

Ref: CommHR/MOF/sf 115-2024

His Excellency Mr Nikos CHRISTODOULIDES

Strasbourg, 23 October 2024

Dear Mr President,

My mandate is to foster the effective observance of human rights in the member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices.

I take this opportunity to follow up on the meetings I had on 14 June and 6 September respectively, with the Permanent Representative of Cyprus to the Council of Europe, Ambassador Dimitris Hatzirygyrou, and the Deputy Minister of Migration and International Protection of Cyprus, Mr Nicholas A. Ioannides. Two migration-related issues were discussed during these meetings: the situation of migrant and asylum-seeking people stranded in the buffer zone; and the allegations of summary returns at sea.

I welcome the efforts of the Cypriot authorities, together with the UN High Commissioner for Refugees (UNHCR), the UN peacekeeping force in Cyprus (UNFICYP) and the European Commission, to find sustainable solutions for the migrant and asylum-seeking people stranded in the buffer zone. However, I am concerned about the situation of some 35 people, including young children and other vulnerable persons, who have been in the buffer zone for several months. I understand that food and drinking water are being provided by the Cypriot authorities, and that UNHCR, UNFICYP and the Red Cross are providing material support. However, poor living conditions prevail, including reported difficulties in obtaining access to certain items, such as formula milk or diapers for babies, and to medical care in a manner guaranteeing confidentiality and dignity. Along with the difficulties in obtaining access to interpretation services when necessary, this situation exposes these people to significant risks of violation of their human rights enshrined in the European Convention on Human Rights (ECHR), including the prohibition of inhuman and degrading treatment and the right to private and family life. Prolonged stays in such conditions are likely to affect their mental and physical health but they may also engage the authorities' positive obligation under Article 2 of ECHR (right to life), as the suicide attempts of two women in the buffer zone illustrate. The best interests of the children and their specific substantive rights enshrined in the United Nations Convention on the Rights of the Child, especially the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, and the right to education are also at stake.

I am also concerned about allegations of unnecessary or excessive use of force against asylum seekers and migrants having reached the government-controlled areas and then been brought back to the buffer zone by law enforcement agencies, and I trust that these allegations are effectively investigated in accordance with ECHR requirements.

I acknowledge the seriousness and complexity of the tasks faced by the Cypriot authorities in handling migratory movements across the Green Line and I am aware of the specific rules applying to this area, including the Green Line Regulation, which provides that "*the Republic of Cyprus shall carry out checks on all persons crossing the line with the aim to combat illegal immigration of third-country nationals and to detect and prevent any threat to public security and public policy.*" However, this Regulation cannot be interpreted as providing a legal basis to derogate from Cyprus' obligations under international refugee and human rights law. These obligations shall be applied in the areas of Cyprus under the jurisdiction of the government of the Republic of Cyprus, including the buffer zone, and therefore I respectfully ask the Cypriot authorities to ensure that effective access to asylum procedures and to adequate reception conditions is given to all those currently stranded in the buffer zone. Considering the conditions prevailing in the buffer zone, their immediate admission into the government-controlled areas appears to be the only possible way to ensure adequate protection of their human rights.

Furthermore, I share with you my concern about repeated reports indicating that boats carrying migrants, including persons who may be in need of international protection, have been prevented from disembarking in Cyprus and summarily returned, sometimes violently, without any possibility for their passengers to access the asylum procedure. This issue, which was already brought to the attention of the Cypriot authorities by my predecessor in a letter of March 2021, was also raised by UNHCR in April and in June 2024, as well as by Human Rights Watch in a report published on 4 September 2024. Several complaints containing allegations of unnecessary or excessive use of force by asylum seeking people who arrived by sea were relayed to the competent authority. However, I note with concern that, according to the provisions of Law 73(I) of 2024, persons who submit complaints against the police to the Independent Authority for the investigation of Allegations and Complaints against the Police may be subjected to prosecution and conviction to a fine or imprisonment if the allegations are found to be ill-founded.

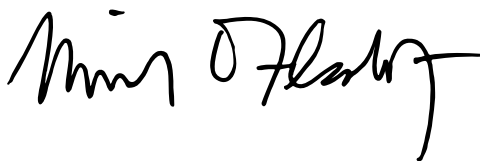
Returning people without carrying out an individual identification procedure prevents member states from establishing whether they may be sending people back to human rights abuses and from assessing the risk of onward refoulement. This in turn may lead to violations of Article 3 ECHR and Article 33 of the UN Refugee Convention, as well as other rules of international law which are binding on the Republic of Cyprus. In addition, collective expulsions of people are also prohibited under Article 4 of Protocol 4 to the ECHR. This was confirmed very recently by the European Court of Human Rights in the judgment delivered on 8 October 2024 in the case of *M.A. and Z.R. v. Cyprus*, concerning the interception of Syrian nationals at sea by the Cypriot authorities and their immediate return. In this judgment, the Court held that preventing the applicants from disembarking in Cyprus to claim asylum led to the violation of Article 3 ECHR (prohibition of inhuman or degrading treatment), Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens), and Article 13 (right to an effective remedy) read in conjunction with Article 3 and Article 4 of Protocol No. 4. These violations resulted, in particular, from a course of action consisting in i) not processing their asylum claims; ii) not conducting any assessment of the risk of lack of access to an effective asylum process in the return country or of the living conditions of asylum-seekers there; iii) not assessing the risk of forcible return of refugees to a country where they might be subjected to persecution; iv) not examining the specific situation of the individuals concerned; and v) not granting them access to effective remedies. While the above-mentioned judgment dealt with interceptions in Cypriot territorial waters, states' obligations to prevent such violations of the ECHR will also be engaged when carrying out interceptions in international waters (see Grand Chamber judgment of 23 February 2012 in the case of *Hirsi Jamaa and Others v. Italy*).

I respectfully ask you to ensure that all operations carried out at sea by Cypriot vessels abide by the obligations arising from the ECHR and set out in the above-mentioned case-law of the Court, and that independent and effective investigations are carried out into allegations of unlawful summary returns and of ill-treatment by members of security forces in the context of such operations.

I recognise the challenges posed by the migratory movements in the Mediterranean and the situation in the Middle East, which may lead to new attempts to cross to the Republic of Cyprus by sea, including to escape the conflict and seek international protection. It is nevertheless my expectation that the Cypriot authorities will take the necessary steps to ensure that all laws and practices in connection with the situation in the buffer zone and on the sea borders comply with the relevant Council of Europe human rights standards, which also includes the resumption of the processing of asylum applications submitted by Syrian nationals.

I look forward to continuing our dialogue and cooperation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael O'Flaherty', written in a cursive style.

Michael O'Flaherty