

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **CYPRUS**

IN 2005

submitted to the Network by **Achilleas DEMETRIADES***

on 15 December 2005

Reference: CFR-CDF/CY/2005



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

* This report was prepared within the period of 1 December 2004-1 November 2005 with Achilleas Demetriades, Barrister, LL.M.; Theodora Christodoulidou, Advocate, LL.M., Ph.D.

REPORT ON CYPRUS IN 2005

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

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The following views constitute the personal opinion of the authors, who are the sole bearers of responsibility for any possible mistakes or misrepresentations.

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 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 (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moysse (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

Les documents du Réseau peuvent être consultés via :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

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The EU Network of Independent Experts on Fundamental Rights is composed of 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 (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moysse (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.

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CHAPTER I. DIGNITY

Article 1. Human dignity

Article 2. Right to life

Domestic violence

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

The Violence in the Family (Prevention and Protection of Victims) Law L. 119(I)/2000¹ as was last amended in 2004 by the Law Amending the Violence in the Family (Prevention and Protection of Victims) Law, L. 212(I)/2004² incorporates new important provisions according to the Group of Specialists of the Committee of Ministers of the Council of Europe.³ The Group of Ministers noted: “the aim of the Violence in the Family (Prevention and Protection of Victims) Law is to remedy the weaknesses of available judicial and administrative procedures in the handling of cases of domestic violence and also to provide for the necessary support and assistance to the victims. [...] Since 1998 almost all cases [of violence in the family] for which there was sufficient evidence, even the less serious ones, were taken to court.”

The US Department of State on the Cyprus Report wrote: “Spousal abuse was a problem and continued to receive attention.”⁴ It continued that “An NGO working with domestic abuse victims reported that, during the year, the number of telephone calls to its hotline had increased 15.8 percent. The NGO reported that 614 individuals, of whom 85 percent were women, 7 percent children and 8 percent men, called claiming to be victims of domestic violence. The NGO also operated a shelter for victims of domestic violence in Nicosia that serviced 25 women and 18 children during the year. The law establishes clear mechanisms to report and prosecute family violence and provides that the testimony of minors and experts such as psychologists may be used as evidence to prosecute abusers. The law also provides for prison terms for the abuse of family members; however, very few court cases resulted in convictions. Doctors, hospital workers and education professionals are required to report all suspected cases of domestic violence to the police. Many victims refused to testify in court and, under the law, spouses cannot be compelled to testify against each other. In cases where a spouse was the victim and only witness and she refused to testify, the courts were forced to drop the case. The law criminalises rape and spousal rape with a maximum of life in prison. Most convicted offenders received considerably less than the maximum sentence.”

Legislative initiatives, national case law and practices of national authorities

In light of what the Group of Specialists of the Committee of Ministers of the Council of Europe said, it is important to say a few words about *The Violence in the Family (Prevention and Protection of Victims) Law of 2000 and of 2004*. It provides for the specific offence of violence in the family. “Violence” means any unlawful act or behaviour or omission by a

¹ O. 119(I)/2000. N.

² L. 212(I)/2004.

³ Final Report of the Group of Specialists on the Implementation of and Follow-up to Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence (EG-S-MV) Directorate General of Human Rights, Strasbourg, 2005.

⁴ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

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member of the family which results in direct physical, sexual or mental injury to another member of the family.⁵ The law explicitly states that violence within the family is an aggravating factor leading to a severer penalty than other forms of violent crime punishable under the common Criminal Code.⁶ *The punishment for indecent assault on females was increased from two to five years, for the offence of causing grievous bodily harm from seven to ten years, for wounding and similar acts from three to four years, and for common assault from one to two years.*⁷ *The law clarifies that rape within marriage carries the same penalty as rape committed outside marriage, i.e. up to life imprisonment.*⁸

For the purposes of this law, the term “member of family” is interpreted broadly to include legally married people, irrespective of whether the marriage still exists, those cohabiting or who have cohabited as husband and wife, as well as all the parents of the couple, the children and grandchildren of the couple, and any other person who cohabits with either of the above people.⁹ The law recognised the impact of domestic violence on children in a provision which states that any act of violence committed in the presence of a child of the family is considered as violence against that child, likely to cause psychological injury, and that this is also an offence punishable with up to 5 years imprisonment.¹⁰

According to the aforementioned law, the Minister of Labour and Social Security appoints Family Counsellors.¹¹ The Family Counsellors are welfare officers and are involved in the investigation and prosecution of a case. They are also granted powers necessary for the more effective protection of the victim such as counselling the family, receiving complaints, filing a complaint before the Police, making arrangements for the immediate medical examination of the complainant, with or even without the consent of the parents under certain conditions, carrying out investigations as to the financial state of the family and the making of arrangements for the accommodation of the perpetrator in cases of restraining order against him is contemplated.

Domestic violence is considered to be an offence against the State. According to Section 20 the spouse is a competent and also a compellable witness if the offence is committed against other members of the family.¹² In this respect, the spouse is required to give evidence under the threat of being prosecuted himself/herself, if he/she refuses, for contempt of court. In particular, since the wife is a compellable witness, when physical or psychological violence is exercised against her in the presence of children, this violence is also considered as violence against the child¹³ and therefore she is a compellable witness as well. Provisions have been included to guarantee confidentiality in the investigation and trial.¹⁴ The law provides that the delivery, receipt or publication of any statement of a victim or witness in a case of domestic violence by any unauthorised person is punishable with up to five years imprisonment. Disclosure of the name or address, or any other information that may give away the identity of the victim or perpetrator, is punishable with two years imprisonment or a fine or both.¹⁵

Section 16 of the Law provides that an accused may be found guilty with only the victim’s testimony. As to how the victim’s testimony is taken in the course of investigation see last year’s Report on the 2004 law, which amended the Violence in the Family (Prevention and

⁵ Section 3 of the *Violence in the Family (Prevention and Protection of Victims) Law*.

⁶ *Ibid.*, Section 4(1).

⁷ *Ibid.*, Section 4(2).

⁸ *Ibid.*, Section 5.

⁹ *Ibid.*, Section 2.

¹⁰ *Ibid.*, Section 3(3).

¹¹ *Ibid.*, Section 6.

¹² This is an exception to the general rule that the spouse is never a compellable witness, Section 14 of the *Evidence Law CAP 9*.

¹³ Section 3(3) of the *Violence in the Family (Prevention and Protection of Victims) Law*.

¹⁴ Section 18 of the *Violence in the Family (Prevention and Protection of Victims) Law*.

¹⁵ Section 34.

Protection of Victims) Law.¹⁶ Also, Section 17 provides that if in the course of examination of a minor by a psychiatrist or psychologist there is mention by the minor that he/she was subject to ill-treatment, the testimony of the psychiatrist and psychologist is an acceptable testimony at court.¹⁷ However, an accused cannot be found guilty with only this testimony. It is imperative that this testimony is substantiated by another independent testimony.¹⁸ Section 14 provides that a complaint by a victim of violence to a teacher, police, family counselor, welfare officer, psychologist, doctor or any other person close to the family circle of the victim is considered as a direct complaint and thus is admissible evidence.

The Committee of Ministers of the Council of Europe on this issue noted: “In Cyprus the primary responsibility for initiating criminal prosecutions lies with the Attorney-General. A specialised team of prosecutors at the office of the Attorney General has been assigned to deal with these cases. All officers of Government departments such as the police, the social workers, teachers, even doctors, psychologist and psychiatrists to whose attention comes a case of domestic violence have an obligation, as this is a criminal offence, to submit a report within 7 days to the Attorney-General. The team then examines the reports and gives directions for their appropriate handling.”¹⁹

Positive aspects

The rules regulating the evidence in matters of violence in the family according to the Violence in the Family (Prevention and Protection of Victims) Law of 2000 and 2004 facilitate the victims of violence. This opinion is based on the following: First, the spouse is a competent and also a compellable witness if the offence is committed against other members of the family; second, an accused may be found guilty with only the victim’s testimony; third, the psychiatrist or psychologist’s testimony on things that the minor had confided in them, is admissible in court; and fourth, the complaint of ill-treatment to various people, such as close family friends, teachers etc are characterised as direct complaints and thus are acceptable testimonys at court.

Article 3. Right to the integrity of the person

Rights of the patients

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

The Human Rights and Bioethics Report of the Secretary-General noted:²⁰ “the Government of Cyprus reported that a multidisciplinary committee was established under the Bioethics Law of 2001”.²¹ “[...] The Cyprus National Bioethics Committee (CNBC) is an independent body, not subject to the administrative control of any ministry, independent officer, department of service, and has jurisdiction and authority assigned to it through legislation. It is composed of 13 members, including the President. The members of the Committee are appointed by the Council of Ministers and are selected from a list of reputable and prestigious personalities. CNBC has the power and the competency to establish Research Ethics Committees (RECs) for ethical review of biomedical research protocols on human beings

¹⁶ L. 212(I)/2004.

¹⁷ Section 17 of the Violence in the Family (Protection and Prevention of Victims) Law.

¹⁸ Ibid.

¹⁹ Final Report of the Group of Specialists on the Implementation of and Follow-up to Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence (EG-S-MV) Directorate General of Human Rights, Strasbourg, 2005.

²⁰ Economic and Social Council, Promotion and Protection of Human Rights: Human Rights and Bioethics Report of the Secretary General, E/CN.4/2005/93, 17 December 2004.

²¹ _____ (_____ π π) _____ 2001, . 150()/2001.

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(scientific and medical research) as well as RECs for the review of clinical trials on medical products.”

Legislative initiatives, national case law and practices of national authorities

The Law on the Protection of the Rights of Patients and Related Issues, L. 1(1)/2005²² was passed on 7 January 2005. The preamble of the said law states: “[...] because human rights in the area of health and more specifically, the right to life, the right to the integrity of the person, both physical and mental, and the right to the security of the person, the respect of the private life and dignified treatment in providing health services [...]”. This Law came into effect on 7 April 2005. For more information on the law on the rights of patients and control mechanisms see last year’s Report.

Pursuant to the implementation of the law on Patients’s Rights, the island’s five main hospitals have obtained their first Patients’ Rights Counsellors to examine complaints against the system and to give advice.²³ According to an NGO, the Cyprus Patients’ Rights Movement (KIDDA), the implementation of the law on the rights of patients faces plenty of shortcomings, especially due to the maladministration at various hospitals.²⁴

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

Conditions of detention and external supervision of the places of detention

Legislative initiatives, national case law and practices of national authorities

The Ministry of Justice tabled a proposal concerning detainees suffering from drug addiction or other psychological problems. A new building is to be built which will temporarily house inmates with mental health problems until the final solution, which will be the establishment of a Multi task centre.²⁵

Centres for the detention of foreigners

Legislative initiatives, national case law and practices of national authorities

The Ombudsman after receiving various complaints concerning the conditions of the detention of foreigners in the police stations published a *Report on the Conditions of Detention of Foreigners in Central Prisons and Police Stations*.²⁶

The Ombudsman divided her research in three categories: First, persons detained in the central prisons after having been found guilty of violating the legislation on immigration. Second, persons detained in the police stations for the purpose of deportation based on orders of deportation and arrest, and third, persons detained at the airport of Larnaka for the purpose of deporting them.

Regarding the first category, there are currently no centres for the detention of foreigners. This means that foreigners violating the immigration laws are imprisoned in the Central Prison. This situation is criticised by the Ombudsman who wrote that it is imperative to

²² _____ π _____ π _____
_____. 1(1)/2005.

²³ Cyprus Mail Newspaper, 8 April 2005.

²⁴ Politis Newspaper, 13 July 2005.

²⁵ Politis Newspaper, 11 January 2005.

²⁶ _____ π _____ π _____ π _____
_____, published on 2 February 2005.

decriminalise the illegal entry into the Republic and deal with this situation not with a criminal procedure.²⁷ In light of this lack, the Ombudsman suggested that these inmates should at least be kept separately from the other prisoners, and should be given greater freedom within the prison and greater opportunities for constructive activities, as they have not committed any crimes.²⁸ The Ombudsman's suggestion on this issue is helpful. However, we are not sure how this could be feasible considering that the majority of prisoners are illegal immigrants waiting for their deportation.

Regarding the second category, the Ombudsman had to say that many foreigners are held in police stations based on orders of arrest and deportation that the Immigration Office issues. These places are mainly places for short term detention, while in fact the detention of those may take up to one or two or three months.²⁹ Indeed, the *Immigration and Aliens Law* does not regulate the maximum amount of time that a foreigner may be detained for the purpose of his/her deportation. Nonetheless, the Supreme Court, with a decision that has often been quoted, stated: "In spite the lack of explicit provision on that, detention for the purpose of deportation must not be without restrictions regarding time, but must be such as it is deemed necessary and logical for the deportation, considering all the circumstances."³⁰ Therefore, in those circumstances in which the detention of foreigners is justified for a long period, the police station is not the right place to be detained.³¹ The State, according to the Ombudsman, must establish special centres for detention of foreigners awaiting their deportation, whose purpose would not be to punish them as criminals, but to detain them until they are deported.³²

Now, as regards the condition of the detention of foreigners in the police stations waiting for their deportation, they are being described by the Ombudsman as "not at all positive".³³ Limited space, lack of activities in connection with the long term detention and overcrowding gives a picture of misery. According to the description of the Ombudsman, the police stations in Larnaka and especially in Limassol seem entirely inappropriate, with no clean air in Limassol (although measures are taken to install a ventilation system), and no place to walk in Lanaka. In contrast, the ones in Nicosia are much better.³⁴ The Ombudsman also noticed that the majority of detainees in police stations are detainees who have initially been declared as illegal immigrants and later on they applied for the refugee status and therefore are asylum seekers. The continuance of their detention by no means should be continued according to the Ombudsman.³⁵

As regards the right of a detainee to have a lawyer, some problems have arisen in practice. This is so because the police requested prior wish or consent on the part of the detainee to contact a lawyer. This meant that if a lawyer at the request of the family of the detainee arrived he would not be allowed to contact the detainee. This practice has now changed and a detainee can express his wish to contact a lawyer after he has been informed of the visit. The Ombudsman however, claimed that this is not happening in practice. She substantiated her opinion on the matter, with cuttings from daily press.³⁶

The Ombudsman also raised this issue in her Annual Report 2004.³⁷ She noted that during 2004 several complaints were filed from lawyers concerning the refusal of the Police to allow

²⁷ Paragraph 1.2.

²⁸ Paragraph 1.2.

²⁹ Paragraph 2.3.

³⁰ *Essa Murad Khailef v Republic of 14 October 2003* (Application Number 91/2003). See further Report 2003.

³¹ Paragraph 2.3 of the Ombudsman's Report.

³² Paragraph 2.5.

³³ Paragraph 2.4.

³⁴ Paragraph 2.4.

³⁵ Paragraph 2.2.

³⁶ Paragraph 2.6.

³⁷ Ombudsman, *Annual Report 2004*, November 2005, p. 94.

Fight against the impunity of persons guilty of acts of torture

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

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its fourth period visit to Cyprus from 8 to 17 December 2004.⁴⁵ The CPT's delegation examined the treatment of persons detained by the police (including immigration detainees) and the effectiveness of the formal safeguards against ill-treatment which are available to such persons. It also reviewed the developments at the Central Prisons and Athalassa Psychiatric Hospital and, for the first time in Cyprus, examined the situation in places accommodating children in the care of the authorities. The delegation visited police establishments, prisons, psychiatric establishments, establishments for children.

It is expected that the CPT will give negative comments on the situation of the detention centres in Cyprus. Its report has not yet been released.⁴⁶ Apparently, the report is going to criticise the conditions in the police stations, as well as the long-term detention of foreigners in very small places. The report is going to praise the places where children with special needs are kept.⁴⁷

The US Department of State on the Cyprus Report⁴⁸ wrote: "Following the January 2003 report of the European Committee for the Prevention of Torture (CPT) regarding police ill-treatment and torture of detainees, police officers participated in vocational and educational training at home and abroad, including conferences dealing with human rights, xenophobia, and discrimination, some of which focused on arrest, interrogation and detention. There continued to be reports that police engaged in heavy handed tactics and degrading treatment of suspects. In the two cases of police abuse in 2003 brought before the courts, one officer was convicted of common assault and fined \$445 (200 pounds) and the other convicted of assault causing bodily harm and fined \$3,340 (1,500 pounds). Both officers kept their jobs."

"The press reported additional instances of police abuse. On June 21, two police officers arrested and allegedly beat a member of the Greek Pontian ethnic minority community in Paphos. The following day, a demonstration against alleged police brutality turned violent, and police used tear gas to disperse the crowd. Four police officers and four Pontians were injured in the incident. On July 1, the press reported that a disciplinary probe had been ordered following allegations that a Nicosia police acting sergeant beat a teenage suspect while he was in custody. The officer was not on duty that day but was present during the interrogation of the suspect who had been brought in on suspicion of abducting and "defiling" a minor. The Chief of Police ordered an investigation and suspended the officer from duty; the acting sergeant was formally charged with common assault, and the case was before the Nicosia District Court for trial at year's end."⁴⁹

Furthermore, "on February 28, an officer at Limassol police headquarters allegedly raped a Moldovan woman in her cell. The woman had been in detention following her arrest for working illegally on the island. The chief of police ordered the officer's immediate arrest and suspension and opened a disciplinary investigation against him. The committee appointed for the trial demanded the officer's resignation and he was charged with rape. Criminal proceedings against him were pending at court at year's end."⁵⁰ "In July, there were several

⁴⁵ <http://www.cpt.coe.int/documents/cyp/2004-12-22-eng-htm>

⁴⁶ Last checked on its website, 7 December 2005.

⁴⁷ Fileleftheros Newspaper, 20 December 2004.

⁴⁸ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁴⁹ Ibid.

⁵⁰ Ibid.

REPORT ON CYPRUS IN 2005

press reports that police and prison officials subjected Turkish Cypriots and foreigners imprisoned in Nicosia's Central Prison to disciplinary treatment. Some inmates claimed that the police, prison wardens and Greek Cypriots regularly beat and abused them. They claimed that the authorities did not answer their calls for protection and prevented some inmates from reporting mistreatment without prison officials present. The prisoners also claimed authorities denied them bail and speedy trials." The said Report further concluded that "although there were individual cases of misconduct reported during the year within the police force, there were no serious cases of police corruption or bribery."⁵¹

"There were no reports of politically motivated killings by the Government or its agents; however, there was one death of a person in police custody. On May 12 [2004], 29 year-old Ionis Ambrosiades died in custody at the Limassol police station. Authorities reportedly determined that the death was a suicide. Police conducted a disciplinary investigation and found the officers on duty guilty of neglect of duty."⁵²

Legislative initiatives, national case law and practices of national authorities

Reports of the Ombudsman

The Ombudsman received a complaint against the police for ill-treatment of a suspect under arrest.⁵³ The Ombudsman noted that first, a suspect was arrested and between his arrest and introduction to the police station he had obvious marks of ill-treatment on his body. In this respect, the police have a burden in explaining logically and in an adequate manner the way in which the marks have been caused. Failing to do so, the police have acted contrary to the prohibition of torture and degrading treatment, enshrined both in the Constitution of Cyprus and in international conventions. In this case, the police failed to explain adequately how the marks were caused.⁵⁴ Second, an attempt by the police to cover up the ill-treatment of a civilian under arrest is as much illegal as the ill-treatment itself.⁵⁵ Third, the Ombudsman in her research recognised that the members of the police do not comprehend the principle of proportionality in terms of exercising proportionate force.⁵⁶ Fourth, the examination of the suspect by a doctor after his complaint of ill-treatment by members of the police, took place at the presence of a police officer. This, according to the Ombudsman should not be happening: the examination of civilians especially after having claimed that they have been subjected to ill-treatment by the police should take place in absolute confidentiality and objectivity and certainly without the presence of police officers.⁵⁷

The Ombudsman received another complaint about ill-treatment by the Police on an asylum seeker.⁵⁸ The Ombudsman in her report concluded that the Police ill-treated the asylum seeker. She based her deliberations on the fact that the Police had not persuasively raised the presumption according to which, when someone is arrested and between his arrest and his release he has obvious marks of ill-treatment on his body, the police have a burden in explaining logically and in an adequate manner, the way under which the marks have been caused. The Ombudsman noted that the "way the investigation (by the police) took place as well as the handling of the issue by the Asylum Unit [...] does not meet the requirement of objectivity and credibility."⁵⁹ More specifically, regarding the way of investigation of the complaint by the police, the Ombudsman explained that the "way the investigation took place

⁵¹ Ibid.

⁵² Ibid.

⁵³ /_ 1755/2003, published on 5 April 2005.

⁵⁴ Paragraph 3.4 of the Ombudsman's Report.

⁵⁵ Paragraph 3.7.

⁵⁶ Paragraph 4.5.

⁵⁷ Paragraph 5.1.

⁵⁸ A/P 1585/2004, published on 27 April 2005.

⁵⁹ Paragraph 3.1.

as well as the deliberations (of the police) raises problematic issues and are not convincing on the objectivity of the police.”⁶⁰ Regarding the handling of the issue by the Asylum Unit “is faulty and doubts its credibility and objectivity.”⁶¹

It is not clear however, as to why the Ombudsman concluded that the investigation by the police and the handling of the issue by the Asylum Unit is not objective.

Governmental Practice

A law proposal entitled *Police (Independent Committee of Investigating Allegations and Complaints) Law*⁶² is being discussed in the Parliament according to which a Committee is to be established which will review the acts of the Police, and especially complaints about ill-treatment by the Police and any other human rights violations. The issue of whether police officers will be members of the said Committee has been discussed. The police force wanted the Committee to have one policeman as a member.⁶³ In the end, the law proposal provides in Section 4 (1) that “it is possible that one [out of five] member of the Committee may come from the Police.” However, the president of the Committee cannot be a member of the Police according to Section 4(2).

Now, as to whether a criminal charge is to be initiated against those that violate human rights, this is a matter that belongs entirely in the discretion of the Attorney-General.⁶⁴ Indeed, according to Section 16, after the Committee completes its investigation and deems that the acts of the Police might be considered as a criminal offence, it refers the issue to the Attorney-General. The Committee will have responsibilities of a criminal investigator and will proceed to criminal investigations, and in case it is considered that a criminal offence took place, the Attorney General will proceed with the prosecution of the policeman.⁶⁵ The Ombudsman expressed her uneasiness on the establishment of this authority as there will be an overlapping of competences between her office and the Committee.⁶⁶ However, this is not entirely true, as the Committee will be vested with criminal responsibilities.

The Attorney-General’s Office provided us with similar information on this law proposal.⁶⁷ The members of this Authority will have the competence of a criminal investigator. If the complaint constitutes a criminal offence the investigation will be conducted under the directions of the Attorney-General. The Authority will be able to examine not only complaints registered with it, but also any allegations that come into the knowledge of the authority in any other way.

It was reported in the daily press that a Syrian national was shot dead by the police. The Police however characterised his death as “sudden and unnatural” and the report of the forensic surgeon is anticipated on the cause of death.⁶⁸

Positive aspects

The proposal to amend the law is a welcome development but it remains to be seen whether and when it will take place.

Reasons for concern

⁶⁰ Paragraph 3.2.

⁶¹ Paragraph 3.3.

⁶² π _____ (_____) _____ 2005.

⁶³ Politis Newspaper, 20 September 2005.

⁶⁴ Fileleftheros Newspaper, 28 July 2005.

⁶⁵ Politis Newspaper, 20 September 2005.

⁶⁶ Politis 20 September 2005.

⁶⁷ Information dated 29 September 2005.

⁶⁸ Politis Newspaper, 30 September 2005.

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The complaints filed and investigated make the need for the above mentioned amendment even more urgent.

Protection of the child against ill-treatments

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

The US Department of State on the Cyprus Report wrote: “During the year [2004], the court for the first time handed down a decision in a child abuse case in which taped victim testimony was admitted as evidence. In that case, the court convicted and sentenced the defendant to 7 months in prison.”⁶⁹

Legislative initiatives, national case law and practices of national authorities

According to statistics published by the Ministry of Labour and Social Security, in the years 2000-2004, 1082 children were victims of violence inside and outside the family.⁷⁰

A person was convicted to 10 years imprisonment after being found guilty by the Nicosia Assizes Court of having an illegal sexual intercourse with his 11 year old nephew. The Assizes Court noted that sexual crimes should be punished severely.⁷¹

The Ombudsman received a complaint by the parent of a 12 year old boy who was arrested by the police, taken to the police station in hand because he allegedly caused damage in the school yard one evening.⁷² The Ombudsman noted that according to Lesson number 126 of the Police Academy entitled “Warden’s Whistle, Club and Cuffs”, “the members of the police should not use cuffs to (a) children, women, old people, wounded or disabled.” In this respect, the fact that the policeman had worn cuffs to the 12 year old boy, even for a few minutes and even if provoked by the child, cannot be accepted.⁷³ Also, the Ombudsman noted that from a legal point of view, there is no provision in the *Penal Code* allowing the arrest and introduction of a person to the police station without any visible indication that that person is liable for a criminal offence. Especially in the case of a child, such behaviour by the police should be banned.⁷⁴

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Police behaviour during demonstrations

The Editors’ Association filed a complaint at the Ombudsman for the ill-treatment of journalists by the Police on the 18 July 2005 during the episodes that took place outside the cement factory in the Moni area.⁷⁵ The incident under consideration took place outside the cement factory of Moni, when truck drivers were striking and were not allowing any truck to enter or leave the cement factory. The strike lasted several days and was supervised by the Police. Due to the great socio-economic impact the strike had on the economy of the society, Police received an order that the Police officers should ensure that the carriers of goods who

⁶⁹ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁷⁰ Fileleftheros Newspaper, 28 September 2005.

⁷¹ Fileleftheros Newspaper, 21 September 2005.

⁷² A/P 1427/2005, published 1 November 2005.

⁷³ Paragraph 4.1 and 5.3.

⁷⁴ Paragraph 5.2.

⁷⁵ A/P 1683/2005, published on 9 August 2005.

wished to enter or leave the cement factory for the purpose of loading and unloading material, were allowed to do so. Clashes erupted between the police and the strikers when the police tried to safeguard that those who wished to enter or leave the cement factory could do so. Although the complaint to the Ombudsman referred to the ill-treatment of journalists by the police force, the Ombudsman in her report also made reference to the treatment of strikers by the police.

The Ombudsman's conclusions with regard to the incident at the Moni cement factory are the following: first, the police did not make it clear to the strikers how determined they were to allow those who wished to enter and/or leave the cement factory, even by using force if necessary. The Ombudsman noted "it is my opinion that at the preparatory stage of the mission, the police did not act as they should: that is, informing the strikers of the consequences of obstructing the trucks from leaving the cement factory".⁷⁶ Second, "the police, observing an assembly, have a responsibility not only not to obstruct the assembly, but also to hinder third parties from aggravating the environment of the assembly." Therefore, the fact that the Police allowed the owner of trucks to be present at the strike, aggravated the already tense atmosphere.⁷⁷ Third, with regards to the ill-treatment of journalists who were present at the strike by the police, the Ombudsman regarded the evidence given by the journalists as credible, as opposed to the evidence given by the police. Therefore, the account of the journalists' description was more persuasive. That means that the police ill-treated some journalists who attempted to record the incidents.⁷⁸ Fourth, with regards to the presence of the journalists at the place where the incidents occurred, the Ombudsman noted that the Police showed lack of operational planning, which in effect hampered the operation itself.⁷⁹ Finally, the Ombudsman as a general conclusion wrote: "the authorities of the state are under the obligation not only to refrain from hampering the exercise of the right to information, but also to take all necessary measures to facilitate its exercise."⁸⁰

There has been a different conclusion to that of the Ombudsman which was delivered by the government-appointed two man committee whose mandate was to investigate the events that took place outside the Moni cement factory.⁸¹ We were not able to secure the Report of the Committee but the information below is taken from the daily press. According to them the Committee stated that the police acted in a "professional and satisfactory" manner and that no excessive or disproportionate force was used by the police against the media.⁸² However, the report noted that police claims to the effect that journalists impeded them from carrying out their duty were "exaggerated".⁸³

Article 5. Prohibition of slavery and forced labour

Trafficking in human beings

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

The US Department of State on the Cyprus Report stated: "The law does not prohibit 'voluntary' prostitution; however, it is illegal to live off the profits of prostitution. Police routinely arrest pimps and prostitutes under this section of the criminal code. Procuring a woman for prostitution is a misdemeanour. Sexual exploitation and trafficking of adults and

⁷⁶ Paragraph 38.

⁷⁷ Paragraph 39.

⁷⁸ Paragraph 40.

⁷⁹ Paragraph 41.

⁸⁰ Paragraph 43.

⁸¹ The Cyprus Weekly Newspaper, 30 September- 6 October 2005.

⁸² Fileleftheros Newspaper, 29 September 2005.

⁸³ Cyprus Weekly Newspaper, 30 September- 6 October 2005.

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children is a felony.”⁸⁴ “The law criminalises trafficking of women and children for the purpose of sexual exploitation; women trafficked into the country for the purpose of prostitution was a problem. The law is gender-specific and does not address internal or labour trafficking.”⁸⁵ “It is a felony to engage in sexual exploitation and trafficking of adults and children, with or without their consent. The court may order persons convicted of trafficking to pay some or all of the expenses needed for the provision of protection, temporary shelter, medical care and psychiatric care for victims. The court may also order persons convicted to pay compensation to the victim, including repatriation expenses. Responsibility for combating trafficking was shared by the Ministries of Justice, Labour and the Interior and the Attorney-General’s office.”⁸⁶

“During the year [2004], police opened investigations in 91 cases involving 194 persons for crimes related to prostitution and sexual exploitation. From these, the courts found persons in 9 of the cases guilty of living off the earnings of prostitution and there were 24 cases pending trial at the end of the year. The courts acquitted the defendants or dismissed charges in eight cases; in another four cases, charges were dropped for lack of evidence. At the end of the year, there were 4 cases pending with the Attorney-General’s office and 22 cases still under investigation. The police charged 20 persons with trafficking of persons and sexual exploitation; all of their cases were pending at the end of the year.”⁸⁷

“The country was a destination for women trafficked from Eastern Europe, primarily Ukraine, Romania, Moldova, Russia, Belarus and Bulgaria. There were no reliable statistics on the number of trafficking victims; however, 62 victims reported pressed charges during the year. Some East European women entered Government controlled areas of the country on temporary 3 month ‘artiste’ visas (renewable for an additional 3 months, but then requiring at least a 6-month absence from the island) to work at a specific cabaret or nightclub. The Government issued 2, 933 such visas during the year. Additionally, some East European women entered the country on work visas as barmaids with set contracts and terms of employment, while others entered on tourist visas and worked illegally.”⁸⁸

“Foreign women working as ‘artistes’ or barmaids were vulnerable to trafficking and exploitation. In some cases, women reportedly were forced to surrender their passports, perform sexual services for clients, or were not paid their full salaries. In one case, a 28 year old Russian woman reported that an acquaintance arranged for her to work as a barmaid. Employment conditions were agreed by phone before she left Russia. When the victim arrived in the country, she found the living conditions provided by her employer were unsanitary and completely inadequate, and she also had a bar employee constantly watching her. Her boss forced her to give him her passport and did not pay her. Besides serving drinks, the victim was forced to clean the bar and drink with clients. One night her boss forced her to go with a client who raped her. A Russian man helped her escape and locate a shelter for trafficking victims. The victim chose to return home after spending some time in the shelter.”⁸⁹ “There was also evidence of a new category of female victims coming from China on student visas who then engaged in prostitution or in some cases found themselves victims of sexual exploitation.”⁹⁰ “The law obligates the Government to provide protection and support for trafficking victims by allowing them to remain in the country to press charges or by facilitating their return home. Of the 62 victims who pressed charges against their traffickers, 47 asked for police protection. The law also requires the Government to provide shelter, medical and psychiatric care to trafficking victims until they have recovered from the trauma

⁸⁴ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

of their experience. The Government may appoint a guardian to advise and give counsel to victims and to represent the victim with the appropriate government agency. Victims may sue traffickers for damages.”⁹¹

“The Government maintained that most women who qualified as trafficking victims chose to return to their home countries voluntarily without testifying in court. There were reports that cabaret owners and ‘artiste’ agents pressured women to withdraw complaints made about their situations or not to follow through with their intention to testify in court.”⁹²

The *US Department of State Trafficking in Persons Report* continued to characterise Cyprus as a Tier 2.⁹³ The said report stated: “Cyprus is a destination country for women trafficked from Eastern to Central Europe for the purpose of sexual exploitation. Traffickers who force women into prostitution continued to fraudulently recruit victims for 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 or student visas. There was increasing evidence of Chinese women being trafficked for sexual exploitation in Cyprus. The Government of Cyprus does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Cyprus made some progress in its anti-trafficking efforts over the past year. The new police anti-trafficking unit produced successful results and showed vigilance in combating the problem. Government recognition of the problem improved, and there was a perceptible shift in awareness among officials, the press, and the public. Nevertheless, the Government did little to generate public awareness about the role customers play in contributing to trafficking in Cyprus. The Government of Cyprus should immediately formalise its recently completed National Action Plan and proactively enforce its implementation. Moreover, the Government should work to improve cooperation with civil society on victim protection and assistance.”⁹⁴

With regards to prosecution the report noted: “In 2004, the Government of Cyprus significantly increased its anti-trafficking enforcement efforts, particularly in the area of investigations and arrests. Under its newly created Office of Combating Trafficking in Human Beings, police made 194 arrests in 91 trafficking-related cases. Additionally, police charged 20 persons with trafficking in persons and sexual exploitation. There were no trafficking-related convictions reported during the reporting period. Police conducted regular visits to cabarets and interviewed women in private, away from their places of work. In 2004, the Government closed ten cabarets for operating without a license. The Government of Cyprus signed a number of anti-trafficking cooperation agreements with source countries during the reporting period.”⁹⁵

With regards to protection, the reported stated: “The Government of Cyprus’ efforts in the area of protection improved in 2004. The Welfare Department of Ministry of Labour routinely ensured that victims received temporary shelter, received legal and financial assistance, and it issued residence and employment permits in cases where victims cooperated in an investigation. The police identified 66 victims willing to testify against their traffickers, 47 of which requested police protection. In 2004, the Government set aside several rooms for trafficking victims in government-subsidized housing and solicited bids for the operation and construction of a permanent shelter. Notably, the Government has stopped issuance of new cabaret license and now prohibits hiring replacements for women on artiste visas who are identified as victims and removed from cabarets. Although the Government established a

⁹¹ Ibid.

⁹² Ibid.

⁹³ *US Department of State Trafficking in Persons Report*, 3 June 2005

⁹⁴ Ibid.

⁹⁵ Ibid.

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screening and referral process, it has yet to fully standardize it by completing its proposed handbook for handling victims.”⁹⁶

Concerning prevention, the report noted: “In March 2005, the Ministry of Interior held a major press conference to publicize the release and routine distribution of a revised information pamphlet for all newly arriving female foreign workers. This pamphlet contains anti-trafficking information in an effort to prevent the exploitation of artists. Although the anti-trafficking unit held a number of press conferences and appeared in popular media to promote its anti-trafficking activities, the Government did not conduct any large-scale demand-oriented awareness campaigns. Police reported receiving an estimated 20 trafficking-related calls per week via their crime prevention hotline.”⁹⁷

Legislative initiatives, national case law and practices of national authorities

According to statistical information received by the Police,⁹⁸ the country of origin of women who are working in Cyprus on “cabaret artist visas” for the year 2003 is: Ukraine (38%), Moldavia (17%), Russia (17%), Romania (1%), Belarus (8%) and the remaining 8% from Philippines, Bulgaria, Israel, Armenia, Brazil, Uzbekistan, Latvia and other. According to statistical information produced by the police before the Parliament, there are 80 cabarets and 35 music and dance spots where 1, 014 artists are employed. Also there are 800 pubs where 1.600 foreign waitresses are employed.⁹⁹

The Ombudsman’s representative at a conference on trafficking organised by the Swedish embassy in Cyprus on 6 October 2005 noted that it is estimated that at least 1000 women are trafficked into the country every 6 months for the purposes of sexual exploitation.

According to Information received by the Ministry of Justice, during the period of 1 January 2005 up to 31 August 2005 there were 17 prosecutions with 34 people prosecuted on the basis of *Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000* (L. 3(I)/2000), whereas other 12 cases are still under investigation.¹⁰⁰ However, it seems that the penalty imposed on those who live off profits of prostitution is rather lenient: indeed, the District Court sentenced someone to four months imprisonment after it found him guilty of sexual exploitation and of living off profits of prostitution.¹⁰¹

In this respect, it is relevant to note that the Supreme Court in *M. v Police of 31 March 2005* (Criminal Appeal number 7667) decided that *the Combating of Trafficking in Persons and Sexual Exploitation of Children Law* was the law upon which a father was charged for sexually exploiting his under age daughter. This is so, despite the fact that the main purpose of the said law is to combat organised sexual exploitation of human beings and children. For further analysis on the said law see report 2004.

Now, with regards to legislation, Cyprus signed and ratified the following agreements: (a) *Agreement between the Government of the Republic of Cyprus and the Government of the Slovak Republic on Co-operation in Combating Organised Crime, Terrorism, Illicit Trafficking in Narcotic Drugs and Psychotropic Substances as well as Other Types of Crime*, L. 5(III)/2005 on 31 March 2005.¹⁰² The Agreement states that “(1) the contracting parties

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Human Rights Protection by Cyprus Police, October 2005

⁹⁹ Fileleftheros Newspaper, 21 October 2005.

¹⁰⁰ Note by the Ministry of Justice, 13 October 2005.

¹⁰¹ Politis Newspaper, 25 October 2005.

¹⁰² _____ π _____ π _____
 _____ π _____
 _____ π _____
 _____, N. 5(III)/2005.

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prostitution.¹¹² The complaint was against the Immigration Office and the Social Welfare Services. With regards to the Immigration Office, they refused to provide them with a residence permit and work permit to another employer, until their complaint was examined. With regards to the Social Welfare Services, they refused to provide them with any income. This forced them to leave the country. The Ombudsman in general noted that “the administrative handling of these cases is unsatisfactory and lacks the necessary sensitivity.”¹¹³

Apart from the Reports of the Ombudsman, which constitute a viable source of information on the issue of trafficking, the Parliamentary Committee on Criminology also prepared a Report entitled *Prostitution-Human Trafficking* after extensive debates in the Parliament with all the relevant Governmental authorities and NGOs.¹¹⁴ According to the Report, the Ministry of Justice makes sure that (a) the so called “artistes” that arrive in Cyprus to work in cabarets and bars are not deprived of their passports; (b) frequent checks by the police occur in cabarets where “artistes” work; (c) the employers have an obligation to pay the expenses of the repatriation of the artists, should they wish to leave Cyprus.

Also, according to the said Report, the Immigration office informs the artists of their rights upon their arrival in Cyprus. In collaboration with an NGO called Cyprus Gender Equality Organisation, it is supplying leaflets in English, Russian, Rumanian and Bulgarian language to artistes upon their arrival in Cyprus giving information on entering, living and working on the island and the aliens’ obligations, as well as employers’ duties. Special reference is made in the leaflet to cases of sexual exploitation and the procedures to be followed in the event of such cases. It also includes contact numbers and addresses of the Social Welfare Services, the Aliens and Migration Service of the Police, the Ombudsman, and NGOs that victims of sex trade can turn to for assistance; the employers are forced to deposit the artistes’ salaries at special accounts.¹¹⁵

As regards Immigration, a new law is being considered taking into consideration the acquis.¹¹⁶ The Council of Ministers in 2001 established a Group of Experts for the cooperation on issues of abolishing human trafficking and sexual exploitation of children. Various governmental departments as well as NGOs participate in this Group.¹¹⁷

Nonetheless, and despite these developments, the Parliamentary Committee stressed out the difficulties involved when dealing with trafficking.¹¹⁸ First, according to the law (which in the case of Evidence is based on the Common law¹¹⁹), a person may be convicted of pandering only when corroborative evidence is provided (_____).¹²⁰ That is, corroborative evidence to the one provided by the person who is making the complaint, which tends to prove that the principal evidence is correct. It has to be stressed here that this is indeed rather odd, considering that in cases of sexual crimes corroborative evidence is not required by the law but only by the Common law practice. This means that the Court may convict the defendant without corroborative evidence, provided that it cautions itself of the dangers of convicting a defendant without corroborative evidence.¹²¹ The question is why the case of pandering is different than the sexual crimes.

¹¹² Ombudsman, *Annual Report 2004*, November 2005, p. 97 (A/P 1216/03).

¹¹³ *Ibid.*

¹¹⁴ *Prostitution- Trafficking*, 16 June 2005.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Section 2(3) of the *Evidence Law CAP 9*.

¹²⁰ Section 157 of the *Penal Code CAP 154*.

¹²¹ *Makris (Peteinos) v Police (1961) CLR 30; Theodorou v Police (1971) 2 CLR 245; Attorney-General v Petrou (1972) 2 CLR 81; Solomou v Republic (1978) 2 CLR 117; Fourris and Ohters v Republic (1980) 2 CLR 152.*

The Government organised an *Action Plan to Combat Trafficking*. According to information found in the Parliamentary Report on *Prostitution-Trafficking* the following measures are being taken: (a) The issuing of work permits for artistes is being suspended; (b) It is prohibited to substitute an artiste who declares that the place she had been working promotes prostitution; (c) The victim of trafficking has a place to stay, legal aid and economic help from the state, provided she is willing to help with the investigation of her former employer; However, on this issue, it was reported in the local press that the money given to these women is 1.43 CYP per day and that they stay at old peoples homes and are fed there since there is no other place to house them. The state according to the same local press reference is planning to establish a home for these women in Limassol, but this is still under construction.¹²² (d) Work permit is issued to victims so that they can be able to work at another field.¹²³ This statement contrasts markedly that of the Omdusman's, who, stated that alleged victims of trafficking are not allowed to change profession.¹²⁴ As to the wages of cabaret artistes, it was reported in the daily press, that the Labour Ministry is drafting legislation that would double the daily wages of cabaret artistes. Now they are being paid 10 CYP per day. It is suggested that their pay would rise to 20 or 23 CYP.¹²⁵

An interesting development whose purpose appears to be the ombating of marriages suspected of being simulated, is the Ministerial decision of the Ministry of Interior of 31 March 2005¹²⁶ according to which it is prohibited for wives of Cypriots to continue working in cabarets, bars etc. The purpose of this decision is to help detect simulated marriages in which the foreign woman marries a Cypriot national and continues working in a cabaret.

The Ministry advised the Police and the Town planning authorities to apply article 15 of the *Law Regulating Roads and Buildings*¹²⁷ to the houses where artistes live. According to this article, the relevant authority may issue an order closing down any building which is believed to be improper for residence due to various reasons, e.g. bad ventilation, overcrowding etc.¹²⁸

Furthermore, the Parliamentary Committee concluded that (1) the *Aliens and Immigration Law* faces gaps and inadequacies, since it has hardly been amended since its inception. (2) Apart from the crimes provided in the Criminal law there are new forms of crimes, like prostitution through the internet or circulation of child pornographic material through the internet as well. These new forms of crimes need to be tackled. The Committee proposes that the Government should examine the establishment of certain *sui generis* crimes.¹²⁹ The Government, should establish mechanisms to the extent possible to deal with the problem of prostitution and trafficking.

The Russian Orthodox Church in Cyprus has a shelter for victims of sexual exploitation, which provides the victims of sexual exploitation free residence, food, medical care, legal assistance and spiritual support, according to the leaflet distributed by the shelter. This leaflet is distributed in Russian, Romanian and English both in Cyprus and in airports of countrys from which victims typically originate: Russia, Ukraine, Belarus, Moldavia and Romania.

An anonymous hotline was established where anybody can call and give information or seek help with regards to trafficking, number 14600-free toll.

Positive aspects

¹²² Politis Newspaper, 23 March 2005

¹²³ *Prostitution- Trafficking*, 16 June 2005, pp. 23-24.

¹²⁴ See supra footnote 107 and accompanied text.

¹²⁵ Cyprus Mail Newspaper, 23 March 2005.

¹²⁶ *Prostitution-Trafficking*, 16 June 2005, p. 31.

¹²⁷ π _____, _____ 96

¹²⁸ Fileleftheros Newspaper, 29 March 2005.

¹²⁹ Ibid., p. 35.

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Additional reporting and seminars on the matter have shed light on the problem of trafficking in an effort to effectively address it.

Reasons for concern

It is clear that the issue of human trafficking and in particular sexual exploitation is an important one and a lot of work needs to be done by the Government to reach acceptable standards. As the representative of the Ombudsman pointed out, even though the relevant Conventions are in place their actual implementation has been lacking.

Protection of the child

Legislative initiatives, national case law and practices of national authorities

According to statistics for the year 2005, there have been 20 incidents of use of child pornographic material through the internet, which are under investigation, while 13 of those have been charged.¹³⁰

The *Law Ratifying the Council of Europe Convention on Cybercrime* L. 22(III)/2004,¹³¹ which provides that states must adopt legislation that criminalizes child pornography, entered into force on 1 May 2005. Thus, any cases of alleged child pornography before that date could not be investigated. This is the case of an adult who downloaded child pornographic material from the internet, but could not be charged by the police for the possession of child pornographic material. He can however be charged for possessing illegal electronic data which carries a prison term or fine.¹³²

Even with the *Law Ratifying the Cyber Convention* entering into force there is still a big problem in Cyprus in investigating child pornography through internet. Article 17 of the Constitution safeguarding the right to privacy has no exceptions to 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.”¹³³ In line with Article 17, the relevant law on the *Protection of the Right to Private Communication* L. 92(I)/1996¹³⁴ states that the Courts may issue an order of monitoring the private communication (a) of people who are imprisoned (therefore have been found guilty by a court of law) or who are in pre-trial detention (defendants awaiting for their trial) and (b) when the means of communication are prohibited by law.¹³⁵ Therefore, the law does not allow the monitoring of private communications of suspects. Due to the unrestricted protection to privacy, serious matters such as child pornography and drug trafficking cannot be investigated. An international child porn web apparently is using Cyprus to load the internet with child pornography using this legal loophole. Indeed, as the Attorney-General said, due to the constitutional provisions protecting the privacy of telephone conversations, Cyprus has turned into a centre of pornographic transmission on the internet.¹³⁶ The issue of amending the Constitution and Article 17 is being discussed in Parliament.¹³⁷

¹³⁰ Report of the Parliamentary Committee on Criminality entitled *Prostitution-Trafficking*, 16 June 2005, p. 8.

¹³¹ π _____ (_____) _____, L. 22(____)/2004.

¹³² Fileftheros Newspaper, 3 February 2005, Cyprus Weekly Newspaper, 4-10 February 2005.

¹³³ Article 17 paragraph 2 of the Constitution.

¹³⁴ π _____ π _____ (_____) _____ 1996, L. 92(____)/1996.

¹³⁵ *Ibid.*, Section 6(2).

¹³⁶ Cyprus Mail Newspaper, 7 October 2005.

¹³⁷ Cyprus Mail Newspaper, 16 October 2005.

The issue of child labour was discussed in the Parliamentary Committee of Labour. No cases are known or are referred on the illegal occupation of children.¹³⁸ The *Protection of Young Persons at Work Law of 2001*¹³⁹ is very restrictive and imposes safeguards for the protection of children at work. According to the Labour office, 2000 children are being registered as working.¹⁴⁰

The EU Council Recommendation of 25 June 2001 on contact points maintaining a 24-hour service for combating high-tech crime has been adopted through the Decision of the Council of Ministers, no 59.545 dated 25 February 2004.¹⁴¹

Positive aspects

The ratification and entry into force of the Council of Europe Convention on Cybercrime was a welcome development.

Reasons for concern

The need to amend Article 17 of the Constitution in relation to monitoring telephone communications or transmissions on the internet concerning child pornography and drug trafficking is becoming more urgent.

¹³⁸ Politis Newspaper, 17 December 2004.

¹³⁹ *π* _____ *π* _____ 2001, .. 48()/2001.

¹⁴⁰ Politis Newspaper, 17 December 2004.

¹⁴¹ Note by the Ministry of Justice, 13 October 2005.

According to the case-law, the Judge may order the pre-trial detention of an accused in case there is a possibility that he/she may not appear in Court. In *Sener Erbekci v Police and Tolgay Erbekci v Police of 7 May 2005* (Criminal Appeals Number 7622 and 7623), the Supreme Court was asked to annul the District Court's order which ordered the pre-trial detention of the accused. Both accused were Turkish-Cypriots having their residence and their family and other ties in the occupied territory. The District Court therefore decided in favour of their pre-trial detention because they reside and have their family ties in territories not controlled by the Republic and so might not appear in court during the trial. The Supreme Court upheld this decision.

The Supreme Court in *Concerning the Application of Apostolou Kyrkou and Nicou Nikolopoulou now at the Central Prisons in Nicosia for the Issuing of a Habeas Corpus Application and the way the Detention Order is Implemented of 29 July 2005* (Application number 56/2005), was asked to order the release the accused who were detained at the Central Prisons in Nicosia until their trial, because they were not detained separately from the convicted ones as is provided for in Article 10(2) of the International Convention on Civil and Political Rights as ratified by *Law on the International Conventions (Economic, Social and Cultural Rights and Civil and Political Rights) of 1969*, L. 14/1969.¹⁴⁷ The Supreme Court noted that it does not fall within its habeas corpus jurisdiction to examine the said issue, as the habeas corpus order is only issued when the detention is illegal. In the case under examination, the detention order was legal and in any case, its legality was not challenged by the accused. It therefore rejected the application. However, it is alarming according to the court that despite the fact that the Republic has ratified international conventions on the issue, the pre-trial detention of the accused is not separate from the detention of the ones convicted in the Central Prisons.

Detention following a criminal conviction

Legislative initiatives, national case law and practices of national authorities

Detention following a criminal conviction: Prisons

With regards to the number of detainees at the Central Prison, it was reported in the daily press that the number of detainees at the central prison has reached 581, when in fact the capacity of the building allows only 340. Half of the inmates are foreigners.¹⁴⁸

Concerning the external supervision of the Central Prisons, there are complaints boxes at the Central Prison in which inmates can file a complaint to the Ombudsman, at the National Organisation for the Protection of Human Rights etc. This complaint can go directly to the institution addressed. Section 22 of the *Prison Law* (L. 62(I)/1996)¹⁴⁹ provides that a Prison Council be established whose responsibility is to care for the good functioning of the prisons in relation to the Prison law and the Regulations based on this law. The president and the members of the Prison Council are appointed by the Council of Ministers and the District Officer of Nicosia is an *ex officio* member of the Prison Council. The responsibilities of the Prison Council are set out in Section 25 of the *Prison Law* and include the investigation of any complaint by the inmates (and if considered necessary the referral of the complaint to the Minister of Justice and the Director of the Prison), making sure that any abuse of power in the treatment of the inmates is referred to the Minister of Justice and the Director of the Prison.

¹⁴⁷ _____ (_____) (_____) _____ 1969, L. 14/1969.

¹⁴⁸ Politis Newspaper, 2 March 2005.

¹⁴⁹ _____ π _____ π _____ (_____) _____ 62()/1996).

sample for the purpose of detecting drug or illegal substances as well as for those providing adulterated urine sample.¹⁶⁶

The Ombudsman dealt with the issue of urine samples in prisons for the purpose of checking whether inmates have used drugs or illegal substances after receiving a complaint by two inmates who challenged the legality of that issue.¹⁶⁷ The Ombudsman in her report concluded: (1) although the urine control is not obligatory it in fact includes an element of obligation as it is always difficult to detect the true will of those in prisons;¹⁶⁸ and (2) every mandatory medical examination, even of the slightest importance such as urine testing, violates the right to private life. For such a restriction to be justified, it has to be provided for by law.¹⁶⁹ According to the Ombudsman, the taking of urine sample cannot be found in the law and therefore, the practice of the police is faulty, as it violates the right to private life.¹⁷⁰

The report of the Ombudsman does not appear to take into account the amendment of the *Prison Law* which took place in 2005.

With regards to the issue of the prisoners' correspondence, the *Prison Regulations* (K.D.P 121/97) number 115 writes: "correspondence that is addressed to any authority of the Republic, or towards political people or people of the public life or towards media shall always be sent through the Head of the Prison, who may prevent their address in the cases that is determined in the law, and when special reasons so require." "The correspondence addressed to the Prison Council or to the Ombudsman shall not be subject to any kind of control by the prison authorities." "Correspondence that does not fall under any of the above mentioned categories shall only be subject to control when the Head of the Prison believes that reasons of security, or prevention of a crime, or any other reasonable justification so require. In this case, the control of correspondence takes place by a special official who has been ordered to do so by the Head of the Prison."

The Ombudsman after receiving a complaint by an inmate at the Central Prison alleging that the prison guard read a letter sent to a friend of hers concluded that "the reading of a letter sent by or addressed to an inmate constitutes an unacceptable violation of his right, unless for certain specific reasons. The general recourse to reasons of security etc does not constitute an adequate justification to the intervention of the rights of the inmate."¹⁷¹ According to the Head of the Prison the letter sent by the inmate was open. The Ombudsman merely pointed out that the fact that the inmate delivered an open letter does not limit the obligation of the prison authorities to respect her right to correspondence.¹⁷²

Now, as regards body search in prisons, Regulation 118(1) of the *Prison Regulations* writes: "the inmates before their entry in the visiting room and after their return from the visiting room are checked for taking out of the prison or receiving any illegal objects or substances." This is the legitimate basis for body search at the prisons according to the Head of Prisons.

The Ombudsman dealt with this issue after she received a complaint by an inmate who is continuously subjected to body search whenever she returns to the prison in the evenings after coming back from work outside the prison.¹⁷³ The inmate complained that she is subject to a body search according to which she has to strip her clothes off. The contested issue was whether the way the body search went underway constituted degrading treatment, as the inmate suggested. She suggested that the body search took place with no gloves and at a place

¹⁶⁶ Ibid., paragraph 3b.

¹⁶⁷ A/P 222/2005 and A/P 285/2005, published on 27 May 2005.

¹⁶⁸ Paragraph 22 of the Ombudsman's Report.

¹⁶⁹ Ibid., paragraph 23.

¹⁷⁰ Ibid., paragraph 27.

¹⁷¹ A/P 1620/2004, 17 March 2005, p. 4.

¹⁷² Ibid, p. 5.

¹⁷³ A/P 1620/3004, published 17 March 2005.

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where it lacked privacy. The Head of the Prison argued otherwise. The Ombudsman concluded that the body search is taking place in an arbitrary way.¹⁷⁴ The Ombudsman substantiated her opinion by saying: “the possibility of arbitrary exercise of the said body search cannot be excluded, considering the nature and the broad discretion on the place and time of the body search, which is left on the prison guards, who inevitably are in an everyday relationship with the inmates.”¹⁷⁵ As regards the conditions of detention, the inmate complained that the prison guards use methods of intimidation against the inmates. The Ombudsman concluded that “from what has been set out in front of me, no ill-treatment by the prison guards can be substantiated.”¹⁷⁶

The Ombudsman received a complaint by two inmates at the Central Prisons in Nicosia regarding the prison’s health conditions.¹⁷⁷ The Ombudsman met the medical staff who noted that the prison’s medical examinations are based on the *Prisons (General) Regulations of 1997*. It is worth mentioning here that the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* in its 2000 Report characterised the said regulations as “clear and comprehensive”. Therefore, as the Ombudsman noted, the issue on the health conditions at the prison concerns the implementation of those Regulations. The medical staff noted that (a) a newly admitted inmate is subject to a medical examination on the first days of his arrival. However, there is not a specific timeframe for that,¹⁷⁸ (b) once a week a member of the Vaccination Department visits the prison,¹⁷⁹ (c) three times a week a general pathologist visits the prison,¹⁸⁰ (d) three times a week a psychologist visits the prison,¹⁸¹ (e) once a week a dentist visits the prison,¹⁸² (f) once a week a dermatologist visits the prison,¹⁸³ (g) if the general pathologist deems that further examinations are necessary, these take place at a later stage,¹⁸⁴ (h) the inmates who need to have an X-ray are taken to the General Hospital at a specific day,¹⁸⁵ (i) the pharmaceutical prescription is available to the inmates two weeks after their examination.¹⁸⁶

The medical staff expressed two concerns to the Ombudsman. First, that there is no specialised nursing staff at the prison and that the prison guards take on nursing duties without being specialized.¹⁸⁷ The Ombudsman noted that since 1999 the Council of Ministers decided to appoint four psychiatric nurses at the prison, but such decision has never been implemented.¹⁸⁸ The second concern of the medical staff is the lack of building areas at which the inmates are examined. This means that medical examinations often take place with the presence of other inmates or prison guards.¹⁸⁹

The situation described is not in line with the *Prison Regulations*, which provide in paragraph 63 that a general pathologist provides his services every day.¹⁹⁰ Also, paragraph 64 (3) of the *Prison Regulation* provides that the Prison Surgery is open 24 hours per day with the relevant specialised nursing staff.¹⁹¹ Therefore, the Ombudsman noted that the *Prison Regulations* should be implemented and suggested that the Prison Medical Centre, which it has already

¹⁷⁴ Ibid., p. 7.

¹⁷⁵ Ibid., p. 7.

¹⁷⁶ Ibid., p. 7.

¹⁷⁷ A/P 990/2004 and A/P 1055/2004, 25 July 2005.

¹⁷⁸ Ibid., paragraph 5.

¹⁷⁹ Ibid., paragraph 5.

¹⁸⁰ Ibid., paragraph 6.

¹⁸¹ Ibid., paragraph 6.

¹⁸² Ibid., paragraph 6.

¹⁸³ Ibid., paragraph 6.

¹⁸⁴ Ibid., paragraph 6.

¹⁸⁵ Ibid., paragraph 6.

¹⁸⁶ Ibid., paragraph 6.

¹⁸⁷ Ibid., paragraph 7.

¹⁸⁸ Ibid., paragraph 7.

¹⁸⁹ Ibid., paragraph 7.

¹⁹⁰ Ibid., paragraph 10.

¹⁹¹ Ibid., paragraph 10.

been declared will be established, should be finally established. This centre will solve a lot of the above mentioned issues with regards to the medical care in prison and the prison's health conditions.¹⁹²

On the other hand, the Prisons Manager stated that some prison guards are specialised in nursing and provide 24hour therapy to the inmates under the orders of doctors. He also noted that due to the overcrowding in prisons, they face some problems with the medical examination of the inmates.¹⁹³ Clearly, there is a divergent of opinions on this issue between the Ombudsman and the Prisons Manager. The Prison Manager also noted that the following programmes are provided in the prison: technical programs for learning an art, such as electronics, cooking. There are also programs for learning how to read and write, computing lessons, painting lessons, art, sowing. The prison has a chorus and a football team.¹⁹⁴

It is also observed that the inmates at the Central Prison in Nicosia do not currently hold the right to vote in any elections taking place in the territory of the Republic, which appears to be contrary to the jurisprudence of the European Court of Human Rights.¹⁹⁵

Alternatives to the deprivation of liberty

The *Guardianship and other ways of treatment of Offenders Law* L. 46(I)/1996¹⁹⁶, provides alternatives to the deprivation of liberty. Those are: the issuing by the Court of guardianship order, which might include community service.¹⁹⁷ According to Section 6, the Court may issue a community service order only if the offender gives his/her consent on that and only if the Court believes that such a measure would be suitable for the offender. Although the law which provides for community work as an alternative to prison term was passed in 1996 it was not put into operation until March 2005 due to the lack of Community workers whose task would be to monitor the implementation of the courts decision on community work. Community work will be imposed to those whose crime is punishable for six months and up to a year. From 20 March 2005, the Courts will be able to impose community work to convicted people instead of prison term. Five people have already been employed whose task will be to monitor the implementation of the Courts decisions concerning community work.¹⁹⁸ From March to October the courts imposed community work to 55 offenders, which shows that the institution of community work is finally working swiftly.¹⁹⁹

The first community service programme as an alternative to a prison term for offences by minors is put into place. It is hoped that the scheme which will apply to people sentenced to six months or less, will assist in the social rehabilitation of young offenders. It might also be extended to sentences of up to a year if it is successful. It will also cut down on the number of juveniles being sent to the main prison and ease the current overcrowding in the system.

Another law proposal entitled *Law on Periodic Imprisonment*²⁰⁰ is being discussed as an alternative to prison term and will apply to those crimes and criminals as the law on community service applies. According to this law proposal, offenders will have the choice of not being imprisoned continuously but partially. This means the certain offenders will be put in prison only during weekends.²⁰¹

¹⁹² Ibid., paragraph 20.

¹⁹³ Note by the Ministry of Justice, 13 October 2005.

¹⁹⁴ Ibid.

¹⁹⁵ See, *Hirst v. United Kingdom* (no. 2) [GC] no. 74025/01, ECHR 2005.

¹⁹⁶ _____ π _____ π _____ π _____ N. 46(I)/1996.

¹⁹⁷ Section 5, paragraph 5.

¹⁹⁸ Politis Newspaper, 28 Januray 2005.

¹⁹⁹ Fileleftheros Newspaper, 13 October 2005.

²⁰⁰ _____ π _____ π _____.

²⁰¹ Fileleftheros Newspaper, 29 July 2005.

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With regards to the issue of pregnant women in Prison, the *Law on the Protection of Underage Children of Convicted or Suspect Mothers* proposal was passed (L. 33(I)/2005, 15/4/2005).²⁰² According to Section 3 of the said law, when any law provides a penalty that deprives the freedom and for any crime, such penalty shall not be imposed on a mother, unless all the following circumstances are met: (a) the crime is a felony or an offence which the court considers severe taking into consideration the nature of the crime as well as the circumstances of its committal: but only in extreme circumstances; (b) the crime has been committed with the use of force against a person and, taking into consideration the circumstances of the case, the court believes that the mother constitutes a direct or continuous threat to society; and (c) the court decides, taking into consideration the circumstances of the case and considering the direct and continuous danger the mother is to society, any other penalty is inadequate, and the issuing of an order of suspended sentence is not justifiable. No Court orders the detention of a suspect mother for the committal of an offence or a felony, unless the court considers the crime under investigation as serious, taking into consideration the nature of the offence in connection with the circumstances of the case.²⁰³ The provisions above are not applicable for offences punishable under the *Violence in the Family Law* which take place by the mother against any of her children or any other child who stays with her, or by the *Drugs and Other Psychotropic Substances Law*.²⁰⁴ A mother according to this law means any pregnant woman and/or any mother of an underage child up to the age of three.²⁰⁵

The Ombudsman considered a complaint by a pregnant woman in prison.²⁰⁶ The Ombudsman noted that the pregnant woman resides in the women ward in a large room with other inmates; she is nourished according to the same way as the rest of the inmates with the exception that she is provided an additional glass of milk per day, and she is monitored by doctors. The Ombudsman noted that “despite the good intentions of the prison staff, the detention of a pregnant woman denotes additional responsibilities of the state to safeguard the health of the woman as well as her unborn child by providing her treatment that is as close as possible to that which she would have had she stayed in the community. This responsibility derives from the principle of the dignity of a person, which means that the imposition of punishment is individualised and based according to the special circumstances of each person.”

Certain lawyers in an attempt to bypass the decision of the District Court regarding the decision to imprison someone found guilty of a crime, often write a letter to the Head of the Prison requiring the release of their client. And when their claim is rejected, they consider the rejection as an administrative act, which can be challenged at the Supreme Court. The Supreme Court pronounced on several occasions that just by challenging the legality of a detention with a letter, and just from the answer received on that point, does not render the dispute an administrative one. See for example, *Andreas Aristodimou v. Cyprus Republic, Supreme Court decision of 13 January 2005* (Review Appeal number 3431).

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

There are no centres for the detention of juvenile offenders. However, minors are now being housed in a new wing away from adult offenders.²⁰⁷ But during the day they mix with the rest of the inmates.²⁰⁸

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_____ π_π _____ 2005, _ 33()/2005.

²⁰³ Ibid., Section 3(2).

²⁰⁴ Ibid., Section 3(3).

²⁰⁵ Ibid., Section 2.

²⁰⁶ A/P 154/2005, 8 July 2005.

²⁰⁷ Cyprus Mail Newspaper, 3 February 2005.

²⁰⁸ Fileleftheros Newspaper, 9 February 2005.

According to information received by the Ministry of Labour and Social Security,²⁰⁹ the Government is preparing a new draft on Children's Law which will replace CAP 352. The draft law complies with both the UN Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights (which has recently been ratified by L. 23(III)/2005). The draft contains provisions inter alia, for the child's best interests to be of primary consideration in all decisions taken within the framework of the law, for the child's opinion to be taken into account in any matter or procedure affecting him/her, for the support of parents in the upbringing of their children and for the child's particular circumstances to be taken into consideration without discrimination of any kind, irrespective of the child's race or his/her parents' race, gender, language, religion, disability, political or other opinion, national ethnic or social origin. This draft will provide for the establishment of courts for juvenile offenders.²¹⁰

The Ministry of Justice and Public Order informed us that a work therapist provides her services in collaboration with the psychologist and psychiatrist especially to juvenile offenders in the prisons.²¹¹

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

The Plenary Session of the Supreme Court in the *Asad Mohammed Rahal v Cyprus Republic of 30 December 2004* (Application number 1023/2004) examined whether the detention of a foreigner (with view of his extradition) for reasons other than his asylum application is legal. In the case under examination, the applicant had first entered the Republic with a false identity and applied for asylum under his false identity. When his asylum application was rejected he applied again for asylum, under his real name the second time round. In the course of an accident in which he was involved, the Police found out that he used a false identity in order to apply for asylum. For this reason, an order for his detention and extradition was issued by the Immigration Office, with his extradition order being suspended until his asylum application was examined. His detention order however, was not suspended. It was the view of the applicant that his detention was illegal because according to Section 7 (4)(a) of the Refugee Law "the detention of an asylum seeker due to his asylee status is prohibited." The Plenary of the Supreme Court reviewed the case law on the matter and noted that the law on this matter is clear: it is prohibited to detain an asylum seeker for the sole reason of him being an asylum seeker. In the case under examination, the applicant was detained because he committed a criminal offence: he used false identity to enter the Republic and to apply for asylum and therefore, his detention order had nothing to do with the fact that he was an asylum seeker. His application was thus rejected.

The said judgement of the Supreme Court at the *Asad Mohammed Rahal v Cyprus Republic of 30 December 2004* (Application number 1023/2004), decided that the detention of a foreigner based on an order of extradition is legal, even if the foreigner afterwards applied for the status of asylum. This was reaffirmed in the Supreme Court judgement at the *Hamoud M. Yasin and Cyprus Republic of 11 January 2005* (Case Number 1152/1004).

The Supreme Court in the Application of Morteza Mollan Zein from Iran and now at the Police Jail No 10 at the Central Prisons and the Republic of 20 July 2005 (Application number 52/2005), decided that judicial review of detention and extradition order is subject to the jurisdiction of the Supreme Court under Article 146(1) of the Constitution because it falls under the sphere of public law, and as such cannot be examined on the basis of a habeas

²⁰⁹ Note by the Ministry of Labour and Social Security, 3 November 2005.

²¹⁰ Politis Newspaper, 21 April 2005.

²¹¹ Note by the Ministry of Justice, 13 October 2005.

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corpus application (Article 155(6) of the Constitution). Therefore, the habeas corpus application of the applicant was rejected.

The Supreme Court at the *Milos Dejic v Republic* of 26 July 2005 (Application number 371/2005) annulled the extradition orders of a Serbian couple who had been staying in Cyprus for 10 years on the ground that the Immigration Officer's decision to extradite them was unjustified as she did not consider the Council Regulation of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States. The Serbian couple according to the Supreme Court were third country nationals residing in Cyprus on a long term basis and the Government should have taken into account this issue and should not have issued an extradition order. This is the first time that this Council Regulation is being applied by the Cyprus Courts.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Deprivation of liberty due to civil debt

A new law abolished the issuing of prison orders for people who are unable to pay their civil debts (L. 66(I)/2004.)²¹² This law entered into force on the 15 June 2005. However, the Attorney-General confirmed that 80,000 arrest warrants for wayward borrowers were pending.²¹³ This means that the old law will apply to them because the new law does not have a retroactive effect. The only way these people can escape prison is by the president issuing a presidential pardon. Indeed, President Papadopoulos announced pardons for about a dozen inmates²¹⁴ and further suspended for six months the execution of arrest warrants for people who failed to pay their debts. This applies to the 80,000 debtors against whom a warrant was still pending on the 15 June.²¹⁵ After the six-month suspension, the arrest warrant is cancelled and cannot be renewed due to the new law. This will solve the problem with pending arrest warrants for people who failed to pay their debts and in fact renders the new law retrospective.²¹⁶

The Cyprus Bar circulated a memorandum –which was also given to the Parliament- with its formal position on the point dated 9 June 2005. According to the Bar, (1) the new law abolishing imprisonment for civil debts is “wrong” according to the language used by the Bar; (2) the previous law providing that people who failed their civil debts could be imprisoned, did not violate any human rights; and (3) the new law should be amended with view of postponing its coming into effect in June, so that alternative methods of collecting debts be found.

Lifers

The Ministry of Justice is considering a new law proposal according to which those convicted of life imprisonment will be imprisoned for 20 years, after which they may apply for the suspension of their sentence if they have been rehabilitated. This legislation is due to be tabled sometime in 2005.²¹⁷ The said law will not provide for a specific amount of years of imprisonment for those convicted with life imprisonment. However, they may apply for the suspension of their sentence.²¹⁸

²¹² For more on this law see last year's Report.

²¹³ Cyprus Mail Newspaper, 22 June 2005.

²¹⁴ Cyprus Mail Newspaper, 22 June 2005.

²¹⁵ Cyprus Mail Newspaper, 23 June 2005.

²¹⁶ Fileleftheros Newspaper, 24 June 2005.

²¹⁷ Fileleftheros Newspaper, 5 July 2005.

²¹⁸ Fileleftheros Newspaper, 21 September 2005.

The *Kafkaris v Cyprus* case is pending before the ECHR and deals partly with this issue. For more on the Kafkaris case see last year's Report. Also, in the case *Concerning the Application of Christos Simianos for issuing a habeas corpus order of 1 July 2005* (Civil Appeal Number 11983), the Supreme Court refused to re-open a case this is a matter for concern.

It should be noted that the Cyprus Bar Association opposes the law abolishing imprisonment for civil debts. What is more worrying is the Bar's opinion that the previous law which imprisoned people who failed to pay their debts under certain circumstances does not violate any human rights.

The situation concerning the detention of convicted persons serving life imprisonment poses significant reasons for concern as it appears to be in violation of the relevant standards of European Human Rights Law. In particular it is observed that there is no organised practice of exemption, or restriction of the period that a life detainee has spend in prison, while a life sentence effectively implies the detention of a convicted prison for the rest of his physical life.

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

With regards to the issue of agent provocateur and entrapment, in the case of *Attorney-General v Odyssea Kanari of 4 March 2005* (Criminal Appeal Number 7716), the Plenary Session of the Supreme Court decided on the issue of entrapment and agent provocateur and more particularly on what the term entrapment means. In the case under consideration, the Assizes Court declared the defendant not guilty because the "participation [of the Police in the commission of the crime] was not acceptable, as it would have been, had it been passive, that is, had it provided the future offender with the opportunity to fulfil his own goals." According to the Assizes Court the policeman acted as an agent provocateur and incited or entrapped the defendant to commit a crime. In the appeal at the Supreme Court the issue was not whether entrapment constitutes a defence or whether entrapment is an abuse that should lead to the discontinuance of the trial, or whether it constitutes a violation of fair trial. The issue was whether in the particular case there had been an incitement or entrapment, as the concepts should be interpreted. The Supreme Court referred to the *Teixeira de Castro v. Portugal* case regarding the meaning of entrapment and the passive participation in the commission of a crime, as well as to the *Looseley* case. According to the Supreme Court decision, the facts in the *Looseley* case are very similar to the facts under consideration by the Supreme Court. The difference however lies with the fact that in the *Looseely* case, the police did not have any reason to suspect that Looseley had been dealing with drugs; whereas in the case here, there were reasons to suspect that the defendant was a drug dealer.

As a conclusion, the Supreme Court decided that the policeman was not an agent provocateur and he did not incite or entrap the defendant to commit a crime. This was so because: (1) the policeman was not acting by his own right but through orders of his superiors who supervised the procedure and watched the defendant; (2) there had been reasonable suspicion, based on information, concerning the participation of the defendant into drugs trafficking; (3) the policeman appeared as a drug user who wished to buy drugs and nothing that he said or did

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after the first meeting with the defendant might be considered incitement or entrapment. The policeman merely provided the defendant with a usual opportunity to commit a crime.

The *Kanari* case on the meaning of entrapment and agent provocateur was followed by other cases (*Michalis Sellas v Republic of 8 April 2005*, Criminal Appeal Numbers 7794, 7797 and 7799 and *Djermal Kasapoglou v Police case of 16 May 2005*, Criminal Appeal 7760). This case closely followed the *Kanari* case on the above issues.

With the above mentioned cases, it seems that the Supreme Court has interpreted, for the time being, the meaning of entrapment and of agent provocateur.

With regards to other methods of inquiry or research by the Police, the *Police Law of 2004* L. 73(I)/2004,²¹⁹ in Section 25(1)(b) provides that for the purpose of crime investigation, police officers can take a urine or blood sample from any persons, either with their consent, or with a court order in case they do not give their consent, and with the help of a medical doctor. This provision was challenged at the Supreme Court in the *Case Concerning the Application of the Attorney-General to file a Certiorari Order of 30 March 2005* (Application Number 189/2004). The facts were as follows: the District Court decided to reject the Attorney-General's request to compel a suspect to provide a blood sample to the police. According to the District Court the issuing of such an order as well as that particular section of the *Police Law* violates the constitution and, more particularly, Article 7(1) on the right to private life and Article 12(4) on the presumption of innocence. The Supreme Court quashed the decision of the District Court. In particular, the Supreme Court argued that the right to the protection of private life, as well as the presumption of innocence and its extension (the right not to be self-incriminated) is not absolute. Sometimes it can be set aside for the purpose of protecting society from crime, as long as the principle of proportionality is implemented. Therefore, section 25(1)(b) of the *Police Law* does not violate any constitutional right.

The Parliament discussed the issue of monitoring telephone conversation for the purpose of investigating serious crimes.²²⁰ As the situation is now, the police cannot monitor telephone conversations of suspected criminals due to Article 17 of the Constitution protecting the right to privacy, which does not allow for any exceptions to this right, except those mentioned in the Article.²²¹ In line with Article 17, the relevant law on the *Protection of the Right to Private Communication* L. 92(I)/1996²²² states that the Courts may issue an order of monitoring the private communication (a) of people who are imprisoned (therefore have been found guilty by a court of law) or who are in pre-trial detention (defendants awaiting for their trial) and (b) when the means of communication are prohibited by law.²²³ Therefore, the law does not allow the monitoring of private communications of suspects. The Parliament discussed the possibility of amending Article 17 of the Constitution so that the police can monitor the private communication of suspects. The situation is somehow funny because according to Section 2 of the said law, the Cyprus Broadcasting Corporation can use a catalogue of telephone conversations (but not the actual conversation) for the purpose of charging people, but the Police cannot do the same for the purpose of investigating crimes.

²¹⁹ π _____ 2004, _ 73()/2004.

²²⁰ Fileleftheros Newspaper, 7 October 2005.

²²¹ Article 17 of the Constitution writes: "(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."

²²² _____ π _____ π _____ (_____) _____
1996, _ 92()/1996.

²²³ Ibid., Section 6(2).

With regards to the meaning of the private life as well as whether it encompasses the sexual behaviour of a person it was raised as an *obiter dicta* in the Supreme Court decision of *Phylakti Aristodimou v Attorney-General of the Republic of 7 June 2005* (Civil Appeal number 11760). The plaintiff initiated an action against the Republic for malicious disciplinary procedure by the police force against him. The facts of the case were as follows: the plaintiff was a policeman against whom a disciplinary procedure was raised because he allegedly violated Regulation 8 (1) of the *Police (Disciplinary) Regulations of 1989*²²⁴ because he had an out of marriage affair. The said regulation speaks of “improper behaviour” by a member of the police, which constitutes a disciplinary offence. The Disciplinary Board interpreted the said regulation in such a way so as to consider an out of marriage affair by a member of the police force as improper behaviour and impose a penalty of 300 CYP to the plaintiff. This decision was quashed by the Appeals Disciplinary Board of the Police. Apparently, a precedent against the decision to impose a penalty had already been established in the Supreme Court decision of *Andreas F. Grigoriou v Republic case of 7 May 1996* (Application 375/95). The Supreme Court in the *Grigoriou case* said that “the private life of a person extends to his/her intellectual quest and company of people for intellectual, spiritual and physical contact. A state’s specific customs with regards to human behaviour [...] does not constitute a criterion by which to interpret or implement human rights, as found in the Constitution and the European Convention on Human Rights. [...] the conduct of unified behaviour of member states and their citizens has to be harmonised.” Therefore, the Supreme Court in the *Aristodimou case* used the *Grigoriou case* as a precedent and rejected the suit against the Republic for malicious disciplinary procedure because “the police was mistaken with regards as to whether the facts of the case constituted a disciplinary offence under Regulation 8 of the Police Regulations. Surely, the private life encompasses the sexual behaviour of a person.”

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

The legislative framework for the protection of family is: (i) the *Children Law, CAP 352*; (ii) the *Parents and Children Relations Laws of 1990 to 2004* (N. 216/90, 95(I)/95, 30(I)/97, 60(I)/97, 190(I)/2002); (iii) the *Violence in the Family (Prevention and Protection of Victims) Law of 2000* (N. 119(I)/2000 and 212(I)/2004); (iv) the *Adoption Law of 1995* (N. 19(I)/1995); (v) the *Combat of Trafficking in Persons and of Sexual Exploitation of Children Law of 2000*, 3(I)/2000; (vi) the *Probation and other Measures of Treating Offenders Law of 1996*, N. 46(I)/1996; (vii) the *Public Assistance and Services Laws of 1991 to 2003*, N. 8/1991, 97(I)/1994 and 74(I)/2003; (viii) the *Private Children’s Homes Regulations of 1982* (KDP 172/82); (ix) the *Day-Care Centres for School-Age Children Law of 1996*, N. 2(I)/1996; (x) the *Children (Day-Care Centres) Regulation of 1993* (KDP 217/1993); (xi) the *Day-Care Centres for School-Age Children Regulations of 1997* (KDP 157/1997).

According to the *Child Benefit Law of 2002 to 2003* L. 167(I)/2002, as amended by laws 22(I)/2003 and 57(I)/2003, every family residing in Cyprus with at least one child is entitled to a basic benefit provided that parent(s) and child live under the same roof.

The Parliament is discussing the possibility of voting a new law on marriage.²²⁵ The Parliament discussed the *Marriage Law* and the problems arising. More specifically, the Parliament discussed issues of marriages by non-recognised religions.²²⁶

²²⁴ _____ (_____) _____ 1989.

²²⁵ Fileleftheros Newspaper, 4 February 2005.

²²⁶ Fileleftheros Newspaper, 4 February 2005.

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With regards to pregnant women see Section 4 of the *Law on the Protection of Underage Children of Convicted or Suspect Mothers* proposal was passed (N. 33(I)/2005, 15/4/2005) referred to in Article 6 of the Report.

Private – and family life in the context of the expulsion of foreigners

Legislative initiatives, national case law and practices of national authorities

The Ombudsman received a complaint by the Ukrainian Parliamentary Commissioner for Human Rights concerning the extradition of Ukrainian nationals employees from a ship calling at the port of Limassol.²²⁷ The most relevant issue constitutes the expulsion of an Estonian citizen –part of the crew- to Ukraine. Upon his arrival, the Government prevented him from entering Ukraine, so he was forced to travel to Estonia by a ticket bought by his Ukrainian wife. According to the *Aliens and Immigration Law*, a foreigner should be expelled to the state where he came from, or with the consent of the Council of Ministers to a state where he was before entering the Republic, or to any other place, provided the Government of each of these two places acquiesce in accepting him.²²⁸ According to the Ombudsman, the expulsion of the Estonian citizen to Ukraine violated the *Aliens and Immigration Law*.²²⁹

The *Aliens and Immigration Law* at Section 2 provides that for the purposes of this law a “national citizen” is the wife of a Cypriot who is not in a separation from her husband by a decision of a competent court and who is residing with him for a period of not less than one year. In the *Kanthalilatha Manchahayaka Arachchige v Cyprus Republic of 1 June 2005* (Application number 447/2004), the Supreme Court was asked to consider whether the applicant was considered as a national citizen provided that the death of her husband before the completion of one year rendered her case as “special circumstances” and therefore she was a “national citizen”. The Court rejected the argument of the special circumstances. It also asked the representatives to specify whether the meaning of “national citizen” implies that the Cypriot national whose wife is examined as to whether she is a national citizen, must be alive. None of the representatives gave their opinion on the issue, which might have made some difference on the question of whether the applicant is a national citizen and thus the

Article 8. Protection of personal data

Independent control authority

Legislative initiatives, national case law and practices of national authorities

No developments see last year’s Report. The Data Protection Commissioner published three announcements on the website with regards to spam, the right to information of candidates for work in the public sector and fraudulent mails.²³⁰

²²⁷ A/P 334/2003, published 8 November 2004.

²²⁸ Section 14(2) of the *Aliens and Immigration Law*.

²²⁹ P. 19 of the Ombudsman’s Report, A/P 334/2003.

²³⁰ <http://www.dataprotection.gov.cy>

Protection of personal data*Legislative initiatives, national case law and practices of national authorities*

The bilateral agreements that have been concluded during 2004-2005 between the Republic of Cyprus and other countries providing for cooperation in the combat and prevention of organised crime and other forms of crime include specific provisions as to the protection of personal data.

In particular, Article 6 of the *Agreement between the Republic of Cyprus and the Republic of Slovakia on Cooperation in Combating Organised Crime, Terrorism, Illicit Trafficking in Narcotic Drugs and Psychotropic Substances as well as other Types of Crime* ratified by Law 5(III)/2005²³¹ provides that “the provision of personal data protection and any transmission of information between the Contracting Parties shall be carried out in compliance with national legislation of the States of the Contracting Parties and under the following conditions: (a) the receiving Contracting Party may use such data solely for the purpose and under the conditions as stipulated by the originating Contracting Party; (b) the receiving Contracting Party shall, at the request of the originating Contracting Party, provide information on the use of the data transmitted, as well as on the results achieved through it; (c) personal data may be transmitted only to the authorities competent for the fight against organised crime. No data shall be made available to other authorities without previous written consent of the originating Contracting Party; (d) the originating Contracting party shall be responsible for the accuracy of the information transmitted and shall also decide upon whether such a transmission is necessary and relevant. Should inaccurate data transmission or the transmission of data that should not have been transmitted be subsequently ascertained, the receiving Contracting Party shall either correct the errors, or destroy the data that should not have been transmitted; (e) any person whose personal data are to be or have been transmitted shall be entitled to request provision of information on the data transmitted and on the data’s planned use, provided that this is admissible under the national legislation of both States of the Contracting Parties; (f) in any case, upon delivery of data, the originating Contracting Party shall notify the receiving Contracting Party of the timeframe for the destruction of the data in accordance with its national legislation. Notwithstanding such time limit, any data relating to the data subject must be destroyed if their retention becomes unnecessary. The originating Contracting party must be notified of the destruction of the transmitted data and the reasons therefore. Upon termination of this Agreement, all the data received under it must be destroyed; (g) both Contracting Parties shall be obliged to keep records of delivery, receipt and destruction of data; (h) both Contracting parties shall be obliged to effectively protect data against unauthorised handling.”

Similar to the above provisions are the provisions of Article 7 of the *Agreement between the Republic of Cyprus and the Republic of Latvia on Cooperation in Combating Terrorism, Illicit Drug Trafficking and Organised Crime* signed on the 11th April 2005 Article 9 of the *Agreement on Cooperation between the Republic of Cyprus and the Republic of France on Security Matters* signed on 4 March 2005, Article 8 of the *Agreement on Cooperation between Cyprus and Estonia in Combating Organised Crime and other Forms of Crime* signed on 8 January 2004 and ratified by Ratification Law 13(III)/2004,²³² Article 6 of the *Agreement between the Republic of Cyprus and the Republic of Lebanon on Cooperating in Combating the Illicit Use of and Trafficking in Narcotic Drugs and Psychotropic Substances*

²³¹ _____
 _____ π _____
 _____ π _____,
 _____ π _____ (_____)
 _____ 2005, _ 5(____)/2005.

²³² _____ π _____
 _____ π _____ (_____)
 _____ 2004, _ 13(____)/2004.

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and *Organised Crime* signed on 19 July 2002 and ratified by Ratification Law 5(III)/2004²³³ and Article 6 of the *Agreement on Cooperation between Cyprus and Bulgaria in the Fight Against Cross-Border Organised Crime, Terrorism, Trafficking in Human Beings and Illicit Drug Trafficking* signed on the 2 December 2003 and ratified by Ratification Law 48(III)/2004.²³⁴

Also, 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* Ratified by Law 61(III)/2004²³⁵ on 3 December 2004, provides that “where personal data is 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”²³⁶

The Annex of the said Agreement provides the basic principles of personal data protection. More specifically, Section 1 writes: “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 that data are stored.” Section 2 of the Annex writes: “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.” Section 3 of the Annex states: “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.” Section 4 states: “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, as the case may be, a request for communication rectification or erasure as referred to in paragraphs (b) and (c) of the principle is not complied with.” Section 5(1) states: “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.” Section 5(2) states: “Derogation from the provisions under principles 1, 2 and 4 of this Annex shall be allowed when such derogation is provided for by the law or 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.” Section 5(3) writes: “Restrictions on the exercise of the rights specified in principle 4 paragraphs (b), (c) and (d)

²³³ _____ π _____ π _____
 _____ (_____) _____ 2004, _ 5(____)/2004.

²³⁴ _____ π _____ π _____ , _____
 _____ π _____ π _____ (_____)
 _____ 2004, _ 48(____)/2004.

²³⁵ _____ π _____ π _____ π _____ , _____
 _____ , _ 6(____)/2004.

²³⁶ Ibid., Article 15.

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.” Section 6 states that “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.” And finally, Section 7 says that “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 a wider measure of protection than that stipulated in this Annex.”

With regards to developments in state practice the following can be said: (a) The Paphos Municipality was considering installing cameras near the seaside in Paphos. The Commissioner for Data Protection stated that the Municipality had to let the public know that a specific area is being controlled by cameras.²³⁷

(b) The traffic department will soon set up the first 23 hidden cameras in specified roads.²³⁸

(c) The Cyprus Republic signed an agreement with the Lord Chancellor’s Department of the UK for the purpose of receiving technical help in the implementation of the data protection laws and principles.²³⁹

(d) Another issue with regards to the protection of personal data was raised in relation to the Holy Synod Practice of requesting that the Ministry of Interior provided it with the Electorate catalogue in view of the forthcoming elections for Archbishop. The Commissioner for Data Protection argued that such a practice of the Holy Synod violates the *Data Protection Law*. This is so because the Holy Synod wants to have the Christian Orthodox Population Record, which is filed at the Ministry of Interior, for the coming elections for Archbishop. The reason why the Commissioner argued that the said practice violates the *Data Protection Law* lies on the fact that first, providing the Electorate catalogue to the Holy Synod entails the processing of personal data; second, the Ministry of Interior cannot give information as to the religion of the people registered at the Electorate catalogue as this is considered as sensitive information and third, if the Ministry of Interior passes on the Electorate catalogue, people registered at the catalogue have to be given the chance to request their removal from the catalogue.²⁴⁰ It remains to be seen what the Ministry of Interior will do.

(e) It was reported in the daily press that the Parliament was discussing a law proposal which would regulate the work of private detectives. It was reported that the said law proposal would also have to regulate the rights of private detectives in safeguarding that they receive information on other people from the public records of the Government²⁴¹ This is a matter of concern since if passed may violate individual rights and freedoms as well as the law on data protection.

Reasons for concern

It would be an alarming development if the law proposal regulating the work of private detectives would also allow them the right to have access to information from the public records which are not open.

Protection of the private life of workers

Legislative initiatives, national case law and practices of national authorities

²³⁷ Politis Newspaper, 21 October 2005.

²³⁸ Fileleftheros Newspaper, 14 September 2005.

²³⁹ Politis Newspaper, 27 January 2005.

²⁴⁰ Politis Newspaper, 14 December 2004, Fileleftheros Newspaper, 14 December 2004.

²⁴¹ Politis Newspaper, 26 January 2005.

REPORT ON CYPRUS IN 2005

The Commissioner for the Data Protection in cooperation with the European Union Office Providing Technical Help and Information organised a seminar entitled “Data Protection and Monitoring at Work” at which the Commissioner made a presentation.²⁴²

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

Marriage and control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

The Ombudsman in her Annual Report of 2004 noted that the Government is rather hesitant in renewing the residence permits of foreigners while their divorce is pending.²⁴³ This is due to the big number of simulated marriages, as well as the fact that court proceedings take long to finalise. What is happening in practice is that once the Immigration office finds out that the couple ceased to live together, a written note is sent to the foreigner spouse informing them to leave the country. Also, the applications for renewing the residence permit while their divorce is issued, is rejected. In this respect, the Government “tolerates” the illegal stay of the foreigner until the divorce is issued. The result of this practice, according to the Ombudsman, is that foreigners are in a situation full of insecurity as to the status of their stay in the Republic.²⁴⁴

The above situation might also hinder the right to their fair trial according to the Ombudsman.²⁴⁵ This was said in relation to a complaint filed at the Ombudsman’s office, according to which a foreigner was refused to have her residence permit renewed until her divorce was out. The immigration office argued that the said foreigner might come back to Cyprus once they secure a visa, if their presence in the divorce court proceedings is considered necessary. In this respect, the Ombudsman noted that this practice violates the right to a fair trial.

The Consultation Committee examined 58 marriages suspect of being simulated and decided that 33 of them proved to be simulated. These numbers cover the period of 2001-2005 and involve simulated marriages that had been reported.²⁴⁶

A very interesting evolution whose purpose is to combat marriages suspected of being simulated is the Ministerial decision of the Ministry of Interior of 31 March 2005, according to which it is prohibited for wives of Cypriots to continue working in cabarets, bars etc.²⁴⁷ The purpose of this decision is to help detect simulated marriages in which the foreign woman marries a Cypriot national and continues working in a cabaret.²⁴⁸

Article 10. Freedom of thought, conscience and religion

Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection

²⁴² Politis Newspaper, 6 July 2005.

²⁴³ Ombudsman, Annual Report 2004, November 2005, p. 88.

²⁴⁴ Ibid., p. 89.

²⁴⁵ Ibid., p. 89.,

²⁴⁶ Fileleftheros Newspaper, 11 July 2005.

²⁴⁷ This information is found at the Report of the Parliamentary Committee on Criminality entitled *Prostitution-Trafficking*, 16 June 2005, p. 31.

²⁴⁸ Ibid.

Legislative initiatives, national case law and practices of national authorities

Concerning conscientious objectors the following can be said. All Cypriot men between the ages of 18 and 50 are subject to compulsory military service of 26 months according to Article 129 of the Constitution of the Republic of Cyprus and Sections 4 and 5 of the National Guard Law L. 20/1964.²⁴⁹ In addition, after completing military service, reservist obligations apply up to the age of 50.²⁵⁰ The Constitution however, recognises the right of conscientious objectors to do an alternative military service. Indeed, according to Article 10 “No person shall be required to perform forced or compulsory labour”. However, the Article continues to state that this shall not include any service of a military character if imposed or, in case of conscientious objectors, service exacted instead of compulsory military service, provided their status as conscientious objectors is recognised by law.

In line with the Constitution, the right of conscientious objection on ethical, moral, humanitarian, philosophical, political or religious grounds was recognised in the National Guard Law L. 20/1964 as was amended in 1992 by L. 2/1992. More specifically, the said law affords the possibility to conscientious objectors to be exempted from armed military service and instead serve an alternative military service. According to the Section 5A (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 with a uniform for 36 months within the army precincts²⁵¹ or serving without a uniform for 42 months outside army precincts.²⁵² In addition, according to Section 5A (5) if a conscientious objector follows the procedure required in order to be exempted from military service during the period in which he is already doing his service, the same criteria would be applied in examining his application and he may be allowed to continue the remaining of his service either as unarmed service with a uniform within the military (the remaining length of his service multiplied by 1.39) or outside the military without a uniform (the remaining length of his service multiplied by 1.85).

However, the alternative unarmed military service outside the armed forces does not appear to have been organised yet and so far no conscientious objectors have been called up for it. Instead, as a matter of practice, they are granted an indefinite exemption.

With regards to the reserve duty the issue is more complicated. While currently the National Guard Law provides for exemption from active military service for conscientious objectors, it does not provide for such an exemption from reserve duty where a conscientious objector has already completed the normal military service (i.e. armed military service). Indeed, under Section 15 paragraph (e), reservists have to serve their reserve duty in the same manner as they did during the compulsory military service. This means that if they had completed the normal military service they had to serve an armed reserve duty. Thus, if a person has completed his military service and later wants to use his status as a conscientious objector to serve his reserve duty unarmed, either due to the fact that before he had served in the army there had been no provisions for conscientious objectors (that is, before 1992 when the law was amended) or because he became one later, this is not allowed.

This gap in the legislation presents a problematic area for conscientious objectors in Cyprus. Indeed, until 2002 several Jehovah’s Witnesses who did their armed military service and decided to claim their right for conscientious objection by failing to appear for reserve duty, had been convicted and sentenced either to imprisonment of up to 2 years or a fine of up to

²⁴⁹ _____ π _____ π _____, ...
20/1964.

²⁵⁰ Ibid., Section 4.

²⁵¹ Section 5A (1) (b) of the *National Guard Law*.

²⁵² Ibid., Section 5A (1) (a). It has to be noted however that in any event during wartime or time of mobilisation, provisions for “unarmed military service outside the armed forces” can be suspended by a decision of the Minister of Defence (*National Guard Law*, Section 5 A, paragraph 10).

REPORT ON CYPRUS IN 2005

£1500 CYP.²⁵³ The Ministry of Defence rejected their conscientious objectors status because, as stated above, the National Guard Law does not allow reservists to apply for conscientious objection status if they already completed an armed military service. However, since November 2002 the Government, as a matter of policy, does not persecute those Jehovah's Witnesses who refuse to do an armed reserve duty, pending a revision of the National Guard Law.

A bill is pending before the Parliament in order to amend the current legislation in relation to conscientious objectors and their exemptions from the obligation to complete armed military service. This Bill was published at the Official Gazette on the 1st July 2005 and is entitled Bill Amending the National Guard Laws of 1964 up to 2003.²⁵⁴ According to the new bill, a person who is granted exemption from military service as a result of being a conscientious objector, will have a duty to complete either an unarmed military service for the period of time that he would have had to serve in military service plus eight months, or alternative civil service for the period of time that he would have had to serve in military service plus thirteen months.²⁵⁵ Further, the bill affords the reservists the right to opt for an alternative unarmed service within army precincts or outside army precincts, even if they had completed the regular military service.²⁵⁶

According to information by the relevant authorities, until the bill is passed and the alternative unarmed services are organised, as a matter of practice all Jehovah's Witnesses are granted an indefinite suspension from their reservist duty as well as from their military duty.

Positive aspects

The 2005 bill that is expected to amend the current National Guard Law will help to clearly safeguard the rights of conscientious objectors in Cyprus as far as the length of the alternative service and the reserve duty is concerned. Until this bill is passed, and as a matter of practice, all Jehovah's Witnesses are granted an indefinite suspension from their reservist duty, as well as from their military duty. With regards to the current practice, no conscientious objectors have been called up for the alternative military service.

Article 11. Freedom of expression and of information

Freedom of expression and of information

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

In the case of *Kyprianou v Cyprus* (Application no. 73797/01) the Grand Chamber of the European Court of Human Rights held unanimously that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights and awarded the applicant 15, 000 euros for non pecuniary damage and 35, 000 euros for costs and expenses.²⁵⁷

Legislative initiatives, national case law and practices of national authorities

Freedom of Expression (in general)

²⁵³ See for example, *Cleanthis Costa Anrdeou v. Republic of 20 October 1996* (Criminal Appeal Number 6477)

²⁵⁴ _____ π _____ π π _____ π _____ _____ 1964 (. 2) _____ 2003, . 4009 _____ 1—
2005.

²⁵⁵ *Ibid.*, Section 5 B, paragraph 1.

²⁵⁶ *Ibid.*, Section 5 A, paragraph 4.

²⁵⁷ <http://www.echr.coe.int>

The Ombudsman received a complaint by the mother of a pupil complaining that the headmaster of the high school he is attending violated his freedom of expression.²⁵⁸ The pupil under consideration organised a petition to abolish the school uniform. Once this paper was discovered by a teacher, it was confiscated and the pupil was reprimanded by the head of the school. The way the school dealt with this situation, which is characterised by the Ombudsman as intimidation, violated the right to expression of the said pupil.²⁵⁹ This right is also recognised in the international convention on the rights of children, which is ratified by the Republic.²⁶⁰ The Educational Parliamentary Committee is also discussing the new regulations on the way high schools function. The said Committee is attempting to safeguard the freedom of expression for the pupils inside the school, provided they are expressed in a manner that does not violate the integrity or the character of others.

It was reported in the daily press that the Supreme Court acting as an Appeal Court decided that radio stations are free to broadcast political advertisements and this freedom falls under their freedom of expression safeguarded in the Constitution.²⁶¹ This issue arose when the Cyprus Broadcasting Authority imposed a penalty of £20 000 CYP to a TV station called ANT1 because it broadcasted an advertisement having a political character. This, according to the Cyprus Broadcasting Authority, violated the Regulations of the Authority which provided that radio and TV stations are prohibited from broadcasting advertisements of political nature. The TV station applied to the Supreme Court requesting the decision to be annulled, while the first instance court declared the said Regulation as falling outside the scope of the law which gave powers to the Authority to create regulations, L. 7(I)/1998. The Cyprus Broadcasting Authority appealed against the decision of the first instance court which was rejected by the Supreme Court. The Supreme Court made it clear that the banning of advertisements of political nature violates the freedom of expression as safeguarded in the Constitution. Unfortunately, we were unable to find this decision.

Limitations to the Right to Freedom of Expression

Section 122(b) of the Penal Code CAP 154 states: “Anyone who proceeds in any act which obstructs or is likely to obstruct the course of any judicial procedure or any police investigation which takes place for the purpose of opening a court procedure, or investigation taking place based on any section of any law, is guilty of an offence and subject to imprisonment of three years.”

In relation to this Section, the Supreme Court in *Cosmos Press v. Police* (1985) 2 C.L.R. 73, while it was found that the relevant publication of the appellants did not directly constitute an obstruction in the award of justice in any sense, held that the prohibition in s. 122 (b) of Cap. 154, was compatible with the right to freedom of expression guaranteed in the Constitution, since it intends to secure the impartiality and respect for the judiciary, which is one of the legitimate aims of a restrictive measure of the free speech right according to the Constitution.

In *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63, the court dealt with section 50 (1) of the Penal Code, which provides that: “Anyone who in any way publishes in any form incorrect news or information that are likely to shake public order or the confidence of the public towards the state or its organs, or are likely to cause fear or alarm to the public, or are likely to endanger in any way the public peace and order, is guilty of an offence and is subject to imprisonment not exceeding two years or a fine that does not exceed one thousand and five hundred pounds or both penalties. It goes without saying that it constitutes a defence for the accused if he proves in a way that the Court deems satisfactory that the publication took place in good faith and was based on such facts that justify the publication.”

²⁵⁸ A/P 2215/2004, 28 January 2005.

²⁵⁹ *Ibid.*, pp. 6-7.

²⁶⁰ *Ibid.*, p. 4.

²⁶¹ Fileleftheros Newspaper, 21 September 2005.

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Section 51A (1) of the Penal Code writes: “Any person who publicly in any matter and in any way procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance, is guilty of an offence and is liable to imprisonment for twelve months or to a fine of one thousand pounds or to both such penalties, and if it is a legal person to a fine of three thousand pounds.”

The compatibility of this provision with freedom of expression was examined in *George Hadjinicolaou v. The Police* (1976) 2 C.L.R. 63, where it was held that it did not constitute an unjustifiable limitation to the right to free speech.

Defences in a defamation action

In *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63, the court dealt with section 50 (1) of the Penal Code, which provides that: “Any person who in any way publishes in any form incorrect news or information that are likely to shake public order or the confidence of the public towards the state or its organs, or are likely to cause fear or alarm to the public, or are likely to endanger in any way the public peace and order, is guilty of an offence and is subject to imprisonment not exceeding two years or a fine that does not exceed one thousand and five hundred pounds or both penalties. It goes without saying that it constitutes a defence for the accused if he proves in a way that the Court deems satisfactory that the publication took place in good faith and was based on such facts that justify the publication.”

It was held that publications containing false information which had the capacity to shake the public’s confidence to the public order or to the State or its agents constituted an acceptable limitation to the right to free speech in accordance with Article 19 of the Constitution of the Republic, as long as the information related to the state and its organs and not to individual persons carrying executive power.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

In *Sigma Radio TV Ltd v Cyprus Broadcasting Authority of 3 February 2005* (Case number 120/2003) the Supreme Court was asked to annul the decision of the Cyprus Broadcasting Authority by which it imposed a penalty on Sigma Radio for its violation of the Radio and TV Stations Regulations.

The Supreme Court in the said decision decided on the following issues: (a) whether there had been a violation of the fair trial by the Cyprus Broadcasting Authority because the Authority decided on the violation, imposed the penalty, acted as a “witness-prosecutor-judge” and collected the fine; and (b) whether the Authority violated the right of expression. The Supreme Court decided that the Authority did not violate the above-mentioned rights. It based its decision on the jurisprudence of the Supreme Court. Indeed, exactly the same issues (and by the same lawyer) had been raised in the *Sigma Radio TV Ltd v Cyprus Broadcasting Authority* case of the previous year (Case numbers 230/99 et al).²⁶² The Supreme Court in its

²⁶² The freedom of expression was amongst the issues raised in the case of *Sigma Radio Ltd v Cyprus Radio-Broadcasting Authority of 24 February 2004* (Case number 320/99). The case involved the broadcasting of a television program that concentrated on the use of drugs in Cyprus. The program was broadcasted four times in February 2001 and engaged in illegitimate journalistic practices according to the Radio Broadcasting Authority. The program featured reportages in which drug addicts presented in detail how they use drugs and described the overall feeling of using heroin in a rather shocking language. A particular interviewee had interrupted the filming in order to go and meet the dealer outside the house who provided her with her daily dose. The interview also included parts in which the drug addiction was being glamorized by the interviewees’ statements. In addition, the program referred to the inability of the State to provide the drug addicts with adequate nursing, whereas it identified a particular nurse against whom there have been complaints from the public about his standard of professionalism. Finally, the name of a member of the public who appeared on air and contributed to the program was revealed, despite his wish to remain anonymous. The Cyprus Radio-broadcasting Authority ruled that the

Plenary Session analysed the issues raised and decided that there had been no violation of the fair trial provision or of the right to expression. Therefore, the Supreme Court in the 2005 case affirmed its previous decision.

In a similar case (*Sigma Radio TV Ltd v Cyprus Broadcasting Authority of 28 March 2005* case number 1202/2002), the Supreme Court was asked to decide as to whether the Radio and TV Stations Law (L. 7(I)/1998) as well as the Regulations based on that law, violate Article 19 of the Constitution which provides for the freedom of expression. This issue had been dealt with in previous cases, namely the cases 230/99 mentioned above, which decided that the L. 7(I)/1998 and its Regulations do not violate the freedom of expression.²⁶³

In *Sigma Radio T.V LTD v Cyprus Radio-Broadcasting Authority of 3 February 2005* (case number 120/2003), *Sigma Radio TV LTD v Cyprus-Broadcasting Authority of 25 February 2005* (case number 668/2003) and *Sigma Radio TV LTD v Cyprus-Broadcasting Authority of 28 March 2005* (case number 1202/2002) similar issues were raised (and by the same lawyer). These cases were dismissed by the Supreme Court in 2005 and consolidated the rationale behind the abovementioned case (i.e. case number 230/99). It appears that provisions that are alleged to have infringed the right of free speech can be overridden, as long as the Cyprus Radio-Broadcasting Authority acts within its limits of discretion and the Supreme Court is keen on following this in future cases, to the possible detriment of freedom of expression.

On the 25th August 2005 the Supreme Court of Cyprus gave judgment on the appeal of the recently decided case of *“O Logos” v Cyprus Radio-Broadcasting Authority* (Case No. 1133/2003). The appeal was rejected and the applicants had to pay the expenses of the case. The facts of the case involved the broadcast of advertisements of toys, something that is prohibited according to articles 33(2)_ and 34(4)(_) of the laws of the Radio-Broadcasting Authority (10/2000).

The Radio-Broadcasting Authority of Cyprus calculated 74 offences, 36 of which involved breaches of article 34(4)(a), 26 of article 34(4)(_) and other 12 involving breaches of article 34(4)(_) (iii) of the law. Therefore, it imposed a financial penalty of twelve thousand pounds (CY).

The applicants argued that the decision should be set aside on the following grounds: First of all, they claimed that the Radio-Broadcasting Authority was responsible to inform them about their breaches so as to avoid repeating them and therefore breach the law several times during

abovementioned facts broke a number of the provisions of the broadcasting rules. Amongst others, the board decided that the program was in breach of the rules related to respect of personality of the individual and dignity of private life and in breach of objectivity and diversity of opinions. The program was also found to be in breach of the rules safeguarding children from offensive and harmful material, because the program was broadcasted before the watershed time of 9 pm, and in breach of the rules of accuracy. Finally, the channel failed to respect the viewer's wish to remain anonymous during his contribution to the program. The issues raised in this particular case were the following three: Firstly, Sigma TV claimed that the Authority did not have the power to impose financial penalties under the regulations, but only in circumstances where the specific breach involved particular provisions of the law relating the license to broadcast. Secondly, Sigma TV mentioned the absence of rules of natural justice. It claimed that it was subjected to unfair trial because the Broadcasting Authority was both initiating the proceedings and ruling the case. Thirdly, the issue of constitutionality of certain provisions of the law was raised, especially those which seemed to contradict the right of free expression, guaranteed under the ECHR. In regard with the last issue, the Supreme Court of Cyprus ruled that according to paragraph 5 of Article 19 of the domestic broadcasting law, the Authority has jurisdiction to intervene in the particular circumstances. The judgment was based on the precedence of *X Association v Sweden* (1982 28 DR 204) and *Informationsverein Lentia and Others v Austria*, where margin of appreciation enjoyed by radio-broadcasting Authorities in different member states was recognized. In addition, the ruling referred to the relevant directive 89/552/EC that seeks to guarantee to viewers quality programming. The Court held that such arguments justify whatever intervention the Cyprus Radio-Broadcasting Authority did and therefore the application was dismissed. It was indeed a decision which did not enshrine the freedom of speech in the Cypriot case-law, but was held to be justified in the circumstances. Recently decided cases follow the same path.

²⁶³ For an analysis as to how the Supreme Court reached that conclusion see last year's Report.

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the same day. Secondly, they argued that the Authority should determine a specific time in which it considers that a transmission is taking place in the morning, in order to convict and penalise a particular station according to the specific time of transmission. Thirdly, the station argued that the intention of the Authority was to gain economic profit by penalising them, because at the time of the breach nobody warned them to avoid the retransmission of the advertisements. The applicants further argued that the objects in the advertisements were not ‘toys’ within the meaning of the word as defined in a number of references of the Greek Media Regulation body. Finally, the broadcaster claimed that the penalty was excessive and contrary to article 3(2) of the law.

All those arguments were struck out. The judge held that the authority rightly handled the case. The Court agreed that the authority is not responsible in informing the broadcasters about possible breaches of the television code. It is the broadcaster’s duty to ensure compliance with the codes. Also, article 1 of the EU directive 88/378 defines the term ‘toy’ in a way which fits the products advertised on TV. This decision was cross-examined by looking at dictionaries and encyclopedias. Finally, the last argument was rejected in reference to the case of *Antenna Ltd. v Cyprus Radiobroadcast authority of 27 February 2004* (Case no. 362/03) where the judge found that the authority is able to impose penalties for different breaches in the same day and not one penalty per day. For the above mentioned reasons, the Supreme Court ruled that the authority did not act in excess of its powers and therefore, the application failed. The applicants had to pay all expenses.

The Ombudsman has recently published her opinion regarding four complaints from MP’s, who claimed to have been exempted from television coverage in respect with discussions held in Parliament about the annual State budget.²⁶⁴ The complaints were made by MP’s representing parties holding only one seat in Parliament. They felt neglected compared to other major parties that dominated the coverage time. The Cyprus Broadcasting Corporation (CyBC) stated that the complainants had been left out because of technical problems and staff shortage that emerged in the second day of the discussion coverage. In order to show that there was no intention to exclude the complainants from the coverage, the General Director pointed out that in 2003 the CyBC covered the speeches of all participants, including the complainants. In her opinion, the Ombudsman stated that the fact that the CyBC was not ready to cover such an important event due to abovementioned reasons was unacceptable. The importance of the event should have alerted the broadcaster to take measures and intercept any unexpected obstacles that would arise. The fact that the speeches were not broadcasted even at a later date shows the superficiality with which the Broadcaster dealt with the event. The Ombudsman also stressed that according to Section 19 of the CyBC Law, the broadcaster is under a duty to ensure fair apportionment of time to all political parties of the country. Although the term “fair apportionment” encompasses the principle of proportionality with respect to allocating different time slots to different parties according to their popularity, under no circumstances should there be any arbitrary discrimination. The Ombudsman decided that under the then circumstances such discrimination was held to be unjustified. Therefore, she concluded that the CyBC should take her opinion in mind in future cases and act accordingly.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

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

²⁶⁴ A/P 113/2005, A/9 114/2005, A/P 115/2005, A/P 1335/2005, 17 March 2005.

The US Department of State on the Cyprus Report stated: “All workers except for members of the police and military forces, have the legal right to form and join unions of their own choosing without prior authorisation, and workers did so in practice. Police officers were permitted only to join associations that have the right to bargain collectively but not to go on strike. More than 70 percent of the workforce belonged to independent unions.”²⁶⁵ “Antiunion discrimination is illegal; however, union leaders contended that private sector employers were able to discourage union activity because the enforcement of labour regulations was sporadic and penalties for anti-union practices were minimal. Parties to a dispute could request mediation by the authorities.”²⁶⁶

Legislative initiatives, national case law and practices of national authorities

The Parliament passed a *Law Amending the National Guard (Composition, Induction and Discipline) Law* L. 55(I)/2005.²⁶⁷ This law adds article 28A-D to the *Basic Law entitled National Guard Unified Law (Composition, Induction and Discipline) L. 33/1990*.²⁶⁸ According to Section 28 A, it is prohibited for any member of the National Guard to be a member of (a) any trade union or association or body that relates to trade union; (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. Section 28 B provides that 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. Those professional associations cannot exceed the number of two, one for the Officers and one for the non-commissioned officers. Also, the constitution of those professional associations is subject to approval by the Minister of Defence and if any such association acts in violation of this law or its memorandum its operation may be suspended until it complies with the law and its memorandum. Section 28 C provides that any issue the professional associations want to promote, shall be processed in writing to the Army Chief, who in turn forwards it to the Minister of Defence. Section 28 D states that a member of the National Guard cannot be a member of any other organised group unless such membership is approved by the Minister of Defence upon a written application to this effect.

Positive aspects

The law amending the National Guard Law is a welcome development for the members of the armed forces.

Article 13. Freedom of the arts and sciences

Freedom of the arts

Legislative initiatives, national case law and practices of national authorities

The Parliament has ratified the Convention for Cultural Cooperation between the Cyprus Republic and the Portugal Republic in the areas of Education, Science and Higher Education, Civilisation, Youth, Sport and Means of Communication, L. 33(III)/2005.²⁶⁹

²⁶⁵ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

²⁶⁶ Ibid.

²⁶⁷ _____ π _____ π π _____ π _____, L. 55(____)/2005.

²⁶⁸ _____ π _____ π _____ π _____ (_____, _____ _____) _____, L. 33/1990.

²⁶⁹ _____ π _____ _____ _____ π _____ _____, _____ π _____, _____, _____ π _____, L. 33(____)/2000, 11 November 2005.

Article 14. Right to education

Access to education

Legislative initiatives, national case law and practices of national authorities

The daily press reported the following practices in the year under scrutiny: (a) A new Armenian school is to be established in Limassol with the expenses covered by the Government.²⁷⁰

(b) The Government is providing the tuition fees and travel expenses of Turkish-Cypriot students who live in the occupied area and attend English School. The English School is an independent and English speaking school, part private and part public.²⁷¹

(c) The Ministry of Education reaffirmed that the right to education is recognised by the Constitution and covers not only citizens of the Republic but also any other citizen irrespective of whether he/she resides in the Republic illegally or not. With regards to Turkish Cypriot students, the Ministry of Education implements measures for their help. For example, additional lessons for the purpose of learning the Greek language, free food at school, employing bilingual teachers, adjusting the programme at school so that Turkish Cypriot students do not attend the lessons on religion and history and instead attend lessons in their mother tongue, the covering of fees of Turkish Cypriot students who wish to attend private schools.²⁷²

Vocational training

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

The European Social Charter noted that “the information provided in the [Cypriot] report and from the information database on education systems in Europe, secondary education is divided between general secondary and technical-vocational training. There are two cycles of general secondary education: the first cycle (Gymnasio) and the second cycle (Lykeio). The Gymnasio is based on a three-year programme, which ends the nine-year compulsory education period. The Lykeio is open, without examination, to pupils having completed the Gymnasio. It provides a more specialised education and gives access to higher education or to a trade practice.”²⁷³

“Vocational education is provided in technical-vocational schools (Technikes Scholes) and is open without examination, to young people having completed the first cycle of secondary education. There are three types of vocational education programmes: the technical education programme, which focus on theory and practice in science and technology; the vocational education programme, which provides specific training for craft and trade and the Apprenticeship Scheme (Systima Mathiteias), designed for pupils who have not successfully completed the first cycle of secondary education. The first two programmes give access to higher education.”²⁷⁴

²⁷⁰ Fileleftheros Newspaper, 21 January 2005.

²⁷¹ Sunday Mail Newspaper, 6 March 2005.

²⁷² Fileleftheros Newspaper, 7 September 2005.

²⁷³ European Social Charter (Revised), Conclusions 2005 (Cyprus).

²⁷⁴ Ibid.

“The Committee asks whether nationals of other Parties to the Revised Charter or of Parties to the Charter of 1961 have access to secondary education on an equal footing with Cypriot nationals.”²⁷⁵

With regards to higher education, the Committee states that “there are two types of higher education in Cyprus: university education and non-university education. Both types are open to pupils having graduated from the second cycle of secondary education or from the technical-vocational schools.”²⁷⁶

“University education is provided at the University of Cyprus. Its initial level is the Bachelor degree, which is based on a basic 120 credit-hours programme. The second level is the Master degree, access to which is opened to graduates having completed at least three full-time semesters and 30 relevant credits and may be subject to an examination or to the submission of a thesis. The Master degree lasts at three years for full-time students and four years for part-time students. The third level is the PhD, which is opened to graduate students and master degrees holders, subject to specific conditions.”²⁷⁷

“The Committee notes from the Eurydice database that about 550 students are admitted each year. Eligibility to university education is mainly designed for Cypriot nationals or for students with at least one parent of Cypriot origin. Furthermore, there is a 10% admission quota for Greek citizens and a 3% admission quota for Cypriot or Greeks from the Diaspora. So-called “overseas students” are eligible to admission, subject to the condition that they speak Greek or Turkish and that they pass some specific examinations.”²⁷⁸

“The Committee requests confirmation that there are no restrictions other than these language and examination requirements for students who are nationals of other Parties to the Revised Charter or to the Charter of 1961.”²⁷⁹

“According to the Eurydice database, there are seven public non-university higher education institutions. Each institution depends from the ministry in charge of the relevant field. The general duration of the courses provided by these institutions is two semesters. Students who successfully complete the courses are granted a higher professional qualification diploma.”²⁸⁰

“The Committee asks whether nationals of other Parties to the Revised Charter or of Parties to the Charter of 1961 have access to non-university higher education on an equal footing with Cypriot nationals.”²⁸¹

The Conclusion of the Committee was that “pending receipt of the information requested, the Committee defers its conclusion [on Article 10 paragraph 1 of the Revised Social Charter.]”²⁸² With regards to apprenticeship, the Committee noted that “the Apprenticeship Scheme established by the Apprenticeship Act No. 13 of 1996 is part of the vocational training system that the Committee assesses in its conclusion under Article 10(1) of the Revised Charter. It is designed for pupils who do not enter the second cycle of secondary education.”²⁸³

“Apprenticeship is organised within the Technical Schools under the supervision of the Ministry of Education and Culture. Apprentices generally spend two days a week on theory and the remaining three days in practical training with local employers. According to the

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Ibid.

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report, apprenticeships are funded by the Human Resources Development Authority of Cyprus (HRDA) – which is a tripartite body, where the Government and social partners are equally represented, and which refers to the Council of Ministers – through the HRDA Fund levym currently set at 0,5% of the payroll of all enterprises except Government administrations, The Fund financed 373 apprenticeships in 2000, 333 in 2001 and 332 in 2002. However, it is unclear from the [Cypriot] report, whether the Fund finances the entire apprenticeship programme or only the theoretical part, which takes place two days a week. The Committee requests that the Government clarifies this point.”²⁸⁴

“The Committee notes that foreign nationals lawfully residing in Cyprus have access to apprenticeships on an equal footing with Cypriot residents.”²⁸⁵

Regarding vocational training for employed people this “is provided under the Human Resource Development Act No. 125(I) of 1999 and funded through the Human Resource Development Fund levy. In 2000, more than 66, 000 people participated in adult education vocational training programmes, for a total expenditure of about 7 million euros. They were about 60,000 in 2001, for a total expenditure of about 5.8 million euros. These programmes were provided by about 150 public and private institutions employing about 750 people.”²⁸⁶

With regards to the vocational training of unemployed people the Committee noted that “the unemployment rate was low (3.8%) but higher among women than among men (5% of female unemployment). Vocational training for jobseekers is provided in the framework of the Human Resource Development Act of 1999 and is regarded as a priority in order to improve the employment rate. The Committee notes [...] that some specific training programmes were adopted during the reference period. In particular, the Scheme of Enhancing Women Entrepreneurship, which was introduced in March 2002 and designed to develop women’s self-employment in trade, services, tourism and the new technologies. The Human Resource Development Authority also sponsored the ‘Supporting Office Staff’ project, intended to promote access to employment to inactive female jobseekers.”²⁸⁷

“In 2002 about 650 unemployed people participated in active measures based on vocational training, including 155 persons who participated in vocational rehabilitation measures for people with disabilities.”²⁸⁸

As regards training during working hours “the Committee notes that training during working hours is remunerated as working time and that employers are then partly subsidized by the Human Resource Development Fund under the Human Resource Development Act of 1999.”²⁸⁹

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

The right to engage in work and the right for nationals from other member States to seek an employment, to establish themselves or to provide services

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

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

The European Committee of Social Rights noted: “The Committee had previously decided under the 1961 Social Charter that non-discrimination legislation is required in order to create genuine equality of opportunities in the open labour market. A fortiori, this reasoning also applies to Article 15(2) of the Revised Charter.”²⁹⁰

“The Committee notes that Law No. 127(I)/2002 guarantee that persons with disabilities are equally treated with other employees by their employer as regards the procedure for application for employment, recruitment, promotion, dismissal, compensation, training and other terms and conditions of employment. Moreover, the law provides for the increase of employment opportunities through incentives to employers and posts reserved to persons with disabilities. A 2004 amendment of the law also provide for the prohibition of any direct and indirect discrimination. The Committee wishes to receive further information on the right of individuals to seek remedies before the courts in cases of discrimination, as well as on the involvement of organisations of persons with disabilities in drawing up employment programmes and policies. It furthermore wishes to know whether there exist measures to ensure the retention of persons with disabilities in employment.”²⁹¹

“During the reference period, regulations implementing Act No. 127(I)/2002 were promoted to provide for the payment of special grants to employers who employ persons with disabilities (allowances covering salary, equipment arrangements and social insurance). The Self-employment Scheme and the Supported Employment Scheme continue to offer financial assistance to persons with disabilities to set their own business or find a job on the open market. In 2002, the Supported Employment Scheme allowed 125 persons to find an employment. However, the Committee notes that there is no figure on persons with disabilities employed in the ordinary work environment- private and public sector in every capacity, nor on those participating in the Self-Employment scheme. Therefore, it repeats this question.”²⁹²

“The report reiterates that persons with disabilities should be given priority in certain posts in the civil service, as blind people with respect to posts of telephone operators in Public Service, Public Education Service and Parastatal Organisations (Act No. 17/1988 regarding the Engagement of Trained Blind Telephone Operators), but indicates that no information on the number of persons concerned are available. The Committee, nonetheless, recalls that it has reservations as to whether it is compatible with the principle of integration and equal opportunities to reserve any type of occupation to blind persons (Slovenia, Conclusions 2003, p. 504) and asks whether the Government plans to phase out this system.”²⁹³

“Finally, the Committee recalls that Article 15(2) requires that persons with disabilities be employed in an ordinary working environment, except where this is not possible due to the nature of the disability. In such exceptional cases provision may be made for sheltered employment.”²⁹⁴

“The report states that several institutions (the Sheltered Employment Scheme of the Mental Health Services, the Centre for Vocational Rehabilitation of the Persons with Disabilities, the Athalassa Hospital, Social co-operatives, and other public or private institutions) provide for sheltered employment to approximately 100 persons, of whom a small part are supported in the open market. Assistance programmes to move in the open market are also available. According to the report, the salaries paid in these facilities range from symbolic payments to allowances to higher salaries. The Committee recalls that people working in sheltered employment facilities where production is the main activity must enjoy the usual benefits of

²⁹⁰ European Social Charter (Revised): Conclusions 2005 (Cyprus).

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

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labour law. The Committee asks whether this is the case and whether trade unions are active in sheltered employment facilities.”²⁹⁵

“Pending receipt of the information requested the Committee concludes that the situation in Cyprus is in conformity with Article 15(2) of the Revised Charter.”²⁹⁶

Legislative initiatives, national case law and practices of national authorities

It was reported in the daily press that since the beginning of 2005 there was a remarkable increase in the number of community workers. More specifically, for the period of January-April 2005, this number increased from 4219 to 7184 (approximately 70% increase), while the number of non-Cypriot non-community workers for the same period increased by 4.3% that is, from 45268 to 47203.²⁹⁷

By virtue of Law 101(I)/2005, the procedure for registration of physical practitioners was amended while a code of ethics was attached to the said law.

Further, by an amendment introduced in March 2005, the regulating provisions concerning pharmacists would be updated with the corresponding Community provisions, in order to respect the freedom of movement and establishment, by *inter alia* recognising professional degrees and diplomas granted in another E.U. member state.

Law 249(I)/ 2004 amended the *Nursing and Midwifery Law (no. 2) of 2004* to correspond TO the better implementation of Directive 77/452.EEC as amended by Directive 2001/19 /EE (article 3); Directive 77/453/EEC as amended until Directive 2001/19/EC (article 4); Directive 80/154/EEC as amended until Directive 2001/19/EE (article 9); Directive 80/155/EEC as amended by Directive 2001/19/EE (article 10).

Further, there was a proposal for enactment of a new law regulating the professional activities of Members of the Parliament to the extent that they are incompatible to their official duties.

Reasons for concern

According to a relevant bill prepared by the Ministry of Labour, employers who are employing employees who are European citizens, in worse working conditions from those applicable to Cypriot nationals, will be liable to an imprisonment sentence. The bill came as an answer to various publications released in the national press objecting to the practice followed by Cypriot employers subjecting European citizens to different and worse working conditions, and especially salaries, from those that would be, had they been Cypriot nationals. Further, the Labour Parliamentary Committee and related matters warned that the current state of implementation of the Community Principle of freedom of movement and establishment was problematic. In their meeting on 21 April 2005, the Committee requested better enforcement and control on the part of the Ministry of Labour of the *Law on Equal Treatment in Employment*. The President of the Committee observed that European citizens employed in Cyprus faced worse working conditions in contravention to the collateral agreement that are applicable in respect to Cypriot employees. He noted that as a result, Cypriot employees see the former as competitors that do not play the rules of the game in the right manner. This increases the phenomenon of racism and xenophobia with devastating effects for the Cypriot society. The representative of the Ministry of Labour referred to the preparation of relevant regulations which would ensure the equal treatment of employees, which *inter alia* would allow for sufficient control of the implementation and enforcement of

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Fileleftheros Newspaper, 13 October 2005.

the basic legislation to this effect. Further she noted that since 1 May 2004 until the 31 December 2004 there were 5,872 Community workers registered in the Social Insurance Fund. On 15 January 2005, there were 4,219 Community workers, while there were 45,268 Third country nationals (T.C.N.) workers. The representatives of the most powerful trade unions highlighted the need for the relevant collateral agreement becoming legally binding, which would allow for tackling problems faced by employees.

The acting director of the Ministry of Labour had stated²⁹⁸ that the new bill would seek to implement the E.U. Regulation prohibiting discrimination in pay and working conditions between E.U. workers and Cypriot nationals. The bill would impose the sentence of imprisonment of a maximum period of six months, or to the imposition of a fine of £ 2,000 CYP.

According to the national press,²⁹⁹ prison pay to inmates for work carried out while serving their sentences is “demeaning”. According to Prison Regulations, there are four “wage brackets” for inmates. Category A is the highest paying, at 75 cents for a day’s work. For category B it is 60 cents, and for category C 45 cents. The lowest, category D, corresponds to 35 cents. This last category includes new inmates, and persons who cannot work because of old age or health reasons. The current pay regime was approved by the Cabinet in 1996, and has remained unchanged. The Ombudsman has called the authorities to review the pay schemes, warning that current conditions actually deter inmates from joining prison work programmes. The Ombudsman warned that if the current pay scheme continues unaltered, the purpose of “rehabilitation” would remain only a theoretical one.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

The Ministry of Labour and Social Security decided to accept applications for extension of work permits of asylum seekers. The said extension concerns only those businesses that are currently employing asylum seekers (that is, in the area of agriculture and farming), and extension will only be given until the end of the year.³⁰⁰

Access to employment in public administrations

Legislative initiatives, national case law and practices of national authorities

Ministries have transferred orders to the semi-state organisations to amend their regulations so that Community citizens can have the right to work and be promoted in those organisations. So far, Community citizens were not allowed to claim positions related directly or indirectly to the exercise of public authority. Similar amendments were adopted by the public service so that governmental positions could be open to Community citizens. However, certain positions directly connected to the exercise of public authority are exempted.³⁰¹

Article 16. Freedom to conduct a business

Freedom to conduct a business

²⁹⁸ Politis Newspaper, 13 May 2005

²⁹⁹ Cyprus Mail Newspaper, 11 May 2005.

³⁰⁰ Information received by a circular of the Employers Organisation dated 23 August 2005.

³⁰¹ Fileleftheros Newspaper, 24 October 2005.

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Legislative initiatives, national case law and practices of national authorities

Law no. 168 (I) of 2002³⁰² was enacted in an effort to force companies whose stocks were meant to join the Cyprus Stock Exchange (but they did not in the end), to return millions of pounds to investors. According to the national press, “the law was an attempt by parliament to appease thousands of small investors who in 1999 were talked into investing their lifetimes savings in bubble shares.”³⁰³ The law provided that companies would have to return amounts spent for the purchase of shares within 30 days from the day that an application to this effect was filed, with 7% interest to be calculated from the day that such amount was paid to the company. Failure to comply would be punishable with a maximum of five years imprisonment and an up to £50,000 CYP fine. The court is moreover entitled in addition to the above, to order the return of any monetary amount paid or other contribution to the investor.

Following the enactment of the above legislative instrument, thousands of applications were brought before the Cypriot courts, by such aggrieved investors claiming amounts spent for the purchase of shares, in the understanding that the titles of such shares would eventually enter the CSE, but which never actually happened.

The Nicosia District Court in *Charalambos Markides v. CyberGroup Ltd*, held that the defendant company did not have to return amounts spent by the plaintiff in purchasing its shares. The plaintiff had purchased 2,000 shares of the relevant company for £1,400 CYP. The defendant company had applied for its titles to enter the Stock Exchange on 15 June 2000. In July 2001 it revoked its application and until the 9 August 2002 the titles had not been introduced to the Stock Exchange. With a letter dated 29 August 2002, C.M. requested the reimbursement of the amount spent for the purchase of shares with 7 % interest in accordance to the provisions of the relevant law.

It is noted to this effect that in criminal appeal case 7279, in *Lapertas Fisheries*, the Supreme Court had urged such investors to utilise the protective provisions of the rights of investors, and retrieve to the measures offered to their protection from Tort Law. If the issuer of shares had resorted to misrepresentation intending the influence of investors, they could even use the penal code to their protection.

There were questions posed in the national press by lawyers practicing in Cyprus, why this obviously unconstitutional law was allowed to be enacted, resulting to such investors in already a difficult financial situation to use it.³⁰⁴

Article 17. Right to propertyThe right to property and the restrictions to this right*Legislative initiatives, national case law and practices of national authorities*

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 of 1991.³⁰⁵ According to the said law, the responsibility for management of abandoned Turkish Cypriot immovable properties in the Government controlled area is delegated to the Guardian

³⁰² π _____ π _____ 2002, . 168()/2002.

³⁰³ Cyprus Mail Newspaper, 8 February 2005.

³⁰⁴ Politis Newspaper, 8 February 2005; Phileleftheros Newspaper, 8 February 2005; Cyprus Mail Newspaper, 8 February 2005.

³⁰⁵ π _____ π _____, N. 139/1991.

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 of 29 September 2003 (Civil Appeal No. 11303) 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 of Evcaf to its property, in accordance to Article 23 (10) of the Constitution. The Supreme Court based its decision on its findings in *Aloupas v. National Bank* (1983) 1 (A) C.L.R. 55 where it was stated 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’ ”. It thus held that the provisions of the Turkish Cypriot Properties Law of 1991, concerning Evcaf 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, and should remain in force only for so long as necessary, for the protection of such properties.

The above case concerned an agreement which was allegedly concluded between the defendants and Evcaf before the Turkish invasion of 1974. Following such events, the defendants continued to use certain immovable property of which the registered owner was Evcaf, for purposes of their own. In 1994 the Guardian of Turkish Cypriot properties sought to obtain occupation of such property in accordance to the provisions of the Turkish Cypriot Properties Law of 1991. The defendants contested the above, by the existence of an agreement concluded in 1973 with Evcaf by virtue of which they were entitled to use the relevant properties. The District Court decided that evidence admitted on behalf of the defendants was unreliable and ordered accordingly the delivery of possession to the Custodian. On appeal, the Supreme Court by its decision of 31 March 2005, in Civil Appeal No. 22962, upheld the first instance decision.

The decision is welcomed as it ensures that the provisions of the Turkish Cypriot Properties Law are applied in accordance to its purpose, namely the protection of such properties for the benefit of their lawful owners. Further, it highlights the problems faced in proving the existence of contractual relationships and obligations concluded before the events of 1974 that are to be anticipated following a settlement of the Cypriot property problem.

In October 2004 a Supreme Court decision at first instance held that a Turkish-Cypriot had the right to the reinstatement of his property in the Government controlled area (*Arif Mustafa v. The Republic of Cyprus*).³⁰⁶ 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 highlighted the problems with the *Turkish Cypriot Properties (Management and other Matters) Law* and urged a review of this law. This decision has created 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. It also highlighted the need to tackle practical problems arising in relation to the displaced Greek Cypriot currently residing in such properties.

The Attorney General has filed an appeal against the said decision to the Supreme Court which is due to be heard at the Supreme Court on 12 January 2006.³⁰⁷ The Attorney-General

³⁰⁶ For more on that, see last year's Report.

³⁰⁷ Fileleftheros Newspaper, 10 November and Politis Newspaper, 10 November 2005.

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also filed an interim order suspending the execution of the decision is now in force. The decision of the Supreme Court on appeal is still pending. It is noted that the decision if upheld will create the need for an effective address of the problems faced by the displaced Greek Cypriots. It is understood that it will involve huge costs to arrange for alternative accommodation of such persons pending an overall settlement to the Cyprus problem, which may well be unrealistic. It has to be observed however, that a decision declining to give full respect to the property rights of Turkish Cypriots, will be highly problematic, and is expected to be challenged before the European Court of Human Rights.

A further challenge to the *Law on Turkish Cypriot Properties* has been posed by the application for judicial review of *Zehra and Nourai Ahmet v The Guardian of Turkish Cypriot Properties*. On 9 December 2004 the applicants requested the reinstatement of their properties by the Ministry of Interior, but their application was refused on 13 August 2004 since in accordance to the relevant provisions of the Law on Turkish Cypriot Properties only persons resident in the territory of the Republic actually controlled by the Government of the Republic are entitled to such reinstatement. This case is distinguished from the afore-mentioned Arif Mustafa against the Republic which is currently pending on appeal, since Mustafa was actually resident in the territories within the control of the Republic.

In purporting to address the problem of Greek Cypriot displaced persons currently residing in Turkish Cypriot properties, a legislative proposal was prepared by a Member of the Parliament.³⁰⁸ The preamble of the proposal provided that due to the necessity caused by the Turkish invasion of 1974 and the continuous military occupation of part of the territory of the Republic of Cyprus, the use of private property for the purpose of facing the housing needs of Greek Cypriot displaced persons, was necessary, in order to respond to the prevailing situation. Further, because of the uncertainty of the period in which the above circumstances would continue, the present enactment would be necessary. In accordance with Section 3 of the proposal, and while the consequences of the Turkish invasion continued to make it necessary for displaced persons to use private property for the housing needs of displaced person, the Ministerial Council is entitled to order the requisition of such property. The said order would remain in force for three years. If following the relevant period the Council holds the opinion that the needs forcing its coming into force continue to exist, it is entitled to renew it.

On a different note, it is observed that the Supreme Court in the *Ali Kiamil v. the Minister of Interior in his capacity as Custodian of Turkish Cypriot Properties of 24 March 2005* (Case no.133/2005) was faced with an application for restitution of the property of a Turkish Cypriot owner, who made an application for legal aid in support in the same proceedings. The Supreme Court observed that according to the law on legal aid currently in force³⁰⁹ the applicant was not entitled to legal aid. It is observed that the relevant law should be amended as a matter of utmost urgency, since an effective right to access to court in association to the protection of the property rights of persons in similar situation as that of the applicant, renders the applicability of legal aid necessary.

An application made in May 2005 to the Land Registry for authorisation for transfer ownership of Greek Cypriot property situated in the northern part of Cyprus to third persons, caused an intense debate in the national media. The application was referred to the Minister of Interior for decision, while the main political parties have condemned such sales of property in the northern part of Cyprus. It is observed that the lawfulness of a rejection of such an application would be difficult to be justified as it *prima facie* contravenes the right to property of interested persons.

³⁰⁸ No.26, Official Gazette 2005, p.66.

³⁰⁹ *Law on Legal Aid*, N. 165(I)/2002.

In the case of *Eirini Karatzia v Cyprus Republic* of 2 August 2005 (Case number 787/2003), the Supreme Court decided that the justification given by the Ministry of Interior in rejecting the applicant's appeal against an expropriation order which would have affected her property, was not properly justified. Justification along the lines "the amendment of the plans entails time consuming procedure", renders the expropriation order unjustified. Therefore, the Supreme Court annulled the expropriation order.

Reasons for concern

Though the scope of the report is strictly restricted to events taking place in the Republic of Cyprus, and leaving aside those occurring in the occupied territories in the northern part of the island, it is observed that the trend of foreign investors purchasing immovable properties in the occupied territories, owned by Greek Cypriots poses a significant reason for concern. Such investors are acting in disregard towards the property rights of Greek Cypriot owners of estates situated in the northern part of the island, that were displaced following the events of 1974, contrary to the relevant provisions of European Human Rights standards as guaranteed *inter alia* by the European Court of Human Rights' decisions in the case of *Loizidou v. Turkey* and the fourth Inter-state applications of *Cyprus v. Turkey*.

On 9 November 2004, the Nicosia District Court ordered the demolition of a house built by British citizens on Greek Cypriot property in the occupied territories in the northern part of Cyprus and return of such property to its Greek Cypriot owner. The court further ordered the defendants to pay the amount of £7,654.83 CYP to the Greek Cypriot owner of such land as compensation for trespass into his property as well as the amount of £294.41 CYP a month starting from December and until the property is returned to its owner. An appeal has been lodged with the Supreme Court, and the case was set for hearing in January 2005. A decision of the court is now pending. The defendants have also filed an application at the Nicosia District Court for bypassing the decision of the District Court which ordered them to compensate the Greek Cypriot owners. The District Court rejected their application.³¹⁰ The decision has been alarming for investors in Greek Cypriot property situated in the northern part of Cyprus, since it may be sought to be enforced in any European Member State, or may fall the basis for the issue of a European arrest warrant.

Another note for concern constitutes the fact that the Administration of the British Sovereign Bases continues to hinder the use and development of properties owned by Greek Cypriots situated within the bases.³¹¹

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

A note prepared for UNHCR in respect of asylum statistics for Cyprus stated that "An annual total that leapt 363 percent between 2002 and 2003, when during the same period the total in Europe as a whole fell by 20 percent. A 499 percent increase when the first nine months of

³¹⁰ *Meletiyou Apostolidi v. David Charlef Orams and Linda Elizabeth Orams of 19 April 2005* (Application number 9968/04)

³¹¹ Politis Newspaper, 23 March 2005. The said press cut reported that the Parliament was contemplating referring a complaint on behalf of owners of property situated in the bases to the European Parliament. Similar measures were reported as under examination by the Ministry of Foreign Affairs.

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2004 are compared with the same period in 2003. A staggering 563 percent increase in the last quarter of 2003, when the surge began.”³¹² The following was stated:

“Cyprus is the third smallest of the 25 EU states, with a total population of 731,000 in the part of the country controlled by the recognized Government. The number of new asylum seekers making applications in the Government controlled part of Cyprus in 2004 (with December still to be counted) was 7,375. On a per capita basis, this would be the equivalent of 600,000 new applications in the United Kingdom or more than 800,000 in Germany. While such theoretical comparisons have obvious limitations (at the end of the day there is still a huge difference between 7,000 and 800,000), they do nevertheless highlight the starkly different trend that Cyprus has been experiencing compared to most of its fellow EU member states.”³¹³

The question is where all these asylum seekers come from and how is Cyprus coping with this wave. According to the note prepared for the UNHCR “The answer is that the phenomenon is more the result of a strange migration quirk than a wave of new arrivals. Most of the asylum seekers in Cyprus are indeed misusing the system – but in a way that is more misguided than nefarious. Most of them were already in the country legally – at least initially – before they made their asylum claims and helped create a whole swathe of statistics that could very easily be misinterpreted.”³¹⁴

“Although Cyprus's asylum seekers come from around 40 different countries, since late 2003 half of them have come from just two: Bangladesh and Pakistan. Most are students, who came to Cyprus on legitimate student visas or legitimate work visas. In 2002, just 71 Pakistanis and not a single Bangladeshi claimed asylum. Then towards the end of 2003, something changed. By the end of the year, 2,077 Bangladeshis and 480 Pakistanis had claimed asylum – the overwhelming majority of them in the last three months of the year.

A number of factors seem to be involved – first and foremost the fact that asylum seekers are allowed to work, and people on student visas are not.”³¹⁵

The Cypriot authorities only assumed responsibility for assessing asylum claims in January 2002 – prior to that, UNHCR decided which asylum seekers were genuine refugees. As in some other new EU states in Central Europe, the system is young. After some initial teething troubles, additional first-instance staff had been hired and trained by the summer of 2003, and the system was starting to function well. A few months later the numbers soared as Bangladeshis and Pakistanis on student or expired work visas suddenly discovered what appeared to be the magic solution to their woes.

To their credit, the Ministry of Interior and its staff, overburdened as they have been with the sudden surge in asylum applications, have made a great effort to continue dealing with applications in a protection-minded spirit.

Cyprus's overall recognition rate between January 1 and November 30, 2004, was 3.6 percent. If the number of cases closed through withdrawals or failure to turn up to interviews is included, the rate falls to around 1.5 percent. Similarly extraordinarily low recognition rates in Slovakia and Greece have aroused repeated expressions of concern by UNHCR, given that the asylum seekers being rejected include large numbers from countries and regions that have been producing a relatively high proportion of genuine refugees, such as Saddam Hussein's Iraq (in the case of Greece) and Chechnya (in the case of Slovakia).”

³¹² “Cyprus: The twisted reality behind the statistics” by E.Strovalidou and R.Colville, UNHCR 13 January 2005.

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid.

But Cyprus's extremely low recognition rate is not challenged by UNHCR. "We believe it to be fair," said Betsy Greve, the outgoing head of UNHCR's office in Nicosia. "The huge majority of cases are simply not refugees, but students or economic migrants who have been misled to believe that they should apply for asylum in order to prolong their stay in Cyprus."³¹⁶

"Cyprus's unfortunate migration loophole is in the process of being closed. In October, the Cypriot authorities – with the full backing of UNHCR – introduced a fast-track procedure for the big backlog of cases believed to be manifestly unfounded. During the first two months, 1,788 asylum seekers had their cases decided, mostly Bangladeshis and Pakistanis. Of these, 352 were rejected, 20 were given refugee or humanitarian status (12 Iranians and 8 Palestinians) and 1,416 had their cases closed – mostly because they withdrew their request or because they did not show up for their interviews.

In another new development, during the last few months a number of students whose asylum claims were rejected have been immediately deported back to their home countries without being able to finish their studies – thereby sending a strong message that the ruse of falsely claiming asylum is actually now counter-productive."³¹⁷

In addition, "since the beginning of 2004, the authorities have introduced much tighter controls on the issuance of student visas, with migration officers sent out to countries of origin to check applications more thoroughly. Reports suggest that around 90 percent of student visa applications are now being rejected for reasons such as fraudulent documents or because the candidate does not speak English – without which they could not possibly carry out their studies in Cyprus. The role played by some colleges in this affair has also been an issue of somewhat heated debate between the Government and the colleges. Perhaps most important of all, the Government is also planning a major change to the aliens and immigration law which will include an element giving foreign students the right to work on a part-time basis."³¹⁸

"Possibly partly as a result of word starting to go round that the asylum game was up, the number of applications by Bangladeshis and Pakistanis fell by 24 percent and 20 percent respectively in November, 2004 – although some Chinese students and Sri Lankan workers on expired visas appeared to be belatedly trying to jump on the same bandwagon.

It is to be hoped that in the future, as Cyprus tightens its student programmes, and a more accurate message about its asylum system is relayed back to countries such as Pakistan and Bangladesh, that fewer people like Naveed are lured into a sad and untenable predicament. Then the Cypriot statistics will give a more accurate reflection of asylum realities."³¹⁹

"After the EU accession, Cyprus tightened its visa policy, as the result of which the work permits of a large number of seasonal workers from non-EU countries have not been renewed. This has resulted in an influx in the number of asylum applications from persons who are not in need of international protection, during the months of November-December since 2002 (such employment contracts end in November-December)."³²⁰

"[...] Cyprus, lying off the southern coast of Turkey and the western coast Syria and Lebanon and having Egypt to its south, is at the crossroad of Europe with the Middle East and North Africa. Its 671 km coastal line combined with its geographic situation, situation of legal limbo

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ UNHCR, Country Operations Plan for Cyprus 2006

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in the North and recent accession to the EU, triggered irregular migration, in particular through the North of the island to the South (through the Green Line), in particular with the relaxation of the restriction on freedom of movement in 2003.

According to a recent survey amongst high school students, 61.8% of them consider that the presence of foreign workers in Cyprus contributes to the increase of criminality in the country. In general, the press contributes to building such perception. The civil society in Cyprus is still at an embryonic stage. The NGOs dealing with human rights, asylum and antiracism have only started to operate for 2 or 3 years.”³²¹

Cyprus remains a divided country in 2005. Cyprus became an EU Member State on 1 May 2004, with the EU Acquis suspended in the North. It has external borders (sea) with the Middle East, Northern Africa and Europe. The Republic of Cyprus is a State Party to the 1951 Convention and 1967 Protocol. The Government of Cyprus (hereafter “GoC”) adopted national refugee legislation in January 2000, which was amended several times to reach compliance with international standards and the EU Acquis on asylum. The institution of asylum in Cyprus is therefore new (it started to function in 2002) and the political environment, in particular with the suspension of the Acquis in the North, is a complicating factor, which has an impact both on the irregular migration trend from the North and on the nature of UNHCR’s operations in Cyprus.

The Government assumed full responsibility of asylum matters as from 1 January 2002. The Asylum Service was created in April 2002. It has been fully trained and within a short period of time, has been able to conduct RSD in an efficient manner. Over 2,500 decisions on the merits were made by the Service in 2004, and equal number of decisions to close the files on administrative grounds was also taken. The second-instance body was established in August 2004 and its capacity still needs to be developed. It has so far reviewed approximately 300 files, but has not yet issued one single positive decision.

By law, asylum-seekers in Cyprus have right to access the labor market at the same level as third-country nationals. Asylum-seekers have also a right to apply for welfare assistance in case they have no sufficient means. They have the right of freedom movement and choice of place of residence. Under the law, recognized refugees have the right to wage-earning employment, welfare assistance and public education at the same level as Cypriots. While all other Convention rights are afforded at the same level with nationals after three years of lawful residence. There are still, however, problems in the implementation of some of these provisions, mainly in the fields of employment and health, this is due to the lack of government officers knowledge, deficiency in co-ordination between respective competent organs as well as absence of housing schemes available for refugees and lack of integration policy.

The number of asylum applicants, ascending since end 2001, reached an unprecedented level in 2004 (and beginning 2005). In total 9,859 persons submitted an asylum application in 2004 (4,411 in 2003). In 2004, Cyprus became the country with the highest number of asylum seekers per capita amongst EU countries. It is acknowledged that most of the applications for refugee status are abusive (strong refugee/migration nexus). This sharp increase combined with the feeling within the government and society that most claims were abusive and that most a/s came from the North. This triggered the adoption of more restrictive practices approaches and policies on asylum, affecting all sectors, such as access to the procedure at local police, quality of the RSD process, detention and access to rights by asylum seekers and refugees.

³²¹ Ibid.

One of the main areas of concern is the current trend of access to asylum procedures and detention. The Police who is the competent organ of receiving asylum applications, proved that they are unable to process the submission of the increased number of applications, in an efficient and timely manner. In some cases this resulted in asylum-seekers being treated as illegal migrants. The liberal provisions of the Refugee Law on detention are being by-passed by the provisions of the Aliens and Immigration Law.

The Director of the Migration Department started to issue deportation orders towards asylum-seekers who applied after prolonged illegal stay in the country or those who entered illegally. Deportation orders are not implemented towards asylum-seekers, pending a final RSD decision, but asylum seekers remain in detention for indefinite periods, with no judicial review. The conditions of detention have been severely criticized by independent officials of the State, as well as by the Committee for the Prevention of Torture of the Council of Europe. It is expected that in 2006 the issue will not be resolved and shall therefore remain high on UNHCR's agenda. The current NGO network is weak and not in a position to address these new challenges in an effective manner.

Access to rights has also been affected by these new trends, in particular within the framework of the discussion on the transposition of the EU Directive. The authorities are currently considering restricting access to employment for asylum seekers. Within this environment, refugees (418 recognized refugees and 113 granted subsidiary protection) also face greater challenges in their efforts for local integration.

Derived from UNHCR's Global Strategic Objectives (including the Agenda for Protection) and from the Strategic Framework of the Bureau for Europe for 2005/2010 (including Bureau for Europe: Priorities for 2006), the following are the overall strategic goals of the 2006 program of UNHCR Cyprus:

- Continue to assist authorities in the building of the institution of asylum in Cyprus, particularly in ensuring that the quality of the asylum system is safeguarded and that the misuse of procedure is avoided. This goal is to be achieved in order to ensure that the sharp increase of asylum seekers in 2004 and beginning of 2005 will not result in the development of strict asylum policies and deterioration of the standards of protection. The consequences could be increased obstacles to access asylum applications and increased resort to detention for undocumented a/s. In pursuing this goal, UNHCR Cyprus shall focus in particular on the policy priorities relating to women and children particularly in addressing detention issues and access to the procedure.
- Promote the local integration of the recognized refugees in Cyprus with the competent authorities, in particular through advocacy of inclusion of refugees in the existing social schemes of the country and in continuing to play a co-ordination role with relevant government organs, as well as NGOs and refugee association. Focus on sectors which are still weak, such as access to health, access to housing and employment. This goal includes a strong Public Information component, in order to ensure that the Cypriot society is aware about the presence of refugees in Cyprus and develop a positive perception towards them, thus facilitating their efforts to locally integrate. NGOs need to be supported continually in order to facilitate the local integration of refugees, in particular through support to their socio-counseling programs as well as legal assistance projects.
- Continue to cooperate with the Asylum Service and the UK authorities in order to ensure that the Memorandum of Understanding is implemented and that asylum seekers are not deported, do not find themselves in a situation of legal limbo, have access to the RSD conducted by the Cypriot authorities and can easily integrate in Cyprus.

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- Foster enhanced partnership with the NGO sector in order to ensure that the NGOs gain expertise and interest in asylum issues and are in a position to advocate for the rights of persons of concern and become fully credible counterparts of the government in the delivery of its protection responsibility.
- Enhance external relation activities aiming in particular at raising awareness on the protection challenges, in order to prevent, through increased support, a deterioration of the protection situation. The target group should be in particular the EC, EU countries, other donors, CoE, human rights institutions in Cyprus (such as Ombudsperson) and the media.
- Strengthen cooperation with UNHCR Rome and other Office in the sub-region, in order to start a smooth implementation of the regionalization process and ensure that UNHCR Rome shall receive the necessary feed-back to play its role in a meaningful manner. In parallel, Contribute to the sub-regional discussion of relevance, in line with BE's priorities for 2006 (in particular: nexus asylum/migration, focus on external borders of the EU and contribution to the formulation of strategies in relation to the Mediterranean basin etc.)
- Continue to build awareness on SGBV, in particular through the development of prevention strategies in an urban environment.
- *Continue to give priority to the ethical conduct by humanitarian personnel, in line with UNHCR Code of Conduct and other relevant documents relating to ethical conduct.*"

Legislative initiatives, national case law and practices of national authorities

Legal framework

The Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention) ratified by Law 1 (III)/2004 has entered into force.³²²

Law 38 (I) of 2005 amending the Aliens and Immigration (Carriers' Liability) Law of 2000 was enacted to implement the Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. According to the amending provisions, Section 3 of the basic law, would provide that carriers are under an obligation to take all necessary measures to ensure that a third country national that is about to be transported to or transit through the Republic, is a holder of the necessary travel documents and visa, as required by virtue of the Aliens and Immigration Law (Cap. 105) when such a person is boarded on the transport vessel.

In the event that the Director of the Registry and Immigration Department refuses to grant an entry permit, because of lack of the required travel documents or where entry is refused in transit and the carrier transporting such a person to his destination country refuses to board him or her, or the authorities of the state of destination have refused his or hers entry, the carrier is obliged to return such person to the third country from which he was brought, or to the third country that granted the travel documents or to any other third country to which his entry is secured.

If the carrier cannot ensure the prompt return of the third country national, he is obliged without any further delay to find an alternative route and undertake to cover any relevant expenses.

Moreover, Section 3 (5) as amended provides that for any offence of the above obligations on behalf of the carrier, the Director of the Registry and Immigration Department can pose an

³²² Notification L. 174/2005.

administrative fine to the owner of such a ship or plane, or to his representative within the territory of the Republic. The relevant fine amounts to €1,725 CYP for each person carried in violation of the above provisions.

On the 1 June 2005 the Government tabled in the Parliament the *Refugee Regulations (Minimum Standards for the Reception of Asylum Seekers)*. The said Regulations once enacted will transpose Council Directive 2003/9/EC.³²³ In the relevant Parliamentary discussion on the Regulations, a disagreement among two Ministries was noted: the Ministry of Interior wanted work permit will be given to asylum seekers for jobs primarily in agriculture and farming, whereas the Ministry of Labour and Social Security preferred that work permit be given to asylum seekers for jobs in agriculture and farming only.³²⁴ According to information received by the Ministry of Interior, it is expected that the Regulations will be enacted and come into force before the end of the year.

Practice

With regards to complaints by asylum seekers, according to the Ombudsman's Annual Report,³²⁵ in 2004 the number of asylum seekers filing a complaint at the Ombudsman was 136. The majority of complaints referred to the Police Station at Paphos Gate in Nicosia and the Aliens and Immigration Offices of the Police. The said complaints referred to difficulties in the asylum procedure, to arrests, detention and ill-treatment of asylum seekers.³²⁶

The Ombudsman in her Annual Report identified that the main problems with the asylum seekers is the delays at the stage of filing an application for asylum at the police station at Paphos Gate or elsewhere. It was noted that the applicants kept visiting the Paphos Gate Police station or other police stations for weeks before it became possible for them to file their application. Meanwhile, the police arrested them for illegal entry into the Republic and since they were in the process of applying for asylum, they did not possess any document legalising their stay in the Republic.³²⁷

The Ombudsman identified several reasons why there were such delays at the stage of applying for asylum: first, while in 2002 those applying for asylum were around 400, in 2004 the applications were increased into 10 000; second, there are no officials of the Asylum Unit supervising the procedure by which applicants file an asylum application at the police stations; third, the fast track procedure of examining overly unfounded applications as is provided in Section 12 of the *Refugee Law* has not properly been put into practice. It is also stated that massive applications for asylum are filed by foreign students, economic migrants whose work permit has expired and illegal immigrants.³²⁸

A report on the conditions and practices at the Kofinou Reception centre³²⁹ was prepared and released in May 2005 by "Apanemi"³³⁰ in coordination with UNHCR. According to "Apanemi", admission to the Reception Centre is voluntary. The centre was designed to provide temporary, emergency accommodation for 3-4 weeks to newly arrived asylum seekers, pending the issue of the necessary documentation and the completion of the relevant procedures that would enable them to find employment or receive social welfare benefits.

³²³ Politis Newspaper, 30 September 2005.

³²⁴ Antilogos Newspaper, 1-7 October 2005.

³²⁵ Ombudsman, *Annual Report 2004*, November 2005, p. 82.

³²⁶ Ibid.

³²⁷ Ibid., p. 84.

³²⁸ Ibid., pp. 84-85.

³²⁹ The Kofinou Reception Centre was put into operation in 2004. The Centre was planned so as to initially have an intake capacity of 150 persons and eventually accommodate a maximum of 500 persons. There, asylum seekers would be cared of pending a determination of their asylum applications. During their stay, asylum seekers were to receive a monthly income, food, clothes and means of transportation. For more information on the Kofinou Reception Center, please see last year's Report.

³³⁰ Women's Information and Support Centre (NGO).

REPORT ON CYPRUS IN 2005

Admission to the centre is only possible following authorisation of the Asylum Service which is responsible for the operation of the centre in general. Accordingly, reference to the centre is only possible during normal office hours. The report observed that there are significant transport difficulties encountered by asylum seekers residing in the centre, lack of equipment covering their everyday needs. It was noted that residents do not have access to a welfare allowance whilst at the centre, apart from an initial grant of £40 CYP provided by the Asylum Service. The residents are registered as unemployed persons with the Larnaca District Labour Office, and they are informed about available vacancies. The report observed that there are no social workers or psychologists present at the centre, while no systematic monitoring is done by the Social Welfare Service. An alarming point made was that there is inefficient medical care provided at the centre, while there were several reported cases of residents carrying contagious illnesses.

“Apanemi” observed that several incidents of violence were reported and even instances of sexual abuse and that there was an evident security problem at the centre. Several NGO volunteers are providing the residents with lessons on the Greek and English language, while at the time of writing there were 4 children attending the elementary school at Kofinou. Further, it was noted that most of the residents of the centre had arrived into the territory of the Republic through Turkey.

It was reported in the daily press that certain asylum seekers find refuge in mosques yards due to the chronic shortage of facilities. While the Kofinou Reception Centre hosts families and women and children, lone male asylum seekers have nowhere to stay and thus, some of them stay at the mosques yards. The NGO KISA criticised the Government by noting that the benefit given to asylum seekers of 270 CYP is not enough to cover their expenses.³³¹

Positive aspects

It will be a positive development in the area of asylum once the Refugee Regulations (Minimum Standards for the Reception of Asylum Seekers) transposing Council Directive 2003/9/EC, will be passed.

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

The Ombudsman in her Annual Report noted that she had received very few complaints from those who have been recognised as having the status of refugee. Most complaints had to do with the fact that the certain Governmental offices do not entirely comprehend what the status of refugee entails and they confuse it with those requesting asylum. There was the example of a refugee who applied at the Ministry of Labour for work and the relevant official thought he was an asylum seeker and registered him for work given to asylum seekers.³³²

Unaccompanied minors seeking asylum

Legislative initiatives, national case law and practices of national authorities

According to the Refugee Law, in case of an unaccompanied child, the Director of Social Welfare Services assumes the role of the child’s guardian and is responsible for providing all the necessary means for the best interest of the child. During the child’s stay in Cyprus, the Director may place the child in the care of his/her relatives, in foster families, reception

³³¹ Fileleftheros Newspaper, 5 October 2005 and Cyprus Mail Newspaper, 6 October 2005.

³³² Ombudsman, *Annual Report 2004*, November 2005, p. 85.

centres especially designed to accommodate minors or other facilities for minors or in the care of the person who undertook the care of the child during his/her departure.³³³

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

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

In her Annual Report of 2004, the Ombudsman noted with regards to expulsions of foreigners, her examination focused on the procedure according to which foreigners are extradited, as well as on the rights of foreigners to appeal against the extradition order at an administrative level.³³⁴ The Ombudsman noted that the legal framework is still not satisfactory on the issue. More specifically, while the law provides that the person against whom an extradition order is issued must be informed of the order in writing and at a language understandable to him/her on the reasons of the extradition, nonetheless, it does not provide any right of the foreigner to appeal against the extradition order at an administrative level. The Ombudsman noted the need for this right to be safeguarded in the law. She suggested that the Immigration Office published a circular informing all the relevant services of their responsibility to inform every person to be extradited of their right to appeal against the extradition within reasonable time. The Immigration Office according to the Ombudsman, responded in a positive way into this suggestion and issued a new type of letter given to foreigners who are about to be extradited, which informs them of their right to appeal against their extradition.

Additionally, the Immigration Office informed the Ombudsman that the new amendment to the Aliens and Immigration Law which is due to be passed early the following year, will safeguard the right of the foreigner to appeal against their extradition order at an administrative level.³³⁵

³³³ Note by the Ministry of Labour and Social Insurance, 3 November 2005.

³³⁴ Ombudsman, *Annual Report 2004*, November 2005, p. 86.

³³⁵ *Ibid.*, p. 87.

CHAPTER III. EQUALITY**Article 20. Equality before the law**Equality before the law*Legislative initiatives, national case law and practices of national authorities*

Ministries have issued directions to the semi-Government organisations to amend their regulations so that Community citizens can have the right to work and be promoted in those organisations. So far, Community citizens were not allowed to claim positions related directly or indirectly to the exercise of public authority. Similar amendments were adopted by the public service so that the positions in the government could be open to Community citizens. However, certain positions directly connected to the exercise of public authority are exempted.³³⁶

A Greek Cypriot refugee living at a refugee campus filed an application at the Supreme Court arguing that the Government action discriminates against certain refugees. The applicant argues the state provided title deeds to certain refugees residing in refugee campuses, while for not for others, like him. This behaviour violates the right to equality and discriminates one group of refugees.³³⁷

Article 21. Non-discriminationProtection against discrimination*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

In its 2001 *Conclusions on Cyprus*, the Committee on the Elimination of Racial Discrimination expressed satisfaction at the amendment of the *Law Ratifying the Convention on the Elimination of all Forms of Racial Discrimination*³³⁸ i.e. Law 28(III)/1999 which criminalises acts mentioned in article 4 of the CERD and notes: “As a result of the amendment it is no longer necessary that incitement to racial hatred be intentional in order for the offence to be committed.”³³⁹

It was reported in the daily press that on the 13 September 2005 the Committee on the Elimination of Racial Discrimination of the Council of Europe visited Cyprus. Their opinion has not yet been released on the internet.

Amnesty International in its 2005 Report covering events from January –December 2004 noted: “on 30 June [2003]³⁴⁰ the Ombudsperson of Cyprus released a report on the living conditions in the Roma settlement of Makounta village. The report expressed concerns about the failure of the authorities to implement policies decided in March 2000 that were designed to tackle homelessness and education services in Makounta. The report criticised the

³³⁶ Fileleftheros Newspaper, 24 October 2005.

³³⁷ Fileleftheros Newspaper, 3 October 2005.

³³⁸ () 1967, . 12/1967.

³³⁹ *Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Cyprus*, UN Doc A/56/18 paras. 256-277 (2001).

³⁴⁰ 3/2003, 30 June 2003 [π π π / 3/2003]].

authorities' refusal to grant Roma the rights that they should enjoy as Cypriot citizens. One example given was the policy of detaining Roma in prison without a court order, a practice applied to undocumented migrants. Another report published by the Ombudsperson's office on 5 July, noted problems of access to education faced by Roma children in Limassol."

The US Department of State on the Cyprus Report wrote: "Constitutional of other legal mechanisms prohibit discrimination. The 1975 Vienna III Agreement remains the legal source of authority regarding the treatment of Turkish Cypriots living in the south. The Government effectively enforced the agreement, which provides for the voluntary transfer of populations, free and unhindered access by the UNFICYP to Turkish Cypriots living in the south, and facilities for education, medical care and freedom of religion."³⁴¹ "The Government no longer keeps statistics on the number of Turkish-Cypriots living in the Government controlled areas due to the free movement of persons fostered by the April 2003 opening of the checkpoints and the fact that Turkish Cypriots are not required to report to the Government when they settle in the south. [...] There were no reports of Turkish Cypriots subjected to surveillance by the Greek Cypriot police during the year."

Legislative initiatives, national case law and practices of national authorities

According to information received by the Ministry of Justice and Public Order the following practices took place in the period under scrutiny.³⁴²

First, with regards to the Police, it was noted that as from 1 January 2005, the police adopted and implemented a specific action plan to combat discrimination, which focuses not only on police training but also includes the following measures: (i) the establishment of a National Working Group against Discrimination composed of representatives of various religious communities and members of the Cyprus police. The aim of this group is to promote the respect of human rights, fundamental freedoms and the principle of equal treatment of all people irrespective of racial, ethnic or religious background, within the police and through the enhancement of cooperation within the various religious groups resided in Cyprus. (ii) The establishment of an Office for Combating Racism and Discrimination at the Police Headquarters. The staff of the office has the responsibility to cooperate, monitor and advice on all aspects of policing in the area of ethnic and cultural diversity, via contact with the investigating officer or contact with the victim. (iii) The appointment of ethnic liaison officers at every Divisional Police Headquarters to liaise with the leaders of ethnic communities and to focus on issues of race/ethnicity. (iv) The development of specific guidelines on recording racially motivated incidents, whereby any incident is defined and recorded as racially motivated if it is perceived to be racially motivated by the victim or a member of the police, or by a person who was present during the incident and who witnessed the incident, or by a person acting on behalf of the victim. (v) Members of the Cyprus Police have participated in the Transnational Project entitled "Multicultural Education for Police Services in Europe: an Exchange of Learned Lessons, Good Practice and Looks". The Project was organised by the UNESCO Centre of Catalonia and was approved by the European Commission in the framework of the "Community Action Programme to Combat Discrimination, 2001-2006" with view to the promotion of non-discrimination on grounds of ethnic origin, religion and belief within and by the Police. The Police's contribution to the above Project has initiated the adoption of a series of measures.

Second, various schools have organized Anti-Discrimination conferences.³⁴³ For example, the Gymnasium of Neapolis in Limassol organised a Conference on the 17 February 2005 entitled "Respect and acceptance of Diversity-Combating Racial Discrimination and Xenophobia"

³⁴¹ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

³⁴² Ministry of Justice and Public Order Note dated 13 October 2005.

³⁴³ Ibid.

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The Lyceum of Paliomethoho also organised a Conference on Racism and Xenophobia on the 22 February 2005 at the school premises. Main speaker was the Ombudsman.

Third, within the framework of the *Action Programme against Racism*, an awareness-raising seminar took place in the buffer zone, at Nicosia on the 11 and 12 June 2005, under the title “Capacity Building Civil Society”. Representatives from the Greek Cypriot and Turkish Cypriot NGOs dealing with issues of anti-discrimination, and representatives from the Ministry of Justice and Public Order, the Ministry of Labour and Social Insurance and from the office of the Ombudsman participated in the seminar.³⁴⁴

Now as regards complaints filed at the Ombudsman the following can be said.

The Ombudsman received a complaint by an asylum seeker because the Postal Services refused to give him a package that was sent to him on the ground that he was not able to show his residence permit, which he did not have because his employer hold it.³⁴⁵

The said incident raised issues of discrimination according to the Ombudsman. The Ombudsman noted that the Postal Services behaviour is based on a Ministry of Justice Circular (number 24 of 23 June 2003) entitled “Foreigners Service by Governmental Authorities”. The said circular provides for the production of the foreigners’ residence permit as a prerequisite of serving them at governmental offices. The Ombudsman concluded that the said circular introduced “regulations banning non-Cypriot nationals, who presumably are illegal immigrants, from having access to public services. By this ban, these people are automatically banned from having access to services and rights that the relevant authorities provide. [...] The governmental authorities are responsible to ensure the residence status of non-Cypriot nationals only within the exercise of their own competence, and based on their legislation, when the legal permit in the Republic constitutes necessary prerequisite for providing the said service or for exercising the said right. [...] Legal residence in Cyprus is not a prerequisite for receiving a package from the Postal Services. What is necessary is to produce evidence of the person’s identity in order to check whether he is the legal recipient of the package. The introduction of any other condition, not only is not based on a legal cause, but is also irrelevant to the role of the Postal Services.”³⁴⁶ Therefore, according to the Ombudsman, this circular constitutes illegal discrimination.

The Ombudsman received another complaint by the “Immigrant Youth Centre for Young Greeks in Cyprus” with regards to the way insurance companies treat Pontian Greeks, which is, according to the Centre, discriminatory.³⁴⁷ The Ombudsman decided that the policies of insurance companies to exclude Pontian Greeks from getting insured and/or have them insured at a higher rate, is discriminatory.³⁴⁸ The insurance companies argued that the reason why it is more difficult for Pontian Greeks to get insured is because of their past practice which has shown that Pontian Greeks are more prone to accidents and usually do not cooperate well with the insurance companies. The Ombudsman noted that “such a policy is based on the racial or ethnic origin of the insured and is unacceptable as it violates the *Equal Treatment (Racial or Ethnic) Origin Law of 2004* (L. 59(I)/2004).”³⁴⁹

The Ombudsman received another complaint by a Pontian Greek against the Social Welfare Services because they refused to provide him with a disability allowance on the ground that he is not a Cypriot national.³⁵⁰ According to the research made by the Ombudsman, the said

³⁴⁴ Ibid.

³⁴⁵ A.K.R. 18/2005, 29 March 2005.

³⁴⁶ Ibid., p. 4.

³⁴⁷ A/K 5/2004, A/K 50/2005, 23 June 2005.

³⁴⁸ Ibid., paragraph 4.1.

³⁴⁹ Ibid., paragraph 4.1.

³⁵⁰ A.K.P. 32/2005, 23 August 2005.

Pontian Greek had a Greek nationality and is given a “visitors’ visa for indefinite stay”. The *Public Allowances Laws* provide that economic help is given to every person residing permanently in Cyprus and whose income is not sufficient for his basic needs. As to when a person is considered as residing permanently in the Republic, the Attorney-General in his opinion stated that the criterion is that of permanency. In this respect, the Pontian Greek had been living in Cyprus since 1999 with his family (parents and sisters) and was given a visitors’ indefinite stay visa. Therefore, being Cypriot national is not a criterion by which the Social Welfare Services can refuse a public allowance. Additionally, based on the principle of equality between Cypriot and EU citizens Social Welfare Services should not make this distinction when providing allowances. Therefore, the Ombudsman stated that the invocation that the applicant did not pose a Cypriot nationality, was unjustifiable and arbitrary and cannot find its basis on the relevant laws.

Positive aspects

The findings of the Ombudsman in relation to the complaint concerning the postal services, are expected to have far reached effects.

Reasons for concern

It is alarming that the Social Welfare Services brush aside so easily the application for a benefit by a non-Cypriot national, and justify it on the fact that the applicant is not a Cypriot national. This raises questions as to whether the Social Welfare Services are well aware of the laws they should be applying and is a reason for concern.

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

It is perhaps worth mentioning a criminal case which commenced on 19 September 2005 before the Nicosia Assizes Court in relation to an extremist organisation entitled “Golden Dawn” where the Greek-Cypriot defendant was accused of causing actual bodily harm on a Turkish-Cypriot as well as for inciting hatred between Greek-Cypriots and Turkish-Cypriots.³⁵¹ It is not clear from the press release which laws are actually utilised. We believe however that Section 47 of the *Penal Code* could have been the basis for the prosecution.³⁵² The Assizes Court decided to acquit the defendant from the charges as the prosecution had failed to prove without reasonable doubt the charges against the accused.³⁵³

Protection of Gypsies / Roms

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

³⁵¹ Fileleftheros Newspaper, 17 September 2005.

³⁵² Section 47 of the *Penal Code* provides that a person who takes publicly any action, with the intention of promoting hostility between the communities, religious groups, due to their race, religion, colour or sex is guilty of an offence. In the event of conviction for such an offence, sentence may be up to 5 years imprisonment.

³⁵³ Cyprus Mail Newspaper, 5 November 2005.

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Amnesty International in its 2005 Report covering events from January –December 2004 noted: “on 30 June [2003]³⁵⁴ the Ombudsperson of Cyprus released a report on the living conditions in the Roma settlement of Makounta village. The report expressed concerns about the failure of the authorities to implement policies decided in March 2000 that were designed to tackle homelessness and education services in Makounta. The report criticised the authorities’ refusal to grant Roma the rights that they should enjoy as Cypriot citizens. One example given was the policy of detaining Roma in prison without a court order, a practice applied to undocumented migrants. Another report published by the Ombudsperson’s office on 5 July [2004], noted problems of access to education faced by Roma children in Limassol.”

Article 22. Cultural, religious and linguistic diversity

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

The Cyprus Broadcasting Corporation, the public broadcaster, is showing a weekly comedy series which is in Turkish language and stars predominantly Turkish Cypriot cast.³⁵⁵

Article 23. Equality between man and women

Gender discrimination in work and employment

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

The US Department of State on the Cyprus Report wrote: “In June 2003, a senior editor at the semi governmental news agency Cyprus Broadcasting Corporation (CyBC) was found guilty of sexual harassment and actual bodily harm charges stemming from a 2002 incident involving a female television reporter and presenter. The courts fined the defendant approximately \$2,225 (1,000 pounds). In June, the Supreme Court ordered CyBC to lift its employment suspension of the defendant. The defendant’s appeal of the fine was pending at year’s end.”³⁵⁶

Legislative initiatives, national case law and practices of national authorities

The *Penal Code CAP 154* provides that the crime of incest can only be committed by a man and not by a woman. In particular Section 147 states: “A person who has intercourse with a woman knowing that she is his grand daughter, daughter, sister or mother is guilty of the offence of incest and is subject to imprisonment of seven years, irrespective of whether the intercourse took place with or without the consent of the woman.” The Assizes Court in Paphos rejected the argument that this law is unconstitutional due to the fact that it penalises the crime of incest only for men. However, it noted that for the purposes of equality incest committed by women should also be a crime.³⁵⁷

³⁵⁴ 3/2003, 30 June 2003 [_____ π _____ π π _____ / 3/2003 _____].

³⁵⁵ Cyprus Mail Newspaper, 13 January 2005.

³⁵⁶ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

³⁵⁷ Fileleftheros Newspaper, 21 October 2005.

REPORT ON CYPRUS IN 2005

The *Law on Equal Pay between Men and Women for the same Work or for the Work of Equal Value* L. 177(I)/2002 provides for the establishment of a Committee of the Investigation and Assessment of Work and defines its terms of reference. The Committee, for the purpose of carrying out its powers relating to the application of this Law, collects information, carries out investigations, assesses comparable jobs and submits a report to the inspector in charge.³⁶⁷

Certain gymnastic groups do not allow women to become members of those groups. This was discussed in the Parliament on 31 May 2005.

Reasons for concern

It is a reason for concern that the regulations on the transfer and /or assignment of teachers make distinctions between married and unmarried people, with the former ones having a more favourable treatment than the unmarried ones. It is advised that these regulations should be amended on the said point, as they violate the right to equality. This is a point that the Ombudsman also stated.

Positive actions seeking to promote the professional integration of women*Legislative initiatives, national case law and practices of national authorities*

The former Attorney-General in an Opinion concluded that positive measures seeking to promote the professional integration of women and positive measures in general are prohibited by Article 28 of our Constitution which safeguards equality.

Gender discrimination in the access to goods and services*Legislative initiatives, national case law and practices of national authorities*

The Supreme Court announced a regulation in January 2005 according to which women lawyers are permitted to appear in court wearing trousers. Before this regulation, the dress code for women was, black skirt and white shirt.³⁶⁸

It is observed that first Women's Cooperative Bank was established in Cyprus.³⁶⁹ The Bank seeks to soothe the problem of access to financial resources. The Bank does not rely on donations but on deposits and its clients can be both men and women. The objectives of the bank, inter alia, include: (a) to enhance the creation and promotion of women-owned business, preferably in new fields. The coop has actively participated in the creation of the National Scheme to Enhance Female Entrepreneurship launched by the Ministry of Commerce, Industry and Tourism; (b) to cooperate with the Government as well as various Institutions in Cyprus and abroad in order to absorb funds and services in the framework of a number of projects. These sources could be utilised for the provision of more flexible loan terms. In addition to the aforementioned programme, the coop has been part of a number of European (e.g. Women's Euro chambers) and Euro-Mediterranean (e.g. AIM, SIFRA) networks; (c) to carry out research on women-related issues. The bank's first project was on Female Entrepreneurial Activity in Cyprus. Its findings were useful in the formulation of suggestions towards the National Scheme to Enhance Female Entrepreneurship launched by the Ministry of Commerce, Industry and Tourism. A second project is being planned which will be a Comparative Study Between Men and Women Entrepreneurs in Cyprus; (d) to organise seminars and workshops in order to support and promote the economic advancement

³⁶⁷ Ibid.

³⁶⁸ Cyprus Mail Newspaper, 13 January 2005.

³⁶⁹ Cyprus National Report, on the Implementation of the Beijing Platform for Action (1995) and the outcome of the twenty-third Special Session of the General Assembly (2000) (Nicosia, 2005), pp. 35-36.

of women-owned business (e.g. on preparing business plans). Free advice/guidance (e.g. in the preparation of the business plan) was provided to women interested in applying for the National Scheme to Enhance Female Entrepreneurship; (e) in future: the coop is currently looking into ways to create a business incubator for companies launched by women. This should enable women to sustain their launched ventures within the first two starting years (which are also the most difficult ones) by providing office space, office assistance, mentoring and legal advice, links and networking.

The Ombudsman in her Annual Report for the year 2004 noted that a complaint was filed at her office by a male widower.³⁷⁰ The said widower applied for a widower pension at the Ministry of Labour but his application was rejected because a widower pension is only provided to female widowers and not males. The Ombudsman decided that the decision of the relevant office fell within the boundaries of the law. However, she noted that the relevant office must examine the wider issue of equal treatment between men and women in the area of pensions.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

According to figures published by the Cyprus National Report on the Implementation of the Beijing Platform for Action³⁷¹ there was one woman Minister of Education. At present the Director of Culture Services is a woman. However, there has been no Permanent Secretary of the Ministry, nor any director of any of the Departments of the Education (Primary Education, Secondary General Education, Secondary Vocational Education and Higher Education), notwithstanding the fact that, 71% of the teaching staff at primary and secondary level of education are women.³⁷² In the Cabinet, there was only one woman among the 11 Cabinet ministers, the Minister of Health, who now has resigned. There was another woman Minister appointed in 1993, the Minister of Education and Culture.

However, there are now women appointed in high political posts. These appointments include the Ombudsman, the Law Commissioner, the Auditor-General, the Deputy Accountant-General of the Republic and the Commissioner for the Protection of Personal Data. For the first time a woman holds position in the Public Education Commission (a five-member Commission). During this period, there are women ambassadors in Brussels, London, Washington and in other important capitals.³⁷³ 37% of the entire Civil Service are women and the percentage of women's participation in the senior officials category increased from 5% in 1995, to 14% in 1999, to 21% in 2001 and 28.82% in 2003. In August 2003, 25 women were members of the Boards of Semi-Government Organisations, which are Boards appointed by the Government, out of 165 members, representing 15.15%. However, some Boards still appear to be "men's clubs".³⁷⁴ In 2003 26.4% of judges are women.³⁷⁵

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

³⁷⁰ Ombudsman, *Annual Report 2004*, November 2005, p. 172 (A/P 1267/03 and A/P 1087/04).

³⁷¹ Cyprus National Report on the Implementation of the Beijing Platform for Action (1995) and the outcome of the twenty-third Special Session of the General Assembly (2000), (Nicosia, 2005)

³⁷² *Ibid.*, p. 27.

³⁷³ *Ibid.*, p. 37.

³⁷⁴ *Ibid.*, p. 37.

³⁷⁵ *Ibid.*, p. 37.

REPORT ON CYPRUS IN 2005

The parliament ratified the *European Convention on the Exercise of Children's Rights* by L. 23(III)/2005 on 22 July 2005.³⁷⁶ The European Convention on the Exercise of Children's Rights is now part of the national law of Cyprus and in case of contradiction it supersedes the national law.

According to article 1 paragraph 4 of the Convention "every state shall [...] specify at least three categories of family cases before a judicial authority to which this Convention is to apply." Paragraph 5 states "any party may, by further declaration, specify additional categories of family cases to which this Convention is to apply or provide information concerning the application of Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and 11." The family cases before a judicial authority to which this Convention is to apply are: (a) custody, (b) adoption and (c) maltreatment and cruel behaviour.³⁷⁷

The Convention recognises procedural rights of a child, including the right to be informed and to express his or her views in proceedings (Article 3) as well as the right to apply for the appointment of a special representative (Article 4). In Article 6 the Convention provides that in proceedings affecting a child, the judicial authority, before taking a decision, shall: "(b) in a case where the child is considered by internal law as having sufficient understanding: ensure that the child has received all relevant information; consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child; allow the child to express his or her views. (c) give due weight to the views expressed by the child."

Article 12 of the Convention provides: "(1) Parties shall encourage, through bodies which perform, inter alia, the functions set out in paragraph 2, the promotion and the exercise of children's rights. (2) The functions are as follows: (a) to make proposals to strengthen the law relating to the exercise of children's rights; (b) to give opinions concerning draft legislation relating to the exercise of children's rights; (c) to provide information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children; (d) to seek the views of children and provide them with relevant information." The family cases before a judicial authority to which this Convention is to apply are: (a) custody, (b) adoption and (c) maltreatment and cruel behaviour.³⁷⁸

In line with the right of children to be able to express their views in judicial proceedings it was reported in the local daily press that a nine-year old boy will give evidence under oath against his mother at the Family Court.³⁷⁹

A law proposal is pending for the establishment of a Commissioner for the Protection of Children's Rights.³⁸⁰ The said law proposal does not give powers to the Commissioner to hear complaints regarding the rights of children. It gives the power to transfer any complaints to the relevant authorities and to follow the investigations and results. The powers of the Commissioner include, the supervision as to whether international conventions and national legislations for the protection of children are being followed; to provide information on issues regarding the rights of children; to represent children and to promote their views in the decision-making centres.³⁸¹

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N. 23(III)2005.

³⁷⁷ Council of Ministers Decision number 56.045 dated 11 July 2002.

³⁷⁸ Ibid.

³⁷⁹ Politis Newspaper, 11 November 2004.

³⁸⁰ Note received by the Ministry of Labour and Social Security, 3 November 2005.

³⁸¹ Politis Newspaper, 2 February 2005.

According to information received by the Ministry of Labour and Social Security,³⁸² the Government is preparing a new draft on Children's Law which will replace CAP 352. The draft law complies with both the UN Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights (which has recently been ratified by L. 23(III)/2005). The draft contains provisions inter alia, for the child's best interests to be of primary consideration in all decisions taken within the framework of the law, for the child's opinion to be taken into account in any matter or procedure affecting him/her, for the support of parents in the upbringing of their children and for the child's particular circumstances to be taken into consideration without discrimination of any kind, irrespective of the child's race or his/her parents' race, gender, language, religion, disability, political or other opinion, national ethnic or social origin.

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Legislative initiatives, national case law and practices of national authorities

A National Plan for the Elderly is being discussed at the Ministry of Labour and Social Security. The aim of this Plan is to improve the social support of the elderly and to promote a dignified lifestyle. This plan will include positive measures, improvement of health services for the elderly, access to work and education for life etc.³⁸³

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

According to the *Annual Report of the Ministry of Labour and Social Security*,³⁸⁴ the Ministry adopted a Plan for Encouraging Families to Care for their Elderly and Disabled Persons. According to this plan, families can take a fund of up to £6000 CYP for the purpose of altering buildings and making any other arrangements so that they can be able to keep their elderly or disabled in the family home.

According to a Note received by the Ministry of Labour and Social Security,³⁸⁵ supportive services which aim at enabling older persons to remain in their own familiar environment instead of being placed in residential homes include: (1) home-care at a local level: the home-care programme has been expanding in recent years and has had successful results throughout Cyprus. Home-care services can be governmental and non-governmental. Home care provision can be financed in full or in part through the public assistance legislation. A very positive development is that informal carers (family members) may now receive a monthly allowance for providing care to an older person who is a public assistance recipient, if the carers have been obliged to terminate their employment in order to take on this role. (2) Tele-care services operated by the private sector provide security to older persons who live alone and have health problems and enable them to remain in their home environment. For recipients of public assistance, the cost of this service and installation of the necessary equipment is provided from public assistance. Currently, there are about 40 recipients of public assistance using these services (older persons and persons with disabilities). (3) Day-care programmes have mainly been developed by the non-governmental sector. Local communities and NGOs are encouraged to develop and run supportive services on a local level by providing older persons with technical assistance and government grants. The cost of

³⁸² Note by the Ministry of Labour and Social Security, 3 November 2005.

³⁸³ Fileleftheros Newspaper, 20 February 2005.

³⁸⁴ _____, *π* _____, 2004, p. 90.

³⁸⁵ Note by the Ministry of Labour and Social Insurance, 3 November 2005.

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day-care for older persons may be covered in full or in part through the public assistance legislation. In order to safeguard the best possible quality of care for persons who use day-care services, the Social Welfare Services are empowered by legislation to visit and inspect the facilities providing such services (see *Adult Day-Centres Law of 1997*, L. 38(I)/1997³⁸⁶ and *the Adult Day-Centres Regulations of 2000*). (4) The Scheme for Improvement of Housing Conditions aims to improve the living conditions of public assistance recipients or borderline cases. The scheme provides for house repairs and house extensions. The maximum amount granted is £7000 CYP.³⁸⁷ In 2004, an amount of £309.746 CYP was awarded to 76 people. (5) The Family Support Scheme for the Informal Care of the Elderly and Disabled Members aims to promote independence and prevent institutionalisation. It provides grants of up to £6000 CYP to individuals and/or families for home alteration and the purchase of equipment, which is necessary for the care and accommodation of an older person or a person with disabilities (who may be a family member or a friend). In 2004 an amount of £145.000 CYP was granted to 30 families.

Specific measures of protection for the elderly

Legislative initiatives, national case law and practices of national authorities

The following measures and/or developments took place during the period under scrutiny whose purpose was to fight the isolation of the elderly people:

(a) According to the *Annual Report of the Ministry of Labour and Social Security*,³⁸⁸ the Ministry adopted a Subsidisation Plan for the Self-Employment of the Elderly. According to this plan, people over 63 are granted the amount of £1500 CYP for the purpose of acquiring equipment and/or materials useful for their new job. Indeed, according to information received by the Ministry of Labour and Social Insurance,³⁸⁹ the Self-Employment Scheme for Older Persons was enforced on 30 November 2001. The Scheme targets persons of 63 years of age and over, whose income does not exceed £400 CYP per month for one person or £500 CYP per month for a couple. It aims at motivating older persons to enter, re-enter or remain in the labour market through self-employment. An applicant may be granted up to £1,500 CYP. It is possible for a beneficiary couple to reapply for a second grant, five years after receipt of the first grant. The Subsidisation of Holidays for Older Persons and Persons with Disabilities Scheme aims at enhancing their social inclusion and providing older persons with a better standard of living. It provides for a holiday allowance for accommodation in Cyprus and abroad.

(b) The Ministry of Work and Social Security adopted a Holidays' Subsidisation Plan for the Elderly and Disable Persons. According to the plan, elderly and disabled persons who are entitled to a public benefit can receive £150 CYP to encourage them to go on holidays.³⁹⁰

(c) *The Public Assistance and Services Law*³⁹¹ safeguards a minimum standard of subsistence for persons in need while incorporating employment incentives so that they can gradually become self-sufficient. These incentives are included in the following law provisions: (i) an amount of £40 CYP is not taken into account when estimating the salary income of public assistance recipients who are 65 years of age and over (Section 9(a)(iii)); (ii) a public

³⁸⁶ _____ 1997, _ 38()/1997.

³⁸⁷ It seems that the Scheme for Improvement of Housing has increased the amount granted to families for the purpose of repairs and house extensions from £6000 CYP that was last year, to £7000 CYP that is this year.

³⁸⁸ _____, π _____, 2004, p. 90.

³⁸⁹ Note by the Ministry of Labour and Social Insurance, 3 November 2005.

³⁹⁰ Ibid.

³⁹¹ _____ π _____ 1991, _ 8/1991.

assistance recipient may also be provided with £500 CYP for job training or job equipment in order to improve his/her employability (Section 8(e)).³⁹²

(d) The Municipal Council of Agios Dometios in Nicosia opened a Centre for the elderly and children. The Centre was mostly funded by the State, but also members of the community of Agios Dometios contributed financially to the establishment of the Centre. The Centre hosts around 100 elderly people per day in the mornings, while in the evenings it hosts 60 elementary school children. A bus transfers the elderly people to the Centre every day and takes them back home in the afternoon. The Centre provides certain activities to the elderly, including exercise, music, etc.³⁹³

(e) In December pensioners will get an additional pension, which is the equivalent of 1/12 of the whole pension they receive yearly.³⁹⁴

The Parliamentary Committee of Human Rights paid a surprise visit to Old people homes in Limassol after receiving complaints of poor conditions and even beating of old people at certain homes. The Committee said that they were satisfied with what they had seen in Limassol, but a political party disagreed saying that they had received a number of complaints concerning some homes regarding the lack of care, bad diet and lack of hygiene.³⁹⁵

Article 26. Integration of persons with disabilities

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 European Committee of Social Rights noted that “the information provided in Cyprus report, according to which no major changes occurred during the period of reference. Act No. 127(I)/2002 still represents the main legal framework defining persons with disabilities. In 2002 the number of persons with ‘long term health problems or impairments’ was 53,369 persons (12.2% of the population), 52% of whom did not work. The number of persons with disabilities of working age was 25,513. The increase in the number of persons with disabilities with respect to the previous report is due to the enlargement of notion of persons with disability.”³⁹⁶

The US Department of State on the Cyprus Report wrote: “There was generally no discrimination against persons with disabilities in employment, access to healthcare, or in the provision of other state services. Persons with disabilities who apply for public sector positions 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. The law mandates that new public buildings and tourist facilities be accessible to all: however, enforcement of the law was weak.”³⁹⁷

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

³⁹² Note by the Ministry of Labour and Social Insurance, 3 November 2005.

³⁹³ Fileleftheros Newspaper, 21 October 2005.

³⁹⁴ Fileleftheros Newspaper, 10 December 2004.

³⁹⁵ Cyprus Mail Newspaper, 19 January 2005.

³⁹⁶ European Social Charter (Revised), Conclusions 2005 (Cyprus).

³⁹⁷ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

The European Committee of Social Rights stated that “Law No. 127(I)/2002³⁹⁸ guarantee that persons with disabilities are equally treated with other employees by their employer as regards the procedure for application for employment, recruitment, promotion, dismissal, compensation, training and other terms and conditions of employment. Moreover, the law provides for the increase of employment opportunities through incentives to employers and posts reserved to persons with disabilities. A 2004 amendment of law also provide for the prohibition of any direct and indirect discrimination.”³⁹⁹

Legislative initiatives, national case law and practices of national authorities

People with disabilities

The Parliamentary Committee on Human Rights discussed the issue of the human rights of deaf people. After listening to the opinion of both, the Government and the Federation of Deaf People, the Parliamentary Committee concluded in its Report that there was a violation of the rights of the deaf people in Cyprus.⁴⁰⁰ This is was based on the following reasons: (a) the sign language is not recognised as a formal language of the Republic; (b) the certificate of the Deaf peoples’ high school is not recognised; (c) the deaf peoples’ benefit is discontinued once the deaf people have in their account more than £500 CYP.

For these reasons the Parliament has tabled a law proposal⁴⁰¹ according to which sign language is to be recognised as a formal language. According to this law proposal, the certificate of sign language can be used as a necessary or additional qualification for jobs in the public sector. Additionally, the Parliament has prepared a second law proposal that amends the *Radio and Television Law*. The amended law will provide for an additional section, Section VIII which will be entitled “Protection of the Rights of Young People and People with Special Needs, Abolition of Discrimination and Protection of Language.” According to this law, TV stations have a responsibility to broadcast news that is understandable to deaf people, at least 5 minutes per hour from noon to midnight. Also, TV stations are required to safeguard that the subtitles follow the rules and policies of the Republic concerning deaf people and that the size of the letters should constitute at least the 1/300 of the height of the screen.

The Government on its part is trying to address the problems that deaf people face. For example, the Ministry of Education and Civilisation is looking at ways in which the standard of the Deaf Peoples’ High School can become higher, so that they can be able to accredit the certificate of the said school. The Ministry of Communications decided that oral announcements in the airports and ports will also be written in specific places, so that deaf people can be able to know what is being announced.

With respect to professional integration of people with disabilities, the Ministry of Labour and Social Security noted the following:⁴⁰² The *Public Assistance and Services legislation* enforced by the Social Welfare Services incorporates several employment incentives to encourage social inclusion and gradual independence from public funds for persons with disabilities. For example, (a) a person with disabilities may be eligible to supplementary public assistance even if she/he works full-time; (b) when estimating the monthly amount of public assistance for an employed person with disabilities (or for a public assistance recipient whose spouse is employed and disabled), an amount equal to £100 CYP may be discounted

³⁹⁸ For more on this see last year’s Report.

³⁹⁹ European Social Charter (Revised), Conclusions 2005 (Cyprus).

⁴⁰⁰ Report of the Parliamentary Committee of Human Rights entitled *The Violation of the Rights of Deaf People in Cyprus*, 4 July 2005.

⁴⁰¹

⁴⁰² Note by the Ministry of Labour and Social Security, 3 November 2005.

from his/her income; (c) a recipient of public assistance may be eligible for a training grant and/or a grant for job equipment up to £500 CYP) according to article 8(e).

In addition, according to the Ministry of Labour and Social Security, through technical and financial assistance (The “Grants-in-Aid Scheme”) the Social Welfare Services encourage initiatives by the civil society for the development of programmes for persons with disabilities including sheltered employment and employment with support. The Special Service for the Care and Rehabilitation of the Disabled Persons under the Department of Labour (Ministry of Labour and Social Insurance) provides several schemes for the vocational rehabilitation of persons with disabilities. These are: (a) the self-employment scheme; (b) the scheme for the vocational training of persons with disabilities in courses of their own choice and (c) the supported employment scheme, which provides for the placement of a job-coach who supports persons with mental or multiple disabilities so as to facilitate their placement and employment in the open labour market. The annual budget estimate for the above schemes is expected to rise to £144.000 CYP for the year 2005 as well as 2006.

In addition to the above programmes, the Service operates the Centre for the Vocational Rehabilitation of the Disabled. The Centre provides vocational training in accordance with the needs of the labour market and the employment prospects of each individual person. In addition, the Centre provides other services which help persons with disabilities to enhance their skills, become independent and cope with any psychosocial problems. The Centre provides training and employment opportunities in the following specialisations: leather goods/ shoemaking, furniture, industry/carpentry, broom making, knitting and sewing embroidery. The average duration of each training course is about 12 months (it may fluctuate depending on the severity of the disability). During training and/or employment, the trainees receive an allowance. The Centre operates six laboratories each of which can accept 12 trainees.⁴⁰³

It was reported by the Ministry of Labour that special actions to facilitate employment participation for persons with disabilities are planned to be promoted during 2005-2006.⁴⁰⁴ These actions will be co-financed by the European Social Fund and the Government of Cyprus with an amount of £900.000 CYP. They include specialised employment schemes for persons with disabilities, which will be implemented in two months time. These schemes include: (a) the enhancement of facilities and services for social integration and vocational rehabilitation of adults with sever disabilities; (b) incentive schemes for the employment of people with severe disabilities in the private sector, either by covering part of the cost of their adjustment to the work place or through the subsidisation of their labour cost; (c) the subsidisation of contributions to the Social Insurance Fund for persons with disabilities employed in private sector establishments.⁴⁰⁵

The Ministry of Labour prepared two plans on the professional integration of people with disabilities. The first plan is called “Plans of Professional Integration of People with Disabilities implemented by the Ministry of Labour, Department of Labour”. According to these plans (a) there is a plan encouraging the self-employment of disable by providing a grant of £2000 CYP to people with heavy disability and by subsidising the interest of up to 300 CYP up to five years; (b) there is also a plan encouraging disable people to acquire professional qualifications by subsidising their fees up to £1000 CYP; (c) there is a plan for people with heavy disability, which will provide personal help to people in order to find work in the open market. Under this plan, the Government provides a grant of up to 6000 CYP per year to organisations whose purpose is to implement such programs. According to the Ministry of Labour, since the year 1993 and until 2004 the number of people with disabilities who have been benefited by the plans implemented by the Ministry of Labour is rising. For

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

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example, in 1993, 24 people benefited from the measures, and in 2004 the number increased to 183 gradually.⁴⁰⁶

The second plan is called “Programs for the professional integration of people with Disabilities co-funded by the European Social Fund for the years 2005-2006.” These programs involve the creation of incentives for employers to employ persons with disabilities. More specifically, these plans involve the subsidisation of the social security of people with disabilities for the first year of their employment; the providing of economic incentives to employers for the purpose of installing facilities for persons with disabilities; the subsidisation of the wages of people with heavy disabilities.

With respect to whether these measures have been put into effect and their results, we are not able to form an opinion.

Apart from the measures taken for the purpose of the professional integration of people with disabilities, the Ministry of Labour adopted another plan whose purpose was to improve the living conditions of people with disabilities as well as to promote their independence and participation in social life. The plan is called “Plan of economic help for providing technical means, organs and other help to people with disabilities.” According to this plan 80% of the value of the required technical mean and up to its whole value can be given by the Republic to the person with a special need requiring the said technical mean.

On the 16 November 2004 the Council of Ministers adopted a Decision on the Overall Policy on Peoples with Disabilities.⁴⁰⁷ This policy does not include the Steliou Ioannou Institution referred to below, which hosts and/or help people with special needs.

Another development which might prove helpful for disabled persons is the law proposal which is underway and which will establish a European parking pass. According to this pass, a disabled person can carry his/her pass so that it will enable him/her to park even in places where parking is prohibited.⁴⁰⁸

However, and despite the above mentioned developments, the following can be said with regards to the problems that disable people face in 2005: (a) It was reported in the daily press that despite the fact that the law relating to beaches (π _____) provides that there should be a specific path on the seaside so that disabled people can have access to the beach, this is not what is happening in practice. Only around 20 beaches provide for access to people with disabilities.⁴⁰⁹ (b) The disabled sign can be freely purchased at bookshops for 70 cents. (c) An survey carried out by the Office of Control and Planning of Access of People with Disabilities of the Ministry of Transport in 2004 reached the following conclusions: 27% of buildings accommodate ramps up to 10% inclination; 22% of buildings accommodate special parking for the disabled; 9% of buildings accommodate specially arranged sanitary places.⁴¹⁰

With regards to children with disabilities, public assistance is fully provided regardless of the family income. Their families are also provided with social and practical support, such as counselling and home-care, if necessary.⁴¹¹

People with special needs

⁴⁰⁶ Note by the Ministry of Labour, Labour Department, 1 March 2005.

⁴⁰⁷ _____ π _____.

⁴⁰⁸ Fileleftheros Newspaper, 26 August 2005.

⁴⁰⁹ Politis Newspaper, 17 August 2005.

⁴¹⁰ Fileleftheros Newspaper, 10 October 2005.

⁴¹¹ Note by the Ministry of Work and Social Insurance, 3 November 2005.

The Parliamentary Committee on Human Rights discussed the issue of the human rights of people with special needs housed at the Christos Steliou Ioannou Foundation. The Christos Steliou Ioannou Foundation came into operation in 1983 as a Social and Vocational Rehabilitation Centre for people with mild and moderate mental handicap. 90% of the expenses of the Foundation are now covered by the state, which participates in the Board of Directors, while the 10% is covered by others.

In 2001 Professor Peter Mittler and the Department of Research and Evaluation of the Cyprus Pedagogical Institute conducted an *Evaluation of Christos Stelios Ioannou Foundation*. Professor Mittler in his research concluded that the philosophies, policies and practices of the Foundation do not reflect the current international consensus on good practice, as exemplified in the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.⁴¹² According to Professor Mittler, (a) too many clients are congregated on a single site, which has in effect become a permanent placement; (b) there is not enough movement of the clients from the central site into community settings and (c) not enough support is available to enable those who are not Foundation clients to work and live in the community.⁴¹³

Figures show that out of the 156 current clients between the ages of 18 to 57, 98 (63%) have been attending since 1990 and 44 (28%) since the Foundation was established in 1983.⁴¹⁴ 60 people have been successfully rehabilitated into the community in the 17 years since the Foundation was established – this would average out at three persons per year.⁴¹⁵

These figures suggest that the Foundation is providing what is in effect a permanent placement for a significant number of clients. “This seems surprising” according to Professor Mittler, “since it would be reasonable to expect that an organisation committed to rehabilitation and community placement of a population of people with only mild and moderate intellectual disability would achieve a greater degree of throughput into community provision, with an appropriate degree of support.”⁴¹⁶ Indeed, the foundation has become a high quality institution, with relatively low rates of discharge and rehabilitation. Around two third of the clients have been attending the Foundation for ten years or more and around 30 per cent have been there since it was opened 17 years ago.⁴¹⁷

Similar remarks were made by the Director of the Social Services at the time, in her insightful report on the Foundation.⁴¹⁸ In her Report, she pointed out that the Foundation, in order to be in line with the European and international standards must try to rehabilitate its clients in a more systematic and organised manner.⁴¹⁹ She moved on to make certain recommendations which the Government should seriously take into consideration.

Positive aspects

Unlike previous years, the problems that disable people face were something that was part of a discussion, not only in the Parliament but also in the daily press.

⁴¹² Professor Peter Mittler and the Department of Research and Evaluation of the Cyprus Pedagogical Institute *Evaluation of Christos Stelios Ioannou Foundation*, 2001, p. 12.

⁴¹³ *Ibid.*, p. 12.

⁴¹⁴ *Ibid.*, p. 16.

⁴¹⁵ *Ibid.*, p. 17.

⁴¹⁶ *Ibid.*, p. 16.

⁴¹⁷ *Ibid.*, p. 28.

⁴¹⁸ See, *Research on the Possible Differentiation in the Policy and Way of Conduct of the Steliou Ioannou Foundation*, Nicosia, 2004, [_____ π _____ π _____], p. 15.

⁴¹⁹ *Ibid.*, p. 45.

Reasonable accommodations

Legislative initiatives, national case law and practices of national authorities

People with special needs are granted £293 CYP per month, irrespective of their economic situation and the state spends 6.5 million CYP per year on benefits.⁴²⁰

⁴²⁰ Fileleftheros Newspaper, 18 March 2005.

CHAPTER IV. SOLIDARITY

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

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

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

With regards to consultation with employers’ and employees’ organisations about the introduction of health and safety legislation and regulations, the European Committee of Social Rights, in its Conclusions (2005) noted that “the situation was in conformity with the Charter.”

Legislative initiatives, national case law and practices of national authorities

In line with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, the Parliament passed a Law 78(I)/2005 on the *Establishment of a General Framework of Informing and Consulting Employees*.⁴²¹ It appears that this law is in line with the said directive.

More specifically, the terminology used i.e. “undertaking”, “information”, “consultation” is identical to that of the Directive. The meaning of “employer” also covers the Republic of Cyprus and the meaning of “employee” covers the person working for another person based on an employment contract or an apprenticeship, and also the person working for another person if the establishment of a contract can be derived from the circumstances.⁴²² The Law shall apply to undertakings employing at least 30 employees.⁴²³

According to Section 5 paragraph 1 of the above mentioned law, “information and consultation shall cover: (a) information on the recent and probable development of the undertaking’s activities and economic situation and (b) information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment, (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by section 3(3)(a).” Those covered in Section 3(3)(a) are Section 4 of the *Law on Collective Dismissals of 2001*⁴²⁴ and Section 8 of the *Safeguarding of the Rights of Employees in case of Transfer of the Undertaking Law*.

According to Section 5 paragraph 2 of the *Establishment of a General Framework of Informing and Consulting Employees*, “information shall be given at such a time, in such fashion and with such content as are appropriate to enable employees’ representatives to conduct an adequate study and where necessary prepare for consultation.” Pursuant to Section 5 paragraph 3 “Consultation shall take place: (a) while ensuring that the timing, method and content thereof are appropriate; (b) at the relevant level of management and representation, depending on the subject under discussion; (c) on the basis of information supplied by the

⁴²¹ π _____ π _____
2005, 8 July 2005.

⁴²² Ibid., Section 2.

⁴²³ Ibid., Ssection 3(1).

⁴²⁴ π _____ π _____, 28()/2001. Must find N. 28(I)/2001, π _____ π _____
(_____ 4).

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employer in accordance with the meaning of ‘information’ and with the opinion which the employees’ representatives are entitled to formulate; (d) in such a way as to enable employees’ representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate; (e) with view to reaching an agreement on decisions within the scope of the employer’s powers referred in paragraph (1)(c).”

Accordingly, Section 5 of the law is identical to article 4 paragraphs 2, 3 and 4 of the directive.

Section 6 (1) provides that the social members may entrust management and labour management and labour at the appropriate level, including at undertaking level with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. The agreements in paragraph 2 and any agreements existing on the 23 March 2005, as well as any subsequent renewals of such agreements, may establish different provisions that those provided for in section 5. Basically, Section 6 paragraphs 1 and 2 are identical to article 5 of the Directive. However, Section 6 paragraph 2(b) and (c) provide more details than those provided for in the directive. It is provided that the agreements referred to in section 6 paragraph 1 must limit to the minimum the extra charge on the undertaking, while they safeguard the implementation of the rights.

Section 7 refers the confidential information and is identical to article 6 of the directive. However, the employer is not obliged to communicate information or undertake consultation in such that, according to objective criteria, it would seriously harm the functioning of the undertaking or would be prejudicial to it; or would be characterised as confidential by the national legislations, like the banking confidence, lawyer’s confidence, issues on security and patents.⁴²⁵

Section 8 is identical to article 7 of the Directive.

Sections 10 and 11 implement article 8 of the Directive. In particular, it is provided that the minister of Labour will appoint investigators whose purpose is to safeguard the better implementation of this law. Section 12 provides that the competent court for which will solve civil nature problems concerning the said law is the Dikastirio Ergatikon diaforon.

The law however omits mentioning and defining the word “establishment.”

In a nutshell, the said law appears to implement correctly the said directive. The only concern is the fact that the term “establishment” is omitted.

The *Safeguarding of the Rights of Employees in case of Transfer of the Undertaking Law* L. 104(I)/2000⁴²⁶ provides that employees or their representatives have the right to information regarding the following: the date of the transfer, the raison d’être of the transfer, the legal, financial and social circumstances of the transfer for the employees and any measures that might be taken concerning the employees.⁴²⁷ Those who have the responsibility to inform the employees must do so on time and before the transfer of the undertaking takes place.⁴²⁸ Additionally, they must do so before the employees are influenced by the transfer with regards to their conditions or work.⁴²⁹ The employer or the transferee have the responsibility

⁴²⁵ Ibid., Section 1 paragraph 2 a and b.

⁴²⁶ π _____ π _____ 2000, N. 104(I)/2000.

⁴²⁷ Ibid., Section 8 paragraph 1(a).

⁴²⁸ Ibid., Section 8 paragraph 1(b).

⁴²⁹ Ibid., Section 8 para 1(c).

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Section 55 of the *Police Law of 2004* L. 73(I)/2004⁴³⁴ safeguards the police officers' right to be a member of any trade union or any other association the purpose of which is to control or influence the working conditions.

Article 29. Right of access to placement services

Access to placement services

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

The European Committee of Social Rights⁴³⁵ observed that the placement rate continued to drop. According to the Republic, this downward trend of the placement rate was mainly due to the recruitment of foreign workers, who have increased considerably in number during recent years. Although the public employment services are involved in the procedure of granting work permits to foreigners, the actual channelling of the latter to the labour market is not made by these services and their placements are not taken into account in the calculation of the placement rate. Another consequence of the employment of foreigners is the relatively high number of vacancies notified to the District Labour Officers due to the procedure followed for granting work permits to foreigners. The Republic states that no data are available for estimating the total number of hiring taking place in the labour market and it is therefore impossible to indicate the market share of the public employment services.

The European Committee of Social Rights considers that this information is necessary to assess the efficiency of the employment services.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

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

According to the European Committee of Social Rights,⁴³⁶ employers are prohibited from dismissing female employees from the notification of pregnancy until the expiry of three months after the end of maternity leave or from giving notice of dismissal which would expire during the above mentioned period. Exceptions to this rule are limited to three cases: serious misconduct on the part of the employee or conduct justifying termination of the contract of employment, cessation of the undertaking's activities and expiry of the contract of employment.

⁴³⁴ π _____ 2004, _ . 73()/2004.

⁴³⁵ See analysis on article 1 paragraph 3 of the European Social Charter (Revised): Conclusions 2004 (Cyprus).

⁴³⁶ European Social Charter Revised: Conclusions 2005.

Legislative initiatives, national case law and practices of national authorities

The legislation applicable to dismissal is *the Law on the Termination of Employment L. 24/1967* as lastly amended by L. 111(I)/2003⁴³⁷ (Part II of L. 24/1967). As a matter of principle, dismissals are not valid if employers terminate employment for any reason other than those listed in Section 5 of the 1967 Law. This lays down the circumstances in which termination of employment may be ordered with no entitlement to compensation for unfair dismissal: (a) employees' failure to carry out their duties satisfactorily, unless this is due to temporary disability resulting from illness, accident or childbirth; (b) collective redundancies; the rules applying to collective redundancies are found in another part of the law; (c) termination of employment resulting from force majeure; (d) termination of employment resulting from completion of a fixed-term contract or because employees have reached retirement age; (e) termination of employment resulting from employees' own conduct, though employers may only exercise this right within a reasonable period following the events in question. The following situations are envisaged by the Law, though are not exhaustive: a breakdown of the employer-employee relationship; serious misconduct on behalf of the employee, criminal or immoral conduct by the employee in the performance of their duties; employees' repeated failure to perform their duties or comply with other rules.

According to Section 6 the following never constitute reasons for dismissal: being a member of an employees' association, or participate in one outside the working hours; being or having been in the past an employees' representative; lodging a complaint at the relevant administrative authorities against the employee or participate in proceedings against the employer; race, colour, sex family condition, religious, beliefs national identity or social background; pregnancy or motherhood; parental leave or leave for force majeure reasons.

However, and despite not being mentioned in Section 6, the European Committee of Social Rights states that dismissals as a reprisal against employees who have lodged complaints with the judicial authorities (as opposed to administrative authorities which is explicitly stated in Section 6) are also invalid under Section 5.⁴³⁸ This is so, because several court decisions that have established precedents confirm this interpretation.

The burden of proof lies with the employer. Section 6(1) states that in the proceeding before the Labour Tribunals employers must establish that dismissal was based on one of the grounds listed in Section 5. Failure to do so, the dismissal is considered as unfair and unjustified. The question however is on the burden of proof in proceedings before Civil Courts. This is so because employees may also recourse to Civil Courts requesting compensation for unjustified dismissal in excess of that provided for in the legislation.

Under Section 30, there is a right of appeal to the Labour Tribunals in the six months following the dismissal. Applicants seeking compensation in excess of that provided for in the legislation may apply to the District Court civil jurisdiction.

⁴³⁷ _____ π _____, _____ π _____
 _____ π _____
 _____ π _____, L. 24/1967.

⁴³⁸ European Social Charter Revised: Conclusions 2005.

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Remedies against the decision of dismissal and compensation due in the event of an unjustified dismissal*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

The European Committee of Social Rights⁴³⁹ concluded that the situation in Cyprus was not in conformity with the 1961 Charter, article 8(2) of the Revised Charter, as the power of the courts to order reinstatement of an unlawfully dismissed employee was limited to cases where the enterprise concerned has more than twenty employees.⁴⁴⁰ In these circumstances (and in general where a woman is not reinstated) the maximum amount of compensation payable is two years' wages, the wages of the first year awarded by the court are paid by the employer and the second years wages are paid by the Redundancy Fund. However, women seeking higher compensation may apply to the District Courts (civil jurisdiction). The Committee recalls that compensation should be sufficient to deter the employer and compensate the employee. In order to assess the situation, it wishes to receive further information on the possibility for a worker unfairly dismissed to seek a higher level of compensation in the civil courts.

The European Committee of Social Rights notes that the Cypriot law "excludes from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer. Taking into consideration that this exclusion is provided for regardless of the employee's qualification, it finds the 26 weeks period manifestly unreasonable and considers that the situation is not in conformity with Article 24 of the Revised Charter."⁴⁴¹

Legislative initiatives, national case law and practices of national authorities

With regards to remedies in case of unjustified dismissal, the employee can (a) receive compensation or (b) be reinstated and/or receive compensation for damages.

With regards to compensation, the Labour Tribunals may award compensation, which may not be less than what individuals would have been entitled to, if they had been given proper notice and not more than two years' pay. In setting this amount, the Tribunal may take account of individuals' pay and their incomes, length of service, their loss in terms of career, the precise circumstances of the dismissal and their age.⁴⁴² The Tribunals may order compensation provided the employee has completed a continuous period of 26 weeks in the employment (Section 3 para 1 of L. 24/1967). Indeed, the requirement that the employee has completed a continuous period of 26 weeks in order to be able to receive compensation seems rather unreasonable.

With regards to reinstatement, the Labour Tribunals may order reinstatement if the victims of unlawful dismissal so wish, if the dismissal is found to have been manifestly in breach of the law or unlawful and in bad faith. The decision is at the Tribunal's discretion. As well as reinstatement, the Tribunals may order payment of compensation for damages resulting from the dismissal. However, the power of the Tribunal to order reinstatement of an unlawfully dismissed employee is limited to cases where the enterprise concerned has more than nineteen employees.⁴⁴³ This requirement also appears unjustifiable.

⁴³⁹ European Social Charter Revised: Conclusions 2005.

⁴⁴⁰ Actually, Section 3(1) of L. 24/1967 stipulates that the enterprise concerned should have more than nineteen employees.

⁴⁴¹ European Social Charter Revised: Conclusions 2005.

⁴⁴² See Annex 1 of the L. 24/1967.

⁴⁴³ Section 3(1) of L. 24/1967.

In this respect, the Government noted that Section 3(1) of the L. 24/1967 which limits the power of the Court to order reinstatement only in workplaces with more than nineteen employees, is not applicable in cases of an unfair dismissal of a woman during pregnancy or maternity leave.⁴⁴⁴ This is so because according to Sections 2 and 11 of the *Equal Treatment between Men and Women in Employment and Occupational Training Law* L. 205(I)/2002, such a dismissal constitutes a prohibited sex discrimination. Furthermore, Section 16 of the said law states that in case of violation of the same law, any provision which sets minimum number of employees to the same employer as a precondition for the liability of the infringer or for the right to compensation or any other remedy shall not be applied. This clarification obviously applies to the unfair dismissal of a woman during pregnancy or maternity leave and does not apply to any other unfair dismissal where the workplace has less than 19 employees. Nonetheless, it is a positive development that the Government said that a tripartite technical committee is already examining the possibility of amending Section 3 of L. 24/1967 so as to provide for the reinstatement of an unfairly dismissed employee to his/her previous position irrespective of the number of employees employed by an employer.⁴⁴⁵

Employees, who consider themselves the victims of unfair dismissal, may also apply directly to the civil courts for damages in excess of those provided for in the Law, according to Section 30(2) of L. 24/1967. The civil courts have no power to order reinstatement.

A law proposal has been tabled in the Parliament entitled Amendment Law on the Employees on Fixed-Term Contracts (Prohibition of Discriminatory Treatment).⁴⁴⁶ According to the law proposal the period after which an employee based on an employment contract is regarded as being employed based on a contract for an indefinite period of time, is reduced from 30 months to 24.

Positive aspects

It is a positive development that the Government said that a tripartite technical committee is already examining the possibility of amending Section 3 of L. 24/1967 so as to provide for the reinstatement of an unfairly dismissed employee to his/her previous position irrespective of the number of employees employed by an employer.

Reasons for concern

According to the law (L. 24/1967) the Tribunals may order the employer to compensate the unlawfully dismissed employee, provided that the employee has completed a continuous period of 26 weeks in employment. Also the Tribunals may order the reinstatement of an unlawfully dismissed employee only to cases where the enterprise concerned has more than nineteen employees. These two requirements appear unjustifiable.

⁴⁴⁴ Governmental Committee of the European Social Charter, Report Concerning Conclusions 2005, 30 November 2005, T-SG (2005) 25, paragraph 45.

⁴⁴⁵ *Ibid.*, paragraph 122.

⁴⁴⁶ _____ π _____ π π _____ π _____ (π _____) _____.

Article 31. Fair and just working conditionsHealth and safety 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 stated the following.⁴⁴⁷

(1) Regarding Article 3(1) of the Charter on the health and safety and the work environment, the Committee considers that there is no sufficient information in the Cypriot report for it to assess the situation under article 3(1). Pending receipt of the information requested, the Committee defers its conclusions.

(2) Regarding Article 3(2) on the regulations on health and safety at work, the Commission noted that in its last report (2003) it found that most of the Community acquis in the area of health and safety at work had been transposed. However, it also said that alignment with regard to indicative occupational exposure limit values (chemical agents at work) must continue. “The Committee notes that to be in conformity with article 3(2) of the Revised Charter. [...] The transposition of most of the Community acquis shows that this general obligation has been met.”⁴⁴⁸

(3) With regards to the protection against asbestos exposure, the Committee noted that since the limit values for exposure have been revised in accordance with the requirements of Council Directive 91/382/EEC of 25 June 1991 by L. 159 of 29/6/96, “the situation in Cyprus regarding protection against asbestos risks is in conformity with the Charter.”⁴⁴⁹

(4) As regards the protection against radiation, the *Protection against Radiation Law* N. 115(I)/2002 transposes Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers of radiation, and Regulation No. 497/2002 transposes Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure. Therefore, the Commission considers that “the situation in Cyprus is in conformity with article 3(2).”⁴⁵⁰

(5) Regarding protection against vibration, “the Committee notes [...] that this risk is not specifically covered by legislation.”⁴⁵¹

However, and in an effort to give effect to the Committee’s Report, the protection against vibration is now specifically covered by legislation. Pursuant to the *Security and Health at Work Laws of 1999 up to 2003*,⁴⁵² the *Security and Health at Work (Protection from Vibration) Regulations* have been adopted in July 2005.⁴⁵³ The purpose of these Regulations was to harmonise the Cypriot legislation with 2002/44/EC Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (sixteenth individual Directive within the meaning of article 16(1) of Directive 89/391/EEC).

⁴⁴⁷ European Social Charter Revised: Conclusions 2005.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

⁴⁵² π _____ 1996 _____ 2003.

⁴⁵³ _____ (_____ π _____) _____,
332/2005, 22 July 2005.

(6) With regards to domestic work, with the exception of pregnant women and women who have recently given birth or are breast-feeding, who are covered by the maternity protection legislation, domestic staff are not covered by health and safety at work provisions. The Committee “considers that in this respect the situation is not in conformity with Article 3(2) of the Revised Charter, which requires all workers, without exception, to be covered by occupational health and safety regulations, where necessary adapted to their particular circumstances.”⁴⁵⁴

On the issue domestic staffs, which is not covered by health and safety at work provisions, the Republic explained the reasons why the scope of the law does not include domestic staff employed in private dwellings.⁴⁵⁵ The Government noted “the reasons for excluding the domestic servants (who work in households) are the constitutional and practical constraints that prohibit Labour Inspectors to enter and inspect the premises where domestic workers carry out their work. The difficulty emanates from Articles 15 and 16 of the Constitution of the Republic, which guarantee the right of personal and family privacy and the inviolable of private dwelling, respectively.” Nonetheless, “the government will examine ways to safeguard the safety and health of domestic servants.”⁴⁵⁶

(7) With regards to self-employed workers, they are not covered by health and safety provisions at work.⁴⁵⁷

(8) With regards to Labour Inspectorate “the Committee undertook a detailed assessment of labour inspectorate of labour inspectorate resources and activities [...]. It found that the situation was compatible with the Charter.”⁴⁵⁸

Legislative initiatives, national case law and practices of national authorities

We are of the opinion that Articles 15 and 16 of the Constitution safeguarding the private and family life and the inviolable of the home respectively, do not constitute insurmountable barriers to Labour Inspectors to enter and inspect premises. With regards to the protection of private and family life, Article 15 is not absolute. As regards the inviolable of the home, entering into somebody’s home can take place after a Court order, according to Article 16 of the Constitution.

Case-law

In *Attorney-General v. Farmakas Quarry of 9 November 2004* (Criminal Appeal number 7670) the Supreme Court examined whether the penalty imposed on the Farmakas Quarry (amount to £800 CYP) for violating the Security and Health at Work Laws which resulted to death of an employee was adequate. The Supreme Court reviewed the case-law on the issue.⁴⁵⁹ According to the case-law (a) an offence related to the security at work must be dealt with severely; (b) the violation of the Security and Health at Work Law requires the imposition of a deterrent penalty; (c) the violation of the Health and Security Laws, even if it does not lead to any injury, cannot justify a lenient approach by the court. Therefore, the Supreme Court increased the fine to £3000 CYP.

In 2004 the District Court of Nicosia imposed penalties on six employers (five companies and one self-employed) on the grounds that they violated the Health and Security at Work Laws.

⁴⁵⁴ European Social Charter Revised: Conclusions 2005.

⁴⁵⁵ Governmental Committee of the European Social Charter, Report Concerning Conclusions 2005, 30 November 2005, T-SG (2005) 25, paragraph 17.

⁴⁵⁶ Ibid.

⁴⁵⁷ European Social Charter Revised: Conclusions 2005.

⁴⁵⁸ Ibid.

⁴⁵⁹ See, *Director of the Department of Labour Inspection v. Chrysostomou et al of 22 November 2002* (Criminal Appeal numbers 7316-7317); *Limassol District Work Officer v. Sedora Enterprises Ltd, (1992)*, *Paphos District Work Officer v. Airsto Developers Ltd, (1996)*.

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The penalties imposed varied from £750 CYP to £4000 CYP.⁴⁶⁰ In 2005 (from January to May) the District Courts imposed penalties on 11 employers because they violated the Health and Security at Work Laws. The penalties imposed varied from £120 CYP to £1250 CYP.⁴⁶¹

A landmark case is being considered by the Nicosia District Court. According to the case the plaintiff is suing the company where she had been working because she was forced to quit her job due to the heavy smoking conditions at work.⁴⁶² No further information has been obtained.

Legislation

Pursuant to the *Security and Health at Work Laws of 1999 up to 2003*,⁴⁶³ the *Security and Health at Work (Protection from Vibration) Regulations* have been adopted in July 2005.⁴⁶⁴ The purpose of these Regulations is to harmonise the Cypriot legislation with 2002/44/EC Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (sixteenth individual Directive within the meaning of article 16(1) of Directive 89/391/EEC).

With regards to Labour Inspectorate, the Ministry of Labour and Social Insurance considers the following Regulations: (a) *Accident Announcement and Dangerous Events Regulations*;⁴⁶⁵ (b) *Professional Illness Announcement Regulations*;⁴⁶⁶ and (c) *Security and Health at Work (protection from noise) Regulations*.⁴⁶⁷

According to a Note received by the Ministry of Work and Social Insurance⁴⁶⁸, the Ministry was notified of 1106 accidents at work, five of which had been lethal, during the first six months of 2005.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

A woman police officer filed a complaint at the Ombudsman arguing that first, she had been the victim of sexual harassment at her work, second, the administration of the police failed to protect her after she filed her complaint at the police and third, she was moved to another police station following the complaint.⁴⁶⁹ After the relevant investigation, the Ombudsman concluded that the said complaint was a valid one. The police administration once they received the complaint they should have investigated it. Their failure to investigate a complaint of a possible harassment at work can be characterised as faulty.⁴⁷⁰ The Ombudsman concluded that the complaints received by the woman police officer can be characterised as sexual harassment and from the evidence collected the police should have referred the case to the Attorney-General. This is her recommendation as well. The Attorney-General will now file a law suit against the perpetrator.⁴⁷¹

⁴⁶⁰ Fileleftheros Newspaper, 23 March 2005.

⁴⁶¹ Fileleftheros Newspaper, 11 May 2005.

⁴⁶² Fileleftheros Newspaper, 8 April 2005.

⁴⁶³ π _____ 1996 _____ 2003.

⁴⁶⁴ π _____ (π _____) _____ , _____

332/2005, 22 July 2005.

⁴⁶⁵ π _____ π _____ 2005.

⁴⁶⁶ π _____ π _____ 2005.

⁴⁶⁷ _____ (π _____) _____ 2005.

⁴⁶⁸ Note, 27 July 2005.

⁴⁶⁹ Ombudsman: *Annual Report 2004*, p. 72 (A/P 224/03).

⁴⁷⁰ *Ibid.*, p. 74.

⁴⁷¹ *Ibid.*, p. 75.

Working time

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

The US Department of State on the Cyprus Report stated:⁴⁷² “The legal minimum wage, reviewed each year, was approximately \$725 (345 pounds) per month for shop assistants, practical nurses, clerks, hairdressers, and nursery assistants. The wage rose to approximately \$770 (367 pounds) after 6 months’ employment. Neither amount provided a decent standard of living for a worker and family. All other occupations, including unskilled workers, were covered under collective bargaining agreements between unions and employers within the same economic sector. The wages set in these agreements were significantly higher than the minimum wage.” “The legal maximum workweek was 48 hours, including overtime. Actual working hours were determined by collective agreements between the unions and employers. In the private sector, the workweek was typically 39 hours for white collar workers and 38 hours for blue collar workers. In the public sector, the workweek was 38 hours during the winter and 35 hours in the summer. Labour inspectors effectively enforced these laws.”⁴⁷³ “There were press reports of the mistreatment of maids and other foreign workers. Such reports usually involved allegations that maids, often from East or South Asia were mistreated by their employers or fired without cause in violation of their contracts. The law protects domestic workers who file a complaint with the Labour Ministry from being deported until their cases have been adjudicated; however many women did not complain to authorities out of fear of deportation.”⁴⁷⁴ “In July, the media reported that following the country’s EC accession, the Ministry of Labour experienced a substantial increase in the number of complaints of labour exploitation. Foreign workers, primarily from Eastern Europe, reportedly were forced to work up to 13 hours a day, 7 days a week, for very low wages.”⁴⁷⁵ “The law requires employers to provide insurance liability coverage for work related injuries. Workers may remove themselves from dangerous work conditions without risking loss of employment. According to labour union officials, these laws were enforced effectively. Factory inspectors processed complaints and inspected businesses to ensure that occupational safety laws were observed.”⁴⁷⁶

Regarding article 2(1) of the Revised Charter on the reasonable daily and weekly working hours, the European Committee of Social Rights notes “pending a receipt of the information requested, the Committee defers its conclusion.”⁴⁷⁷

Legislative initiatives, national case law and practices of national authorities

Pursuant to the *Working Time Law* L. 63(I)/2002, working time, including overtime, may not exceed 48 hours per week, on average over a 4-month period. A worker is entitled to minimum daily rest of 11 consecutive hours per 24 hours. According to the report the law covers all economic sectors. The armed forces, police and seafarers are excluded from application of the law.

Pursuant to the *Drivers Driving Time and Rest Period Law* L. 131(I)/2002 the daily driving period for drivers must not exceed 9 hours, extendable to 10 hours twice a week. The total driving period cannot exceed 90 hours in each period of two consecutive weeks.

⁴⁷² US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ European Social Charter, Revised : Conclusions 2005 (Cyprus)

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The *Catering Employees Law* L. 65(I)/2002 prohibits employment of more than 48 hours each week, including overtime, or more than 8 hours each day for catering staff.

The *Shop Assistances Law* L. 75(I)/2001 provides that the normal hours of work for shop assistance vary from 38 to 39.5 hours per week.

A new administrative Act was adopted by the Ministerial Council pursuant to the *Minimum Wage Law*.⁴⁷⁸ The minimum wage was increased to £362 CYP per month, and in regards to an employee working for more than 6 months the minimum wage was set at £385 CYP per month. This constitutes an increase of 5%.⁴⁷⁹

With regards to public holidays with pay, the law provides for 15 public holidays annually for the public and the banking sector. In other sectors 13 to 15 public holidays are fixed by collective agreements and practice. As regards shop assistance, Section 5 of the *Shop Assistants Law* L. 75(I)/2001 defines 9 days as days on which shops must remain closed. Pursuant to the Public Servants Regulations and Shop Assistants Law, employees consenting to work overtime on a public holiday, are compensated on an overtime basis at a rate double the normal hourly rate of pay. As regards the banking sector, the existing collective agreement provides that if an employee is required to work on a public holiday, he/she will be compensated on an overtime basis referred to as a double rate, and for four specific days at an overtime basis at a triple rate.

With respect to weekly rest period, pursuant to the Organisation of Working Time Act N. 63(I)/2002 a worker is entitled to a weekly rest period of 24 consecutive hours. An employer may decide that a continuous rest period of 48 hours be given in a 14 days period. The Committee recalls that, under article 2(5) a rest period may be deferred to the following week, as long as the worker is granted a two day rest period after twelve days of consecutive work. Section 16(2) of the above mentioned Act provides that a compensatory rest is granted where the ordinary weekly rest period is worked, except for exceptional circumstances in which it is objectively impossible to grant a compensatory rest period and where suitable protection shall be granted instead. Any breach of the above act is punishable by imprisonment or a fine. The European Committee of Social Rights concludes that “the situation in Cyprus was in conformity with article 2(5) of the Revised Charter.”⁴⁸⁰

As regards night work, the *Organisation of Working Time Law* L. 63(I)/2002 defines the term “night time” as the period commencing at 23.00 hours on any day and ending at 06.00 hours on the following day. The working time of a night worker must not exceed 8 hours in any 24-hour period on average, in a period of one month or in such other period as may be provided for in any collective agreement (Section 9). The 24-hour period of weekly rest, will not be taken into account in calculating this average. An employer must ensure that before a worker is assigned to night work for the first time, and at regular intervals thereafter, free of charge medical examinations are underway (Section 10). A night worker with health problems caused by night work must be transferred, whenever possible, to day time work.

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

⁴⁷⁸ π _____, _____ 183.

⁴⁷⁹ Politis Newspaper, 10 June 2005.

⁴⁸⁰ European Social Charter, Revised: Conclusions 2005 (Cyprus).

Protection of minors at work and monitoring of the protection

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

The US Department of State on the Cyprus Report wrote:⁴⁸¹ “The minimum age for employment in an ‘industrial undertaking’ is 16. Labour inspectors enforced the law effectively.”

Legislative initiatives, national case law and practices of national authorities

According to a Note received by the Ministry of Labour and Social Security,⁴⁸² the policy of the Government for the protection of young persons at work is pursued mainly through the effective implementation of the *Protection of Young Persons at Work Law of 2001*, L. 48(I)/2001. This law transposes all the provisions of the European Directive 94/33/EC on the protection of young persons at work with some additional provisions. The law is enforced in accordance with the legislation on compulsory schooling, i.e. the *Primary and Secondary Education (Compulsory and Free of Charge Education) Law*, L. 24(I)/1993, the *Laws ratifying Article 7 paragraphs 1-4, 6, 8 and 10 of the Revised European Social Charter of the Council of Europe* and the *ILO Conventions on Minimum Age 1973* (No. 138) as ratified by Law 17(III)/1997⁴⁸³ and the *Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*⁴⁸⁴ L. 33()/2000.

According to the above mentioned note, Law L. 48(I)/2001 is administered by the Department of Labour and the Ministry of Labour and Social Insurance. A Labour Inspection System exists under the Department of Labour Inspection of the Ministry of Labour and Social Insurance. It is organised and operated according to the ILO Labour Inspection Convention No. 81. Basic provisions of the above law include: (a) prohibition of the employment of children who have not reached 15 years of age. Exceptions are allowed under certain circumstances for children of 14 years of age; (b) prohibition of the employment of young persons (15 to 18 years of age) in certain dangerous occupations. Annex I of the Law corresponds to Annex I of the Directive 94/33/EC and represents a non-exhaustive list of factors and processes that are likely to entail specific risks for young persons. Annex II of the Law is a non-exhaustive detailed list of additional, more specialised types of work and processes that considered dangerous, heavy and unhealthy for young persons. These activities are prohibited for young persons; (c) prohibition of the employment of persons, who have attained the age of 15 and are under 18, between the hours of 23 and 7.

The said Law sets the maximum time, which is (a) 7 hours and 15 minutes daily or 36 hours weekly for persons who have reached the age of 15 and are under 16 years old; (b) 7 hours and 45 minutes daily or 38 hours weekly for persons who have reached the age of 16 and are under 18 years old; (c) for persons who have reached the age of 15 but are under the age of 18, the law provides for a minimum period of continuous rest of 12 hours during each 24 hour period and of 48 hours during each week.⁴⁸⁵

Article 33. Family and professional life

⁴⁸¹ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁴⁸² Note by the Ministry of Labour and Social Insurance, 3 November 2005.

⁴⁸³ π () 1997, 17()/1997.

⁴⁸⁴ π () 2000, 31()/2000.

⁴⁸⁵ Note by the Ministry of Labour and Social Insurance, 3 November 2005.

REPORT ON CYPRUS IN 2005

Parental leaves and initiatives to facilitate the conciliation of family and professional life

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 considers that the situation in Cyprus is in conformity with Article 8(1) of the Revised Charter on the issue of maternity leave.⁴⁸⁶ This is so because insecure or fixed term contracts cannot be used to circumvent the rules of maternity leave. Also, the minimum period of maternity leave is 16 weeks, there is a 9 week period of compulsory leave i.e. leave that may not be relinquished, which must be taken from the second week before the expected date of confinement. Maternity allowance is payable to women who have been insured for at least 26 weeks prior to the commencement of maternity leave, have paid contributions totalling at least 26 times the weekly Basic Insurable Earnings prior to the commencement of maternity leave and have paid or had credited contributions in the previous contribution year at least equal to 20 times the weekly Basic Insurable Earnings.

Maternity protection legislation provides that nursing women are entitled to time off for the purpose of nursing a child: a woman is entitled for time off for the purpose of nursing a child: a woman is entitled for a period of six months from confinement to either interrupt her work for one hour or to start or finish the day earlier by an hour. This hour is considered as working time and is remunerated accordingly. “The Committee notes that the period of 6 months for which time off for nursing is permitted is short. The Committee considers that in principle nursing breaks should be granted until at least the child reaches the age of nine months. The Committee concludes that the situation in Cyprus cannot be considered as being in conformity in this respect. The Committee concluded that the situation in Cyprus is not in conformity with article 8(3) of the Revised Charter on the grounds that the period over which women are granted time off for nursing is too short.”⁴⁸⁷

Protection against dismissal on grounds related to the exercise of family responsibilities

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

Employers are prohibited from dismissing female employees from the notification of pregnancy until the expiry of three months after the end of maternity leave or from giving notice of dismissal which would expire during the above mentioned period. Exceptions to this rule are limited to three cases: serious misconduct on the part of the employee or conduct justifying termination of the contract of employment, cessation of the undertaking’s activities and expiry of the contract of employment.⁴⁸⁸ Regarding reinstatement of an unlawfully dismissed employee, this is limited to cases where the enterprise concerned has more than nineteen employees.⁴⁸⁹ Thus, the European Committee of Social Rights concluded that “the situation in Cyprus is not in conformity with article 8(2) of the Revised Charter on the ground that the power of the courts to order reinstatement of an unlawfully dismissed employee is limited to case where the enterprise concerned has more than twenty employees.”⁴⁹⁰

Pursuant to Section 6(2) of the *Termination of Employment Law* N. 24/1967 as amended, marital status, pregnancy, maternity and absence from work due to parental leave do not constitute a valid reason for termination of employment. An employee may bring a case before the Labour Tribunal in case of unlawful dismissal within the meaning of Section 6 of

⁴⁸⁶ European Social Charter (Revised): Conclusions 2005 (Cyprus).

⁴⁸⁷ Ibid.

⁴⁸⁸ See also the analysis in Article 30 supra.

⁴⁸⁹ See supra Article 30 analysis.

⁴⁹⁰ European Social Charter (Revised): Conclusions 2005 (Cyprus). As explained above, the law does not provide for twenty employees but for nineteen. The European Committee of Social Rights should note that.

the *Termination of Employment Law*. The Labour Tribunal may award compensation which cannot be less than the amount the employee would receive if made redundant but at the same time cannot exceed the wages of a period of two years. The Labour Tribunal may order reinstatement, but cannot exceed twelve months wages. An employee may claim a higher amount of compensation from the District Court. The European Committee of Social Rights concludes that “the situation is not conformity with the Revised Charter article 27(3) on the ground that courts may only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned has more than 20 employees.”⁴⁹¹

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 Rights⁴⁹² noted that the Social Welfare Services of the Ministry of Labour and Social Insurance is the governmental agency in charge of the promotion and provision of social services. They address social risk and aim to enhance social cohesion. The Social Welfare Services is responsible for policy-making, promotion, implementing and monitoring the provision of social services. It is divided into four departments: (i) families and children, (ii) public assistance, (iii) older persons and persons with disabilities, (iv) staff development and programme design. The final provision of social services is ensured by a network of providers, which consists mainly of third sector providers (Community Welfare Councils and NGOs). The Social Welfare Services can provide social services directly, subsidise services provided by NGOs, or purchase services from non-public providers. The main services are family support such as counselling, preventive and protective services for children, child day-and short-or long-term case; home care, day care and residential care for the elderly and persons with disabilities. Target groups are children, the elderly, persons with disabilities, families at risk and single-parent families.

Everyone legally resident in Cyprus is entitled to social services provided he or she meets the predetermined criteria. When access is denied, applicants may file an appeal to the Director of Social Welfare Services, to the Ombudsman, to the Minister of Labour and Social Insurance, or to the Court.⁴⁹³

Supervision of the social services is carried out by the SWS which is entrusted by law to register and inspect day care centres for children and day care and residential care for older persons and persons with disabilities.⁴⁹⁴

Legislative initiatives, national case law and practices of national authorities

Social Security

According to information received by the Annual Report of the Ministry of Labour and Social Insurance,⁴⁹⁵ pursuant to the *Social Security Law of 1980* L. 14/1980,⁴⁹⁶ the contributions to the Social Security Fund and the allowances, are proportionate and are calculated to a percentage of the income of the insured from their work. The Social Security Plan covers obligatory every person who works in Cyprus. It is funded by the employers, the insured and

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ Annual Report of the Ministry of Work and Social Security, 2004.

⁴⁹⁶ π _____, _ . 14/1980.

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the state. The Plan provides financial benefits, such as marriage benefit, maternity benefit, illness benefit, unemployment benefit, widow benefit, inability benefit, orphan benefit, elderly benefit, benefit for the wives of people whose fate is unknown due to the 1974 war, death benefit, and benefits for accidents at work and diseases caught up at work. In 2004 5.632 people have been convicted for violating the Social Security Law.

According to the *Social Security Law of 1980*, L. 14/1980, Section 29, the maternity benefit is given to women to have given birth if, at the day of birth, she or her husband fulfil the requirements of the contribution to the Social Security Fund. This leads to the conclusion that women who do not fulfil the requirements of the law and are unmarried cannot claim the maternity benefit.

Since the 1 May 2004, the Social Security Department applies Council Regulation 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the communities and Council Regulation 574/72 which fixes the procedure for implementing Regulation 1408/71.⁴⁹⁷

Housing

*The House Financing Organisation Regulations (Issuing of Loans)*⁴⁹⁸ (Number 866) were amended in December 2004. According to the Regulations, the interest on a house loan is 6.75% If however the family requires a loan for their first house, and the area of the house is less than 250 square metres, then the interest is 6,25%. If the area is less than 120, then the interest is 6,00%.

A new law proposal which will codify the benefits and rights of refugees and others who suffer with regards to their housing is being discussed. It is worth mentioning here that the beneficiaries of this law will include Turkish Cypriot sufferers before 1974 who have no other property.⁴⁹⁹

The Government is reportedly working on a comprehensive housing plan aimed primarily at helping large families and persons with special needs to acquire their own home. The Standing Committee of the Housing Policy Agency discussed the basic parameters of the plan. Although still in the early stages, and despite budgetary constraints, the intention reportedly is to broaden the groups of people entitled to these facilities. The preliminaries agreed during the meeting to include the following: Raising the maximum long-term loan from the current £30 000 CYP to £50 000 CYP. Paying off loans in 30 years, except in cases where an applicant reaches the age of 70 before that time. Interest rates will be 65 per cent of those that currently apply. State grants (for non displaced persons) will be around 8000 CYP; current loan scheme range from £3000 CYP. Moreover, in most cases there will be no restrictions based on a person's income, given that an applicant does not own another house. With the new arrangements, large families (which so far have been eligible for low-interest loans but no grant) will now also receive the subsidy, but income criteria will apply. This also covers people with special needs. Families with an income up to £20 000 will be eligible for the grant. There are also additional incentives for people to settle in small communities at a distance from urban centres. Large families and persons with special needs will also enjoy an extra advantage in being able to choose the location of their house anywhere in the fee areas.⁵⁰⁰

Social security in favour of persons moving within the Union

⁴⁹⁷ Annual Report of the Ministry of Work and Social Security, 2004.

⁴⁹⁸ π _____ (_____) _____ 1982

⁴⁹⁹ Fileltheros Newspaper, 17 March 2005.

⁵⁰⁰ Cyprus Mail Newspaper, 19 January 2005.

Legislative initiatives, national case law and practices of national authorities

According to information received by the Ministry of Labour and Social Insurance,⁵⁰¹ EU national residing in Cyprus are entitled to social assistance and social services provided by the Social Welfare Services, in accordance with the relevant legislation. Access to social security/protection is mainly safeguarded by EC Regulations 1408/71 and 547/72, which after Cyprus' accession to the EU are enforced by the Social Insurance Services under the Ministry of Labour and Social Insurance. The Regulations coordinate the social security schemes of the member states of the EU and their purpose is to safeguard the rights of employed persons, self-employed persons and members of their families when they exercise their right to move and reside within the EU. The most important coordinating principles of Regulation 1408/71 are the following: (a) no discrimination is made between nationalities (equal treatment); (b) the worker is subject to the legislation of only one state at a time; (c) rights in course of acquisition are protected (aggregation of periods of insurance, employment or residence); (d) rights already acquired are protected (export of benefits).

Other relevant developments*Legislative initiatives, national case law and practices of national authorities***Unaccompanied minors**

According to the *Refugee Law*, in case of an unaccompanied child, the Director of Social Welfare Services assumes the role of the child's guardian and is responsible for providing all the necessary means for the best interest of the child. During the child's stay in Cyprus, the Director may place the child in the care of his/her relatives, in foster families, reception centres especially designed to accommodate minors or other facilities for minors or in the care of the person who undertook the care of the child during his/her departure.⁵⁰²

Article 35. Health careAccess to health care*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 regarding the European Social Charter (Revised) noted that "health care is still widely privatised."⁵⁰³

The Committee wrote: "with regard to health education in schools, [...] the Committee notes that an initial selection of 16 schools have taken part in the healthy schools network set up by the WHO's Europe office and it is planned to extend the programme in 2003-2004."⁵⁰⁴

"The Committee considers that the situation in Cyprus is in conformity with article 11(2) of the Revised Charter."⁵⁰⁵

"The Committee notes that, as a result of amendments made in 2003 to the Public Health Act and its implementing regulations, 43 communicable diseases are now notifiable in accordance with WHO and European Union recommendations. The Ministry of Health has set up a

⁵⁰¹ Note by the Ministry of Labour and Social Insurance, 3 November 2005.

⁵⁰² Note by the Ministry of Labour and Social Insurance, 3 November 2005.

⁵⁰³ European Social Charter (Revised): Conclusions (2005).

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

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network for the surveillance and control of communicable diseases, which will comply with Council of Europe standards for the protection of personal data.”⁵⁰⁶

The US Department of State on the Cyprus Report wrote:⁵⁰⁷ “Approximately 85 percent of the population was eligible to receive free public health care.”

Legislative initiatives, national case law and practices of national authorities

Legislation providing for the introduction of a general health scheme was enacted on 19 April 2001. Several implementing regulations are being drawn up. It is estimated that the new scheme will be operational in about five years. The scheme covers all citizens of Cyprus who are permanently resident and foreign citizens who reside permanently or are legally employed in the country. The legislation concerning the autonomy of state hospitals is in its final states, as part of the implementation of the General Health Plan. The legislation states that each hospital will be run by its own board and have its own budget, which will be approved by the state. Soon it will be finalised and brought forward to the Council of Ministers for approval.⁵⁰⁸

Turkish Cypriots receive free medical care since the checkpoints have opened in April 2003. This has caused the Health Ministry to pay £3.6 million CYP. Until the end of 2004, there had been 24, 422 visits to state hospitals from Turkish-Cypriots.⁵⁰⁹

Foreign nationals living and working legally in Cyprus are entitled to the same medical cover as locals. According to a senior administrative officer at the Health Ministry, out of the some 9 000 UK nationals residing in Cyprus around 3 800 have already filed for an application to receive a medical card. As is the case for Cypriots, as a rule medical cards are not issued per individual, but per family. To be eligible for 100 per cent free care, applicants must be permanent residents and provide proof in writing of medical coverage in their country of citizenship, enabling the reciprocal agreement between that country and Cyprus to be used. In January 2006 it is expected that the standard form which foreigners have to fill in will be phased out and replaced by the European Health Insurance Card (EHIC).⁵¹⁰

The Cypriot Health and Consumer Protection Commissioner kicked off the EU’s 72 million euro anti-smoking campaign aiming mainly at adolescents and young adults.⁵¹¹

The husband of a person suffering from HIV/AIDS filed a complaint at the Ombudsman with regards to the lack of the required medicine.⁵¹² The Ombudsman criticised the Ministry of Health for not complying with the requests of the patient’s doctor to have the said medicine. The behaviour of the Ministry on the said issue is unacceptable, according to the Ombudsman, as the said medicine is essential for the well-being and survival of the patient. This complaint brought into the fora wider issues with regards to the medical care of people suffering from HVI/AIDS.

Reasons for concern

Not everyone residing in Cyprus is allowed to free medical care. People working for the Government irrespective of their income are allowed to free medical care, while others are only allowed if they fulfil certain criteria, such as income. This is quite discriminatory, considering that the provision of health care is not based on a contributory system. Rather, it

⁵⁰⁶ Ibid.

⁵⁰⁷ US Department of State, Cyprus Country Report on Human Rights Practices, 28 February 2005.

⁵⁰⁸ Cyprus Mail Newspaper, 16 September 2005. See also last year’s Report on the issue.

⁵⁰⁹ Cyprus Mail Newspaper, 11 March 2005, Politis Newspaper, 28 February 2005.

⁵¹⁰ Cyprus Mail Newspaper, 10 March 2005.

⁵¹¹ Cyprus Mail Newspaper, 2 March 2005.

⁵¹² Ombudsman, *Annual Report 2004*, November 2005, p. 178 (A/P 2294/04).

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Parliament passed a *Law for the Promotion on the Use of Biofuels or other Renewable Fuels for Transport*.⁵¹⁷ The aim of this law according to Section 3 is to promote the use of biofuels or other renewable fuels to replace diesel or petrol for transport purposes in each member state, with a view to contributing to objectives such as meeting climate change commitments, environmentally friendly security of supply and promote renewable energy sources.

(4) Cyprus acceded the Kyoto Protocol on 16 July 1999 and the Protocol entered into force on 16 February 2005.

(5) A law proposal was tabled at the Parliament for the purpose of ratifying the amendment of 2000 on the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage.⁵¹⁸ Cyprus has already ratified the *International Convention on Civil Liability for Oil Pollution Damage in 1989* by Law No. 63/1989.⁵¹⁹

(6) A law proposal has been tabled at the House of Parliament entitled *Law on the Measures for the Protection of Human Health and Environment from the release in the environment or distribution in the market of Genetically Modified Products*.⁵²⁰ The purpose of this law is to protect human health and the environment from the introduction of genetically modified products in the environment and their distribution in the open market.

The Standing Committee of the Bern Convention in its 24th meeting (29 November-3 December 2004) adopted a recommendation regarding the installation of a new antenna in the Sovereign Base Area of Akrotiri.⁵²¹ The Standing Committee recommended to “(1) Further monitor on a long-term basis the consequences of the construction of the Pluto I and II antennae in a site with ornithological values of international importance, especially in order to better estimate the overall level of bird mortality. [...]. (2) Monitor radiation levels in order to assess effects on bird orientation [...]. (3) Draw up an integrated management plan for the whole wetland complex of the Salt Lake and Phassouri Marsh, including surrounding areas of outstanding ecological importance (beaches, dunes, rocky shorelines), taking into account the requirements of the Ramsar and Bern Convention and of the European Union directives in order to safeguard the international values. (4) Ensure that the establishment of the management plan or other plans and projects are based on public consultation and mutual agreements between the SBAA, the Cypriot authorities and specialised NGOs and that it is communicated to all stakeholders, especially local residents. [...] (6) Take steps to ensure that the archaeological, historical and ecological values of Akrotiri, which represent an underestimated opportunity for environmental and cultural education, especially for schools but also for the public at large be recognised; open and improve some of the signposted trails in the military area as a specific programme of the Aktorit Information Centre and the future permanent visitors centre, in order to better communicate with the Cypriot population.”

It was reported in the daily press in January 2005 that an independent Environmental Commissioner will be established during the period under study.⁵²² Nothing has been progressed on this initiative.

⁵¹⁷ Ο π
2005, N. 66(I)/2005.

⁵¹⁸ Fileleftheros Newspaper, 7 September 2005.

⁵¹⁹ π π 1969
1967 () π 1989, . 63/1989.

⁵²⁰ π π π π

⁵²¹ Recommendation No. 113 (2004) of the Standing Committee, adopted on 3 December 2004, on the installation of a new antenna (Pluto II) in the Sovereign Base Area (Akrotiri, Cyprus).

⁵²² Politis Newspaper, 27 January 2005.

Article 38. Consumer protectionProtection of the consumer in contract law and information of the consumer*Legislative initiatives, national case law and practices of national authorities*

For the purpose of implementing Commission Directive 2003/95/EC of 27 October 2003 amending Directive 97/77/EC laying down specific purity criteria on food additives other than colours and sweeteners, the Council of Ministers adopted *Regulations on the Various Substances in Food (Amendment) Regulations of 2004*.⁵²³

The Parliament has amended twice the *Law on the Selling Price Inscription and Unit Price of Products Provided to Consumers*.⁵²⁴ The first amendment is Law 136(I)/2005.⁵²⁵ Before this amendment, the obligation to write down the selling price of packed products including every tax and unit price was restricted to shops whose area covered more than 280 square metres. The amendment law crossed out the said restriction. Also before this amendment, outdoor sellers, as well as automatic machines did not have this obligation, while with the amendment they do.

The second amendment to the *Law on the Selling Price Inscription and Unit Price of Products Provided to Consumers* is L. 119(I)/2005,⁵²⁶ which added Section 4 A to the Basic Law. This amendment introduced the obligation of those who sell oil or petroleum to have the price of each fuel they sell hung at a label. The said label should be distinguishable, lit during night hours and the inscription upon the label should not be less than 15 centimetres tall.

The European Consumer Centre of Cyprus opened in Cyprus on 10 June 2005. The centre will handle all complaints by Cypriot consumers regarding the purchase of products or the provision of services from other member states. It will also deal with complaints filed by European citizens to similar centres in other member states relating to purchases or services from Cyprus. The European Consumer Centre of Cyprus belongs to a network currently covering 23 Consumer Centres across Europe.⁵²⁷

The Ministry of Trade and Industry announced the establishment of a Consumer Claims Tribunal (Alternative Dispute Resolution) that would be tasked with settling disputes out of court. The tribunal is expected to be up and running early next year and would settle claims of up to £3000CYP. The tribunal would take a maximum of three months to process a claim.⁵²⁸ This bill establishing the Consumer Claims Tribunal is now pending before the Parliament.

The Parliament is discussing the possibility of establishing a Commissioner for the Protection of the Consumer. The Commissioner will examine complaints by the consumers and will be able to impose penalties.⁵²⁹ According to information received by the Ministry of Trade and Industry, the Commissioner will not be vested with additional powers than the ones held by the Consumer Protection Department of the Ministry of Trade and Industry.

⁵²³ _____ (_____) _____ 2004.

⁵²⁴ _____ π _____ π _____ π _____ π _____

⁵²⁵ _____ π _____ π π _____ π _____ , . 112()/2000.

⁵²⁶ _____ π _____ π π _____ π _____ , . 136()/2005.

⁵²⁷ _____ π _____ , . 119()/2000.

⁵²⁸ The Cyprus Weekly Newspaper, 17-23 June 2005. For more on this see the website of the Ministry of Commerce, Industry and Tourism at <http://www.mcit.gov.cy>.

⁵²⁹ Cyprus Mail Newspaper, 17 June, Politis, 17 June 2005.

⁵²⁹ Fileleftheros Newspaper, 21 February 2005.

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Cyprus has become a member of the International Consumer Protection Enforcement Network (ICPEN GLOBAL).⁵³⁰ This decision took place on 9-11 March 2005 at an international conference in Edinburgh.⁵³¹

The Organisation for the Protection of the Consumer is organising a programme for the education of people in agricultural areas regarding the safety of food and products. This programme is co-funded by the EU and the Ministry of Commerce and Tourism.⁵³²

Reasons for concern

Although the laws on the protection of the consumer provide for the right to file a law suit for associations representative of consumers (i.e. *Law Regulating the Distant Marketing of Consumer Financial Services and Relevant Laws* L. 242(I)/2004, *Law on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees* L. 7(I)/2000, *Law on the Establishment of Consumer Contracts Outside the Shop* L. 13(I)/2000 etc),⁵³³ the Organisation for the Protection of the Consumer has never used this right.

⁵³⁰ Fileleftheros Newspaper, 23 March 2005.

⁵³¹ Fileleftheros Newspaper, 16 March 2005.

⁵³² Fileleftheros Newspaper, 20 September 2005.

⁵³³ For more on this right see last year's Report.

CHAPTER V. CITIZENS ' 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

Shener Levent, a Turkish Cypriot, was prevented from standing as a candidate at the elections to the European Parliament by the Cypriot European Parliament Elections Director because he was not registered at the special Electoral Poll, as specified by the law. He filed a recourse against the Cypriot European Parliament Elections Director. After his case was dismissed at the first and second instance,⁵³⁴ he filed suit against the elected members of the European Parliament (*Concerning the Electoral Application with regards to the elections of members of the European Parliament of 13/6/2004 decision of 14 June 2005*, Electoral Application number 1/2004).⁵³⁵ Shener Levent argued that the election was null because (a) the said law was not published in Turkish at the official gazette of the Republic, and therefore he was not aware that he had to get registered at the Special Electoral Poll and (b) the said law discriminates him, as a Turkish Cypriot against Greek Cypriots.

The Court rejected his Application. The said law, although not published in the Turkish language at the Gazette of the Republic, was published in various Turkish-Cypriot newspapers, including the paper Shener Levent was working as the Director. According to the Supreme Court, the responsibility of the Republic to publish all its laws, including the relevant law, in the Turkish language at the Gazette as provided for in Article 3(1) of the Constitution, can not be implemented at the moment. This is due to the special circumstances of the situation in Cyprus as recognised by the principle of necessity in the *Attorney General v Mustafa Ibrahim and Ohters case of 1964* (1964 CLR, P. 195). More recently, the responsibility of the Republic to publish all its laws in the Turkish language at the official gazette was recognised as impossible to be implemented (*Ahmet Cerkez v Republic and Gengiz Kasapoglou v Police of 16 May 2005* (Criminal Appeals number 7702 and 7703). Now as regards Shener Levent's argument that he was discriminated against Greek Cypriots because he is a Turkish Cypriot, this was an argument that was rejected by the Court as well. The same obligation to get registered at the Special Electoral Poll exists for Greek Cypriots and Turkish Cypriots alike, including other EU citizens. As a result, the Application of Shener Levent was rejected by the Supreme Court acting as an Electoral Court by its decision on 14 June 2005.

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

The Ombudsman in one of her reports⁵³⁶ suggested that the Cyprus Republic should take measures to ratify the Council of Europe *Convention on the Participation of Foreigners in*

⁵³⁴ For more on that see last year's Report.

⁵³⁵ π
13.6.2004.

⁵³⁶ A. K. P. 61/2004, 10 June 2005.

It is observed that the relevant bill providing for the right to vote for Turkish Cypriots citizens of the Republic, and residents in its territory, has not been enacted as yet. The situation is particularly alarming bearing in mind that parliamentary elections are coming up in 2006.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

A law proposal entitled the *Law on the Exercise of the Right to Elect and Get Elected by the Members of the Turkish Community who have their Normal Residence in the Government-Controlled Area (Temporary Provisions)* is pending.⁵⁴² This law gives the right to Cypriots who belong to the Turkish-Cypriot community and who reside in the Government controlled area, to vote and stand as a candidate at any election, i.e. presidential, parliamentary, elections for mayor and municipal elections. This proposal was the result of the judgement of *Aziz v. Cyprus* (no. 69949/01, ECHR 22 June 2004).

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

⁵⁴² π (π) π 2004.

Other relevant developments

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 noted that “according to the [Cypriot] report, nationals of the Republic of Cyprus may be prevented from leaving the country on the following grounds as stipulated, inter alia, under the Children’s Act and the National Guard Laws: (a) an arrest warrant or a court order are pending with respect to the person; (b) the person is legally liable for the care and maintenance of a child or children under the age of sixteen years and wants to leave the country without the child or children in which case the Director of Social Welfare Services is under an obligation to prevent the person from leaving the country unless this person can provide evidence that the child or children are not likely to become dependent on public funds or be exposed to moral danger or neglect; (c) the person has been called for military service unless a special license is granted by the Minister of Defence.”⁵⁴³

Article 46. Diplomatic and consular protection

⁵⁴³ European Social Charter (Revised), Conclusions 2005 (Cyprus).

CHAPTER VI. JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

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

In the case of *Kyprianou v Cyprus* (Application no. 73797/01) the Grand Chamber of the European Court of Human Rights held unanimously that there had been a violation of Article 6(1) (right to fair trial) of the European Convention on Human Rights and awarded the applicant 15, 000 euros for non pecuniary damage and 35, 000 euros for costs and expenses.⁵⁴⁴

Legislative initiatives, national case law and practices of national authorities

Legislation

The Parliament passed a law entitled *Law on the Provision of the Establishment of a Legal Aid Fund for Investors* L. 103(I)/2005.⁵⁴⁵ The purpose of this law is to help those who lost money in the Stock Market saga that took place during the period 1999-2000. According to Section 10 of the said law, legal aid is given to physical persons for civil suits (a) to those who seek remedy based on the *Securities and Stock Market Law* (π _____ π _____) and its Regulations for the period of 1 January 1999 to 30 June 2001 and/or (b) to those who seek remedy in relation to an actionable right arising from the purchase or acceptance of purchase or from the sell or offer to sell securities during the period of 1 January 1999 until June 2001 with the purpose of introducing the said securities to the Cyprus Stock Market. The said remedy in both cases above should exceed £2000 CYP but not the £50 000 CYP.

For the purposes of the above mentioned law a fund is established which is called “Investors Legal Aid Fund” whose purpose is to secure and dispose money for the purposes of providing legal aid to investors. The resources of the fund come from the Standing Fund of the Republic (Section 3). A Committee is also established which will recourse to the relevant steps in order to provide legal aid to investors (Section 4 and 5). The Committee decides on the application for legal aid based on the general economic situation of the applicant and when his/her family income does not exceed £20 000 CYP per year (Section 11).

The Parliament has amended the *Law on Legal Aid* with the *Law Amending the Legal Aid Law of 2002* L. 22(I)/2005.⁵⁴⁶ The purpose of this amendment law is to transpose Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. According to Section 6A paragraph 1, cross-border dispute is a civil or commercial dispute where the party applying for legal aid is either an EU citizen or a third country national domiciled or habitually resident an EU member state other than Cyprus. According to Section 6A paragraph 2, natural persons involved in dispute covered by this law shall be entitled to receive free legal aid in relation to a cross-border dispute. This legal aid includes pre-litigation advice, legal advice and representation in court. Free legal aid in cross-border disputes also include the paying of a translator, the expenses of an official translation of documents required by the court and travel costs to be borne by the applicant where the

⁵⁴⁴ <http://www.echr.coe.int>

⁵⁴⁵ π _____ π _____, L. 103(I)/2005.

⁵⁴⁶ π _____ π _____ π _____ 2002, L. 22(I)/2005.

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physical presence of the persons concerned with the representation of the applicant's case is required in court and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means (Section 6A paragraph 3). The Court in which the cross-border case is pending can issue a certificate for legal aid if (a) it deems that the economic situation of the applicant does not allow him to safeguard legal aid and (b) due to the severity of the case or any other circumstances it is preferable for the interest of justice that the applicant receives free legal aid for the preparation and establishment of his case; (c) the case is not obviously without basis or falls outside the scope of Directive 2003/8/EC or in the case that pre-litigation advice was provided if the access to the court is not secured. According to Section 7B the competent authority in Cyprus for the transmission of applications for people who have their domicile or their residual address in the Republic for legal aid from other member state is the Ministry of Justice.

The *Law on the Legal Aid* was amended for a second time in 2005 L. 77(I)/2005.⁵⁴⁷ According to the second amendment, for the purpose of legal aid in the appeal court, the issuing of a new certificate is not required and the Court takes into consideration the report of the Social Services which was provided in the first instance case, provided the applicant swears that his financial position has not changed (Section 7 paragraph 1). The same applies to instances of free legal aid in cross-border cases. The issuing of a new certificate is not required and the court takes into consideration the application which was provided in the first instance case, provided the applicant swears that his financial position has not changed (Section 7A).

Case law

The Supreme Court in the *Sigma Radio T.V LTD and Cyprus Broadcasting Corporation of 18 March 2005* (Civil Appeal Numbers 11803, 11804 and 11805) was also asked to consider whether Order number 18 of the Civil Procedure Rules, which provides for the possibility of an accelerated procedure, violates the right to a fair trial provided for in the Constitution. The Supreme Court decided that Order 18 safeguards the right to a fair trial and provides adequate guarantees to the plaintiffs for the presentation of their case within a framework set.

The Supreme Court was asked to decide whether Section 5 of the *Legal Aid Law* L. 165(I)/2002 which provides for legal aid for damages caused by a violation of human rights in civil and criminal procedures is unconstitutional. (*Application by Sveltana Shalaeva of 21 October 2005*, Number 3/2005). The Applicant in this case sought legal aid in an administrative procedure before the Supreme Court in her case against the Republic for not providing her with a residence and work permit. The Applicant argued that Section 5 of the Legal Aid law is unconstitutional because it violates article 12(5) of the Constitution which provides that "the accused for an offence has the following rights [...] to be provided with free legal aid if he/she does not have the means to pay for an attorney." The Supreme Court rejected the Applicant's claim and noted that "nothing in Article 30 or 35 [of the Constitution] can be interpreted in favour of the argument of the Applicant that the term 'accused for an offence' in article 12(5) [of the Constitution] encompasses anything else but an accused for an offence." In this case the applicant is not an accused for an offence and therefore Section 5 of the *Legal Aid Law* cannot be considered as unconstitutional.

The Supreme Court in *Ali Kiamil v. the Minister of Interior in his capacity as Custodian of Turkish Cypriot Properties of 24 March 2005* (Case no.133/2005) declined to allow an application for legal aid by a Turkish Cypriot concerning his judicial review action of a decision of the Guardian of Turkish Cypriot properties. The court based its decision on the provisions of the *Legal Aid Law* L. 165(I)/2002. The said law in Section 5 provides that legal aid is available in proceedings concerning violation of human rights, in civil applications against the Republic for damages emanating from determined human rights violations, or

⁵⁴⁷ _____ π _____ π π _____ π _____, L. 77(I)/2005.

criminal proceedings where the offence under examination concerns determined human rights violations. The court declined to accept that a judicial review procedure for annulment of a decision directly affecting the human rights of an applicable would be covered by the relevant law.

In *Kaukaros v The Republic of 1995* (Criminal Appeal no.5653, 5654) the appellants challenged a decision of the Assizes Court not to allow their counsel's request to withdraw from their case on two separate occasions. They argued that this deprived them of a fair trial, and representation by an advocate of their own choice. The Supreme Court observed that the appellants themselves had never revoked their authorisation given the counsel of their choice, nor did they allege that they had suffered from poor representation or otherwise negligent acts of their counsel. The Supreme Court observed that acceptance of a case by an advocate, effectively binds him until the end of the proceedings. He can withdraw from the case only following the grant of leave to this effect by the court according to Section 15 of the Advocates Law, Cap. 2.⁵⁴⁸ Such grant is within the court's discretion which is to be exercised in accordance to the interests of justice and the consequences to the defence of an accused.

The above decision was applied by the Limassol Assizes Court in its decision dated 14 February 2001, in the context of criminal proceedings in the case of *Panovits v. The Republic*. The Court in this case rejected the request of counsel to withdraw from the case. The easiness with which the Assizes Court interpreted the limits of its discretion to accept a counsel's request to withdraw from a case, poses reasons for concern both in relation to the rights of the advocate in question, as well as to the fair trial rights of an accused.

Reasons for concern

The situation in respect to a conviction for murder is problematic, since according to the Cypriot Penal Code, the Assizes Court entering such a finding, has to impose the sentence of life imprisonment. The court does not have the possibility to exercise its discretion to impose a sentence corresponding to the particular circumstances surrounding the offence, or to the relevant and applicable attributes of the convicted. Thus, in effect the sentence is stemming directly from the corresponding legislative provision, and as such can be seen as imposed by the legislature and not by the judiciary.

Independence and impartiality

Legislative initiatives, national case law and practices of national authorities

Further to the *Kyprianou v Cyprus* case which the ECHR held unanimously that there had been a violation of article 6(1) (2) and (3)(a) (see Report 2004), the Cypriot Government on 19 April 2004 requested that the case be referred to the Grand Chamber and the panel of the Grand Chamber accepted the request on 14 June 2004. The case is now pending at the Grand Chamber.⁵⁴⁹

The Supreme Court in the case of *Michalis Michael v Cyprus Republic of 7 October 2005* (Application number 902/2004) was asked to decide whether a penalty imposed by an army officer to another army officer of a lower position, violated the principles of natural justice (i.e. no man can be judge in his own case) because the person who imposed the penalty was also the complainant. The Supreme Court ruled that the army officer imposing the penalty was indeed a judge in his own case and therefore he did not have the competence to impose a penalty. The Supreme Court accepted the application.

⁵⁴⁸ According to Section 15 "every advocate is an administrator of justice and has disciplinary responsibility and is subject to disciplinary procedure that is provided for in this Section."

⁵⁴⁹ Press Release issued by the Registrar of the ECHR, 2 February 2005.

Reasonable delay in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

According to the Parliamentary Legal Committee, only 2% of the court cases that are filed are heard. The rest 98% end up in compromise.⁵⁵⁰

The Supreme Court in the *Demetris Mehris v. Police of 24 March 2005* (Criminal Appeal Number 67/2005 and 80/2005), was asked by the Appellant to reduce the prison sentence of 45 days for the crime of securing credit with false illustration, because there had been three and a half years delay in the hearing of the case. The Supreme Court reviewed the case law on the subject and especially the *Eustathiou v Police case* (1990, 2 SCD 294). According to the Eustathiou case, delays in judicial proceedings can be distinguished into two categories: (a) delays until the case is brought to Court due to delays of the investigatory authorities and (b) delays in the Court and until the case is decided. In the case under examination (i.e. Demetris Mehris case), the investigatory authorities did not delay the investigation. On the contrary, the delay took place while the case was being heard in the Court. However, it was the Appellant's fault for the delay, as he did not appear in court in the specific date and an order for his arrest had to be issued. Thus, the Appellant cannot invoke delay in judicial proceedings when it is himself who is responsible for the delay. For this reason, the claim that due to the delay a more lenient punishment should be imposed on him was rejected.

In *Christos Zinonos v Police of 18 February 2005* (Criminal Appeal Number 7809), the accused appealed against the decision of the Assizes Court, because there was delay in judicial proceedings. The Supreme Court cited the recent *Charalambides v Police case of 1 June 2004* (see Report 2004) which pronounced the factors taken into consideration by the Court in deciding the reasonableness of the length of proceedings. Based on the factors mentioned in the Chalarambides case, the Supreme Court decided that there was a delay in the investigation of the crime by the police authorities but this delay under the circumstances was not excessive or unreasonable and therefore did not violate the right to a fair trial as safeguarded in the Constitution and the ECHR.

The issue of the reasonableness of the length of proceedings was also discussed in the *Attorney-General v George Gavriel, Andreas Ioannides and George Afxentiou of 12 January 2005* (Criminal Appeal number 7691). The Assizes Court whose decision was appealed by the Attorney-General decided to acquit the defendants because of delays in judicial proceedings which amounted to a violation of the fair trial provision safeguarded in the Constitution. The Supreme Court cited the *Attorney-General v Costas Meliou Menelaou case of 14 April 2004* (See Report 2004) which also discussed the factors taken into consideration in deciding the reasonableness of the length of judicial proceedings and decided that the delay fall within a reasonable time and therefore did not violate the constitutional rights of the defendants. The Supreme Court also noted that the decision to discontinue the trial is an exceptional measure which shall be used only when the interest of justice requires.

In the *Aggela Iosif Laperta v Mavroudis-Michael & Co Construction Ltd of 31 March 2005* (Civil Appeal Number 11767), the Supreme Court was asked to decide whether to give extension to one of the plaintiffs in order to submit an outline of address. The Supreme Court cited the *Koullatou v Panagiotou case* (2003, DSC 895), which stated that the purpose of the Orders of the Civil Procedures Rules is to safeguard a fair trial. Deviation from the rules is possible if it does not reverse the purpose of the rules. Additionally, the criterion in deciding as to whether an extension will be given is whether the plaintiffs made no effort or shown

⁵⁵⁰ Fileleftheros Newspaper, 25 October 2005.

indifference (*Strovolos Council v Giasemidou, 1997*, DSC 104). In the case under consideration, the plaintiff requested a two-day extension in the submission of the outline of address; he did not show any lack of effort or interest in the submission of the outline. As a result, the Supreme Court allowed a two-day extension as it did not violate the fair trial provision with regards to reasonableness in judicial proceedings.

Right to the enforcement of judicial decisions

Legislative initiatives, national case law and practices of national authorities

The Republic ratified on 4 November 2005 the Protocol No. 14 to the Convention for Protection of Human Rights and Fundamental Freedoms Amending the Control System of the Convention by L. 24(III)/2005.⁵⁵¹

Article 48. Presumption of innocence and right of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

In 7 March 1996 the Council of Ministers based on Section 13(b) of the *Police Law* CAP 285,⁵⁵² decided to end the services of three Police officers because they were found guilty by an Investigation Committee established by the Council of Ministers and based on CAP 44, for torturing detainees. Before the establishment of the Investigation Committee, the Police officers were prosecuted before the relevant Assizes Court, which pronounced them not guilty and discharged them from the charges. The charges were based on the *Law of 1990 Ratifying the Convention against Torture and Other Degrading Treatment of Punishment* (L. 235/1990).⁵⁵³ The police officers challenged the decision of the Council of Ministers which ended their police career at the Supreme Court. The Supreme Court in 26 November 1997 decided that the decision of the Council of Ministers which ended their career violated “[...] their presumption of innocence and was contrary to the Constitutional principles and the ECHR. The decision violated Article 12(2) of the Constitution which stipulates that those found innocent and discharged by a relevant court of the Republic cannot be tried twice. The decision of the Council of Ministers takes as granted and as accepted the findings of the committee with regards to the guilt of the police officers, despite the fact that they had been found innocent by the Assizes Court.” Therefore, the decision of the Council of Ministers “violates Articles 12(2), 12(4), 12(5) and 30 of the Constitution.” The above relate to the case of *Attorney-General and Charalambos Taliadoros, Theodoros Sylianou and Ilias Kyriakides of 25 April 2005* (Civil Appeals 11381 and 11403) with which the plaintiffs (the police officers) sought compensation from the Republic based on article 146(6) of the Constitution for damage caused due to the Council of Ministers’ Decision which was later annulled by the Supreme Court.

The rules governing the evidence in criminal matters

Legislative initiatives, national case law and practices of national authorities

⁵⁵¹ _____ π _____ π _____ π _____
 _____ π _____, L. 24(____)/2005.

⁵⁵² _____, _____ 285.

⁵⁵³ _____ π _____ π _____
 _____ (____) _____ 1990, L. 235/1990.

REPORT ON CYPRUS IN 2005

The Parliament is discussing the amendment and updating of the *Law on Evidence*. More particular the following issues are expected to be amended: evidence given by minors, evidence given by spouses against each other and corroborating evidence.⁵⁵⁴

Video Recorded Interviews can be carried out according to the *Domestic Violence Law* 119(I)/2000 and under the *Witness Protection Law* 95(I)/2001. Such interviews can be carried out and be presented at Court if there is testimony from one of the following: victim or witness of domestic violence offence; a minor (under 18); a mentally challenged person; a handicapped person; a witness in a case under the Trafficking Law 3(I)/2000-trafficking case; a witness under the witness protection program.

Positive aspects

The fact that the Parliament is finally discussing the amendment and general updating of the Law on Evidence is a very welcome development, as the Law on Evidence is quite outdated.

Good practices

The right to freely choose one's defence counsel and the right to an interpreter

Legislative initiatives, national case law and practices of national authorities

In *Attorney-General v Alexander Vidakovic of 7 March 2005* (Criminal Appeal number 7616) the Supreme Court was asked by the Attorney-General to overturn the decision of the Assizes Court which interrupted the hearing and discharged the defendant because the interpreter did not appear in court. The Supreme Court overturned the decision of the Assizes Court and ordered the re-hearing of the case on the following grounds: first, it was incomprehensible why the Assizes Court discharged the defendant instead of rescheduling the hearing so that the interpreter would be present and second, the defendant in previous proceedings claimed that he spoke Greek and in fact engaged himself into a long conversation with the judge with regards to his right to legal aid in Greek.

In *Djermal Kasapoglou v Police of 16 May 2005* (Criminal Appeal Number 7760), the Supreme Court discussed the issue of the language of the hearing. The defendant was a Turkish-Cypriot who was charged for living off prostitution. In the appeal he argued that the Assizes Court violated his right to a fair trial because the hearing, including the indictment and various documents, were in the Greek not the Turkish language and in 7 hearings there was not an interpreter in the Court to translate what was happening into his own language. With regards to the first argument that the indictment, the hearing and all documents should be in Turkish as provided for in article 3 (1) (2) and (3) of the Constitution, the Court cited previous cases (*Republic v Sener Erbekci and other, 27 July 2004, The United Bible Societies (Gulf) v Hadjikakou, 1990, DSC 395*) according to which those articles of the Constitution are set aside based on the principle of necessity. With regards to the second argument, that in 7 hearings there was not an interpreter present, the Supreme Court studied the records of the Assizes Court and noted that (a) the defendant admitted that he spoke and understood Greek, (b) he never requested a translator, (c) seemed to be in close cooperation with his Greek-Cypriot lawyer. In this respect, the Supreme Court cited the case of *Gavriiildides v Police* (2003, DSC 405), which noted that the constitutionally recognised rights of the defendants in criminal proceedings are exercised through his lawyer. This means that the Court cannot verify all the time whether what the lawyer does or says is in line with his client's orders. (d) The argument that he needed a translator was firstly introduced in the appeal. As a result, his

⁵⁵⁴ Fileleftheros Newspaper, 11 January 2005.

right to a fair trial was not violated by the Assizes Court and therefore his argument was rejected.

The issue of the language of the hearing when the defendant is Turkish Cypriot was also raised in the criminal appeal number 25/2005 of *Sener Erbankci v Republic of 7 July 2005*. The defendant was a Turkish Cypriot who was convicted for possessing and intending to supply ecstasy pills. In his appeal to the Supreme Court he argued that the Assizes Court violated his right to a fair trial because the hearing was in the Greek language and not in the Turkish which is one of the official languages of the Republic. Additionally, the translator in the hearing did not properly translated the hearing and as a result his constitutionally right to have an interpreter was violated. With regards to the first argument, the Court cited the previous *Djemal Kasapoglou v Police case* which rejected such argument. With regards to the second argument, the Supreme Court noted that once the defendant claimed that the interpreter did not translate promptly the whole procedure, the Assizes Court assigned another translator. It also pointed out that when the defendant is represented by a lawyer and the hearing is in a language not understood by the defendant, it is the lawyer's responsibility to draw the court's attention with regards to the translation and then the court should make sure that the defendant receives a translation promptly. The right to the defendant to have a translator is violated only when the court realises that the procedure is not understood promptly by the defendant.

According to an established bank practice in Cyprus, all banks ban their employees from being accompanied by a lawyer during disciplinary proceedings against them. This often ends into them being dismissed without having the right to be represented or accompanied by a lawyer. This practice was challenged before the District Court of Nicosia. The applicant requested a declaratory decision by the court stating that the refusal of Laiki Bank (the Bank he was working with) to allow him to be accompanied by a lawyer during the disciplinary proceedings against him constitutes a violation of natural justice and of his constitutional rights. The Court decided that the right to be represented by a lawyer safeguarded in Article 12 (5) of the Constitution does not make any distinction between disciplinary proceedings and criminal ones. This means that employees in disciplinary proceedings have the right to be represented by a lawyer. According to the Court, this bank practice violates the constitutional rights of the applicants.⁵⁵⁵

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

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

The Nicosia Assizes Court imposed a 10 year imprisonment to the defendant after he was found guilty of sexual intercourse with an under age child. The Court noted that according to the case law, severe punishments are imposed to those committing sexual crimes.⁵⁵⁶

The Limassol Assizes Court imposed a 3 year imprisonment to the defendant after he was found guilty for illegal possession of Class A drugs. The Attorney-General appealed the punishment obtained as obviously unsatisfactory. The Supreme Court noted the necessity of imposing strict penalties in cases of drug trafficking and increased the penalty to five years imprisonment. (*Criminal Appeal 9/2005, decided on 27 June 2004*).

⁵⁵⁵ Fileleftheros Newspaper, 21 January 2005.

⁵⁵⁶ Politis Newspaper, 21 September 2005.

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

Legislative initiatives, national case law and practices of national authorities

In Concerning articles 12, 28, 30 and 146 of the Constitution, George Sylianou v Republic of 18 February 2005 (Application number 517/2004), the Supreme Court was asked whether Article 12 (2) of the Constitution which provides that nobody shall be tried or punished twice for the same offence is applicable in cases where a disciplinary procedure follows a criminal procedure which found the applicant guilty. In the case under examination the applicant was a policeman who was found guilty of theft by a public officer by a District Court acting as a Criminal Court and was given a fine of £500 CYP. After the end of the criminal procedure, he was subject to a disciplinary procedure by the Police, which imposed on him the penalty of forced resignation. It was the applicant's argument that the disciplinary punishment violated his right not to be tried or punished twice, as he had already been punished by the Criminal Court. The Supreme Court rejected this argument on the ground that Article 12(2) of the Constitution does not apply to disciplinary procedures but only to criminal ones. Therefore, even if subsequent to a criminal procedure, a disciplinary procedure is initiated based on the same facts as the criminal one and the person was found guilty and convicted by a criminal court for the same act, that does not violate the *autre fois acquit* principle. In reaching to this conclusion the Supreme Court invoked its case-law on the matter that dates back in the 1970s (i.e. R v Mozora, 1970, 3 CLR 210; Lambrou v Republic, 1972, 3 CLR 379 and 386; Mythyllos v Republic, 1982, 3 CLR 698, 705-706; Georgiades v Republic, 2000, 3 DSC 515 and 517).