



Strasbourg, 8 October 2010

GVT/COM/III(2010)003

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

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

(received on 8 October 2010)

COMMENTS OF THE GOVERNMENT OF THE REPUBLIC OF CYPRUS
ON THE THIRD OPINION ON CYPRUS
BY THE ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES.

Document ACFC/OP/III(2010)002, adopted on 19 March 2010

The following general remarks (as Part I of the present document) focus on certain points in the Third Opinion on Cyprus which are considered as problematic. Comments in Parts II and III further below provide updates on some of the recommendations made that are of immediate interest and reflect the positive evolution of Government policies, though a full proper update and any further responses to the Advisory Committee's recommendations are reserved for a future (Fourth) national Report by Cyprus. The present Comments should be (published and) read in tandem with the Opinion, given the fact that there is no possibility for correcting it prior to being made public, but also, most importantly, with a view to avoiding repeating similar *lacunae* in future Opinions.

I –GENERAL REMARKS:

1. The Government of the Republic of Cyprus regrets to note that despite the impressive breadth and depth of coverage of the Third Opinion, some of its views and key concerns communicated to the Secretariat on time were not adequately taken into consideration.
2. The text under reference contains inaccuracies as to the terminology used, in addition to probably inadvertent omission, obscuration and obfuscation of significant facts. These may well lead to reduced awareness and to misinterpretation regarding both the actual situation on the ground and the responsibilities of Cyprus under the Framework Convention.

Examples of the aforementioned would include the following lacunae:

- a) The cumulative use of terms such as “*territory not under government control*”, (paragraphs §§9, 15, 36 note 2, 68, 82 note 14, 85, 98, 100, 108, 170, 172, 179), “*two territories*”, (§68), “*in the course of the conflict*”, (§108), “*settlement of the conflict*”, (§§9, 12, 35), “*once the conflict is settled*”, paragraph 12, “*villages... are... inaccessible*”, paragraph (§§68, 171), may allude to but in no way describes in a clear factual manner the reality of the situation in Cyprus, which is the continued division by force of arms resulting from illegal invasion and military occupation of almost 37% of the island's territory since 1974, in violation of the founding Treaties international law and the UN Charter.

The Republic of Cyprus had already indicated the need for precision and consistency in its Comments on the preceding two Opinions of the Advisory Committee, (2001 and 2007), and indicated the use of the appropriate terms “**occupied areas**” or “**areas not under the effective control of the Government**”, to designate the territory illegally occupied by Turkey. (Cf: **doc GVT/COM/II(2007)005 dated 9 July 2008, especially §§ 5 and 6**)

Furthermore, although the Third Opinion examines measures solely taken by the Republic of Cyprus, in many instances there seems to be no distinction between the obligations and responsibilities of the Republic of Cyprus and the responsibilities of the occupying power regarding religious groups and the exercise of their rights.

Indeed, the persistent violations of the right of free movement, the right of property and the usurpation and continued illegal exploitation of properties in the occupied areas seem to be attributable to Cyprus, the country occupied, rather than to Turkey, the occupying power actually responsible.

Instances of this problematic approach include the issue of properties (§80 : mentioned as hindering smooth relations between the two communities), the issue of difficulties religious groups encounter when they exercise their right of free movement between areas under the effective control of the Government and the occupied areas (§§ 62, 68, 171,189), the suggestion to facilitate movement between areas under government control and occupied areas (§ 172), the fact that the Maronites right to inherit properties is not recognised in practice in the occupied areas (§ 68).

- b) The unfortunate combination of *in abstracto* references to *political and other developments*, and especially to the non-solution of the Cyprus conflict (§§ 80, 185) as being a significant impediment to changing some provisions relating to the rights of minorities and (by implication) having a (negative) impact on the Government's policy related to minority protection. This is far from being the case as, despite being impeded, the Government continues consistently with policy making in conformity with its international obligations .
- c) The inclusion of references to Turkish Cypriot citizens of the Republic without express clarification that they are **not** members of a national minority within the meaning of the Framework Convention.

3. As indicated in Pamphlet No. 8 of the UN Guide for the Council of Europe's Framework Convention for the Protection of National Minorities, minority situations differ greatly from country to country and, consequently, require different approaches. According to the said UN Guide, the CoE Convention is described as a "Framework" convention due to its "programmatic" provisions, which establish principles and objectives, guiding States in protecting their national minorities.

4. As indicated in the Third Report by Cyprus, Turkish Cypriots are not a national minority within the context of the Framework Convention. As citizens of the Republic of Cyprus, they enjoy fully and equally all the rights and protections afforded under the Constitution and the laws of the Republic of Cyprus and Human Rights instruments binding on Cyprus.

5. The Framework Convention is not and cannot be relevant or applicable to citizens of Cyprus not belonging to a nationally recognised minority. Any information or assistance or facilitation provided to the members of the Advisory Committee outside the scope of the Convention is for the sake of completeness of information as to the varied positive measures the Government has adopted over the years and continues to pursue so as to ensure that its Turkish Cypriots citizens, whether resident in territory within its effective control or in the occupied areas, are assisted as and when necessary in the fullest realisation and enjoyment of their rights.

6. It is indeed important to note that while the Third Opinion focuses on the areas under the effective control of the Government, it inadvertently obscures the fact that beyond the full and equal enjoyment of their rights, Turkish Cypriot citizens enjoy specifically designed or privileged access to all Government services, irrespective of their area of residence.

This can involve priority access e.g. to public medical services (including treatment abroad) or to services dealing with welfare or regarding their civic status. This approach applies also in terms of cultural outreach and provision of information by state

broadcasting media, i.e. via regular radio and TV programmes, such as the daily news bulletins in Turkish, the five-times-a-week hour-long programme *BIZ-EMEIS* (us), the weekly hour-long programme “*Under the same sky*” and the many other bicomunal or targeted radio, TV and all Cypriot cultural events which promote rapprochement and the shared vision for a peaceful future for all Cypriots. The prevailing positive situation is not adequately reflected in the Opinion.

II. COMMENTS ON RECOMMENDATIONS UNDER THE RUBRIQUE “ISSUES FOR IMMEDIATE ACTION”

Take adequate measures to ensure, during the population census in 2011 and other forthcoming processes, effective implementation of the principle of self identification, especially in respect of the Armenians, the Latins and the Maronites, as well as the Roma:

7. According to the Statistical Service of Cyprus - (CYSTAT), self identification aspects have been incorporated in the statistical tools that will be used for the census in 2011.

Information regarding religion, citizenship and languages will be collected through a computerised questionnaire. The questions will be posed to all residents of the Republic irrespective of their nationality and will be neither leading questions, nor limited to specific groups of respondents.

Take urgent action to combat and sanction effectively all forms of discrimination and intolerance including misconduct by members of the police force:

8. The reference (§93 of the Opinion) that the criminal law provisions in force only include protection against incitement to discrimination, hatred or ethnic and racial violence is inaccurate. In addition to these acts, the following are also criminal offences under the Elimination of All Forms of Racial Discrimination (Approval) Law (11(III)/92 and 28(III)/99), the Criminal Code (Cap.154), the Equal Treatment in Occupation and Work Law (58(I)/2004), and the Equal Treatment (Racial and Ethnic Origin) Law(59(I)2004):

- a) Establishment or participation in organisations promoting organised propaganda or activities aiming at racial discrimination;
- b) Public expression of ideas (orally or through the press, document, pictures or by any other means) insulting to persons or groups by reason of their racial or ethnic origin, or their religion;
- c) Refusal to supply goods or services by reason of a person’s racial or ethnic origin, or their religion, or subjecting their supply to conditions relating to racial or ethnic origin, or religion¹;
- d) Commission of acts in public with intent to promote enmity between the Communities or the Religious Groups, on account of race, religion, colour or gender;

¹ Conduct referred to in paragraphs a, b, and c is criminalised under the Elimination of All Forms of Racial Discrimination (Approval) Laws (11(III)/92 and 28(III)/99). Conduct under paragraph a carries imprisonment for up to 2 years or a fine up to €1708 or both. Conduct under paragraph b carries imprisonment for up to 1 year or a fine up to €854 or both. Conduct under paragraph c carries imprisonment for up to 1 year or a fine up to €683 or both.

- e) Causing the inhabitants by any manner to engage in any acts of violence against each other or mutual discord, or cultivating a spirit of intolerance²;
- f) Any direct or indirect discrimination in the employment sector, (such as access to work) on account of inter alia race, ethnic origin, religion, or convictions³;
- g) Any direct or indirect discrimination in education, social protection, medical treatment and access to goods and services on account of race and ethnic origin⁴;

9. A bill for implementing the (European Union) Council Framework Decision (2008/913/ JHA) of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law, provides expressly that in imposing sentences the courts may take into account racist and xenophobic motives (§96).

10. Once the Police Complaints Authority has completed an investigation file (containing all witness statements and other evidential material), it is transmitted to the Attorney-General for evaluation of the evidence collected and decision on the institution of criminal proceedings. If he decides on the institution of criminal proceedings the case will be taken to court on the basis of the evidence collected by the Authority. If the Attorney - General considers that further evidence must be collected before a decision can be taken, the file is referred back to the Authority for further investigation and upon its completion it is again transmitted to the Attorney - General for his evaluation and decision on institution of criminal proceedings (§ 94).

In cases where, upon the completion of an investigation the Police Complaints Authority considers that a disciplinary offence has been committed, there is express provision in the relevant Law⁵ obliging the Police to proceed directly with disciplinary proceedings against the police members concerned without any other further investigation of the matter. The disciplinary case proceeds on the basis of the evidence collected during the investigation by the Authority.

The Authority may decide to refer to the Attorney- General or the Chief of the Police, as the case may be, only complaints concerning acts by members of the Police which do not fall within its competences⁶ (i.e. because they do not concern human rights violations). Complaints respecting acts over which the authority does not have competence must be referred for further action by the Attorney - General, where they may constitute criminal offences, or to the Chief of Police, where they may constitute disciplinary offences, or to both, where they may constitute both criminal and disciplinary offences.

² Conduct referred to in paragraphs d and e is criminalised under the Criminal Code (Cap.154). Conduct under paragraph d carries imprisonment for up to 5 years. Conduct under paragraph e carries imprisonment for up to 1 year or a fine up to €1.708 or both, and if committed by a body corporate a fine up to €5125.

³ This is criminalised by the Equal Treatment in Occupation and Work Law (58(I)/2004) and carries imprisonment for up to 6 months or a fine of up to €6.834 or both. If the offence is committed by gross negligence the relevant fine is up to €3.417. The same penalties are applicable if the offence is committed by a legal person and in case its chairman, director, secretary or other similar officer has consented, collaborated in or acquiescence to the offence, he is also liable to the same penalties, but in such a case the legal person is only liable to a fine of up to €1.960 or up to €6.834 if the offence by the officer was committed by gross negligence.

⁴ This is criminalised by the Equal Treatment (Racial and Ethnic Origin) Law (59(I)2004) and carries the same penalties as in footnote 3 above.

⁵ Section 17(1) of Law 9(I)/2006

⁶ Section 16(1)(a) of the Law

11. By orders of the Chief of Police (Circular No CID/432/1(IV), dated 05/01/2001), under the title “Handling of Cases Involving Racism”, all offences and/or incidents with a racial motive shall be investigated by a Police Sergeant or higher ranking Officer and the investigation shall be monitored and coordinated by the local divisional Assistant Police Commander in charge of Operations. (§95)

Take additional measures to provide a more adequate response to the educational needs of the Armenians, the Latins and the Maronites, in particular as regards the availability of teaching materials and qualified teachers; provide the support needed to enable adequate minority language teaching for the Armenians and the Maronites.

12. In-service training for the teachers for Armenian Language, especially designed and implemented for the educators working at the NAREG Schools, will be arranged by the Paedagogical Institute, in the academic year 2010-11.

An open call for proposals will be launched in order to ensure involvement of the best qualified academic staff / practitioners (including Armenians of the Diaspora) in the materialisation of the in-service training programme. The Government will cover all financial costs.

13. As regards the educational needs of the Maronite Community, the informal teaching of Cypriot Maronite Arabic –CMA- (since the Action Plan for the codification and the revitalisation of the language is at early stages), is currently under examination by the Division of Primary Education of the Ministry of Education and Culture (MOEC) which is formulating the new policy in collaboration with representatives of the Maronite Community.

Regarding the training of teachers as well as the production of teaching materials, specific suggestions are included in the proposed Action Plan. The Government supports the relevant efforts of the Maronite Community and encourages it to take initiatives towards the realisation of this project and to also submit any proposals it deems useful.

Unofficial instruction material is currently used for the instruction of CMA during the voluntary schedule of the St. Maronas School. The material was designed and developed by Maronite teachers that have little or no experience in developing curricula and syllabuses.

However, in order for the MOEC to adopt it, it has to be officially assessed by an independent expert. The MOEC has asked the Representatives of the Community to designate an expert academic in order to conduct the assessment and awaits their response.

III. COMMENTS ON RECOMMENDATIONS UNDER THE RUBRIQUE “FURTHER RECOMMENDATIONS”

Re-examine, in the light of the principle of free self-identification and in view of any subsequent revision of the Constitution, the obligation of the Armenians, the Latins and the Maronites to affiliate themselves with either the Greek Cypriot Community or the Turkish Cypriot Community, as well as their statutory obligation to vote to elect their representative in Parliament;

14. The issue of affiliation cannot be a priority at present, but it could be examined in any future revision of the Constitution.

As regards the statutory obligation to vote, there have been no related prosecutions since 2001.

NB- The assertion in Paragraph 34 of the Opinion that the Ministry of Interior will be submitting a proposal for amendment to the Council of Ministers relaxing this legal requirement, is inaccurate.

While stepping up measures to protect and support the Roma under the Framework Convention, identify ways to establish a structured dialogue with them and to obtain up- to date information regarding their ethnic, linguistic and religious affiliations:

15. Comment: The issues regarding the Cyprus Roma are part of the overall policy planning of the Government. More up to date information concerning their affiliations is expected to be available upon completion of the 2011 census.