ANNEXE

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation à Chypre.

L'ECRI rappelle que l'analyse figurant dans son troisième rapport sur Chypre est datée du 16 décembre 2005, et que tout développement intervenu ultérieurement n'y est pas pris en compte.

Conformément à la procédure pays-par-pays de l'ECRI, le projet de rapport de l'ECRI sur Chypre a fait l'objet d'un dialogue confidentiel avec les autorités chypriotes. Un certain nombre de leurs remarques ont été prises en compte par l'ECRI, qui les a intégrées à son rapport.

Cependant, à l'issue de ce dialogue, les autorités chypriotes ont demandé à ce que leurs points de vues suivants soient reproduits en annexe du rapport de l'ECRI.

"ANNEX TO THE ECRI REPORT

Observations made by the Ministry of Foreign Affairs

As regards **para.4 of the executive summary** it should be stressed that according to the provisions of Protocol 10 of the EU Accession Treaty the entire territory of the Republic of Cyprus becomes part of the EU and in the event that a comprehensive settlement of the Cyprus Problem had not been reached by the date of accession May 1 2004, the application of the acquis is suspended in the areas, in which the Government of the Republic does not exercise effective control.

As regards **para. 39**, although the Republic of Cyprus aims at promoting bi-communal initiatives involving school communities (students, teachers etc) the response from the Turkish-Cypriot community seems to be negative. It is important to note that although the National Agencies for EU Educational Programmes in Cyprus have informed Turkish-Cypriot Teachers Union and students of the opportunities to participate in such programmes as citizens of the Republic of Cyprus, these organizations have persistently refused to disseminate the relevant information to their members, have rejected the offer to participate as citizens of the Republic of Cyprus and in the events they participated their efforts went towards upgrading the status of the so-called "TRNC" rather than promoting conciliation and cooperation.

Paras.63-70: As far as the enclaved Greek-Cypriots in Rizokarpaso are concerned, it is recalled that in the 4th Interstate Appeal of Cyprus v. Turkey (10 May 2001), the European Court of Human Rights ruled that Turkey is guilty of:

- Violating the rights of the Greek Cypriots enclaved who live in the occupied area (right to freedom of speech and expression, free opinion and acquisition of information and ideas),
- Violating the rights of the Greek Cypriots enclaved to education, due to lack of providing facilities for Secondary Education.

The infringement of their right to education continues since, although the operation of a full secondary school in Rizokarpaso was made possible this year, the Turkish side demands prior "clearance" of the names of the members of the school staff, while if and when such "clearance" is given it is only after a slow and time consuming process. More specifically this year the names and all requested details of four members of the staff (English, French, Mathematics and Computer Science teachers) were transmitted by the Republic of Cyprus to UNFICYP on September 2, 2005, ten days prior to the opening of the school. Unfortunately the Turkish side only "cleared" three of the teachers by the 10th of October. The two additional staff members whose names were submitted to UNFICYP on the 5th of October, were "cleared" by the Turkish side on the 14th of November, when the latter also informed UNFICYP that the Information Technology teacher, whose details had been submitted on the 2nd of September 2005, had not and would not be cleared. The Government of the Republic of Cyprus submitted to UNFICYP the details of a new teacher for Information Technology and a new Literature teacher on the 21st of November 2005 and 7th of December respectively. "Clearance" for the IT teacher was given on the 21st of December 2005, while the "clearance" for the Literature teacher is still pending.

As regards **paras. 78-82,** detailed information is given in the attached document Annex I under title: "Measures of the Government of the Republic of Cyprus to the benefit of the Turkish Cypriots".

As regards **para 105** it should be stressed, at the outset, that the Report makes use of inaccurate wording when it refers to the majority of Turkish Cypriots who accepted the Annan Plan, as it did not take into account the fact that "voters" in the occupied areas include the Turkish mainland settlers (information is given in the attached document under the title: "illegal settlement in the occupied part of the Republic of Cyprus" -Annex II). A more detailed information regarding the "legitimate concerns of the Greek Cypriots regarding the Annan plan" is given in Annex III.

MEASURES OF THE GOVERNMENT OF THE REPUBLIC OF CYPRUS TO THE BENEFIT OF THE TURKISH CYPRIOTS

The Turkish occupation army was forced in 2003 to partially lift the restrictions on the freedom of movement across the cease fire-line in Cyprus. As a result, for the first time since the Turkish invasion of 1974 and subsequent occupation of the northern part of Cyprus, Turkish Cypriots and Greek Cypriots had the opportunity to cross the line - through controlled by the Turkish army checkpoints - and interact peacefully, proving false the allegations of the Turkish side that the two communities cannot live together in peace.

The Government of the Republic of Cyprus, in order to facilitate the economic development of the Turkish Cypriots, adopted in 2003 a package of measures to the benefit of the Turkish Cypriot citizens of the country. The cost of those measures for the period 2003-2005 amounts to approximately **EURO 77 million** (CY Pounds 44.2 million), including approximately **EURO 36.2 million** (CY Pounds 20.8 m.) for 2005, as follows:

- **Health Care free of Charge:** **EURO 10.94 million** for the period 2003-2005, including EURO **4.52 million** for 2005
- **Social Benefits** (Social Insurance, Pensions and other Governmental Allowances, Social Welfare Financial Assistance): **EURO 58.8 million** for the period 2003-2005, including **EURO 28.7 million** for 2005.
- **Other Financial Benefits** (Student Subsidies, New Born Child Allowance): **EURO 498 680** for the period 2003-2005, including **EURO 196 620** for 2005.
- **Cost of Transportation of Turkish Cypriots** (from the checkpoints to destinations in the Government controlled area and *vice-versa)*: **EURO 204 450** for the period 2003-2005, including **EURO 104 400** for 2005.
- **Education** (Fees for Turkish Cypriot Elementary and Secondary Private School Students and cost of transportation of Turkish Cypriot Students): **EURO 753 420** for the period 2003-2005, including **EURO 445 440** for 2005.
- **Dams and irrigation systems maintenance cost and water supply to particular villages in the occupied area:** **EURO 4.18 million** for the period 2003-2005, including **EURO 1.59 million** for 2005. It is noted that the total cost, for the particular measure, for the period 1974 -2005 was **EURO 17.32 million**
- **Supply of Electrical Power to the occupied area:** **EURO 1.62 million** for the period 2003-2005, including **EURO 575 900** for 2005. It is noted that the total cost for the Supply of Electricity to the occupied area for the period 1974-2005, was **EURO 261.23 million**

NOTE: The cost of the above is covered by the budget of the Republic of Cyprus. The vast majority of the Turkish Cypriots do not pay taxes to the Republic of Cyprus, since they reside at the area where the Government of the Republic of Cyprus does not exercise effective control.

Moreover it is noted that the authorities of the Republic of Cyprus have issued the following documents for Turkish Cypriot citizens of the Republic:

- **57 309 identity cards**
- **32 185 Passports**
- **63 592 birth certificates**

NOTE: Turkish Cypriots living in Cyprus are estimated to be less than 90 000**.**

About 7400 Turkish Cypriots, residing in the occupied area cross on every day basis to the Government controlled area for work purposes. According to estimation of the Turkish Cypriot Chamber of Commerce their salaries, which are transferred to the occupied area, total about **EURO 313.2 million** annually.

Finally, the value of goods produced in the occupied area, traded through the cease fire line according to the provisions of the Green Line Regulation of the European Union (Regulation (EC) No. 866/2004),, is estimated by the Turkish Cypriot Chamber of Commerce to be **EURO 1.9 million**, including goods of value **EURO 1.42 million** traded through the cease fire line during 2005.

AIDE MEMOIRE

Illegal settlement in the occupied part of the Republic of Cyprus

- The interaction between

  -the Republic of Cyprus's accession to the EU on May 1st 2004,

  -the construction boom taking place in the Turkish-occupied area of the Republic since 2002,

  -the prospect of the provision of financial aid to the Turkish Cypriot community by the EU, the US[1] etc., and

  -increased employment opportunities for Turkish Cypriots in the Government-controlled areas (where salaries are higher)[2]

  is already having a positive impact on the economic situation of the Turkish Cypriot community[3]. The Turkish-occupied area is hence turning into a magnet for manual laborers. Using this as a cover, Turkey has dramatically intensified its deliberate colonization of the said area by Turkish settlers, whose numbers trump those of the indigenous Turkish Cypriots.

- On 12 October 2004, as part of Turkey's latest attempt to consolidate the already extremely large number of settlers in Cyprus, it was announced that a "protocol" had been signed between Turkey and its subordinate local

[1] The proposed EU/US financial assistance is about EURO 259 million and USD 30.6 million respectively.

[2] It is estimated that, facilitated by the partial lifting of restrictions on the free movement of persons in 2003, about 4,500 Turkish Cypriots cross the Green Line to work in the free areas on a daily basis; the number immediately prior to the partial lifting of the said restrictions was about 700.

[3] According to the "planning bureau" of the so-called "turkish republic of northern Cyprus", whereas in 2003 the per capita income in the Turkish-occupied territories was USD 5,949 by the end of 2004 this was expected to go up to USD 7,350. The construction boom and incomes from "south Cyprus" were cited as two of the most important factors contributing to the improved performance of the economy in 2003.

administration, the so-called "turkish republic of northern Cyprus". The "protocol" provides that "residence" and/or "work permits" will be speedily "issued" to Turkish nationals present in the Turkish-occupied area without the "permission" of the "trnC", having entered the said area by a given date using only their identity cards.

According to latest estimates, the publicization of the said "protocol" has reinforced the inundation of the Turkish-occupied north with an EXTRA 40,000 Turks in a single year (2004). Many of the new arrivals are residing in abandoned or derelict homes and in buildings that are currently under construction. All this confirms Turkish Cypriot press reports to the effect that Turkey is in hot pursuit of increasing its population currently in Cyprus to 400,000.

Such attempts at changing Cyprus's demographic character are intensified by Turkey's refusal to assist in the repatriation of settlers[4] and by the allocation of usurped Greek Cypriot-owned homes/lands to them. Ironically, a number of settlers who had been allocated Greek Cypriot properties chose to take advantage of the illegal construction boom in the Turkish-occupied north to "offload" the "stolen goods" by "selling" them for handsome profit. Such persons have since returned to Turkey as wealthy "chieftains".

- Historically, since 1974 Turkey has systematically pursued a deliberate policy of colonizing occupied Cyprus, from which it expelled 170,000 Greek Cypriots. This is being done in order to change the demographic structure of the Island, to control and adulterate the political will of the Turkish Cypriot community[5] (even in the post-solution era[6]), to buttress Turkey's military presence in Cyprus[7], and to prejudice a just settlement of the Cyprus problem by creating illegal *faits accomplis* which could prove practically difficult to reverse[8].
- The constant influx into the occupied area of settlers from mainland Turkey takes place in parallel with a continuous outflow of indigenous Turkish Cypriots[9], who, in 1974, totaled about 118,000 i.e. about 18% of Cyprus's population. Today, Turkish settlers (estimated at upwards of 160,000[10]) far outnumber Turkish Cypriots (estimated at 87,600[11]), who also have lower rates

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[4] For example, it has been reported that the Turkish "embassy" in the occupied territories is no longer extending financial aid to Turkish settlers who wish to be repatriated but who cannot afford the trip back to Turkey. Moreover, it appears that the "protocol" of announced on 12.10.2004 provides that prior to a person's "extradition" to Turkey the "trnC" authorities must brief the Turkish "embassy" in occupied Nicosia. Certain Turkish Cypriot political leaders have interpreted this as being tantamount to asking Turkey for its "permission" before a Turkish national can be repatriated.

[5] For example, according to a recent announcement of the "supreme electoral council" of the so-called "turkish republic of northern Cyprus", 146,971 persons are registered to vote in the "trnC" "parliamentary elections" of February 2005; it is estimated that 55% of those are *non*-Turkish Cypriots. It is recalled that the number of "trnC" "registered voters" at the time of the separate simultaneous referenda of 24 April 2004 was 143,639.

[6] Notice how by exercising political control over the Turkish Cypriot community through the settlers Turkey could decisively influence developments in any post-solution Cypriot polity.

[7] A substantial proportion of the settlers are young Turkish males who have received Turkish Army training as conscripts. By implication, even following the official demilitarization of Cyprus, Turkey would, through the settlers, guarantee the presence of an army in waiting on an island situated within a stone's throw of its shores.

[8] For example, as regards the right of Greek Cypriot refugees/displaced persons to return to their homes and properties, many of which Turkey's subordinate local administration has "bequeathed" to settlers.

[9] Now made easier by their acquisition of EU citizenship and the access this provides to 24 other EU Member States.

[10] The figure includes the most recent wave of arrivals.

[11] 2001 estimate—the number has, in all probability, since decreased.

of reproduction. In addition, stationed in the occupied area are upwards of 35,000 Turkish troops. That is, **there are at least 195,000 non-Turkish Cypriots, or more than two Turks for every Turkish Cypriot.**

N.B.: According to the census carried out by the Cypriot Government in 2001, the population of the areas of the Republic of Cyprus in which the Government still exercises effective control and of communities situated within the British SBAs was 703,529.

- Under international law, transfers by an occupying power of its own civilian population into the territory it occupies are illegal:

  -Article 49 (para. 6) of the 1949 Fourth Geneva Convention stipulates that the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies";

  -Article 85(4)(a) of the 1977 Protocol I Additional to the Geneva Conventions considers the transfer by the occupying power of parts of its own civilian population into the territory it occupies as being a "grave breach" of the Convention;

  -Article 8(2)(b)(viii) of the 1998 Rome Statute of the International Criminal Court lists the "transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies" as a "war crime".

- The fact that the occupied part of Cyprus has been subjected to systematic settlement from Turkey has been reported on twice by the Council of Europe's Committee on Migration, Refugees and Demography, first in 1992 (Rapporteur: A. Cucó, Spain) and, more recently, in 2003 (Rapporteur: J. Laakso, Finland). On 24 June 2003 the Laakso Report led to the adoption by the Parliamentary Assembly of the Council of Europe of Recommendation 1608 wherein, having noted the lack of exact figures of Turkish nationals arriving in the occupied part of Cyprus, the Assembly *inter alia* stated the following:

  "5. In the light of the information available, the Assembly cannot accept the claims that the majority of arriving Turkish nationals are seasonal workers or former inhabitants who had left the island before 1974. Therefore it condemns the policy of "naturalisation" designed to encourage new arrivals which was introduced by the Turkish Cypriot administration with the full support of the Government of Turkey.

  6. The Assembly is convinced that the presence of the settlers constitutes a process of hidden colonisation and an additional and important obstacle to a peaceful negotiated solution of the Cyprus problem.

7. Therefore, the Assembly recommends that the Committee of Ministers:

i. instruct the European Population Committee (CAHP) to conduct a population census of the whole island, in co-operation with the authorities concerned, in order to replace estimates with reliable data…

iv. call on Turkey, as well as its Turkish Cypriot subordinate local administration in northern Cyprus, to stop the process of colonisation by Turkish settlers…

v. call on Turkey to comply with the decisions of the European Court of Human Rights concerning refugees' right to property in the occupied part of Cyprus…"

As with Recomm. 1197 (1992), Recomm. 1608 has been ignored by Turkey.

- Coincidentally, it is recalled that one of the major reasons for the Greek Cypriot rejection of the Annan Plan was that the Plan legitimized the continued presence of the vast majority of the Turkish settlers and included provisions that would have allowed the continued influx of Turkish nationals into Cyprus. Regarding the latter point, the enormous size of Turkey's population, its relative underdevelopment, neighboring Cyprus's status as an EU Member State and the 434-year old presence of a Turkish community on the island, meant that the arrangements envisaged by the Annan Plan would have turned Cyprus into an ideal destination for Turkish migrants, with all the implications this would have had for Cypriot demography, politics and national security in the long run.
- In light of the above, the Republic of Cyprus demands that the Republic of Turkey—which is set to open negotiations for accession to the EU on 03.10.2005—**immediately** introduce a moratorium on the influx into the occupied areas of non-Cypriot citizens ("settlers"), to **immediately** begin to facilitate the repatriation of settlers already in Cyprus, and to **immediately** assent to the conduct as soon as possible, in the occupied areas, of an internationally supervised census, which will comprehensively profile, *inter alia*, the nationality of persons residing there.

AIDE MEMOIRE

On April 24th the People of Cyprus were asked to approve or reject, through separate, simultaneous referenda, the U.N. Secretary General's proposal for the Comprehensive Settlement of the Cyprus Problem (Annan Plan V). A clear majority of 75.8% of Greek Cypriots rejected the Annan Plan.

It should be emphasized that Greek Cypriots have not rejected the solution of the Cyprus problem. They have not approved this particular Plan.

According to the Agreement reached in New York on 13 February 2004, the Secretary General would finalize the Plan, exercising his discretion, after two stages of serious negotiations between the sides in order to reach agreement on all key issues. Unfortunately, the prospect of the finalization of the Plan by the Secretary General, at the end of the agreed procedure, has proved to be a counter-incentive for substantive negotiations in Cyprus and in Switzerland.

Thus throughout the process, no real negotiations took place, since the Turkish side consumed most of the time by putting forward demands that were contrary, both to the fundamental principles of the Plan, as well as, to previously agreed "trade-offs".

These Turkish demands have been satisfied in the Annan Plan as finalized by the Secretary General on 31 March 2004. In contrast, basic proposals of the Greek Cypriot side, all within the parameters of the Plan, have been disregarded. The clear outcome of the referenda in both sides confirmed the initial assessment of the Greek Cypriot side, that all third parties involved in the process concentrated their efforts towards satisfying the interests of the Republic of Turkey and ensuring a positive result of the referendum in the Turkish Cypriot community, while ignoring the fact that Greek Cypriots also had to be convinced to approve the Plan.

The final package presented to the sides contained provisions, which could not be approved by the Greek Cypriots:

- Greek Cypriots did not accept the **presence of Turkish troops in perpetuity**, which according to the Plan would remain in Cyprus even after Turkey's eventual accession to the European Union.
- Greek Cypriots did not accept the **continuation of the Treaty of Guarantee for an indefinite period of time**, with an expanded scope when compared to the 1960 Agreement following the independence of Cyprus. It should be noted that it is this very treaty that Turkey used as a pretext, in violation of the UN Charter, to justify its 1974 invasion of Cyprus**.** It was not possible for Greek Cypriots to accept the **indefinite continuation of Turkey's Guarantor status over a country,** which has suffered an invasion and subsequent occupation by this Guarantor power.
- Greek Cypriots rejected a Plan, which **did not contain ironclad provisions for the implementation of the agreement,** especially for those provisions where Turkey's cooperation was necessary. It is noted that demands of the Greek Cypriot side for additional guarantees and other safeguarding measures regarding the gradual reduction of Turkey's occupying troops and the territorial adjustment, were ignored, thus increasing the feeling of insecurity for the Greek Cypriots.
- Greek Cypriots failed to understand why, despite their numerous protestations, **45000 Turkish settlers, were to be given citizenship of Cyprus**, in addition of those who are married to Turkish Cypriots or have been born in Cyprus, plus a further, at least **20000 were to be given permanent residence with the prospect of gaining citizenship in a period of four years.** It suffices to remind that the Republic of Turkey, in violation of the 1949 Geneva Convention, the Statute of the International Court and the Treaty of Establishment, illegally implanted these settlers in Cyprus.
- Moreover, people did not understand why **all Turkish settlers, who constitute a majority of persons on the "electoral rolls of the TRNC", have been permitted to vote in the referendum,** in spite of the principle, laid dawn by the International Court of Justice, "requiring the free and genuine expression of the will of the people concerned" as well as, the precedent applied in East Timor.
- In addition, Greek Cypriots rejected a Plan, which effectively allow a **permanent flow of Turkish nationals** in Cyprus.
- Greek Cypriots did not consent to a Plan that would have **established a complicated and dysfunctional state, through the possibility of continuous deadlocks on clearly political issues unsuitable for judicial arbitration.** This could, with a high degree of certainty, lead to paralysis.
- Greek Cypriots rejected the Plan, certain provisions of which are clear violations or long-term suspensions of the enjoyment of fundamental rights. These

provisions institutionalize a divisive structure in the political sphere, on questions of residency, in the exercise of the right to property and even the right to conduct business.

- Greek Cypriots disapproved a plan that **denied to the majority of refugees the right of return to their homes** in safety. Moreover, the proposed complex mechanism, relevant to the exercise of the property rights of refugees, with the numerous conditions attached to reinstatement of property, failed to convince that it would effectively function. In addition, the scheme for compensation was fraught with ambiguities that raised serious concerns about its future economic viability.
- Greek Cypriots rejected a Plan **imposing on them the liability to pay the large claims for loss of use of properties in the Turkish occupied area.** Greek Cypriots simply refused to assume the cost of the *fait accompli* created by the 30-year occupation of their land.
- Greek Cypriots rejected a Plan, which **provides that Cyprus shall not put its ports or airports at the disposal of the European Union, in the context of European Security and Defense Policy, without the consent of Greece and Turkey.** Acceptance of such provisions would deprive Cyprus of enjoying sovereign rights even as a member of the European Union.

The disappointment of the international community, for not arriving at a settlement, is fully understandable. The Republic of Cyprus shares this disappointment. Nevertheless it should be noted that the international community should aim at finding and securing viable, just and lasting solutions to international problems. The efforts for a solution of a complex international dispute, such as the Cyprus problem, must continue. The solution, to be viable and to withstand the test of time, must be just and perceived as such by the people who have to live with it.

Though this particular effort did not succeed in resolving the Cyprus problem, the international community should remain committed in addressing the root causes of the problem. This is none other than the illegal invasion and occupation of part of the Republic of Cyprus by Turkey and the forceful separation policies inflicted on the Greek Cypriots and Turkish Cypriots by 30 years of Turkish military occupation.

The Greek Cypriots are not turning their backs to their Turkish Cypriot compatriots. On the contrary, we shall work for a solution that will meet the hopes and expectations of both communities. We want a common future for all Cypriots within the European Union, without any third parties dictating that future.

In this spirit, a package of measures, to the benefit of the Turkish Cypriots, which have been described as generous by the international community and have lead to tangible economic and other benefits to the Turkish Cypriots is being implemented by the Republic of Cyprus since last year. In particular more than 12% of the Turkish Cypriots are working in the Government controlled area. Moreover, a considerable number of Turkish Cypriots is using, free of charge, the medical facilities of the Republic.

On 26 April, the Republic of Cyprus, in addition to this package announced to the European Union its intension to expand the trade, subject to the procedures and rules of the European Union, of wholly obtained goods (agricultural, mining and fishery products) as well as the intra-island trade of the manufactured goods produced in the occupied area. Furthermore, the Government of the Republic of Cyprus has advocated that the 259 million euros for the years 2004-2006, earmarked by the European Union for the Turkish Cypriots in the event of a Cyprus settlement,

be made available as from now. **Turkish Cypriots will be given the opportunity to enjoy, to the extent possible, the benefits of Cyprus's European Union accession.**

MINISTRY OF FOREIGN AFAIRS

13.3.2006

Observations made by the Ministry of Labour and Social Insurance

Paragraph 54

ECRI has received consistent reports according to which, due to lack of expediency of, and co-ordination between, different parts of the administration, it is often very difficult, and some times entirely impossible for asylum seekers to access social and economic rights granted to them by law. Some of the main problems in this respect are reportedly connected with the difficulties encountered in obtaining a residence permit (so-called "pink slip"), which is necessary to access certain rights in the field of healthcare provision, social welfare, education, and, in some cases, employment. Due to the long delays in the issuance of pink slips to asylum seekers -- reports indicate that asylum seekers may wait from 4 months to as long as two years – asylum seekers are, in practice, denied access to these rights. ECRI notes that the Cypriot authorities have started to address these concerns. For instance, social services have been instructed to provide services to asylum seekers who cannot produce the pink slip but have the confirmation letter given to them by the police upon submission of the asylum application. However, ECRI notes reports according to which problems persist, as in practice, not all relevant authorities accept such documentation, including hospitals and sometimes welfare offices. ***In order to ensure uniform acceptance of the confirmation letter by all welfare offices, social welfare services prepared a written procedure, which was circulated to all districts in June 2005***.

Paragraph 55

According to the law, pending the examination of their claims asylum seekers are entitled to work or, in case they are unemployed for reasons other than their own decision, to claim welfare benefits. ECRI notes, however, that in 2004 the Ministerial Committee of Employment decided to allow asylum seekers (and persons who have been benefiting from subsidiary protection for less than one year) to work exclusively in the farming and agricultural industry. It has been reported to ECRI, however, that working conditions in these sectors are extremely poor. ***For instance, wages are reported to be well below the minimum fixed by collective agreements for other sectors of the economy, and food and housing, which must be provided by the employer, are often reported to be of sub-standard quality – DELETE***. Non-governmental organisations have received many reports of severe exploitation of asylum seekers employed in these sectors. In addition, this employment policy is reportedly applied to asylum seekers irrespective of particular situations of vulnerability that may concern them. ***Thus for instance, entire families have had to move and work in farms and live in complete isolation, and children have sometimes had to discontinue school – DELETE***. ECRI notes that, if asylum seekers refuse to be employed under these conditions they lose their entitlement to welfare benefits. Non-governmental organisations have emphasised that, in addition to

resulting in a situation of serious distress for asylum seekers, these conditions tend to push them towards the irregular labour market, with further negative consequences in terms of exploitation and exposure to the risk of being arrested and detained in view of deportation.

(... "Wages in the farming and agriculture industry are reported to be below the minimum fixed by collective agreements for other sectors of the economy and food and housing are often reported to be of sub-standard quality »…:

Wages and other terms and conditions of employment in the farming and agricultural industry, have been determined through a collective agreement, between the employers and the employees, since 2004. The agreement provides for a gross salary of CYP£220. The net salary is CYP£195 after deducting food and housing expenses, medical insurance (both parties contributing 50% each), social insurance contributions. Neither the salary, nor the other terms of employment, are considered to be less favourable than the terms provided for in collective agreements of other sectors. Moreover, enterprise agreements for organized units in the agriculture industry, provide terms of employment more favourable than the ones provided for by the collective agreement of the industry.

As far as the quality of food and housing is concerned, it has been observed that the majority of employers provide housing facilities of well-acceptable quality level. In other case, after a complaint is forwarded to the Department of Labour Relations, or when inspecting the premises their quality level is evaluated as unsatisfactory, the appropriate indications are made to the employer.)

Paragraph 71

In its second report, ECRI recommended that the Cypriot authorities introduce comprehensive legal provisions against racial discrimination in employment. As mentioned above[12], the legal framework is now in place, although the new provisions have not yet been applied in a Labour Court case. However, ECRI understands that a few cases of employment discrimination have been filed with the Commissioner for Administration. In spite of the virtual absence of formal complaints, ECRI has received reports according to which discrimination on grounds such as national or ethnic origin or religion does take place in employment. For instance, as mentioned in other parts of this report, domestic and other foreign workers continue in ***some*** cases to be subject to exploitation and discrimination by their employers. It has also been highlighted that non-EU workers may fall victims of indirect discrimination, for instance when collective agreements stipulate unreasonably disadvantageous conditions for sectors mainly operated by these workers.

[12] Civil and administrative law provisions.

Paragraph 111

In its second report, ECRI noted that domestic and other foreign workers were ***in some cases*** subject to exploitation and abuse by their employers. It therefore recommended that the Cypriot authorities raise awareness among domestic and other foreign workers of their rights and of the procedures by which they can ensure enjoyment of these rights ***("that the Cypriot authorities should raise awareness among domestic and other foreign workers of their rights and of the procedures by which they can ensure enjoyment of these rights": Every foreign worker is provided with a contract of employment (in English), indicating in detail the terms and conditions of his/her employment, which have been previously examined by the Department of Labour in cooperation with the Department of Labour Relations, to ensure compatibility with the levels provided for in collective agreements. Being holders of their contracts of employment, ensures that foreign workers are aware of their rights and other benefits they are entitled to)*** . It also recommended that deportation of these workers not be carried out before thorough and fair proceedings in each case have taken place. Furthermore, ECRI recommended that means of subsistence, including new employment, should be available to domestic and other foreign workers whose contractual or other rights may have been violated by their employers. It has been reported to ECRI, however, that domestic and other foreign workers are still subject to exploitation and abuse by their employers. A significant number of them are actually reported to be victims of trafficking for purposes of labour exploitation or - as is the case for a growing number of women working as artists in cabarets, night clubs and pubs since ECRI's last report - sexual exploitation. It remains reportedly very difficult for domestic and other foreign workers to change employer when the latter has violated their contractual or other rights. ECRI notes that, since its last report, the Cypriot authorities have introduced changes to the procedures applicable in these cases. Thus, for instance, following the filing of a complaint by the foreign worker with the ***District Labour Relations Office***, the employer may issue a "release paper" which allows the worker to take up employment with another employer. Furthermore, in case the dispute has not been settled by the ***District Labour Relations Office***, the case is now examined by a Committee composed of representatives of the Migration Office, the Ministry of Labour and Social Insurance and the police. ECRI notes, however, that there is no obligation for the employer to issue a "release paper", that the time for the examination of these labour disputes is often excessively long and that during such procedures the complainant is not allowed to work and has therefore, as a rule, no source of income ***("the complainant is not allowed to work and has therefore, as a rule, no source of income": In practice, the complainant may actually apply to the Migration Officer for a work permit and be allowed to work, while his/her complaint is being examined by the Committee***) . As a result of this situation and of the close link still existing between employment with a specific employer and the residence permit, domestic and other foreign workers are still reported to endure serious situations of exploitation and abuse in order to avoid deportations. With regard more specifically to women working as artists in cabarets, night clubs and pubs, ECRI notes that an Action Plan to Combat Trafficking in Human Beings is being implemented by the Ministry of Interior.

Paragraph 112

In its second report, ECRI noted the stated commitment of the Cypriot authorities to backing civil society efforts to create support structures for immigrants, including the establishment of a centre which would provide them with information and legal assistance as necessary. ECRI notes that such structures are not yet in place. The Cypriot authorities have reported that the social welfare services provide financial and technical assistance to non-governmental organisations to carry out activities in these fields. ***This assistance is provided by social welfare services according to the regulations and budget capacity of the Grants-in-Aid Scheme, which covers supportive services for an array of vulnerable groups of the population. Since 2001 (a period covered in the previous report) there has been a 215% increase in grants provided by social welfare services to immigrant support NGOs (£10.000 in 2001 - £31.500 in 2005). These NGOs may also receive grants from other government services (Ministry of Interior, Ministry of Justice and Public Order, the Cyprus Youth Board).*** However, it does not seem to ECRI that significant support has been provided to civil society organisations active in the field of monitoring the human rights situation of immigrants in Cyprus and providing assistance to them since its second report. In fact, ECRI has received reports according to which, in some cases, the Cypriot authorities have displayed a negative attitude towards these organisations and have publicly criticised their work as contrary to official policy or national interests.

MINISTRY OF LABOUR AND SOCIAL INSURANCE

13.3.2006

Observations made by the Ministry of Interior

Citizenship Legislation (para 6 and 7):

The power to grant citizenship vests with the Minister of Interior who decides on the recommendations of the Civil Registry and Migration Department formulated after receiving reports from various government departments and services, including the Police, based on information gathered by them also from personal interviews with the applicants.

Applications are mainly rejected for reasons of public security and public order.

Decisions are subject to judicial review under Article 146 of the Constitution. A very small number of such applications before the Supreme Court have so far been successful, and none of them have been so for reasons of discrimination.

The same applies to complaints for rejections submitted to the Commissioner for Administration.

Citizenship has been granted also to recognized refugees and in calculating their legal presence in Cyprus, their stay in the Republic as asylum seekers was also taken into account.

Asylum seekers and refugees (Executive summary and para 43-62):

- **With regard to the second paragraph of the Executive Summary**, the Asylum Service is the competent authority for the proper implementation of the Refugee Law which is fully in line with the European acquis and other international Conventions relating to the rights of refugees, asylum seekers and other persons in need for international protection.

  In the past, the Asylum Service intervened in a number of cases in order to identify whether the detention of asylum seekers was justified. The main priority of the Asylum Service and other competent authorities is to ensure and safeguard that no human rights violations or ill-treatment takes place. Regarding this issue, the Asylum Service has a close cooperation with the Civil Registry and Migration Department as well as the Immigration Unit of the Police. If such cases come to its knowledge, the Asylum Service will intervene in order to safeguard, as mentioned above, that the proper procedure is followed.

  Furthermore, the Asylum Service has a close cooperation with the Commissioner for Administration and the Law Office of the Republic with regards to the implementation of antidiscrimination legislation.

- **With regard to paragraph 45**, Asylum Service's basic principle is that the non-refoulement is fully respected by the Cypriot authorities. Asylum seekers are not deported unless a second instance decision has been taken and provided that this decision was a negative one.

  With regard to the detention of asylum seekers the competent authority is the Director of Civil Registry and Migration Department following the case-law of Cyprus. In such cases the Asylum Service follows an accelerated procedure in order to limit the length of the detention period. As mentioned above, the detention of asylum seekers is only allowed where such a decision is fully in line with the provisions of the existing legislation.

  The right to apply for asylum is safeguarded by the Law and instructions issued by the Asylum Service. Furthermore, officers of the Asylum Service periodically visit the local immigrations to monitor the situation. Upon submission of their application, asylum seekers are entitled either to subsistence allowance or access to employment, or both, provided that their salary is not sufficient to support themselves during their stay in Cyprus. Furthermore, some of them are hosted in the Kofinou Reception Centre, where they are provided with food and accommodation. Asylum seekers are entitled to free education in public schools and health care.

- **With regard to paragraph 48**, withdrawals of asylum claims could take place provided that the asylum seeker states that he has no fear of persecution in case of return to his country and that he has been informed in a language he understands about the consequences for this action.

- **With regard to paragraph 53**, within the framework of the European Refugee Fund (ERF), Cyprus has funded and will continue to fund NGOs providing legal aid.

- **With regard to paragraph 54**, in collaboration with the Ministry of Health and the Welfare Office, any problems arose in the past regarding the access to healthcare and welfare, has been successfully addressed and these rights are fully respected.

- **With regard to paragraph 55**, the Asylum Service reiterates that asylum seekers are not subject to deportation unless the examination of their case is completed.

- **With regard to paragraph 56**, the Asylum Service, as already mentioned above, takes all necessary measures in order to ensure that the principle of non-refoulement is fully respected and that no deportation takes place before the examination of an asylum case is completed.

  Furthermore, the Asylum Service never closes files arbitrarily and such decisions take place provided that the provisions of the law are fulfilled.

Roma – Cypriot Gypsies[13](paragraphs 83-82)

- **Housing:** About 83 Gypsy families (360 persons) reside in the Limassol District while about 73 Gypsy families (259 persons) reside in the Pafos District. The Government of Cyprus pays for the improvement and repair of the Turkish-cypriot houses where the Gypsy families reside. In 2005 the repairs for 20 Turkish-cypriot houses inhabited by Cypriot Gypsies in the Limassol District cost CYP80.000. In 2004 the repairs of the Turkish-cypriot houses inhabited by Cypriot Gypsies in the Pafos District cost around CYP80.000. In 2005 this cost amounted to CYP20.000. The Government of Cyprus has also created two housing projects, one in Limassol and the other in Pafos, consisting from 16 and 24 prefabricated housing units respectively for the Cypriot Gypsies. The aforementioned housing units are equipped with all basic amenities such as water (drinking water incl.) and electricity supply, telephone line installation, sewage etc. About 40 Cypriot Gypsy families are residing in these houses.
- **Education:** The Ministry of Interior in order to encourage school attendance by Gypsy children subsidizes their school meals, school uniforms, school books and stationary etc.

Armenians, Latins and Maronites (paragraphs 87-88):

The Ministry of Interior, being the competent Ministry for the protection of the religious groups, has demonstrated sensitivity on the subject and continues to do so by subsidising, monitoring and supporting matters of concern to the religious groups. It is further noted that there is an excellent cooperation between the Permanent Secretary of the Ministry of Interior and the Armenian, Latin and Maronite Representatives on issues relating to their respective religious group.

Matters of concern to the religious groups are discussed thoroughly in meetings chaired by the Permanent Secretary and sometimes by the Minister of Interior, in the presence of representatives from all relevant Ministries, with a view to promote and effectively deal with them.

The consultation mechanism deals, among other, with the following issues:

- the implementation of relevant Conventions, such as the Framework Convention for the Protection of National Minorities;
- the competences of the Representatives of the religious groups;
- the preservation of the social cohesion of the religious groups;
- the maintenance and restoration of monasteries, churches and other monuments of the religious groups;

13 See "Answers to Comments/Questions submitted to the Government of Cyprus regarding its Initial Periodical Report on the European Charter for Regional or Minority Languages" prepared by the Law Commissioner of the Republic of Cyprus, July 2005 (answer to question 11).

- the fair participation of members of the religious group in the Public Service and Public Corporations;
- the subsidization of students of religious groups (tuition subsidies for primary and secondary education and purchase of books);
- the granting of Government land for cemeteries;
- payment of priests´ salaries;
- Government financial assistance to farmers, members of the Maronite religious group, living in the occupied territory of Cyprus;
- special measures to facilitate links between Cypriot Maronites living in the Government controlled territory and those living in the occupied territory of Cyprus (i.e. free transportation twice a week, free housing in the Government Refugee Housing Estates, free food supplies once a week, government aid for the repairs of houses, Maronite churches, cemeteries in the occupied territory as well as for the repair of roads and water supply in Kormakites) ;
- co-ordination of efforts for better utilization of the grants given by the various Ministries.

The situation of immigrants and the need for an immigration and integration policy (executive summary and paragraphs 108-119)

- The first thing to be noted is that since 2000 the number of non-Cypriots staying in the free area of the Republic has risen from the reported figure of about 20.000 to about 75.000 which includes an estimated 15% of illegal immigrants and another approximately 7-8%, on average, asylum seekers.

  This number (75.000) includes Europeans and non-Europeans of various categories of status, the main of which is temporary employment/residence permits. There exists, however a considerable number of visitors, for example persons who choose to retire in Cyprus and another considerable number of students, and lastly a smaller but increasing number of permanent residence permits, the so called immigration permits which are granted for various reasons including of course employment and self-employment.

  It could be said that despite the fact that the existing Aliens and Immigration Law was enacted before Independence and even before the coming into force of our Constitution, and in this regard it could be described as “antiquated”, however it had been several times amended, especially in the process of joining the European Union i.e. since 1996, and it provided a sufficient legal framework to formulate and implement a migration policy, especially having in mind that Cyprus opened its door for migrant workers only at the beginning of the 90s, for a very limited number and on a very temporary basis.

  Nevertheless, the dramatic changes that occurred since the beginning of the 90s and especially in connection to our accession to the European Union as well as the partial lifting of the restrictions on the free movement of persons across the cease-fire (green)-line, have made it absolutely necessary to completely substitute the existing legal framework.
  So, apart from the new law on the Free Movement of Nationals of E.U. Members and Members of their Families, already in force since 1-5-2004, a new bill on Aliens and Immigration has been prepared by the Law Office of the Republic which inter-alia transposes all the relevant existing acquis.

  This new bill is presently being studied at the Ministry of Interior in consultation with all other competent government departments. Consultations are soon to be enlarged to include independent offices and NGO’s. Meanwhile in the effort of the Republic to be in full compliance with the European acquis, the existing

Aliens and Immigration Law will be amended as to transpose into the national legislation the Directives on long term residence and family reunification. The amending Law is about to be submitted to the Council of Ministers for approval within March 2006. Afterwards, it will be immediately sent to the House of Representatives for voting.

As regards conditions of employment of especially domestic workers, following the establishment of a tri-party Committee, by a Council of Ministers decision, to examine complaints lodged by this group in particular, the number of complaints had risen to such an extent that created a great back-log problem for the Committee.

Moreover, it was soon discovered that the great majority of these complaints constituted an abuse of the procedures because it was used as an excuse to abandon the employer and work illegally with greater income pending the examination of the complaint which could take several months to almost a year.

To reduce the problem, the Committee of Ministers introduced the 'release paper' which was an expressed mutual consent to terminate employment with a specific employer, and gave the foreign domestic worker one month during which he could seek and find a new employer. In case of failure he should return to his country and apply to come again with a new employer when one was found.

It should be stressed that sexual harassment or ill-treatment has always been treated under the criminal code.

Finally as regards the detention of foreigners for deportation, following a striking number of habeas-corpus applications and applications under Article 146 of the Constitution, the Supreme Court on 30-12-04 in its appellate jurisdiction in two cases confirmed the powers vested in the Minister of Interior, delegated to the Director of the Civil Registry and Migration Department, by virtue of the existing Aliens and Immigration Law.

- **As regards the comments in paragraph 109** about the deportation of an alien residing in Cyprus for 10 years, we enclose as Appendix "A" the report of the Director of the Civil Registry and Migration Department to the Commissioner for Administration, stating the facts of the case.

Complaint with no. Α/Π 389/2005 regarding an action of the Civil Registry and Migration Department

I refer to your letter with file no. Α/Π dated 17/3/05 by which you have forwarded to me your Report on the above complaint and first I wish to assure you that both the facts and the particular characteristics of this case, as well as the legal framework which applied for it, including also the case law of the European Court of Human Rights and the Court of European Communities (in connection with the implementation of the Directives of the Council of European Union) have been studied and taken very seriously into consideration before the taking of measures for the expulsion of the said alien from the Republic, i.e. the issue of expulsion/detention orders against them on 14.2.2005.

Therefore, I am of the opinion that there is no question of re-examining the case, as you recommend, given that neither in your Report nor in the subsequent letters of the advocate of the aliens Mr. Chr. Clerides to me, to the Minister of Interior and to the President of the Republic dated 18.3.05, 19.3.05 and 19.3.05 respectively, are

any new particulars or information justifying the re-examination of the case included.

However, as in the administrative files which you have examined in order to reach your conclusions, there is no reference to the thinking on the basis of which I took the decision for expulsion which consequently was not taken into consideration by you in your subsequent criticism and recommendations I shall explain below the reasons for my decision and at the same time comment on certain points you raise.

I. Statement of Relevant Facts

Mrs Jelena Spasic arrived in Cyprus on 13.9.1994 in order to work under a twelve-month employment contract as caretaker in a Polyclinic in Nicosia and for this purpose she was granted a **temporary residence permit** which was initially valid until 13.9.1995. The said temporary permit was renewed each year until 13.2.2000 when it became final, always in the capacity of caretaker and not as nurse.

Mr. Milos Dejic, who at the time was a fiancé of Mrs. Spasic, entered Cyprus on 17.1.1995, in order to visit her, asked for extension of his residence permit as visitor which was rejected on 1.6.1995, but following representations by him in which he invoked the performance of a wedding with Mrs Spasic he was issued a **temporary residence permit as visitor which was valid until 30.8.1995.**

A new application by him asking to be allowed to continue to remain as visitor was rejected again on 27.11.1995, **whereupon he applied to get a temporary residence permit for employment purposes under a twelve month contract as printer** in a printing house in Nicosia. The said temporary residence permit which was issued to him was valid until 13.9.1996 and was renewed until 24.9.1997.

Mr. Dejic subsequently remained without a residence permit (because the Labour Department did not approve the further employment of alien staff in the Printing House where he worked) despite the fact that he had been repeatedly asked to leave the country, with the result that a new application made by him on 21.7.1998 in order to continue the same work after the approval of the Department of Labour was secured, was rejected on 8.3.1999.

In view of the conditions prevailing at the time in Yugoslavia because of the war in that country and for humanitarian reasons the letter of rejection dated 8.3.1999 was not handed to him, but on the contrary **he was allowed to remain in Cyprus for humanitarian reasons.**

A new application by him, through the Archbishopric, asking to be allowed to remain was rejected on 8.3.2000. Subsequently an application by his ex employer was approved for one year and he was then issued a **temporary residence permit until <u>27.4.2001</u> with the remark 'final'.**

During the above mentioned period, the two complainants performed a civil wedding on 24.7.2000 and afterwards a religious wedding on 20.9.2000 while on 23.11.2000 a child was born to the complainants.

On 12.12.2000 Mr. Dejic asked for his wife to be allowed to stay with him until the expiry of his own permit in view of the recent birth of the child, a request which was accepted and thus Mrs. Spasic was issued a **temporary residence permit as visitor, which was valid until 27.4.2001, with the remark "final"**.

On 3.4.2001, that is a few days before the expiry of the final permit of the couple, Mr. Dejic submitted an application for naturalization. It was rejected on 30.5.2001

because it did not meet the period of residence in the Republic required by the relevant law.

New applications by him for renewal of the temporary residence permit for employment purposes were rejected since in the meantime both had completed the maximum allowed period of employment of aliens in the Republic, and on 29.5.2002 expulsion/detention orders were issued against Mr. Dejic. There followed new correspondence with the result that the execution of the orders was delayed, which became finally possible on 4.9.2002, when the complainant was arrested in order to be expelled.

However, following new representations by the employer, who invoked special reasons for the employment of the said alien in his business, Mr. Dejic was set free so that the Department of Labour could examine the said allegations of the employer, and Mr. Dejic was asked to make a new application with an approved contract from the Department of Labour for the issue of a temporary residence permit. The Department of Labour did not approve the employment of an alien to his employer and thus the said application was never submitted.

Mr. Dejic subsequently **asked in March 2003, through his lawyer, that the couple should be allowed to remain in the Republic until the end of the school year of their child in the day care station. The said request was accepted again for humanitarian reasons.**

There followed an application for naturalization by Mrs Spasic on 22.5.2003 and the second application for naturalization of Mr. Dejic also on 22.5.2003. Both were rejected on 2.4.2004 and 26.6.2003, respectively, because the period of legal residence in the Republic required by the relevant law was not completed. In view, however, of the examination of the said application as well as the completion of the annual attendance of the child at the day care station, **the family was again allowed to remain in the Republic <u>until 30.6.2004,</u> again for humanitarian reason.**

There followed new correspondence with invocation also of Directive 2003/109/EC of the European Union, on the part of the couple who were repeatedly asked in writing to depart but they did not do this until expulsion/detention orders were issued against them on 14.2.2005.

The Police executed the detention order against Mr. Dejic only and not that against Mrs. Spasic, again for humanitarian reasons and, acting in the best, under the circumstances, interest of the child, as required both by the relevant International Law on the Protection of the Rights of Man and specifically the Rights of the Child, as well as by the Constitution of the Republic and the provisions of the local Law.

Analysis of the Relevant Facts

The complainants entered the Republic for employment on a temporary basis.

It is evident that from their initial arrival in the Republic the complainants requested a residence and employment permit on a temporary basis. On the basis of their requests, they secured such temporary residence permit. Furthermore it is worth noting that Mr. Dejic had difficulty securing even such temporary permit because from time to time there were problems in the Department of Labour ascertaining the need for employment of an alien in his field of work.

After the complainants completed, the maximum allowed period of residence in the Republic, they started in various ways to try to get extension of this permit, as an exception.

Initially **for humanitarian reasons, because of the birth of the child and the war in the country of origin,** such extension was given to the couple. Subsequently and because of their continuing applications for naturalization and extensions, they remained in the country until a decision was taken regarding the above mentioned applications. It is also worth stressing that the continuing submission of the applications for naturalization has been abusive since no new evidence was ever produced justifying a change of the decision for rejection. Following the applications for naturalization there were again appeals for the issue of a temporary residence permit for humanitarian reasons, this time in view of the fact that the child continued to attend a day care station.

On the basis of the above, it is worth noting that your conclusion in the second paragraph of page 1 of your Report that "Since 2001 the administration has started to react negatively to applications by the couple asking to be granted a further residence and employment permit… "attributes, I believe, a tendency of prejudice against the complainants of the part of the Department with which I do not agree.

Also I do not agree with your statement in the same paragraph that "In any case, following pressures which were exerted either by their lawyers or by their employers or even by the Church of Cyprus, their permit was renewed from time to time, legalizing afterwards their residence status. It appears from the above that the extensions were given as a matter of exception, mainly for humanitarian reasons and within the framework of the principles of good administration. Every application and letter of the complainants was examined in good faith and in no case were measures taken against then as long as the examination of any request of theirs was outstanding.

By extension, I disagree with your conclusion in the fourth paragraph of page 4 of your Report that "The administration itself has contributed to the creation of the long residence situation".

On the contrary, I consider that the aliens repeatedly abused the procedures in order to extend their residence in the Republic for the maximum period despite the fact that they knew that the permit which was given them each time was temporary.

In this connection, and since as it is gathered from the facts of the case, the intention of the complainants was to secure permanent residence in the Republic, the fact that they never applied for the granting of an immigration permit for the purpose of their employment in the Republic remains unexplained. Such an application would have given the Authorities the opportunity to examine whether the prerequisites for the issue now of a permanent residence permit were fulfilled, according to the existing regulations.

Finally, as regards your remarks in the third paragraph of page 2 of your Report about their employment, I am sorry to observe that both complainants seem to have been illegally employed in the Republic given that the last residence permit of Mrs. Spasic was as visitor and expired on 27.4.2001 and of Mr. Dejic the last residence employment permit also expired on 27.4.2001. Employment in violation of an alien's residence permit or without such permit constitutes an offence in accordance with the Aliens and Immigration Law Cap. 105 to 2003. I also clarify that after this date, that is on 27.4.2001, and despite the fact that the couple were not allowed to remain in the Republic for the reasons I mentioned earlier until 30.6.2004, despite my written suggestions and despite the fact that Mr. Dejic was told in writing that he would be allowed to work also, they themselves did not apply to obtain a legal residence/employment permit, ignoring the suggestions of the authorities.

Legal framework within which the Decision for expulsion has been taken

Since 27.4.2001, the couple of the complainants have been practically residing in the Republic without a legal permit, and since 30.6.2004 without even the tolerance of the Authorities. Moreover, and as it is established a posteriori the complainants are employed illegally also.

After 30.6.2004, they were repeatedly asked to depart but without complying with their legal obligations with the result that expulsion/detention orders were issued against them on 14.2.2005 on the basis of paragraph (k) of sub-section 1 of section 6 of the Aliens and Immigration Law Cap. 105 to 2003, on illegal residence.

Relevant Community Law

Directive 2003/109 E.C.

Directive 2003/109/EC was enacted in accordance the spirit of the Tampere Declaration, 15-16 October 1999, which is that the European Union has to secure the fair treatment of the nationals of third countries legally residing on the territory of the member states and to recognize to them, within the framework of a decisive policy in the accession field, rights and obligations similar to those it recognizes to the citizens of the European Union. This Declaration points out, inter alia, that the integration of third country nationals who have long been residing in the member states, constitutes a fundamental element for the promotion of the economic and social coherence which constitutes the primary target of the Community in accordance with the Treaty. This Directive recognizes to third country nationals, residing in the territory of a member state legally and continuously for at least five years, the status of long term resident provided they produce evidence that they have, on the one hand, sufficient resources for the maintenance of themselves and the members of their families and, on the other, medical insurance.

According to Article 27 of the above Directive, the Directive comes into force on the date of its publication in the Official Gazette of the E.U. that is on 23.1.2004 while a period of 2 years is granted to the member state in order to incorporate the Directive in their national systems.

I would like to note that even if I take into consideration the interpretation of the said Directive most favourable the complainants and assume that the Directive created immediate enforceable rights for them on the date of its publication, that is on 23.1.2004, I observe that the prerequisites which are contained in the said Directive are not fulfilled in their case and, consequently, the Directive cannot be applied to them.

Taking into account the more general objectives of the adoption of this Directive as they are specified in the preamble to the Directive and more specifically in its paragraphs (2) and (3), the Directive was enacted for the purpose of integration of third country nationals residing in the territory of the member state with long term resident status. As it is stated more specifically in the Directive, the main criterion for obtaining this status is the duration of the legal residence on the territory of the member state. In paragraph 6 of the preamble to the Directive it is specifically stated that:

“Residence should be both legal and continuous in order to show that the person has put down roots in the country”.

Furthermore, it is worth noting that because of the recent enactment of the Directive, as far as I know, its interpretation has not until now been given in the case law of the Court of the European Communities and there is no other decisive source of analysis of the implementation of the Directive. In view of this fact, the interpretation in corresponding matters developed by the European Court of Human Rights is expected to be of decisive importance.

More specifically, the ECHR case law is absolutely relevant to the case of the reinforced protection of the long term residents in the territory of the member states. In paragraph 16 of the preamble to the Directive and also in Article 12 it is stated specifically that the protection of aliens who possess the long term resident status against expulsion is based on criteria developed by its case law by the ECHR. This reference constitutes a clear indication about the framework of implementation of the Directive.

Thus the relevant Directive aims at the protection of the same category of aliens, more specifically integrated immigrants, for whom the protective ECHR case law has been enacted. As it appears from the analysis of the relevant case law of the Court in Strasbourg which follows, these are defined as second generation immigrants or persons who entered the territory of the Member state at a young age and remained in it for the greatest part of their life *(Boughanemi v France [24.4.1996]; Bouglifa v. France [21.10.1997])*. The couple of the complainants in question is outside the category of aliens who are protected by the said case law and thus outside the scope of implementation of the Directive.

Article 4(1) of the Directive provides that the member state will grant the long term resident status to third country nationals who reside permanently and continuously in their territory for a period of 5 years before the lodging of their relevant application for recognition of this status.

"1. Member States shall grant long-term resident status, to third country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application"

Furthermore, according to Article 7 (1) of the Directive, a third country national who is interested in obtaining this status has to lodge an application for this purpose.

"To acquire long term resident status the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides".

It is worth noting that on the basis of the Community Law principle which requires the interpretation of the relevant provisions of the national law of the Member State in conjunction with the provisions of the Directive, I reach the conclusion that the complainants do not fall within the scope of implementation of the Directive since they never applied to obtain a permanent residence permit in Cyprus.

In the relevant Cyprus Law a clear distinction is drawn between temporary residence permits and immigration permits. Immigration permits constitute by definition long residence permits. The fact that no application has been lodged for an immigration permit makes impossible the implementation of the specific Directive in their case.

Conclusion:

Even if the Directive had a binding effect on the Republic since the date of its entry into force, i.e. on 23.1.2004 it would not have prevented the said expulsion because it would not have applied to the said aliens on the basis of its paragraph 1 of article 4

in view of the fact that on 23.1.2004 the aliens were not holders of a legal residence permit and the period of their legal residence had expired on 27.4.2001 i.e. almost three years before the Directive came into force.

On this occasion I would like to say that the said Directive has been incorporated in the draft of the new Aliens and Immigration Law which has been prepared by the Law Office of the Republic and is now under study by the Ministry of the Interior and by our Department and consultations regarding it are about to start. A copy of the extract of the relevant articles is attached for your information. **(Annex A).**

Council Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States, *(Official Journal C. 080 18/03/1996 p. 0002-0004).*

This Decision defines in paragraph III as long term residents those who prove that they have completed legal and without interruption residence in the territory of a member state for a period which is defined in the national law of the member state and in any event for a period of 10 years.

"III 1. Without prejudice to the provisions of point IV, the following third country nationals should be recognized in each Member State, as long term residents:- those who provide proof that they have resided legally and without interruption in the territory of the Member States concerned for a period specified in the legislation of the Member State and, in any event, after 10 years' legal residence."

Our national law does not provide for such a period and thus the Decision becomes relevant in the cases of aliens who reside legally and without interruption for 10 years in the territory of the Republic. For the reasons cited above the said couple do not meet this prerequisite and, consequently, do not fall the scope of its implementation.

II. Relevant ECHR Legislation

1. Jurisdiction

Due to the looming "threat" or the impending application by the couple to the European Court of Human Rights (ECHR) I would like to refer briefly to Article 35 (1) of the Convention according to which the ECHR has jurisdiction to examine a case according to the generally recognised International Law rules after the domestic legal remedies have been exhausted.

"It is recognizable rule that, where a state has treated an alien in its territory inconsistently with its international obligations but could nevertheless by subsequent action still secure for the alien the treatment (or its equivalent) required by its obligations, an international tribunal will not entertain a claim put forwards on behalf of that person unless it has exhausted the legal remedies available to him in the state concerned." (1.Oppenheim's International Law, 522-523 (Jennings & Watts (eds.), 9th ed. 1992)."

In connection with the above I would like to stress the fact that on 24.2.2005 the complainants withdrew their application against the expulsion/detention orders and what is more at the stage of the hearing of the interim application for suspension of the expulsion. Moreover, they reached before the Court a compromise settlement with the Authorities and agreed to depart voluntarily within the next 20 days. (A copy of the relevant court minute is forwarded as Annex B). The complainants, as it is gathered also from the non implementation by them of the compromise

agreement, insist on their position and completely ignore their legal obligations to the Republic.

It is my position that at this stage, that a possible application by the aliens to the ECHR will not have exhausted all the domestic legal remedies in the Republic.

2. The alleged right

It is clear from the moves of the said aliens, judicial and non judicial, that their fundamental human right which they consider is violated by the execution of the orders is their right to settle permanently and as family in a country of their choice other than the country of their origin.

I would like in this connection to express the view that there is no such human right and that the honest and consistent respect for the concept of human rights requires protection of the condition from including a series of other concepts and arguments to the point that their concept becomes meaningless.

In any case, such right is not recognized in the European Convention on Human Rights:

"The right of an alien to enter, and to reside in the territory of a Contracting State has not been laid down in the European Convention on Human Rights…While Article 2, paragraph 2 of Protocol No. 4 provides that 'everyone shall be free to leave any country including his own' the second paragraph of Article 3, of the same Protocol expressly restricts the right to enter the territory of a Contracting State to nationals. Article 4 of Protocol No.4 only prohibits the collective expulsion of aliens, while Article 1 of Protocol 1 No. 7 contains certain procedural requirements for decisions concerning the expulsion but does not restrict the sovereign right to expel aliens." [O. Van Dijk, Protection of "Integrated" Aliens Against Expulsion under the European Convention on Human Rights, European Journal of Migration and Law 1 (1999): 293-312, p. 293].

The above position is based on the case law both of the European Commission of Human Rights and the Court. In Application Number 7048/75 in the case *X v. United Kingdom* (9 March 1977) the Commission decided that the Convention and more specifically its Article 8 does not create a right to a couple of aliens who reside in a specific country other than the country of their origin. The Commission noted: "That follows from the liberty of the States not restricted by the Convention, to regulate the entry of aliens".

"As a matter of International Law and subject to its Treaty obligations, a state has the right to control the entry of non-nationals into its territory." (*Abdulaziz, Cabales and others v. The United Kingdom* (1985) 7 EHRR 471, para. 67; *Gul v .Switzerland* (1996) 22 EHRR 93 para. 38; *Ahmut v. The Netherlands* (1996) 24 EHRR 62).

As it is stated in the Work "Theory and Practice of the European Convention of Human Rights" P. Van Djik & G.J.H van Hoof (2nd Edition 1990) page 519, footnote 1305:

In Application No. 7048 /75 in X v. *The United Kingdom* (9 March 1977) where the Commission decided that Article 8 does not per se guarantee the right for a married couple to move their residence to a specific country, where one of the two has a visitor's permit."

The above principle was systematically applied in case law for almost 30 years In the Application Number 42703/98 Radiovanovic v. Austria dated 24 April 2004 it is stated again that aliens who do not have the right, according to the Convention, to enter or to reside in a specific country and the Council of Europe countries should control the entry and residence of aliens in accordance of course always with the protection framework specified by the Convention.

Conclusion

The European Convention of Human Rights does not safeguard the right to a person or family to permanent residence in a country of their choice except the country where they come from even if the settlement in the country of choice would create more favourable conditions for them.

III. Relevant Provisions of the European Convention of Human Rights

According to Article 1 of the Convention and its interpretation by the ECHR and in view of the fact that the complainants are still in the territory of the Republic, the Republic should in its moves protect their rights. The provisions of the Convention apply without discrimination to all the persons who come under the jurisdiction of the Member State.

Articles of the Convention, which are, in my view, relevant to the case of the complainants are Article 3 and Article 8 of the Convention.

"First some decisions of the European Commission of Human Rights and later judgments of the European Court of Human Rights (*Berrehab and Moustaquim*) made it clear that the European Convention of Human Rights also applies to alien immigrants and that especially its Articles 3 and 8 on inhuman treatment and family life, restricted the possibilities to expel aliens who have been admitted, have long legal residence and close family ties in the country of residence." (Kees Groenendjik, "Long term Immigrants and the Council of Europe", European Journal of Migration and Law, vol. 1 (1999), p. 281

There follows an extensive analysis of the above provisions,

I. ARTICLE 3 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

Regarding the effect of Article 3 of the Convention in the case under examination I would like to state the following:

In the decision of the Commission of Human Rights in the Application *Cruz Varas v. Sweden,* the Commission, examining the question whether the impending expulsion of Varas constituted violation of Article 3 of the Convention, said the treatment of aliens in such cases must be seriously inappropriate in order to constitute violation of Article 3. The Commission in that case set a high limit regarding the implementation of Article 3 in expulsion cases.

It is my position that the facts of the case under consideration do not raise a question of violation of the right safeguarded by Article 3 of the Convention.

I would also like to observe that not even the impending expulsion of the child constitutes interference of the Republic with the right safeguarded by Article 3 of the Convention. In the aforementioned case the Commission said in paragraph 92 of its decision that:

"The Commission considers that, although the expulsion of the son would involve serious problems for him, the circumstances are not such as to indicate violation of Article 3 of the Convention".

Furthermore, in support of my position that the fact that the complainants would most probably enjoy more favourable living conditions in Cyprus than in their country of origin does not constitute violation of Article 3 or Article 8 of the Convention, I note the Court's reference in the case *Bensaid v. United Kingdom* (2001), para. 32:

"The fact that the applicant's circumstances in Algeria would be less favourable than those enjoyed by him in the United Kingdom is not decisive from the point of view of Article 3 of the Convention".

I would also like to stress that it is most clearly recognized that the expulsion of the child will most probably constitute a source of problems. But it is pointed out that it has become impossible to avoid this expulsion in the circumstances, given that the parents of the child themselves have been systematically refusing to comply with their legal obligations even though they knew the legal consequences of their non compliance and, even worse, the probable consequences for their child. A relevant decision of the Commission of Human Rights which appears to confirm my position that the Republic is not to blame for the consequences of the couple's refusal to comply with the obligations imposed by law is the decision in the case *Cruz Varas v. Sweden* (1991) in which it is noted in para. 102 that:

"The Commission is therefore of the opinion that the splitting up of the family, as a result of the family member's failure to comply with lawful order, does not show lack of respect for the applicant's family life".

It is my view that the responsibility for the consequences which the child will have, unfortunately, to face does not rest with the Republic but with its parents themselves. The Republic both as a good will gesture and within the framework of the protection of the rights of the child which are safeguarded by the relevant international treaties and the Constitution of the Republic twice granted extension of the residence of the parents in order to enable the child to complete the school year even though this was a kindergarten. Unfortunately the parents of the child did not take seriously into consideration the concessions made by the authorities or perhaps this was not finally their real motive and they decided to continue to reside and to work illegally in the Republic. The Republic does not bear the legal or moral responsibility for this decision of the parents.

II. ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The protection stemming from Article 8 of the Convention is relevant in this particular case, as far as the protection of the right for family life, as well as the protection of the right for private life is concerned. I will henceforth analyse the relevant legislation regarding these two rights in order to justify my position regarding my decision in respect to the expulsion of the two complainants, that it does not violate Article 8 of the Convention.

i. RIGHT FOR FAMILY LIFE

Regarding the protection of the right for family life, as it is provided by the European Convention for Human Rights and also by the Constitution of the Republic, I would like to point out that the case under examination does not concern family reunification, since the family as a whole lives within the territory of the Republic and is called upon to depart as a whole to their country of origin. It is the explicit

intention of the Republic that the family should not split up and that all the family members depart to their country of origin.

Concerning Application no. 48321/00, of the decision of the Court in the case *Slivenko v. Latvia*, dated 9th October 2003, the Court pointed out that by expelling the whole family from Latvia by the Authorities of Latvia, the whole family was not split up, therefore the Authorities did not violate the right of the applicants for protection of their family life.

"Under the convention the applicants were not entitled to choose in which of the two countries…to continue or re-establish an effective family life."

Furthermore, the same argument was examined in the case *Cruz Varas v. Sweden* (1991) 14 EHRR 1 (para. 88-89) where the Court decided that the expulsion of a married couple along with their child to their country of origin, under circumstances which did not produce any insurmountable obstacles to the continuation of their family life in the latter country, did not constitute a violation of their right for protection of family life. It is worth mentioning that the Committee stated that the applicants did not produce satisfactory evidence to prove that it would have been impossible to continue their family life in their country of origin. It is therefore important to stress out that the burden of proof in such circumstances and taking into account such obstacles is on the applicants according to Strasbourg legislation:

"97. The Commission recalls that there is no general right under the Convention to enter, reside in and not to be expelled from a given country…In such a situation it is incumbent on the applicants to show that there are obstacles to establishing family life in their home countries or that there are special reasons why that could not be expected of them."

In the case under examination the complainant couple has never produced such evidence.

The legislation of the Court regarding the matter under examination is explicit:

"Article 8 does not impose a general obligation on a state to respect the choice of married couples as to the country of their residence where there are no obstacles to establishing family life in their own or their spouse's home countries." (*Abdulaziz v. UK* (1985) 7 EHRR 471 para. 67, *Gul v. Switzerland* (1996) 22 EHRR 93 para. 38; *Ahmut v. Netherlands* (1996) 24 EHRR 62).

Specifically, in the decision of the E.C.H.R. in the case *Abdulaziz v. UK* (1985) 7 EHRR 471, the Committee decided that the refusal of the Government of the United Kingdom to allow the husbands of the applicants to enter or reside in the United Kingdom did not constitute a violation of the right for family life of the applicants. The reason was that the applicants failed to prove that there were insurmountable obstacles to the possible settlement of the families in question in the countries of origin of the husbands. In the said decision of the Court, it is worth mentioning that the fact that the applicants had known that their husbands did not have the right of residence in the United Kingdom has played a significant part. Their marriage was conducted with persons who had either failed to secure the right of temporary residence in the country, or failed to secure their entry in the country.

In respect to all the above, I observe that the marriage of the complainants, as it appears in the indication of the facts above, was performed while the alien couple, under the present examination, did not possess a permanent permit of residence in the territory of the Republic. I also take notice of the fact that the aliens had not

informed the Department about any serious obstacles which they could possibly face in case they returned to their country of origin.

Conclusion:

It is my submission, as it is obvious from the above mentioned, that my decision for expulsion of the aliens in question does not violate their right for protection of their family life, as it is provided in Article 8 of the European Convention on Human Rights and the Constitution of the Republic. I repeat that:

"Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory." (*Adulaziz v. U.K.*; *Gul v. Switzerland*)

It is the intention of the Republic that the whole family of the complainants depart (therefore the splitting up of the family is not a matter for discussion) to their country of origin, since there is no serious problem hindering their resettlement in their country of origin according to the evidence produced before us.

ii. RIGHT FOR PROTECTION OF PRIVATE LIFE

As Judge Morenilla mentions in the decision *Nasri v. France*, (1995) Series A No, 3209-B, p. 31, "Deportation from a country in which the person concerned has lived from birth or from childhood constitutes an interference with his private and personal sphere where it entails, as in this case, the separation of the person concerned from his essential social environment, his emotional and 'social circle', including his family."

For the reasons I have mentioned above, I believe that the responsibility for the consequences stemming from the expulsion of the applicants concerning their private life, bear the latter and not the Republic, and therefore I do not think that their expulsion constitutes a violation on the part of the Republic of the right for protection of their private life.

As it is clarified by the E.C.H.R. in its decision in the case *Bensaid v. United Kingdom* (2001) 33 EHRR 205 para. 46, "Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8"

I would also like to point out that the right for protection of private life in cases of expulsion is granted to immigrants who are considered to be integrated in the given country. According to the extract of Judge Morenilla above, the right for respect of private life of the alien would be probably violated by the potential expulsion, if the alien has lived in the country in question since his date of birth or at least since his childhood and for the biggest part of his life.

In the decision of the Court in the case *C v. Belgium (7.8.1996)*, where the issue of protection of private life of an alien under expulsion was reexamined, it is noted that: "In addition Mr. C established real social ties in Belgium. He lived there from the age of eleven, went to school there, underwent vocational training there and worked there for a number of years. He accordingly also established a private life there within the meaning of Article 8, which encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature."

The basic criterion considered by the Court as to whether the protection of the right for private life of an alien subjected to expulsion constitutes a right protected by the Convention, seems to be the capacity of that alien to be considered as an integrated immigrant, which mainly depends on the duration of residence of that alien in the country, that is from at least young age and for a long period of time.

This conclusion seems to be validated by the important and recent decision of the Court in the case *Slivenko v. Latvia* where "it appears that the removal of persons from a territory where they resided practically throughout their lives amounts to an infringement of their rights to private life and their home."(Pieter Boeles and Marina den Houdijker, Case Reports, European Journal of Migration and Law, p. 163)

I would also like to refer to the decision *Bensaid v. The United Kingdom* (2001), where following was mentioned:

"48…. Even assuming that the dislocation caused to the applicant by removal from the United Kingdom where he has lived for the last eleven years was to be considered by itself as affecting his private life, in the context of the relationships and support framework which he enjoyed there, the Court considers that such interference may be regarded as complying with the requirements of the second paragraph of Article 8, namely as a measure "in accordance with the law", pursuing the aims of the protection of the economic well-being of the country and the prevention of disorder and crime, as well as being necessary in a democratic society for those aims."

This decision is of great importance to the case under examination, in view of the fact that the duration of residence of the applicant is similar to the time period of physical presence of the complainants in the Republic.

The evidence under examination make it obvious that the preconditions which emerge from the legislation of the Court as to whether there is an issue of violation of the right for protection of private life, which with no doubt apply in the cases of integrated immigrants, do not cover the case of the complainants under examination.

These aliens have lived in Cyprus for a period of time substantially lower compared to the limitation defined by the legislation of the Court for Human Rights, to protect the Convention in cases of expulsion of integrated immigrants.

III. THE PRINCIPLE OF PROPORTIONALITY

Firstly I would like to quote the following extract from the writing "Human Rights Practice" Jessica Simor and Ben Emmerson (2000), para. 8. 07:

"Whether the decision to refuse entry or expel an individual is compatible with the obligations of the authorities under the Convention will depend on the seriousness of the interference with the applicant's rights in each case. Thus there can be no general findings that immigration rules or laws comply with the Convention, each decision must be considered on its individual merits."

I would also like to point out that "According to the court's case-law (the authorities) would have to strike a fair balance between the legitimate interests of the alien and the interests to be protected by the State." (Van Djik, 'Protection of "Integrated" Aliens against expulsion under the European Convention of Human Rights, European Journal of Migration and Law vol.1 (1999), p.293)

It is my position that such right or interest afforded to the aliens under examination is not affected for the reasons mentioned above.

However, even if it is assumed that the decision for expulsion influences in a negative manner the protection of the right for their family or private life, it is my position that such influence is necessary in a democratic society. In any case, the fact that the aliens in question have abused the existing procedures and have resided (and worked) illegally would be relevant to the examination of whether the expulsion is necessary for the protection of public interest and of our general immigration policy.

I also find relevant the recent decision of the House of Lords in the case of *Regina v. Secretary of State for the Home Department (Appellant) ex parte Razgar (FC) (Respondent)* [2004] UKHL 27, where Lord Bingham of Cornhill proceded with an extended analysis of the enforcement of the proportionality principle in matters which involve Article 8 of the European Convention of Human Rights in expulsion procedures. In paragraphs 17-20 of the relevant decisions it is noted that:

> "In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?
>
> 18. If the reviewing court is satisfied in any case, on consideration of all the materials which are before it and would be before an adjudicator, that the answer to question (1) clearly would or should be negative, there can be no ground at all for challenging the certificate of the Secretary of State. Question (2) reflects the consistent case law of the Strasbourg court, holding that conduct must attain a minimum level of severity to engage the operation of the Convention: see, for example, *Costello-Roberts v United Kingdom* (1993) 19 EHRR 112. If the reviewing court is satisfied that the answer to this question clearly would or should be negative, there can again be no ground for challenging the certificate. If question (3) is reached, it is likely to permit of an affirmative answer only.
>
> 19. Where removal is proposed in pursuance of a lawful immigration policy, question (4) will almost always fall to be answered affirmatively. This is because the right of sovereign states, subject to treaty obligations, to regulate the entry and expulsion of aliens is recognised in the Strasbourg jurisprudence (see *Ullah* and *Do,* para 6) and implementation of a firm and orderly immigration policy is an important function of government in a modern democratic state. In the absence of bad faith, ulterior motive or

deliberate abuse of power it is hard to imagine an adjudicator answering this question other than affirmatively.

20. The answering of question (5), where that question is reached, must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. ...Decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases..."

I consider that the enforcement of the above principles confirms my rationale, which is that the expulsion of the said complainants under the prevailing circumstances is considered to be necessary.

Finally, I would like to stress out that in the present case, according to our practice regarding any other alien, irrespective of religion and nationality, great effort has been applied in examining the facts with good faith and objectivity, and at the same time taking into consideration the public interest, as well as the immigration policy and the particular features of our country.

I believe that the aliens in question have been allowed enough exceptions, especially for humanitarian reasons, and if they feel that they have been done wrong by my decision, much more so if they feel that it is legally not sound, I do not understand why they have withdrawn their application against the orders of expulsion/detention and especially at the time of the hearing of their interim application for stay of execution of the expulsion order.

Always at your disposal for further information.

(A. Shakalli)
Director of the Department

Observations made by the Ministry of Education and Culture

• **Para. 37:**

The following text to be added after the word "long-term initiatives"(tenth line):

Extra curricular activities, competitions, performances, special events, school activities as well as the review of the curriculum, such as in Civics, have been substantially upgraded and exert a highly positive effect on the majority of pupils regardless of ethnic origin or community.

The following text to be added after the word "some teachers" (fourteenth line):

The official policy of the Ministry Of Education and Culture is the awareness of human rights by educators and pupils alike. Possible traits of discrimination among some teachers may reflect individual opinion, which, in no way, interferes with the formal teaching, which abides by the Ministry's official policy.

• **Para. 66:**

The following text to be added at the end of this paragraph:

The Ministry did not receive any official complaint. Exemptions that are officially asked by parents are always granted and in all cases alternative courses are offered to children. It must be stressed that the right to freedom of religion (as well as that of thought and conscience) is safeguarded by article 18 of the Constitution of the Republic. There is no stigmatisation for any children who do not attend lessons of Religious knowledge, which are Greek orthodox faith oriented. What happens occasionally is the natural curiosity and/or comments of pupils for their peers who do not attend the regular classes, whether these are Religion or Physical Education for that matter and are exempted from class attendance. No biased commentary is made on the pupils' faith itself. Pupils themselves acknowledge the right to difference in religion.

• **Para. 83:**

The following text to be added at the end of this paragraph:

The fact is that Roma children do receive support and assistance in their language as well, since the Ministry of Education and Culture has appointed three Turkish Cypriot teachers and four bilingual teachers who speak both Greek and Turkish during the present school year 2005-2006.

• **Para. 85:**

The following text to be added after the word "Commissioner for Administration" (ninth line):

We strongly disagree with this sentence. There is no policy to segregate pupils. It is the aim and effort of the Ministry of Education and Culture to combat this kind of segregation by various measures. The fact is that pupils should enrol to the nearest school to the place they live based on their educational district. If Pontian Greeks rent or buy houses in specific areas and as a result some schools have a great number of these pupils, it is not something that the Ministry of Education and Culture should be blamed for. There has been an effort to transfer pupils to a different educational district and, in Paphos for example, the Paphos State Institute for Further Education which numbers over 1.000 pupils attending afternoon language and other lessons has been moved to a district predominantly inhabited by Pontians so as to effect a mixed pupil population.

• **Para. 87:**

The following text to be added at the end of the paragraph:

The Ministry of Education and Culture offers to minority groups pupils all possible assistance for attendance to both public or private schools, in the case of the latter they are subsidised so that they can attend schools of their choice."