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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF CYPRUS
ON THE FOURTH OPINION OF THE ADVISORY COMMITTEE
ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES
BY CYPRUS**

(received on 25 September 2015)

**Comments of the Government of Cyprus on the Fourth Opinion of the Advisory
Committee on the implementation of the Framework Convention for the
Protection of National Minorities**

Document ACFC/OP/IV(2015)001, adopted on 18 March 2015

I. General Remarks

1. Following Turkey's 1974 invasion and the continuing military occupation of part of the territory of Cyprus, the Government of the Republic of Cyprus is not in a position to apply and consequently ensure the implementation of the rights as provided for by the Framework Convention in the whole of the territory of the State.

2. Negotiations aiming at a comprehensive settlement of the Cyprus issue, resumed on 15 May 2015, after a seven-month suspension instigated by Turkey's provocations in Cyprus' EEZ. The resumption of negotiations, created a positive climate and both Communities seem to be optimistic that conditions will soon prevail that may enable the two leaders to achieve substantive progress. Following the resumption of negotiations, the two leaders also agreed to work on a parallel track on confidence-building measures, aiming at improving the everyday lives of the people and at building trust and confidence among the two Communities.

3. In the context of the Opinion of the Advisory Committee, it is noted that in accordance with the Constitution of Cyprus, Turkish Cypriots are not a national minority and consequently cannot be afforded such status under the Framework Convention. As such, either direct or indirect references to restrictions of their rights are unfounded and have no place in this framework.

4. It is however useful to recall that the Turkish Cypriot Community, by its own decision, withdrew its participation from the institutions of the Republic in 1963. Despite the fact that the provisions of the Constitution pertaining to the participation of the Turkish Cypriots in the institutions have since been suspended as a rule e.g. seats in Parliament, their positions remain available for their return. Furthermore, Turkish-Cypriots who are in possession of a Republic of Cyprus identity card, whether residing in the Government-controlled areas or in

the areas not under the effective control of the Government, enjoy their full benefits as citizens of the Republic, which allow them, among others, to move freely, settle, work and study within the EU. An amendment to the electoral law provided for the automatic inclusion in the electoral lists of all Turkish Cypriots holding a Republic of Cyprus identity card with a declared address in the areas of Cyprus which are not under the effective control of the Government, which enabled them to vote in the European Elections in 2014.

5. The Opinion is contradicting in its claims that there is on one hand a rigid classification of all Cypriot citizens into the two communities based on the Constitution and on the other the invocation of the doctrine of necessity, according to which, due to the prevailing circumstances in Cyprus, the Constitution cannot be faithfully applied. Certain constitutional provisions have in fact become obsolete and the Constitution has been amended over the years to adjust to changing circumstances. As indicated in the Third State Report the obligation of religious groups to opt to belong to one of the two communities, because of their small numbers, is the means provided for by the Constitution for safeguarding that they have a right to participate in the bi-communally composed organs of the state, as members of the community to which they belong.

6. Following the accession of Cyprus to the EU, the Constitution of the Republic was amended in 2006 to acknowledge the supremacy of EU Law. As an EU Member State, Cyprus adheres to the EU Treaties which explicitly state that the rights of persons belonging to minorities are among the values upon which the Union is founded and is committed to promote. Member States are bound by EU Law which prohibits discrimination on grounds of race or ethnic origin and protection within this framework applies to everybody living in the EU, not only EU citizens. The EU legislation on discrimination, racism and xenophobia also fully applies to Cypriot Roma, who are predominantly EU citizens. The Government of the Republic of Cyprus is committed to meeting the needs of all its citizens and ensuring that their rights are exercised in full.

II. Comments on the observations and recommendations contained in Sections I–III of the Advisory Committee’s Fourth Opinion

7. Par. 4, 14 and footnote number 10

Comment: In the Opinion there appears to be a confusion between the functions/powers of the Communal Chambers and the fundamental rights and freedoms guaranteed in Part II of the Constitution. Under the Constitution, the Greek Communal Chamber and the Turkish Communal Chamber are afforded legislative and administrative functions/powers over limited subjects (religion, education and matters of personal status) concerning each community as a whole. Owing to the abnormal situation and the resultant non-functioning of the Communal Chambers, the legislative functions of the Greek Communal Chamber over the said limited subjects were transferred by Law 12/1965 to Parliament. Similarly, the administrative functions/powers of the Greek Communal Chamber over the said limited subjects were transferred by Law to the Ministry of Education and other Ministries, as well as the Council of Ministers. The provisions of the Constitution related to the functions/powers of the Turkish Communal Chamber remain inapplicable as the Turkish Cypriot community as a whole does not participate in the functioning of the State. As such the reference to the “communal rights of Turkish Cypriots” in paragraph 14 of the Opinion is inappropriate.

On the contrary, the rights and freedoms guaranteed in Part II of the Constitution are afforded to every person. In particular, concerning the property rights of Turkish Cypriots to which footnote number 10 refers, it is reminded that the European Court of Human Rights noted in relation to the Turkish Cypriot Properties (Administration and other Matters) (Temporary Provisions) Law that it “cannot exclude that Law 139/1991 as amended provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Turkish Cypriots.”¹

8. (i) Par 16, “...*only very few cases invoke the new provisions and national Courts reportedly continue to consider allegations of discriminatory treatment according to their compatibility with the pre-existing provisions of the Constitution rather than with the now directly applicable EU and international antidiscrimination standards*” and (ii) footnote number 32, “...*So far, there has reportedly not been one case where the Court took racial bias into account when sentencing*”.

¹ *Kazali against Cyprus and 8 other applications*, decision of 6 March 2012, para. 153.

Comment: In relation to (i) and (ii) above: At the round table discussion held in the Ministry of Interior in December 2014, the Advisory Committee was informed by the Ministry of Justice and Public Order that, until recently, cases involving discrimination were not classified as such in the Courts' statistical data. No statistics were kept for cases concerning discrimination, i.e. when there was a case of attack, racially motivated, this case was filed in the Courts' statistical data as attack and not as a discrimination case. That is the reason for not having any records in the Courts concerning discrimination cases. For the purpose of identifying, in the future, cases concerning discrimination, the Courts were instructed to keep statistics in relation to these.

9. Par 17 and footnote number 16

Comment: Legal aid is provided in relation to civil and criminal proceedings. Free legal aid is available in civil proceedings brought against the Republic for damage caused by "prescribed human rights violations". Prescribed human rights violations are violations of the rights safeguarded by the Cyprus Constitution as well as International Treaties specified in the Table to the Law e.g. the European Convention for the Protection of Human Rights, the UN Convention for the Elimination of All Forms of Racial Discrimination, the International Covenants (Economic, Social and Cultural Rights and Civil and Political Rights). Free legal aid in civil proceedings is afforded to the victim of alleged human rights violation. Free legal aid is available also in criminal proceedings for offences punishable with imprisonment of at least one year. Free legal aid in criminal proceedings is afforded to the accused.

The Opinion is not sufficiently clear how it connects the statement in the main text at paragraph 17 that victims of discrimination are deterred from lodging complaints and the footnote number 16 that legal aid in criminal proceedings is available only for offences punishable with imprisonment for at least one year, which excludes offences under the anti-discrimination provisions for which the penalty is a maximum of six months, given that free legal aid in criminal proceedings is available to the accused and not the victim of discrimination. This applies because in the Cypriot criminal justice system the victim of discrimination has the role of the witness for the prosecution and therefore he does not bear the costs of the proceedings. The prosecution is initiated by the Public Prosecutors (the State).

This means that the costs of the proceedings cannot constitute an obstacle to victims from lodging a complaint.

Moreover, the reference in footnote number 16 is not entirely correct. While criminal offences prescribed by the *Equal Treatment (Racial or Ethnic Origin) Law*, [L.59(I)/2004] and the *Equal Treatment in Employment and Occupation Law*, [L.58(I)/2004] are punishable with imprisonment of up to six months, criminal offences prescribed by other laws {i.e. *Law ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, Law combating certain forms and expressions of racism and xenophobia by means of criminal law*, [L.134(I)/2011]} are punishable with imprisonment of more than six months.

10. Par. 34: "...*This has reportedly resulted in an increasing sense of a shift towards a three-pronged society where members of the predominant Greek Cypriot linguistic and religious community are viewed as "first class citizens", EU citizens and wealthy immigrants are regarded as coming second, and Turkish Cypriots, Roma, refugees and asylum-seekers are considered as falling into a third category, a possible perception that has direct implications for the lives of and attitudes amongst residents of Cyprus on a daily basis*".

Comment: This statement is an assessment not founded on any objective criteria.

11. Par. 46: "... *It further regrets that there has been no support to any print media in Armenian language since 2011...*"

Comment: As stated in par. 56 of the Fourth State Report, the Ministry of Interior provided in its 2013 budget for funds to support the publication of printed material and to cover the cost for the design and maintenance of websites by the religious groups.

12. Par. 61 "...*The presence of minority communities as an integral part of Cypriot society should not only feature in religious education but should also be covered in other relevant subjects, such as history, which should be taught in a manner that accommodates multiple perspectives.*"

Comment: The History Curriculum applied in all public schools aims to provide a coherent and effective body of historical knowledge, relating to the most important periods of the history of Cyprus, Greece and the wider European and world history. It is based on the contemporary principles and methodology for history teaching, including approaches such as multiperspectivity in history teaching, as adopted by the Council of Europe. Emphasis is placed on aspects that unite the communities of Cyprus, without distortion of historical events or using these to promote hatred among people. In addition, special emphasis is given to human rights and democratic citizenship education. At the same time, it aims at cultivating values, shaping attitudes and behaviours that make up the modern democratic citizenship. Through this, pupils are expected to become responsible and active citizens, able to contribute towards reconciliation and cultivation of mutual confidence and the promotion of fundamental values, such as democracy and freedom. Finally, the History Curriculum aims at fostering capacities, skills and attributes required by the society of the 21st century, particularly, the basic skills associated with the reflective management of the historical knowledge. The Ministry of Education and Culture has provided to schools supplementary educational material, translated in Greek, Turkish and English, that was prepared by an NGO, the Association for Historical Dialogue and Research, to foster multi-perspectivity, historical understanding and critical thinking amongst teachers and pupils. This project was **supported by the United Nations Development Programme - Action for Cooperation and Trust.**

In the school curriculum for the subject of History certain units focus on the presence and historical development of the Turkish Cypriots and the three religious groups that are recognized as such by the Constitution. Moreover, the students are expected to evaluate and respect the contribution of the Turkish Cypriots and the religious groups in the social, economic and cultural development of Cyprus. The curriculum contains proposed activities for the design of projects by students and a list of monuments is included for the organization of planned visits by the teachers, thus promoting better understanding of the history of the Turkish Cypriots or other religious groups in Cyprus. Furthermore, the curriculum specifically mentions that through the teaching of History, students are expected to develop respect for religious and cultural differences and become critical of prevailing stereotypes. Additionally, teachers are encouraged to use several primary and secondary sources for a multi-angled approach of a specific topic.

13. Par. 74: “... *The Advisory Committee reiterates its position that effective consultation should be maintained not only on issues that are of exclusive concern to minority communities but also on issues that affect them as members of broader society...*”

Comment: Members of national minorities are consulted on issues affecting them in their capacity as members of the broader society, through the usual channels available to the broader society, i.e. political parties, foundations, societies, pressure groups, etc.