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**“Emerging issues of access to justice for
vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

**Report presented by the Minister of
Justice and Public Order of Cyprus**

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I. Migrants and asylum seekers

Background

Cyprus has historically been a country of emigration. During the second part of the 20th century many Cypriots sought to escape poverty for a better life in more developed countries abroad. The Turkish invasion of 1974 and the displacement of 1/3 of the population resulted in new waves of emigration. Since then Cyprus has seen extensive economic development and has become host to labour migrants who contribute positively to the economy and its high growth rates.

Immigration policy in Cyprus has been changed in the early 1990s to accommodate the entry and residence of temporary migrant workers in order to meet labour shortages. This change of policy quickly transformed Cyprus from a country that traditionally exported migrants to a net immigration receiving country. Today the total number of resident non-Cypriots that come from a country outside the EU is estimated at approximately 70.000, representing almost 10% of the total population and 14% of the economically active population.

Access to Justice

Migrants: Following the developments in the sphere of migration affairs, Cyprus formulated and adjusted its relevant legislation and policy according to the EU *acquis* as well as other European and International Conventions. In general, the Constitution of Cyprus, the existing legislation, the International Conventions ratified by Cyprus and legal practices, provide and safeguard the equal treatment of every person. Migrants and their families enjoy treatment not less favourable than that offered to Cypriot nationals.

The Constitution of Cyprus defines the fundamental rights and liberties and provides effective remedies for their enforcement. Equality before the law, the administration and justice as well as the enjoyment of all civil, economic, social and cultural rights is safeguarded by the Constitution to all persons without any discrimination on the ground of race, sex, religion, colour, national or social descent. For example, the existing legislation, collective agreements and practices provide equal treatment - in terms of salaries, working conditions and other working rights - of every person in respect of employment. All labour laws and regulations apply in the case of migrant workers, on equal footing with nationals. The only exception is made as regards employment in the public sector, where positions can be taken by citizens of the Republic of Cyprus and by citizens of EU member states.

With respect to the matter of access to justice in particular, migrants have full rights to appeal to the Supreme Court and full rights to file a civil law suit at District Courts just like Cypriot and EU nationals. As far as the facilitation of access to justice this is mainly practiced by NGOs which provide legal aid to migrants.

Asylum Seekers: In general, the asylum system in Cyprus is based on clear legal principles, which comply with the International Conventions and the European *acquis*. Our policy aims towards striking a balance between safeguarding the rights of applicants in all cases that are genuine and protecting the asylum system from all those who use it for other reasons.

The Asylum Service, which is the competent Authority to examine asylum applications at first instance, is in a constant course of harmonization with the European Union's Directives as regards Asylum. More specifically, it should be mentioned that, on 25 July 2007, the Council Directive 2004/83/EC of 29 April 2004 "on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted", was transposed into the Refugee Law. Furthermore, the Asylum Service is in the process of preparing a Bill for the

transposition of the Council Directive of 1 December 2005 "on minimum standards on procedures in Member States for granting and withdrawing refugee status".

Legal Representation

With regards to the right of legal representation, according to Cyprus Refugee Law, an applicant has the right to have a lawyer or legal advisor during all stages of the asylum procedure. Furthermore, the applicant has the right to communicate with the UNHCR throughout the entire procedure of the examination of his asylum application (first and second instance), as well as other organisations dealing with refugee matters. Asylum seekers have the right to employ a lawyer at their own expense, or may be provided with free legal assistance by other organizations dealing with refugee matters, some of which are funded by the European Refugee Fund for this purpose. Furthermore, they are provided with an information leaflet which is translated in 11 languages and provides thorough information on their rights and obligations as asylum seekers.

Single Procedure

The Single Procedure as regards granting of refugee status, subsidiary protection and humanitarian status is already applied according to the Refugee Laws (2000-2007) since 2003. More specifically, in cases where the application is rejected because it is not found to fulfil the requirements of the Geneva Convention and of the Cyprus Refugee Laws of 2000-2007, it is examined whether there are any reasons to grant subsidiary protection status. These reasons may include fear of persecution for reasons not mentioned in the Geneva Convention or because return to the country of origin is not possible (for example, because of warfare).

In cases where the application is rejected because it is not found to fulfil the requirements of the Geneva Convention and of the Cyprus Refugee Laws of 2000-2007 and furthermore there are no reasons to grant subsidiary protection status (both falling within the concept of international protection), it is examined whether there are any reasons to grant Humanitarian Status for a limited period of time in cases of illness, pregnancy, or need for psychological support, or for any other humanitarian reason, before returning to the country of origin.

Detention Conditions

In Cyprus, there are no detention centers operating exclusively for rejected asylum seekers. The Law does not define a specific time limit for an alien to stay in detention after the rejection of his asylum claim at first and second instance, since this depends on various factors, which are mentioned below:

- (a) after a second-degree rejection of an asylum claim, an alien may appeal to the Supreme Court, an action which does not have suspensive effect, unless an interim order is issued by the Court. The length of the detention, apart from the provisions of the Aliens' And Immigration Law, is specified in the Case Law of the Republic.
- (b) the issuing of travel documents for the deportation of an alien may require a long procedure. For example, in the case of Iranians who got rid of their travel and other personal documents, the deportation is very difficult. Furthermore, in the case of African nationals, who usually do not carry travel documents, time is required for the issuing of these documents.

It should be mentioned that the Detention Centers are operated by the Immigration Authorities of Cyprus. The detention of asylum seekers is often necessary for reasons clearly stated in the Refugee Law. The Asylum Service, may intervene in those cases, where the detention of an asylum seeker is deemed to be unjustified by the Law, and therefore makes sure that the Law is applied correctly.

Reviewing Authority

The independent Refugee Reviewing Authority has the responsibility for the examination of asylum applications at second instance and was established with the amendment of the Refugee Law on 06 February 2004. An appeal before the Reviewing Authority has a suspensive effect on any deportation orders issued against the applicant.

In case of rejection on second instance the applicant may appeal to the Supreme Court. This appeal has no suspensive effect unless a provisional order has been issued by the Court for this purpose.

A new approach through strengthening Integration

Migration with all its consequences is one of the greatest challenges of our times and it will continue to be so during the following decades. This has been acknowledged on many occasions at the European Union level. That is the reason why Europe focuses on a more holistic approach to migration which, among others, seeks to develop and adopt integration policies that will help third country nationals to become a real and active part of the society. This of course should include access to justice for migrants and asylum seekers who need special protection and who should be entitled to exercise their fundamental rights like any other person, regardless of their nationality or status. The rule of law and respect for human rights should be there for all. As such, this issue should therefore be viewed within the framework of strengthening integration. A measure taken in this direction is the decision of the Council of Ministers of Cyprus by which the Ministry of Interior is appointed as the Coordinator of a multidisciplinary group responsible for defining the framework of an integration policy.

We should define a new strategy regarding immigration which will be characterized by a more humane approach in respect of legal migration, and, under which, our position on illegal migration would be firm while still respecting the human rights of the immigrants who cannot stay. There is still room and need for improvement and for flexibility in order to guarantee the rights of these people and also to deal efficiently with those who want to abuse the procedures. Cyprus is determined to take the appropriate steps in order to facilitate the integration of legal migrants within the Cypriot society, including the facilitation of access to justice. Such a determination arises from the belief that a society which is unable to transmit its values, principles, and way of life to all its members bares a share of responsibility for the social problems arising. We have a duty to enhance the participation of immigrants in the community in order to attain the goal of a multicultural society based on equality, justice and security.

II. Children perpetrators of crime

Access to Justice in general

In Cyprus, equality of access to justice and the right to recourse to the courts against public authority measures are prescribed and ensured by constitutional provisions. The mechanisms of justice are equally available to every person in the Republic.

In criminal cases, the accused person is presumed innocent until proven guilty according to the law. Nobody can be tried twice for the same offence and the punishment for an offence cannot be disproportionate to the severity of the crime committed.

By virtue of Article 12 of the Cyprus Constitution, every person charged with an offence has the right to defend himself in person or through a lawyer of his own choosing and if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require.

Under these provisions, free representation of an accused person by an advocate is accorded in all criminal proceedings before Courts of first instance or on appeal and also during the pre-trial stage.

The Cyprus Constitution further guarantees to every person the right to call witnesses, to present and have sufficient time to prepare his case and to have an interpreter if he cannot understand the language used in the Court.

Comprehensive legislation for the protection of witnesses and those who assist in the fight against crime is in place. Another law also provides for compensation to those who, having been sentenced to a term of imprisonment at first instance, are finally acquitted on appeal or their sentence is substituted with a non custodial one.

Court proceedings are open to the public except in cases where the Court considers that it is in the interest of public safety or of public morals or in the interests of children, that these may be conducted without the presence of the public or the press.

Administration of Juvenile Justice

1. According to section 14 of the Criminal Code Cap.154 of the Laws of Cyprus as amended recently, a person under the age of fourteen years is not criminally responsible for any act or omission.
2. Several provisions contained in The Juvenile Offenders Law, Cap. 157 aim at dealing with juvenile offenders in a manner taking into account their tender age and consistent with the promotion of their best interests.
 - Such cases are heard by a juvenile court sitting in a different building or room from that in which the ordinary sittings of the District Court are held, or on different days or at different times from such sittings.
 - It is a duty of the Court to explain in simple language to the juvenile brought before it the substance of the alleged offence.
 - Privacy is fully respected at all stages of the proceedings. In a Juvenile Court no person other than the members and officers of the Court and the parties to the case, their advocates and other persons directly concerned in the case are allowed to attend. The Court may, in its discretion, require the attendance of the parents or guardian.
 - The Court may obtain information as to the juvenile's general conduct, home surroundings, school record and medical history.

By express provision in the aforementioned Law no young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way.

Deprivation of Liberty

3. The remand of a person in custody either during the investigation of a criminal offence or after the framing of charges and pending trial is invariably looked upon by the Courts in Cyprus as an exceptional measure, derogating from the presumption of innocence which must be strictly justified, more so in the case of young offenders. The Courts are vested with discretion in the matter and when adjudicating on a remand application are bound to bring about a balance between the need to uphold individual liberty on the one hand and the necessity of bringing the culprit to justice on the other. Any such decision is subject to appeal.

4. When dealing with cases where juveniles are suspected of having committed an offence, the police make sure that the parents or guardians as well as the Divisional Police Commander are promptly informed. Where the suspect is a pupil, arrest and examination at school is avoided and when such course is absolutely necessary, it is effected only with the consent and in the presence of the schoolmaster.
5. By virtue of section 7 of the Juvenile Offenders Law, where, exceptionally, a minor committed for trial is not released on bail, the Court shall, instead of committing him to prison, commit him to custody in a police station. The police are under the duty to make arrangements for preventing his association with an adult charged with an offence.
6. In 2005, comprehensive legislation was enacted (Law 163(I)/2005) expanding on the constitutional provisions safeguarding the rights of persons arrested and detained in custody.

Apart from laying down standard rules for the conditions of detention, the well-being and decent treatment of arrested persons and detainees, this law:

- provides for the right of any arrested person to have immediate communication with a lawyer of his choice and with his family/relatives/other person of his choice, and in the case of a foreign person, with his Embassy or consular office, or in the absence of such offices, with the Ombudsman or the National Organization for the protection of Human Rights in Cyprus, and also the right to medical examination and treatment.
- lays down the corresponding obligations of the members of the police to inform the arrested person of his rights and facilitate their effective exercise before interrogation begins, and penalizes the violation of any of these obligations.
- regulates the rights to visits by the relatives, meetings with the lawyer and other matters during detention.

As regards specifically minors under the age of 18, the law provides in addition:

- for the obligation of the police to inform promptly the parents or guardians of the arrest or detention and the reasons therefor, (notwithstanding the exercise by the minor of his rights to communicate) and if need be to inform also the Social Services of the Republic.
- that the interrogation is conducted in the presence of the minor's lawyer.
- that the parents or guardians have the right to be present during the communication and meetings of the minor with his lawyer, or during medical examination or treatment.
- that the minor is detained separately.

Sentencing of Juveniles

7. According to section 12 of the Juvenile Offenders Law Cap. 157 where the Court before which a juvenile is tried for any offence is satisfied of his guilt, it may deal with the case in any of the following ways:
 - (a) by dismissing the charge;

- (b) by committing the offender to the supervision of a probation officer under the provisions of the Probation of Offenders Law 46(I) of 1996 (the task is entrusted to the Welfare Office of the Ministry of Labour and Social Insurance);
 - (c) by committing the offender to the care of a relative or other suitable person;
 - (d) by sending the offender to a reform school;
 - (e) by ordering the offender or the parents/guardian to pay a fine, damages or costs to which the offender is liable;
 - (f) by imposing a sentence of imprisonment. By express provision in this section, a juvenile shall not be sentenced to imprisonment if he can be suitably dealt with in any of the ways as set out above.
8. In fact it can safely be stated that it has been and still is a goal of national criminal policy in Cyprus to extend the use of non-custodial sanctions in substitution of custodial ones. A series of judicial decisions over the last 35 years suggest that imprisonment ought to be a measure of last resort and, in the case of young offenders, a measure to be avoided, unless considered inevitable in view of the gravity of the offence or persistent recidivism.
 9. Notwithstanding that there is no statutory definition of young adult offenders, persons under 21 are invariably treated as young offenders and at times this category is extended to include persons up to 25. An example in legislation is the Narcotic Drugs and Psychotropic Substances (Amendment) Laws of 1992 and 2003 which provided for the increase in penalties for drug offences up to life imprisonment but also differentiated the treatment of persons under the age of 25 who are first-time offenders and the offence is connected with personal use of drugs. Such cases are tried summarily and the penalties do not exceed imprisonment of two years.
 10. In cases of crimes other than trivial ones involving young persons up to 21 years of age it is an established practice to obtain a social inquiry report before passing sentence, in order to secure information from a reliable source about the character, upbringing and environment of the offender so as to evaluate in an informed way the accused's prospects of rehabilitation.
 11. The most frequently used measure of dealing with young offenders is the probation order placing the convict under the supervision of a probation officer of the Welfare Office.

In 1996 (law 46(I) of 1996), community service was introduced as an alternative non-custodial sanction which may be combined, with the consent of the offender, to the probation order. This aims at increasing the rehabilitation chances, especially of young offenders, as they will avoid interruption of the links with society and the stigma of having been sent to prison which, in a small country like Cyprus, cannot be easily erased.

Imprisonment of Juveniles

12. Young offenders sentenced to imprisonment are held separately and do not associate with adult prisoners.

Young people in detention are encouraged to improve the level of their education and vocational training by attending classes in or outside the prisons or by correspondence courses.

They are all given the opportunity to work as far as possible at a type of work they wish to perform, in order to increase their ability to earn their living after release.

- 12.1. Psychological and psychiatric services and support are offered to all young prisoners in need, with personal meetings, group discussions (meetings in group) and meetings in the presence of the prisoner's family. The psychological services are offered on a daily basis and the psychiatric services once a week.
- 12.2. Welfare service and support is also given to all young prisoners with regular visits/contacts with their families and home leave, in order to facilitate the social integration with their families and free society.
- 12.3. All young offenders have the opportunity to participate in recreational activities and programmes such as sports, athletics, theatre, music, chess etc, which keep them mentally and physically active.
- 12.4. By virtue of Article 53 of the Constitution of Cyprus, the President of the Republic may on the recommendation of the Attorney General remit, suspend or commute any sentence passed by a court in the Republic.
- 12.5. Prison Regulations also provide for the remission of sentences for good conduct and industry.
- 12.6. It should be noted that within the framework of the policy towards abolition of institutional/custodial treatment of juvenile offenders was also the closing down in 1987 of the only Reform School in Cyprus which had no inmates at the time.
13. In 2004, the Law on the Rehabilitation of Convicted Persons was amended, the main amendments being those which regulated more leniently the conditions under which previous convictions are struck off in the case of young persons up to the age of 21.
14. Another law with a child-rights oriented approach, in the domain of criminal justice, was enacted in 2005, whereby the deprivation of liberty of pregnant women or mothers of children up to 3 years of age, either during the investigation of an offence against them or after conviction, was limited to very serious offences and under prescribed conditions (Law No.33(I)/2005).

