



**OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS**

**BUREAU DU COMMISSAIRE
AUX DROITS DE L'HOMME**



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 12 February 2004

CommDH(2004)2

Original version : French

**REPORT
BY MR ALVARO GIL-ROBLES,
THE COMMISSIONER FOR HUMAN RIGHTS,**

ON HIS VISIT TO CYPRUS

25 - 29 June 2003

**to the attention of the Committee of Ministers
and of the Parliamentary Assembly**

Introduction

Pursuant to Article 3 e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I accepted the invitation extended to me by the Minister for Foreign Affairs of the Republic of Cyprus, Mr George Iacovou, to make an official visit from 25 to 29 June 2003, and travelled to Nicosia with the Director of my Office, Mr Christos Giakoumopoulos, and Mr Gregory Mathieu. I must preface this report by thanking Mr Iacovou for all the endeavours of his department to make my visit a success, and the Permanent Representative of the Republic of Cyprus to the Council of Europe, Mr Nicolaos Emiliou, for his valuable co-operation in preparing the visit. I would also highlight the indispensable support extended to me by the Minister of Justice and Public Order, Mr Doros Theodorou, and by the Director General of the Ministry, Mr Lazaros Savvidis. In addition, I wish to express my gratitude to the various government agencies, with which I had meetings, for their great helpfulness, openness and exemplary collaboration.

Besides the above mentioned persons, I was able to meet the President of the Republic, Mr Tassos Papadopoulos, the President of the House of Representatives, Mr Demetris Christofias, the Chair and the members of the parliamentary Committee on Human Rights, the Attorney-General of the Republic, Mr Solon Nikitas, with Judge Christos Artemidis and other judges of the Supreme Court, the Ombudsman (Commissioner for Administration) Ms Eliana Nicolaou, the Commissioner for Legislation, Ms Leda Koursoumba, and representatives of the Bar and the civil society. I also visited the Nicosia prison, the police detention centre for aliens, the police station at Omorfita and the Limassol psychiatric clinic.

Considering that the mandate of the Commissioner for Human Rights requires him to promote the effective respect for human rights of all who may avail themselves of the Council of Europe's human rights instruments, I also went to the northern part of the island. There I spoke with Messrs Mehmet Ali Talat, Güngör Güngan, Ilker Neuzat and Ertugrul Hasipoglou, leaders of Cypriot political parties; representatives of Turkish Cypriot civil society, representatives of professional circles, lawyers, journalists, and the representatives of Mr Rauf Denktas, Messrs Olgun and Necatigil. I met representatives of the legal professions as well: Mr Taner Erginel, Ms Gönül Eronen and Mr Bertan Ozerdag. I also met detainees in the northern part, and visited two villages on the Karpas peninsula where I met some members of the Greek Cypriot community.

Finally, I would like to warmly thank the office of the Delegation of the European Commission in Cyprus whose co-operation throughout the visit was most valuable.

General observations

1. The visit took place at a time of preparation in Cyprus for the EU accession, which marks the end of a long road whose milestones have been the island's decolonisation and independence, the inter-community conflict and the arrival of the Blue Helmet troops, the events that led to the occupation of the north of the island, making hundreds of thousands of people refugees, and finally the de facto partitioning for almost thirty years.

2. It is encouraging to observe today that the traumas of the island's painful and often bloodstained history, fraught with fatalities, disappearances, suffering and anguish, do not only provoke anger and bitterness but also – increasingly, moreover – a yearning to press onward and look ahead to the future. Although the visit took place a few weeks after the failure of the plan for reunification put forward by UN Secretary General Kofi Annan, I gained the impression - particularly in my talks with the representatives of civil society on both sides of the island - that past misfortunes could be transformed into a unifying factor for the new generation. I noted with great satisfaction that the concept of human rights was no longer permeated by past bloodshed but embraced the emerging new realities and the new challenges taking shape in Cyprus.
3. But despite this positive, optimistic feeling, the fact must be faced that problems exist and persist.
4. In the part of the island under the control of the legitimate Government of the Republic, these problems relate to the administration of justice, the situation in prisons, the conduct of the police, the status of foreigners, military service and treatment of persons suffering from mental disorders. The institutions of the Republic make an accurate and telling appraisal of these problems and are taking adequate steps to solve them. Likewise, the Cypriot courts and the new Ombudsman institution conduct their activities with genuine care to respect everyone's human rights. I hope that the present report and the recommendations therein will be helpful to them.
5. The situation in the north of the island remains most disturbing. The relaxation of restrictions imposed by the "Turkish Republic of Northern Cyprus" (TRNC) in crossing the line dividing the two communities has raised much hope but does not seem to have appreciably improved matters or, as such, to have triggered a new process.

1. The judicial and prison systems – imprisonment for debt

6. The Cypriot judicial system is not unaffected by the problem of delays in the administration of justice, which besets most of the Council of Europe member states. However, it should be acknowledged that the problem has not reached such proportions as to demand a radical reform of the judicial apparatus or of civil and criminal procedure. The measures recently taken by the Minister of Justice seem adequate in this respect: new posts for judges have just been created and the computer equipment of the courts is being modernised.
7. The Cypriot Government's efforts are also focused at present – and rightly so – on the situation of prison inmates and the modernisation of the scale of sentences and their application.
8. The main prison in Nicosia which I visited is in good condition. A new wing had been inaugurated the week before the visit and the old wings had been renovated. The maximum security section, where persons serving long sentences are held, the women's wing and the semi-custodial department (whose cells are equipped with kitchens and air conditioning systems) demonstrate genuine concern for maintaining good living conditions. As I was able to observe, the staff's relations

with the prisoners are also good. The inauguration of the new wing makes it possible to remedy the problems of overcrowding noted for instance in the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

9. However, some prisoners complained of the absence of proper medical attention. The Government could examine the possibility of setting up a permanent medical centre attached to the main prison.
10. Meanwhile, the Parliament has passed amendments to the Penal Code allowing prison sentences to be replaced by community service. The Minister of Justice also disclosed current discussions in the Government on the penalty of life imprisonment, with a view to making termination of imprisonment possible subject to certain conditions.
11. Regarding the prisons, the following measures have been ordered by the Minister of Justice:
 - creation of a prison officers' college to improve professional standards among prison wardens;
 - introduction of training programmes for prisoners (vocational training, courses in the use of computer facilities, foreign language learning);
 - creation of separate places of confinement for young offenders and for persons sentenced to long terms of imprisonment;
 - establishment of a prisoners' psychiatric treatment centre.
12. These actions are a response to the criticisms expressed by the CPT in its last report; the establishment of a psychiatric care centre is moreover recommended by the Ombudsman in a special report. They should be continued and completed with all dispatch.
13. While conditions of imprisonment do not pose any major problem, the large numbers of foreigners serving sentences for illegal residence in Cyprus is a cause of anxiety. The overwhelming majority of prisoners in the new wing were in fact foreigners (see paras. 26 et seq. below).
14. I also met a few people imprisoned for failure to settle their public or private debts. This is alarming. According to the information received subsequently, 24 persons were imprisoned for debt on the day of my visit. Admittedly, the law does not consider such detention as a penalty, but only as a measure of enforcement of obligations (private ones included), and imprisonment can be ordered only as a last resort by a court after a hearing and only if the judge is convinced that the person concerned is solvent but refuses to pay. The legislation also allows debtors to request the court's permission to pay in monthly instalments, which is normally granted; they are even able to re-apply to the court for an adjustment of the size of the instalments in the event of a change in their financial condition.
15. But whatever the procedural guarantees surrounding the custodial measure, they, in no way, mitigate its harshness. The gravity of the measure in fact means that it verges on a criminal sanction, and recourse to such methods in order to ensure

compliance with obligations and security of transactions seems completely outmoded today. As a matter of fact, if debtors really have resources or income enabling them to honour their obligations, measures such as seizure and liquidation of their assets - including their bank credit – seem more effective by far for securing payment of debts. If they do not, their imprisonment will be of no benefit to the creditors, nor will it enhance the security of transactions. Quite the contrary; a debtor's imprisonment deprives him of any medium-term prospect of earning income to make payment. In fact, at the main prison in Nicosia I met a young man who had been imprisoned for some days for failure to pay damages after a road accident in which his responsibility was established. I fail to see how imprisonment can help him acquire the means he lacks, or how this measure protects his creditors' interests. Since my visit to Cyprus, other Cypriots imprisoned or under threat of imprisonment have approached the Office of the Commissioner to complain of the absurdity of the system. Thus, it is plainly necessary to review this question in order to find up-to-date alternatives that are more suitable and more adequate to guarantee payment of debts. It should also be pointed out that none of my official contacts was intent on the retention of the present system. While drawing attention to its legality and to the array of judicial guarantees that surround it, they all told us of their conviction that a change was imperative. I may refer in that respect to Article 1 of Protocol No 4 to the European Convention on Human Rights which forbids imprisonment for private debts.

2. Human rights issues linked with immigration

16. Cyprus stands at the crossroads of three continents and, being under the strong pressure of migration, it feels the consequences of its position. The imminence of accession to the European Union has, if anything, increased the pressure of migration.
17. Lawful immigrants represent a large percentage of the island's population. They originate from Europe – above all from the states of the former USSR – and from the Middle East or Asia, and make up for the shortage of labour force in certain sectors of the economy, very often in the tourist industry. There are no statistics for illegal migrants.
18. As in other countries of Southern Europe, the Cypriot authorities, as well as the island's society too, have been taken by surprise by this development which is hard to put to contain. In fact there is no real immigration policy in Cyprus. The legislator adopted the new instruments concerning immigration in 2001 and a law on asylum and refugees in 2000, whose complete application was not possible until 2003. The Ombudsman has noted in his reports over the last few years that the authorities have tried to control the migration flow by enforcing the existing provisions to the letter and with strictness and severity, leading to a dramatic increase in complaints to her from foreigners.
19. The absence of a real immigration policy exposes legal immigrants to significant risks of being abused, particularly where working conditions are concerned. Loss of job often means forfeiture of their residence permits, with a possible switch in status from legality to illegality simply at the employer's whim. Although in some

sectors, such as industry or construction, strong unionisation has stood in the way of inequalities between foreigners and nationals, the situation is most alarming in the case of domestic employees, a category that comprises practically one-third of all the legal immigrants working in Cyprus. Following a recommendation by the Ombudsman, all foreign workers' complaints against their employers, including those made by domestic employees, can now be lodged with the employment services of the Labour and Social Insurance Ministry's Regional Offices.

20. Likewise, several foreign women are liable to expulsion because of relationships which they have attempted to form with a Cypriot man or because they have broken off such a relationship. The Ombudsman has stigmatised such cases in her reports.
21. This situation leaves little room for a policy of integration, which Cypriot society stands in great need bearing in mind the progressive emergence of xenophobic outbreaks. ECRI is concerned about the absence of a policy dealing not only with the regulation of migrants' entry and residence and of the rights pertaining to their employment, but also with fuller integration of the immigrant population in society. In general, the immigration policies have been largely founded on the idea that immigrants are people coming to work in Cyprus for a very limited period of time only, and this has had negative repercussions on the possibilities available to them for fully exercising their rights and organising in defence of their common interests.

- *Asylum seekers*

22. The number of asylum seekers doubled in 2001 compared to 2000, and the figures continue to rise rapidly. In 1997 only 60 asylum requests were submitted, whereas in 1999 the figure jumped to 789 and in 2001 reached 1326. As for 2003, the number increased dramatically with a total of 4411 applications. Amazingly enough, approximately 68% of these applications were submitted in the months of November and December. Up to 2002, asylum requests had to be made to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Cyprus which decided as to their validity. Since April 2002, an independent authority for refugees has been established in accordance with the Refugee Act of 2000 (number 6(1)2000). This authority, composed of the Permanent Secretaries of the Foreign Affairs Ministry and the Ministry of Justice and Public Order, is responsible for applying the Refugee Act, making proposals to the Government on refugee policy, and providing circulars or guidelines on national legislation, international conventions relating to refugees, the findings of the UNHCR and the resolutions of other international organisations. The refugee authority has in fact prepared a leaflet for asylum seekers containing very useful information : how to apply for refugee status, how to obtain a residence or work permit, particulars of refugees' rights and obligations, how to qualify for public assistance, information on the interviews leading to determination of refugee status. Interpreters have been made available to the authorities for the following languages: Farsi, Turkish, Arabic, Russian and Serbo-Croatian. Finally, the staff of the authority has received training with the UNHCR. A judicial appeals authority has also been instituted.

23. Despite these efforts, many problems remain. The refugee authority apparently does not have the necessary human resources for speedy processing of asylum requests.
24. In 2002, the Office of the UNHCR criticised certain practices of border guards which involved turning back “boat people” from the Cypriot coast without giving them the opportunity to submit an asylum request.
25. Furthermore, at the time of the visit there was still no reception centre for asylum seekers in Cyprus. The Government theoretically provides temporary residence and work permits for asylum seekers awaiting an official decision on their requests. Many applicants for asylum, however, are deemed to have entered Cyprus illegally and are placed in custody. This situation has also been criticised by the representative of the High Commissioner for Refugees. The Government has had a reception centre built near Kofinou in the Larnaca district which will initially have an intake capacity of 150 persons and may eventually accommodate a maximum of 500. I visited the construction site which appeared to me unsuitable for accommodating asylum seekers decently, in particular families with children. The site is quite far from any township, on rather arid land without much vegetation, which could cause problems during the summer heat. Besides, it is enclosed by a wire fence which raises the fear that the inmates will not have freedom of movement. I can only hope that the authorities will take appropriate steps to provide this reception centre with the requisite facilities – including transportation to Kofinou or Larnaca.

- Illegal immigrants

26. According to the authorities, a very large number of illegal immigrants (some 80% of the total of undeclared immigrants) arrive in Cyprus by crossing the demarcation line from the Turkish-occupied part of the island. They are placed in custody until arrangements are made for their expulsion. In principle, their detention by the immigration authorities is not supposed to exceed eight days. However, if their removal has not been possible within that time, foreigners who have entered illegally or are unlawfully within Cypriot territory (for example after expiry of their visa) may be prosecuted on criminal charges, placed on remand and given prison sentences. If so, they serve the sentence before being deported.
27. Foreigners in the process of deportation are held in a police detention centre near the main prison in Nicosia, where conditions are distinctly less satisfactory than for the inmates of the main prison. However, no complaint or disclosure of ill-treatment in this establishment has been presented.
28. As stated earlier, I was surprised by the number of illegal immigrants held in the main prison. Several of them said they were ready to return to their homelands after having served their sentences. In that prison, I also met two young parents, the father being held in the main prison and the mother in the women’s prison while their child was in the care of the public welfare services in Larnaca. This situation of particular hardship is disproportionate to the irregularities held against the undeclared immigrants. It is clearly necessary for the Government to consider rapidly the possibility of classifying foreigners’ illegal entry to and residence in

Cyprus as an infringement of regulations rather than as a criminal offence, to save persons whose situation is not in order from being subjected to multiple penalties in succession (imprisonment and expulsion), particularly where – as in the case of several persons held in the main prison – they are willing to return home.

- Trafficking in human beings

29. It is not at all difficult to understand how Cyprus, given its remarkable economic and tourist development, has come to be a major destination for this traffic in the Eastern Mediterranean region. The absence of an immigration policy and the legislative shortcomings in that respect have merely encouraged the phenomenon.
30. The authorities have responded at the normative level. The Act of 2000 (number 3(I), 2000) has established a suitable framework for suppression of trafficking in human beings and sexual exploitation of children. Under the Act, any action identifiable as trafficking in human beings in the light of the Convention for the Suppression of Trafficking in Persons and of the Exploitation and Prostitution of Others, together with other acts of a similar nature specified by law, are an offence punishable by 10 years' imprisonment, the penalty being increased to 15 years where the victim is under 18 years of age. The offence of sexual exploitation carries a 15 year prison sentence. If committed by persons in the victim's entourage or persons wielding authority or influence over the victim, the penalty is 20 years in prison. According to the provision of Article 4, using children for the production and sale of pornographic material is an offence. Article 7 grants State aid, within reasonable limits, to victims of exploitation; such aid comprises subsistence allowance, temporary accommodation, medical care and psychiatric support. Article 8 reaffirms the right to redress by stressing the power of the court to award punitive damages justified by the degree of exploitation or the degree of the accused person's constraint over the victim. A foreign worker lawfully present in Cyprus who is a victim of exploitation can approach the authorities to find other employment up until the expiry of the initial work permit (Article 9). Lastly, the Council of Ministers, under Article 10, appoints a guardian for victims with the principal duties of counselling and assisting them, examining complaints of exploitation, and having the culprits prosecuted, as well as for pinpointing any deficiency or loophole in the law and for making recommendations with a view to their removal.
31. At a practical level, the Government has made efforts to protect women who have laid a complaint against their employers by permitting them to remain in the country in order to substantiate the charges. In certain cases, the women have remained in Cyprus at government expense during the investigation.
32. However, apart from punitive procedures, preventive control measures could be introduced. By the authorities' own admission, the number of young women migrating to Cyprus as nightclub artistes is well out of proportion to the population of the island.

3. Police violence

33. The information obtained during the visit of the CPT to Cyprus in 2000 suggests that the positive trend registered in the 1996 report as to treatment of persons held by the police has not been sustained. Several allegations of maltreatment of prisoners by police officers have been received. This included kicks and punches to the body and the head; knocking people's heads against the wall; blows with truncheons and sticks; death threats with a pistol held to the head; electrical shocks to various parts of the body. In some cases, the severity of the instances of maltreatment was such that they could be designated as torture. In the light of this information, the CPT concluded that physical ill-treatment of persons in police custody remained a serious problem in Cyprus. The European Court moreover found in two judgments (*Egmez v. Cyprus* of 21 December 2000 and *Denizi and others v. Cyprus* of 23 May 2001) that inhuman treatment had been inflicted by the police on Turkish Cypriots. Certain general measures have been taken in connection with the execution of these judgments and the report of the CPT. (see paras. 36 et seq. below.)
34. Whilst it is distressing to find that the cases brought before the Court concerned ill-treatment inflicted on Cypriots, the reports of the Commissioner for Administration (Ombudsman) describe cases where police brutality has been exercised against foreigners. ECRI expresses its serious concern over information pointing to excessive use of force by the police against foreigners unlawfully entering or residing in Cyprus.
35. During the visit to the Omorfita police station, I was able to speak with the persons under arrest – who did not complaint about the conduct of the police – and to observe that the conditions of detention were good. The Minister of Justice and the police chief described in the following terms the machinery put in place for dealing with cases of police violence:
36. By decision of the Council of Ministers dated 3 October 1996, the power of the Council of Ministers to appoint investigators for purposes of inquiry into the offences and crimes committed by state officials has been delegated to the Attorney-General. The latter may receive written complaints accusing members of the police of having committed an offence. This is a positive change as the Attorney-General is better placed to respond promptly to complaints of this type. At all events, the Council of Ministers retains the parallel authority to appoint investigators. They have the same powers as criminal police investigators when enquiring into offences. Complaints may be submitted not only by the victims but also by lawyers, representatives or human rights associations, journalists or members of parliament. The findings of the inquiry are presented to the Attorney-General who can decide where appropriate to prosecute. In the first year of operation of this machinery (March 2001 – June 2002), 43 inquiries were opened concerning maltreatment on arrest. Prosecution on criminal charges resulted in three cases.
37. In addition, an internal police control board is being set up. Composed of members of the police and Ministry of Justice officials, and acting under the Minister's authority, this body will have jurisdiction for investigating collusion of police

officers with the world of crime and violations of fundamental rights by the police. It would be advisable, and I consider it desirable, to greatly enhance the credibility and effectiveness of this apparatus if its composition could be extended to persons not answerable to the Government, particularly lawyers and/or representatives of NGOs.

38. The steps described above are naturally to be welcomed. It is nonetheless disturbing to find that there is still a rather timid official reaction to allegations of police misconduct, particularly in those cases detected by the independent national authorities. It is crucially important that no impression of toleration or impunity be conveyed in any way whatsoever. Such an impression would not be consistent with the convictions of the Government or indeed with the interests of the police or of Cypriot society as a whole. Improper treatment during police custody could be averted by certain procedures, as for example compulsory medical examination of persons arrested and held by the police to be undergone at the time of detention and release, and the mandatory presence of a lawyer as from the first police interview and the duty to inform the families or friends of the person under arrest. According to information received by the Minister of Justice, a bill is in preparation to lay the burden of proof on the police in the event of injuries or other marks of violence found on persons held.

4. Domestic violence

39. The authorities are aware that violence within families is a real problem. Vanquishing it necessitates co-ordinated action to punish violence while bringing about a change in attitudes. In that perspective, as early as 1994, Cyprus adopted an up-to-date Act on the Prevention of Violence in the Family and the Protection of Victims, revised in July 2002. Most significantly, it contains provisions on:
- authorising the recording of the victim's declarations by electronic audiovisual means and the production thereof in court, together with witness statements taken electronically so as to avoid confrontation with the accused;
 - guaranteeing celerity of procedure and protection of witnesses from any harassment or intimidation;
 - admissibility of the testimony of a medical practitioner who, during a consultation with a child patient, has heard disclosures of ill-treatment committed by any person, and the obligation for the spouse of the accused to testify (waiving the usual rules of criminal procedure);
 - the creation and operation of shelters for victims.

Training programmes for judges and the law enforcement authorities have been introduced. Furthermore, the Council of Ministers has appointed an advisory committee on domestic violence responsible for monitoring the implementation of the legislation and reporting annually to the Council of Ministers. These measures are to be commended.

5. Questions relating to military service

40. The term of military service is normally 26 months. Defence Act 2/92 of January 1992 recognises conscientious objection on ethical, moral, humanitarian, philosophical, political or religious grounds. However, the alternative service offered is a very long period of non-armed service; it is for either 34 months to be undergone in uniform within army precincts or for 42 months without a uniform and outside army precincts. These regulations do not correspond to the standards of the Council of Europe. Legislative measures are being contemplated to make Cypriot legislation compatible with the requirements of the Recommendations on the subject by the Committee of Ministers.
41. The Ombudsman has received certain complaints from persons exempted from military service that their exemption certificates indicate the grounds (often a bald mention of “psychological reasons”) placing them at a disadvantage in occupational and social life. Moreover, this endorsement carries certain automatic consequences such as withdrawal of the driving licence, which is plainly unreasonable. This practice is inimical to the right to protection of personal data and the right to respect for private life. It might even constitute degrading treatment where – as was the case with one complaint to the Ombudsman – the “psychological reasons” mentioned actually refer to the subject’s homosexual tendencies. The authorities assured me that they would make an attentive examination of the question.

6. Rights of the mentally ill

42. The latest CPT report already ascertained significant improvements in the living conditions of persons suffering from mental disorders in the Athalassa psychiatric hospital, while demanding further progress.
43. The situation remains difficult as regards persons present in the Athalassa clinic even though they do not require psychiatric treatment but simply need permanent care because of a major disability. The Ombudsman has condemned this situation and a solution will reportedly be envisaged when a new psychiatric complex is built.
44. I visited the psychiatric clinic of the hospital in Limassol, which receives patients only for fairly short periods not exceeding a few days or weeks. As I was able to observe, the doctors and staff run it according to modern methods that are conducive to patients’ integration in their family and social environment and prevent as far as possible social marginalisation that may result from prolonged hospitalisations. These positive developments have been made feasible through the 1997 law on psychiatric treatment. This statute furthermore instituted a supervisory board consisting of seven members (two lawyers, two psychiatrists, a psychologist, a nurse, a welfare officer and a representative of an NGO active in the field of mental health), with authority to deal with patients’ complaints.

Human rights issues linked to the division of the island

45. The island's divided state resulting from the occupation of the northern part since 1974 and from the proclamation of the "Turkish Republic of Northern Cyprus" ("TRNC") is familiar. The international community has condemned this development, and in 1983 the United Nations Security Council adopted Resolution 541 (1983) declaring the proclamation of the "TRNC" legally void. The numerous and often serious issues of human rights observance raised by the 1974 operations and the continuous state of occupation are likewise known. The determination of these issues has fallen to the European Court of Human Rights on receipt of inter-State applications and individual petitions. The Court has delivered judgments finding violations ascribable to Turkey, the enforcement of which is pending before the Committee of Ministers. The Parliamentary Assembly is also well informed about the issues. Thus there is no reason to reiterate in the context of this report the relevant findings for which the Council of Europe statutory organs have direct knowledge.
46. I must however express my concern about the painful issue of missing persons in Cyprus, one of the more tragic consequences of the forced division of the island. The European Court of Human Rights expressed the view that "*the silence of the authorities in the face of the real concerns of missing persons relatives attains a level of severity which can only be categorised as inhuman treatment*" (judgment in the case of Cyprus against Turkey of 10 May 2001). In the past, I have strongly asserted that it is difficult to build peace in the minds of people, who remain unsure of the fate of their missing relatives, which heavily impacts in term on mutual confidence of riven societies (see Report on Kosovo : the human rights situation and the fate of persons displaced from their homes (CommDH(2002)11; also appended to the Annual Report 2002 (CommDH (2003)7 pp. 219)). Resolving this issue will require unreserved and concerted efforts on both sides. In this regard I was pleased to learn that the Government of Cyprus has recently taken steps to secure evidence about the fate of each and every missing person and has established a DNA bank as well as an ante-mortem data bank from relatives of missing Turkish Cypriots.
47. Moreover, it seems to me essential to look at the possible impact of certain recent developments on the issue of respect for the human rights of all persons on the island. Indeed, in April 2003, following a relaxation of restrictions imposed by the "TRNC", the line of demarcation ("Green Line") separating the two communities was partially opened and movement between the northern part of the island and the one under the control of the Cypriot Government commenced. Otherwise, the negotiations conducted under the auspices of the United Nations on the basis of the "Annan Plan" for reunification of the island have foundered – for the time being – with the rejection of the plan by the Turkish Cypriot leader Rauf Denktas. Thus Cyprus is preparing to join the European Union in May 2004, without having the division problem solved. These events take place in a climate of changing attitudes among the Greek Cypriot community but also - and perhaps even more so - the Turkish Cypriot community.

48. My contacts with Turkish Cypriot civil society and political party leaders were instructive in this respect. Their message is that the Turkish Cypriot population has been suffering from relative isolation for the last thirty years and sees in the accession of Cyprus to the European Union a way out of it. For a whole generation of young professionals, the events of 1974 are a remote fact of history and the ensuing division, which persists, is perceived at present as an obstacle to their self-fulfilment and to their European aspirations. Without going so far as to espouse the idea of reunification at any costs, they concede that the solution of the “Cyprus problem” through mutual compromises should underpin a new departure.
49. The representatives of Mr Rauf Denktas appeared far more reluctant regarding the prospects for a solution. What seems especially disturbing is the sense of deadlock likely to take hold of the younger progressive elements of Turkish Cypriot society. Following the inconclusive results of the recent voting, the political contest to designate the community’s new leaders continues. Several people expressed to me their fear that a certain discredit might be cast on the poll by the participation of constituents newly registered as “citizens of the TRNC”. These recent arrivals in the north of the island have reportedly few affinities with the Turkish Cypriot community and little interest in the solution of the “Cyprus problem”. These fears reveal a political split – possibly even a social one - in the population in the north.
50. For Greek Cypriots, the challenge of reunification is different, involving a perception of the solution as a process of compromise and not as a total victory over “the foe” of the last thirty years.
51. While the solution hinges on the full flowering of civil society and commitment to a common future, the preservation of political freedoms in the northern part of the island seems to be the primary objective. Only in a framework of unrestricted democratic dialogue can the path of compromise be found (see paras. 53 et seq. below.).
52. A second goal should be the settlement of the awkward land property issue through creative actions, which at the same time are in accordance with human rights (paras. 63 et seq. below).
53. Lastly, progress towards a solution that is in everyone’s interest presupposes a minimal resolve to the short-term settlement of sensitive issues whose resolution demands but few efforts. I would head this category with the issue of Greek and Maronite Cypriots’ rights in the north of the island (paras. 69 et seq. below).

Political rights and freedoms in the northern part of Cyprus

54. My contacts with civil society, journalists, party representatives and spokesmen for the leadership of the Turkish Cypriot community highlighted an alarming situation in respect of the exercise of freedom of expression.
55. Opposition journalists are the target of intimidating practices which take various forms (smear campaigns in the press, criminal proceedings for defamation sometimes ending in imprisonment, threats, violence, searches, damaging or

destroying printing apparatus, confiscation of equipment, imposition of heavy fines). While the case of Sener Levent, managing editor of the daily newspaper “Avrupa” (Europe) – closed down and reissued in December 2001 under the new name “Afrika” – remains the most widely known, other journalists and persons who state positions diverging from the leadership’s official line concerning the Cyprus question risk prosecution before the military courts. A teacher, for instance, was suspended from duty and disciplinary and criminal proceedings were brought against him because he called the Turkish intervention in 1974 an “invasion”.

56. Several journalists and opposition members have complained of the lack of effective judicial protection from the oppressive and violent acts directed at journalists and protesters. According to them, “the courts of the TRNC are not independent but placed under the control of Turkey”. In relation to this it should be noted in this connection that the European Court of Human Rights held in its judgment of 10 May 2001 in the case of *Cyprus v. Turkey* “*that there was nothing in the institutional framework of the “TRNC” legal system which was likely to cast doubt either on the independence and impartiality of the civil courts or the subjective and objective impartiality of judges, and, secondly, those courts functioned on the basis of the domestic law of the “TRNC” notwithstanding the unlawfulness under international law of the “TRNC”’s claim to statehood.*”. The information given to me by NGOs, lawyers and certain members of the “TRNC Constitutional Court” quite plainly indicate that impartial rulings – sometimes “disturbing” the regime – may be delivered by the judiciary at local level. The decision of the “TRNC Constitutional Court” outlawing participation by security forces personnel in formations that try civilians (with reference to the European Court of Human Rights judgment of 9 June 1998 in the case of *Incal v. Turkey*) was praised by several of my interlocutors. On the other hand, numerous criticisms were levelled at another decision, lately delivered by the “TRNC Constitutional Court”, in the case of the teacher who had been suspended, declaring the appeal premature.
57. At all events, and aside from the question of the independence or otherwise of the “TRNC’s” judicial apparatus, two observations have to be made.
58. Firstly, a problem of some gravity to my mind is posed by the trial of civilians before military courts particularly in cases that are sensitive in political and social terms. The fact that, since the above-mentioned decision of the “TRNC Constitutional Court”, the bench of the military court no longer includes members of the security forces does not entirely solve the problem.
59. Secondly, it should be underlined that a violation of human rights does not only result from a final conviction by a court. The mere bringing of proceedings, the repeated questioning, the searches and in some cases the pre-trial detention are quite enough to constitute intimidation and censure even without a final conviction. A journalist told me that he was arrested in July 2000 by police officers who searched his home; he was then taken to a police station and locked up for 11 days without being able to contact his family or a lawyer. He was subsequently released without being charged on any count. Such occurrences – if proven authentic – constitute a major impediment to the exercise of political rights and freedoms.

60. The political debate associated with the recent ballot (December 2003) has merely accentuated the hindrances to freedom of the press.
61. Lastly, the fact that the investigation of the murder of left-wing journalist Kutlu Adali in 1996 has still produced no results arouses a sense of impunity and insecurity.
62. Some NGO representatives have also complained about the conditions of detention being extremely harsh, which aggravate the practice of intimidation. In this matter I asked to see, and was able to visit, sentenced persons and persons held on remand. The building is indeed dilapidated and there is a problem of overcrowding, though not particularly serious. I spoke, not in the presence of the wardens, with certain detainees, one of them serving a life sentence. They complained of the excessive heat, the absence of a refrigerator and anti-mosquito devices, the impossibility of having radios in the cells and the scarcity of hot water in winter. They told me, however, that relations with the staff were good and none complained of ill-treatment.
63. In conclusion, and without presuming to give an exhaustive description of the situation, I consider the exercise of certain political freedoms to be seriously impeded in the north of the island. The partial opening of the “Green Line” has had little impact in the matter. It has nonetheless facilitated contacts for journalists and Turkish Cypriot political players with Greek Cypriot counterparts. To that extent, it helps create a certain mood of trust.

Freedom of movement and property rights

64. The partial opening of the “Green Line” has permitted communication between the north and south, which was not allowed for nearly 30 years. Many Greek and Turkish Cypriots have made the crossing of the “Green Line” without any violent incidents or animosity. The myths about impossible co-existence have vanished and it suffices to cross the line to the northern sector of Nicosia to see shop-signs in Greek, a phenomenon replicated in the Karpas district.
65. It must not be overlooked that although the Cypriot Government authorities do not impose any restrictions, freedom of movement is still limited; this is not only because of the identity check applied by the agents of the “TRNC” at the crossing points but it is also due to the existence of fairly strict rules imposed by the “TRNC”. For instance, Greek Cypriots are only permitted to enter the northern part for a maximum of two days on the condition that they reside in a hotel. Turkish Cypriots are only permitted to remain in the area under the control of the Government of Cyprus until midnight, and any lateness is noted in a police report when passing the checkpoints with – as many testify – threats of criminal law sanctions. It seems however that these threats are not put into practice and that increasingly this rule is not strictly applied
66. The partial opening of the “Green line” has enabled Cypriots to go to the places where they resided before 1974 but not to recover or freely dispose of their property. As regards properties owned by Greek Cypriots in the northern part,

admittedly most of them are occupied on the strength of title deeds issued by the “TRNC” that are recognised neither by the Cypriot Government nor by the international agencies, which have adverted to this question, in particular the European Court of Human Rights. A recently adopted regulation has set up a commission with authority to examine the claims of the pre-1974 owners of buildings or their heirs. It provides that persons wishing to approach the commission shall have an unrestricted right of access to the northern part of the island for the purposes of the relevant procedure. However, the regulation only contemplates the award of compensation for loss of ownership and use, and does not enable claimants to recover possession and enjoyment of their property.

67. Property of Turkish Cypriots in the area under the control of the Government of Cyprus is administered by the Directorate for Turkish Cypriot property management, an authority coming under the Minister of the Interior. In principle, Turkish Cypriots settling in the south or having emigrated abroad before 1974 are entitled to recover their property (although some unwarranted delays have been noted by the Ombudsman in the processing of reinstatement applications). Things do not work like that for Turkish Cypriots who have settled in the northern part of the island; they still legally own their assets but are not entitled to dispose of them.
68. A bill, the subject of comment in the Greek Cypriot paper press, prescribing criminal law sanctions for Greek Cypriots contacting “the authorities of the TRNC”, has been rejected by Parliament, which I consider most gratifying. The reverse would have plainly been prejudicial to the growth of a climate of confidence which is hard enough to establish as things stand.
69. The partial opening of the “Green Line” has therefore not fundamentally altered the facts of the situation regarding property rights.

Position of the “enclaved” Greek Cypriots in the northern part of the island

70. During my stay in the island, I was also able to visit two villages where Greek Cypriots live in the Karpas peninsula region. At the end of last June, only a few families and some older persons were to be found there. They gave me a warm and dignified welcome and I briefly reminisced with them about the various stages of their life since 1974 and discussed the outlook for their community.
71. The European Court of Human Rights found multiple violations in respect to these persons in its judgment of 10 May 2001 in the case of Cyprus v. Turkey:
 - violation of freedom of religion, as the restrictions on their freedom of movement had limited their access to places of worship and other aspects of their religious observance;
 - violation of freedom of expression in that the textbooks intended for their primary school were subjected to undue censorship;

- ongoing violation of their right to respect for their property in that, once they permanently leave the Karpas region, their right to respect for their property is no longer secured and in the event of death the inheritance rights of the deceased's relatives residing in the south are not recognised;
- violation of their right to education in that they have not received a suitable secondary education;
- violation of their right to respect for private and family life and for their homes owing to numerous surveillance measures applied to them.

72. The Court also adverted to the conditions under which these persons are compelled to live: isolation, restricted freedom of movement, surveillance and no prospect of regeneration or expansion of their community. In the Court's view, the conditions under which this population is condemned to live are demeaning and offend the very concept of human dignity. The discrimination to which they are subject has reached such a degree of gravity as to constitute degrading treatment within the meaning of Article 3 of the European Convention on Human Rights.
73. According to the statements of the people I met, their position has improved recently, particularly as regards their security and their relations with their neighbours, many of whom arrived from Turkey after 1974 to take possession of properties belonging to Greek Cypriots. Finally, the partial opening of the "Green Line" has enabled them to receive visits from the south and somehow the sense of isolation is no longer so oppressive.
74. However, it cannot be overlooked that many problems noted by the Court still persist. This is the case particularly where the secondary education of children in Rizokarpasso is concerned. Since the beginning of the current school year those having completed primary school have been denied a secondary education in Greek, even though the teachers can be sent by the Cypriot Government and premises are available. As a result, the pupils are obliged to move south with their younger brothers and sisters and with one or both of their parents. Thus, only the grandparents will remain in Rizokarpasso, which is being steadily drained of its last Greek Cypriot community members.
75. Prompted by the grave consequences of this state of affairs, and by the amazing ease with which it could be remedied, I urge all competent persons to take the necessary measures to enable these pupils to continue their schooling in their own village, with their families, without having to move to the other end of the island. The Council of Europe, with its considerable experience in the educational field, could usefully offer both communities its assistance. A step in this direction will make it possible to convince all the interested parties that the way for the future is respect for others, not their annihilation, and that for both sides the resolution of the "Cyprus problem" on the basis of mutual respect is the condition *sine qua non* for a future that honours fundamental rights.

CONCLUSIONS AND RECOMMENDATIONS

76. For several years, Cyprus has resolutely affirmed its commitment to European integration, and its forthcoming European Union membership constitutes a substantial political and social challenge. This challenge must be met by all, including the leaders of the two communities, the NGOs and of course the legitimate authorities of the Republic. The latter certainly realise the responsibility which they bear at this decisive moment for the future of Cypriot society, and the importance of effective human rights observance in this context. In order to support their firm resolve and assist them in the pursuit of their goal, the Commissioner, in accordance with article 8 of Resolution (99) 50, makes the following recommendations:
- To implement the projects for the foundation of the prison officers' college, the vocational training programmes for prisoners, the allocation of separate premises for young offenders and the provision of a permanent medical and psychiatric care centre attached to the Nicosia prison;
 - To examine with a view to its reform the legislation prescribing imprisonment for non-payment of debts;
 - To develop a policy of migrant integration, and to instruct the Ombudsman or another independent authority, to keep watch and make recommendations on combating xenophobia and intolerance;
 - To provide the refugee authority with the necessary financial and human resources for speedy processing of asylum requests, and to rapidly establish a suitable reception centre for asylum seekers, particularly families;
 - To decriminalise offences relating to foreigners' illegal entry to and residence in the territory of the Republic;
 - To adopt and implement a plan of action against trafficking in human beings;
 - To improve the safeguards against unnecessary use of force by the police;
 - To modify the legal arrangements concerning conscientious objection and alternative service in accordance with the Recommendations of the Committee of Ministers in the matter; in particular, to alter the practice whereby the medical reasons for granting exemption from the obligation to perform military service are recorded on the certificate of exemption;
 - To set up an appropriate institution for assisting persons in need of constant care because of a major disability.

APPENDIX TO THE REPORT

1. This report was presented to the Committee of Minister's Deputies of the Council of Europe on 12th February 2004. Following the presentation and in the light of information provided by the Permanent Representative of Cyprus, the Commissioner decided to add the following precisions.
2. New legislation is being prepared, under which the Ombudsman is to be vested with competence to combat discrimination in both the public and the private sphere. Two relevant bills have been tabled by the Government in Parliament on 12th January 2004; one for extending to this field the Ombudsman's competence and the other for affording specifically the necessary functions, powers and duties for combating discrimination.
3. More specifically, according to these bills, the Ombudsman will have the power to examine written complaints by any person or groups that were subjected to any kind of discrimination. In such a case, the Ombudsman will have the power to order the perpetrator to pay financial fine or address recommendations to him, so that such an incident will never occur again. S/he may also prepare Codes of Practice, advocating such practical measures specified in the Code, as may be deemed necessary to be taken concerning any activity in the private or public sector. Finally, s/he will have a duty to carry out surveys and statistics to be published in the Official Gazette, on any matter falling within his competence.
4. The Commissioner welcomes these developments and expresses the hope that the above bills will soon be enacted into Law.
5. As regards the treatment of people under arrest by the Police, the Cyprus authorities informed the Commissioner that a new bill was prepared by the Legal Service of the Republic, which was tabled in Parliament on 27th November 2003. It has already received its first reading by the competent Parliamentary Committee in mid-December 2003.
6. This bill provides that every person arrested has the right to contact immediately by phone, in person and in private, a lawyer of his own choice and any other person s/he may wish so. Also, every such person has the right to be medically examined in private by a doctor of his/her choice. The Police has the duty to inform the detainees of their rights in a language they understand. Any violation of these rights by the Police is considered as a criminal offence, punishable with imprisonment.
7. The Commissioner welcomes these developments.
8. The Government informed the Commissioner that provisions have been made regarding the free daily transfer of the asylum seekers from the Kofinou Reception Centre to Limassol and Nicosia. Moreover, the applicants residing in the Reception Centre are entitled to leave the place whenever they wish.
9. The Commissioner takes note of this information.