

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



12 April 2006

**REPORT ON THE MEETING WITH REPRESENTATIVES OF  
THE CYPRIOT GOVERNMENT ON PROVISIONS  
OF THE REVISED EUROPEAN SOCIAL CHARTER  
NOT ACCEPTED BY CYPRUS**

Nicosia, 31 January – 1 February 2006

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For each of the 35 provisions not accepted:

- European Committee of Social Rights Case-law
- Situation in Cyprus
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## Context of the meeting

The Nicosia meeting was the sixth such meeting under the new procedure of examination of non-accepted provisions – Article 22 of the 1961 Social Charter – agreed by the Committee of Ministers in December 2002<sup>1</sup>.

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Cyprus the European Committee of Social Rights had agreed with the Cypriot authorities that it would meet representatives of various ministries in Nicosia on 31 January and 1 February 2006.

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<sup>1</sup> Committee of Ministers decision of 11 December 2002.

## **Composition of the delegation and Government representatives**

The Council of Europe delegation comprised the following persons:

Mr. Matti MIKKOLA, Former President of the European Committee of Social Rights (ECSR)  
 Mr. Alfredo BRUTO DA COSTA, Member of the ECSR  
 Mr. Nikitas ALIPRANTIS, Member of the ECSR  
 Ms Csilla KOLLONAY-LEHOCZKY, Member of the ECSR  
 Ms Polonca KONČAR, Member of the ECSR  
 Mr. Henrik KRISTENSEN, Deputy Executive Secretary of the European Social Charter  
 Ms Irene KITSOU-MILONAS, Administrator, Secretariat of the European Social Charter

They were assisted by:

- Mrs Maria HOUVARDA (interpreter)
- Mrs Rea FRAGOFINOU (interpreter)

They held meetings with the following representatives of the relevant Ministries and Agencies:

### **Ministry of Interior:**

Mr M. PARELLIS – Chief Administrative Officer  
 Ms M. LIVERI – Administrative Officer

### **Ministry of Finance:**

Ms M. KOLETTA– Senior Administrative Officer, Grants and Benefits Service  
 Ms A. IACOVOU– Administrative Officer, Grants and Benefits Service  
 Ms F. HERACLEOUS

### **Ministry of Labour and Social Insurance:**

E. KOUTOUROUSSI, Acting Director General  
 Mr L. NIKOLAIDES – Director of the Department of Labour Inspection  
 Mr T. TRYFONOS – Director of the Social Insurance Services  
 Mr N. NEOCLEOUS – Director of the Department of Labour  
 Ms. R. PANTAZI– Senior Welfare Officer, Social Welfare Services  
 Mr M. KOURTELLIS – Senior Labour Inspection Officer  
 Ms P. KATSELLI– Senior Labour Officer, Department of Labour  
 Ms E. GEORGIADOU – Social Insurance Officer A´  
 Mr S. CHRISTOPHI – Administrative Officer  
 Ms M. MATSOUKARI – Administrative Officer

### **Ministry of Education and Culture:**

Mr Y. SAVVIDES – Permanent Secretary’s Assistant

**Ministry of Health:**

Mr P.GOGAKIS – Senior Administrative Officer  
Mr Chr. KAISIS – Senior Medical Officer  
Mr A. DEMOSTHENOUS – Chief Medical Officer  
Mr A. POLYNIKIS– Chief Medical Officer  
Ms I. DEFTERA – Mental Health Services  
Mr E. ANASTASSIOU– Mental Health Services

**Tuesday 31 January 2006**

## **PROGRAMME OF THE MEETING**

**8.30-9.00:** Meeting with the Minister of Labour and Social Insurance, Mr Christos TALIADOROS

### **Morning session: 9.00-14.00**

## **OPENING STATEMENTS**

Mrs. E. KOUTOUROUSSI, Acting Director General of the Ministry of Labour and Social Insurance

Mr. H. KRISTENSEN, Deputy Executive Secretary of the European Social Charter

### **First part of provisions related to Employment**

- Article 2§3: The right to annual holiday with pay
- Article 2§4: The right to the elimination of risks in inherently dangerous or unhealthy occupations
- Article 2§6: The right to information on employment contract

Presentation by Mr. ALIPRANTIS

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Relations, Labour Inspection and Social Insurance Services

- Article 3§4: Occupational health services for all workers

Presentation by Mr. ALIPRANTIS

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Inspection

### **10.15 – 10.45: Coffee break**

- Article 4§1: The right to adequate remuneration

Presentation by Mr. BRUTO DA COSTA

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Relations

- Article 4§2: The right to increased rate of remuneration for overtime work
- Article 4§3: The right to non-discrimination between men and women workers with respect to remuneration
- Article 4§4: The right to a reasonable notice of termination of employment
- Article 4§5: The right to limitation to deductions from wages

Presentation by Mr ALIPRANTIS

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour, Labour Relations and Social Insurance Services

### **12.00 – 12.30: Coffee break**

- Article 7§5: Right of young workers and apprentices to fair pay
- Article 7§7: The right to annual holiday with pay for employed persons under 18 years of age

Article 7§9: The right to regular medical control for employed persons under 18 years of age

Presentation by Mr ALIPRANTIS

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour, Labour Inspection, Social Insurance Services and the Cyprus Productivity Centre

- Article 8§4: Regulation of night work of pregnant women, women who have recently given birth and who are nursing their infants
- Article 8§5: Prohibition of dangerous, unhealthy or arduous work of pregnant women, women who have recently given birth and who are nursing their infants

Presentation by Ms KONČAR

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Inspection

#### **14.15-15.30: Lunch hosted by the Ministry of Labour and Social Insurance**

#### **Afternoon session: 16.00-18.00**

##### **Second part of provisions related to Employment**

- Article 18§1: The right to engage in a gainful occupation in the territory of the other Parties- application of existing regulations in a spirit of liberality
- Article 18§2: Simplification of existing formalities and reduction of dues and taxes

Article 18§3: Liberalisation of regulations

Presentation by Ms KOLLONAY-LEHOCZKY

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour and the Ministry of Interior

- Article 21: The right of workers to information and consultation
- Presentation by Ms KOLLONAY-LEHOCZKY
- The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Relations
- Article 22: The right of workers to take part in the determination and improvement of working conditions and working environment
- Presentation by Mr ALIPRANTIS
- The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Inspection

#### **16.45 – 17.00: Coffee break**

- Article 25: The right of workers to the protection of their claims in the event of the insolvency of their employer
- Presentation by Mr. MIKKOLA
- The Cypriot situation (law and practice): presentation by High Level Officials of the Social Insurance Services
- Article 26§1: The right to dignity at work-Sexual harassment
- Article 26§2: Harassment
- Presentation by Ms KOLLONAY-LEHOCZKY



The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour

- Article 27§1: The right of workers with family responsibilities to equal opportunities and equal treatment-participation in professional life
- Article 27§2: The right to parental leave

Presentation by Ms KONČAR

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour, Labour Relations, Social Insurance Services and Social Welfare Services

- Article 29: The right to information and consultation in collective redundancy procedures

Presentation by Ms KONČAR

The Cypriot situation (law and practice): presentation by High Level Officials of the Department of Labour Relations

## Wednesday 1 February 2006

### 9.00-13.30

#### **Provisions related to legal and social protection**

- Article 13§1: Right to social and medical assistance – Adequate assistance for every person in need

Article 13§4: The right to specific emergency assistance for non-residents

Presentation by Mr. MIKKOLA

The Cypriot situation (law and practice): presentation by High Level Officials of the Departments of Social Welfare Services and the Ministry of Health

- Article 16: The right of the family to social, legal and economic protection

Presentation by Ms KOLLONAY-LEHOCZKY

The Cypriot situation (law and practice): presentation by High Level Officials of the Departments of Social Welfare Services and the Ministry of Economics

#### **10.15 -10.45: Coffee break**

- Article 17§1: The right of children and young persons to social, legal and economic protection-Assistance, education and training
- Article 17§2: Free primary and secondary education- regular attendance at school

Presentation by Mr. MIKKOLA

The Cypriot situation (law and practice): presentation by High Level Officials of the Social Welfare Services and the Ministry of Education and Culture

- Article 23: The right of elderly persons to social protection

Presentation by Mr. BRUTO DA COSTA

The Cypriot situation (law and practice): presentation by High Level Officials of the Social Welfare Services and the Ministry of Health

- Article 30: The right to protection against poverty and social exclusion

Presentation by Mr. BRUTO DA COSTA

The Cypriot situation (law and practice): presentation by High Level Officials of the Social Welfare Services, the Social Insurance Services and the Ministry of Economics

- Article 31§1: The right to housing- adequate housing
- Article 31§2: Reduction of homelessness
- Article 31§3: Affordable housing

Presentation by Mr. MIKKOLA

The Cypriot situation (law and practice): presentation by High Level Officials of the Ministry of Interior

### **CONCLUDING REMARKS**

Mr. H. KRISTENSEN, Deputy Executive Secretary of the European Social Charter

Mrs. E. KOUTOUROUSSI, Acting Director General of the Ministry of Labour and Social Insurance

## Executive summary

The mission consisted of a meeting with members of the various relevant Cypriot ministries. Prior to the opening of the meeting with the Government, the ECSR delegation was received by the Minister of Labour and Social Insurance, Mr. Christos TALIADOROS. The meeting was opened by Ms Elpiniki KOUTOUROUSSI, Acting Director General of the Ministry of Labour and Social Insurance, who welcomed the process of dialogue with the ECSR and highlighted the Cypriot willingness to make continuous efforts to comply with the Revised Charter.

Presentations were made by members of the delegation on the provisions which have not been accepted by Cyprus, and representative(s) of the competent Ministry gave an explanation of the national situation with regard to the provisions in question of the revised Charter. This was followed by discussions on the situation in Cyprus vis-a-vis certain provisions.

The delegation had at its disposal a report prepared by the Cypriot authorities on the provisions not accepted by Cyprus. This was supplemented by information presented during the meeting. The delegation's views were based on this information; information on the current situation in law and in practice or on intended changes to legislation or current developments in the law and practice, in light of the case law of the ECSR.

This exchange of view showed that the state of Cypriot law and practice in fact permit acceptance of many additional provisions. It is abundantly clear that after the EU accession, there are no legal obstacles to Cyprus accepting a large number of additional provisions of the revised Charter. The delegation concluded that immediate acceptance seemed possible in respect of about half the provisions concerned (17). In respect of a further 9 provisions acceptance might also be possible and only in respect of 9 provisions acceptance did not seem feasible in the short term. An opinion expressed by the ECSR delegation that Cyprus could accept a provision does not imply that the situation will automatically be found to be in conformity with the revised Charter; it simply indicates that there are no major obstacles to ratification of and compliance with the provision.

The present report will serve as basis on the Cypriot side for continuing the analysis of what is feasible and for consulting with the social partners in order to proceed to further acceptance of provisions.

### Provisions which could be immediately accepted by Cyprus

- 2§3 – the right to annual holiday with pay
- 2§6 – the right to information on employment contract
- 4§3 – non-discrimination between men and women workers with respect to remuneration
- 7§7 – the right to paid annual holidays for employed persons of under 18 years
- 8§4 – regulation of night work
- 8§5 – prohibition of dangerous, unhealthy or arduous work
- 13§1 – adequate assistance for every person in need
- 17§1 – the right to assistance, education and training for children and young persons
- 17§2 – the right to free primary and secondary education

- 22 – the right of workers to take part in the determination and improvement of the working conditions and working environment
- 25 – the right of workers to the protection of their claims in the event of the insolvency of their employer
- 26§1 – prevention of sexual harassment at work
- 27§1 – the right of workers with family responsibilities to participate in professional life
- 27§2 – the right of workers with family responsibilities to parental leave
- 29 – the right to information and consultation in collective redundancy procedures
- 31§1 – the right to adequate housing
- 31§2 – the reduction of homelessness

**Provisions which could be possibly accepted by Cyprus**

- 4§2 – the right to an increased rate of remuneration for overtime work
- 4§5 – limitation of deduction from wages
- 13§4 – specific emergency assistance for non-residents
- 16 – the right of the family to social, legal and economic protection
- 21 – the right of workers to be informed and consulted
- 23 – the right of elderly persons to social protection
- 26§2 – prevention of moral harassment at work
- 30 – the right to protection against poverty and social exclusion
- 31§3 – the right to affordable housing

**Provisions which could not be accepted by Cyprus in a short term**

- 2§4 – the elimination of risks for workers in dangerous or unhealthy occupations
- 3§4 – the promotion of occupational health services
- 4§1 – the right to adequate remuneration
- 4§4 – the right to a reasonable notice of termination of employment
- 7§5 – the right of young workers to a fair wage
- 7§9 – the right of workers under 18 years of age to regular medical examinations
- 18§1 – the right to engage in a gainful occupation in the territory of the other Parties  
– application of existing regulations in a spirit of liberality
- 18§2 – simplification of existing formalities and reduction of dues and taxes
- 18§3 – liberalisation of regulations

## Survey provision by provision

This part<sup>2</sup> has been drafted on the basis of the European Committee of Social Rights Case-Law Digest, May 2005 (document prepared by the Secretariat) as well as the report on provisions not accepted by Cyprus, a document prepared and submitted by the Ministry of Labour and Social Insurance. Reference is also made to the additional information provided as well as to the comments made during the meeting.

### Provisions related to Employment

#### Article 2§3– The right to annual holiday with pay

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

3. to provide for a minimum of four weeks annual holiday with pay.

#### ECSR Case-law presented by Mr N. ALIPRANTIS

Article 2§3 guarantees the right to a minimum of four weeks annual holiday with pay. Annual leave may not be replaced by financial compensation, and employees must not have the option of giving up their annual leave. Workers may be required to have been employed for twelve months before they become eligible for annual paid leave.

Provided that they produce a medical certificate, workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§3 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 3, even if it affects less than 20% of workers in practice.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

#### The situation in Cyprus

The annual leave with pay for employees has been increased from three to four weeks with the Annual Holidays with Pay (Amendment) Law 66(I) of 2002.

For employees that are working 5 days a week, the annual leave is 20 working days whereas for employees that are working 6 days a week, the annual leave is 24 working days.

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<sup>2</sup> The report is drafted in the order the provisions were discussed during the meeting.

In the case where the employee is entitled to an annual leave of more than four weeks under any law, agreement or custom, this right is guaranteed by the Annual Holidays with Pay Law.

Furthermore a provision which provides that all workers are entitled for annual leave with pay, of at least four weeks, is included in the Organisation of Working Time Law of 2002 (N.63(I)/2002), Article 8 (1).

**Conclusion**

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

**Article 2§4 – The right to the elimination of risks in inherently dangerous or unhealthy occupations**

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.

**ECSR Case-law presented by Mr N. ALIPRANTIS**

Article 2§4 requires States to eliminate risks in inherently dangerous or unhealthy occupations and is therefore closely linked to Article 3 of the Revised Charter. Where the sufficient elimination or reduction of risks has not yet been achieved, workers concerned should be guaranteed a right to additional paid holidays or reduced working hours. States are required to identify the dangerous or unhealthy occupations in question; this is subject to review by the Committee.

Sectors such as mining, quarrying, steel-making and ship-building have always been and are still regarded as dangerous or unhealthy. This provision also applies to occupations involving for example, ionising radiation, extreme temperatures, noise, working on computer screens, etc. Scientific progress has revealed certain illnesses or risk factors, such as stress, which were previously not recognised as such.

The Committee has pointed out that, while Article 2§4 calls for the reduction of working hours or additional paid holidays in dangerous and unhealthy occupations where the sufficient elimination or reduction of risks has not yet been possible, other means of reducing the length of exposure to risks may, in view of the overriding health and safety aims of this provision, also be in conformity with the Charter.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§4 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 4, even if it affects less than 20% of workers in practice.

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2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

### **The situation in Cyprus**

The provisions of this paragraph are related to the basic principles on which OSH legislation rests. In accordance with the Management of Safety and Health Issues at Work Regulations of 2002 (P.I. 172/2002), the employer, having in mind the nature of activities carried out in his establishment, should assess the potential risks involved and accordingly take the necessary measures to eliminate or, if not possible, reduce residual risks to an acceptable safe level. These Regulations are in line with the Directive 89/391/EEC of the European Council.

These Regulations do not provide for reduction of working hours or additional paid holidays for workers, when it is not possible to eliminate or reduce sufficiently the risks at the workplace. However, for special risk sources, such as noise, vibration, etc, technical or administrative measures applied by the employer may necessitate for a reduction of the worker's exposure time to the specific risk source, or a reduction of the number of workers affected by the risk source.

Article 9 (2) of the Organisation of Working Time Law of 2002, secures that night workers whose night work entails specific risks or significant physical or mental stress shall not work at night for more than eight hours in any twenty-four hour period. According to article 9 (3), the definition of night work which entails specific risks or significant physical or mental stress, where this is not determined by legislation or collective agreement, shall be agreed through consultation between the employer and representatives of workers, in accordance with the provisions of the Law and the written assessment of risks.

The provision of the above mentioned law, covers night work in specific.

### **Conclusion**

Since applicable legislation does not provide for a reduction of working hours or for additional paid holidays with respect to inherently dangerous or unhealthy occupations, this provision cannot be accepted at the present stage.

### **Article 2§6 – The right to information on employment contract**

**With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:**

**6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.**

***Appendix: Parties may provide that this provision shall not apply:***

- a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;***
- b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.***

## ECSR Case-law presented by Mr N. ALIPRANTIS

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.

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### The situation in Cyprus

According to the Employer's Obligation to Inform Employees of the Particulars of their Contract of Employment or their Employment Relationship Law of 2000 (N.100(I)/2000), the employer is obliged to inform each of his/her employees, in writing, of the particulars of the contract of employment or the employment relationship, not later than one month after the date of the commencement of employment.

According to explanations given during the meeting, the information regarding the employment contract covers all the aspects required by the ECSR' case law.

### Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

### Article 3 –The right to occupational health services for all workers

**With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:**

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

*Appendix: It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.*



## ECSR Case-law presented by Mr N. ALIPRANTIS

According to Article 3§4, workers in all branches of the economy and every undertaking must have access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

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### The situation in Cyprus

The Health and Safety at Work Laws of 1996 to 2003 and the Regulations that are issued under them, such as the following:

- (a) The Minimum Requirements for Safety and Health at Work (Extractive Industries Through Drilling) Regulations of 2002
- (b) The Minimum Requirements for Safety and Health at Work (Surface and Underground Extractive Industries) Regulations of 2002
- (c) The Asbestos (Safety and Health of Persons at Work) Regulations of 1993 up to 2004
- (d) The Safety and Health at Work (Biological Agents) Regulations of 2001
- (e) The Safety and Health at Work (Carcinogenic and Mutagenic Agents) Regulations of 2001 and 2004
- (f) The Safety and Health at Work (Protection from Noise) Regulations of 2002

provide for the obligation of the employer to safeguard the health of the employees or other persons by means of medical examinations, monitoring of the employees health and the appointment of Occupational Physicians to this effect.

For certain processes, such as extraction by drilling, surface and underground extractions and specific risk sources, such as asbestos, biological, carcinogenic and mutagenic agents, noise, etc, the specific set of Regulations require for surveillance of the employees health in relation to the specific risk associated with the safety and health at work.

To promote further the development in Cyprus of a health surveillance system for employees, a study has been conducted on behalf of the Department of Labour Inspection on the establishment and operation of a health surveillance system for employed persons. The aim of this study was to propose ways and methods for conducting worker's medical examinations and to develop occupational health services for all economic activity sectors. Based on this study, an Action Plan is prepared by the Department of Labour Inspection, which is however under further development in order to reach its final form and then brought before the Social Partners for discussion. Moreover, a feasibility study should also be conducted to ensure that the proposed System would serve its purpose well. In this respect, further work and more time would definitely be necessary, before the said System finally materialises.

Furthermore, paragraph 4 of article 3 of the European Social Charter, calls for the progressive development of occupational health services for all workers.

The current national OSH legislation excludes from its scope domestic servants. The reasons for excluding domestic servants (work in households) are the constitutional and practical constraints that prohibit Labour Inspectors from entering and inspecting the premises (private dwellings) where these workers carry out their work. These

difficulties emanate from article 15 on the «Right of personal and family privacy» and article 16 on «The inviolable of private dwelling» of the Constitution of the Republic of Cyprus.

The practical constraints arise from the judicial difficulties to obtain the necessary Court Order in order to enter such premises, which in return render the effective and essential enforcement of the OSH legislation to such places of work impracticable. Also the monitoring of the implementation of the OSH legislation is negatively affected, because the time-consuming judicial procedures eliminate the element of rapid response in case where immediate action is required.

However, and in the light of the comments of the Committee, the Government is considering the possibility of amending the Safety and Health at Work Laws of 1996 up to 2003 in order to include in its scope this group of workers.

## Conclusion

In the light of the above, notably as regards the exclusion from protection certain categories of domestic workers, this provision cannot be accepted at the present stage.

## Article 4§1 – The right to a fair remuneration

**With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:**

**1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.**

### ECSR Case-law presented by Mr A. BRUTO DA COSTA

Article 4§1 guarantees the right to a remuneration such as to ensure a decent standard of living.

To be considered fair within the meaning of Article 4§1, a wage must not fall too far short of the national average wage. The threshold adopted by the Committee is 60%. Wages must in any event be above the poverty line in a given country.

The concept of remuneration, for the purpose of this provision, relates to remuneration, – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities.

The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid.

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A net wage which falls below the 60% threshold is not automatically considered unfair within the meaning of the Charter. If the wage lies between 50 and 60%, a state may be asked to ~~indicate that the wage is sufficient for a~~ decent standard of living, e.g. by providing detailed information on the cost of living. However, a net wage which is less than half the net national average ~~wage~~ will be deemed to be unfair. The situation of the State concerned ~~will hence be considered not in conformity with~~ Article 4§1.

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### The situation in Cyprus

The industrial relations system in Cyprus is based on a liberal and voluntary model, where terms and conditions of employment, including wages, are determined through collective bargaining between the two parties (employers and employees), with a view to signing collective agreements. However, the Minimum Wage Law (Cap.183) provides for a minimum level of wage for specific occupations, through an Order which is issued annually, aiming at protecting vulnerable groups of employees, mainly characterized by weak bargaining power. According to the latest Order issued in 2005, the minimum wage covers clerks, shop assistants, child-care workers (assistant baby and child minders) and personal care workers (nursing aids) and has been set at £362 on appointment and at £385, after completing a six month period of employment at the same employer, level that reaches 46,13% of the national median wage. On the basis of a decision of the Council of Ministers, the level of the minimum wage will gradually increase to reach 50% of the national median wage by 2008.

There is no legislation determining minimum levels of wages for all occupational categories.

### Conclusion

In the light of the figures provided on current wage levels and taking into account the explanation of certain features of the Cypriot economy such as the voluntary nature of the industrial relations system and the forthcoming introduction of the Euro, this provision cannot be accepted at the present stage.

### Article 4§2 – The right to increased rate of remuneration for overtime work

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

### ECSR Case-law presented by Mr N. ALIPRANTIS

Article 4§2 is intrinsically connected ~~to~~ Article 2§1, which ~~deals with~~ daily and weekly working ~~hours~~. Workers required to ~~work~~ overtime must ~~receive premium pay for the work done~~.

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Leave may be granted to compensate for overtime, but must be ~~of longer duration~~ than the overtime worked. In other words, it ~~does not suffice to give the person concerned leave of equal duration~~ to the number of extra hours worked.

This provision applies to all workers, except "in particular cases". The Committee has indicated that these exceptions, which may apply to certain categories of civil servant and managerial staff, must be limited.

The general tendency in Europe is to calculate working hours by taking a weekly average over a period of several months. During this period, the number of hours actually worked in any week may vary between a maximum and a minimum figure (excluding any overtime performed), and thus a higher rate of remuneration. Arrangements of this kind do not, in themselves, constitute a violation of Article 4§2, provided that the conditions laid down in Article 2§1 are respected.

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### The situation in Cyprus

There is no legislation securing an increased rate of remuneration for overtime work, in general, except in the case of shop assistants. According to the Shop Assistants Law (article 7 of Cap. 185 and Regulation 180/90), every shop assistant is entitled to overtime compensation on the rate of 1: 2 for holidays and Sundays and 1:1 ½ on other days.

Moreover, the practice arising from collective agreements provides for overtime compensation on the rate of 1: 2 for holidays and Sundays and 1:1 ½ on other days.

### Conclusion

In the light of the above information, on the situation in practice, including the overtime rates indicated, the acceptance of this provision is possible.

### Article 4§3 – The right to non-discrimination between men and women workers with respect to remuneration

**With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:**

**3. to recognise the right of men and women workers to equal pay for work of equal value.**

### ECSR Case-law presented by Mr N. ALIPRANTIS

#### *The principle of equality*

The right of women and men to "equal pay for work of equal value" must be expressly embodied in law.

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The equal pay principle applies to the same work and to "mixed jobs", that is ones performed by both women and men, but also to work of the same value. This requires states to develop classification methods that enable them to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force.

The principle of equality should cover all the elements of remuneration i.e. basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

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The equality principle must apply to all those employed in the private and public sectors.

The principle of equal pay must also apply between full-time and part-time workers, the latter being predominantly female (calculation of hourly wage, pay increases, components of pay).

### Procedural safeguards

#### Right of appeal and compensation

Employees who are victims of wage discrimination must be entitled to refer their case to a judicial body. The burden of proof in wage discrimination cases must be reversed.

Domestic law must provide for comparisons of pay and jobs to extend to other enterprises, where this is necessary for an appropriate comparison. To be effective, an objective job evaluation system must be able to look outside the enterprise in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female.

In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.

#### Protection against reprisals

Employees who claim their right to equal pay must be legally protected against possible reprisals by employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

Victims of reprisals must receive adequate compensation for damage suffered, by means of:

- reinstatement or retention of employment in the event of unlawful or unfair dismissal, and compensation for any pecuniary damage suffered;
- payment of compensation in proportion to the damage suffered, i.e. covering pecuniary and non-pecuniary damage, if the employee does not wish to return to his or her job or it is impossible for the employment relationship to continue;
- the ending of discrimination and the award of compensation in proportion to the damage suffered in all other reprisal cases.

In fixing the level of compensation, account must be taken of the need to deter the employer from taking such action in the future. However, account should also be taken of any administrative, civil or criminal penalties imposed on the employer

#### Measures to promote equal pay

To secure equal pay in practice, states must take, or encourage other bodies to take, positive measures to narrow the pay gap as much as possible, such as:

- encouraging the social partners to deal with equal pay in collective agreements;
- improving job classifications and job evaluation as means of reducing inequalities in pay;
- improving the quality and coverage of wage statistics,

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- paying more attention to equal pay for women and men in national action plans for employment.

### The situation in Cyprus

According to the Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed Laws(N.177(I)/2002 and N.193(I)/2004), every employer must provide equal pay to men and women for the same work or for work to which equal value is attributed, irrespective of the sex of the employee. The aforementioned Laws apply to all employees, for all activities relating to employment. Where a system of occupation classification is used for the determination of pay, such a system must be based on common criteria for male and female employees and must be designed in such a manner that discrimination based on sex is excluded. The comparison between employees must be made with reference to employees who are employed or were employed, by the same employer or in a business controlling the employer, at the same time or were employed during the two previous or following years.

The Ministry of Labour and Social Insurance is empowered, under these laws, to appoint inspectors or other officers for the effective application of its provisions. Also, Law 205(I)/2002 (as amended in 2004) on Equal Treatment of Men and Women in Employment and Vocational Training provides for equal treatment of men and women and that any direct or indirect discrimination on the grounds of sex is prohibited as to the determination and the application of terms and conditions of employment, including qualifications and other conditions, preconditions and criteria for placement, for becoming permanent, for induction, transfer, detachment or promotion.

During the meeting, it was stated that the Cypriot legislation has implemented EU legislation. Furthermore, consultations have been carried out in order to eliminate any illegal clause in collective agreements.

### Conclusion

In the light of the current case law and the current legal situation and practice (in particular the implementation of EU legislation as well as the acceptance of Article 20 of the revised Charter), the provision could be immediately accepted by Cyprus.

### Article 4§4 – The right to a reasonable notice of termination of employment

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

4. to recognize the right of all workers to a reasonable period of notice for termination of employment.

*Appendix: This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.*

### ECSR Case-law presented by Mr N. ALIPRANTIS

Article 4§4 is included in the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving

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¶ Employees who claim their right to equal pay must be legally protected against possible reprisals by

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wages. In this respect, receipt of wages in lieu of notice is permissible, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice.

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Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer.

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The right to reasonable notice of termination of employment applies to all categories of employee, including those employed on a non-standard basis. It also applies during the probationary period. National law must be broad enough to ensure that no workers are left unprotected.

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The Committee has not defined the concept of “reasonable” notice. It assesses the situations on a case by case basis and indicates which periods of notice are to be considered unreasonable. The major criterion for the assessment of reasonableness is length of service. It has concluded, for example, that the following are not in conformity to the Charter:

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- one week’s notice during the first year of service;
- less than one month’s notice after one year of service;
- thirty days’ notice after at least five years’ service;
- six weeks’ notice after ten to fifteen years’ service;
- eight weeks’ notice after more than fifteen years’ service.

Young people should be entitled to the same periods of notice as adults.

Procedures which delay a decision to terminate employment (e.g. disciplinary proceedings in the civil service or trade union consultations) are excluded from the period of notice, which starts only after the decision has been taken.

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In addition to the above, workers must be given time off to look for a new job during the period of notice.

### Situation in Cyprus

According to the Termination of Employment legislation the period of notice depends on the employee’s employment period as follows:

<u>Period of employment</u>	<u>Notice</u>
From 26-51 weeks	1 week
from 52-103 weeks	2 weeks
from 104-155 weeks	4 weeks
from 156-207 weeks	5 weeks
from 208-259 weeks	6 weeks
from 260-311 weeks	7 weeks
from 312 and over	8 weeks

Moreover, the right of the employee to a longer period of notice under any custom, law, collective agreement or other arrangement is safeguarded by the Termination of Employment legislation.

The Termination of Employment legislation does not provide for a period of notice for the first six months of employment as it is considered as a period of probation.

**Conclusion**

Since the applicable legislation does not provide for notice during the probation period, this provision cannot be accepted at the present stage.

**Article 4§5 – The right to limitation to deductions from wages**

**With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:**

**5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.**

*Appendix: It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer from deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.*

**ECSR Case-law presented by Mr N. ALIPRANTIS**

Article 4§5 guarantees all workers the right to their wage being subject to deductions only in circumstances well-defined in a legal instrument, (law, regulation, collective agreement or arbitration award) and subject to reasonable limits.

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The remaining wage after deductions should not deprive workers and their dependents of their very means of subsistence. It is for this reason, that the Committee, considers the situation in a given state, in which a worker is left with a portion of wage which is lower than the statutory minimum subsistence level, not in conformity with this provision.

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All forms of deduction are covered by this provision, including trade union dues, fines, maintenance payments, repayment or wage advances etc. The procedures relating to wage deduction are also taken into account, such as consultation of worker representatives, the right of the worker to be heard and any appeal to an independent authority.

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The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

**The situation in Cyprus**

The Cyprus Government has accepted the ILO Convention (N.95) and has prepared a draft Law regulating the cases where non-cash compensation and deductions from wages are allowed. Currently the draft Law is examination by the Legal Service of the Republic.



## Conclusion

After the entry into force of the aforementioned law, the acceptance of the provision will be possible.

### Article 7§5 – The right of young workers and apprentices to fair pay

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances.

### ECSR Case-law presented by Mr N. ALIPRANTIS

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

The “Fair” or “appropriate” character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes es and social security contributions.

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The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.

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The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

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Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

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### The situation in Cyprus

The Cypriot report did not provide any information on this issue. The discussions that were held during the meeting showed that for the same reasons as those indicated under Article 4§1 prevented from accepting this provision.

## Conclusion

This provision cannot be accepted at the present stage.

### Article 7§7 – The right to annual holiday with pay for employed persons under 18 years of age

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

7. to provide that employed persons under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay.

#### ECSR Case-law presented by Mr N. ALIPRANTIS

In application of Article 7§7, young persons under eighteen years of age must be given at least four weeks' annual holiday with pay.

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; the annual holiday with pay should not be suspended in the event of illness or accident during the holidays.

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#### Situation in Cyprus

The Annual Holidays with Pay legislation does not discriminate between adults and young persons under eighteen years of age.

For details about the Annual Holidays with Pay legislation the report refers to the responses on Article 2 para 3 above.

#### Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

### Article 7§9 – The right to regular medical control for employed persons under 18 years of age

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control.

#### ECSR Case-law presented by Mr N. ALIPRANTIS

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations.

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. They may, however, be carried out by the occupational health services, if the se services have the specific training to do so.

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The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.

## Situation in Cyprus

Article 14 of Law 48(I)/2001 for the Protection of Young persons in Employment provides for free assessment of health for adolescents (of 15-18 years) employed at night. Specifically, it provides as follows: "Prior to prospective employment in any night work and at regular intervals, after any such employment commences, adolescents shall be entitled to a free assessment of their health and capacity"

Furthermore the said Law provides for compulsory medical check-ups for persons under 18 years of age when their safety, physical and mental health and development is placed at risk during work.

Specifically, Article 19 of the same Law provides, inter alia, that "To ensure the health and safety of employed young persons, an employer must take all necessary measures prescribed under the Health and Safety at Work Law 1996....."

The same Article provides that each employer, for every activity in which young persons are to be employed, should make a written assessment of the risks that exist for young persons and which relate to their work. The Law specifies in a non-exhaustive list, certain agents, processes and activities that should be taken into consideration during the risk assessment process, before any measures are taken for the protection of the safety and health of young persons at work.

On the basis of this non-exhaustive list, the employer is obliged to provide medical control at regular intervals for young persons when the potential risk is present. Also, the Law defines certain activities that young persons are prohibited from being engaged.

## Conclusion

Insofar as the assessment of whether regular medical checks are necessary is left to the discretion of the employer, the situation may not be in conformity at present.

This provision cannot be accepted at the present stage.

## Article 8§4 – The right of employed women to protection of maternity (regulation of night work)

**With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:**

**4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants.**

### ECSR Case-law presented by Mrs P. KONČAR

Article 8§4 applies only to industrial work in the strict sense. In industry, there are also non-industrial jobs to which it does not apply:

- women in managerial posts or technical posts carrying responsibilities;
- women working in health and welfare services, who are not usually required to do manual work.

Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate these aspects. The regulations must:

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- allow only limited exceptions to the rules on night work, which must be authorised only when special production needs make them necessary, having due regard to working conditions and the organisation of work in the firm concerned;

- lay down conditions for night work **of** women, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work, in case of health problems linked to night work etc;

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### Situation in Cyprus

The Maternity Protection (Safety and Health at Work) Regulations of 2002 (P.I. 255/2002) specifies the obligations of the employer regarding the adoption of measures for the improvement of safety and health of women who are pregnant, have given birth, or are breast-feeding. These Regulations are in line with Directive 92/58/EEC of the European Council.

In particular, Regulation 4 specifies the duties of the employer for women who are either pregnant, have given birth, or are breast-feeding and undertake night work. In such cases, the employer should either shift the affected employee to a day work placement or, if not possible, to extricate the employee from her duties for as long as necessary to ensure her safety and health without detriment to her rights.

### Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

### Article 8§5 – The right of employed women to protection of maternity (prohibition of dangerous, unhealthy or arduous work)

**With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:**

**5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.**

### ECSR Case-law presented by Mrs P. KONČAR

Article 8§5 applies to all women in paid employment, including civil servants. Only self-employed women are excluded.

This provision prohibits the employment of the women concerned **on** underground work in mines. This applies to extraction work proper, but not to women who:

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- occupy managerial posts and do not **perform** manual work,
- work in health and welfare services,
- spend brief training periods in underground sections of mines.

This prohibition must be provided for in law.

Certain activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, must be prohibited.

## **Situation in Cyprus**

Regulation 5 dictates that the employer cannot force any pregnant woman to carry out certain work, for which the risk assessment has indicated a possible exposure to hazards arising from physical, biological, chemical agents or from work in underground mining. Similarly, for breast-feeding women the same Regulation dictates that the employer cannot force them to undertake any work for which the risk assessment has indicated a possible exposure to hazards arising from chemical agents or from work in underground mining. However, no reference is made for women who have recently given birth.

These Regulations include also a non-exhaustive list of agents, methods of production and working conditions that women, who are either pregnant or are breast-feeding, should not be exposed to.

It should be noted that the above mentioned Regulations do not explicitly prohibit employment in underground mining or in any other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature, but on the basis of risk assessment call for the implementation of proper measures by the employer that ensure the safety and health of this group of workers.

During the discussion, Mrs KONČAR indicated that in the absence of an explicit prohibition, a *de facto* prohibition is sufficient. The Cypriot authorities specified that the employer's assessment should take into account the health conditions of the employee concerned.

## **Conclusion**

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

### **Article 18<sup>3</sup> – The right to engage in a gainful occupation in the territory of other Parties**

**With a view to ensuring the effecting exercise of the right to engage in a gainful occupation in the territory of any other country, the Parties undertake:**

- 1. to apply existing regulations in a spirit of liberality;**
- 2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;**
- 3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;**  
[...]

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<sup>3</sup> Due to the interlinks between the 3 paragraphs not accepted by Cyprus, the ECSR case law and the presentation of the Cypriot situation are not presented separately.

## ECSR Case-law presented by Mrs C. KOLLONAY-LEHOCZKY

### 18§1

Article 18 applies to employees and the self-employed who are nationals of Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18 covers not only workers already on the territory of the Party concerned, but also those in their country of origin.

This article also covers foreign workers who have obtained employment but subsequently lose it.

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

### 18§2

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers covered by paragraph 3 but are dealt with specifically under this provision.

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With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.

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Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

### 18§3

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

- Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.

- Right to engage in an occupation:

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country.

The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.

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– Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.

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### Situation in Cyprus

As far as foreign non-EU nationals is concerned, the current policy of employment is restrictive (see APPENDIX I). In particular, the employment of foreign non EU nationals, is only for a **fixed period** of time and is used only for the satisfaction of pressing, short-term needs in the labour market, in certain economic fields and occupations according to Ministerial Council's decision. Moreover, the employment of foreign non EU nationals is mainly regulated by the Criteria and Procedures agreed between the Social Partners and approved by the Council of Ministers. The Criteria for granting of approval for work permit are described in Appendix I.

Employers who wish to employ foreign non-EU nationals must first submit their vacancies to the District Labour Offices to investigate and confirm that their needs cannot be satisfied by local labour force (Cypriot or European citizens). Moreover, the interested employer is called to publish in the daily newspapers the available position via the Employment Services of District Labour Offices. In case where there are no Cypriot or European citizens available and capable to fill the specific positions, the employer submits the special application form for employment of foreign workers duly completed together with any other necessary documents, listed in the form. Manpower recruitment is made by the employers or through intermediaries, and action must take place while foreign nationals are outside Cyprus.

It is also important to note that the Republic of Cyprus secures equal treatment between foreign workers and local personnel through its Constitution, which guarantees the protection of human rights regardless race, religion or ethnic origin. In addition, Ministerial Council Decisions as well as a number of administrative arrangements also exist, to promote and guarantee that migrant workers are at least treated equally with nationals, in respect to, among other things, terms and conditions of employment.

Finally, the Ministry of Labour and Social Insurance safeguards the equal treatment between foreign workers and local personnel through written contracts of employment signed by both the employer and the foreign employee. These contracts contain all terms and conditions of employment (hours of work, salary and other benefits, holidays, overtime pay, duties etc.), which also apply for Cypriot employees, mainly on the basis of collective agreements.

The principle of the free movement of workers within European Union is applied in Cyprus since 1st May 2004. It covers the citizens of all member states of the E.U. It also covers the citizens of Norway, Iceland and Liechtenstein, which belong to the European Economic Area, as well as the citizens of Switzerland. In the text that follows the term « member state » means any one of the above mentioned countries

**Legislation:**

The employment of European citizens is regulated by Law no. 92(I) of 2003 "Law on Free Movement and Residence of Nationals of the Member States of the European Union and their Families".

According to the above legislation, the freedom of free movement and residence in the Republic can be restricted only on the grounds of reasonable threat of public order, safety or health.

Accordingly, as from 1st May 2004, any European national can enter the territory of the Republic of Cyprus by simply showing a valid passport or identity card. The members of the family have the same right as the European national of whom they are dependant. The issue of a visa is not required, unless the members of the family are not nationals of an EU member state. In such a case a residence document is issued, having the same validity as that issued to the national of a member state of whom he/she is dependant.

Furthermore, some provisions of the Aliens and Immigration Law, which concern administrative issues, still apply, provided that they are not in conflict with the provisions of the above-mentioned Law. The competent authority for the implementation of these Laws is the Ministry of Interior.

**Regulated professions:**

In case nationals of E.U. Member States wish to pursue a profession that is regulated in Cyprus such as lawyer, medical doctor, accountant, engineer, electrician e.t.c, by legislation determining the specific necessary qualifications and the procedure for acquiring the right to pursue the profession, then the person concerned should contact the competent body responsible to receive and examine applications for the specific profession to acquire the relevant permit, the same way that exists for the Cypriot nationals.

**Procedure**

Nationals from member states have the right to enter Cyprus by simply showing a valid EU passport or ID Card without having to register upon arrival.

If there is an intention to stay and take up employment one has to:

- a) apply within 8 days for an Alien Registration Certificate (ARC) at the local Immigration Branch of the Police (issued automatically for monitoring purposes). A fee of £20 is paid for the issue of such certificate
- b) apply for a social insurance number upon securing employment in Cyprus
- c) apply for a residence permit in case one intends to stay longer than 3 months and take up employment in Cyprus. This application must be submitted before the expiration of this 3-month period to the Civil Registration and Migration Dept. through the local Immigration Branch of the Police and the residence permit or document is issued within six months from the date of application and the submission of the required documents by the applicant (a fine is imposed in case of non-compliance).



It should be noted that the conclusion of formalities for acquiring a residence permit is not an obstacle to the immediate commencement of employment.

Interested applicants can get the application forms from the Civil Registry and Migration Department, Ministry of Interior and from the local Immigration Branch of the Police.

The application forms can also be downloaded from the website of the Ministry of Interior: <http://moi.gov.cy>

The application and renewal fees for the mentioned residence permit for an EU national and to the members of the family, are CY£5. It should be noted that a fine is imposed in the case of non-compliance (Law N92(I)/2003) and specifically a fine of CY£500 to any employer employing a European national without a residence permit as well as to a European national working in Cyprus without the said permit.

#### **Necessary documents required when EU citizens apply for a residence permit**

1. Valid passport or Identity Card
2. The document of Engagement of Employment (forming part of the application) stamped by the Labour Department, showing the code of economic activity of the employer.

The residence permit for employment purposes is valid for a 5-year period and is not withdrawn solely on grounds that he/she is temporarily incapable of employment as a result of illness or accident or if he/she is unintentionally unemployed as certified by the Department of Labour.

When the residence permit is renewed for the first time, the period of residence permit can be restricted to one year, if the holder continues to be involuntarily unemployed for more than twelve consecutive months. After the expiration of this 1-year period, the permit cannot be renewed, if the holder is still unemployed.

A temporary residence permit for employment purposes, can be limited to the expected period of employment in the following cases:

- a. For a period of employment exceeding 3 months but not exceeding a year or when a person is working for a person providing services in the Republic.
- b. For seasonal employment exceeding 3 months, except for the cases where no permit is required (article 10 of N.92(I)/2003).

The members of the family of a European national, have to right to exercise an employed or self-employed activity in the Republic. This permit should be reviewed after a period of two years from the date of issue.

**Information provided by the Appendix to the Cypriot report**

**CRITERIA AND PROCEDURE FOR THE GRANTING OF WORK PERMITS TO FOREIGNERS/REMUNERATION AND TERMS OF EMPLOYMENT**

**A. CRITERIA AND PROCEDURE FOR GRANTING WORK PERMIT TO FOREIGNERS**

During the examination of applications for the granting of permits for temporary employment of foreigners the following criteria and procedures will be applied which will aim at the satisfaction of pressing needs in labour force and at the improvement of working conditions, better organization and technological upgrading of business.

A basic precondition for the granting of permit for importing foreign workers is the absence of prospects to meet the specific needs of the employer by local force (either because it does not exist or because Cypriots are unwilling to be employed in the specific occupation/sector due to the nature of the occupation or sector or due to night work) which will be ascertained following an investigation of the competent service of the Ministry of Labour and Social Insurance after the interested employer publishes the vacant posts in the local press through the District Labour Offices and has no positive response.

1. Criteria for granting approval for work permit

a) Saving and better utilization of the Labour Force

In case it is established, following an investigation by the competent services (Department of Labour, Productivity Center, services of the Ministry of Commerce and Industry), that due to technical equipment and technology used, methods of production and organization of labour, there is no proper utilization of the labour force, permit will be granted for a reasonable time period required by the business to make the necessary changes (with the assistance of the above mentioned services) for saving labour.

b) Improvement of working conditions:

In case the business has serious problems in working conditions (safety, health, welfare) permit for the employment of foreigners will be granted for a reasonable time period needed by the business to make the necessary changes for improvement on the basis of the recommendations of the Director of the Labour Inspection Department.

It is understood that in cases where businesses, meet all preconditions in the areas of technology organization and working conditions, applications for the import of workers will be examined positively.

2. Working permits will not be granted:

- a) In cases where the employer dismissed redundant personnel during the last eight (8) months who could easily have been employed in the sections or Departments where the employment of foreign workers is requested. It is understood that this provision will not be implemented in exceptional cases

especially when the employer re-employed the dismissed personnel before the eight (8) month period.

- b) In cases where during the last twelve (12) months the employer suspended work. Excluded are the cases where provisions exist under the Collective Agreement (hotel industry, clothing, shoe and suitcase manufacture) and also cases where work has been suspended on account of *force majeure* or other unforeseen circumstances.
  - c) In cases where working conditions are unsuitable unless the importation of workers aims at creating the necessary precondition for the improvement of working conditions and the compliance to the recommendations of the Labour Inspection Department of the Ministry of Labour and Social Insurance as provided in paragraph 1(b) above.
  - d) In case where the employer does not abide by the relevant Collective Agreement or does not comply with the relevant branch agreement.
3. The working conditions which are provided by the relevant Collective Agreement (branch or business) for the local staff will be implemented by the employer for the foreign personnel as well. It is understood that if the terms of the contract are violated the permit will be withdrawn.
  4. The employer must be an organized business (except in the areas of agriculture and animal husbandry) so that he can meet his obligations.
  5. In cases where working permits will be recommended for employment of foreigners with special skills and knowledge, which Cypriots do not possess, the employee shall be obligated to name a Cypriot who will be trained in those areas during the period of the foreigner's employment provided such Cypriot is available.

#### **B. Remuneration and terms of employment / Rights and obligations of foreign workers**

To fulfill Cyprus international obligations and to avoid the importation of cheap labour, which might affect the rights of Cypriot workers the following provisions shall apply:

1. All the provisions of the labour and other relevant legislation.
2. The remuneration and other benefits to be enjoyed by foreign workers will be those envisaged for Cypriot workers by the relevant collective agreements in the sector.
3. The transportation costs of foreign workers from their native country will be borne exclusively by the employer.
4. The employers will ensure their foreign workers with special health insurance. The special health insurance shall cover the foreign workers for medical expenses as well as clinic or hospital confinement (hospital expenses).

#### **C. Special Terms**

In case of strike foreign workers shall not be allowed to work as strike breakers.

In case of redundancy or suspension of works, foreign workers shall be the first to be dismissed.

The employer shall be responsible to provide accommodation of acceptable standards and basic facilities to the foreign workers and shall be entitled to deduct from their salary an amount up to 10% of their wages for the cost of accommodation. If the employer is not providing food, in the accommodation provided there must be kitchen facilities. In case the employer is providing free food he shall be entitled to deduct an additional sum of up to 15% of their wages.

No other decrease in the wages of foreign workers shall be allowed except those provided for by the Cypriot labour or other legislation or by the terms of the present procedure.

Any deduction from the salary of the foreign worker for the payment of fees to middlemen shall not be allowed.

Foreign workers shall enjoy all the rights enjoyed by Cypriots apart from those of change of employer/place of work/specialty for which a permit from the competent authority is required.

Foreign workers can join or not join a union of their own choice. Foreign workers will have to meet their financial obligations to the trade union. To this end the employer will provide the necessary facilities deducting and remitting to the unions the corresponding amount, which is equal to 1% of their wages. It is understood that the application of this agreement will not consist a precedent for Cypriot workers.

#### **D. APPLICATION, MONITORING AND CONTROL**

1. The application and the control of the provisions of paragraphs A, B and C above, will be the responsibility of the competent service of the Ministry of Labour and Social Insurance and the Immigration Department of the Ministry of Interior. The two services will closely cooperate with the trade unions and employers organizations.
2. For the better control and monitoring of the situation about the work permits which will be granted there will be deliberations by the competent service of the Ministry of Labour and Social Insurance with the representatives of the employers and trade unions.
3. In cases of violation of the above criteria/terms by the employer, the work permits of foreigners will be cancelled and no work permits will be granted in the future to the specific employer for the employment of foreigners.

#### **Conclusion**

These provisions cannot be accepted at the present stage, inter alia for the following reasons:

- it appears that all formalities have to be fulfilled before the employee enters the country to take up work and that it is not possible for the foreign worker to complete them in the country of destination;
- even for EU-nationals it is not possible to obtain permanent residence permits for the purpose of work even after the person has worked for a certain period in the country and that the maximum period for such permit is five years.
- it seems that it is not possible for a foreign workers from a non-EU contracting party to change his employer/place of work or field of activity without a special permit.

## **Article 21 - The right to information and consultation**

**With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:**

- a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

*Appendix for Articles 21 and 22: For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.*

1. *The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.*
2. *For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.*
3. *It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.*
4. *It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.*
5. *The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.*

## **ECSR case law presented by Mrs C. KOLLONAY-LEHOCZKY**

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be informed on all matters relevant to their working environment except where the conduct of the business requires that some confidential information not be disclosed.

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Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on their employment status.

This provision applies to all undertakings of the private sector, including those managed by public authorities. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

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These rights must be effectively guaranteed. In particular, workers must have legal remedies when they are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

### **Situation in Cyprus**

Information and consultation between employees and employers, is adequately exercised in Cyprus, especially so in organised sectors of economic activity, as well as at the national economy level. This is an outcome of the nature of the industrial relations system (based on voluntarism and tripartite cooperation) as well as a result of the high unionization rate of employees (65,31%). Specific provisions of the Industrial Relations Code, Part I.C(2)–Joint consultation with the unions or the employees, as well as Part II.C(1) –Consultation in the case of dismissals for reasons of redundancy, are relevant to this article.

Furthermore, the Law establishing a General Framework for Informing and Consulting Employees (N.78(I)/2005), sets out minimum requirements for the right to information and consultation of employees, in undertakings employing at least 30 employees.

According to article 5 (1) (a) of the Law (N.78(I)/2005), minimum requirements for the information and consultation of employees, in undertakings employing at least 30 employees, include information on the recent and probable development of the undertaking's activities and economic situation. On the basis of article 7 (2) the employer is not obliged to communicate information or undertake consultation when:

- the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or would be prejudicial to it.
- the information is characterised by the present Law as confidential, such as the banking and legal secrecy, or national security and patent issues.

According to article 5 (1) (b) and (c) of the aforementioned Law establishing a General Framework for Informing and Consulting Employees, information and consultation cover:

- information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment
- information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

- Moreover, the Establishment of a European Works Council Law (N.68(I)/2002 and its subsequent amendment Law N.(143(I)/2003), aims at safeguarding and improving the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

It should be noted that over 97% of the total number of enterprises in Cyprus, employ less than 30 employees (97% employ less than 20 employees and 99,2% employ less than 50 employees<sup>4</sup>). It is also noted that 94,1% of the total number of enterprises are family-run, employing no more than 4 employees.

## Conclusion

As the Parties may exclude from the field of application of this article, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice, it would appear that the situation is in conformity on this point. However, the enterprise structure in Cyprus creates a special situation where the excluded undertakings make up almost the entire labour market thus effectively voiding the right in question of scope. The ECSR has yet to pronounce itself on such a situation and the position it will take cannot be prognosticated with full certainty.

## Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

**With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:**

- a. to the determination and the improvement of the working conditions, work organisation and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organisation of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

***Appendix for Articles 21 and 22: For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.***

- 1. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.***
- 2. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.***
- 3. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are***

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<sup>4</sup> Source: Census of Establishments 2000, Statistical Service.

*inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.*

4. *It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.*
5. *The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.*

**Appendix for Article 22:**

1. *This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.*
2. *The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.*

**ECSR case law presented by Mr N. ALIPRANTIS**

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision.

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The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established.

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This provision applies to all undertakings of the private sector, including those managed by public authorities. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

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Workers must have legal remedies when they are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

**Situation in Cyprus**

With respect to the establishment of a suitable working environment and proper working conditions, as far as the safety and health of the employees is concerned and in accordance with paragraph (b) and partly paragraph (a) of this article, the existing OSH legislation contains provisions for the right of workers, or their representatives, to a balanced participation in Safety Committees and consultation with the employer on issues that affect their safety and health at work.

According to the Management of Safety and Health Issues at Work Regulations of 2002 (P.I. 172/2002), the employees or their representatives take part, in a balanced manner, at consultations with the employer or express their opinion, among others, in the cases when the employer:

- ◆ Proceeds with changes within the working environment or introduces new technology that would affect the safety and health of the employees.



- ◆ Organises training programmes on safety and health issues.
- ◆ Requests the services of External Protection and Prevention Services in order to comply with the OSH legislation.

The worker's representatives have the right to submit proposals to the employer and request the enforcement of measures for the improvement of the working environment and the preservation of the safety and health of the employee.

### Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

### Article 25 - All workers have the right to protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

#### Appendix:

1. *It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided by reason of the special nature of their employment relationship.*
2. *It is understood that the definition of the term "insolvency" must be determined by national law and practice.*
3. *The workers' claims covered by this provision shall include at least :*
  - a *the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;*
  - b *the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;*
  - c *the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.*
4. *National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.*

### ECSR case law presented by Mr. M. MIKKOLA

States benefit from a margin of appreciation as to the form of protection of workers' claims since this provision does not demand the existence of a specific guarantee institution. The protection afforded, whatever its form, must be adequate and effective and must cover situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.

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### The situation in Cyprus

With the purpose to secure the employees' rights in the event of insolvency of the employer, the Protection of Employees Rights in the Event of Insolvency of the Employer Law N. 25(I) of 2001, was entered into force on the 9<sup>th</sup> of March, 2001, administered by the Ministry of Labour and Social Insurance.

Under this Law, a special fund is established through which the employees are paid the amount due to them in the case of insolvency of their employer. The fund is financed every month by 16,6% on the contributions paid by the employers to the Redundancy Fund. An employee is entitled to the following payments out of the fund:

- payment of outstanding claims relating to pay for the last 13 weeks of employment occurring within a period of 26 weeks preceding the date of the onset of the employer's insolvency,
- payment of the proportion of the outstanding claims relating to paid leave for the above mentioned 13 weeks in the case where the employer is exempted from the obligation to pay contributions to the Central Holiday Fund and payment of the proportion of the 13<sup>th</sup> or the 14<sup>th</sup> salary or the 53<sup>rd</sup> to 56<sup>th</sup> weeks wages.

### Conclusion

In the light of the current case law and the current legal situation and practice which complies with the criteria of adequacy and effectiveness the provision could be immediately accepted by Cyprus.

### Article 26§1– The right to dignity at work – Sexual harassment

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct

*Appendix: It is understood that this article does not require that legislation be enacted by the Parties.*

### ECSR case law presented by Mrs C. KOLLONAY-LEHOCZKY

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment determined by a preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature which may harm the dignity or the career of the person concerned.

There is no need for a state's legislation to explicitly make reference to harassment where that state's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination.

From a procedural standpoint, effective protection of employees requires a certain shift in the burden of proof, making it possible for a court to judge in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of

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the judge or judges.

This provision requires that employers be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or at premises under their responsibility from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients etc.

Victims of sexual harassment must be given effective legal remedies. These remedies must include reinstatement, where the employee has been dismissed in the context of a sexual harassment case, and appropriate damages, which should be sufficiently reparatory for the victim and sufficiently deterrent for the employer.

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Furthermore, States are required to conduct awareness-raising campaigns to promote the protection against sexual harassment among social partners and the general public.

### **The situation in Cyprus**

Article 12 of the Law 205(I)/2002 on Equal Treatment of Men and Women in Employment and Vocational Training provides for the protection against sexual harassment. In particular, this Article prohibits any act that constitutes sexual harassment, isolated or repeated. Employers and representatives of the legal entities or bodies corporate referred to in section (3) of articles 7, 8 and 10 of the Law, shall protect their employees, trainees, or candidates for employment, vocational education or training from any act that constitutes sexual harassment.

Moreover, Article 13 (1) of the above-mentioned Law provides for the obligation of the competent authority, the workers' organizations and the employers to inform the workers about the provisions of the Law. Article 13(2) also provides that the workers' organizations have to inform the workers on the provisions of this Law as well as for the measures taken for its application and securing respect of the principle of equal treatment, with written announcements, or distribution of leaflets at the place of work, or any other appropriate means.

Finally, Article 30 provides that any person who intentionally violates among others the provisions of Article 12, is guilty of an offence and is punished with a fine up to four thousand pounds or imprisonment up to six months or to both such penalties, provided the offence is not more severely punished by other provisions.

During the meeting, the Cypriot authorities confirmed that national legislation complies to a great extent with the requirements of Article 26§1.

### **Conclusion**

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Cyprus.

## **Article 26 – The right to dignity at work – Harassment**

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations:  
to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

*Appendix: It is understood that this article does not require that legislation be enacted by the Parties.*

*It is understood that paragraph 2 does not cover sexual harassment.*

### **ECSR case law presented by Mrs C. KOLLONAY-LEHOCZKY**

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as under Article 26§1.

### **The situation in Cyprus**

On the basis of the new Directive 2002/73/EC, a draft Law amending the above-mentioned Law is currently pending for enactment at the House of Representatives. With its enactment, the relevant legislation will be in full compliance with the new Directive. It is important to note that Article 12 of the amending Law provides for other forms of harassment, apart from sexual. Specifically, the new article provides for the prohibition of forms of behaviour, which are considered to constitute harassment or sexual harassment.

### **Conclusion**

The delegation pointed out that the directive has a limited dimension as it does not cover all the requirements of Article 26§2, such as the shift of the burden of proof making it possible for a court to judge in favour of the victim on the basis of sufficient *prima facie* evidence. The Cypriot authorities shared this view and confirmed that the enactment of other laws was envisaged. In the light of this, the acceptance of the provision is possible.

## **Article 27<sup>5</sup> – The right of workers with family responsibilities to equal opportunities and equal treatment – participation in professional life – The right to parental leave**

**All persons with family responsibilities and who are engaged or wish to engage in**

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<sup>5</sup> Due to the interlinks between the two paragraphs not accepted by Cyprus, the ECSR case law and the presentation of the Cypriot situation are not presented separately.

employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities

*Appendix : It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating on or advancing in economic activity. The terms "dependent children » and « other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.*

1. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to take appropriate measures:

- a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
- b. to take account of their needs in terms of conditions of employment and social security;
- c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements.

2. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice.

#### **ECSR case law presented by Mrs P. KONČAR**

Under Article 27§1a of the Revised Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training. Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. Particular attention should be devoted to part-time workers' unemployment.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment. It should be borne in mind that worker's needs cannot be left to the mere employer's goodwill but must be provided in some binding legal instrument. Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with

family responsibilities. Where a State has accepted Article 16, childcare arrangements are dealt with under that provision. In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.

Provisions granting the right to parental leave must apply to all categories of workers.

### **Situation in Cyprus**

According to the Parental Leave and Leave on Grounds of Force Majeure Law of 2002 (N.69(I)/2002), any employed parent shall be entitled to take unpaid parental leave of a duration of up to thirteen weeks in total, by reason of the birth or adoption of a child, in order for the parent to take care of and participate in the raising of the child. Article 5 (1) of the Law provides that parental leave shall be taken:

- In the case of natural parents, within the period commencing on the day after the expiration of the maternity leave and ending on the sixth anniversary of the child's birth.
- In case of adoption, within a period of six years commencing on the date of the adoption and after the maternity leave has been taken, given that the child will not be over twelve years old.

According to the Social Insurance legislation credits up to 156 weeks for child rearing are provided to women who withdraw from the labour market or interrupt their insured employment due to child care.

Several measures are being promoted through a National Reform Programme, aiming, among others, towards equality of opportunity and treatment for workers with family responsibilities. These measures include:

- the promotion and protection of flexible forms of employment
- the upgrading/modernization of the Public Employment Services and the training of the personnel, so that better employment services, as well as, better vocational guidance services (individualised approach) will be offered.
- the promotion, by the Human Resource Development Authority of Cyprus, of suitable training programmes which will contribute towards entry/re-entry in the labour market
- the qualitative and quantitative improvement of services for the care of children and elderly.

Legislation implemented by Social Welfare Services, relating to the provision of care services, includes: The Children Law, Cap. 352 and its amendment of 2002; The Children (Day-Care Centres) Orders of 1993 and 1994; The Day-Care Centres for School-Age Children Law of 1996 and Regulations of 1997; The Adult Day-Care Centres Law of 1997; The Adult Day-Care Centres Regulations of 2000; The Homes for the Elderly and Disabled Laws of 1991 - 1994; The Homes for the Elderly and Disabled Regulations of 2000.

In view of the increasing trend in dual-earner families, which is encouraged by governmental policies aiming at the integration, reintegration and retention of women in the labour market, the Social Welfare Services promote the ongoing

improvement and upgrading of care services for children, the elderly and persons with disabilities aiming at promoting reconciliation of work and family responsibilities.

Particular emphasis is placed on providing care services and family support programmes on a local level, in partnership with the voluntary sector. In this connection, Social Welfare Services provide technical assistance and monetary support, in the form of grants, to community councils and NGOs for the development and operation of services and programmes, such as:

- (a) Day-care centres for pre-school children,
- (b) Day-care centres for the care and protection of school-age children after school while their parents are at work,
- (c) Services for elderly persons, including home-care, day-care, meals-on-wheels, holiday camps, residential care,
- (d) Services for people with disabilities, including home-care, day-care, residential care, and
- (e) Group support services for vulnerable groups of society, such as persons with mental or physical illnesses, persons who are victims of family violence, persons who are prone to substance abuse, etc.

In this way, flexibility and diversity of service provision is achieved for families in both urban and rural areas, whilst social cohesion is enhanced through the active involvement of community bodies in identifying and meeting social needs. It should be stressed that care services are not only perceived as a means of meeting the needs of employed parents and encouraging women's participation in the labour market. Great emphasis is also given to the needs, rights and welfare of the children and the adult dependants receiving such services. In order to ensure high-quality care provision, Social Welfare Services are empowered by legislation to set standards of operation and to monitor the services provided in day-care centres and residential facilities for children and adults, as well as services provided by child-minders.

With a view to enhancing care services provided by the voluntary sector, a new measure is being promoted by Social Welfare Services, which will be co-funded by the European Social Fund, under Objective 3 "Human Resources" of the Single Programming Document of Cyprus (**see publication on [www.planning.gov.cy](http://www.planning.gov.cy)**). Within this framework, a survey will be undertaken with a view to examining the current situation, ascertaining needs and making proposals. Based on the conclusions of the survey, the Social Welfare Services will promote the upgrading/expansion of 10 care programmes at local level, which will provide high quality, low-cost services to families. This measure is part of a wider programme of measures aiming at promoting the integration of women into the labour market and reconciling work and family life.

In response to the emerging trend of 'multiple caring roles' where employed parents are often responsible not only for their children but also for their elderly parents, an allowance may be provided to family members who are unable to work or are obliged to withdraw from employment in order to care for elderly family members. A support scheme has also been introduced for families caring for elderly members, which subsidises them for necessary house repairs, adjustments and extensions so that

they may retain their elderly members at home and provide them with the care they need.

## Conclusion

In the light of the current case law and the current legal situation and practice the two provisions could be immediately accepted by Cyprus.

## Article 29 – The right to information and consultation in collective redundancy procedures

**With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers’ representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example, by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.**

*Appendix: For the purpose of the application of this article, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.*

### ECSR case law presented by Mrs P. KONČAR

This provision guarantees workers’ representatives the right to be informed and consulted in good time by employers who are planning collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm’s activity. This obligation is not just an obligation to inform unilaterally, but implies that a process be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers’ representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.

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For this purpose, all relevant documents must be supplied before consultation starts: reasons for the redundancies, planned social measures, criteria for being made redundant, order of redundancies.

The right to be informed and consulted must be backed by guarantees to ensure that consultation actually takes place. If an employer fails to respect his obligations, provision must be made for minimum administrative or judicial proceedings before the redundancies take effect, to ensure that they do not take place until the obligation to consult has been fulfilled. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of employees to contest the lawfulness of their being made redundant is examined with reference to Article 24 of the Charter.

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### Situation in Cyprus

According to the Collective Redundancies Law of 2001(N.28(I)/2001), where any employer intends to make any collective redundancies, he/she is obliged to consult in good time with the workers’ representatives with a view to reaching an agreement. Article 4 (2) provides that consultations will, at least, cover the following matters –



- Possible measures to prevent any collective redundancies or to reduce the number of the employees who would be affected.
- Ways and means for easing the adverse consequences arising from such collective redundancies, through social measures.

Moreover, the Law provides that redundancies which have to be notified to the Ministry of Labour and Social Insurance can only be put into effect after the expiration of a period of 30 days commencing on the day of providing such notification and the Ministry shall use this period to seek solutions to the problems which may arise from any intended collective redundancies.

A relevant provision is also included in Part II.C(1) of the Industrial Relations Code, according to which, in the event of collective dismissals, the employer should notify the union of his intention to effect dismissals as soon as is practically possible, taking into account the number employees to be dismissed, their employment opportunities and retraining needs. After the notification date, consultations should be carried out with the unions and/or employees in accordance with the provisions of to the Collective Redundancies Law and the I.L.O. Recommendation No. 119.

### **Conclusion**

In the light of the current case law and the current legal situation and practice that also fully complies with the relevant EU legislation the provision could be immediately accepted by Cyprus.

### **Provisions related to legal and social protection**

#### **Article 13§1: The right to social and medical assistance – Adequate assistance for every person in need**

**With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:**

1. **to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.**

#### **ECSR case law presented by Mr. M. MIKKOLA**

According to Article 13§1, all nationals and resident foreigners who are without adequate resources have an individual right to adequate social and medical assistance.

For the purpose of this provision, social assistance covers cash benefits and benefits in kind payable primarily on the basis of need. Benefits restricted to certain beneficiaries as well as universal benefits come within the scope of this provision (social allowances, social pensions, minimum integration income, etc).

Medical assistance covers access to free or subsidised health care, or payments enabling people to afford the care they require.

Since it is an individual right, the right to social and medical assistance must be:

- clearly defined in law and based on objective criteria;

- not subject to any condition other than need;
- enforceable.

In particular, the individual right to social assistance is genuine when:

- assistance is provided to all those in need;
- the level of benefits is adequate.

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Since need is the only criterion referred to in Article 13§1, any restrictive conditions, as for example a lower age limit (e.g. twenty–five years) or budgetary feasibility, are contrary to the Charter.

The right to social assistance must be maintained for as long as the state of need persists. However, linking social assistance with willingness to look for work or undergo vocational training is in conformity with the Charter, provided that these conditions are reasonable and in keeping with the aim pursued, namely to find a lasting solution to the person's problems. In this context, reduction or suspension of social assistance benefits may be in conformity with the Charter only if they do not deprive the needy persons of any sources of subsistence.

### Situation in Cyprus

The Public Assistance and Services Laws of 1991- 2003 ensure a socially acceptable minimum standard of living for all persons legally residing in the Republic of Cyprus. The legislation makes no discrimination on the basis of nationality, race, religion, gender etc.

Any person whose income and other economic resources are insufficient to cover his/her basic and special needs, as defined in the legislation, may apply for public assistance, which may be provided in the form of monetary support and/or services. Basic needs include food, essential clothing and footwear, electricity, water supply and items for hygienic living. Rates for basic needs are reviewed annually to comply with the rising cost of living. At present, the rates for basic needs are set to £194,00 for the recipient and £97,00 for every dependant person who has reached the age of 14 and £58,20 for every dependant person under the age of 14. Special needs may include rent allowance, a medically prescribed diet allowance, a disability allowance, home-care, day-care, residential care, house equipment, house repairs, allowance for mortgage interest, pocket money, grant for occupational training or the purchase of tools and equipment with a view to making the recipient independent or reducing his/her dependency on public funds, etc.

Public Assistance legislation incorporates employment incentives to encourage social inclusion and gradual independence from public funds. It makes special provisions for persons who are more vulnerable to social exclusion, i.e.:

- people with disabilities,
- single-parent families,
- families with four or more children,
- families at high risk of dissolution

People who fall within these categories may be eligible for public assistance even if they work full-time.

Employment incentives are provided to recipients of public assistance by discounting part of their earnings when estimating their monthly public assistance allowance. A greater amount is discounted for persons with disabilities, older persons, single-parents and persons with mental illness. Furthermore, the Law provides for a subsidy scheme promoting self-employment initiatives for older persons.

In recognition of the special needs of children with disabilities, public assistance is provided to them regardless of family income. Their families are also provided with social and practical support where needed, e.g. home-help.

### **Conclusion**

In the light of the current case law and the current legal situation and practice that the provision could be immediately accepted by Cyprus.

### **Article 13: The right to social and medical assistance – The right to specific emergency assistance for non nationals**

**With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:**

**3. to apply the provisions referred to in paragraphs 1,2,and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.**

*Appendix: Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.*

### **ECSR case law presented by Mr M. MIKKOLA**

Article 13§4 applies to nationals of the other Parties who are lawfully present in a Party's territory, but do not reside lawfully or work regularly there. Since their presence is temporary, appropriate forms of social and medical assistance do not necessarily include all the benefits available under the general scheme. Temporary assistance in an emergency is sufficient (food, accommodation, clothing, emergency medical care). In such cases, assistance must be given, regardless of local or national resources.

Persons covered by this provision may be repatriated, but the relevant provisions of the 1953 European Convention on Social and Medical Assistance must be respected.

### **Situation in Cyprus**

The explanations provided by the Cypriot side indicated that de facto practice emergency assistance was granted as required under this provision of the Charter. However, it seemed that de jure the decision to grant such assistance was taken at the discretion of the responsible Minister.

## Conclusion

In the light of the above, further analysis is required in order to determine whether this provision can be accepted.

### Article 16: The right of the family to social, legal and economic protection

**With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.**

***Appendix: It is understood that the protection afforded in this provision covers single-parent families.***

#### ECSR case law presented by Mrs C. KOLLONAY-LEHOCZKY

According to Article 16, States undertake to ensure the right of the family to social, legal and economic protection by implementing a comprehensive family policy by various means. In this respect, foreigners, as covered by the Appendix, shall be equally treated. Roma/Gypsies families shall also be ensured the same social, legal and economic protection.

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Since "family" can mean different things in different places and at different times, the Charter refers to the definitions used in national law. No distinction is made between the various models of family and, in keeping with the case law of the European Court of Human Rights in relation to Article 8 of the Convention, the scope of Article 16 is not restricted to family based on marriage. Consequently, for the purpose of Article 16 family means the community of parents and their children, including single-parent families.

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#### 1. Legal Protection

Spouses must be equal, particularly in respect of rights and duties within the couple (marital authority, ownership, administration and use of property, etc.) and children (parental authority, management of children's property).

In cases of irreparable deterioration in family relations, Article 16 requires the provision of:

- legal arrangements to settle marital conflicts and, in particular, conflicts pertaining to children: care and maintenance, deprivation and limitation of parental rights, custody and access to children when the family breaks up, as well as the possibility for children to express their opinion in proceedings concerning them;
- family mediation services to settle disputes and protect the family from too much harm for future relations between the parents and with the children.

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Article 16 covers the issue of domestic violence. Accordingly, members of the family must be protected in law (legislation or other provisions) and in practice (services devoted to prevent the risk of ill treatment, to support and rehabilitate victims).

#### 2. Economic protection

States are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. These benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the monthly median equivalised net income, as calculated by Eurostat. The level of benefit should be adjusted as necessary to keep pace with inflation.

Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are relevant to the implementation of this provision.

### 3. Social protection

Article 16 requires states to assist families with childcare, housing, and appropriate social services.

Regarding children, states are required to ensure that services are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises, and cost of childcare to parents, etc.).

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Since the focus of Article 16 is the maintenance of family's ties, housing under this provision is dealt with only from the family perspective – where family stands for households with children, including single parents and young couples that will potentially have children. This means *inter alia* that family-size dwellings in states' construction and social housing policies must be available, as well as housing benefits specifically targeted at families (e.g. grants or subsidies for the purchase or construction of family home, tax relief on mortgage repayments, subsidised loans for acquiring the first home, subsidised rent for families, housing allowances, etc.).

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Families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on child raising.

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In order to ensure that the views of families are taken into account in the formulation of family policy, civil organisations representing families should be consulted by the relevant authorities.

### **Situation in Cyprus**

Policies implemented by the Social Welfare Services, under the Ministry of Labour and Social Insurance, aim to address social risks and enhance social cohesion. Family policies are based on the premise that the family constitutes the basic unit around which societal institutions are built. Although families in Cyprus are still relatively close and child-centred, demographic and socio-economic changes have challenged traditional family roles. The increasing complexity of family problems, break-up and reconstitution of families, family violence, urbanisation, the repercussions of the mass media and modern technology are among the issues of increasing concern for Cyprus, as in the rest of Europe. Social Welfare Services provide a variety of programmes focusing on:

- (1) supporting and strengthening families in order to enable them to effectively exercise their roles and responsibilities,
- (2) preventing the aggravation of conditions that might lead to family disruption, juvenile delinquency or social exclusion,
- (3) safeguarding the right of families and individuals to a decent standard of living and maintaining their human dignity.

Programmes include:

- Family support and preventive services, including counselling, family guidance, home-help, child day-care, services for older family members and persons with disabilities. [Please see description of supportive services developed in partnership with the voluntary sector, in our comments under Article 27]
- Income maintenance through public assistance, with special provisions for single-parent families, families with four or more children, families at high risk of dissolution, children with disabilities. [Please see fuller description of Public Assistance in our comments under Article 13]
- Child protection, including specialised services for families experiencing violence, services for children who must be taken into care, such as foster care and residential care, as well as counselling and other social work services aiming at improving conditions and facilitating the earliest possible return of the children to their own homes. [full description of Child Protective Services, is provided under the comments on Article 17.

The Grants<sup>6</sup> and Benefits Service of the Ministry of Finance is responsible for granting child benefit, according to the Child Benefit Law, since 2003.

Every family who has its habitual residence in Cyprus with at least one child is entitled to a basic benefit, provided that they are living together. A supplementary benefit is also granted to families based on the gross family income.

Families are entitled to the child benefit for their **unmarried children who live together**, as follows:

- Up to 18 years old,
- Between 18 - 25 years old while serving in the National Guard,
- Between 18 - 23 years old , provided they attend full time education ,
- Males of age between 23 -25 , for as long as they have served in the National Guard and provided they attend full time education and,
- Irrespective of their age, provided that they are unable for self supporting due to physical or mental disability

The child benefit is paid monthly to families with three or more children and annually at the end of the year to families with one or two children.

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<sup>6</sup> The information on family benefits was provided during the meeting by the Ministry of Finance.

TABLE  
CHILD BENEFIT RATES FOR 2006

Number of children in the family	Basic annual benefit £	Supplementary annual benefit for families with income up to £9.000 per year £	Supplementary annual benefit for families with income between £9.001 and £18.000 per year £
One child	218,48	54,62	27,31
Two children	436,97	218,48	163,86
Three children	1.310,89	491,59	409,65
Four and more children	655,45 per child	218,48 per child	136,55 per child

- The family income which is taken into consideration for granting the supplementary child benefit is the gross family income, which was acquired three years before. For example for the year 2006 the family income considered is the income for the year 2003.
- Child benefit is adjusted every year on the 1<sup>st</sup> of January according to the cost of living index (comparison of the last year with the previous year) and it is not subject to taxation.

### Conclusion

The discussion focussed on the sufficient amount of family benefits. The delegation explained that there was no definite threshold. When adequacy is assessed other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are taken into account. More information is needed in order to evaluate the situation. In the light of the above, the acceptance of the provision is possible.

### Article 17<sup>7</sup>: – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b. to protect children and young persons against negligence, violence or exploitation;
- c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support.

<sup>7</sup> Due to the interlinks between the two paragraphs not accepted by Cyprus, the ECSR case law and the presentation of the Cypriot situation are not presented separately.

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

**Appendix : It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.**

**This does not imply an obligation to provide compulsory education up to the above-mentioned age.**

### **ECSR case law presented by Mr. M. MIKKOLA**

Article 17§1 integrates into the Social Charter rights which are guaranteed by the UN Convention on the Rights of the Child. The ECSR has concentrated its examinations of the first national situations on the following issues which constitute only a part of the material scope of Article 17:

- The status of the child
- The right to education
- Children in public care
- Protection of children from ill-treatment
- Children and the law, including young offenders

#### The status of the child

Article 17 guarantees the right of a child to know in principle, his or her origins. The Committee examines the procedures available for the establishment of maternity and paternity, and in particular it examines the situations where the establishment of maternity or paternity is not possible and where the right of a child to know his or her origins is restricted.

Article 17 of the Charter permits no discrimination between children born outside of marriage, and children born within marriage, e.g. in respect of maintenance obligations and inheritance rights.

#### The right to education

Every child has the right to education. Both §1 and §2 of Article 17 require states to establish and maintain an education system that is both accessible and effective. In order for there to be an accessible and effective system of education there must be, *inter alia* a functioning system of primary and secondary education; which includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas). The number of children enrolled in school should reach 100% of those of the relevant age. Class sizes and the teacher pupil ratio must be reasonable.

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A mechanism to monitor the quality of education delivered and to ensure a high quality of teaching is also required.

Education must be compulsory until the minimum age for admission to employment

Equal access to education must be ensured for all children, in this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. Where



necessary special measures should be taken to ensure equal access to education for these children. The right of children with disabilities to education is examined under Article 15§1.

#### Children in public care

Any restriction or limitation of parents' custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.

The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions.

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.

National law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. Further~~more~~, a procedure must exist for complaining about the care and treatment in institutions.

There must be adequate supervision of the child welfare system and in particular of the institutions involved.

#### Protection of children from ill-treatment

The criminal law must penalise the different forms of ill-treatment of children. There must be agencies and services designed to protect and prevent the ill-treatment of children.

A prohibition in legislation against any form of violence (including corporal punishment) against children, whether at school, in institutions, in their home or elsewhere.

#### Young offenders

The age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age. Minors should only exceptionally be remanded in custody for serious offences and should in such cases be separated from adults.

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length of sentence must be laid down by a court. Young offenders should not serve their sentence together with adult prisoners.

According to Article 17§2, primary and secondary education must be free of charge. This covers the basic education system. In addition, hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable groups.

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Measures must be taken to encourage school attendance and to reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

## Situation in Cyprus

Legislation implemented by Social Welfare Services, relating to the welfare and protection of children, includes: The Children Law, Cap. 352 and its amendments of 1999 and 2002; The Children (Day-Care Centres) Orders of 1993-1994; The Private Children's Homes Regulations of 1982; The UN Convention on the Rights of the Child (Ratification) Laws of 1990 - 2000; The Day-Care Centres for School-Age Children Law of 1996 and Regulations of 1997; The Parents and Children Relations Laws of 1990 –1998; The Children (Relationships and Legal Status) Law of 1991. The Public Assistance and Services Laws of 1991 – 2003; The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 - 2004; The Adoption Law of 1995; The Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Ratification) Law of 1994; The Combat of Trafficking in Persons and of Sexual Exploitation of Children Law of 2000; The Law Providing for Probation and other Measures of Treating Offenders of 1996.

Child policies implemented by Social Welfare Services aim at safeguarding the rights, welfare and best interests of children, through preventive and family support services and child protection services.

The Social Welfare Services provide Child Protection Services on a short or long-term basis to children who are deprived of their family's support. Though every effort is made to prevent the removal of children from their families, in some cases this unavoidable. The Director of Social Welfare Services is empowered by legislation to take children who are in need of care and protection into his/her care and, where necessary, to assume parental responsibility. In such cases, the policy of Social Welfare Services has always been to provide protective services in conditions approximating a natural family situation. Placement in a foster family or a group foster home is preferred to residential placements in institutions. Residential placements in children's homes or boys'/girls' hostels are used as a solution of last resort, in cases of children with serious behavioural problems and other difficulties.

When child is taken into care, counselling and social welfare services are provided to the child's family with the aim of improving conditions and facilitating the earliest possible return of the child to his/her family.

It should be noted that, in accordance with a special administrative procedure aiming at decriminalising offences committed by juvenile offenders, children under the age of 16 years who commit minor offences are diverted from prosecution and treated as children in need of care, protection and rehabilitation (preventive/supportive services and child protection services).

In accordance with relevant legislation, Social Welfare Services also provide adoption services, which aim at safeguarding the best interests of children to be adopted. In this connection, Social Welfare Services have a supervisory role and do not function as an adoption agency. Adoption services include:

- Preparation of a report on the suitability of prospective parents to adopt.
- Duties of a "guardian ad litem", according to court orders. The aim is to safeguard the best interests of children, both before the court and in general.
- Preparation of a report for the court indicating whether the adoption is in the best interests of the child.

- Post-adoption counselling.

Intercountry adoptions have become the norm since there are hardly any children available for adoption in Cyprus. An increasing number of couples apply to the Social Welfare Services for a pre-adoption study for adoption purposes abroad. In these cases, the Social Welfare Services act as the competent authority and follow the procedures provided for by the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

## Conclusion

In the light of the current case law and the current legal situation and practice that the provision could be immediately accepted by Cyprus.

### Article 23: The right of elderly persons to social protection.

**With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:**

- to enable elderly persons to remain full members of society for as long as possible, by means of:
  - a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  - b. provision of information about services and facilities available for elderly persons, and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  - a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  - b. the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

*Appendix : For the purpose of the application of this paragraph, the term « for as long as possible » refers to the elderly person's physical, psychological and intellectual capacities.*

### ECSR case law presented by Mr. A. BRUTO DA COSTA

On a general level, the Committee has requested information on national policies for the elderly and on the level and development of national expenditure for social protection and services for the elderly, as well as measures to allow/encourage elderly persons to remain in the labour force.

Non-discrimination legislation (or similar legislation) should exist at least in certain domains protecting persons against discrimination on grounds of age.

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Elderly persons at times may have reduced capacity making powers or no such powers or capacity at all. Therefore, there should exist a procedure for 'assisted decision making' for the elderly.

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The main objective of the first paragraph of Article 23 is to enable elderly persons to remain full members of society. It provides two means by which this can be achieved: goal-adequate resources and information on services and facilities. According to the explanatory report, the expression "full members" means that elderly persons must suffer no ostracism on account of their age, since the right to take part in society's various fields of activity is not granted or refused depending on whether an elderly person has retired or is still vocationally active or whether such a person is still full of legal capacity or is still subject to some restrictions in this respect (*diminutio capitis*).

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The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a 'decent life' and play an active part in public, social and cultural life. The Committee compares pensions with the average wage levels and the overall cost of living. Pensions must be index-linked.

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The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer's allowance for family members looking after an elderly relative.

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Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers that 1§b of Article 23 presupposes the existence of services and facilities, and that elderly persons have the right to certain services and facilities. Therefore, the Committee examines not only information relating to the provision of information about these services and facilities but also these services and facilities themselves. In particular, information is sought on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.

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The needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. National policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.

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In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for persons with dementia and related illnesses and adequate palliative care services.

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Article 23§3 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the

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institution, the protection of property, ~~the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.~~

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There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. ~~All institutions must be licensed or approved and an independent inspection mechanism must exist to examine, in particular, the quality of care delivered.~~

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Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.

### Situation in Cyprus

Legislation implemented by Social Welfare Services, relating to the well-being of elderly persons, includes: The Public Assistance and Services Laws of 1991 – 2003; The Homes for the Elderly and Disabled Laws of 1991 - 1994; The Homes for the Elderly and Disabled Regulations of 2000; The Adult Day-Care Centres Law of 1997; The Adult Day-Care Centres Regulations of 2000.

Policies implemented by the Social Welfare Services for elderly persons aim at safeguarding a decent standard of living and promoting the independent social functioning of elderly persons, strengthening links with the family and the community and providing supportive services within the community in order to enable elderly persons to remain in their own familiar environment for as long as possible, rather than being institutionalised. Such services include:

- Home-care provided by governmental, community and private carers.
- Day-care provided in governmental, community and private facilities.
- Financial support for basic and special needs, including the purchase of home and day-care services, through public assistance [see description of “Public Assistance” under Article 13].
- A Scheme for Supporting Families for the Care of their Elderly Members: subsidizes families with grants for necessary house repairs, adjustments and extensions so that they may retain their elderly members at home and provide them with the care they need.
- A Scheme providing Grants for Home Improvements.
- A Financial Subsidy Scheme for the Self-Employment of Elderly Persons: aims at keeping elderly people healthy and active by providing incentives for their reactivation and participation in society.
- Holiday Subsidy Scheme: subsidizes persons over the age of 63 years and persons with disabilities, who are recipients of public assistance, with a grant of for a 6-day holiday, together with their carers, anywhere in Cyprus at any time during the year.
- Family Carers’ Allowance: may be paid to family members who are obliged to withdraw from employment or are unable to work in order to care for elderly family members.

Residential care is provided only in cases where particular individual needs cannot be met by the family and supportive services within the community. Social Welfare Services may place elderly persons in governmental, community or private residential homes or in the homes of registered carers.

With the aim of providing the best possible quality day-care and residential care, Social Welfare Services set standards of operation and inspect facilities, in accordance with legislation, whilst new legislation is currently being prepared for the regulation of home-care. An Advisory Body, consisting of representatives of relevant governmental departments and non-governmental organisations, has a consultative role in the implementation of the legislation concerning standards of residential care.

With a view to increasing and upgrading services for elderly persons (e.g. home-care, day-care, meals-on-wheels, holiday camps, residential care), the Social Welfare Services encourage community participation in the development and operation of such services [see description under Article 27].

It should be noted that issues concerning elderly persons are also promoted by the Co-ordinating Body for the Elderly, which consists of representatives of governmental departments, the social partners and non-governmental organisations. The Co-ordinating Body, which is chaired by the Minister of Labour and Social Insurance, was established in 1995 by decision of the Council of Ministers and its terms of reference are:

- (i) To safeguard a dignified standard of living for elderly persons.
- (ii) To safeguard the means of achieving optimal social functioning of elderly persons.
- (iii) To promote the participation of elderly persons at decision-making levels, especially on matters that concern them.
- (iv) To study ways of facilitating easy access and service provision for elderly persons.
- (v) In general, to improve the quality of life of elderly persons.

A prime example of the participation of older persons in public life is the Senior Citizens' Parliament, a symbolic revival of the Senate of Elders of Ancient Greece. The Senior Citizens' Parliament was established in 1999 during the International Year of Older Persons, on the initiative of NGOs. It consists of 56 elderly members representing various voluntary bodies dealing with matters related to the elderly and aims to make visible all issues concerning elderly people and to recommend solutions. A special session at the House of Representatives is reserved once a year for the Senior Citizens' Parliament, which is attended by members of parliament and representatives of legislative and executive authorities.

Furthermore the General Social Insurance legislation provides for the payment of old age pension to insured persons who satisfy prescribed contribution conditions.

The Social Insurance legislation provides also for the payment of a minimum pension to insured persons with insufficient insurance record. The amount of the minimum pension is 85% of the amount of the full basic pension.

Moreover, persons who do not receive any pension income either from the Social Insurance Scheme or from any other source and satisfy certain residence requirements are entitled to Social Pension. The amount of Social Pension is equal to 81% of the amount of the full basic pension provided under the Social Insurance Scheme.

The basic part of the pensions provided under the Social Insurance Scheme is indexed to insured earnings every year, whilst the supplementary part is indexed to the Consumer Price Index.

Social Pension is adjusted every year in the same way as the basic part of pensions provided under the Social Insurance Scheme.

According to the National Strategy Report on Pensions, the gross replacement rate from the statutory scheme in the case of a worker retiring at 65 and after 40 years of employment at the average wage is 46% in 2005, leading to a net replacement rate of 52%. However, the replacement rates are expected to increase as the earnings-related Social Insurance Scheme approaches maturity.

### Conclusion

During the discussion, it appeared that many changes are underway (budget coordination, increase of pensions, inspection of the centres for mentally ill elderly persons). In the light of this information as well as of the current law and practise, the acceptance of the provision is possible.

### Article 30 - The right to protection against poverty and social exclusion

**With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:**

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;**
- b to review these measures with a view to their adaptation if necessary.**

### ECSR case law presented by Mr A. BRUTO DA COSTA

By introducing into the Charter a new Article 30, the Council of Europe member states considered ~~ed~~ that living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States ~~Parties~~ to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

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The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive listing of the

areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena. The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.

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Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed.

### Situation in Cyprus

Measures for combating poverty and social exclusion are taken within the framework of an overall and coordinated approach, in line with the EU Social Inclusion Process, which is based on the open method of coordination and involves the participation of representatives from the governmental and non-governmental sectors, the social partners and academic institutions. Specifically:

Before accession to the EU, the **Joint Inclusion Memorandum (JIM)** was prepared jointly with the EU Commission and signed on 18.12.2003. This document outlined the principal challenges and policy responses of Cyprus for tackling poverty and social exclusion. The Cyprus JIM may be found on:

[http://www.europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/cy\\_jim\\_en.pdf](http://www.europa.eu.int/comm/employment_social/soc-prot/soc-incl/cy_jim_en.pdf)

Cyprus prepared a **National Action Plan for Social Inclusion (NAP/Incl.)** for 2004 - 2006 which was submitted to the Commission in July 2004. It was based on the priorities identified in the JIM and complied with the commitment made by Member States at the European Councils of Lisbon (March 2000), Nice (December 2000) and Stockholm (June 2001): to promote sustainable economic growth and quality employment which will reduce the risk of poverty and social exclusion as well as strengthen social cohesion in the Union between 2001 - 2010. The Cyprus NAP/Incl. may be found on: [http://europa.eu.int/comm/employment\\_social/social\\_inclusion/docs/nap\\_incl\\_2004\\_cy\\_en.pdf](http://europa.eu.int/comm/employment_social/social_inclusion/docs/nap_incl_2004_cy_en.pdf)

Cyprus prepared an **Implementation/Update Report on the NAP/Incl.** for 2004 - 2006 which was submitted to the Commission in June 2005. The Report presents the progress achieved in implementing the the NAP/Incl. 2004 - 2006, as well as priority objectives and quantified targets for the future. It may be found on:

[http://europa.eu.int/comm/employment\\_social/social\\_inclusion/docs/2005/cy\\_en.pdf](http://europa.eu.int/comm/employment_social/social_inclusion/docs/2005/cy_en.pdf)

### SOCIAL COHESION MEASURES<sup>8</sup>

1. The Ministry of Finance received an approval by the Council of Ministers on 21 October 2005 on a package proposal with measures aiming to the financial support of the low income classes and the reinforcement of social cohesion.

<sup>8</sup> This information was provided during the meeting by the Ministry of Finance.



2. The package was prepared with criteria (i) the effectiveness of the proposed measures and (2) our persistence to the fiscal stability policy, which composes a fundamental precondition for economic and social development. Namely for the preparation of the package the prospectives of the Cyprus economy were taken into consideration as well as our obligations as a member country of the EU and the ERM II which require the elimination of fiscal deficits and pushing public debt towards a declining trend.

3. Despite the need for fiscal consolidation through the imposition of permanent structural and other relating measures, the Government of the Republic of Cyprus decided that from the social policy view, certain particular measures were necessary, targeting the relief of the low income social classes.

4. The social cohesion package for 2005-2006 amounts to a total of £102,4 million. The package includes the following:

(a) Providing of additional social benefits to low income groups of the population. For 2005 £11 million was spent on these grants and £16,3 million for 2006 followed by £15,5 million annually for the next years.

Eligibility for these additional social benefits have existing recipients of such public social benefits, families with over four children, soldiers coming from families with over four children, families with three children, pensioners, inhabitants in the occupied areas etc.

(b) Additional grants to volunteer organizations, multifunctional centers for the elderly and children especially near the buffer zone with total expenditure of about £810.000.

(c) Review of the legislation for the provision of social benefits aiming for their permanent increase. Annual expenditure for this measure is estimated at £2,3 million.

(d) Co funded programmes/schemes with sponsoring from the Structural Funds of the European Union – estimated annual expenditure is expected to reach £2 million (2006-2008).

(e) Upgrading of the housing schemes for displaced persons with additional annual expenditure of £7 million.

(f) Subsidy for the acquisition of first residence by the return of part of VAT with estimated annual cost of about £75 million. Beneficiaries will receive a return of 2/3 of VAT (that is pay only 5% VAT) for residence up to 250 sq. metres and the benefit is only for the 130 sq. metres. This has effect only on houses that have acquired a building permit after 1/5/2004.

(g) Regulating agricultural loans with estimated expenditure of about £23 million. The regulating plan has already been approved by a Council of Ministers' decision on 21/10/2005 and it includes contribution of the Government towards the loans and subsidies on interest payments, but it must also be approved by EU.

5. The above measures will add to the fiscal deficit by 0,14 percentage points of the GDP for 2005, 0,2 percentage points of the GDP for 2006 and about 0,15 percentage points of the GDP for the coming years. It must be noted that above measures are additional to the extraordinary compensating measures for the low

income population groups within the framework of the five years plan for saving energy amounting to £15,5 million.

6. The two packages, the social cohesion with £102,4 million expenditure and the package of compensatory measures for the increase of cost energy, with £15,5 million expenditure in direct sponsoring and other £17 million benefit for the Cypriot consumer by sponsoring saving energy measures are already implemented.

7. The social policy of the Government of the Republic of Cyprus is not limited to these two packages that were announced last year. The aim of raising the standard of living of lower and intermediate income groups of the population have great priority for this Government with an important increase on social expenses during the last three years. The social expenses in the government budgets from 2002 up to 2006 were increased by about 70%. This shows the social sensitivity of the Government, but also vision for social growth that has anthropocentric character.

## Conclusion

In the light of the above and in particular of the ongoing changes carried out in Cyprus, the acceptance of this provision is possible.

## Article 31<sup>9</sup> – The right to housing

1. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard.
2. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.
3. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to make the price of housing accessible to those without adequate resources.

## ECSR case law presented by Mr M. MIKKOLA

### 31§1

States must guarantee the right to adequate housing.

The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.

The criteria for adequate housing are:

- \_\_\_\_\_ a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste

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<sup>9</sup> Due to the interlinks between the two paragraphs not accepted by Cyprus, the ECSR case law and the presentation of the Cypriot situation are not presented separately.

disposal, sanitation facilities, electricity, etc and if specific dangers such as the presence of lead or asbestos are under control.

- over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
- security of tenure means protection from forced eviction and other threats (dealt with under paragraph 2 of Article 31).

The standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners. The situation in practice is also assessed.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing implies its legal protection. Adequate procedural safeguards are requested. Tenants or occupiers must be given access to affordable and impartial judicial remedies.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

**31§2**

Homeless are those individuals who legally do not have at their disposal a dwelling or other form of adequate shelter.

With regard to the reduction of homelessness, reactive and preventive measures must be taken.

States must gradually reduce homelessness, towards its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness. The temporary supply of shelter, however adequate, cannot be considered satisfactory. Individuals living in conditions of homelessness should be provided with adequate housing within a reasonable period.

States must also take action to prevent categories of vulnerable people from becoming homeless. To this purpose they must implement a housing policy for all disadvantaged groups of people to ensure access to social housing (access to social housing is primarily examined under Article 31§3).

States must set up procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

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Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties **effected** in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during **the winter period**, provide legal remedies and offer legal aid to those who are in need **of seeking** redress from the courts. **Procedural safeguards are of great importance**. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

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Equal treatment with respect to housing must be guaranteed, in particular, to **the** different groups of vulnerable persons, particularly low-income persons, **the** unemployed, single parent households, young persons, persons with disabilities including **those with** mental health problems.

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### 31§3

An adequate supply of affordable housing must be ensured.

Housing is affordable **if** the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis, **while** still being able to maintain a minimum standard of living, **according to the standards** defined by the society in which the household is located.

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In order to increase the supply of affordable housing,

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It is incumbent on states to:

- adopt appropriate measures for the construction of housing, in particular social housing;  
**ensure access to social housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.**
- introduce housing benefits for low-income and disadvantaged sections of the population. **Housing allowance is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.**

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Equal treatment with respect to housing (**Article E**) must be guaranteed, in particular, to **the** different groups of vulnerable persons, particularly low-income persons, **the** unemployed, single parent households, young persons, persons with disabilities including **those with** mental health problems.

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### Situation in Cyprus<sup>10</sup>

1. The percentage of households in Cyprus that own their home is 70% approximately. The rest of the population (30% appr.) satisfies its housing needs by renting a house or an apartment.

<sup>10</sup> This information was provided during the meeting.

2. Housing facilities are of good standards and houses are safe from a sanitary and health point of view. All households have water supply, a kitchen, a bath, a toilet, hot water supply (99%).
3. Protection from forced eviction is provided by the Law. The owner of the house and the tenant have the right to apply to the Court to prevent their interests. In the Court are provided impartial procedures.
4. Fortunately, homelessness is not a social problem in Cyprus. No person or family leave without a permanent roof over their head.

This is a result of a strong and effective social and housing policy.

According to the Public Assistance and Services Law, every person who cannot meet his basic or special needs (in which housing is included) is eligible for public assistance and, if he has not his own house, he is eligible and for a rent allowance.

5. The housing schemes are mainly divided into two categories:
  - (a) Public housing programs that were introduced by the Government for refugees.
  - (b) Non refugees housing programs such as schemes for low income families, persons living in disadvantage areas, large families, persons with disabilities.
6. There are four housing programs for refugees and displaced families:
  - (a) Low – Cost Housing Programme. The Government provides, mainly in urban areas, to the displaced families flats and houses in housing estates which are built and belong to the Government, suitable for their temporary accommodation until their return home.
  - (b) Self–Help Housing Programme on Government Land. The Government provides, in urban or rural areas, building plots, as well as a grant-in-aid to displaced families, in which they add from their money for the construction of their own house, in accordance with the architectural plans provided by the Government.
  - (c) Self-Help Housing Scheme on Private Land. The Government provides grants for the purchase of building materials only.
  - (d) Purchase of a House or an Apartment Scheme. Government, mainly in urban areas, provides grants-in-aid and loans to displaced families who wish to buy a house or an apartment from the private sector.
7. The non refugee housing programs enable the beneficiary to have a housing unit or to extend his existing house or to repair it.

The non refugee housing programs are the following:

- (a) Rebuilding and Rehabilitation Programme in the historic centre of towns. The Government provides incentives for the renovation and rehabilitation of traditional buildings which are usually in an unsatisfactory condition. The Programme also provides for the building of new houses in empty plots.

- (b) Division of Building Plots for Low – Income Families in Communities. Land in communities is divided into building plots, which are then sold at very low prices to very low-income families.
  - (c) Scheme for Large Families. Low interest rate and long repayment period loans are offered to large families for the purchase, construction, extension or repair of housing units.
  - (d) Scheme for Rural Areas. Low interest rate and long repayment period loans are offered to low-income families who intend to settle permanently in specific villages.
  - (e) Scheme for Communities along the Buffer Zone Areas. Low interest rate and long repayment period loans and grants are offered to households for settling in specific communities along the buffer zone, irrespective of their financial status. (The buffer zone is an operational concept used since 1974 to describe the area between the ceasefire line of the Turkish military forces and the forward defence line of the national guard).
  - (f) Housing Scheme for Low-Income Households. Generous grants and low interest, long repayment period loans are offered to low-income families for the purchase of flats built by the Cyprus Development Land Corporation.
  - (g) Lefkosia (Nicosia) Greenline Programme. Low interest rate and long repayment period loans, as well as supplementary grants, are awarded to couples willing to reside in areas in the vicinity of the buffer zone in Nicosia. (Green line is the line dividing the capital of Cyprus in the northern occupied part and the southern part controlled by the Government of Cyprus).
  - (h) Housing Plan for Communities with a Population of less than 200 Inhabitants. Low interest rate and long repayment period loans, as well as supplementary grants, are offered to people, irrespective of income, in order to reside permanently in communities with a population of less than 200 inhabitants.
  - (i) Housing Scheme for the Repair of Houses for Public Assistance Recipients. A grant is provided to public assistance recipients for the repair or extension of their house.
  - (j) Rental Subsidisation Scheme. Rent subsidies are provided to displaced people, based on income level.
8. The State, in its effort to supplement the above Schemes, established two semi-governmental Organizations:
- (a) The Housing Finance Corporation, which provides loans to persons with low or middle-income, to buy or construct their own house,
  - (b) The Cyprus Land Development Corporation which assists the households with low or middle income to buy their own building plot or a housing unit and pay with a long-term low interest loan.
9. A Housing Policy Agency was established in 2001 with a mandate to coordinate and improve the criteria of existing schemes. The Housing Policy Agency has appointed an Ad Hoc Committee for criteria, which examined all government non refugee housing programs, in an attempt to achieve uniformity and improvement of criteria and provisions of housing schemes. The study for the provision of incentives for the

enhancement of the housing sector in areas which are less populated, as well as the support to special target groups based on their particular needs, has been completed. The proposals are to be forwarded to the Council of Ministers for decision.

**Conclusion**

In the light of the case law, of the current situation in law and practice and of the clarification made during the meeting, Articles 31§1 and 31§2 can be accepted immediately. The acceptance of Article 31§3 is possible.

with respect to access to social housing.