 18 December 2003 there were 29 persons in prison due to their inability to repay their 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.

In view of the above a new amendment to the Civil Procedure Law, Cap. 6 has been introduced by Law 66 (I) of 2004. Section 90 (1) of the Civil Procedure Law provides that the Court may order that a debt to be payable by periodic instalments fixed by the Court in respect to the debtor's financial situation. Section 2 of Law 66 (I)/2004 amends Section 90 (2) of the Civil Procedure Basic Law into the following:
"A Court order issued on the basis of Section 90 (1) may be cancelled, suspended or amended following an application to this effect by the debtor if he/she succeeds in proving that his/hers

financial situation has substantially changed as of the date of the latest examination, and thus has been rendered incapable of paying the instalments prescribed by the court order, *or if the Court taking into account all the relevant circumstances may consider such cancellation, suspension or amendment of its previous order equitable*." (emphasis indicates the addition of the amendment of L.66 (I)/2004)

Section 3 of Law 66 (I) of 2004 amends Section 91 (1) of the Basic Law to provide that:
"In the event of the delay of payment of more than three instalments or delay of less than three instalments when by their payment the debt is to be considered as settled, the Court may upon a by summons application by the judgement debtor to order that the amount of the said delayed instalments be paid in the same way as a financial sentence imposed in a criminal case, except if the debtor is able to establish a reasonable cause of such delay; *or if the Court taking into account all the relevant circumstances sees fit to issue any other order*." (emphasis indicates the addition of the amendment of L.66 (I)/2004)

Section 4 of Law 66 (I) of 2004 repeals Section 91 of the Basic Law altogether as of the 15 June 2004.

Reasons for concern

By the repeal of Section 91 of the Civil Procedure Law, the procedure by which incapability of a judgement debtor to settle a civil debt could result in his/hers imprisonment by treating the fact of delay of paying of the relevant instalments, as a fine imposed by a criminal procedure is outlawed.

The fact remains that alternative procedures are likely to be used having the same effect, such as the procedure of contempt of court for not complying with the Court order for payment of the relevant instalments or the procedure of Section 91 B of the Civil Procedure Law in regards to defrauding on the part of a judgement debtor punishable by imprisonment of 12 months or a fine of £1000 CY or both.

Other developments

Legislative initiatives, national case law and practices of national authorities

Law 133 (I)/2004 on the European Arrest Warrant and Surrender Procedures of Wanted Persons was enacted implementing *Decision EEL 190 of 18/7/02* [*Ο Περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004, Ν. 133(I)/2004, 30/4/04]*.

According to Section 2 (2) of the said law the implementation of its provisions shall not prejudice respect for fundamental human rights and principles, as laid down in Article 6 of the European Convention of Human Rights.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

Article 17 of the Constitution is expected to be amended in the process of harmonisation with EU legislation. Article 17 states 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. (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 unconvicted prisoners and business correspondence and communication of bankrupts during the bankruptcy administration." The scope of protection of the right to privacy in correspondence provided for by Cypriot legislation renders the role of the investigation authorities excessively difficult and poses problems in the implementation of relevant EU legislation.

The Bill amending Article 17 has been prepared by the Ministry of Justice and Public Order and awaits for its approval by the Council of Ministers (Politis, 12 October 2004).

In general, according to the relevant legislative framework and jurisprudence of domestic courts evidence gathered by the police from use of undercover officers or agent provocateurs cannot be admissible in court proceedings if such evidence has been taken in violation of fundamental rights as recognised by the Constitution. On the contrary, when the evidence collected by an undercover officer or an agent provocateur does not violate the fundamental rights of the suspect as recognised by the Constitution, then *prima facie* it is acceptable in court. In such a case the judge has the discretion to declare such evidence admissible. The above issue is currently under examination by the Supreme Court which is expected to release its decision on the matter in January 2005.

Controls imposed on potential candidates in employment (in particular security checks with regard to applicants for "sensitive positions")

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CoE Commissioner for Human Rights noted in paragraph 41 of his Report that: " The Ombudsman has received certain complaints from persons exempted from military service that their exemption certificates indicate the grounds (often a bald mention of "psychological reasons") placing them at a disadvantage in occupational and social life. Moreover, this endorsement carries certain automatic consequences such as withdrawal of the driving licence, which is plainly unreasonable. This practice is inimical to the right to protection of personal data and the right to respect for private life. It might even constitute degrading treatment where- as was the case with one complainant to the Ombudsman- the "psychological reasons" mentioned actually refer to the subject's homosexual tendencies. The authorities assured me that they would make an attentive examination of the question."

Legislative initiatives, national case law and practices of national authorities

Following a recommendation to this effect by the Commissioner for the Protection of Personal Data the discharge certificate issued by the National Guard does not state the reason of discharge. (*Commissioner for the Protection of Personal Data, Annual Report 2002-2003*, p. 21)

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

Termination of pregnancy is prohibited in Cyprus by virtue of Sections 167-169 of the *Penal Code Cap. 154*. According to Section 167 a person acting with intention to cause the termination of the pregnancy of a woman is conducting an offence and may be subject to imprisonment of 14 years. According to Section 168 a woman who intentionally attempts to terminate her pregnancy is committing an offence punishable by 7 years imprisonment. There

are however exceptions to this rule. According to article 169A of the *Penal Code*, no person will be held criminally liable under articles 167-169 when the termination takes place by a doctor lawfully registered at the Medical Association (*Περί Εγγραφής Ιατρών Νόμος*) when (a) the impregnation was the result of rape and under such circumstances that would create serious breakdown to the social and family life of the pregnant woman, (b) the pregnancy would put in danger the physical and mental life of the woman or any of her children or there is a danger that the child, if born, would suffer from physical or mental disabilities that would render it seriously disabled.

Personal identity

Legislative initiatives, national case law and practices of national authorities

In regards to the right to have access to one's origins, the relevant law is the *Law 19 (I) of 1995 on Adoption* (*Νόμος που Προνοεί για την Υιοθεσία,* N. 19(I)/1995). Section 24 (3) provides that when the adopted person reaches the age of 18, he/she can request for a Court order to have access to his own record including the relevant sensitive information. The Court has to receive the opinion of the Welfare Department of the Ministry of Labour and Social Affairs.

Family life

General

Legislative initiatives, national case law and practices of national authorities

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 Marriage Law, Law 104 (I)/2003, has repealed the law regulating Civil Marriages between Cypriots and Foreigners. According to Law 104 (I)/2003, any person is able to conduct a civil marriage regardless of nationality and religion. It is worth noting the novelty of Law 104 (I)/2003 in providing that Turkish Cypriots are able to conduct a civil marriage with Greek Cypriots or other foreigners.

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

Removal of a child from the family

Legislative initiatives, national case law and practices of national authorities

According to *Law 119 (I) of 2000 Concerning the Prevention of Violence in the Family and Protection of Victims* [*Νόμος που Προνοεί για την Πρόληψη της Βίας στην Οικογένεια και για την Προστασία των Θυμάτων,* N. 119(I)/2000] as amended by Law 212(I)/2004, the Court during or after the closing of a hearing of a case concerning violence against a minor can order the removal of the minor and its placement at a secure place, or under the care of the Head of the Service of Social Welfare of the Ministry of Labour and Social Security for any period of time that is deemed necessary (Section 21(1)). Section 22, as amended by Section 13(a) of the Law 212(I)/2004, provides for the circumstances and the procedure under which the Court can order an interim order for the purpose of removing the minor from the family home until the case has been decided. The interim order is granted on the basis of *prima facie* evidence in support of the existence of a serious possibility for repetition of violence.

Once the child is removed from the family home it is placed under foster care or under the care of the Welfare Office. The Welfare Office accommodates such children in one of the eight *State Institutions of Child Care.* It has been reported in the local press that the State Institutions of Child Care cannot deal with the needs of such children since they are understaffed, with lack of scientific expertise on the part of their personnel. However, the Welfare Office has undertaken to train accordingly the staff of such Institutions. (*Fileleftheros, 19 November 2004*).

According to the *Law on the Relationship between Parents and Children* [*Ο Περί Σχέσεων Γονέων και Τέκνων Νόμος of 1990,* N.21/90] as amended by Law 203(I)/2004 (Section 21) the parental care of a child can be revoked by a Court order upon the conviction of the parent for an offence relevant to the life, health or morals of the child.

The right to family reunification

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights in its *Conclusions for 2004 (Cyprus)* has observed that "for family reunion no specific level of income is required. Furthermore, according to the Aliens and Immigration Regulations of 2000, the diseases accepted as an obstacle to family reunion are AIDS, hepatitis and venereal diseases."

"The Committee notes that refusal to family reunion for health reasons is possible in case of specific illnesses requiring quarantine stipulated in the World Health Organisation's International Health Regulations of 1969 (which replaced the International Sanitary Regulation No. 2 of 25 May 1951). These diseases are, as mentioned in the Health Regulations, cholera, including cholera due to the eltor vibrio, plague and yellow fever. Refusal for health reasons is also possible in case of serious contagious or infectious diseases such as tuberculosis or syphilis. If, on a case by case basis, it is established that very serious drug addiction or mental illness poses a threat to public order or security, then this could justify refusal of family reunion."

In this context the Committee observed that " the diseases which pose an obstacle to family reunion mentioned in the report include other diseases than those requiring quarantine stipulated by the WHO and therefore go beyond that allowed for under Article 19 (6). The Committee requests information from the Cypriot Government as to whether and how the diseases mentioned jeopardise public health. It also requests statistical information on the number of applications for family reunion rejected on health grounds."

"The Committee concludes that the situation in Cyprus is not in conformity with Article 19 (6) of the Revised Charter on the grounds that diseases, other than those mentioned in the WHO Regulations are posed as an obstacle to family reunion."

Legislative initiatives, national case law and practices of national authorities

According to the latest amendment of the Refugee Law, Law 241 (I) of 2004 [Νόμος που Τροποποιεί τους περί Προσφύγων Νόμους του 2000 μέχρι 2004, Ν. 241(I)/2004], in the event of individuals enjoying 'temporary protection' the relevant authorities in applying Articles 25 and 26 of Directive 2001/55/EC, have to provide for the reunification of the members of their family. This is so, provided that such members fall within the meaning of "family" as defined in article 20Θ paragraph 1.

In the case of *Ahmed Ibrahim Kedoum v The Republic of Cyprus*(Judgment of 21.1.03) Kedoum had challenged before the Supreme Court the legality of the deportation and detention order issued against him 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. Kedoum had argued that issuing of the said orders was contrary to the European Convention on Human Rights and Article 15 of the Constitution of the Republic, safeguarding the right to the protection of family life. He argued that such issuing in effect separated him from his family residing in Cyprus. It was held 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 Kedoum's child born in Cyprus had 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.

In the case of *Kalomira Ioannou v The Republic of Cyprus (Judgment of 28.3.2003),* the husband of Ioannou was an Iranian citizen who arrived in Cyprus in 1998, before the marriage with Ioannou had occurred, on a temporary residence permit. The said marriage took effect in 2000. The husband of Ioannou did not seek to renew his residence permit upon its expiration and continued to live and work in Cyprus. He was subsequently arrested and expelled in March 2000. Ioannou challenged the relevant administrative decision not authorising her husband's entry into 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 of Ioannou's right to family life". In view of the above the recourse was rejected.

Reasons for concern

Spouces of Cypriots of Turkish Cypriot origin who have entered and remained in the occupied territories since 1974 cannot obtain the Cypriot nationality. The relevant amending bill approvedby the Council of Ministers is pending before the House of Representatives since May 2004. The Political Parties appeared to be reluctant to proceed to enactment of the said Amendement.

Article 8. Protection of personal data

Independent control authority

Legislative initiatives, national case law and practices of national authorities

The *Processing of Personal Data (Protection of the Person) Law of 2001 to 2003* [*Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001*, N. 138(I)/2001 and N. 37(I)/2003] provides for the appointment, the rights and obligations of the Commissioner for the Protection of Personal Data. The said law establishes the Office of the Commissioner and sets out the Commissioner's competence and decision-making powers. The Commissioner was appointed on 1 March 2002 and commenced her functions on 1 May 2002. Secondary legislation in the form of Regulations has been enacted, namely, the Processing of Personal Data (Permits and Fees) Regulations of 2002 [*Οι Περί Επεξεργασίας Δεδομένων (Άδειες και Τέλη) Κανονισμοί του 2002, Κ.Δ.Π.538/2002*], which were issued on November 8, 2002. There has not been any evolution of the Commissioner's powers, functions and competence during 2004.

During 2004, the Commissioner for the Protection of Personal Data published two directives: one concerns the regulation of video-recording both in private and public fora [*Βίντεο-Παρακολούθηση, Οδηγία που Εκδίδεται από την Επίτροπο Προστασίας Δεδομένων Προσωπικού Χαρακτήρα βάσει του Άρθρου 23(ι) του περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία Ατόμου) Νόμου 138(I)/2001*]; the other directive concerns the Internet [*Διαδίκτυο, Οδηγίες που Εκδίδονται από την Επίτροπο Προστασίας Δεδομένων Προσωπικού Χαρακτήρα βάσει του Άρθρου 23(ι) του περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμου 138(I)/2001*].

In July 2004 the Commissioner published her first *Annual Report of 2002-2003*. According to the report, during this period, she received 30 complaints in relation to the implementation of the relevant law. The Commissioner noted that the limited number of complaints received has been due to the citizens' unawareness of the role of the Commissioner, especially at the first stages of the establishment of the Office. It has to be noted that 40% of the complaints were against the public sector, 30% against the private and 30% against legal persons of public law [*Επίτροπος Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, Ετήσια Έκθεση 2002-2003*].

Positive aspects

The Commissioner for the Protection of Personal Data received a complaint by a soldier claiming that the certificate of discharge issued by the National Guard contained sensitive data. On the basis of such data the police decided to withdraw his driving license. The Commissioner decided that the National Guard certificate of discharge must include only necessary information for the purpose of showing that the person whose name is written on the certificate has fulfilled its military obligations. The National Guard complied with the deliberations of the Commissioner and amended the certificate of discharge accordingly. (*Annual Report 2002-2003*, p. 21)

Protection of personal data

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Within the Report of the Monitoring Mission (peer review) under Chapter 24 in the fields of Justice and Home Affairs in Cyprus (20 June- 2 July 2003) it was stated that: "On data protection, Cyprus has made good progress. The Office of the Data Protection Commissioner has accomplished much in its first year of existence. Nevertheless, further development of the work programme is needed to complete the initial phase of promoting sectoral and public awareness of its role and duties imposed by the legislation, accompanied by the establishment of an effective complaints procedure. Attention should be paid to further developing the international co-operation and exchange of experience within Member States."

Within the EU 'Comprehensive monitoring report on Cyprus's preparations for membership 2003', the following was stated (page 18):
"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."

Legislative initiatives, national case law and practices of national authorities

The legal framework on data protection within the period under scrutiny is the following:

(a) The *Processing of Personal Data (Protection of the Person) Law of 2001 to 2003* [*Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001*, N. 138(I)/2001] as amended in 2003 by the *Amendment of the Processing of Personal Data (Protection of Person) Law* [*Ο περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Προσώπου) (Τροποποιητικός Νόμος) του 2003*, N. 37(I)/2003].

(b) The *Electronic Communications and Postal Services Regulation Law* [*Ο Περί Ρυθμίσεως Ηλεκτρονικών Επικοινωνιών και Ταχυδρομικών Υπηρεσιών Νόμος του 2004*, N. 112(I)/2004].

(c) The *Law on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce and Associated Matters* [*Ο Περί Ορισμένων Πτυχών των Υπηρεσιών της Κοινωνίας της Πληροφορίας και Ειδικά του Ηλεκτρονικού Εμπορίου καθώς και για Συναφή Θέματα Νόμος του 2004,* N. 156(I)/2004].

(d) The *Memorandum of Understanding between the European Community and the Republic of Cyprus on Cyprus's participation in the Community Programme in the Field of Electronic Interchange of Data between Administrations (IDA)*. The IDA programme was established by Decision No 1719/199/EC and Decision No 1720/1999/EC of the European Parliament and the Council of 12 July 1999 as modified by Decision No 2046/2002/EC of the European Parliament and of the Council of 21 October 2002 respectively. Cyprus ratified the Memorandum on the 12 March 2004, Number 3818 and is now part of the legislation of Cyprus [*Μνημόνιο Συνεργασίας μεταξύ της Ευρωπαϊκής Κοινότητας και της Κυπριακής Δημοκρατίας για Συμμετοχή της Κύπρου στο Κοινοτικό Πρόγραμμα στον Τομέα της Ηλεκτρονικής Ανταλλαγής Δεδομένων μεταξύ Διοικήσεων*].

(e) The *Convention on Cybercrime singed in Budapest 23.22.01 ratified by Law 22 (III)/2004*. [*Ο Περί Σύμβασης Κατά του Εγκλήματος Μέσω του Διαδυκτίου (Κυρωτικός) Νόμος του 2004* N. 22(III)/2004, 30/4/04]. This law establishes new offences concerning computer data.

(f) 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.

(g) 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 itineraries;
> 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.

Within the framework of the Community Program Phare, the Republic of Cyprus has singed the Twinning Light Contract with the Lord Chancellor's Department (now Department of Constitutional Affairs) of the United Kingdom for the purpose of providing technical help to the implementation of the data protection principles. Within the framework of the said programme, certain directives have been prepared which will be published on the basis of the *Processing of Personal Data (Protection of the Person) Law of 2001 to 2003.* The said directives involve codes of practice for the police and private corporations, papers on closed circuit television recording (CCTV) etc. (Commissioner, *Annual Report of 2002-2003*, July 2004, pp. 35-36).

Cyprus by virtue of Law 61 (III) of 2004 has ratified *the Agreement between the Government of the Republic of Cyprus and the Government of the Italian Republic on mutual administrative assistance for the prevention, investigation and Repression of Customs Violations.*

Article 15 of the said Agreement relating to the Protection of Personal Data provides that:
"Where personal data are exchanged under this Agreement, the Contracting Parties shall ensure a standard of data protection at least equivalent to that resulting from the implementation of the principles in the Annex to this Agreement, which is an integral part of this Agreement."

The said Annex provides for the Basic Principles of Personal Data Protection. In particular it states that:

" 1. Personal data undergoing automatic processing shall be:
a. obtained and processed fairly and lawfully;
b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
c. adequate, relevant and not excessive in relation to the purposes for which they are stored;
d. accurate and where necessary, kept up to date;
e. preserved in a form, which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.
2. Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.
3. Appropriate security measures shall be taken for the protection of personal data stored in automated data files against unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.
4. Any person shall be enabled:
a. to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;

b. to obtain at reasonable intervals and without excessive delay or expense, confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;
c. to obtain as the case may be rectification or erasure of such data if they have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in principles 1 and 2 of this Annex;
d. to have a remedy if a request for, as the case may be, communication, rectification or erasure as referred to at paragraphs (b) and (c) of this principle is not complied with.

5.1. No exception to the provisions under principles 1,2 and 4 of this Annex shall be allowed except within the limits defined in the following principle.
5.2. Derogation from the provisions under principle 1,2 and 4 of this Annex shall be allowed when such derogation is provided for by the law of the Contracting Party and constitutes a necessary measure in a democratic society in the interest of:
a. protecting State security, public safety, the monetary interest of the State or the suppression of criminal offences;
b. protecting the data subject or the rights and freedoms of others.
5.3. Restrictions on the exercise of the rights specified in principle 4, paragraphs (b), (c) and (d) of this Annex may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes where there is obviously no risk of an infringement of the data subjects.
6. Each Contracting Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles set out in this Annex.
7. None of the provisions of this Annex shall be interpreted as limiting or otherwise affecting the possibility for a Contracting Party to grant data subjects with a wider measure of protection than that stipulated in this Annex."

Remedies

The *Processing of Personal Data (Protection of the Person) Law* provides that the data controller shall compensate the data subject who has suffered damage by reason of violation of any provision of the law, unless he proves that he is not responsible for the event that caused the damage (Section 17). The law does not define the term "damage" but it is expected that the Commissioner for the Protection of Personal Data will deal with the term "damage" in practice and on a case-by-case basis.

The Law also provides for sanctions, offences, penalties and other administrative sanctions in the event of violation of the rules regulating the processing of personal data (Section 25).

Reasons for concern

According to local press releases, the Commissioner for the Protection of Personal Data has stated before the Human Rights Committee of the House of Representatives that the Government is the greatest violator of the privacy personal data. The Application Forms to be filled by Applicants for governmental posts requested information as to the Applicant's religion, spouses' names and other personal information that were irrelevant to the efficiency or the qualifications of the Applicant. (*The Cyprus Weekly, 8-14 October 2004*).

The Commissioner for the Protection of Personal Data has stated that her Office is unable to deal with an expected increase of complaints due to shortage of staff. (*The Cyprus Weekly, 8-14 October 2004*).

Protection of private life of the worker and the prospective worker

Legislative initiatives, national case law and practices of national authorities

The protection offered by the Processing of Personal Data (Protection of the Person) Law of 2001 to 2003 covers prospective, actual and former employees in the public or private sector, as they fall within the meaning of the term "data subject" as defined by Section 2 of the Law.

The Commissioner for the Protection of Personal Data has not yet taken a decision or recommendation on the extent to which an employer may process the personal data of an employer without his/her consent on the basis of Section 5(2)(b) of the Processing of Personal Data (Protection of the Person) Law of 2001 -2003. As a result, practitioners and other interested parties in general are essentially left on their own to interpret the Data Protection legislation, which is to a great extent very general and somewhat ambiguous.

Nevertheless, when interpreting the law, the Commissioner for the Protection of Personal Data has stated that she will take into consideration Recommendations and Resolutions of the Committee of Ministers of the Council of Europe on the Protection of Personal Data, documents adopted by the Article 29 Data Protection Working Party of the European Commission, other international instruments, as well as positions of other national Data Protection Commissioners/Authorities (http://www.dataprotection.gov.cy).

Section 5 of the Law sets out the criteria for the lawful processing of personal data. At least one of the criteria set out in section 5(2) must be satisfied if personal data are to be processed lawfully in the employment context. Each of these criteria requires that in any case, the processing that takes place must actually be "necessary for" the achievement of the objective in question rather than merely incidental to its achievement.

Those most likely to be relevant are:

(a) Processing is necessary for compliance with a legal obligation to which the controller is subject: Employment law may impose legal obligations on the employer, which necessarily require the processing of personal data. The employer may be under a legal obligation to make certain disclosures of personal data, for example, to the tax authorities or to process data or in connection with social security payments.

(b) Processing is necessary for the performance of a contract to which the data subject is party, or in order to take measures at the data subject's request prior to entering into a contract: Employment relationships are very often based on a contract of employment between the employer and worker. To meet its obligations under the contract to, for example, pay the worker, the employer must process some personal data.

Regarding points (a) and (b) above, workers' personal data collection and processing is allowed exclusively for those purposes directly related to the employment relationship and on the condition that such acts are necessary for fulfilling obligations of both parties founded on this relationship, either legal or contractual. Workers' personal data collection and processing for reasons that do not involve the employment relationship directly or indirectly is forbidden. Worker's consent may not lift prohibition against abuse of this purpose.

In addition, according to the principles established by section 4 of the Data Protection Law, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are processed at any given time within the framework of employment relationships and work organisation. Data must also be accurate and subject to updating and must be kept for the time period required for the fulfilment of the specific processing purposes.

In case of termination of employment or in the event that a job candidate is not selected or recruited, workers'/candidates' data must be kept in a form that permits identification of data subjects for no more than the period required for defending one's right before a court.

Further data keeping and processing is permitted only if so provided by a law or if explicitly requested by the worker/candidate for the purpose of seeking a post in the future or seeking a new post or for use by the worker him/herself (for the certification of employment and for the recognition and foundation of worker's rights).1

(c) Processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party to whom the personal data are communicated, on condition that such interests override the rights, interests and fundamental freedoms of the data subjects: This criterion requires a balance to be struck between the interests of the employer and the interests of workers. The employer has a legitimate interest in processing personal data of his workers for lawful and legitimate purposes that are necessary for the normal development of the employment relationship and the business operation. The level of tolerated privacy intrusion will very much depend on the nature of the employment as well as on the specific circumstances surrounding and interacting with the employment relationship which may have an influence. For example, the amount of personal information about a potential worker that an employer will be allowed to collect will differ for a security supervisor of the Central Bank of Cyprus and for one of the workers in the cafeteria in the same building.

An employee as a data subject has the rights set out in articles 11-14 and 16-17 of the Processing of Personal Data (Protection of the Person) Law, namely the right to information, the right to access, the right to object, the right to interim judicial protection and the right to compensation.

Protection of the private life of the insured person and the person seeking an insurance

Legislative initiatives, national case law and practices of national authorities

The protection of a "data subject" provided by the Processing of Personal Data (Protection of the Person) Law applies to an insured person as well as to a person seeking insurance. Section 5 (2) laying down the circumstances under which processing of personal data without consent of the subject is permitted, permits the processing of personal data for the performance of a contract to which the data subject is a party or in order to take measures at the data subject's request prior to entering into a contract. The Commissioner for the Protection of Personal Data has not yet reached any decision or recommendation clarifying the scope of Section 5(2)(b).

An insured person as a data subject has the rights set out in articles 11-14 and 16-17 of the Processing of Personal Data (Protection of the Person) Law, namely the right to information, the right to access, the right to object, the right to interim judicial protection and the right to compensation.

Finally, pursuant to section 7 of the Law, due to the sensitive nature of data involved, insurance funds and insurance companies have an obligation to notify in writing to the Commissioner for the Protection of Personal Data, the establishment and operation of a record or the initiation of processing.

[1] DIR. 115/18 of the Hellenic Data Protection Authority, Prot. No. 1830, 20.9.2001.

Protection of private life in the processing of medical data

Legislative initiatives, national case law and practices of national authorities

Medical data is considered as "sensitive data" as they concern health. Section 6 of the *Processing of Personal Data (Protection of the Person) Law,* imposes a general prohibition on the collection and processing of sensitive data although it then sets out a number of exceptions to this general principle if one or more of the following conditions are fulfilled:

(a) The data subject has given his/her explicit consent unless this consent has been obtained illegally or is contrary to accepted moral values, custom or if a specific law provides that the consent does not lift the prohibition.
(b) The processing is necessary so that the data controller can fulfil his obligations or carry out his duties in the field of employment law and the Commissioner has given a permit for this purpose.

(c) The processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent.

(d) The processing is carried out by an institution, club or any other non-profit making organisation which has political, philosophical, religious or trade-union aims, and relates solely to its members and such other persons with whom the aforesaid club, institution or organisation retains by reasons of its aims. Such data may be communicated to third parties only if the data subject gives his consent.

(e) The processing relates exclusively to which are made public by the data subject or are necessary for establishment, exercise or defence of legal claims before the Courts.

(f) The processing relates to medical data and is performed by a person providing health services by profession and has a duty of confidentiality or is subject to relevant codes of ethics on condition that the processing is necessary for preventive medicine, medical diagnosis, the provision of treatment or the management of health services.

(g) The processing is necessary for serving national interests or national security, and criminological or correctional policy needs and as long as it is carried out by a service of the Republic or an organisation or institution authorised for that purpose by a service of the Republic and concerns the ascertainment of crimes, criminal sentencing, security measures and investigation into major destructions, i.e. natural disasters or large scale destruction caused by terrorist attacks or other criminal activity.

(h) The processing is carried out exclusively for statistical, research, scientific and historical purposes, under the condition that all the necessary measures for the protection of the data subjects are taken.

(i) The processing is carried out exclusively for journalistic purposes or within the framework of artistic expression and provided that the right to the protection of private and family life is not violated in any way.

Finally, Section 7(6) of the Law provides that data controllers are discharged form the duty to notify where the processing is carried out by doctors or other persons offering health services and the processing concerns medical data. This is on condition that the data controller is bound by medical confidentiality or any other confidentiality set out in any law or code of ethics and as long as the data are not transmitted nor disclosed to third parties. Nevertheless, persons offering health services such as clinics, hospitals, rehabilitation centres, insurance funds and insurance companies, as well as data controllers of personal data are not discharged

from the obligation to notify when the processing is carried out in the framework of telemedicine programs or the provision of medical services through a network.

Reasons for concern

It was reported in the local press that the Medical Association has criticised insurance companies for insisting on having access to confidential medical reports before compensating their clients. According to insurance companies' practice, the insurance companies required clients or prospective clients to fill out a questionnaire which included a section on "actual diagnosis". In this case, prospective clients did not have much choice if they needed to get insured and had to waive their right to the secrecy of their medical data (*Cyprus Mail, 2 September 2004*)

It has also been reported that old X-rays of patients at the General Hospital of Nicosia had been left unprotected outside the hospital boundary, until the process of their destruction was completed. (*Politis, 29 September 2004*)

Video surveillance in public fora

Legislative initiatives, national case law and practices of national authorities

The Data Protection Commissioner has released in 2004 a directive regarding the use of closed circuit television recording (CCTV). [*Βίντεο-Παρακολούθηση, Οδηγία που Εκδίδεται από την Επίτροπο Προστασίας Δεδομένων Προσωπικού Χαρακτήρα βάσει του Άρθρου 23(ι) του περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία Ατόμου) Νόμου 138(I)/2001*]. This directive applies to video surveillance in private as well as in the public fora.

According to the said directive, CCTV users in private (a) have to justify such use, (b) need the explicit consent of the data subject; without which the use of CCTV cameras is only permitted in specific cases i.e. for the fulfilment of an obligation of the data processor, for safeguarding vital interests etc.

However users of CCTV cameras in the public fora need to be more cautious with regards to the justification of such use. The usual justification would relate to (a) crime prevention and crime investigation (b) public and national security, (c) protection of a specific area, (d) health and safety, (e) protection of public morals, and (f) the regulation of traffic. (pp. 5-6)

Another requirement for the legitimate use of CCTV cameras in public is awareness by the citizen that he/she is being monitored. Such awareness may however not be necessary for the purpose of (a) the defence of the state, (b) national needs and (c) investigation of crimes (p. 9). Such use for crime investigation presupposes that criminal activity has been recorded and it has been deemed necessary that the use of CCTV cameras without knowledge by the data subject that he is recorded would be effective. Additionally, such use without the knowledge of the data subject is permitted outside the buildings of the Secret Services or the National Guard that the public does not necessarily identify as such. (p. 10)

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

Marriage

Legislative initiatives, national case law and practices of national authorities

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

The case of *Selim v. Cyprus, Application no. 47293/99* before the European Court of Human Rights has prompted the introduction of 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.

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.

Reasons for concern

The provisions of Law 104 (I) of 2003 though provide the possibility for conduct of a valid religious Muslim wedding for members of the Turkish Cypriot community or other Muslim persons resident in the territory of the Republic, such possibility is not existent at the moment. According to Section 3(2), a Marriage Officer that has the power to conduct a valid wedding can be any person appointed accordingly by the Minister of Interior. Section 40 (3) (a) provides that the Minister can register any priest of "whatsoever religion, dogma or body" provided he/she makes an application and with the affirmation of the leader of his/her religion/dogma/body. The problem is posed by the fact that no such person capable of conducting a Muslim religious wedding is currently registered at the Ministry of Interior and therefore is recognised as a Marriage Officer. The fact that the same obstacle to the conduct of religious weddings is not existent in the case of members of the Greek Orthodox Church or of the other religious dogmas recognised within the Constitution creates the question whether the differential treatment required by the provisions of Law 104 (I)/ 2003 is legitimate and does not constitute unjustified discriminatory treatment.

Legal recognition of same-sex partnerships

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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.

"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)*

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).*

Legislative initiatives, national case law and practices of national authorities

Since “marriage” according to Law 104 (I) of 2003 is the agreement towards the union between a man and a woman, and since there is no law differentiating between a “marriage” and a “partnership”, there is no legal recognition of same-sex partnerships.

Recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

There is no specific provision in relation to transsexuals within the provisions of Law 104 (I) of 2003. So far, no relevant court decision has been reported.

Control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

Section 19 (2) of the *Marriage Law* 104 (I) of 2003 [*Ο Περί Γάμου Νόμος,* N. 104(I)/2003] defines a simulated marriage as “the marriage taking place between a citizen of the Republic of Cyprus or a foreigner who resides legally within the Republic with a foreigner for the sole purpose of securing the entrance and residence of the latter into the Republic.” In accordance to Section 19 (1) such a marriage is to be considered as void [*ανυπόστατος γάμος*]. A court order to this effect is necessary before the marriage’s status becomes void. Until such decision is taken, the marriage is considered valid.

Section 7 A (1) of the *Aliens and Immigration Law, Cap. 105* [*Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος, Κεφάλαιο 105*] provides that upon such a determination of a marriage as void, the Director of the Aliens and Immigration Authority may forbid the alien from remaining in the Republic and may cancel or not renew his/her permit. In establishing the relevant facts the Director may conduct an interview of the persons involved. The said Section dealing with simulated marriages was inserted in the Basic Law by virtue of the amending law 22(I) of 2001.

Reasons for concern

The provision requiring a Court order before the status of a simulated marriage turns into void is considered as problematic. Law 104 (I) of 2003 is being examined with the purpose of its amendment.

Article 10. Freedom of thought, conscience and religion

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the International Religious Freedom Report 2004 on Cyprus, released by the Bureau of Democracy, Human Rights and Labour of the U.S. Department of State on 15 September 2004, it was stated:
“The Constitution of the Republic of Cyprus provides for freedom of religion, and the Government generally respects this right in practice...However the politically decisive environment in Cyprus occasionally affected aspects of religious freedom.”

"There was no change in the status of respect for religious freedom during the period covered by this report, and government policy continued to contribute to the generally free practice if religion. After the Turkish Cypriot authorities' decision to relax crossing restrictions on April 23, 2003, Greek Cypriots reported relatively easy access to religious sites in the north, including Apostolos Andreas monastery; Turkish Cypriots equally were able to visit religious sites, including Hala Sultan Tekke mosque, in the government controlled area."

"Approximately 96 percent of the population in the government-controlled area is Greek Orthodox. Approximately 0.7 percent of the remaining population is Maronite, slightly less than 0.4 per cent is Armenian Orthodox, 0.1 percent is Latin (Roman Catholic), and 3.2 percent belong to other groups. The latter category includes small groups of Cypriot Protestants and foreigners of various religious beliefs. There is some western Protestant missionary activity in the government-controlled area."

"Turkish Cypriots residing in the south…are allowed to practice their religions freely."

"The 1960 Constitution of the Republic of Cyprus specifies that the Greek Orthodox Church of Cyprus, which is not under the authority of the mainland Greek Orthodox Church, has the exclusive right to regulate and administer its internal affairs and property in accordance with its holy canons and charter. The Constitution states that the Vakf, the Muslim institution that regulates religious activity for Turkish Cypriots, has the exclusive right to regulate and administer its internal affairs and property in accordance with Vakf laws and principles. No legislative, executive, or other act can contravene or interfere with the Orthodox Church or the Vakf. Both the Greek Orthodox Church and the Vakf are exempt from taxes with regard to religious activity. According to the law, they are required to pay taxes only on strictly commercial activities, such as commercial and real estates operations."

"Three other religious groups are recognised ion the Constitution: Armenian Orthodox, Maronite Christians and Latins (Roman Catholics). These groups are exempt from taxes and are eligible along with the Greek Orthodox Church and the Vakf, for Government subsidies to their religious institutions. No other religious group is recognised in the Constitution."

"..The Government of Cyprus … (has) constitutional or legal bars against religious discrimination."

"In the government-controlled area, religions other than the five recognised religions are not required to register with the authorities; however, if they desire to engage in financial transactions, such as maintaining a bank account, they must register as a non profit company. To register, a group must submit an application through an attorney stating the purpose of the non profit organisation and providing the names of the organisation's directors. Upon approval, non profit organisations are tax-exempt and are required to provide annual reports of their activities. Registration is granted promptly, and many religious groups are thus recognised. No religious groups were denied registration during the period covered by this report."

"There are no prohibitions against missionary activity or proselytising in the Government controlled area. Foreign missionaries must obtain and periodically renew residence permits in order to live in the country; normally renewal requests are not denied."

"The Government requires children in public primary and secondary schools to take instruction in the Greek Orthodox Religion. Parents of other religions may request that their children be excused from such instruction. While these children are exempted from attending religious services, some Jehovah's witnesses parents have reported that their children were not excused from all religious instruction."

[…]

"Missionaries have the legal right to proselytise …, but the Government… closely monitors missionary activities. It is illegal for a missionary to use "physical or moral compulsion" to make religious conversions. The police may investigate missionary activity based on a citizen's complaint. They may also open an investigation if missionaries are suspected of being involved in illegal activities that threaten the security of the republic, constitutional or public order, or public health and morals. There are occasional apprehensions but there have been no arrests under these laws."

"There have been no reports of religious prisoners or detainees."

"There were no reports of forced religious conversion."

"There are polite relations between the Greek Orthodox Church of Cyprus and the other religious communities…Although Turkish Cypriots reported that unused mosques have been vandalised, the Government routinely carries out maintenance and repair of mosques.."

"The Orthodox Church is suspicious of any attempts to proselytise among Greek Cypriots and closely monitors such activities. Religion is a significantly more prominent component of Greek Cypriot society than of Turkish Cypriot society, with correspondingly greater cultural and political influence. .. While the pre-eminent position of the Church has been somewhat reduced in recent years, it remains an important power centre in Cypriot politics. Present day influence of the Church can be seen in the political messages of bishops and priests regularly include in their Sunday sermons."

"On April 24, Greek Cypriots and Turkish Cypriots voted in separate referenda on a plan to reunite the island proposed by UN Secretary General Kofi Annan. In the weeks leading up to the referendum vote in the Greek Cypriot community, the Greek Orthodox Church of Cyprus came out against the Annan Plan and priests and bishops regularly made political statements about the Annan plan in their sermons. In a sermon six days before the referendum, the Bishop of Kyrenia (now resident in the government –controlled area, although his traditional seat is located in the area under Turkish Cypriot administration) told Greek Cypriots that those who voted for the Annan plan would not go to heaven. In the Turkish Cypriot community, the Vakf did not take a public stand on the Annan Plan."

As noted in regards to Cyprus in the "Report on Measures to combat discrimination in the 13 Candidate Countries (VT/2002/47)" of 2003, 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."

Legislative initiatives, national case law and practices of national authorities

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 and to manifest his/her religion or belief, in worship, teaching practice, or observances, and to change his/her religion or belief.

Article 138 of the Penal Code provides that 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.

Article 149 of the Penal Code provides that 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.

Article 142(1) of the Penal Code provides that 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.

Incitement to national, racial or religious hatred is sanctioned by virtue of Law 84 (I)/2003 amending the Penal Code, which brings into force the new Section 47 of the Penal Code. Section 47 provides that any person recoursing to any action in public with the specific intention to a) to cause any change to the sovereignty of the Republic or (b) to incite hostility among the different communities, religious groups due to his national origin, religion , colour or sex, is guilty of a criminal offence punishable by imprisonment of up to five years.

It is also relevant to note that the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems of 28.1.2003 has been ratified by virtue of Law No. 26 (III)/2004.

Reasons for concern

It is worth noting that by virtue of Article 18 (2) of the Constitution "All religions whose doctrines or rites are not secret are free." The element of transparency in religious practices imposed by the Constitution may lead to hindrances of effective protection to the right to freedom of religion.

Reasonable accommodation provided in order to ensure the freedom of religion

Positive aspects

In regards to available facilities for prisoners of a religion other than the dominant Greek Orthodox Religion , the Central Prison of Nicosia has special dietary provisions for Muslim individuals, there is a mosque inside the Prison, the detainees are allowed to receive mail, books or other material relating to their religion, the library of the Prison includes religious texts. No issue has arisen in relation to the ability of the detainees to carry religious signs.

Protection against harassment especially of religious minorities

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The *International Religious Freedom Report for 2004* of the US State Department stated: "There were no reports of persecution targeted at specific religions, including acts of anti-Semitism, by individuals or organisations designated as terrorist organisations."

It was further noted that "there are polite relations between the Greek Orthodox Church of Cyprus and the other religious communities in the south." "The Government routinely carried out maintenance and repair of mosques in the south." "Turkish Cypriots are able to visit religious sites, including the Hala Sultan Tekke mosque, in the government controlled area."

Legislative initiatives, national case law and practices of national authorities

There is no notable discrimination either de jure or de facto in the practise of different religions.

However, it is worth noting, that at the moment the conduct of a legally valid Muslim religious marriage is not possible due to the combined effect of the provisions the new Marriage Law No. 104 (I)/2003 and the fact that no person that can conduct Muslim marriages has requested registration as a 'Marriage Officer' for the purposes of that law (*see analysis of Article 9 above*.)

In addition the Armenian Representative at the Parliament has observed that the Armenians have to request for specific leave to attend their religious festive duties. It is noted that such leave is usually granted and is paid.

In regards to the possibility of children of different religions not to attend religious classes at public schools, it is noted that while representatives of the Ministry of Education have argued that students may be exempted from attending such courses upon their written application to this effect, in practice complaints have been made that involve teachers not granting such exemptions.

According to information received by the Ministry of Education, a parent of a child of a different religion than the dominant Greek – Orthodox religion, may, upon his/her written application to this effect, request the exemption of the child from attending the religious courses. In such a case, the child may attend a non religious course. In elementary education there are no consequences for a child's absence therefore a child is allowed to be absent to order to practice his/her religion.

There have not been any applications/claims or complaints in regards to carrying religious signs at school, and therefore a Representative of the Ministry of Education has stated that there is no relevant policy for this matter, which is subsequently left to the discretion of the Director of each school. No special provisions have been taken regarding specific dietary needs of children due to their religion.

In relation to the obligation of serving in the Cypriot National Guard, there is no specific provision in relation to an individual's religion. All Cypriot citizens are under the same obligation to do their military service. However in relation to the religious groups recognised by the Constitution, and in accordance with a Decision by the Council of Ministers, service of members of such groups is voluntary. Therefore their members upon their application to this effect may be exempted for their military service. In regards to Cypriot Muslims they have to

do their military service and there are no special provisions or facilities in regards to the practice of their religion. It should be noted that such cases are rare.

In relation to prohibited religious practices it is worth noting that by virtue of Law 48 (I)/2003 the Criminal Code Cap. 154 has been amended so as to render female genital mutilation a criminal offence.

Reasons for concern

According to the established procedure for appointment at the civil service of the Republic an applicant is requested to fill in a "G6" Form which explicitly requests a declaration of Religion. Steps are being taken for amendment of the G6 Form.

Civil service related to conscientious objection

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the International Religious Freedom Report 2004 on Cyprus, released by the Bureau of Democracy, Human Rights and Labour of the U.S. Department of State on 15 September 2004, it was stated:

"Members of Jehovah's Witnesses reported some difficulties in claiming conscientious objector status and exemption from required reserve military service in the Greek Cypriot National Guard."

"While the law provides for exemption from active military service for conscientious objectors, it does not provide such an exemption from reserve duty. Legal proceedings were initiated in 2002 against several members of Jehovah's witnesses for failure to appear for reserve duty. Their cases were suspended in November 2002 pending a revision of the law."

The CoE Commissioner for Human Rights noted in this regard in paragraph 40 of his Report that: "The term military service is normally 26 months. Defence Act 2/92 of January 1992 recognises conscientious objection on ethical, moral, humanitarian, philosophical, political or religious grounds. However, the alternative service offered is a very long period of non-armed service; it is for either 34 months to be undergone in uniform within army precincts or for 42 months without a uniform and outside army precincts. These regulations do not correspond to the standards of the Council of Europe. Legislative measures are being contemplated to make Cypriot legislation compatible with the Recommendations on the subject by the Committee of Ministers."

Reasons for concern

The *Law on the Establishement and Organisation of the National Guard and Related Issues* [*Νόμος Προνοών περί της Ιδρύσεως και Οργανώσεως της Εθνικής Φρουράς και περί Συναφών Ζητημάτων,* N. 320/1964] as amended by Law 43(I)/2003, affords the possibility to a conscientious objector to be exempted from armed military service and are allowed to serve an alternative military service. According to the Section 5 A (2) (a), a 'conscientious objector' is a person who refuses to do armed military service on grounds of conscience and is granted the status of 'conscientious objector' by a decision of the Minister of Defence. Alternative service constitutes either serving 34 months within army precincts (section 5A (1)(b)) or serving 42 months outside army precincts (section 5A (1)(a)). It has to be noted that active military service lasts 26 months (section 5(1)).
A Bill is pending before the Parliament in relation to conscientious objectors and their exemption from the obligation to do armed military service. Meanwhile, according to

information by the relevant authorities as a matter of practice Jehovah's Witnesses are granted an indefinite suspension.

Article 11. Freedom of expression and of information

Freedom of expression and information

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Ombudsman in her Report 1768/2004, 1861/2004 (*Έκθεση Επιτρόπου Διοικήσεως αναφορικά με πειθαρχική έρευνα εναντίον δύο εργατών του Ταμείου Θήρας λόγω δηλώσεων στις οποίες προέβησαν στην εφημερίδα Εργατικό Βήμα,* 18 October 2004) noted that within the context of an employement relationship any limitations imposed on the right to freedom of expression must be justified by the nature of the employment relationship and the ensuing obligations on the part of the employee, and must not under any circumstances revoke the substance of the said right.

The requirement of a prior permission by the employer before an employee may express his/ hers opinion may well constitute an unjustified interference with the right to freedom of expression if in the event of refusal for such permission the protection of the said right would become ineffective. Protection of the right to freedom of expression is particularly important in relation to the freedom of expression of members of a Trade Union or other employees commenting on their working conditions. The Ombudsman held that the disciplinary action proceedings brought against two employees for commenting to the local media on the health and safety standards of their employment was unacceptable.

Legislative initiatives, national case law and practices of national authorities

National legislation

Article 19 of the Constitution of the Republic provides:
"(1) Every person has the right to freedom of speech and expression in any form.
(2) This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.
(3) The exercise of the rights provided in paragraphs 1 and 2 of this article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety of the public order or the public health of the public morals of for the protection of the reputation or rights of others of for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.
(4) Seizure of newspapers or other printed matter is not allowed without the written permission of the Attorney-General of the Republic, which must be confirmed by the decision of a competent court within a period not exceeding seventy-two hours, failing which the seizure shall be lifted.
(5) Nothing in this Article contained shall prevent the Republic from requiring the licensing of sound and vision broadcasting or cinema enterprises."

The *Sound and Vision Broadcasting Stations (Events of Major Importance) Administrative Regulations of 2004* [*Οι περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών (Εκδηλώσεις Μείζονος Σημασίας) Κανονισμοί του 2004*, ΚΔΠ 451/2004] were adopted by the Cyprus Broadcasting Authority on 30 April 2004. The Regulations deal with the right of the public to follow major events. In accordance with Article 7 of the said Regulations a television station

may file a complaint to the Broadcasting Authority in relation to actions of another television station considered as in violation of the said Regulations.

National case-law

In *Sigma Radio T.V. Ltd and others v. Cyprus Broadcasting Authority (Cases No. 320/99,809/00 and others) 24 February 2004*, a number of important issues were under examination by the Supreme Court in relation to the operation of the Cyprus Broadcasting Authority. It was held that the Broadcasting Authority may impose sanctions as provided in Section 3 (2) (f) of the *Radio and Television Station Law of 1998 as amended (Law 7 (I) /1998)* upon a finding of a violation of the said law or upon a violation of the *Radio and Television Station Regulations of 2000*, that include the Journalist's Code of Practice.

The Supreme Court examined whether the Authority's decision making process complied with the requirements laid down in Article 6 (1) of the European Convention of Human Rights and Article 30 (2) of the Constitution of the Republic, guaranteeing the right to a fair trial. It held that every stage of the relevant proceedings; specifically the collection of the relevant information, their prima facie examination, communication of such information to the Applicants, the fact that the Applicants were given the right to express their opinion in writing and orally and at the final decision-making stage, the Authority had acted in compliance with the requirements of Article 6 (1) ECHR and Article 30 (2) of the Constitution.

The provision of Section 38 (1) (d) of the said Law that an administrative fine imposed and received by the Authority is to be deposited at the Authority's Fund was held not to affect the objectivity of the Authority. The Supreme Court noted in this respect that the requirements of Article 6 (1) ECHR and Article 30 (2) of the Constitution are satisfied since the Supreme Court possesses full jurisdiction to review any decision of the Authority upon filing of a recourse to this effect.

The Applicants had argued that any restrictions imposed on a Broadcasting Station in regards to the licence for its operation cannot be dependent on a judgment of an administrative authority, but such restrictions must be determined by a Court of law. The Applicants argued that the term "penalty" referred to in Article 19 (3) of the Constitution implies a criminal sentence. Therefore any penalties and sanctions that may be imposed in accordance with the provisions of the Broadcasting Law and Regulations can only be imposed by a Court of Law and not by an administrative organ.

Further the Applicants relied on Article 12 (2) of the Constitution to challenge Section 48 (6) of the Broadcasting Law providing that any person acting in violation of a provision of this law or Regulations shall be guilty of a criminal offence, and in the event of respective conviction will be subject to imprisonment of maximum three years or a fine not exceeding CY£20 000 or both. Article 12 (2) of the Constitution provides that: "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." The Supreme Court has stated in this respect that for procedural reasons it did not have to examine the said issue, noted however, that the parallel criminalisation of the offences contained in the Broadcasting Law may be problematic, but in any event such offences should be considered as administrative ones.

The Supreme Court noted that the power granted by Article 19 (5) to the Republic on requiring the licensing of sound and vision broadcasting or cinema enterprises befalls within the limits imposed by Article 19 (3) and cannot go beyond such limits. Article 19 (3) provides that "The exercise of the rights provided in paragraphs 1 and 2 of this article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are

necessary only in the interests of the security of the Republic or the constitutional order or the public safety of the public order or the public health or the public morals of for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

The Court noted in this respect that Article 19 of the Constitution is the equivalent of Article 10 of the European Convention of Human Rights. It refereed to *X Association v. Sweden (1982)28 DR 204* in that "The purpose of the licensing can be broad, but there is a duty to ensure that the rights under Article 10 remain protected." It further referred to *Informationsverein Lentia and Others v. Austria (1993)17 EHRR 93* where the ECtHR noted that "Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other consideration, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligation deriving from international legal instruments. This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they do not correspond to any of the aims set out in paragraph 2. The compatibility of such interferences with the Convention must nevertheless be assessed in the light of the other requirements of paragraph 2." The Supreme Court further referred to EEC Directive 89/552 of October 17, 1989.

In view of the above the Court held that Article 19 of the Constitution does not preclude administrative sanctions imposed for violations of the restrictions imposed in accordance to Article 19 (5) of the Constitution. It was held that the Broadcasting Law and responding Regulations on the licensing of sound and vision broadcasting or cinema enterprises constitute the regulation provided for in Article 19 (5) of the Constitution, and are compatible with the safeguards provided for in Article 19 (3) of the Constitution. This is so, irrespective of the interpretation attributed to the term "penalty" contained in Article 19 (3). Even if criminal nature is attributed to the said term, the restrictions and sanctions provided by the Broadcasting Law and Regulations are not to be associated with the term "penalties" contained in Article 19 (3) but with non compliance with the provisions of the said law and regulations.

The Court further disagreed with the argument on behalf of the Applicants that the power conferred to the Republic by virtue of Article 19 (5) cannot be delegated to a Public Authority. It held that such delegation was better serving the requirement for independent determination of complaints against the media.

Media pluralism and fair treatment of the information by the media

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The US Department of State, Bureau of Democracy, Human Rights and Labour published *Country Report on Human Rights Practices - Cyprus* on 25 February 2004. According to the report, "in the government controlled area, there were seven major daily newspapers, one weekly, and six major magazines. Several private television and radio stations in the Greek Cypriot community competed effectively with government-controlled stations." "Opposition newspapers frequently criticised the authorities."

Legislative initiatives, national case law and practices of national authorities

The *Law Amending the Television and Radio Channel Law* was adopted on 30 April 2004 [*Νόμος που Τροποποιεί τον περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών Νόμος του 2004,* N. 97(I)/2004].

In *Christos Iosifides v. The Cyprus Broadcasting Corporation (Application number 300/2003, 6 February 2004*) an independent candidate for the 2003 Presidential Elections challenged the decision of the Cyprus Broadcasting Corporation not to grant him equal with the other candidates time of coverage. The Court rejected the application. Section 2 of the Cyprus Broadcasting Corporation Law 212/87 defines the term "presidential candidate" as a person that publicly pronounces his/hers candidacy, complies with the limitations imposed by the Constitution in this respect and either is the current President of the Republic, is a leader of a political party, is being supported by a political party or can be reasonable considered as an important contributor to the political, economic or social life of Cyprus. The Court found the decision of the CYBC not to treat the applicant as a "presidential candidate" for the purposes of Law 212/87 justified.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Amnesty International within its *Regional Report on Cyprus* (January-June 2004) has "expressed its concern that during April, following the President of the Republic's endorsement of a "no" vote in the referenda to support the plan proposed on 31 March by the UN Secretary General for a comprehensive settlement to the Cyprus problem, the Government and State Authorities had failed to act in a way that showed *due diligence* in carrying out its duty to respect, protect and defend the right to freedom of expression. For example, the organisation received a series of allegations that during the week prior to the Greek-Cypriot referendum there was an escalation in attempts to intimidate individuals into voting "no": civil servants and policemen were said to have been given memoranda falsely claiming that the salaries and pensions of those working in federal state institutions could not be guaranteed and that some civil servants received phone calls threatening them that they would lose their jobs if they supported a "yes" position. Amnesty International was concerned that the government's failure to address perpetrators of such activities with sufficient vigour and due diligence resulted in human rights abuses." (http://www.amnesty.org/library/index).

In the same context it has to be noted that allegedly the CYBC has refused to allow the EU Enlargement Commissioner, Guenter Verheugen to analyse the provisions of the Annan Plan before the referendum, on the ground that such an action would constitute interference in the electoral process. An article in the Financial Times was titled: "top EU and UN officials are being prevented from giving interviews to Greek Cypriot television before Saturday's crucial referendum." (Judy Dempsey, "*EU Hits a Perceived Ban from Greek Cypriot TV Reunification Plan Vote*, Financial Times, 20 April 2004).

Reasons for concern

According to information dated 25 October 2004, received by the Chairman of the German-Cypriot Forum, the Government of Cyprus has attempted to prevent a workshop on "Sustainability for Cyprus" that took place in Nicosia in October 2004. According to the Chairman of the Forum, the Government prevented the participation to the workshop of civil servants experts in the fields of environment and tourism. The reason offered by the Government as included in the correspondence of the Cyprus Embassy in Berlin was the fact that the Forum had invited experts in the relevant fields from the northern part of the island including persons working within the Turkish controlled administration and Turkish Cypriot universities. In particular it was noted that: "The DZF recalls the fact that by prohibiting its employees from making a public appearance, the Government of the Republic of Cyprus has acted like the Turkish Cypriot leader Rauf Denktas in the fall of 2000 who had forbidden the invited Turkish Cypriot representatives to participate in a DZF conference on water management in Nicosia. To us, the attitude of the Government of Cyprus is a "dialogue

blockade" we find difficult to bear. We find it extremely unusual that a member state of the European Union obstructs the work of an NGO that works on an international level in such a way."

It has to be noted however that a number of other bi-communal conferences and events have taken place uninhibited within the period under scrutiny.

Article 12. Freedom of assembly and of association

General

Article 21 of the Constitution provides that:

"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 to join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of this Article, no person shall be compelled to jpoin any association or to continue tyo be a member thereof.
3. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are absolutely necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person, whether or not such person participates in such assembly or is a ,member of such association.
4. Any association the object or activities of which are contrary to the constitutional order is prohibited.
5. A law may provide for the imposition of restrictions on the exercise of these rights by members of the armed forces, the police or gendarmerie.
6. Subject to the provisions of any law regulating the establishment or incorporation, membership (including rights and obligations of members), management and administration, and winding up and dissolution, the provisions of this Article shall also apply to the formation of companies, societies and other associations functioning for profit."

Article 27 of the Constitution of the Republic of Cyprus secures the right to strike. It states:
"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 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 services."

No person shall be forced to join a trade union, as prescribed by Article 21 of the Constitution and Sections 45 and 50 of the Trade Unions Law 1965 to 1996 [*Ο Περί Συντεχνιών Νόμος*].

Freedom of peaceful assembly

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In relation to a complaint lodged by a participant in a peaceful demonstration for physical abuse by the Police (Complaint No. 340/2003) [Α/Π 340/2003, Έκθεση Επιτρόπου Διοικήσεως Αναφορικά με το Παράπονο με αρ. Α/Π 340/2003 κατά της Αστυνομίας, published on 5 February 2004] the Ombudsman concluded that "the intervention of the police

was unnecessary and constituted an unnecessary intervention to the right of assembly of those present."

Freedom of civic association

Reasons for concern

The director of the bi-communal 'Kardas Cultural Association' reported politically motivated police intimidation and accused the Police for carrying out numerous raids at the Centre. The Police denied such claims. (*Cyprus Mail, 23 September 2004*).

Freedom of association for trade unions

Legislative initiatives, national case law and practices of national authorities

A bill amending the National Force Law 33 (I) of 1990 [*Νομοσχέδιο Αριθμός 72 με Τίτλο Νόμος που Τροποποιεί τους περί Στρατού της Δημοκρατίας Νόμους του 1990 μέχρι 2003*] is pending before the Parliament. The said bill prohibits a permanent member of the armed forces from being a member of (a) any trade union or association or body that relates to trade unions; (b) any association or body the purpose of which is to control or influence the employment conditions; (c) any association or body the purpose of which is to control or influence the wages, pensions or service conditions of the army. A member of the army who violates the provisions of this law is guilty of a disciplinary offence. However, members of the army can establish and be members of professional associations the purpose of which would be to improve the working conditions of its members. According to the said bill only two such professional associations may be instituted, the manifesto of such associations has to be approved by the Minister of Defence, and in the event that an association acts in violation of Law 33 (I)/90 or of its manifesto the Minister may suspend its operation for a period not exceeding two years. In addition the said bill states that a member of the National Guard cannot be a member of any other organisaed group unless such membership is approved by the Minister of Defence upon a written application to this effect.

Reasons for concern

It should be noted that a complaint has been lodged to the Ombudsman's Office in relation to the approach followed by the Ministry of Defence in response to an attempt to establish an association for members of the National Guard with the purpose of promoting such members' interests upon a prospective solution of the Cyprus political problem on the basis of the Annan Plan. It has been alleged that upon receipt of the notification of the establishment of the said association, the Ministry arranged informal interrogations of the members of the association and several such members were removed to less advantageous posts.

Article 13. Freedom of the arts and sciences

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

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.

Article 14. Right to education

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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."

Legislative initiatives, national case law and practices of national authorities

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]*.

The Republic of Cyprus has ratified by Law 28 (III)/ 2004 the *Convention Defining the Statute of the European Schools* on 30 April 2004. [*Νόμος που Κυρώνει τη Σύμβαση Σχετικά με το Καταστατικό των Ευρωπαϊκών Σχολείων*, N. 28(III)/2004].

According to the latest amendment to the *Refugee Law* by Law 241 (I)/2004 [*Νόμος που Τροποποιεί τους περί Προσφύγων Νόμους του 2000 μέχρι 2004,* N. 241(I)/2004], persons whose temporary protection status has expired are to be deported with the exception of families with children attending a local school. Such deportation should only take place upon the end of the running school year. (Section 20E paragraph 2(b)).

Free education is available at all levels and is compulsory up to the age of 15. Under the *Protection of Young Persons at Work Law* of 2001, as a general rule, children under the age of 15 years old may not be employed (Section 5).

Local press releases have stated that pre-elementary education is to become compulsory (for children of four years of age and eight months up to five years of age and eight months). The Goverement is to undertake to fund such children. (*Fileleftherso*s, *3 November 2004*)

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.

Education for children belonging to national, religious or linguistic minorities who wish to attend private schools

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. The Council of Ministers periodically increases the amount of financial support. The State covers the 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 subsidises the tuition fees of students of pre-primary, primary and secondary education who belong to the religious groups of Maronites, Armenians and Latins. For example, the State supports Cypriot Armenian students attending the Melkonian, by paying their fees (£1100 CY every year per student), while they provide approximately £450 CY to every Cypriot Armenian student who attends a different private school.

The Government financially assists the religious groups and communities to operate their own schools. For example the Armenians have their own primary schools which are 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”.

Education for children not speaking the Greek language

Children who do not speak the Greek language attending a public school can be registered and attend classes as observers. Meanwhile, they can attend Greek language courses This is so until these children reach an adequate comprehension of the Greek language. The High School of Faneromeni in Nicosia belongs to the Priority Educational Zone, which means that there is a “transcultural” special programme. The purpose of this program is to teach children who do not speak Greek the Greek language. In addition the National Institutes of Education operating during evenings provide Greek lessons to children free of charge.

Within 2004 the said Greek language courses for foreign children had began before the school term so as to facilitate such children. (*Cyprus Mail, 23 July 2004*).

Children belonging to religious minorities and attending public schools
Children belonging to religious minorities can be exempted from Religious studies at public schools upon the filing of a written request to this effect at the Department of Secondary Education of the Ministry of Education.

Children belonging to religious minorities may also be exempted from participation in religious festivitiesupon a written request to this effect by their parents. Additionally, such children may be absent from school during their own religious festivities.

Dressing codes and special dietary customs
According to the School Regulations "the student has the duty to wear everyday a uniform which has been approved and avoid anything excessive in his/her appearance."
No relevant complaint has been examined by the relevant authorities.

Teaching of the native language of migrant children
At primary education the English language is taught. At secondary education the following languages are offered: English and French as compulsory and German, Italian, Spanish or Russian as optional. It must be stressed that other languages are taught according to the existing demand at the State Institutes and Adult Education Centres of the Ministry of Education and Culture. All of the courses of the State Institute of Further Education, the Adult Education Centres are subsidised by the Goverement. It should also be noted that a number of private schools exist offering courses in foreign languages.

Good practices

The Ministry of Education and Culture continued to offer affordable courses in various subjects. Tuition fees for such courses was approximately £30 CYP per year while they are free for people over 65 years old.

Reasons for concern

The Melkonian Educational Institute providing education to Armenian students will close in June 2005. The decision for its closure was taken by the Armenian General Benevolent Union (AGBU) in New York. Goverement officials have stated that the Government is to undertake the funding of alternative arrangements for the education of such children.

According to local press releases, the Ombudsman has stated in regards to children with certain disabilities that "there is inadequate exchange of information and coordination between the involved services, sporadic and improper attention and disfunction on the part of Nicosia District's Special Education Commission" (*The Cyprus Weekly, 30 July-5 August 2004*).

Vocational training

Legislative initiatives, national case law and practices of national authorities

Pursuant to section 15 paragraph 3 of the *Protection of Young Persons at Work Law (Law 48 (I)/2001) [Ο Περί Προστασίας των Νέων κατά την Απασχόληση Νόμος του 2001*] time spent by young workers on vocational training is to be considered as working time.

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

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 Μεταναστεύσεως Νόμος 1960-2003; Aliens and Immigration Law 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.

The right for nationals from other Member States to seek employment, to establish himself or to provide services

Legislative initiatives, national case law and practices of national authorities

The Law on the Free Movement and Residence of Member States of the EU and their Family Members [Ο περί της Ελεύθερης Διακίνησης και Διαμονής των Υπηκόων των Κρατών Μελών της Ευρωπαϊκής Ένωσης και των Μελών των Οικογενειών τους Νόμος του 2003 και 2004, N. 92(I)/2003 as amended by N.126(I)/2004], which implemented the relevant for this article Council Directives 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, provides for the freedom of movement, the freedom of residence and the freedom to provide services for payment of citizens of a Member State of the European Union and of the European Economic Area, within the Republic of Cyprus.

Positive aspects

The 2004 Amending Law extends the persons entitled to provide paid services within the Republic of Cyprus, to residents within the European Economic Area. Furthermore, the Amending Law eliminates the requirement for the provision of a health certificate when an application is made by a person interested in residing within the Republic for the purpose of working therein. Finally, the Amending Law provides for the possibility of persons who have been deported from the Republic for reasons of public order, public safety or public health to make a new application for being granted a new entry permit.

Professional prohibitions and the conditions of access to certain professions

Legislative initiatives, national case law and practices of national authorities

For the purposes of implementing Council Directive 93/16/EEC to Facilitate the Free Movement of Doctors and the Mutual Recognition of their Diplomas, Certificates and Other Evidence of Formal Qualifications, the Parliament passed the *Registration of the Doctors (Amendment) Law* [*Ο περί Εγγραφής Ιατρών (Τροποποιητικός) Νόμος του 2004,* N. 102(I)/2004, 30 April 2004]. The amending Law has been enacted for the purpose of the recognition in Cyprus of diplomas, certificates and other evidence of formal medical qualifications that have been awarded to EU Member State nationals in other Member States, as well as for giving the same effect in Cyprus to such qualifications as those which have been awarded by other Member States.

Similar provisions are provided by the *Dentists (Amendment) Law of 2004* [*Ο Περί εγγραφής Οδοντιάτρων (Τροποποιητικός) Νόμος του 2004*, N. 82(I)/2004] which has been enacted for the purpose of implementing Council Directive 78/686/EEC concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services and Council Directive 78/687/EEC concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of the activities of dental practitioners

Where lawyers are concerned, the House of representatives has enacted the *Law Amending the Lawyer's Law* [*Ο περί Δικηγόρων (Τροποποιητικός)Νόμος του 2004*] for the purpose of harmonising Cypriot legislation with Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services and Directive 98/5/EC of the European Parliament and of the Council to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

The prohibition of any form of discrimination in the access to employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights in its *Conclusions 2004 (Cyprus)* on the European (Revised) Social Charter noted: "the situation in Cyprus is not in conformity with article 1(2) of the revised Charter on the grounds that nationals of Contracting Parties to the 1961 Charter and of States Parties to the Revised Charter who are lawfully resident in Cyprus can only be employed if no citizen of Cyprus can be recruited for the same post. This condition constitutes direct discrimination on grounds of nationality; the duration of alternative military service, which generally lasts twice as long as compulsory military service, amounts to a disproportionate restriction on the right of workers to earn their living in an occupation freely entered upon."

Legislative initiatives, national case law and practices of national authorities

Cyprus has transposed Directives 75/117/EEC, 76/207/EEC, and 97/80/EC on the equal treatment of men and women, as well as Directives 2000/78/EC and 2000/43/EC on other forms of discrimination. (See further analysis in articles 22 and 23) by the Law Combating Racial and Other Forms of Discrimination of 2004 [Ο Περί καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (επίτροπος) Νόμος του 2004, N.42(I)/2004], the Law on the Equal Treatment during Employment and at Work of 2004 [Ο Περί Ίσης Μεταχείρισης στην απασχόληση και την Εργασία Νόμος του 2004, N. 58(I)/2004], the Law on Persons with Disabilities of 2004 [Ο Περί Ατόμων με Αναπηρίες (Τροποποιητικός) Νόμος του 2004, N. 57(I)/2004] and the Law on Equal Treatment (Racial or Ethnic Origin) Law of 2004 [Ο Περί Ίσης Μεταχείρισης (Φυλετική ή Εθνοτική καταγωγή) Νόμος του 2004, N.59(I)/2004].

Furthermore, according to the Law on the Free Movement and Residence of Member States of the EU and their Family Members, EU citizens can be employed in any field of employment.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

According to Section 9 of the *Refugee Law* [*Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για την Νομική Κατάσταση των Προσφύγων,* N. 6(I)/2000] asylum seekers have the right to work .

Freedom to choose an occupation

Legislative initiatives, national case law and practices of national authorities

According to the Law on the Free Movement and Residence of Member States of the EU and their Family Members, EU citizens can be employed in any field of employment.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In *Nicos Mavronicholas et al v. Cyprus Committee of the Stock Exchange (Case number 79/2002 et al, 19 Januray 2004*) certain companies raised a case against the Cyprus Committee of the Stock Exchange arguing that L. 137(I)/2000 imposes restrictions to the freedom to choose an occupation and the right to engage in work as this is recognised by article 25 of the Constitution. Article 25 reads: "(1) Every person has the right to practice any profession or to carry on any occupation, trade or business. (2) The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest." The said law provides that at the end of each year, any company registered at the stock market, should not have liquid assets that exceed the 20% of its whole asset. The Supreme Court decided that this provision violates the core of article 25(1) and is therefore unconstitutional.

Article 16. Freedom to conduct a business

Freedom to conduct a business

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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

"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]

"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 alignment has been largely completed, although further fine-tuning 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 amendments 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-tuning.

[...]

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 currency 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 investments abroad by residents other than 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 amendment 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 Organisation, Vine Products Commission, and Cyprus Grain Commission....In completing preparations for membership, Cyprus must continue to develop a track 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."

Legislative initiatives, national case law and practices of national authorities

The freedom to conduct a business is safeguarded by article 25 of the Constitution of the Republic of Cyprus which reads: "(1) Every person has the right to practice any profession or to carry on any occupation, trade or business. (2) The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest." Article 26 of the Constitution also provides for the freedom of contract and reads: "(1) Every person has the right to enter freely into any contract subject to such conditions, limityations or restrictions as are laid down by the general principles of the law of contract. a law shall provide for the prevention of exploitation by persons who are commanding economic power. (2) A law may provide for collective labour contracts of obligatory fulfilment by employers and workers with adequate protection of the rights of any person, whether or not represented at the conclusion of such contract."

According to the Contract Law, Cap 149 [*Ο Περί Συμβάσεων Νόμος*, Κεφ. 149], a contract is defined as an agreement concluded by the free will of parties that are able to contract, for lawful consideration and for a lawful purpose, and which are not explicitly characterised by the Law as invalid or unlawful. The Contract Law applies to all contracts in general, including contracts for the purpose of conducting a business, that is, for the provision of services.

The Law on the Free Movement and Residence of Member States of the EU and their Family Members [Ο περί της Ελεύθερης Διακίνησης και Διαμονής των Υπηκόων των Κρατών Μελών της Ευρωπαϊκής Ένωσης και των Μελών των Οικογενειών τους Νόμος του 2003 και

2004, N. 92(I)/2003 as amended by N.126(I)/2004], which implemented the relevant for this article Council Directives 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, provides for the freedom to provide services for payment of citizens of a Member State of the European Union and of the European Economic Area, within the Republic of Cyprus.

Regarding competition in the field of the provision of services, many cases are pending before the Commission for the Protection of Competition, especially concerning the abuse of dominant position by the incumbent telecommunications operator (CYTA) in the provision of telecommunications services, to the detriment of consumers.

Other Laws enacted within the context of the harmonisation procedure purport to develop further business opportunities while enabling already established businesses 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] which was enacted on 12/06/2003 harmonises the Cyprus imports law with the European Law on quantitative restrictions, specifically with article 30 of the Treaty establishing the European Community.

The Customs and Excise Duties (Amendment) Law [*Ο Περί Τελωνείων και Φόρων Καταναλώσεως Νόμος του 2004,* N. 90(I)/2004], the Value Added Tax Law [*Ο Περί Φόρου Προστιθέμενης Αξίας (Τροποποιητικός) Νόμος του 2004*, N. 95(I)/2004] and the Excise Duties Law of 2004 [*Ο περί Φόρων Κατανάλωσης Νόμος του 2004*, N. 91(I)/2004], were enacted on 29/04/2004 for the purpose of harmonisation with the provisions of the Sixth Directive concerning intra-community trade and the imposition of value added tax on specific goods and services.

Directive 2000/35/EC dealing with delays in business transactions was 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.

Finally, for the purpose of harmonisation with the acquis communautaire, the Republic of Cyprus has ratified the 1980 Rome Convention on the law applicable to contractual obligations as well as the First and Second Protocol on the interpretation of the 1980 Convention by the Court of Justice of the 1980 Rome Convention [*Ο Περί της Σύμβασης της Ρώμης για το Εφαρμοστέο Δίκαιο στις Συμβατικές Ενοχές και του Πρώτου και Δεύτερου Πρωτοκόλλου όσον Αφορά την Ερμηνεία της από το Δικαστήριο των Ευρωπαϊκών Κοινοτήτων (Κυρωτικό) Νόμο*, N.31(III)/2002]. Of particular importance is Article 5 of the Convention which applies to consumer contracts, that is, contracts the object of which is the supply of goods or services to a consumer for a purpose which can be regarded as being outside his trade or profession, or contracts for the provision of credit for that object. It is presumed that the Convention as well as the ratifying Law apply to internet contracts, in that they concern the provision of consumer goods or services and, in the case of services, the services are to be supplied to the consumer in a country in which the consumer has his habitual residence.

Imposition of certain standards, for instance standards restricting the award of public contracts (ethical, social, environmental criteria)

Legislative initiatives, national case law and practices of national authorities

From May 1st 2004, all companies that are set up in accordance with the laws of an E.U. member state and have their registered office, central administration, or principal place of business in the territory of the European Union, have free access to the public procurement markets in the Republic of Cyprus. Under the Association Agreement between the European Communities and the Republic, E.U. companies are entitled to be treated as favourably as national companies in procurement procedures.

The legislation that is applicable in the award of government contracts consists mainly of the following which is in full compliance with the classical E.U. Directives and the utilities directives of the Community, such as Council Directive 92/13/EEC, 93/38/EEC, 98/4/EC and 2001/78/EC:

The Public Procurement Law of 1997 to 2004 [Ο Περί Προσφορών του Δημοσίου Νόμος, N.102(I)/1997 as amended by N.44(I)/1998, 103(I)/1998, 2(I)/1999, 24(I)/1999, 32(I)/1999, 45(I)/1999, 102(I)/1999, 40(I)/2000, 177(I)/2000, 1(I)/2001, 33(I)/2001, 58(I)/ 2001, 59(I)/2001, 51(I)/2003 and 154(I)/2004], applies only to public contracts that are considered to be confidential. In that they concern the provision of military equipment, relevant material, the award of works by the National Guard or the provision of services relevant thereto.

The *Law on the Award of Contracts (Supply, Works and Services) of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors of 2003 to 2004* [*Ο Περί της Σύναψης Συμβάσεων (Προμήθειες, Έργα και Υπηρεσίες) στους Τομείς του Ύδατος, της Ενέργειας, των Μεταφορών και των Τηλεπικοινωνιών*, N.100(I)/2003 as amended by N.24(I)/2004 and N.182(I)/2004], lays down rules for procurement procedures to ensure that potential suppliers and contractors have a fair opportunity to secure the award of public contracts. It also ensures that there is an appropriate review procedure made available to suppliers or contractors in the event of infringement of the provisions of the Law. It further provides for a substantial increase in the guarantees of transparency and non-discrimination and at the same time sets in place effective and rapid remedies. In addition, the Law provides for the power of the European Community to intervene directly in the contracting entities' procurement procedures. In collaboration with the Treasury of the Republic which is appointed by the Law as the competent authority, it has the power to suspend and set aside decisions or discriminatory clauses in documents or publications. The Law contains provisions on certain thresholds and the calculation of the value of contracts, draw up contract documents, Award Procedures, the conformity of the service provider to certain quality assurance standards, the operation of a qualification system for economic operators and the eligibility of economic Operators

The *Law on the Award of Contracts (Supply, Works and Services) of 2003 to 2004* [*Ο Περί της Σύναψης Συμβάσεων (Προμήθειες, Έργα και Υπηρεσίες),*N.101(I)/2003 as amended by N.23(I)/2004 and N.181(I)/2004] applies to all public contracts having as their object supplies, works and services, the estimated value of which, net of Value Added Tax, is equal to or exceeds certain thresholds.

The *Law Regarding Tenders in the Water, Energy, Transport and Telecommunications Sectors of 2002 to 2003* [*Ο Περί Προσφορών στους Τομείς του Ύδατος, της Ενέργειας, των Μεταφορών και των Τηλεπικοινωνιών,* N.29(I)/2002 as amended by N.52(I)/2003],
has been enacted for the purposes of harmonisation with Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors and Directive 98/4/EC of the European Parliament and of the

Council amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. The Law applies whenever contracting entities exercising certain activities falling within the water, energy, transport and telecommunications sectors, intend to conclude a supplies, works or service contract

Furthermore, it is noted that as from 1.5.2003, there was an abolition of the preferential treatment of local suppliers by any public procurement that is published for works or supply of services to the public sector or to local authorities or utilities.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Other relevant legislation in the field of the provision of services concerns electronic communications and information technology services. This legislation includes the Law Regulating *Electronic Communications and Postal Services of 2004* [*Ο Περί Ρυθμίσεως Ηλεκτρονικών Επικοινωνιών και Ταχυδρομικών Υπηρεσιών Νόμος του 2004*, N. 112(I)/2004] which was adopted for the purpose of harmonising Cypriot legislation with the 2002 European telecommunications regulatory package, such as Directives 88/301/EEC, 98/34/EC, 1999/5/EC, 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC, 2002/58/EC, 2002/77/EC, 97/67/EC, 2002/39/EC and Regulation (EC) No 2887/2000.

Furthermore, the House of Representatives has enacted the *Law on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce and Associated Matters of 2004* [*Ο Περί Ορισμένων Πτυχών των Υπηρεσιών της κοινωνίας της Πληροφορίας και Ειδικά του Ηλεκτρονικού εμπορίου καθώς και για Συναφή Θέματα Νόμος του 2004*, N. 156(I)/2004] for the purpose of implementing Directive 2000/31/EC. The Law aims at ensuring the free movement of information society services between the Republic and the Member States of the European Union, in relation to the establishment of service providers, commercial communications, the conclusion of electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, means of legal protection and the cooperation between Member States. The Law applies to all information society services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

Article 17. Right to property

The right to property

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Human Rights Case Law:

Case of Azinas v. Cyprus (Application no. 56679/79/00, European Court of Human Rights, 28 April 2004) the Applicant complained that a violation of article 1 of Protocol No. 1 had taken place in relation to the forfeiture of his pension rights following his dismissal from the Public Service. The application was rejected by the Grand Chamber of the Court as inadmissible for non exhaustion of domestic remedies, thus the Grand Chamber did not have to determine whether such pension rights were protected by the scope of Article 1 of protocol 1.

Legislative initiatives, national case law and practices of national authorities

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." It is further 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."

After the Turkish invasion in Cyprus of 1974, the majority of the immovable property owned by persons belonging to the Turkish Cypriot community that is situated in the government controlled area has been deserted. The legislative framework dealing with such Turkish Cypriot properties is the Turkish Cypriot Properties (Management and other Matters Law [Περί Τουρκοκυπριακών Περιουσιών Διαχείριση και άλλα θέματα, N. 139/1991]. According to the said law, the responsibility for management of abandoned Turkish Cypriot immovable properties in the government controlled area is delegated to the Custodian of Turkish Cypriot properties. Greek-Cypriot displaced persons temporarily reside in such properties pending a permanent settlement of the Cyprus political problem and their return to their properties in the northern part of the island.

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) examined 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.

A Turkish Cypriot has succeeded in obtaining in October 2004 a land mark court decision at first instance for the reinstatement of his property in the government-controlled area (*Arif Mustafa v. The Republic of Cyprus*). This case was hailed as indicating that the rule of law and human rights protection is existent in relation to the property rights of Turkish Cypriots. At the same time, the Mustafa case brought into fore the problems with the *Turkish Cypriot Properties (Management and other Matters) Law* and urges the revaluation of this law. This decision if upheld by the Supreme Court, will create a precedent according to which Turkish Cypriots can reclaim their property situated in the government controlled area prior to an overall solution of the Cyprus problem. The decision also raised the need to tackle practical

problems arising in relation to the displaced Greek Cypriot currently residing in such properties.

The Attorney General filed an appeal against the said decision to the Supreme Court (*Fileleftheros, 30 September*) and an interim order suspending the execution of the decision is now in force (*Cyprus Mail, 12 October*). The decision of the Supreme Court remains to be seen.

A case has been brought before the Assize Court of Kyrenia (now operating in Nicosia) against the Republic of Cyprus by a Turkish Cypriot -Ahmet Necati Ozcan- alleging that he was deprived of his land in Saint Epiktito Kyrenia during the inter communal violence of 1963-1964. The alleged deprivation of his property continued until 1974 when control of his land befell to the Turkish Military Forces. (*Fileleftheros, 28 May 2004*, *Politis, 28 May 2004*).

On 9 November 2004 judgement by default was issued in case number 9968/04 in the District Coiurt of Nicosia between *M.Apostolides v. D.C.Orams and L.E.Orams* for delivery of poseession of certain premises in Kyrenia (now under the control of the Turkish army.) as well as for damages and mesne profits concerning the use of same. The defendants have applied to have the judgement set aside and the matter is still pending.

The significance of this case is that for the first time a Greek Cypriot has applied to the courts of the Republic concerning the unauthorised use of his property in the area under Turksih control. The interesting aspect of this case is that the judgement in view of Cyprus accession in the EU can be executed in the United Kindom where the Defendants appear to own property.

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 human right standards.

British Sovereign Bases

Owners of land bordering with the British Bases accused the Administration of the Bases for violation of their property rights by placing restrictions on the development of their land. For example, the administration does not allow the partition of their land to a satisfactory degree and bans the sale of plots for building of houses as well as the sale of homes and flats to non-permanent residents. The owners of the land argue that the said limitations deprive them of their right to enjoy their property and restrict the area's development in general. (*Cyprus Mail, 8 September*). It has been decided that the Ministry of Foreign Affairs will intervene and urge the British Bases administration to ensure that people having property bordering with the bases enjoy the same rights concerning their property as the rest of the people whose property falls within the jurisdiction of the Republic. (*Fileleftheros, 22 September*).

Intellectual Property Rights

Legislative initiatives, national case law and practices of national authorities

The Republic has ratified the *Convention of the World Intellectual Property Organisation on the Enforcement and Phonograms* [*Συνθήκης του Παγκόσμιου Οργανισμού Πνευματικής Ιδιοκτησίας για τις Εκτελέσεις και τα Φωνογραφήματα (Κυρωτικός) Νόμος του 2004,* N. 37(III)/2004].

The copyright and Neighbouring rights laws of 1976-2002 have been amended on 20/4/04 by Law 128 (I)/2004. The copyright and neighbouring rights amending law of 2004 [*Νόμος που Τροποποιεί τους περί του Δικαιώματος Πνευματικής Ιδιοκτησίας και Συγγενικών Δικαιωμάτων Νόμους του 1976 μέχρι 2002*, N. 128(I)/2004, published on 30 April 2004] has essentially implemented Directive 2001/29/EC of 22 May 2001. It also increased the penalties in relation to criminal offences from £1500 CY to £30 000 CY fine and from 2 years imprisonment to 3 years imprisonment. Also it created a stronger presumption in respect of ownership and its proof.

While Film and DVD piracy is increasing in Cyprus the police has recently created an Anti-Piracy Squad .(*Sunday Mail, 25 July 2004*).

Moreover, in an attempt to tackle piracy, a series of police operations and checks were carried out to shops and a high number of illegal copies of software, cds, video games, videotapes as well as systems for the production of illegal copies were confiscated. (*Note by the Ministry of Justice and Public Order dated 13 December 2004*)

Public expropriations and compensation

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Human Rights Case Law

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 the fact 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.

Legislative initiatives, national case law and practices of national authorities

Since 1974 the Government has been expropriating land belonging to the Turkish Cypriots situated in the area under its control. Compensation for such expropriations is to be kept at a Fund established by the Custodian of Turkish Cypriot Properties. It has been reported in the local press that compensation for some of the expropriated land has not yet been deposited in the Guardian's fund. (*Cyprus Mail, 28 May 2004, Politis, 27 May 2004*).

Most court cases on expropriation reported within the period under scrutiny involved the question as to whether the expropriated land had been used or will be used for the purposes of the expropriation. For example, in Μιχάλης Καραολή v. Υπουργείο Εσωτερικών Μέσω Τμήματος Πολεοδομίας και Οικήσεως, (Review Appeal number 3208, 28 January 2004), the Council of Strovolos had expropriated a plot of land belonging to the applicant for the purposes of expanding a road. Six years later, the Council decided to use the expropriated

land as a parking place. The Court decided that the proposed use of the land as a parking place is different from the purpose for which the land had been expropriated in the first place. Therefore, the decision for expropriation was cancelled. The Court based its decision on article 15(1) of the Expropriation Law [περί Αναγκαστικής Απαλλοτρίωσης Νόμος, N. 15/1962] and article 23(5) of the Constitution which states : "Any immovable property or any right over or interest in any such property compulsorily acquired shall only be used for the purposes for which it has been acquired. If within three years of the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the property at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance of non-acceptance of the offer, and if he signified acceptance, such property shall be returned to him immediately after his returning such price within a further period of three months from such acceptance."

A similar issue arose in the case of ΕΤΚΟ ΛΤΔ v. Κυπριακής Δημοκρατίας (Application number 260/2002, 9 January 2004). The Court decided in favour of the applicant and the expropriated land was to be returned to its initial owner.

Article 18. Right to asylum

Asylum proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to figures released by the United Nations High Commissioner for Refugees (UNHCR) 6062 people applied for asylum within the period of January- September 2004. The UNHCR in a Press Release has stated that the number of people seeking asylum in Cyprus for the second quarter of 2004 increased by 90 per cent. This increase was mostly due to a sudden surge in applications by Asians who had originally entered the country on student visas (*UNHCR Press Release, Asylum statistics, second quarter 2004*).

Legislative initiatives, national case law and practices of national authorities

Asylum proceedings and respect of the fundamental rights of asylum seekers during the examination of their request

The relevant legislative framework is The Refugee Law [Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για την Νομική Κατάσταση των Προσφύγων, N. 6(I)/2000] as amended by Law 53(I)/2003, 63(I)/2003, 9(I)/2004 and 241(I)/2004.
There are have been two amendements of the Refugee Law in 2004.

Law 9(I)/2004 adopted on 6 February 2004 [Νόμος που Τροποποιεί τους Περί Προσφύγων Νόμους του 2000 έως (Αρ. 2) του 2003] harmonises the Cypriot legislation with the EU Asylum Acquis. In particular, L. 9(I)/2004 harmonises the Cypriot Refugee Law with: (a) Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; (b) Council Decision 2000/596/EC establishing a European Refugee Fund; (c) (EC) 343/2003 Council Regulation establishing the criteria and mechanisms for determining the Member state responsible for examining an application for asylum lodged in one of the Member States by a third-country national; (d) (EC) 1560/2003 the Commission Regulation laying down detailed rules for the application of Council Regulation (EC) 343/2003; (e) (EC) 2725/2003 Council Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention; (f) (EC) 407/2002 Council

Regulation laying down rules to implement regulation (EC) 2725/2000 concerning the establishment of "Eurodac"; (g) Convention Determining the State Responsibility for Examining Applications for Asylum Lodged in One of the Member States of the European Communities (singed Dublin 15 June 1990 entered into force 1 September 1997).

Law 9(I)/2004 amending the Refugee Law, in section 22, provides for the establishement of the "Asylum Service and Review Authority". The Asylum Service is responsible to examine asylum applications at first instance (article 26(1)). The said Service is also responsible for the receipt of fingerprints in relation to the (EC) 27/25/2000 Council Regulation on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention and (EC) 407/2002 Council Regulation laying down rules to implement regulation (EC) 2725/2000 concerning the establishment of "Eurodac" (article 27(1)(f)). The Asylum Service is also responsible to implement Council Decision 2000/596/EC establishing a European Refugee Fund and Council Decisions 2001/275/EC and 2002/307/EC on the Eligibility of Expenditure under the European Refugee Fund.

The second amendment was enacted by virtue of Law 241(I)/2004 on 5 November 2004 [Νόμος που Προνοεί τους Περί Προσφύγων Νόμους του 2000 Μέχρι 2004] by which Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, was implemented.

Asylum seekers are allowed to: (a) move freely within the territory of the republic; (b) to be provided with free medical care; (c) to work; (d) to have access to educational facilities within the public sector (section 9 of the Refugee Law).

The Kofinou reception centre has been put into operation. The Centre will initially have an intake capacity of 150 persons and may eventually accommodate a maximum of 500. In this centre asylum seekers are cared for until their asylum application is decided. During their stay at the centre, asylum seekers receive a monthly income, while food, clothes and means of transportation are provided for. It has been reported in the local press that the centre has all the necessary equipment including beds, shits, pillows, tables and chairs while air conditioning has also been installed. (*Politis 27 May 2004*)

The *Refugee Law* provides that an asylum seeker who has entered the republic illegally is not subject to punishment on the account of his/her illegal entry into the republic, if he/she presents himself to the proper institutions and requests asylum (section 7(1)). Additionally, it is expressly prohibited to detain someone just for being an asylum seeker (section 7(4)(a)). Detention is only permitted after a court order and only on specific circumstances provided for by the Refugee Law section 7(4)(b)(i) and (ii).

In *Re the Application for Habeas Corpus of Soharab Hossain Khan and the Republic of Cyprus, Application No. 44/2004, 20 May 2004* it was noted that Law 9 (I)/2004 that came into force on 6 February 2004 lays down the principles that regulate the proceedings before the Asylum Service as the authority that deals with asylum applications at first instance. The decisions of the Asylum Service may be subject to an "administrative appeal" before the Review Authority.

According to section 18 (6) the decisions of the Asylum Service cannot be executed before the period allowed for filing of an administrative appeal has expired, and following such filing before the issuing of the decision of the Review Authority. The Applicant can stay within the territory of the Republic until the issue of the decision of the Review Authority.

According to Section 28 (f) (1) in relation to the applications through the fast track procedure provided for by Section 12 (d) of the Refugee Law , an administrative appeal can be exercised within 10 working days from the date when the decision of the Asylum Service becomes known to the Applicant.

In all other cases, Section 28 (f) (2) provides that an administrative Appeal can be filed within 20 working days from the date when the decision of the Asylum Service becomes known to the Applicant.

The Refugee Law 2000-20004 as well as the obligations binding on the Republic from the Geneva Convention of 28 /7/1951 as well as by the Dublin Convention of 15/6/1990 impose a requirement that during the examination of the asylum application any measure taken for the removal of an alien should be suspended.

Detention of a person that has submitted an asylum application is provided for by way of exception in Section 7 (4) and (6) of the Refugee Law and can only be allowed upon the grant of a judicial order to this effect either for the verification of his identity or nationality of such person or for the investigation of new evidence in support of the application, that is submitted subsequent to a dismissal of an application both at first instance and at an appellate level.

Such detention cannot exceed 8 days. The period of detention may be renewed by a Court order for a further period of 8 days provided that the overall period of detention does not exceed a period of 32 days. (Section 7 (6)).

Protection of Personal Data

An asylum seeker in principle enjoys all the rights derived from the *Laws on the Regulation of Personal Data* [*Οι Περί της Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμους του 2001 και 2003*].

Remedies against the rejection of asylum applications

The Law 9(I)/2004 amending the Refugee Law, in section 22, provides for the establishement of the "Asylum Service and Review Authority". The Review Authority has the power to review asylum applications rejected by the Asylum Service. A decision of the Review Authority, being an administrative act, can be challenged before the Supreme Court on the basis of its revisional jurisdiction under article 146 of the Constitution.

In *Police v. Zhang Hao from China and Wu Qioug from China* (*Application number 10335/04, 12 March 2004*) two Chinese persons that had entered the Republic on student visas has exceeded the period that they were allowed to remain within the Republic and were pronounced as illegal immigrants. They subsequently filed asylum applications. The Distrcit Court held that in accordance with the *New York Protocol of 1967* of the *Geneva Convention,* term refugee *sur place* applies by analogy to persons resident in one country who at some point due to events that meanwhile occurred at their country of origin, cannot return back home.

Positive aspects

The Ombudsman in her annual report of 2003 published in July 2004 [*Επίτροπος Διοικήσεως, Ετήσια Έκθεση 2003*] has stated that "the administrative regulations and especially the handling of cases by the Immigration Authorities were improved compared to the previous year. There has been good cooperation with the Immigration Authorities not only in the stage of research but also in the stage of compliance with the suggestions of the ombudsman." (p. 67).

Speaking at a joint session of the House Ombudsman and Human Rights Committees the Ombudsman stated that she has received 100% compliance from the Department of Migration. (*Cyprus Weekly, 5-11 November 2004*).

The Human Rights Committee of the Parliament visited the Asylum Seekers Centre in Kofinou and called for steps for its improvement. The Chairman called for improvement in medical care and the provision of education for the children of asylum seekers as well as improvement of transportation facilities and security of the centre. Nonetheless, the Committee Chairman recognised that employment of asylum seekers "appears to be covered to quite a satisfactory degree." (*The Cyprus Weekly, 28 May- 3 June 2004*)

The steep increase of asylum applications within the period under scrutiny has created a huge work load for the authorities. This increase has been explained by the authorities, UNHCR and the media as a result of a rise in applications from Asians initially entered the republic on "student" visas. It has to be noted that in several cases persons holding a student visa do not speak the English language, when in fact that is the teaching language at the relevant colleges. In view of the above, the authorities have enforced measures to monitor more closesly the student registrations to such private colleges.

This issue has been amptly stated by the ombudsman in her annual report: "large number of those applying for asylum was foreign students whose permit had expired and who most likely were using the asylum seekers route abusively […]. This brought into the fore another problem, that of granting large number of student permit to foreigners who in fact are economic immigrants." (p. 73)

Reasons for concern

According to the ombudsman's annual report concerning asylum seekers, "most complaints are addressed against the Police in the Paphos gate in Nicosia and include complaints about ill-treatment, arrest and delays when people apply for the status of asylum" p. 68). "Additionally, there have been instances of unjustified arrests or hasty deportations of foreigners who reported themselves at the police asking for asylum and cases of refusal to accept asylum application." "Finally there have been cases when the police did not comply either with the provisions of the Refugee Law or with the relevant for this process directions of the director of the Population and Immigration Office." (p. 74). It has to be said that according to her report the "Asylum Seekers Unit was not properly staffed, neither were its members adequately trained, while the number of applicants have exceeded the logically expectable number, creating a huge work load" (p. 73).

Not only the ombudsman but also a local NGO (KISA) has complained that asylum seekers are ill-treated at the Paphos Gate police station. KISA announced that "instead of providing asylum seekers with assistance in filing their applications, they were interrogated on their application." (*The Cyprus Weekly, 17-23 September*). KISA also criticised the fact that in some cases asylum seekers have been deported without their case being properly examined (*Fileleftheros, 11 November 2004*)

In regards to the reception centre at Kofinou, the Commissioner for Human Rights of the Council of Europe Alvaro Gil-Robles in his report (*Report by Mr Alvaro Gil-Robles, the Commissioner for Human Rights, on his Visit to Cyprus 25-29 June 2003,* published on 12 February 2004) stated: "I visited the construction site which appeared to me unsuitable for accommodating asylum seekers decently, in particular families with children. The site is quite far from any township, on rather arid land without much vegetation, which could cause problems during the summer heat. Besides, it is enclosed by a wire fence which raises the fear that the inmates will not have freedom of movement. I can only hope that the authorities will

take appropriate steps to provide this reception centre with the requisite facilities-including transportation to Kofinou or Larnaka." (p. 7). In the Appendix to the Report, the Commissioner noted that "the Government has informed the Commissioner that provisions have been made regarding the free daily transfer of the asylum seekers from the Kofinou Reception Centre to Limassol and Nicosia. Moreover, the applicants residing in the Reception Centre are entitled to leave the place whenever they wish." (p. 19, paragraph 8).

Recognition of the status of refugee

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The UNHCR published a report in October 2004 entitled *The Situation of Refugees in Cyprus from a Refugee Perspective* (*Report based on meetings with refugees in Cyprus during the period July-September 2004*). According to the report, there is an increase in the number of persons granted refugee status in Cyprus during the last two years. There are 386 refugees, with another 12 persons who have been granted subsidiary protection and 8 other persons residing in Cyprus for a prolonged period on humanitarian grounds. This brings the total number of refugees as in June 2004 to 406.

According to the report "the refugees are of the view that there are many obstacles for them to exercise their rights" (p. 10). It concludes that "some progress has been made during the past two years in improving the rights of refugees in Cyprus. The Cyprus Refugee Law was amended to incorporate or clarify these rights, and some are being implemented. However, other rights still need attention from the authorities before one could state that refugees have effective access to those rights" (p. 23).

For example, the report mentioned that according to the Refugee law, refugee travel documents shall be issued to refugees, unless considerations of public safety or public order exist (article 22(2)). However, although this provision was included in the Refugee Law and entered into force in January 2000, no such documents have been made available yet to the refugees. In the absence of the availability of a refugee travel document, the Civil Registry and Migration Department of the Ministry of Interior issued special certificates, which would allow a refugee to travel abroad for one specific trip (p. 11). "Due to its format and limited validity, it cannot be considered as a fulfilment of the obligation of the authorities to issue refugees with travel documents. It is worth noting that the latter obligation does not only derive from the Cyprus Refugee Law but also from article 28 of the 1951 Convention Relating to the Status of Refugees" writes the UNHCR report (p. 11).

According to the same report, although the *Refugee Law* stipulates that refugees shall be issued with a refugee identity card, no such identity card exists yet (p. 12).

Legislative initiatives, national case law and practices of national authorities

Section 3 of the *Refugee Law* is identical to article 1A (2) of the *1951 Convention Relating to the Status of Refugees* which stipulates the definition of the term "refugee".

As regards the exclusion clauses of article 1F of the 1951 Convention Relating to the Status of Refugees, it is to be noted that article 5(1)(c) of the Refugee Law is identical to article 1F. The only minor difference is that article 1F talks of "serious reasons" for not applying the provisions of the Convention Relating to the Status of Refugees, while the Refugee Law speaks of "serious indications" [σοβαρές ενδείξεις].

Positive aspects

The personel of the Refugee Authority has received training by the UNHCR.

The Education Ministry decided to allow refugees and asylum-seekers to follow free of charge the Greek Language courses provided as part of the Adult Educational courses as of October 2003. Therefore, any refugee or asylum seeker can attend the weekly Greek lessons free of charge. The UNCHR has not been able to obtain statistics on the number of refugees who followed these courses.

Unaccompanied minors seeking asylum

Legislative initiatives, national case law and practices of national authorities

According to the *Refugee Law* (latest amendment L. 241(I)/2004) "unaccompanied minor is the person under the age of 18 who arrives at the Republic without being accompanied by an adult responsible for him/her according to the law or customs and during that time no adult is in fact exercising the guardianship of this person. This includes a minor who ceases being accompanied after his/her arrival at the territory of the Republic" (article 2).

The detention of a minor seeking asylum is strictly prohibited and contrary to adults, who could be detained after a Court order, minors can never be detained (article 7(4)(a)(c)).

Regarding unaccompanied minors seeking asylum, the relevant officials who receive the application inform immediately the manager of the service who on its turn immediately informs the manager of the Social Services Department. The Manager of the Social Services Department acts as the minor's guardian and takes all appropriate measures on behalf and for the benefit of the minor (article 10(1)). The Council of Ministers publishes regulations on the conditions by which unaccompanied minors are received (10(2)).

Good practices

The Asylum Service has approved a *Plan on the European Refugee Fund* dated 17/06/04, in accordance with Council Decision 2000/596/EC and Commission Decisions E(2001) 736 and E(2001) 4372 on the European Refugee Fund.

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

Collective expulsions

Legislative initiatives, national case law and practices of national authorities

The Refugee Law [Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για τη Νομική Κατάσταση των Προσφύγων, Ν. 6(I)/2000] as lastly amended by the L. 241(I)/2004 provides for temporary protection [προσωρινή προστασία] in section 19A. According to this section, the status of temporary protection is granted to any applicant who is not recognised as refugee nor is granted with the status of subsidiary protection, for humanitarian reasons. According to Section 20, "temporary protection" is a special procedure which provides direct and temporary protection to people who cannot return to their county of nationality due to massive inflow or when massive inflow of displaced is imminent. Whether there is a massive inflow of displaced persons, as well as the duration and expiration of temporary protection is decided by the Council of Ministers according to the procedure of Directive 2001/55/EC (new article 20A, Law Amending the Refugee Law of 2000-2004, [Νόμος που Τροποποιεί τους περί Προσφύγων Νόμους του 2000 μέχρι 2004, Ν. 241(I)/2004]). According to section 20 paragraph 3, for the

purposes of providing someone with the temporary status protection, the procedure of individual examination of each case is not followed. This does not however prejudice the right of the person to apply for asylum (individual application).

Prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments.

Legislative initiatives, national case law and practices of national authorities

The *Convention on the Simplification of the Process of Expulsion/extradition among the member states of the European Union* [*Περί της Σύμβασης για την Απλουστευμένη Διαδικασία Έκδοσης Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Κυρωτικός Νόμος του 2004,* N. 12(III)/2004] has been ratified by Law 12 (III) of 2004 on 26 March 2004.

Law 44 (III)/04 has ratified *the Co-operation Agreement between the Government of the Republic of Cyprus and the International Centre for Migration Policy Development* [*Νόμος που Κυρώνει τη Συμφωνία Συνεργασίας Μεταξύ της Κυβέρνησης της Κυπριακής Δημοκρατίας και του Διεθνούς Ινστιτούτου για την Ανάπτυξη της Μεταναστευτικής Πολιτικής*, N. 44(III)/04] on the 16 July 2004. According to this agreement "the parties shall periodically provide each other with statistics relating to international migration, asylum, visa and border control, as well as documents relating to legislation in the above-mentioned fields, and will exchange information on courses, meetings, seminars and conferences, relevant to or hosted in the Republic of Cyprus." (article 2(1)).

The Republic has further ratified the *Protocol that Amends the European Convention on the Suppression of Terrorism* [*Νόμος που Κυρώνει το Πρωτόκολλο που Τροποποιεί την Ευρωπαϊκή Σύμβαση για την Καταστολή της Τρομοκρατίας,* N. 18(III)/2004] on the 30 April 2004.

According to the Refugee Law, foreigners who face real and serious risk of being killed or being subjected to torture or cruel or degrading treatment in their country of nationality may be granted subsidiary protection (Sections 19 paragraphs 1 and 2). In this case, they have a residence permit in Cyprus for a year which is renewable (section 19 paragraph 4).

Foreigners under a life-saving medical treatment

Legislative initiatives, national case law and practices of national authorities

According to the latest amendment to the Refugee Law (L. 241(I)/2004), persons whose status of temporary protection as defined above has expired are extradited. However, an extradition order is not issued when the extradition is considered impossible or illogical because the said persons due to their health condition cannot travel or will be subject to negative consequences if their treatment is discontinued (section 20E paragraph 2).

Subsidiary protection

Legislative initiatives, national case law and practices of national authorities

The Refugee Law [Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για τη Νομική Κατάσταση των Προσφύγων, Ν. 6(I)/2000] as lastly amended by the L. 241(I)/2004 provides for subsidiary protection. Article 19 of the Refugee Law as amended by L. 9(I)/2004 recognises the status of subsidiary protection. Paragraph 1 of article 19 states that an applicant who is not recognised as refugee or any other applicant whose application does not fall within the scope of article 3 (which provides for the definition of refugee), may be granted the status of subsidiary protection.

This is so, provided the applicant is forced to abandon or stay away from his/her country of nationality, due to a valid fear that he/she will be subject to serious and unjustified damage, as this is defined in article 19, and who is not able or willing due to this fear to put himself under the protection of his/her country of nationality.

Paragraph 2 of section 19 provides the definition of "serious and unjustified damage" for the purposes of this law. This is (a) torture or inhuman or degrading treatment or punishment; (b) grave human rights violation, which triggers the international responsibilities of the Republic of Cyprus; (c) threat against the life, security or freedom, which is the result of indiscriminate violence in armed conflict, or is the result of systematic or general human rights violations against people close to the applicant.

Section 19 provides for the rights of persons granted the status of subsidiary protection. Accordingly such a person (a) may not be extradited to his country of nationality (paragraph 3); (b) has residence permit for a year which is renewable; (c) has the right to reside and move freely within the Republic, (d) has free medical care, access to public educational facilities and the right to work, similar to that of refugees (paragraph 5); (e) after the completion of a year of someone with the status of subsidiary protection, he/she has the same rights as those recognised for refugees in this law (paragraph 6).

CHAPTER III : EQUALITY

Article 20. Equality before the law

No significant development to be reported

Article 21. Non-discrimination

Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Case of Aziz v. The Republic of Cyprus (ECHR, decision of 22 June 2004)
The applicant who is a member of the Turkish-Cypriot community, requested to be registered to the electoral roll with a view to voting in parliamentary elections. The Ministry of Interior refused the applicant's request, explaining that under the Constitution members of his community could not be registered on the Greek-Cypriot electoral roll. The applicant applied to the Supreme Court against the said refusal. The Supreme Court dismissed the appeal, holding that under the Cypriot Constitution and relevant electoral legislation, members of the Turkish Community residing in the Republic of Cyprus could not vote in parliamentary elections and that it could not intervene to fill a legislative gap which existed in this respect.
The European Court of Human Rights pronounced that as the "difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot" (paragraph 36), as well as from the constitutional provision regulating voting rights between members of the Turkish-Cypriot and Greek-Cypriot communities, which had become impossible to implement, there was a clear inequality of treatment in the enjoyment of the right in question. Accordingly the ECHR decided that there had been a violation of article 14 in conjunction with Article 3 of Protocol 1 of the Convnetion.

Legislative initiatives, national case law and practices of national authorities

The Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems has been ratified by virtue of Law 26 (III) of 2004. [*Νόμος που Κυρώνει το Πρόσθετο Πρωτόκολλο στη Σύμβαση κατά του Εγκλήματος Μέσω του Διαδικτύου Αναφορικά με την Ποινικοποίηση Πράξεων Ρατσιστικής και Χενοφοβικής Φύσης που Διαπράττονται Μέσω Συστημάτων Ηλεκτρονικών Υπολογιστών*, N. 26(III)/04, 30 April 2004].

Cyprus has implemented the Council Directive 2000/43/EC on the principle of equal treatment irrespective of racial or ethnic origin by adopting the *Equal Treatment (Racial or Ethnic Origin) Law* [*ο περί Ίσης Μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή)* N. 59(I)/2004 on 18 March 2004]. This law prohibits discrimination on any of the above mentioned grounds in the public and private sector, in matters of social protection, health treatment, social services, training, and access to goods and services. Violation of the provisions of the Law is a criminal offence and the person who has been discriminated against is afforded the right to institute civil proceedings for compensation covering both pecuniary and non-pecuniary damage. This statutory right is additional to the right established by case-law to institute civil proceedings for recovery of just and reasonable compensation for human rights violations.

The *Equal Treatment in Employment and Occupation Law of 2004* [*Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του 2004*, N. 58(I)/2004 on 18 March 2004] was adopted with the purpose of harmonising the Cyprus legislation with Council Directive 2000/78/EC which establishes a general framework for equal treatment in employment and occupation. This law prohibits discrimination specifically in the spheres of employment and occupation on the grounds of racial or ethnic origin as well as on grounds of religion, belief, sexual orientation disability and age.

The *Commissioner of Administration* Law was amended in order to extend the power of the Ombudsman to deal with issues of equality between men and women, and equality concerning human rights and individual freedoms independent of race, nationality, community, language, colour, religion and political or other beliefs. [*Νόμος που Τροποποιεί τους περί Επιτρόπου Διοικήσεως Νόμους,* N. 36(I)/04, 19 March 2004].

Another law adopted this year which implements Council Directive 2000/48/EC is the *Combating of Racism and Other Discrimination (Commissioner) Law of 2004* [*Ο περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος Νόμος) του 2004*, N. 42(I)/2004 adopted on 4 March 2004]. This law grants to the ombudsman special competences, duties and powers for the purpose of combating and eliminating discrimination in both the public and private sector. Under the provisions of this law any person or group may lodge a complaint to the ombudsman claiming to have been subject to discrimination prohibited by any law**,** including the Cyprus Constitution, national legislation and international conventions or treaties ratified by the republic. The discrimination referred to may be perpetrated by treatment or conduct, or the application of a provision, term, criterion or practice which may be specifically prohibited by law as discriminatory, or may constitute direct or indirect discrimination in the enjoyment of any of the rights recognised in laws and treaties. The law also covers discriminatory provisions/terms/criteria/practices which may be found *inter alia* in contracts of employment, collective agreements, articles of association of legal persons, societies, bodies and institutions, contracts for the supply of goods and services, and terms of membership or organisations, including professional ones. In case discrimination is found, the ombudsman is empowered to order the person or authority in question to pay a fine, and/or to address recommendations to them on specific practical measures for the purpose of ending or not repeating the relevant treatment or conduct or application. The ombudsman can also carry out investigations *ex proprio motu* into incidents of discrimination.

Burden of proof

According to the *Equal Treatment (Racial or Ethnic Origin) Law [ο περί Ίσης Μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή) Νόμος του 2004*, N. 59(I)/2004 on 18/03/04] and *Equal Treatment in Employment and Occupation Law of 2004 [Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του 2004*, N. 58(I)/2004 on 18/3/04] "when persons who consider themselves wronged because the principle of equal treatment has not been applied to them, establish before a competent court facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment." (sections 7 and 11 respectively)

Rights for associations

Both the above mentioned laws provide for the right for associations with a legitimate interest to assist the victims of discrimination in the filing of their complaint. According to article 14 of the L. 58(I)/2004, "associations or other employers' organisations that have the legitimate interest can exercise on behalf of the complainant the rights provided in the law with the consent of the complainant" (section 14). L. 59(I)/2004 instead of employers' organisations

writes about "organisations or other associations that have as their mandate the elimination of racial, ethnic origin" (section 11).

Statistics

The Cyprus Labour Institute, published a report in January 2004 entitled Report on the Economy and Occupation 2003 [Έκθεση για την Οικονομία και Απασχόληση 2003]. According to this report, due to the fact that immigrants do not participate in trade unions, their working contracts are often breached (p. 127). According to the findings of the said Institute immigrants are victims of abuse in their workplace. The Institute has organised in 2003 the first immigrants' meeting in an effort to organise immigrants in unions to enable them to effectively claim their rights. It has to be observed that implementation of the worker's rights of immigrants as individual rights may be a more effective method to deal with the problems they are facing.

Good practices

Cyprus has joined an EU-wide enlightenment campaign to combat discrimination on the basis of sex, race, religion, disability, age or sexual orientation entitled "For Diversity against Discrimination" which was launched at Nicosia's main square by the Justice Minister. This campaign is organised by the National Labour Committee set up specially to coordinate Cyprus's role in the campaign and focuses on encouraging diversity in the workplace. (*The Cyprus Weekly, 17-23 September*). The focus of the campaign is to make the public more aware of discrimination and inform it of the new legal apparatus available on the issue (*Cyprus Mail, 17 September*).

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

According to L. 59(I)/2004 and L. 58(I)/2004 any person who considers that the provisions of these laws have been violated to his detriment can apply to the Court or lodge a complaint to the Ombudsman (articles 8 and 9, and 12 and 13 respectively). It has to be noted that the Combating of Racism and Other Discrimination (Commissioner) Law of 2004 L. 42(I)/2004 grans to the ombudsman special competences, duties and powers for the purpose of combating and eliminating discrimination in both the public and private sector.

Positive aspects

The Labour Ministry has not received any complaint based on any ground of discrimination inthe work place within the period under scrutiny.

Reasonable accommodation of the specific needs of certain groups, especially religious or ethnic minorities

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Committee of Ministers of the Council of Europe Framework Convention for the Protection of National Minorities concluded that "there is a differentiation in language requirements introduced for applicants belonging to religious groups as concerns access to the civil service." (Council of Europe: Framework Convention on the Protection of National Minorities, *Collection of Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities Article by Article* http://www.minority.org).

Protection of Gypsies / Romas

Legislative initiatives, national case law and practices of national authorities

According to the official data, the number of Roma in Cyprus is estimated to be less than 400. The Roma community is not recognised as a Constitutional Minority (i.e. a minority recognised by the Constitution, as is the case with the Armenians, Maronites and Latins). Therefore, they do not enjoy the enhanced protection/participation as the Constitutional Minorities do (e.g. participate in the House of Parliament, state funding education in their own language etc).

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The US Department of State, the Bureau of Democracy, Human Rights and Labour published an *International Religious Freedom Report 2004*, on 15 September. The report concludes that "the government respects the right to freedom of religion", the "government policy continued within 2004 to contribute to the generally free practice of religion", "the generally amicable relationship among religions in Cypriot society contributed to religious freedom" and "there are polite relations between the Greek Orthodox Church of Cyprus and the other religious communities."

The *Advisory Committee of the Council of Europe Framework Convention for the Protection of National Minorities* noted that "the religious groups have a right to elect their own representatives in the House of Representatives, who attend as observers and have an advisory role on religious and educational matters affecting their group, but without any legislative powers (Council of Europe: Framework Convention on the Protection of National Minorities, Collection of Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities Article by Article, http://www.minorityrights.org).

Legislative initiatives, national case law and practices of national authorities

The Constitution of Cyprus provides for the protection of freedom of religion. Article 18 states:
"1. Every person has the right to freedom of thought, conscience and religion.

2. All religions whose doctrines or rites are not secret are free.

3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion.

4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, private or in public, and to change his religion or belief.

5. The use of physical or moral compulsion for the purpose of making a person change or preventing him from changing his religion is prohibited.

6. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the pulic order or the public health or the public morals or of the protection of the rights and liberties guaranteed by this Constitution to any person.

7. Until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person. 8. No person shall be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

8. No person shall be complelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own."

A complaint has been filed to the Ombudsman by the Cyprus Association of Evangelical Church alleging a violation of the freedom of religion (Politis, 11 October). The Ombudsman has not yet published her deliberations on the issue.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

For the purposes of implementing Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, *the Law on the Equal Treatment of Men and Women in Occupation and Vocational Training* of 2002 [*Ο περί Ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση Νόμος του 2002,* N. 205(I)/2002] was adopted. This law prohibits any discrimination on the grounds of sex, direct or indirect, as is provided for in Council Directive 97/80/EC. Specifically article 2 provides a definition of direct discrimination due to sex. It "means the adverse treatment related directly and obviously to sex, pregnancy, giving birth, breast feeding and motherhood". "Indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless the provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex" (article 2).

For the purposes of implementing Council Directives 86/378/EEC and 96/97/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, and Council Directive 97/80/EU on the burden of proof in cases of discrimination based on sex, *the Equal Treatment of Men and Women in Occupational Social Security Law* was adopted *in 2002* [Ο περί Ίσης Μεταχειρίσεως Ανδρών και Γυναικών Επαγγελματικά Σχέδια Κοινωνικής Ασφάλισης Νόμος του 2002, N. 133(I)/2002]. This law inserts the concept of direct and indirect discrimination in the field of social security schemes. It has to be noted that "direct and indirect discrimination" has the same meaning as in the *Law on Equal Treatment of Men and Women in Occupation and Vocational Training.* However, Law 133(I)/2002 does not mention anything on the burden of proof concerning the existence of discrimination.

National case law

A woman pilot has begun a landmark sexual discrimination suit against Cyprus Airways. The case has recently reached the courts and is believed to be the first major case of sexual discrimination against a semi-government company. (*Cyprus Mail, 21 September 2004*). The case has been filed at the Court in Nicosia in April 2001.

In the case *Μαρία Βρούτου ν. Λειτουργού Εγγραφής* (*Application number 436/2003, 12 May 2004)* an administrative act regarding the grant of internally displaced status has been challenged in the Supreme Court. According to the relevant administrative act, a child whose father is internally displaced due to the Turkish invasion is considered as a displaced person. On the contrary, when the mother is internally displaced, the child is not considered as a displaced person. This provision was challenged by Maria Broutou whose mother has the status of internally displaced person but not her father. The plaintiff argued that the law violated the right to equality as recognised in the Constitution. The Supreme Court desisted from making any determination on the legality of the law on the grounds that the Court is not allowed to correct the omissions of the law makers.

It is worth mentioning here that the issue of expanding the meaning of "displaced" to the children whose mother is displaced had been the subject of discussion several times in the past. However, the Ministry of Interior is unwilling to agree to such expansion based on serious political and economic reasons that will arise. More specifically, in case of expanding the meaning of "displaced", 80% of the population will fall under the meaning of "displaced".

Statistics

The Cyprus Employers and Industrialists Federation with the support of the National Mechanism on the Rights of Women (a department under the Ministry of Justice) published a report on the *Position of the Woman in the Contemporary Industry* in September 2004 [Η Θέση της Γυναίκας στη Σύγχρονη Επιχείρηση]. The aim of the research was to find out the woman's role in the economic production, her participation in various fields and workplaces and the hierarchical level in which she is found. According to the report, on the overall, 40% of the employees are women and 60% are men. However, only 14.4% of women are found at managerial or high management positions (p. 13) and only 16% participate at the Companies' Board Directors (p. 22), while the vast majority of employed women (64%) are employed as administrative and secretarial personnel (p. 14). In addition the high majority of women (87%) regard the environment in which they are working or used to work as a women friendly environment (p. 35) and 63% of the working women regard the treatment they are receiving in occupation as equal to men (p. 36). The president of Employers and Industrialists Federation told a press conference that in the last five or six years there has been a "spectacular increase" in women's occupation. (*Cyprus Mail, 30 September 2004*).

The Cyprus Gender Equality Observatory [Παρατηρητήριο Ισότητας Κύπρου], an NGO dealing with equality, mostly in the field of employment, received one complaint for unequal payment, two complaints for discrimination in the access to work and promotion, and two complaints for sexual harassment during the year of 2004. Those complaints were against employers in both the private as well as public sector. According to the opinion of the Director of the Cyprus Equality Watch, the discrimination based on sex is more easily identified in the private sector. Nevertheless, there is inherent discrimination in the public sector as well. A report analysing the said opinion is due to be published in March 2005.

Positive actions seeking to promote the professional integration of women

Positive aspects

The National Mechanism on the Rights of Women is involved in the European Program on the equality of men and women entitled "Women in the Business World – Enhancement of Female Entrepreneurship" (*Fileleftheros*, *17 November*).

Remedies available to the victim of gender discrimination (burden of the proof, level of penalties, standing of organisations to file suits)

Legislative initiatives, national case law and practices of national authorities

Sexual harassment

According to the *Law on the Equal Treatment of Men and Women in Occupation and Vocational Training* adopted in 2002, sexual harassment is considered as a form of discrimination based on sex (article 2). Sexual harassment is "an unwanted conduct of sexual nature or related to sex, which violates the dignity of women and men at their work or at the vocational training and is expressed by words or acts" (article 2). The establishment of sexual harassment was the first time this concept was inserted in a law on the equal treatment of men and women in occupation and employment. It has to be noted that the prohibition includes not only sexual harassment but also the prevention of a complaint of sexual harassment (article 12(1)). Of particular importance is the fact that sexual harassment is also a criminal offence under this law (article 30(1)).

Burden of proof

Section 14(1) of Law *on the Equal Treatment of Men and Women in Occupation and Vocational Training* adopted in 2002states: "At a civil procedure, if the plaintiff who alleges that she/he was wronged due to a violation of any provision of this law establishes before a court facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the respondent does not prove the lack of violation or its circumstances, the violation is established ."

Remedies

The said law provides that workers who suffer discrimination based on sex have a right of appeal before the Labour Court. The Labour Court awards just and reasonable compensation to the victim of discrimination that covers at least all the positive damage, including moral damages (article 15(3)). In case of dismissal the Court orders, apart from damages, the reinstatement of the employee (article 14(4)). Additionally, if the discrimination is purposeful then the perpetrator is considered to have committed a criminal offence and shall be subject to pecuniary punishment and/or imprisonment (article 30(1)). The Law also provides for the appointment of a Gender Equality Committee in matters of employment and vocational training.

Associations having a legitimate interest to assist the victim in the introduction of the claim
The relevant law analysed here does not provide for the right of associations or organisations representing the interests of employees to file a suit in Court on behalf of the employee. These organisations, once they receive a complaint, they may report it to the Ombudsman or to the Employment Supervisors of the Ministry of Work and Social Affairs, who on their turn may file a suit on behalf of the employees at court or seek an out of court reconciliation.

Positive aspects

The Cyprus Employers and Industrialists Federation published a *Code on the Dealing with Sexual Harassment in Employment* (May 2004) which can be used as a tool by employers, employees, their federations as well as by women organisation on the matter.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

According to statistics there are currently 9 women Members of Parliament out of 56; 1 woman major out of 33 and 79 members of town counsellors out of 398. This is quite an improvement from previous elections. In the 1996 elections there were 3 women Members of Parliament, 4 majors and 66 members of town counsellors.

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

The Republic ratified the 1996 Convention on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children [Νόμος που Κυρώνει τη Σύμβαση για Δικαιοδοσία, Εφαρμοστέο Δίκαιο, Αναγνώριση, Επιβολή και Συνεργασία σε Σχέση με Γονική Ευθύνη και Μέτρα για την

Alternatives to removal from the family

Legislative initiatives, national case law and practices of national authorities

Regarding alternative possibilities to the removal of the family home due to the possibility of abuse, the Laws on the Domestic Violence (Prevention and Protection of Victims) of 2000 and 2004 (N. 119(I)/2000 as amended by Amendment law N. 212(I)/2004), provide that the Court instead of imposing another punishment to the person convicted, it can put him/her under guardianship, based on the Guardianship and Other Ways of Treatment of those who Committed Crimes Law, under the specific provision that he/she will be subject to corrective education of self control, for the purpose of desisting from the same violent acts in the future (article 25).

Juvenile offenders

Legislative initiatives, national case law and practices of national authorities

The ombudsman in her report (*Επίτροπος Διοικήσεως, Ετήσια Έκθεση 2003*) stated that the lack of a special ward for juvenile offenders creates various problems and violations of human rights of those prisoners due to their vulnerable position (p. 59). A special ward for juvenile offenders is essential according to the ombudsman.

Following calls to establish a special ward for juvenile offenders, the Parliamentary Human Rights Committee discussed a proposal for the establishment of a separate ward for juvenile offenders in prisons on 9 March 2004. This ward will be used as a correctional institution for juvenile offenders serving prison sentences.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Cyprus has not singed the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, done in New York on the 25 May 2000.

The President of the Republic announced that a Commissioner on the Rights of the Child will be appointed. The Commissioner will deal specifically with issues relating to children and their rights (Fileleftheros, 17 November).

Reasons for concern

The Council of Ministers appears to be reluctant to continue approving the registration of minors of Cypriot origin (Turkish Cypriot origin) whose other parent is Turkish that has entered and remained within the occupied territories in Cyprus after the Turkish Invasion of 1974. The relevant Law Proposal has remained before the Council of Ministers for at least four months and has not yet been approved.

Article 25. The rights of the elderly

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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."

Article 26. Integration of persons with disabilities

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:
-The Protection of the Mentally Retarded Persons Law No. 177 of 1989
-The Lottery Law No. 79 (1) of 199
-The Special Fund of the Occupational Rehabilitation Centre for Persons with Disabilities, No.127 of 2000
-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 [*Νόμος που προνοεί για τα άτομα με αναπηρίες*], prohibits discrimination on the ground of disability. The basic rights of disabled persons are stated in section 4 of the said Law and include access to buildings, roads and any other public transportation, 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. Further the law provides for 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. Section 5 provides for equal treatment at work both in the public and private sector.

Protection against discrimination on the grounds of health or disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CoE Commissioner for Human Rights in commenting the right of the mentally ill in paragraph 43 of his Report, stated that "(t)he situation remains difficult as regards persons present in the Athalassa clinic even though they do not require psychiatric treatment but simply need permanent care because of major disability. The Ombudsman has condemned this situation and a solution will reportedly be envisaged when a new psychiatric complex is built."

In his Conclusion the Commissioner recommended that an appropriate institution should be established for assisting persons in need of constant care because of major disability. The lack of sufficient structures in this regard in the Republic poses a valid reason for concern.

Legislative initiatives, national case law and practices of national authorities

The *Disabled Persons (Amendment) Law* [*Ο περί Ατόμων με Αναπηρίες (Τροποποιητικός) Νόμος του 2004,* N. 57(I)/2004] amending the *Disabled Persons Law* [*Νόμος που Προνοεί για τα Άτομα με Αναπηρίες,* N. 127(I)/2000] has been enacted with the purpose of harmonising the Cypriot legislation with Council Directive 2000/78/EC. It prohibits direct or indirect discrimination on the grounds of disability (sections 2 and 3); it also provides that any positive action measures to the benefit of disabled persons are not to be considered discriminatory. (section 3B). According to section 9A upon the establishement of the basic facts relevant to a complaint, in the context of court proceedings, discriminatory treatement is established.

Additionally, the *Law Providing Transport Allowance for people with Disabilities* [*Ο περί Παροχής Επιδόματος Διακινήσεως εις Αναπήρους Νόμος του 1980*] was amended on 29 April 2004 by the L. 177(I)/2004 [*Ο περί Παροχής Επιδόματος Διακινήσεως (Τροποποιητικός) Νόμος του 2004*]. The said law was amended so that it can be in line with the Treaty Establishing the European Union and in particular articles 12, 39 and 43. The amendment provided for an increase in the State subsidy of transportation of disabled persons. The said law established a committee responsible for providing a transport allowance to persons with disabilities. It has to be noted that this allowance is given to persons with disabilities for the purpose of transportation to the place of their employement as well as to disabled students (section 7A(1)).

Professional integration of persons with disabilities: positive actions and employment quotas

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights in its Conclusions on Cyprus for 2004 have stated in relation to employement among disabled that: "no recent data are available, but according to the 1992 population census 25.2% of persons with disabilities were in employement. It further states that this low percentage is expected to increase as a result of measures currently under consideration which aim at providing incentives for employers to hire disabled persons."

Legislative initiatives, national case law and practices of national authorities

The Parliament has enacted the *Law on the Equal Opportunities to Work for the Disabled and the Children of the Enclaved* [*Νόμος που Προνοεί για την Παροχή Ίσων Ευκαιριών για την Επαγγελματική Αποκατάσταση των Παθόντων και των Τέκνων των Εγκλωβισμένων,* N. 87(I)/2004, published on 16 April 2004]. As per article 3 of the said law, the disabled and children of enclaved shall have preferential treatment for the appointment and promotion at employement in the public sector. This is so provided they meet the necessary requirements for such appointment or promotion.

The Ministry of Labour and Social Security is considering a package of measures which create incentives for employers to employ persons with disabilities. According to various press releases the said measures will cover the following: (a) in relation to persons with grave disabilities, their salary will be funded by the state for a certain period of time; (b) employers who employ people with disabilities will be given 40% of the disabled employees' wages; (c) social security of persons with disabilities will be partly funded by the Government (20%); (d) financial support will be given to employers for the purpose of installing facilities for persons with disabilities. The said measures will be co-funded by the Cyprus Republic and the European Social Fund. (*Fileleftheros, 7 July*, *Fileleftheros, 18 June*, *Politis, 18 June*, *Fileleftheros, 30 September 2004*).

In regards to measures of affirmative action, persons with disabilities applying for a public sector post are entitled to preference if they are deemed able to perform the required duties and if their qualifications are equal to those of other applicants. (Report of the US Department of State, Bureau of Democracy, Human Rights and Labour Report for Cyprus 2004).

Law No. 103(I)/2000 provides for the establishment of a special fund for the Centre of professional rehabilitation of persons with disabilities [*Νόμος που Προνοεί για την Ίδρυση Ειδικού Ταμείου του Κέντρου Επαγγελματικής Αποκατάστασης Ατόμων με Αναπηρία*]. This special fund is a public law body and as such may enter into agreements, start and defend any court proceedings, as well as acquire its own property. Its aim is the establishment of programs for employment, and the creation of small business enterprises for disabled people The said Fund is in full operation.

Reasons for concern

The main problem that people with disabilities face is professional integration. This is the position of the Deaf Peoples' Federation (*Fileleftheros, 4 November*) and of the Federation of Handicapped People. According to a local newspaper, 48% of the people with disabilities are employed. However, when it comes to grave disabilities, only 25% is employed (*Fileleftheros, 15 October 2004*).

Regarding discrimination, despite the fact that *People with Disabilities (Amendment) Law* prohibits direct or indirect discrimination on the ground of disability, the Association for the Disabled have stated that people with disabilities are being widely discriminated against and that more that 90% of the members of their association are unemployed (*The Cyprus Weekly, 17-23 September*).

It has to be noted that there is an overlap among the various services providing allowance to people with disabilities, the result of which is that the same person receives various allowances. In this case, the cooperation among various services is imperative. For this reason, a specially established Ministerial Committee, consisted by the Ministers of Labour and Social Security, Economics, Education, Interior and Transport is currently preparing a General Report on problems faced by disabled persons. [Σφαιρική Αντιμετώπιση των Θεμάτων των Ατόμων με Αναπηρίες] (*Fileleuftheros, 15 November*). A Representative if the Ministry of Labour and Social Security has stated that a new Plan has been adopted by the Council of Ministers and is to be examined by various organisations defending the rights of disabled.(*Fileleftheros, 17 November 2004*).

CHAPTER IV : SOLIDARITY

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

Workers' information on the economic and financial situation of the undertaking

Legislative initiatives, national case law and practices of national authorities

The *Law Providing for the Establishment of European Works Council for the Purpose of Safeguarding Employees' Rights for Information and Consultation in Community-Scale Undertakings and Community-Scale Groups of Undertakings* [*Ο περί της Σύστασης Ευρωπαϊκών Επιτροπών Επιχειρήσεων με Σκοπό τη Διασφάλιση του Δικαιώματος των Εργαζομένων για Ενημέρωση και Διαβούλευση σε Κοινοτικής Κλίμακας Επιχειρήσεις και Ομίλους Επιχειρήσεων Νόμους του 2002*, N. 68(I)/2002] was lastly amended by L. 143(I)/2003.

According to article 3(1) of the said law, "the purpose of this Law is to safeguard and to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings". Article 4(1) provides that: "For the purpose of this law a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community scale group of undertakings […] with the purpose of informing and consulting employees under the terms, in the manner, and with the effects laid down in the present Law". According to article 15(1) "The European Works Council shall have the right to meet with the central management once a year […] (2) the meeting shall relate in particular to the structure of the undertaking or the group, its economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial organisational changes, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures or undertakings, establishments or important parts thereof, and collective redundancies" (3) The select committee or, where no such committee exists, the European Works Council shall have the right to be informed in good time for exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the even of relocations, the closure of establishments or undertakings o collective redundancies. In these circumstances, the European Works Council shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking, or group of Community-scale undertakings having its own powers of decision, so as to be informed and consulted. If the meeting is organised with the select committee, then those members of the European Works Council representing establishment of undertakings, which are directly affected, have the right to participate."

Article 28. Right of collective bargaining and action

General

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights in its *European Social Charter (Revised) Conclusions 2004 (Cyprus)* in regards to joint consultation noted: "the [national] report stated that the relevant legislation was fully discussed with the social partners before enactment. Act 68(I)/2000 implements Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings

and Community-scale groups of undertakings for the purposes of informing and consulting employees. Similarly, Act 104(I)/2000 implements Council Directive 77/187/EC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business of parts of business. The Committee [European Committee of Social Rights] also takes note of Act 28(I)/2001 on collective redundancies, which came into force on 9 March 2001 and implements Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of Member States relating to collective redundancies. Section 4.1 of the aforementioned Act provides for private sector employers to consult staff in good time before carrying out such redundancies. The Committee asks for the next report to state whether employee representatives were consulted before this legislation was enacted. The Committee concludes that the situation in Cyprus is in conformity with Article 6(1) [on joint consultation] of the Revised Charter." (http://www.coe.int/T/E/Human_Rights)

Legislative initiatives, national case law and practices of national authorities

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.

Social dialogue

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights published the *European Social Charter (Revised) Conclusions 2004 (Cyprus)*. According to the report of the European Committee of Social Rights, Cyprus is in conformity with article 6(2) of the Revised Charter [on the negotiation procedures]" and "with article 6(3) [concerning conciliation and arbitration]."

The Committee has noted that "During the reference period discussions were held with the social partners regarding the establishment of a separate tripartite Employement Committee with a view to monitoring the employement situation and to submitting suggestions for the formulation of national employement policy."

It was further stated "the cooperation between Government and social partners in the field of employement has been reinforced within the framework of the preparation in the European Employement Strategy. The social partners have been consulted on the preparation of the Joint Assessment of Employement and Labour Market Priorities in Cyprus and they have been invited to submit their comments on the Ntaional Action Plan under preparation."

The right of collective action (right to strike) and the continuity of public services

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In regards to collective action, the European Committee of Social Rights has noted that "the current (national) report states that the government has taken seriously the Committee's previous conclusion and has brought it to the attention of the Labour Advisory Board with a view to modifying the relevant provisions of the Trade Union Laws 1965-1996. The Committee notes this information and asks that the next report indicate the relevant changes to the legislation. The Committee assesses the Government's power to requisition workers and ban strikes under article 6(4). In its last conclusion with respect to article 1(2) of the 1961 Charter, the Committee found that the situation in Cyprus was not in conformity insofar as two regulations, Defence Regulations 79A and 79B, which authorised the Government to requisition workers and ban strikes in cases other than those allowed by the Charter were still in force. The report on article 1(2) states that the Government agreed in principle that the two regulations should be amended and that they were never applied during the reference period. It also confirms however, that the situation from a legal standpoint has not changed since the last report. The Committee points out that non-application of legislation currently in force is not sufficient to demonstrate that the rights laid down by the revised Charter are guaranteed, and that his ground of non-conformity has been recorded in all the Committee's conclusions on article 1(2) since 1994. It therefore considers that the situation has not changed. The Committee concludes that the situation in Cyprus is not in conformity with article 6(4) of the Revised Charter [concerning collective action] on the grounds that: in accordance with the Trade Unions Laws 1965-1996, the decision to call a strike must be endorsed by the executive committee of a trade union; Defence Regulations 79A and 79B, which authorise the requisition of workers and the prohibition of strikes in cases other than those allowed by the Revised Charter, are still in force."

Article 29. Right of access to placement services

Access to placement services

Legislative initiatives, national case law and practices of national authorities

The law that provides for the right of access to placement services is the Law on Private Agencies for Placement Services [Ο περί Ιδιωτικών Γραφείων Εξεύρεσης Εργασίας Νόμος του 1997, N. 8(I)/1997] as lastly amended by L. 195(I)/2002 [Νόμος που Τροποποιεί τον περί Ιδιωτικών Γραφείων Εξεύρεσης Εργασίας Νόμο του 1997]. The latest amendment to the Basic Law has come into force upon Cyprus' accession in the EU by virtue of Section 5 of the said law.

The basic parameters of the said law on Placement Services are: (1) It is prohibited to operate a private agency for placement services without the permission of the Ministry of Labour and Social Security (section 3(1));
(2) No permission is given to run such an agency unless (a) such an agency is run by a natural person who is a citizen of the Republic or a citizen of any other EU member state, (b) such an agency is run by an association whose majority members are citizens of the Republic or citizens of other EU member states, (c) such an agency is run by a company whose majority shareholders are citizens of the Republic or citizens of other EU member states (section 5);
(3) No such agency will seek to find an employment to citizens of the Republic or citizens of other EU member states residing outside the territory of the Republic, or to foreigners seeking to find an employment within the Republic. These are so, unless such kind of service is mentioned in the agency's establishment permission (section 8(1));
(4) Each such agency which seeks to find an employment to foreigners within the Republic or to Cypriot citizens or other EU citizens abroad, shall comply with the current legislation, administrative acts and regulations relating to foreigners and immigration as well as any legislation relating to the employment of non Cypriot citizens (section 8(2));
(5) The Ministry of Labour and Social Security shall appoint Supervisors for the efficient implementation of this law (section 16(1)).

Article 30. Protection in the event of unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

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.

The Supreme Court has examined the issue of unfair dismissal in two appeals this year (Kanika Hotels Ltd v. Λουκά Λουκά, Appeal No.11581, Feb.2004, Kynigos Hotels Ltd v. Γιωργούλλας Χρίστου, Appeal No. 11582, March 2004). Both of these cases involved employment in the tourist industry. The cause of dismissal in the first case was a dispute between employees and in the second case was the lack of caution on the part of a cleaning lady. The Court held that the dismissal of an employee should only be taken as a last resort measure while it took into account that such dismissal would end the career of the employee. The Court implicitly relied on a test of reasonableness which was not satisfied for it considered the dismissal to be a disproportional measure in respect to a minor and isolated incident.

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

Pursuant to the *Security and Health at Work Laws of 1999 up to 2003* [*Οι περί Ασφάλειας και Υγείας στην Εργασία Νόμοι του 1996 έως (αρ. 2) του 2003*] the *Security and Health at Work Regulations have been amended.* [*Οι περί Ασφάλειας και Υγείας στην Εργασία (Χημικοί Παράγοντες) (Τροποποιητικοί) Κανονισμοί του 2004*] and were published on the 6 February 2004. The purpose of these Regulations was to harmonise Cypriot legislation with Council Directive 98/24/EC and Community Directives 91/322/EEC and 2000/39/EC.

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].

The Regulations on Safety and Health in the Work Environment of 2002 N230/2002, provide 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 Department of Employment Supervision at the Ministry of Labour (Τμήμα Επιθεώρησης Εργασίας) reported that during the first 6 months of 2004 (i.e. 1 January up to30 June) there have been 840 reported work accidents, of which 7 have been lethal. (*Note by the Department*

of Employment Supervision dated 22 July). According to the Department of Employment Supervision, the former figure includes accidents that caused the absence of the employee from work for more than three days. It has to be noted however, that these figures are preliminary and do not constitute the formal figures of 2004, which most likely will be published at the beginning of next year.

Reasons for concern

It was reported in the local press that the Department of Employment Supervision faces various problems. One the most serious problems is that it is understaffed: it has 46 employees. As a result, 20 supervisors have to supervise/cover 60 000 working places which employ 320 000 workers. (*Fileleftheros*, *28 May* and *Politis*, *28 May 2004*)

The Confederation of Cypriot Workers (SEK) at an announcement criticised the way in which community workers, mainly from Central and Eastern Europe are being treated by their employers: their salary is too low, sometimes they are force to work 10 to 13 hours per day, or work seven days per week. (*Fileleftheros*, 28 July). To this allegation, the Employers' and Industrialists' Federation (OEV) replied that they are unjustified and without any convincing evidence. (*Cyprus Mail*, *29 July 2004*).

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

According to the Law on the Equal Treatment of Men and Women in Occupation and Vocational Training [Ο περί Ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση Νόμος του 2002, Ν. 205(I)/2002], sexual harassment is considered as a form of discrimination (section 2). Sexual harassment is "an unwanted conduct of sexual nature or related to sex, which violates the dignity of women and men at their work or at the vocational training and is expressed by words or acts" (section 2).

First, the *Equal Treatment (Racial or Ethnic Origin) Law* [N. 59(I)/2004] provides for the prohibition of harassment. According to section 2 "harassment is the unwanted conduct related to racial or national origin with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment." Second, the *Equal Treatment in Employment and Occupation Law of 2004* [N. 58(I)/2004] also provides for the prohibition of harassment. According to section 2 of the said law, "harassment is the unwanted conduct related to any of the grounds referred to in section 3 [i.e. racial or national origin, religion or belief, age or sexual orientation] with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment." Third, the *People with Disabilities (Amendment) Law* [N. 57(I)/2004] provides that "harassment is the unwanted conduct related to disability with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment."

Working time

Legislative initiatives, national case law and practices of national authorities

In 2002, new Law was enacted on the Organisation of Working Hours [Ο περί Οργάνωσης του Χρόνου Εργασίας Νόμος του 2002, Ν 63(I)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 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 (Οροι Υπηρεσίας) Τροποποιητικοί Κανονισμοί του 2002*].

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

A new Administrative Act (number 558/2004) was passed pursuant to the Minimum Wage Law[*Ο περί Κατώτατου Ορίου Μισθών Νόμος, Κεφάλαιο 183]* on 14 May. Accordingly the new minimum wage is £ 345 CYP per month, and in regards to an employee working for more than 6 months minimum wage is set to £ 367 CYP.

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

Protection of minors at work

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights at its *Conclusions 2004 (Cyprus)* on the European Social Charter (Revised) noted: "the situation in Cyprus is not in conformity with section 7(1) of the Revised Charter on the grounds that the *Protection of Young Persons at Work Act of 2001* does not apply to occasional or short-term work relating to the provision of domestic service in a private household." (p. 13 at http://www.coe.int/T/E/Human_Rights/).

As regards paragraph 2 of section 7: ["prohibition of employment under the age of 18-for dangerous activities] and 3 [prohibition of employment of children subject to compulsory education] of the European Social Charter (Revised), "the Committee concludes that the situation in Cyprus is in conformity with section 7(2) of the Revised Charter [… but] is not in conformity with section 7(3) on the grounds that the Protection of Young Persons at Work Act does not apply to occasional or short term work relating to the provision of domestic service in a private household (section 3)" (p. 14)

Regarding section 7 paragraphs 4 [length of working time], 6 [time spent on vocational training] and 8 [prohibition of nigh work], the Committee concluded that the situation in Cyprus is in conformity with the said paragraphs. (p. 15)

Legislative initiatives, national case law and practices of national authorities

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.

Military service

In regards to military service, the compulsory recruitment age at the National Guard is 18 years old according to the Law on the Establishment and Organisation of the National Guard as lastly amended by L. 42(I)/2003 [Νόμος Προνοών περί της Ιδρύσεως και Οργανώσεως της Εθνικής Φρουράς και περί Συναφών Ζητημάτων, N. 20/1964]. However, a volunteer may be recruited in the National Guard at the age of 17 years old according to section 12(2) of the Law on the Establishment and Organisation of the National Guard. The compatibility of section 12(2) the Law on the Establishment and Organisation of the National Guard is with section 20(3) of the Protection of Young Persons at Work Act, prohibiting the employment of young persons less than 18 years old in dangerous and unhealthy environment is debatable.

In regards to international standards for military recruitment laid down in the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the minimum age for compulsory military recruitment is the age of 18. According to the said Protocol, states may accept volunteers in the military from the age of 16. In view of the above Cyprus legislation in this area is compatible to the said standards.

Monitoring of the protection

Legislative initiatives, national case law and practices of national authorities

According to section 24 of the Protection of Young Persons Law the Minister of Labour is responsible to appoint people who supervise the efficient implementation of the law. These supervisors conduct investigations, checks etc for the purposes of implementing the said law. While carrying out their duties, the supervisors have broad powers mentioned in section 25. Among them is to enter places of work without prior notification, to carry any equipment necessary for entering the place of work, to demand information from any person who prima facie might know something about employment of minors etc. If a person violates the provisions of this law, he/she is guilty of an offence and can be convicted to penalty of up to 10 000 CYP or imprisonment up to two years or both punishments (section 30(1)).

In practice however, there are no specific employment supervisors whose work is to monitor the protection of child labour and young persons at work. In Cyprus, the Health and Safety Inspectors [επιθεωρητές εργασίας], whose tasks are to supervise working conditions, also check whether minors are employed in various jobs contrary to the provisions of the relevant law. It seems that the appointment of a person with the specific task to supervise working conditions of minors is not necessary, considering Cyprus' small size, and the fact that this job is being conducted by the employment supervisors.

The Social Welfare Services of the Ministry of Labour and Social Insurance are the official government agency responsible for the protection (physical and/or moral) of children.

Article 33. Family and professional life

Parental leaves

Legislative initiatives, national case law and practices of national authorities

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, Ν.69(Ι)/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.

Family life and professional promotion

Legislative initiatives, national case law and practices of national authorities

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

Social assistance and fight against social exclusion

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights published the *European Social Charter (Revised) Conclusions 2004 (Cyprus)*. The Committee "notes from the Cypriot report that public assistance policies are based on the principle that persons in need of support and assistance have an unquestionable right to live in dignity and freedom, to enjoy the fruits of social progress and to receive the support they need at the time they need it. The report further states that there is no statutory provision resulting in social or political discrimination against persons receiving social or medical assistance. Recipients of social or public assistance are not prevented by law or practice from exercising their civil and political rights in full or from taking up certain kinds of employment or office. […] The Committee concludes that the situation in Cyprus is in conformity with section 13(2) of the Revised Charter [concerning non-discrimination in the exercise of social and political rights]." (http://www.coe.int/T/E/Human_Rights, p. 21)

As regards section 13(3) of the Social Charter (Revised) on the prevention, abolition or alleviation of need, "the Committee asks to be informed about total annual expenditure on social welfare services over the last 5 years and as a share of GDP. Pending receipt of the information requested, the Committee defers its conclusion." (p. 22)

Legislative initiatives, national case law and practices of national authorities

The Public Assistance and Services Law N. 8/1991 as amended by L. 97(I)/1994 ensures a minimum standard of living for all persons who reside in Cyprus irrespective of nationality. Any person whose income and other financial resources are insufficient to cover his/her basic and special need, as this is determined by law, is entitled to public assistance. This may be provided in the form of monetary support or in the form of services (section 3). Persons eligible for public assistance in the form of monetary support are also visited by the Social Welfare Officers of the district in which they reside. The Officers provide support, counselling and advice on the individual needs of the recipients and on matters relating employment.

According to the Child Benefit Law [Νόμος που Προβλέπει για την Παροχή Επιδόματος Τέκνου και Άλλα Συναφή Θέματα, N. 167(I)/2002], the child benefit is provided to residents in Cyprus with one of more children. Additional child benefits are provided to families with an income below a certain threshold. This law has entered into force on 1 January 2003.

Fight against social exclusion

The Ministry of Labour and Social Affairs has submitted a law proposal at the Council of Ministers the purpose of which is to modernise the legislation on Social Benefits. Additionally, it proposes a Scheme aiming at makin independent those who receive social benefits. According to this Scheme, when the receiver of social benefit enters the employment market, he/she will continue to receive the benefit. The said benefit will gradually be terminated, giving time to the receiver to adjust. (*Fileleftheros*, 15 October)

It is proposed by the government that pensioner age will gradually increase from the age of 60 to the age of 61, 62 and 63 in the years 2007, 2008 and 2009 respectively. This will apply to people working for the government and the educational service. (*Fileleftheros*, 18 August) The aim is that those supposed to retire in 2007 will retire in 2010 and from the year of 2010, the retirement age will be the 63rd year of the employee. (*Fileleftheros*, 25 October)

The Ministry of Labour drafted a National Scheme for Employment for the period of 2004-2006, which is monitored by the EU. The main parameters of this scheme are to increase the employment of women, to raise the lower salary, to attract more people to work etc. The Scheme also provides for measures for the Turkish Cypriots residing in the government controlled area. So far there are 2 500 Turkish Cypriots who pay contributions to the Social Security Fund. (*Politis*, 8 October)

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

According to the *Refugee Law* [*Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για την Νομική Κατάσταση των Προσφύγων,* N. 6((I)/2000] as lastly amended by L. 241(I)/2004, asylum seekers have the right to receive state benefits according to the relevant laws (section 9(1)(c)).

Social security in favour of persons moving within the Union

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights published the *European Social Charter (Revised) Conclusions 2004 (Cyprus)*. The European Committee of Social Rights noted that "the total

number of persons covered by the social security system corresponds to 93.5% of the economically active population and 99.5% of the gainfully employed population." (http://www.coe.int/T/E/Human_Rights, p. 19)

The said Committee notes that "Cyprus continues to give full effect to the parts of the Code [European Code of Social Security] which it has accepted. […] therefore the situation in Cyprus is in conformity with section 12(2) of the Revised Charter [concerning the maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102]. (p. 19)

The Committee notes "the ordinary adjustments made to certain social benefit rates, for example the increase of basic and supplementary pensions (old-age, invalidity and survivor's) by 3.3% and 3.8% respectively in 2001 and by 5.2% and 2.0% respectively in 2002. […] Pending receipt of the information requested the Committee concludes that the situation in Cyprus is in conformity with article 12(3) of the Revised Charter [concerning the development of the social security system]". (p. 20)

According to the report of the European Committee of Social Rights, "the situation in Cyprus is not in conformity with article 12(4) of the Revised Charter [on the social security of persons moving between states] on the following grounds: the residence requirement for entitlement to the social pension is excessive and may constitute indirect discrimination against nationals of other States Parties; Cypriot legislation does not provide for the aggregation of insurance or employment periods completed by nationals of States Parties which have not concluded bilateral social security agreement with Cyprus." The Republic of Cyprus however noted that "as regards the aggregation of insurance or employment periods, the Community Regulations 1408/71 and 574/72 will enter into force in respect of Cyprus as from 1 May 2004. Where non-EU countries are concerned, the government of Cyprus is willing to conclude bilateral agreements." (p. 20)

Legislative initiatives, national case law and practices of national authorities

The Government of Bulgaria has invited the Republic of Cyprus to establish a bilateral treaty in the area of social security (*Fileleutheros, 23 June 2004*)

Article 35. Health care

Access to health care

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The World Health Organisation on the 2001 World Health Day published a report on Cyprus. On the issue of access to mental health it wrote: "Mental health care needs are met mainly by the state and are used by 70% of the population. They are basically free of charge." (http://www.emro.who.int/mnh/whd/CountryProfile-CYP.htm)

Legislative initiatives, national case law and practices of national authorities

The *General Regulations on the Medical and Governmental Institutions* [*Οι περί Κυβερνητικών και Ιατρικών Ιδρυμάτων Κανονισμοί,* ΚΔΠ 225/2000, ΚΔΠ 660/2003, ΚΔΠ 455/2004] are in force. According to the Regulations, a citizen of Cyprus with permanent residence in Cyprus may apply for a Health Care Card. This card may provide benefits like free health care or decreased cost of health care to government medical services.

Regarding asylum seekers, the *Refugee Law* [*Νόμος που Προνοεί για την Αναγνώριση Προσφύγων και για την Καλύτερη Εφαρμογή της Σύμβασης για την Νομική Κατάσταση των Προσφύγων*, N. 6(I)/2000 as amended by Law 53(I)/2003, 63(I)/2003, 9(I)/2004 and 241(I)/2004], provides that asylum seekers are allowed to free medical care (section 9). Concerning immigrants, as a general rule, they are not allowed to free medical care because they are not Cypriot citizens. However, according to the *Administrative Acts on the Medical and Governmental Institutions* mentioned above, certain health services are given free of charge to all (including immigrants). For example, services related to tuberculosis, venereal disease and Aids; examinations related to contagious diseases; examinations on the Mediterranean anaemia. Also certain patients (including those who are not allowed to free medical care) are allowed to have certain services free of charge. For example, cancer patients (including those with blood cancer) are allowed to have their treatment and all the medicines free of charge, so are patients with Parkinson disease etc.

It is not clear which percentage of the population is allowed to free medical care. According to information received by the Ministry of Health, it is estimated that 67% of the population is allowed to have access to free medical care.

However, a new law on the Introduction of a General Health Service and Related Issues has been adopted [Νόμος που Προβλέπει για την Εισαγωγή Γενικού Συστήματος Υγείας και για Συναφή Θέματα, Basic Law 89(I)/2001 and amendments by laws N. 134(I)/2002 and N. 101(I) /2004]. This law establishes a General Health Service, which is based on a contributory system for health care. According to this system the employer, employee and state contribute towards health care. The General Health Service is not yet in operation and it is estimated that will be in operation in the next five years.

The latest amendment to the *Law on the Introduction of a General Health Service and Related Issues* (L. 101(I)/2004) aims at implementing article 3 of the Council Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed and to members of their families moving within the Community. Specifically, the said amendment aims at safeguarding the principle of equal treatment in health care of EU citizens.

A significant number of Turkish Cypriots, previously not allowed to enter the government controlled area, receive free health care. According to the Administrative Regulations mentioned above, they are allowed free medical care since they are Cypriot citizens. Therefore, once the conditions for free medical care (income below a certain standard provided for in the law) are satisfied they are granted free access to health care.

Drugs (regulation, decriminalisation, substitutive treatments)

Legislative initiatives, national case law and practices of national authorities

For the purposes of implementing Directive 2001/20/EC of the European Parliament and of Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of food clinical practice in the conduct of clinical trials on medicinal products for human use, the Parliament has enacted the *Law Amending the Laws on the Human Use of Drugs (Quality Control, Supply and Price)* N. 100(I)/2004, 30 April 2004].

Article 36. Access to services of general economic interest

No significant developments to be reported

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

The Republic of Cyprus has ratified several international treaties and conventions concerning the protection of the environment:

(a) It ratified the *Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer*, [*Νόμος που Κυρώνει τις Τροποποιήσεις του Πρωτοκόλλου του Μοντρεάλ για τις Ουσίες που Καταστρέφουν τη Στιβάδα του Όζοντος*, N. 23(III)/2004, 30 April 2004]

(b) It ratified the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,* [*Νόμος που Κυρώνει τη Σύμβαση του Ρότερνταμ Περί της Διαδικασίας Συναίνεσης Μετά από Ενημέρωση για Ορισμένα Επικίνδυνα Χημικά Προϊόντα και Προϊόντα Φυτοπροστασίας στο Διεθνές Εμπόριο* N. 20(III)/2004, 30 April 2004]

(c) It ratified the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996* (HNS Convention), [N. 21(III)/2004, 30 April 2004].

(d) It ratified the *Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto.* An Annex VI has been added to this Convention entitled "Annex VI: Regulations for the Prevention of Air Pollution from Ships". [*Νόμος που Κυρώνει το Πρωτόκολλο του 1997 που Τροποποιεί τη Διεθνή Σύμβαση για της Πρόληψη της Ρύπανσης της Θάλασσας από Πλοία του 1973, και το Πρωτόκολλο της του 1978, όπως Τροποποιήθηκαν, και που Τροποποιεί τους Κυρωτικούς τους Νόμους του 1989 έως 2003*, N. 46(III)/2004, 16 July 2004]

(e) It ratified the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or used on the Wheeled* [*Νόμος που Κυρώνει τη Συμφωνία που Αφορά της Κατάρτιση Παγκόσμιων Τεχνικών Κανονισμών για τα Τροχοφόρα Οχήματα, τον Εξοπλισμό και τα Εξαρτήματα που Μπορούν να Τοποθετούνται ή/και να Χρησιμοποιούνται σε Τροχοφόρα Οχήματα*, N. 47(III)/2004, 16 July 2004]. This convention is directly connected to the protection of clean environment because the equipment used or inserted in vehicles can improve the public health and the environment (preamble paragraph 7)

For the purpose of implementing the EU directive 2002/49/EU of the European Parliament and of Council of 25 June 2003 on the evaluation and management of environmental noise (EE L 189 of 18 July 2002), the Parliament passed on a *Law on the Evaluation and the evaluation and Management of Environmental Noise*, [*Νόμος που Προνοεί για την Αξιολόγηση και τη Διαχείριση του Περιβαλλοντικού Θορύβου,* N. 224(I)/2004, 30 July 2004].

Apart from the above mentioned ratifications and implementations of EU directives, the Cyprus Parliament amended the *Law on the Protection of Seaside* [*Νόμος που Τροποποιεί τον Περί Προστασίας της Παραλίας Νόμο N. 206(I)/2004,* 28 May 2004]. According to this law anyone who violates the provisions of the law is criminally liable and could be imprisoned or be subject to pecuniary penalty.

The Republic has ratified the *Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention).* The seaside area near Hotel Anassa is a protected area, as according to the Bern Convention it has wild flora and fauna species specified in the

Appendices of the said convention. For this reason and according to section 14 of the *Law on the Protection of Seaside,* it is prohibited to put sea beds in these areas. Contrary to the above mentioned, the Hotel Anassa was reported to have placed sea side beds at these protected areas during the summer of 2004 with the permission of the local community council (*Politis*, *11 August 2004*).

According to the local press, the Ministry of Education and Culture is preparing a Plan whose purpose is to enhance the environmental conscience of students at schools. (*Politis*, *15 November*).

Reasons for concern

The input of sea side beds at an area protected by the Bern Convention and contrary to the Law on the Protection of Seaside is a reason for concern. This is more so, since no measures have been taken by the appropriate authorities to prohibiting such violation.

The right to access to information in environmental matters

Legislative initiatives, national case law and practices of national authorities

The parliament has enacted the *Law on the Free Access of the Public to Information in Environmental Matters* [*Νόμος που Προνοεί για την Ελεύθερη Πρόσβαση του Κοινού σε Πληροφορίες που Σχετίζονται με Θέματα Περιβάλλοντος*, N. 119(I)/2004, 30 April 2004]. This law was adopted for the purpose of implementing the EU directive 2003/4/EU of the European Parliament and Council of 28 January 2003 providing for the right to access to information on environmental matters.

The Agriculture Ministry's Environmental Service to the Laboratory of Environmental Education of the Aegean University commissioned for the first time a public survey on environmental information rights. The survey was in line with EU directives calling for participation of citizens in environmental protection through free access to information. It was concluded in the survey that relatively few Cypriots were aware of their rights to official information about the environment and only a small minority have exercised those rights (The Cyprus Weekly, 8-14 October)

Reasons for concern

Cyprus is in the bottom on the EU's recycling league, with only 2.5% of solid waste collected for reuse and the rest buried in landfills (*Cyprus Weekly* Newspaper, 24-30 September)

Article 38. Consumer protection

Protection of the consumer in contract law

Legislative initiatives, national case law and practices of national authorities

The Law on the Establishment of Consumer Contracts not conducted in shop establishments [Ο περί της Σύναψης Καταναλωτικών Συμβάσεων Εκτός Εμπορικού Καταστήματος Νόμος του 2000, N. 13(I)/2000] provides protection to the consumer concerning door-to-door sales. This law applies to contracts that take place (a) during an event organised by the trader outside his/her shop; or (b) during a trader's visit at the house of the buyer or other consumer, at the consumer's place of work, or at any other place, and when the visit takes place without the explicit consent of the consumer (section 3).

The said contract is not valid unless it is written and (a) mentions the date of the contract, the name, telephone and address of the trader in an obvious way; (b) describes in detail the goods or services; (c) provides as a basic condition of the contract the right of the consumer to withdraw from the contract with a written notification within 14 days after the establishment of the contract or the fulfilment of the obligation (παροχή); (d) is accompanied with the means by which the consumer may withdraw (usually a paper); (e) notes clearly the name and address of the person against whom the notification will take place; (f) is signed by the trader and the consumer (section 5). The trader is obliged to fulfil its obligation within 14 days starting the following day of the contract (section 6). If the consumer withdraws from the contract, any money paid to the trader must be returned immediately (section 9)

Electronic business and mail order

E-business and mail order is regulated by the Law on the Establishment of Distance Consumer Contracts [ο περί της Σύναψης Καταναλωτικών Συμβάσεων εξ Αποστάσεως Νόμος του 2000, N. 14(I)/2000] as last amended by L. 237(I)/2004 on the 5 April 2004 [Νόμος που Τροποποιεί τον περί της Σύναψης Καταναλωτικών Συμβάσεων εξ Αποστάσεως Νόμος]. According to the said law, distance consumer contracts are those contracts between a provider and a consumer under an organised distance sales or service-provision scheme run by the supplier who, for the purposes of the contract, makes use of one or more means of distance communication (section 2). Those means of distance communication are mentioned (not exclusively) in the annex number one of the said law, and include email, television, telephone etc.

No distance contract is valid unless the provider makes sure to make available to the consumer the following information: (a) the identity of the provider and the nearest to the consumer provider's shop address; (b) the basic characteristics of the good or service; (c) the price of the good or service; (d) delivery expenses; (e) way of payment, delivery and execution of the contract; (f) the right to withdraw from the contract, apart from the cases mentioned in section 7(7) of the said law; (g) the duration of the offer and price (section 5). Additionally, the law provides that the consumer has the right to unilaterally withdraw from the contract by sending a written warning within 14 days starting the day after the receipt of the goods or the day after the completion of the contract in case of services and without giving any justification (section 7).

For the purposes of implementing Directive 2002/65/EC, the Parliament passed on the *Law Regulating the Distant Marketing of Consumer Financial Services and Relevant Issues* [*Νόμος που Ρυθμίζει την Εξ Αποστάσεως Εμπορία Χρηματοοικονομικών Υπηρεσιών Προς τους Καταναλωτές και Προνοεί για Συναφή Θέματα,* N. 242(I)/2004]. The purpose of this law is to regulate the distant marketing of consumer financial services. According to the law, the supply of financial services to a consumer without a prior request on his part is prohibited, when this supply includes a request for immediate or deferred payment. The consumer is exempted from any obligation in the event of unsolicited supply. It goes without saying that the absence of reply does not constitute consent (section 17).

Additionally, "(1) the use by a supplier of the following distance communication techniques shall require the consumer's prior consent: (a) automated calling systems without human intervention (automatic calling machines); (b) fax machines. (2) Means of distance communication other than those referred to in paragraph 1, when they allow individual communications: (a) shall not be authorised unless the consent of the consumers concerned has been obtained, or (b) may only be used if the consumer has not expressed his manifest objection. (3) The measures referred to in paragraphs 1 and 2 shall not entail costs for consumers.

Protection of the consumer in the law of civil procedure

Legislative initiatives, national case law and practices of national authorities

Right to file a suit for associations
The laws on consumer protection provide for the right to file a suit for associations representative of consumers.

For example, the Law Regulating the Distant Marketing of Consumer Financial Services and Relevant Issues (L. 242(I)/2004) provides for the right for associations representative of consumers' interests to file a suit at the Court requesting an injunction. This right is provided to associations legally established, or associations which according to the law or their memorandum, establish a legal interest for the protection of the collective interests of consumers (section 22).

The same provision is found in the Law on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees [Ορισμένων Πτυχών της Πώλησης Καταναλωτικών Αγαθών και Συναφών Εγγυήσεων Νόμος, N. 7(I)/2000], the Law on the Establishment of Consumer Contracts outside the Shop [Ο περί της Σύναψης Καταναλωτικών Συμβάσεων Εκτός Εμπορικού Καταστήματος Νόμος του 2000, N. 13(I)/2000] and the Law on the Establishment of Distance Consumer Contracts [Ο περί της Σύναψης Καταναλωτικών Συμβάσεων εξ Αποστάσεως Νόμος του 2000, N. 14(I)/2000] in sections 11, 15 and 18 respectively. The L. 7(I)/2000 regulates the rights of the consumers, guarantees, time limits and specifies an EU compatibility level of protection, while L. 13(I)/2000 protect consumers from the door-to-door sales and L. 14(I)/2000 protect distance consumer contracts.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

For the purpose of implementing Directive 2001/95/EC of the European Parliament and of the Council on general product safety, the Parliament has enacted the *Law Providing for the General Product Safety* [*Νόμος που Προνοεί για τη Γενική Απαίτηση Ασφάλειας των Προϊόντων,* N. 41(I)/2004, 19 March 2004].

Positive aspects

It is reported that the Cyprus Consumers' Association will discuss the possibility of establishing a centre which will deal with consumers' complaints and will be funded by the European Consumer Service Centre (*Fileleutheros*, 15 July 2004)

CHAPTER V : CITIZEN'S RIGHTS

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

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

Legislative initiatives, national case law and practices of national authorities

The parliament has enacted the *European Parliament Members Election Law* [*Ο περί της Εκλογής των Μελών του Ευρωπαϊκού Κοινοβουλίου Νόμος του 2004*, N. 10(I)/2004]. The purpose of the said law was to fully harmonise the Cyprus national legislation with Council Directive 93/109/EC. According to this law, any citizen of the Republic and all nationals of any other EU member state who reside in the Republic for a period of 6 months prior to their acquisition of the right to vote, have the right to vote at elections to the European Parliament. The criterion of residence in the Republic for a period of six months is considered to have been satisfied if the Cypriot citizen or the EU citizen has resided in the territory of another EU member state for the period of six months. (section 4).

Any citizen of the Republic and all nationals of any other EU member state have the right to stand as a candidate to the European Parliament Elections (section 13, of L. 10(I)/2004).

Prior to the European Parliament Elections, the District Offices had explained in the English language through the local media the procedure under which EU citizens could vote at the said elections. Additionally, at the Electoral Registries for EU citizens relevant information was disseminated in various European languages.

In the case of *Shener Levent* v. *Cyprus Republic, via the Ministry of Interior, European Parliament Elections Director (Appeal 3821, Case number 606/2004, 11 June 2004)*, a Turkish Cypriot challenged the decision of the Cypriot European Parliament Elections Director to reject his application to stand as a candidate at the European Parliament Elections. The Supreme Court rejected the appeal on the ground that he was not registered at the Electoral Poll as provided for in the said Law. (*sic* sections, 13, 6 and 21 of the *European Parliament Elections Law* L. 10(I)/2004 in combination with section 21 of the *Members of the Parliament Law* L. 72/1979).

In this respect it is important to note that while the government did not publish the *European Parliament Members Election Law* L. 10(I)/2004 in the Turkish language at the Official Gazette of the Republic, it published all the relevant information regarding the European Elections in almost all Turkish-Cypriot newspapers, including the newspaper in which the applicant worked for (*Fileleftheros, 21 May 2004*, *Cyprus Mail, 3 June 2004*).

Positive aspects

Turkish Cypriots are allowed to register to vote for the European Parliament elections according to the *European Parliament Members Election Law* mentioned above, which does not differentiate between Turkish-Cypriots and Greek-Cypriots. However, only 503 Turkish Cypriots have been registered to vote and there has been only one Turkish-Cypriot candidate. (*Cyprus Mail*, 3 June).

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

Participation of foreigners in public life at local level

Legislative initiatives, national case law and practices of national authorities

Cyprus has signed the Council of Europe *Convention on the Participation of Foreigners in Public Life at Local Level* on the 15 November 1996 but has not yet ratified it. According to article 19 of the Convention "Each Party shall inform the Secretary General of the Council of Europe of any legislative provision or other measure adopted by the competent authorities on its territory which relates to its undertakings under the terms of this Convention." We do not yet know of any initiatives of Cyprus to the Secretary General regarding this convention.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

In the context of the implementation of Council directives 94/80/EC, 96/30/EC and 94/60/EC, the parliament has enacted the *Law on the Municipal and Council Elections (Citizens of Other Member-states)* [*Ο Περί Δημοτικών και Κοινοτικών Εκλογών (Υπήκοοι Άλλων Κρατών Μελών) Νόμος του 2004,* N. 98(I)/2004, 22 April 2004]. According to this law, EU citizens non nationals of Cyprus who at the time of their register at the Election Polls reside in Cyprus and have been residing in Cyprus or any other EU state the past 6 months, have the right to vote and stand as a candidate in municipal and council elections according to the law of Cyprus (sections 3 and 12). The said law lays down details/arrangements according to which EU nationals residing in Cyprus can vote and stand as a candidate. Section 8 lays down the conditions under which one can be registered at the Election Polls.

Municipal elections have not taken place within the period under scrutiny.

Right to vote and to stand as a candidate at municipal elections for third country nationals

Legislative initiatives, national case law and practices of national authorities

Third country nationals are not allowed to vote and stand as a candidate at municipal elections.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Case of Ibrahim Aziz v. The Republic of Cyprus, (Application no. 69949/01, European Court of Human Rights, 22 June 2004)

The Applicant who is a member of the Turkish-Cypriot community, requested to be registered in the electoral list with a view of voting in parliamentary elections. The Ministry of Interior refused the applicant's request, explaining that under the Constitution members of his community could not be registered on the Greek-Cypriot electoral list. The applicant applied to the Supreme Court against the refusal. The Supreme Court dismissed the appeal, holding that under the Cypriot Constitution and relevant electoral legislation, members of the Turkish Community residing in the Republic of Cyprus could not vote in parliamentary elections and that it could not intervene to fill a legislative gap which existed in this respect.

The ECHR noted that although states have a wide margin of appreciation in this sphere of the protection offered by Article 3 of Protocol 1 of the Coinvention and considerable latitude in establishing rules governing parliamentary elections, such rules should not be such as to exclude some persons from participating in the political life of the country, in particular, in the choice of the legislature. As a result of the anomalous situation in the country that began in 1963 and the occupation of northern Cyprus by Turkish troops "the relevant constitutional provisions have been rendered ineffective" and therefore "there is a manifest lack of legislation resolving the ensuing problems" (paragraph 29). Consequently, the applicant as a member of the Turkish-Cypriot community residing in the government-controlled area of Cyprus, had been deprived of any opportunity to express his opinion in the choice of the members of the House of Representatives of which he is a national and where he has always lived (paragraph 29). In such circumstances, the very essence of this right to vote had been denied (paragraph 30). The ECHR decided unanimously that a violation of article 3 of Protocol No1 of the European Convention on Human Rights had taken place.

Positive aspects

In execution of the judgment of the European Human Rights Court in the Aziz case, the Human Rights Unit of the Legal Service has prepared legislation under which Turkish-Cypriots living in the Government-controlled area of the Republic and satisfying the same qualifications as Greek-Cypriots can register in the Electoral List and can therefore exercise the right to vote in all elections, that is, parliamentary, presidential and local elections. The relevant bill has been approved by the Council of Ministers.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

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."

Legislative initiatives, national case law and practices of national authorities

For the purpose of implementing the Cyprus legislation with the European acquis, the *Law Regulating the Free Movement and Residence of EU Member States and their Family Members of 2003* has been amended [*Νόμος που Τροποποιεί τον περί της Ελεύθερης Διακίνησης και Διαμονής των Υπηκόων των Κρατών Μελών της Ευρωπαϊκής Ένωσης και των Μελών των Οικογενειών τους Νόμο του 2003,* N. 126(I)/2004] to apply also in relation to an other contracting party of the European Economic Area".

Other relevant developments

Freedom of movement within Cyprus

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The UN Secretary-General in his Report on the *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, Including: Question of Human Rights in Cyprus* has stated that: "The human rights concerns in Cyprus derive predominantly from the persisting division of the island and the political situation which, to date, remains unresolved. Cyprus' division has consequences on the enjoyment on the whole island of a number of human rights including freedom of movement, freedom of association, property rights, freedom of religion, family rights, freedom of expression, voting rights, right to education, right to health, and the human rights issues pertain to the question of missing persons (paragraph 5). "It should be noted that the freedom of movement is still limited. Whereas Turkish Cypriots are able to enter the south, showing their identity cards, Greek Cypriots need to show their passports at the crossings in the north, and are additionally required to obtain a "visa" to enter the north. Turkish Cypriot authorities require that Turkish Cypriots visiting the south return by midnight to the north. […] Greek Cypriots visiting the north are allowed to stay overnight up to three days in any given time. Non-Cypriots wishing to enter the south are restricted from gaining entry if they have not entered through the

authorised entry points in the south." (paragraph 9) (Economic and Social Council, Commission on Human Rights, sixtieth session, E/CN.4/2004/27, 19 April 2004)

The Commissioner for Human Rights in his *Report on his visit to Cyprus* stated: "The partial opening of the 'Green Line' has permitted communication between the north and south, which was not allowed for nearly 30 years. Many Greek and Turkish Cypriots have made the crossing of the'Green Line' without any violent incidents or animosity." (p. 15, paragraph 64).

According to the same report "it must not be overlooked that although the Cypriot Government authorities do not impose any restrictions, freedom of movement is still limited; this is not only because of the identity check applied by the agents of the 'TRNC' at the crossing points but it is also due to the existence of fairly strict rules imposed by the 'TRNC'. For instance, Greek Cypriots are only permitted to enter the northern part for a maximum of two days on the condition that they reside in a hotel. Trukish Cypriots are only permitted to remain in the area under the control of the Government of Cyprus until midnight, and any lateness is noted in a police report when passing the checkpoints with –as many testify- threats of criminal law sanctions [by the 'TRNC']." (p. 15, paragraph 65)

Legislative initiatives, national case law and practices of national authorities

European citizens as well as Cypriot citizens are not allowed by the Government authorities to use the ports or airports in the occupied territories. In *Application number 127/2004 of 8 September 2004* a Greek-Cypriot flew to Istanbul through the illegal airport of Tymbou in the occupied area. The District Court decided that his action was not legal. Nonetheless, it did not impose any sanctions/penalties. This was so because the Court invoked EU Council regulation 866/04 and decided that the defendant would have been treated discriminately if penalties had been imposed on him while for the same offence no penalties would have been imposed on EU nationals. The Supreme Court upon an appeal by the Attorney General against the decision of the District Court, decided that the procedure according to which the District Court decided the case did not suffer from any illegality and refused to deliver judgement on the merits of the appeal since it did not fall within its jurisdiction.

Article 46. Diplomatic and consular protection

No significant developments to be reported

CHAPTER VI : JUSTICE

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

Access to a court

Legislative initiatives, national case law and practices of national authorities

Article 30(1) of the Constitution writes: "No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever is prohibited."

In Kyriakos Kyriakou v. Police (Penal Appeal Number, 7580, 28 May 2004), the Supreme Court decided a case according to which the defendant argued that his right to have adequate time and facilities for the preparation of his defence as provided for in article 12(5)(c) of the Constitution had been violated. This was so because the Court did not cancel the hearing of the relevant case, even though at the same time, the same defendant had another hearing at another Court. According to the defendant, the Court violated article 12(5)(c) of the Constitution because it proceeded with the hearing,. The Supreme Court decided that the Court violated the right to a fair trial. According to the Supreme Court, if the Court had balanced correctly the events in question, it would have known that the requirement for fair trial could not have been met by means of rejecting the defendant's request for cancellation of the hearing. (p. 8) Therefore, the Supreme Court accepted the appeal and cancelled the decision of the Court.

Interim judicial protection

Legislative initiatives, national case law and practices of national authorities

The Law on the Composition, Jurisdiction and Authority of the Courts of the Republic and other Purposes concerning the Administration of Justice of 1960 as lastly amended by L. 165(I)/2004 [Νόμος Προβλέπων περί της Συνθέσεως, Δικαιοδοσίας και Εξουσιών των Δικαστηρίων της Δημοκρατίας και δια άλλους Σκοπούς Αφορώντας εις την Απονομήν της Δικαιοσύνης, N. 14/1960] in article 32 provides for Interim Orders. In particular, section 32(1) writes: "[…] each court, in the exercise of its civil jurisdiction is able to issue an interim order […] in any circumstances it deems just and appropriate […]." It goes without saying that an interim order cannot be issued unless the court is satisfied that (a) there is a serious issue under discussion, (b) there is possibility the applicant has the right to a remedy and (c) it will be difficult or impossible to award justice at a later stage, unless an interim order is ordered (section 32(1)). Paragraph 2 of the said section provides that "any interim order issued according to paragraph 1, can be issued under such conditions and circumstances as the court deems just, and the court can at any time may cancel or amend any interim order provided there is a justified reason."

Legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

The Constitution itself provides for the right of the accused to have free legal aid if he has no sufficient means to pay for legal assistance. In particular article 12(5) writes: «Every person charged with an offence has the following minimum rights: (c) « [...] if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interest of justice so require. » Article 30(3) of the Constitution also provides that « Every person has the right

(d) [...] to have free legal assistance where the interests of justice so require and as provided by law. »

The Law of Legal Aid of 2000 [Νόμος που Προνοεί για Παροχή Δωρεάν Νομικής Αρωγής του 2002, N.165(I)/2002], provides for free legal aid for the purposes laid down in articles 3, 4 and 5.

(1) According to sections 3 and 4(1)(a), (2), the legal aid for criminal cases is only available to offences for which a minimum prison sentence of one year is provided.
(2) According to section 6 of the said law, legal aid for advice, aid and representation is to be granted in cases brought before the Family Law Court for any procedure in respect to family relations initiated on the basis of Bi-lateral and Multilateral Treaties binding on the Republic.
(3) According to section 5 of the said law, free legal aid should be granted for civil procedures against the Republic for damages caused to individuals due to specific human rights violations.
(4) Free legal aid is also to be granted for any criminal procedure when the offence under examination relates to specific human rights violations. Such legal aid will include advice, aid and representation.
However, Legal Aid for a civil procedure relating to a violation of human rights filed outside the territory of the Republic covers only legal advice (section 5(3)(b)).

In *Andreas Constantinou v. Cyprus Republic* (*Application number 1/2003*, *19 December 2003)* a Cypriot citizen requested to have access to free legal aid for the purpose of raising a case against the Republic at the European Court on Human Rights (ECHR) according to section 5(3)(b) of the *Law on Legal Aid*. The Supreme Court rejected the claim, since the ECHR had already ruled that the case was inadmissible. It did however mention that, in any case, according to section 5(3)(b) of the *Law on the Legal Aid*, it covers only the legal advice when the violation of human rights is filed outside the Republic.

At another case of *Application for Free Legal Aid for the Applicant* (*Application number 2/2004, 28 January 2004),* the Supreme Court had to consider whether the *habeas corpus* procedure could be considered as a criminal procedure, for which free legal aid could be provided according to the *Law on the Legal Aid* (section 4(1)(b), (2)). In this case the applicant had been convicted to life imprisonment after he had committed a criminal offence. Later on, he made an application for a *habeas corpus* order and requested free legal aid. The Court decided that the *habeas corpus* procedure is a civil one. However, in this case, the procedure under examination is a criminal one, since the applicant had been imprisoned under a criminal cause process. Therefore, the applicant is allowed to free legal aid. The Court also pointed out that according to well-accepted jurisprudence, when in doubt, interpretation of a law which relates to a human right, should be solved in favour of the human right of the citizen.

Independence and impartiality

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Michalakis KYPRIANOU v Cyprus (Application No 73797/01)

The Applicant is an advocate. In the course of proceedings to which the Applicat had been participating represdenting the defendants, the Applicant was found guilty for contempt of court.

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 that also found him guilty and sentenced him. The Applicant also complained 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 further complained 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 complained 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 complained under Article 10 of the Convention that his conviction for contempt of court constituted an unjustified interference with his freedom of expression.

The European Court of human rights observed that "the decisive feature of the case is that the judges of the court which convicted the applicant were the same judges before whom the contempt was allegedly committed. This in itself is enough to raise legitimate doubts, which are objectively justified, as to the impartiality of the court" (paragraph 34). The Court considered that "in situations where a court is faced with misbehaviour on the part of any person in the courtroom which may constitute the criminal offence of contempt, the correct course dictated by the requirement of impartiality under article 6(1) of the Convention is to refer the question to the competent prosecuting authorities for investigation and if warranted prosecution and to have the matter determined by a different bench from the one before which the problem arose" (paragraph 37). The Court further considered that there has been a breach of the principle of impartiality on the basis of both the objective and subjective tests. Accordingly, there has been a violation of article 6(1) of the Convention.

The European Court of Human Rights held unanimously that there had been a violation of Article 6(1), Article 6(2) and Article 6(3) of the Convention and that it was not necessary to examine the applicant's complaint under Article 10. The Court awarded the applicant 15,000 euros (EUR) for non-pecuniary damage and EUR 10,000 for costs and expenses.

Legislative initiatives, national case law and practices of national authorities

The Constitution itself requires independence and impartiality of the Court and the judges. Article 30(2) states : "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. […]"

Publicity of the hearings and of the pronouncement of the decision

Legislative initiatives, national case law and practices of national authorities

The Constitution provides for the publicity of the hearing and the pronouncement of the decision. It also provides the circumstances under which the publicity of the hearings is raised. Article 30(2) states: "[…] Judgement 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 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 safely 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 interest of justice."

Reasonable delay in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the CoE Commissioner for Human Rights Report it is observed at paragraph 6, that "The Cypriot judicial system is not unaffected by the problem of delays in the administration of

justice….However it should be acknowledged that the problem has not reached such proportions as to demand a radical reform of the judicial apparatus or of civil and criminal procedure. The measures taken by the Minister of Justice seem adequate in this respect: new posts for judges have just been created and the computer equipment of the courts is being modernised."

Legislative initiatives, national case law and practices of national authorities

In the Nicos Polyviou v. Police *(Penal Appeal number 7394, 22 January 2004),* the Supreme Court examined allegation of unreasonable delays in judicial proceedings. Indeed, the Supreme Court found that the hearing of the case had been rescheduled for 14 times, 10 of which however had been requested by the defendant counsel. The Court invoked the jurisprudence of the European Court on Human Rights according to which delays attributable to the state and its organs are relevant for the purposes of articles 6(1) of the ECHR and 30(2) of the Cypriot constitution. The Court recognised the fact that the court showed unjustified lenience in accepting the various requests for cancellation by the defendant lawyer. However, the defendant could not rely on the behaviour of his representative and protest for unjustified delay. The Supreme Court rejected the appeal.

The Supreme Court in the Michalis Anaxagora Charalambidi v. Police (Penal Appeal number 7369, 1 June 2004) had to decide whether the delay in judicial proceedings (6 years) violated the constitutional right recognised in article 30(2) which provides for a hearing within a reasonable time. The Court pronounced that the factors taken into account in deciding the reasonableness of the length of proceedings were: (a) the complexity of the case, (b) the conduct of the applicant and (c) the conduct of the competent administrative and judicial authorities. In the relevant case, the case was considered as complex. Additionally, the conduct of the applicant was another factor that delayed the proceedings: he had not been prepared in the hearings and asked to cancel the hearing 11 times. For these reasons, the Supreme Court decided to reject the appeal by the defendant against the decision of the lower court and pronounced that article 30(2) of the Constitution had not been violated.

The pre-mentioned factors that are taken into account when deciding the reasonableness of the length of proceedings were reaffirmed at another case during 2004. (Attorney General v. Costas Meliou Menelaou, Penal Appeal Number 7549 14 April 2004)

Right to the enforcement of judicial decisions

Legislative initiatives, national case law and practices of national authorities

The Republic of Cyprus ratified the *European Convention on the International Validity of Criminal Judgments* as far back as 1974. As a reservation to the Convention, the Republic availed itself of the reservations provided for in paragraphs a, b and d of the Appendix I of the Convention. Paragraph (a) of the Appendix I provides that each contracting state may declare that it reserves the right to refuse enforcement if it considers the sentence relates to a fiscal or religious offence. Paragraph (b) provides that each contracting state may declare that it reserves the right to refuse enforcement of a sanction for an act which according to the law of the requested state could have been dealt with only by an administrative authority. Paragraph (d) of Appendix I states that each contracting state may declare that it reserves the right to refuse the enforcement of sanctions rendered *in absentia* or *ordonnances penales* or on one of these categories of decisions only.

The Law on the Recognition, Registration and Enforcement of Judgments of Foreign Courts [Νόμος που Προνοεί για την Αναγνώριση, Εγγραφή και Εκτέλεση Αποφάσεων Αλλοδαπών Δικαστηρίων, N. 121(I)/2000] provides the procedure under which the decision of a foreign court can be recognised, registered and enforced in Cyprus. A decision of a foreign court can

be recognised, registered and enforced only if Cyprus has conducted a reciprocal treaty with another state on recognition, registration and enforcement of judicial decisions.

In 2004 the Attorney-General has set up a Human Rights Unit. This Unit is responsible for advising the administration and drafting necessary legislation regarding the enforcement of judgments against Cyprus for human rights violations and securing that administrative practice and legislation are compatible with the European and United Nations human rights case-law, instruments, law, norms and recommendations. This includes responsibility to advice on measures and to prepare legislation for implementing the recommendations adopted by the Committee of Ministers, ensuring the effectiveness of the implementation of the ECHR at national and European levels.

A Bill prepared by the Human Rights Unit makes all organs, authorities and persons in the Republic liable to criminal sanctions for contempt of court, when they do not fulfil their constitutional obligation to give effect and act upon judgments of the Supreme Court. The jurisdiction of the Supreme Court to declare null and void acts, decisions or omissions of the administration is afforded by the Constitution and embraces acts, decisions and omissions contrary to the human rights provisions of the Constitution, and of laws, including the laws ratifying European and United Nations Human Rights Conventions. The Bill has been approved by the Council of Ministers and has been presented in Parliament in October 2004

Article 48. Presumption of innocence and rights of defence

Presumption of innocence

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Kyrpianou v. The Republic of Cyprus The applicant alleged a violation of article 6(2) of the Convention which provides: "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." The European Court of Human Rights held that the applicant "was asked for mitigation rather than given a full opportunity to defend himself against a charge which would have grave consequences for his liberty. In these circumstances, the Court finds that the Assize Court violated the principle of the presumption of innocence" (paragraph 56). The court decided unanimously that there has been a violation of article 6(2) of the Convention.

Legislative initiatives, national case law and practices of national authorities

The Supreme Court in *The Republic of Cyprus v. Marina Abraamidou, Michalis, Georgiou and Charalampou Charalambous,* (*Number 352, 4 February 2004*) dealt with the right of the accused against self-incrimination. Tthe right of the accused against self-incrimination is derived from article 12(4) of the Constitution which states: "Every person charged with an offence shall be presumed innocent until proved guilty according to law." The exact scope of this right against incrimination was the contested issue in this case. According to the relevant case, the police tricked the accused into providing a DNA sample. That was so, despite the fact that the accused at the beginning of the interrogation refused to give a DNA sample to the police. Counsel for the Republic of Cyprus argued that the right against self-incrimination covered only oral evidence by the accused and did not cover other evidence i.e. body samples etc. The Court held that the right of the accused against self-incrimination is restricted to "oral" evidence.

Pikis J. in his dissenting opinion argued that the right against self-incrimination is not restricted to oral evidence. Rather this right covered every act or omission of the accused

which tends to incriminate him/her. This would includes the acts of the police for the purpose of collecting a DNA sample. For this reason, he concluded that the police had violated article 12(4) of the Cyprus Constitution providing for the presumption of innocence which encompasses the right against self-incrimination.

The rules governing the evidence in criminal matters

Legislative initiatives, national case law and practices of national authorities

The *Law on Evidence Chapter* 9 was amended by the *Law Amending the Evidence Law* [*Νόμος που Τροποποιεί τον Περί Αποδείξεως Νόμο*, N. 32(I)/2004] in 12 March 2004. According to this amendment, hearsay evidence may be admissible in the context of court proceedings. (article 24(1)).

The Supreme Court in *A. Panayides Contracting Ltd v. Nicou Stavrou Chalarlamous* (*Civil Appeal number 10850,* 16 February 2004) had to re-evaluate (a) whether section 4 of the *Law on Evidence Chapter 9*, which existed before the adoption of the Cyprus Constitution, has survived the fair trial provision as is laid down in the Constitution and (b) whether section 2 of the *Law that Amends the Evidence Law* (L. 94(I)/1994) is in contravention with fair trial provision as laid down in the Constitution. The relevant sections allow the Court to exceptionally permit a written statement as evidence in civil and criminal cases without the person giving the written statement be present in the hearing and without him/her testifying in the hearing. The Court decided that section 4(2) of Chapter 9 has been overshadowed by the coming into force of the Constitution, and section 2 of the L. 94(I)/1994 violates the Constitution. The Supreme Court after examining the jurisprudence of the European Court of Human Rights ruled that the issue as to whether written statements can be admitted as evidence (without the person making the statement testifying in the hearing) violate the Constitution, cannot be examined nor decided *in abstracto,* but *in concerto*, that is, depending on the facts of each case. Therefore, the Court decided that section 4 of Chapter 9 has survived the Constitution.

The right to freely choose one's defence counsel

Legislative initiatives, national case law and practices of national authorities

The Constitution itself provides that someone has the right to freely choose one's defence counsel. Indeed, article 12(5)(c) states: "Every person charged with an offence has the following minimum rights: (c) to defend himself in person or through a lawyer of his own choosing […]". Article 30(3) of the Constitution also provides "Every person has the right (d) to have a lawyer of his own choice […]."

In the *Andreas Manoli Onoufriou v. Police (Penal Appeal number 7558, 8 March 2004)* Onoufriou challenged a Court order for his imprisonment on the grounds that article 30(3)(d) of the Constitution was violated. The said article states : "Every person has the rights (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." The defendant in the said case –who appeared without a lawyer-, argued that the lawyers he chose to represent him from the free legal aid refused to do so. On the other hand, the defendant rejected the lawyer who had been allocated by the Court to represent him. The Supreme Court decided to reject his appeal on the grounds that according to the jurisprudence of the European Court on Human Rights, if the defendant does not use the system of free legal aid, cannot later on complain about the lack of legal representation. Additionally, in the system of free legal aid, the defendant does not have the right to choose his lawyer. Therefore, article 30(3)(d) had not been violated. This case simply establishes that the right to freely choose one's defence counsel is inapplicable in the system of free legal aid.

In *Kyriakos Kyriakou v. Police (Penal Appeal number 7580, 28 May 2004)* the Supreme Court examined a violation of the right to choose a defence lawyer. The Supreme Court pronounced that the right to freely choose one's defence lawyer is not without restrictions. This means that the exercise of this right cannot be isolated from the trial and cannot lead to the termination of the hearing. The conduct of the trial, according to the Supreme Court, is not based on the exercise of the right to choose one's defence lawyer at will. Otherwise, the exercise of this right would have become a trial condition. In this case the Court decided that at every point at the hearing the defendant was represented by a lawyer and therefore his right to choose his defence lawyer had not been violated.

The right to an interpreter

Legislative initiatives, national case law and practices of national authorities

The Constitution provides for the right to an interpreter. Article 12(5) writes: "Every person charged with an offence has the following minimum rights: (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court." Article 30(3) also provides that "Every person has the right (e) to have free assistance of an interpreter if he cannot understand or speak the language used in court."

The Criminal Procedure Law Chapter 155 provides that "when the evidence is given at a language not understandable by the accused and the accused is present during the hearing, the evidence is translated at the public hearing in a language he/she understands." (article 65(1)). "When documents are registered for the purposes of typical evidence, it is up to the discretion of the court to translate part of the documents as the Court deems necessary." (article 65(2)).

Accelerated criminal procedures

Legislative initiatives, national case law and practices of national authorities

Sections 88-91 of the Criminal Procedure Law Chapter 155 provide for the circumstances under which expediated criminal procedures can take place. According to section 88 expediated criminal procedures can take place within six months after the perpetration of the crime. Such procedure can onlytake place once the sentence for the offence is not more than three months imprisonment or £25 CYP or both.

In expediated criminal procedures, if the accused does not appear in court during the hearing, and provided it is proved that he/she has been given the warrant, the hearing proceeds and the decision is taken in absentia (article 89(1)). On the other hand, if the accused appears in the hearing and the public prosecutor does not, the court declares the accused innocent. This is so, unless the court deems that it is correct to postpone the hearing and reschedule it, under any condition the court considers appropriate [σκόπιμο] (article 89(2)). If during the hearing the court considers that the case should be tried by the criminal court [κακουργιοδικείο], it interrupts the procedure and orders an inquiry/preliminary examination, as is provided for by the said law (article 90). If during the hearing the public prosecutor considers that there are enough reasons to withdraw the charge, the court can allow him/her to withdraw the charge. In this case, it pronounces the accused innocent. It goes without saying that if the withdrawal takes place as mentioned and prior to the apology of the accused, the accused is acquitted. This however does not count as innocence (article 91).

The rights of the accused, as well as the admission of evidence rules, in expediated proceedings are the same as in normal proceedings. (see sections 47-88).

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

Legality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

Article 12(1) of the Constitution states: "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."

The Republic of Cyprus has ratified the *Protocol Amending the European Convention on the Suppression of Terrorism* with the L. 18(III)/2004 on 30 April 2004. [*Νόμος που Κυρώνει το Πρωτόκολλο που Τροποιποιεί την Ευρωπαική Σύμβαση για την Καταστολή της Τρομοκρατίας*].

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

Article 12(3) of the Constitution provides that "no law shall provide for a punishment which is disproportionate to the gravity of the offence."

In Savvas Christoforou v. Police (Penal Appeal Number 7685, 20 July 2004) the Supreme Court considered whether the total sentence of 4.5 years imposed by the First Instance Court as a consecutive sentences was disproportionate. The Court took into account the criminal behaviour of the defendant and held that the total sentence was disproportionate to the relevant offences.

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

Right not to be tried or punished twice

Legislative initiatives, national case law and practices of national authorities

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." Section 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 Section 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.

APPENDIX : CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
a) the free and informed consent of the person concerned, according to the procedures laid down by law,
b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
c) the prohibition on making the human body and its parts as such a source of financial gain,
d) the prohibition of the reproductive cloning of human beings.

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

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

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

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

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

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY

Article 20: Equality before the law

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic
features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27 : Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient
resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
a) the right of every person to be heard, before any individual measure which would affect him or her
adversely is taken;
b) the right of every person to have access to his or her file, while respecting the legitimate interests of
confidentiality and of professional and business secrecy;
c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence
1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

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

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

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

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission
which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.