



# **Benchmark Report on the Organizational Scheme of Institutions Governing Legal and Judicial Sector in the Republic of Cyprus**



Embassy of the Turkish Republic  
in Nicosia

**tepav**

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The Turkish Republic of Northern Cyprus  
Prime Ministry

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## Introduction

1. The current report has been commissioned by TEPAV as part of a study on benchmarking Northern Cyprus from the perspective of all the small countries in the world. It is conducted within the framework of the '**Functional-Institutional Review in Northern Cyprus**' and is intended to evaluate the organizational scheme of institutions governing the legal and judicial sector in the Republic of Cyprus (henceforth referred as the RoC). The Terms of Reference for the report is attached as **Appendix A**.
2. The primary objective of the evaluation will be the provision of basic information about public institutions responsible for legal and judicial sector in the RoC so as to enable a comparative analysis of their historical development and current state with respect to the situation in Northern Cyprus.
3. In order to facilitate better comparisons with Northern Cyprus, the following basic information is provided about the RoC:

### **People**

- The population of the RoC, as currently constituted, is 838, 897

### **Budget**

- 7,454,200,000 Euros

### **Per Capita GDP**

- 21,747 Euros

### **Average Gross Annual Salary**

- 24, 768 Euros<sup>1</sup>

### **Government**

- Type: Republic
- Independence: 16<sup>th</sup> August 1960
- Constitution: 16<sup>th</sup> August 1960
- Branches: Executive (President elected for 5 years), Legislature (Unicameral House of Representatives of elected for 5 years), Judiciary with a Supreme Court, six District Courts and a number of other functional courts.
- Administrative Divisions: 6 Districts of Nicosia, Larnaca, Limassol, Paphos, Kyrenia and Famagusta.

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<sup>1</sup> Statistical Service of the RoC

## **CHAPTER I: Institutional and Legal Setting of the Legal and Judicial Sector of the Republic of Cyprus**

4. The Terms of Reference for the report stipulates that a discussion of the institutional and legal setting of the legal and judicial sector should focus on the following areas:
  - The nature of the legal system;
  - The nature of executive-judiciary relations;
  - The role and responsibilities of the Attorney-General;
  - The role and responsibilities of the Ministry of Justice and Public Order;
  - The court structure.

### **The Nature of the Legal System**

5. The RoC is a common law jurisdiction and has to a large extent adopted the English system of law. English cases are often cited in the courts as guidelines and are, under certain circumstances, binding.<sup>2</sup> However, in two significant respects, the RoC legal system differs from the common law tradition. One of these differences is the system of administrative law and the other is the role of the Supreme Court. Both of these topics will be explored in more depth in the following pages.
6. The sources of law which the courts use when exercising civil or criminal jurisdiction can be summarized as follows:<sup>3</sup>
  - European Union Law;
  - The Constitution;
  - Legislation of the House of Representatives of the RoC;
  - Common law and equity when there is no domestic law in force;
  - Laws and principles of Vakf, as per Article 110 (2) of the Constitution;
  - The Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland which were applicable to Cyprus before independence subject to compatibility with the new Constitution, as per Article 188 of the Constitution;
  - With regard to matrimonial cases of persons belonging to the Greek Orthodox Church or another religious group, the law of that Church or religious group;
  - Judicial precedents of the Supreme Court which, under the common law doctrine of *stare decisis*, are binding on subordinate courts;

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<sup>2</sup> Hadjitheodosiou v Koulia and Another (1970) 1 CLR 310

<sup>3</sup> Introduction to Cyprus Law by Andreas Neocleous, 2010 Edition, page 54 & 138.

- International treaties, conventions and agreements which have been approved and ratified by law and published in the Official Gazette of the Republic such as the European Convention of Human Rights.
7. The law that was applicable at the time of independence was primarily English common law. The newly forged Constitution of the RoC retained the laws that were applicable at the time of independence but also provided that any applicable laws had to be consistent with the provisions of the new Constitution. One of the consequences of this requirement of 'constitutionality' was a significant programme of legal adjustment and amendment in the years that followed the establishment of the Republic.
  8. Furthermore, the Constitution also introduced a wholly different legal order to the one that prevailed during the colonial administration. Quite unlike the English constitutional arrangements where the United Kingdom Parliament is always 'supreme' and can change any law or over-rule any court decision it does not like, any existing laws or new law enacted by the House of Representatives of the new Republic had to be compliant with the Constitution.
  9. The supremacy of the Constitution referred to above also provided extensive mechanisms for the testing of the constitutionality of any law as well as decisions, acts or omissions of the executive or administrative authorities. Prior to the adoption of the Constitution of the Republic, the only legal mechanism which was available for challenging administrative acts or omissions, was by way of judicial review and the issuing of prerogative writs such as certiorari, mandamus, prohibition and quo warranto. Although the new Constitution retained the judicial review mechanism and the remedies referred to above, it also introduced, through Article 146, a mechanism for testing the constitutionality of any laws.
  10. The Constitution also secured, through Articles 6-35, respect for basic human rights and is analogous to the rights guaranteed by the European Convention of Human Rights. Most of the decisions of the Supreme Court under Article 146 on the constitutionality of any law or act or omission of the Administration touch on questions of human rights. A detailed report by the United States Department of State, Bureau of Democracy, Human Rights and Labor, regarding the state of human rights in the RoC, is attached as **Appendix B.**
  11. However, despite all the new changes that were ushered in by the founding of the Republic, the common law and equity remains the basic foundation of the legal system. Hence, precedents from the English legal system as well as methods of legal interpretation still play a major role in the decision making process of the courts.

12. The other major influence on the evolution of the legal system of the RoC has been the accession to the European Union on 1<sup>st</sup> May 2004. A copy of the Treaty of Accession is attached marked as **Appendix C**. As a result of the accession, European law has supremacy over domestic legislation. The European Court of Justice (ECJ) has interpreted the practical effect of the European Community Treaty in its landmark decision in *Costa v ENEL*<sup>4</sup> as amounting to the establishment of a doctrine of supremacy for EU law, giving it superior legitimacy over the national laws of Member States. Hence, the Treaty of Accession Law provides that the rights and obligations imposed by the Treaty have direct validity in Cyprus and are superior to any domestic legislative or regulative provisions.
13. One source of EU law is primary legislation that is contained in the treaties establishing the Union and is directly enforceable in the national courts. Another source of EU law are the directives of the Union that are binding on Republic as to the result to be achieved but give the RoC authorities the choice as to the form and method of implementation.
14. Finally, no discussion of the institutional and legal setting of the judicial sector and sources of law in the Republic of Cyprus can be complete without reference to a legal innovation, for want of a better word, which has been a hallmark of the Republic's legal order since the 1964. The RoC, which was established as a partnership state between the two primary communities of the island, was tragically torn apart following the inter-communal hostilities that broke out on 21<sup>st</sup> December 1963. The exclusion of the Turkish Cypriots from the organs of the Republic and in particular the judiciary was followed by the development of the so-called doctrine of the 'law of necessity' by the Greek-Cypriot judiciary. Although a possible rational justification could feasibly be advanced for the doctrine in relation to the need for the political machinery of the state to continue functioning in the absence of the Turkish Cypriot Vice-President and members of the House of Representatives, no such rationalization is likely to withstand any serious legal scrutiny in relation to the legal rights of Turkish Cypriots enshrined in the Republic's Constitution, the European Convention of Human Rights and various EU laws. Yet, despite the fact that the 'law of necessity', as a legal device, is meant to be strictly temporary, a last resort and a 'defensive mechanism in order to prevent the state from petering out'<sup>5</sup>, it is consistently interpreted by the judiciary of the RoC in order to deny access to fundamental human and constitutional rights to Turkish Cypriots. A series of pilot cases initiated by Turkish Cypriots at the European Court of Human Rights was expected to begin to introduce a degree of restraint to what appears to be a very wide interpretation of the doctrine, if such a doctrine so widely interpreted indeed exists. However, a decision of the ECHR on 6 March

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<sup>4</sup> Case 6/64 *Costa v ENEL* (1964) ECR 585

<sup>5</sup> Constitutionalism, Human Rights and the Separation of Powers, *The Cyprus Precedent* by Georgios M. Pikis, 2006 pages 27-41.

2012 dashed such expectations.<sup>6</sup> Nevertheless, the decision of the court was based not on the substance or the merits of the cases but premised on the fact that the applicants had not exhausted domestic remedies of the RoC. The legal issues raised by the cases, particularly in relation to loss of use and control of properties of Turkish Cypriots, lack of any adequate or actual compensation mechanism and the wanton use of the doctrine of necessity will inevitable come back to haunt the ECHR once such cases exhaust the domestic remedies of the RoC.

15. It is important to note at this stage of the report that the whole issue of the absence of the Turkish Cypriot community form organs of the RoC creates a very wide range of legal and democratic deficit problems which are on the whole beyond the remit of this report and hence are not discussed except where absolutely necessary.

### **Nature of Executive-Judiciary Relations**

16. The Constitution of the Republic of Cyprus is founded on the principle of separation of powers, namely the Legislature, the Executive and the Judiciary. Article 46 provides that executive power is 'ensured by the President and the Vice-President through the Council of Ministers.' Article 61 of the Constitution assigns all legislative power to the House of Representatives (except those specifically reserved for the Greek Communal Chamber and the Turkish Communal Chamber). Article 54 reserves executive power to the Council of Ministers and Articles 136 and 152 entrusts judicial power to the Supreme Constitutional Court and the subordinate courts.
17. The Executive is charged with the execution of laws enacted by the Legislature-the House of Representatives- as well as the control of the machinery of government. Moreover, foreign affairs, security and defense are explicitly within its domain as per Article 54 of the Constitution.
18. A Minister is a member of the Executive, exercising executive power in relation to the Ministry that he heads. The authority of the Minister extends to all subjects relating to the execution of laws relevant to his Ministry and the administrative process associated with it. However, his authority does not extend to the staffing of the Ministry or the discipline of the staff, which is matter for the civil service and the Public Service Commission.
19. The latter distinction is the result of yet another characteristic of the constitutional arrangements that provide for yet another separation between political and administrative authorities. Hence, in *Charilaos Frangoulides (No.2) v the Republic*<sup>7</sup>, the participation of the Minister in the preparation of a confidential report about the performance of a civil

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<sup>6</sup> *Niazi Kazali and Hakan Kazali v Cyprus*, application no.49247/08

<sup>7</sup> *Frangoulides v Republic* (1982) 1 C.L.R. 462

servant, which was then used by the Public Service Commission not to promote him, was held to be unconstitutional. The court stressed that the whole purpose of assigning responsibility for the appointment and discipline of civil servants to an independent body such as the Public Services Commission was the underlining of the separation between political office and public service. Such separation is intended to ensure the neutrality of public service and prevent any doubt relating to any political bias in public decision-making.

20. The Constitution provides for a separate and independent judiciary that is vested with very wide powers. In effect, the judiciary is responsible for interpretation of laws and resolution of disputes between members of the public, between members of public and public authorities or between public authorities.
21. The judiciary's exclusive responsibility for the interpretation of laws is jealously guarded. Hence, in *Diagoras Development Ltd v National Bank of Greece*<sup>8</sup>, the court held: "there exists constitutionally entrenched Separation of Powers between the Legislative Power and the Judicial Power in our Republic...every aspect of judicial power vests in the court. No authority other than the Judiciary can legitimately assume the exercise of any facet of judicial power. State powers are distributed between the three branches of State...Within its sphere each power is sovereign and autonomous."
22. Moreover, the Constitution of the RoC, through Article 146, introduced judicial review of executive or administrative action as a distinctive new judicial process, empowering the Supreme Constitutional Court with jurisdiction to review any executive or administrative action or omission. The effect of Article 146 has been the establishment of a public law right for any individual or body whose legitimate interest may have been prejudiced by an act or omission of the Administration. The purpose of such constitutional provision is the promotion of sound administration and the protection of constitutional rights. However, Article 146 empowers the court only as far as ascertaining the legality of the executive or administrative action. Hence, the court may annul an administrative act if it is persuaded that it was not a reasonable decision for the Administration to take. However, the court is not empowered to substitute its own decision to that of the Administration as the doctrine of separation of powers prevents such an eventuality.

### **Roles and Responsibilities of the Attorney General**

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<sup>8</sup> *Diagoras Developments Ltd. V National Bank of Greece S.A.* (1985) 1 C.L.R. 581

23. The Constitution introduced a number of independent offices of the state, one of which is the Law Office of the Republic. The Attorney General is appointed by the President and must be a qualified lawyer of high professional and moral standing and must qualify for appointment as a judge of the Supreme Court. However, his appointment is for life and he can only be removed from office in exceptional circumstances outlined in the Constitution. The security of tenure of the Attorney General is deemed to be conducive to his independence, excluding the possibility of interference from the Executive.
24. The primary role of the Attorney General is that of legal adviser of the Republic, in particular the President and the Ministers.
25. The Attorney General also advises the President about commutation or suspension of sentences of imprisonment.
26. The Attorney General is also Honorary President Cyprus Bar Council and Chairman of the Legal Board, the Advocates Disciplinary Board and the Advocates Pension Fund.
27. A further pre-eminent role of the Attorney General is the responsibility for the prosecution of crime. Power vests in the Attorney General, exercisable at his discretion, to initiate, conduct, take over and continue or discontinue criminal proceedings. Such power is exercised either by him directly or by subordinate officers of the Office.
28. Hence, the Office of the Attorney General has exclusive jurisdiction in prosecuting for offences triable at the Assize Court which are in essence offences that are punishable by a minimum of five years imprisonment. Section 107 of the Criminal Procedure Law mandates that only the Attorney-General can file charges before the Assize Court. However, in relation to offences which are triable summarily, case law has recognized that a person who has been the victim of a criminal offence can also institute private criminal proceedings against the alleged wrongdoer. However, even in such situations, the prosecution can often not proceed without the consent of the Attorney General. Moreover, the Attorney General also has discretion to intervene at any stage of the proceedings in order to take over or discontinue the proceedings.
29. It is also important to note that the acts or omission of the Attorney General in relation to prosecutions are not subject to judicial review under Article 146.
30. The staffing structure of the Law Office of the Republic is as follows:

- Attorney General: 1
- Personal Assistant to the Attorney General: 3
- Deputy Attorney General: 1
- Personal Assistant to the Deputy Attorney General: 2
- Attorneys of the Republic: 6
- Senior Lawyers of the Republic: 14
- Lawyers of the Republic, "A": 19
- Lawyers of the Republic, "B": 31
- Temporary Lawyers: 10
- Consultant: 1
- Brussels based Lawyers: 3
- Secretary to the Disciplinary Board: 2
- Secretary to the Legal Board: 1
- Library: 1
- Data Base Assistants: 3

31. The organizational structure of the Law Office of the Republic is believed to be a traditional hierarchy. However, it has not been possible to obtain an organizational chart which demonstrates the structure.

32. A significant development deserving special mention is a recent tendency for the Attorney General's Office to intervene in civil law suits initiated by Turkish Cypriots in the courts of the RoC, particularly in relation to the property right. For example, in *Mustafa Arif v the Minister of Interior*<sup>9</sup>, the Attorney General attempted to block the applicant's request to court for the return of his property. The applicant's property was eventually returned to him after several years of litigation when the Attorney General withdrew his appeal when it was becoming increasingly clear there that were no legitimate legal grounds for his objections. In a similar vein, in the *Hatice ve Siddika Hanimlar Vakfi* case<sup>10</sup>, the applicant was denied access to court on the grounds that she had not secured the consent of the Attorney General in order to commence legal proceedings. It is submitted that such interventions of the Attorney General in civil law disputes is without legal foundation and is beyond the scope of his powers as defined by Article 113 of the Constitution which provides as follows:

" The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for any offence against any person in the Republic."

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<sup>9</sup> *Arif Mustafa v the Minister of Interior*, Case No. 125/2004, Supreme Court

<sup>10</sup> *Evkaf and Vakf Law*, Cap 337 and the *Vakf of Hatice and Siddika Hanimlar*, (Application 1/2006)

Its is submitted that a citizen of the Republic, trying to enforce a civil law right, in essence the right to property, cannot in any sense be deemed to be committing an offence. Therefore, it is impossible to identify any legal grounds on which the intervention of the Attorney-General could have been justified since any powers he has under Article 113 did not apply in such cases.

33. In a report<sup>11</sup> on the efficiency of justice, RoC was one of the few polled states which had returned no figures for the number of sanctions which had been pronounced against the prosecutors office.

### **Roles and Responsibilities of the Ministry of Justice and Public Order**

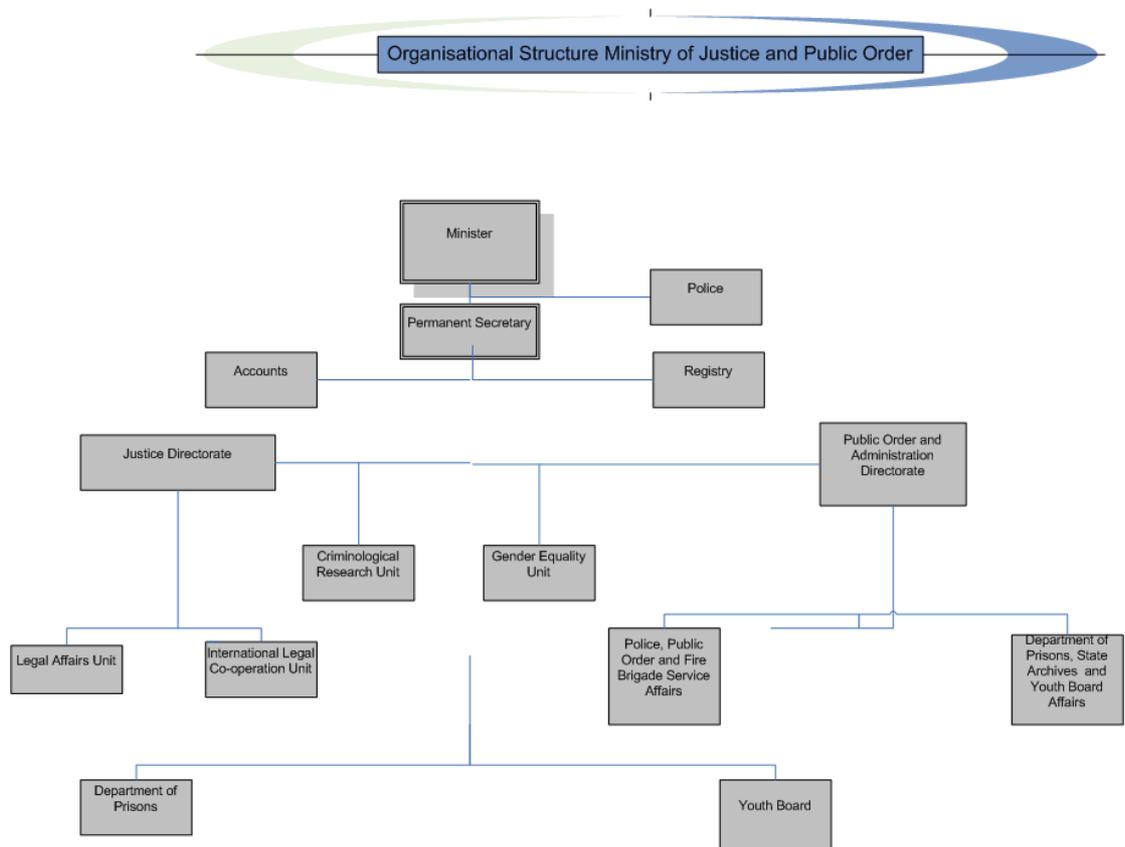
34. The Ministry of Justice and Public Order is one of the Ministries of the Council of Ministers which exercises executive authority in the Republic. Its key responsibilities are:

- Public order;
- Police and fire service;
- Law reform;
- Monitoring of international legal conventions;
- Study and promotion (with the cooperation of the Supreme Court) of legislative and administrative measures for the smooth operation of the justice system and in particular the courts;
- Study and promotion of matters relating to human rights;
- Supervision of prisons and the implementation of penal policy, specially in relation to the treatment and rehabilitation of offenders;
- Study and implementation of policies to prevent and combat crime

35. The organizational structure of the Ministry is as follow:

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<sup>11</sup> European Judicial Systems, Edition 2010 (data 2008), Efficiency and Quality of Justice, European Commission for the Efficiency of Justice (CEPEJ), henceforth referred as CEPEJ 2010



36. In brief, it can be said that the Ministry, through its responsibility for the operation of the courts under the Registry, is responsible for the administration of the judicial process and the courts. Moreover, when the judicial proceedings are concluded and an accused is sentenced, the role of the prosecution services- the Office of the Attorney General- ends and the role of the Ministry of Justice and Public Order intensify. For example, the administration of prisons and all matters relating to prisons come within the province of the Ministry of Justice and Public Order.

37. The Ministry is also responsible for the close overview of the need for legal reform in public and private law, such as criminal law, administration of justice, family law, human rights and the treatment and rehabilitation of offenders. It also cooperates very closely with the Supreme Court in order to adopt administrative measures in order to promote smooth operation of the courts and develop policy and strategies in order to prevent crime and promote public safety.

38. Most significantly, the Minister of Justice and Public Order as the political head of the Police Force is hence responsible for the maintenance of law and order, preservation of peace and the prevention and detection of crime.

39. Finally, the Ministry is the link between the Judiciary and the Executive with responsibility for buildings, staff, technical support and the support staff of the courts.

### **The Police Service**

40. The national police service of the RoC is the only organization which is responsible for policing. It reports directly to the Ministry of Justice and Public Order. Its functions are divided into four principle areas: education, administration, operations and support services. Its main responsibilities are:

- Maintain public law and order;
- Preserve the peace;
- Prevent and detect crime;
- Apprehend offenders.

41. In particular, the Police Service exercises its authority throughout the RoC pursuant to the following laws and Regulations:

- Constitution of the Republic;
- Police Law 73 (1) 2004;
- Police Regulations;
- Police Standing Orders;
- Criminal Code, Cap154;
- Criminal Procedure Law, Cap 155;
- Evidence Law, Cap 9;
- The Processing of Personal Data Law, Law 138 (1)/2001.

42. In terms of organizational structure, there are five Departments whose functions are as follows:

- Administration Department, with overall responsibility for the organization of the Police Service, including personnel issues;
- Traffic and Transport Department, with overall responsibility for all traffic issues including the investigation of traffic accidents, reporting of driving offences, etc.;
- Criminal Investigations Department, with responsibility for the investigation and detection of serious crimes;
- Research and Development Department, with responsibility for the research and development of procedures to enhance the efficiency of the Police Service, including I.T.

43. The key Police Services and their responsibilities are the following:

- Aliens and Immigration Unit with responsibility for the implementation of the Aliens and Immigration Law and Regulations;
- Drug Enforcement Unit with responsibility for preventing and combating drug use as well drug trafficking;
- Criminalistics Service with responsibility for scientific examination of exhibits and crime scenes;
- Audit and Inspection Service which inspects Police Departments, Units, Services, etc.;
- Central Information Services with responsibility for collating information regarding national security and public order. This service is directly answerable to the President and for administrative issues to the Chief of Police.

44. The four Police Units and their respective responsibilities are the following:

- Cyprus Police Academy which is considered a Higher Academic Institution and provides academic and professional training to all members of the Police Service;
- Mobile Immediate Action Unit with responsibility for rapid response to and management of high risk incidents, organized acts of violence, natural disasters and terrorist activities;
- Presidential Guard Unit with responsibility for the security of the President, his family, residence and the Presidential Palace;
- Port and Marine Police with responsibility for the patrol and surveillance of the coast and the territorial waters.

45. Additionally, there is now a European Union and International Police Cooperation Directorate which is responsible for handling all policing issues relating to the implementation of the *acquis communautaire* and promoting the development of international cooperation and police relations.

46. As at 2003, the total number of police staff was 4,811, including specialized posts and special constables. The rank structure and strength was as follows:

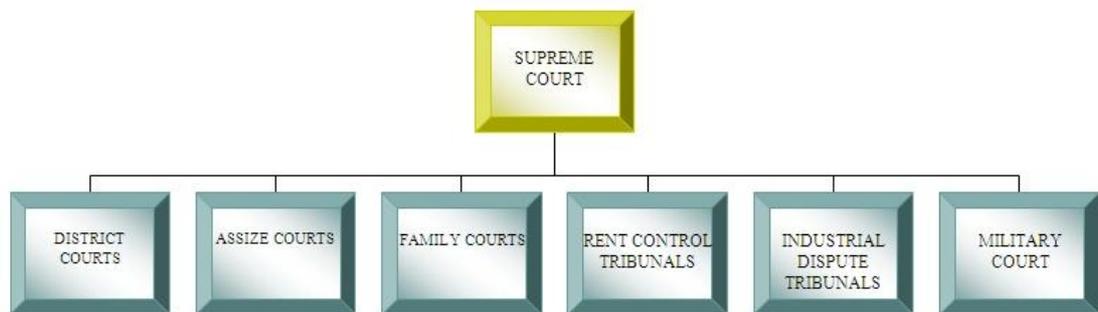
Chief of Police: 1  
 Deputy Chief of Police: 1  
 Assistant Chief of Police: 4  
 Chief Superintendent: 14  
 Superintendent (A & B): 29  
 Chief Inspector: 62  
 Inspector: 209  
 Sergeant: 621  
 Constable: 3100  
 Specialized Posts: 50

Special Constables: 720

47. As at 2006, the total number of police staff was 4,771 including specialized posts and special constables. The gender make-up of the force was 11.76% female and 88.24% male.
48. An organizational chart for the police service is attached, marked as **Appendix D.**

### **The Court Structure**

49. There are two tiers of courts in the RoC. The Supreme Court sits at the apex of the judicial system and there are a number of subordinate courts. A diagrammatical overview of the court structure is as follows:



50. The Supreme Constitutional Court was formed by virtue of Article 153 (1) of the Constitution. The court was significantly reformed following the inter-communal hostilities in 1963-1964 and the exclusion of Turkish Cypriot judges from the courts. The Administration of Justice (Miscellaneous Provisions) Law (Law 33 of 1964) was enacted which established a new Supreme Court, taking over the functions of the High Court and the Supreme Constitutional Court. The legal challenge from a Turkish Cypriot to this enactment on grounds of unconstitutionality saw the first direct reference to and use of the doctrine of law of necessity in Attorney General v Mustafa Ibrahim case<sup>12</sup>.
51. The re-constituted Supreme Court has a President and 12 other Judges who are appointed by the President of the RoC for life and hold office until the retirement age of 68. The Supreme Court sits as a number of different 'thematic' courts and has the following jurisdiction:
- Constitutional Court: It is empowered to rule on constitutionality of any proposed law and conflict of power and competences between the various organs of the State as well as determine any questions relating to the interpretation of the Constitution.

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<sup>12</sup> Attorney General v. Mustafa Ibrahim a.o. (1964) C.L.R. 195 (CA)

- Appellate Court: It is empowered to hear and determine all appeals from any of the subordinate courts exercising civil or criminal jurisdiction and can uphold, vary, set aside or order re-trial in case before it. It may also draw its own inferences from the facts ascertained at the trial Court and may, in certain exceptional cases, receive further evidence.
- Administrative Court: It functions as the only administrative Court in the territory of the RoC and has exclusive jurisdiction to adjudicate on any recourse made to it relating to acts or omissions of any organ, authority or person exercising executive or administrative authority. It is further empowered to issue prerogative orders such as habeas corpus, mandamus, prohibition, quo warranto and certiorari.
- Court of Admiralty: It is empowered to hear and determine any admiralty cases with a single judge, with a right of appeal to the full bench.
- Electoral Court: It also functions as an Electoral Court, with the power to hear and determine any petition concerning the interpretation and application of Electoral Laws.

52. There are 85 judges who preside over the First Instance Courts, made up of District Courts, the Assize Courts and the four functional courts. The Supreme Council of Judicature, a body consisting of the Judges of the Supreme Court, appoints the judges of the First Instance Courts. The Supreme Council of Judicature is an independent body whose functions is further elaborated in the section of this report dealing with human resource management and the section on the independence of the judiciary. Judges of First Instance Courts enjoy same terms and conditions of employment and can be retired in the same way as judges of the Supreme Court. However, the normal retirement age for judges of the First Instance Courts is 63.

53. There are six District Courts, according to Courts of Justice Law, (Law 14 of 1960) which exercise original first instance jurisdiction in all civil and criminal matters which arose partially or wholly within the district where the dispute arose or where the defendant resides or carries on a business at the time of filing of the application. The main exception to this rule are matters which are reserved constitutionally for the Supreme Court or one of the other subordinate courts.

54. Assize Courts adjudicate on all offences which are punishable under the Criminal Code and may impose any sentence laid down by law. There are five Assize Courts, one for Nicosia, Larnaca, Famagusta, Limassol and Paphos.

55. Family Courts also number five, one for each administrative district as above and deal with all family law matters such as divorce, custody and property disputes between spouses. There are eight judges of the Family Courts.
56. Industrial Disputes Courts deal with all matters relating to employment matters, industrial relations, health and safety, dismissal and other similar matters. There are three judges of the Industrial Disputes Courts.
57. Rent Control Courts, one for Nicosia, one for Limassol and Paphos and one for Larnaca and Famagusta adjudicate on all disputes relating to rented properties. There are three judges of the Rent Control Courts.
58. Military Court has jurisdiction over all disputes affecting personnel in the National Guard. There is only one judge of the Military Court.

## **CHAPTER II: Institutional Framework for the Administration of Justice and Legal and Judicial Policy Development**

59. The Terms of Reference for the report stipulates that a discussion of the institutional framework for the administration of justice and legal and judicial policy development and implementation should focus on the following areas:

- Court and case administration, including aspects of budget and salaries.
- Dissemination of legal information such.
- Role of the public sector in the delivery of legal services

### **Court and Case Administration**

60. The court and case administration system comes under the general supervision and control of the administrative staff of the courts under the supervision of the Chief Registrar.

61. The Chief Registrar and all the staff subordinate to him, are public servants in the Ministry of Justice and Public Order and are appointed to their posts by the independent Public Services Commission.

62. Staff and employees of the Registries perform their duties within the overall parameters of relevant laws and procedural rules. The key personnel of the Registries and their respective role and responsibilities are as follows:

- The Chief Registrar heads the administrative departments of the Judicial Service;
- The Assistant Chief Registrar assists with the organization, supervision, direction and control of the operation of the administrative departments of the Judicial Service;
- The Senior Registrars are heads of the administrative staff of the District Courts;
- Grade 1 Registrars are heads of the court administrative departments with responsibility for petitions, civil and criminal appeals, judicial review applications and reports, law publications, admiralty, civil and criminal court cases, property management and enforcement of judgments and writs.
- Judicial officers are responsible for the legal work of the Supreme Court;
- Senior court short-hand typists are responsible for taking minutes of court proceedings and writing out transcripts;
- Senior court bailiffs are responsible for the execution of judicial judgments;
- Accounting officers are responsible for the supervision and recording of financial transactions;

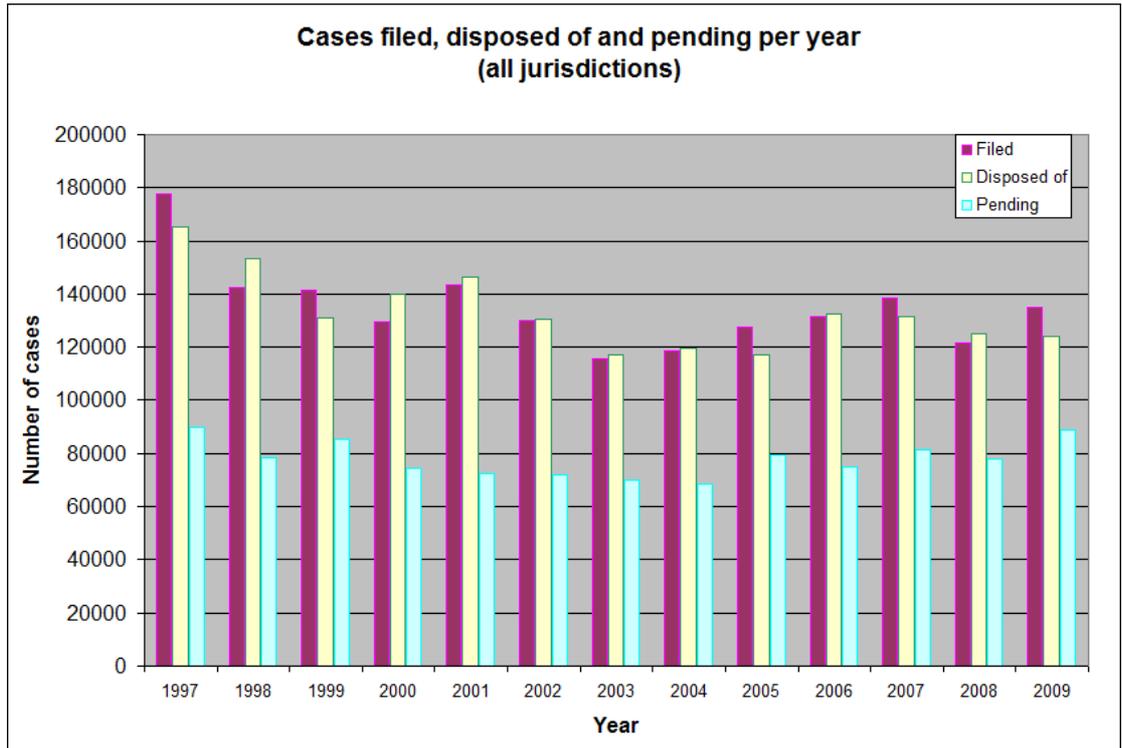
- Secretarial personnel such as secretaries, office staff, typists and messengers provide the full range of secretarial support to the courts.

63. The Registrar of each court is responsible for the issuing of all summons, subpoenas and enforcement orders, the filing of every order and judgment, the keeps of the archive of all proceedings, issues certified copies of proceedings and keeps a record of all charges and fines payable to the court. In the District Courts, the Registrar also supervises the management of property in accordance with the provisions of Section 189 of the Property Management Law and ensures that accounts by executors and administrators are properly kept. The Registrar is also the person who is assigned by the court for the authorization of expenditure and the execution of judgment.

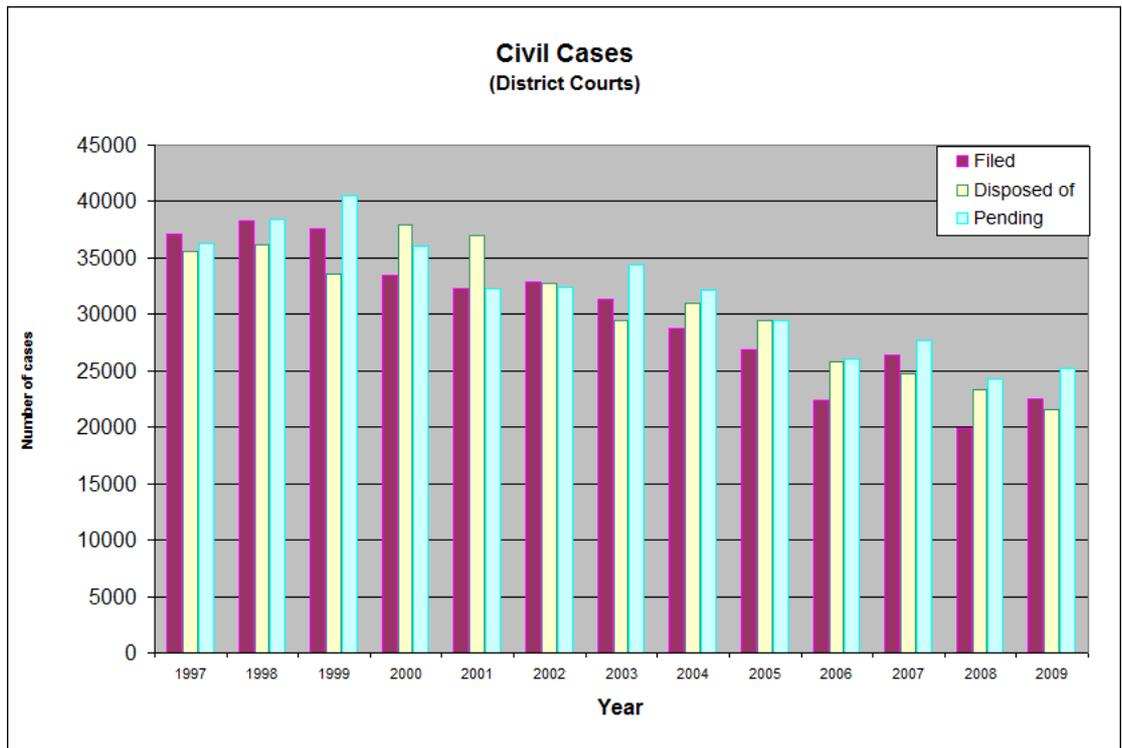
64. Case work statistics for the courts are as follows:

**SUPREME COURT**

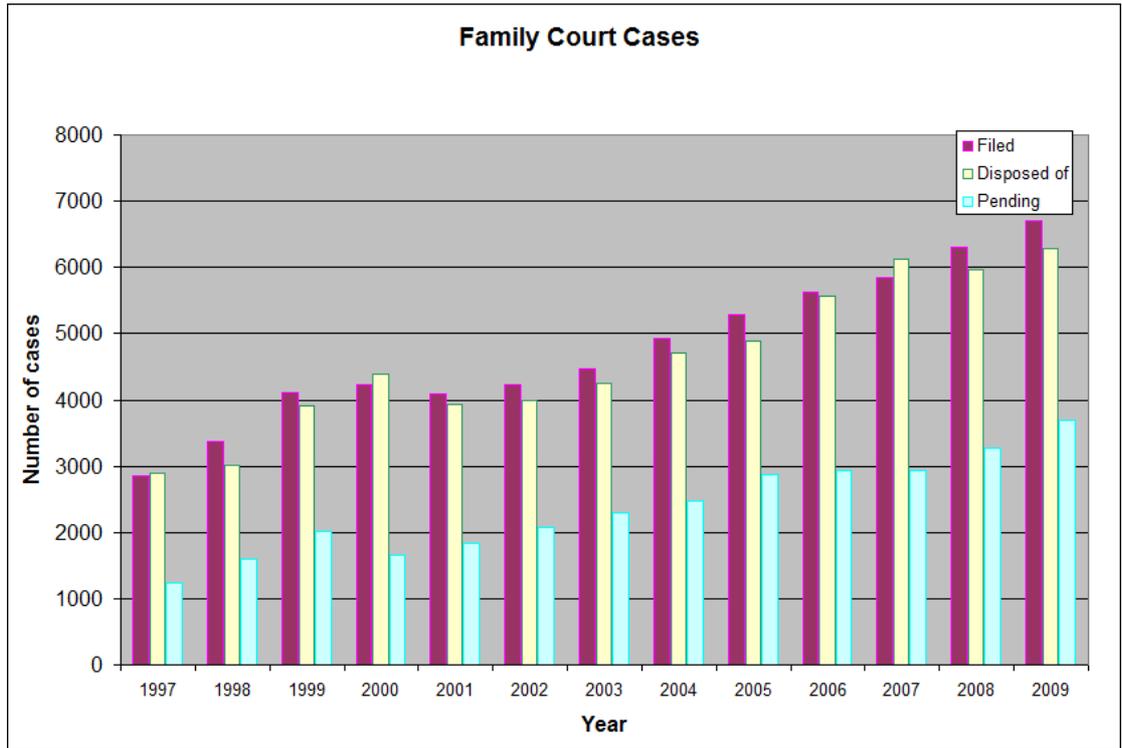
**COURT OF FIRST INSTANCE**



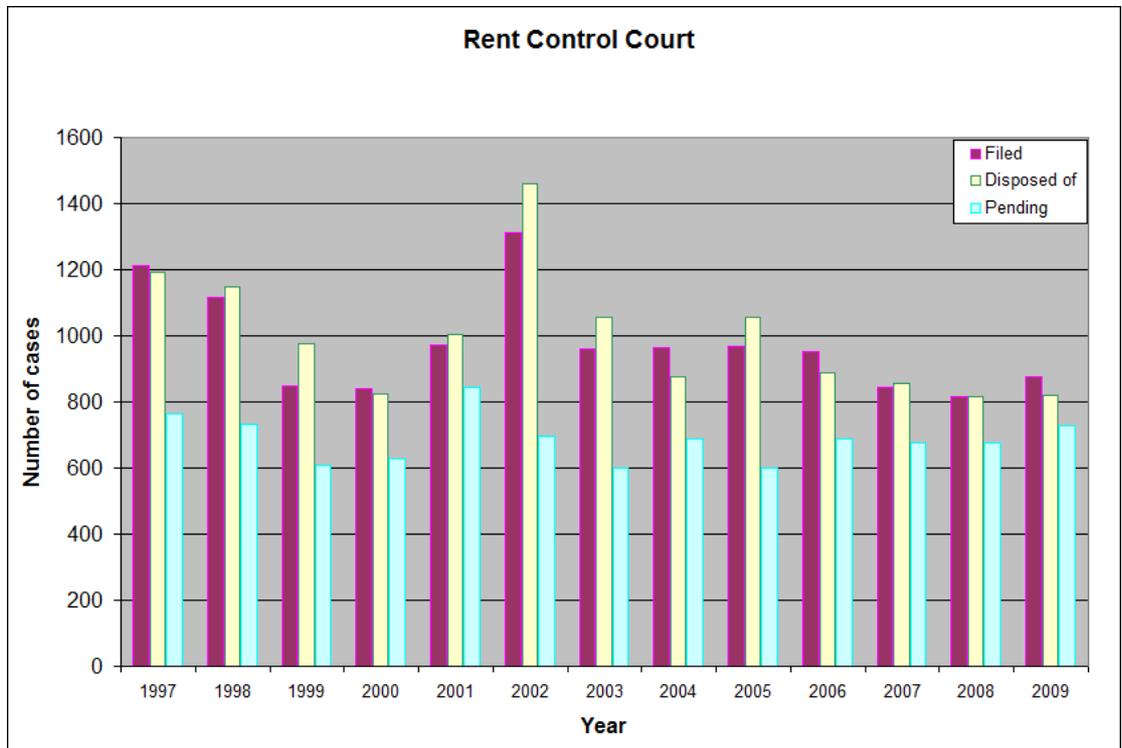
**DISTRICT COURTS-CIVIL JURISDICTION**



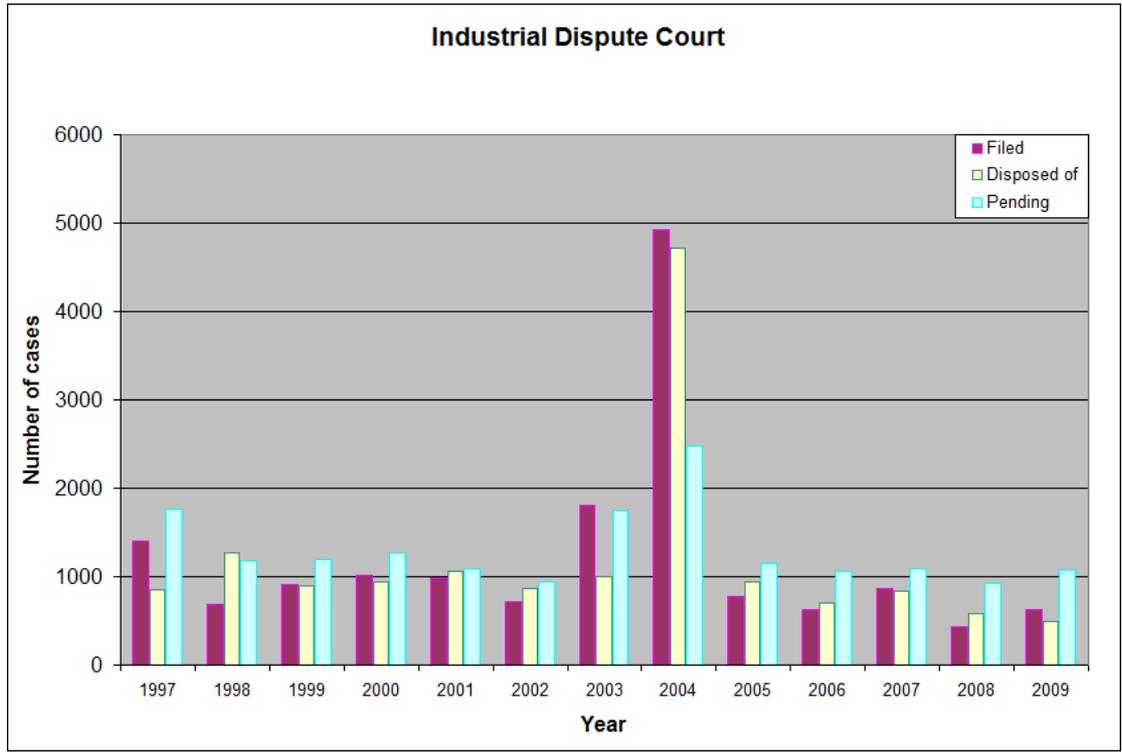
**FAMILY COURTS**



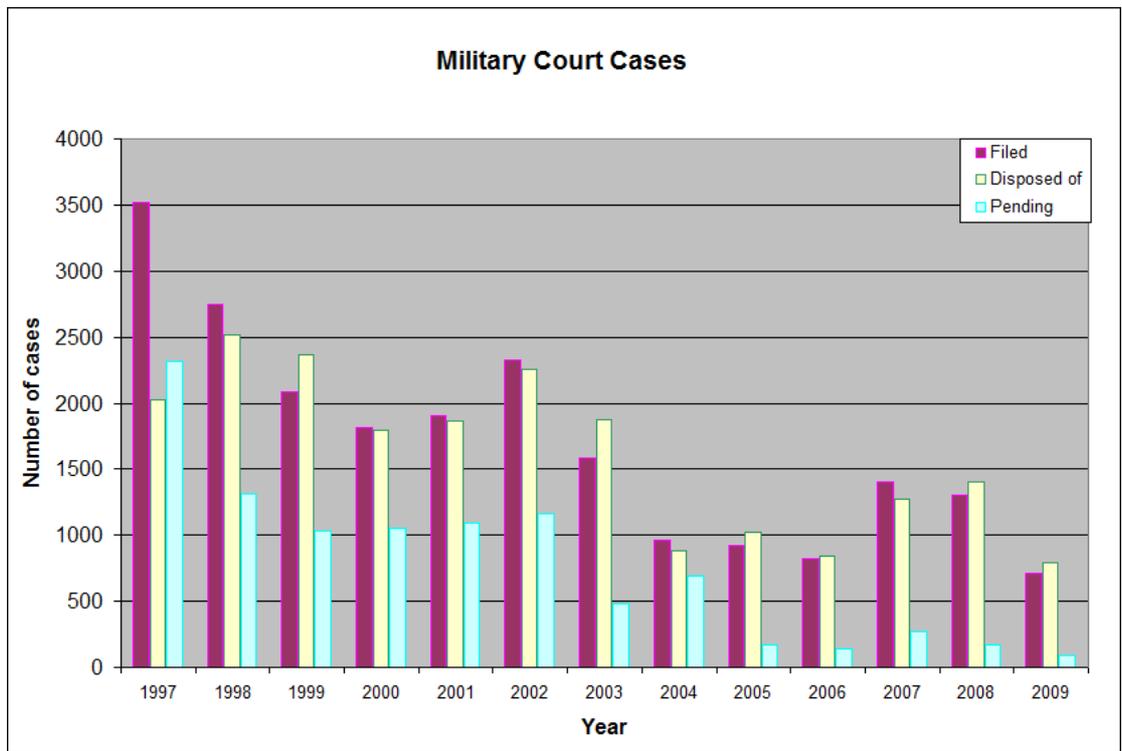
**RENT CONTROL COURT**



**INDUSTRIAL DISPUTES COURT**



## MILITARY COURT



## Budgets

65. The budget for Constitutional Services represents the operational costs including salaries of the Office of the Attorney General and is attached to this report marked as **Appendix E**. It stood at €25.798.229 in 2010. A report<sup>13</sup> into the efficiency of justice noted that the annual budget per inhabitant allocated to the prosecution services in the RoC in 2008 was 17.7 Euros whereas the average figure for the polled states was 10.5 Euros and the median figure was 8.3 Euros. Similarly, the annual public budget allocated to prosecution services as a percentage of GDP per capita was 0.08% for RoC whereas the equivalent figures for Iceland and Malta were 0.03% and 0.05 respectively. Hence, it could be said that the prosecution service of the RoC is expensive to run. A table indicating the annual public budget allocated to prosecution service per inhabitant, as part (in %) of the GDP per capita in 2008, is attached marked as **Exhibit F**. A table indicating the average annual variation of the prosecution budget, as part of the GDP per capita between 2004 and 2008, is attached marked as **Exhibit G**. A table indicating the total annual approved budget allocated to overall justice system in 2008 in Euros and the evolution of this budget between 2006 and 2008 as a percentage is attached marked as **Exhibit H**. A table indicating the annual budget per inhabitant allocated to prosecution services in 2008 in Euros is attached marked as **Exhibit I**. The above mentioned appendices F-I have been sourced from the CEPEJ 2000 Report.

66. The budget for the Ministry of Justice and Public Order represents the operational costs including salaries of the Ministry and is attached to this report marked as **Appendix J**. It stood at €360.585.886 in 2010, with €255.374.543 spent on the Police Service, €19.616.685 on the Prison Service, €36.124.703 on the Fire Service and €24.279.807 on the harmonization programme with *acquis communautaire*.

67. The Budget for Constitutional Powers includes the operational costs and salaries of the courts service and is on page 94 of the document which is attached marked as **Appendix K**. It stood at €25,513,4419 in 2010. A report<sup>14</sup> into the efficiency of justice noted that the total annual budget of the RoC allocated to all courts including legal aid (without prosecution) per inhabitant in 2008 was 32.5 Euros whereas the median figure for the polled states was 30.2 Euros and the average figure was 40.1 Euros. A table, sourced from CEPEJ 2000 Report, indicating these figures is attached marked as **Appendix L**. Similarly, the annual public budget of the RoC allocated to all courts including legal aid as percentage of GDP per capita was 0.15% whereas the equivalent figures for Malta and Iceland were 0.17% and 0.36% respectively. The average figure across the polled states was 0.28% and the median figure 0.23. A table, sourced from CEPEJ 2000 Report, indicating these figures is attached marked as **Appendix M**. Hence, it appears that the overall funds allocated to the court system in the RoC is below European averages and can be said to be poor.

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<sup>13</sup> CEPEJ 2010

<sup>14</sup> CEPEJ 2010

68. In response to a survey<sup>15</sup> on the efficiency of the judicial system, it was indicated that no studies have been carried out in the RoC, as at 2004, on the costs of cases brought before the courts from the perspective of either users or the State.

69. In a report<sup>16</sup> on the efficiency of justice, it was noted that RoC was one of four countries in which there had been a decline in the amount of budgets committed to the operation of the courts.

### **Human Resource Management**

70. Human resource policy and management within the RoC is organized centrally and has two components:

- Public Administration and Personnel Department within the Ministry of Finance which is responsible for formulating and implementing the appropriate personnel administration policy of the public service and the wider public sector;
- Public Services Commission, established under Article 125 of the Constitution and further governed by the Public Services Law of 1990 and 2005, which is responsible for the appointment, employment, promotion, transfer, retirement and discipline of all public servants;<sup>17</sup>

71. Hence, as per Article 125 of the Constitution, the staff of the Ministry of Justice and Public Order, including the Police Service, is managed in compliance with this constitutional provision.

72. The Office of the Attorney General has independent status as per Article 112 of the Constitution. The President of the RoC appoints the Attorney General but his appointment is for life. However, the other officers of the

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<sup>15</sup> Pilot Scheme For Evaluating Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ)

<sup>16</sup> CEPEJ 2010, page 20

<sup>17</sup> Structure of the Civil and Public Services In The Member And Accession States of The European Union, Austrian Federal Chancery, Second Edition.

Office of the Attorney General are appointed by the Public Services Commission and are hence public servants, with their terms and conditions of employment determined by the Public Service Law.

73. Similarly, the courts service of the Republic and all personnel thereof come who come under the overall supervision and management of the Chief Registrar in the Ministry of Justice and Public Order are also appointed by the Public Services Commission and are public servants.
74. By contrast, the judges of the Supreme Court and of the subordinate courts are under the supervision and guidance of the Supreme Council of Judicature as per Article 157 of the Constitution which provides that the ‘appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers are exclusively within the competence of the Supreme Council of Judicature.’ The Council is made up of the President and the other twelve Judges of the Supreme Court and operates as the body responsible for the appointment, promotion and discipline of the judiciary. As the body with disciplinary powers, it is also the only effective mechanism for members of the public who wish to make a complaint against a judge or in relation to the handling of a particular case.

### **Dissemination of Legal Information**

75. The development of new technology and the internet has significantly improved the dissemination of legal information in the RoC. A number of websites have been set-up by the Government, the courts, private organizations and the Cyprus Bar Association which has greatly improved the availability and dissemination of legal information. The following websites play particularly significant roles in this process:
- [www.leginet.eu](http://www.leginet.eu) provides information on sources of law and decisions and judgments of the Supreme Court and other subordinate courts;
  - [www.supremecourt.gov.cy](http://www.supremecourt.gov.cy) is the website of the Supreme Court provides information about its work, statistical data and important cases.
  - [www.competition.gov.cy](http://www.competition.gov.cy) is the website of the Cyprus Competition Authority and provides information about leading Supreme Court decisions in its remit.
  - [www.cylaw.com](http://www.cylaw.com) is operated by a not-for-profit organization and provides information on Cyprus law, decisions of the Supreme Court from 1997 onwards, secondary legislation from 2005 onwards, Civil Procedure Rules and decisions of the Competition Authority.

- [www.cygazette.com](http://www.cygazette.com) is the website of the Government Printing Office with responsibility for publishing all legislation which has been passed by the House of Representatives and promulgated by the President;
- [www.cylawreports.com](http://www.cylawreports.com) is the website which allows searches of all decisions of the Supreme Court;
- [Cyprusbarassociation.org](http://Cyprusbarassociation.org) is the website of the Cyprus Bar Association which is the professional membership organization for lawyers licensed to practice in the RoC. The Association provides an information dissemination service through both its website and an e-mail service to its members on latest legislation, professional regulations and requirements and significant case law.

76. There are a number of additional websites that may not be law specific but nevertheless provide information regarding the governance of the Republic. They are as follow;

- <http://www.cyprus.gov.cy/>
- <http://www.pio.gov.cy/>
- <http://www.parliament.cy/parliamenteng/>
- <http://www.cyprus.gov.cy>
- [http://www.pio.gov.cy/reference/gov\\_list/courts.htm](http://www.pio.gov.cy/reference/gov_list/courts.htm)
- <http://www.psc.gov.cy>.

77. Furthermore, the Welfare Service has a role in both informing and supporting victims of crime. Information can, for example, relate to financial compensation which can be made available to victims of crime.

### **Role of the Public Sector in the Delivery of Legal Services**

78. The role of the public sector in the delivery of legal services is performed by a number of ministries and independent offices the key ones of which are:

- Office of the Attorney-General
- Ministry of Justice and Public Order
- The Courts
- Ministry of Interior
- Ombudsman

79. Additionally, the public sector plays a further role in the delivery of legal services through the provision of public funding, namely legal aid, in criminal and civil cases.

### **Attorney General, Ministry of Justice and Public Order and the Courts**

80. The role of the Office of the Attorney-General, the Ministry of Justice and Public Order and the courts has already been described elsewhere in this report.

### **The Ministry of Interior**

81. The role of the Ministry of Interior is primarily related to the functions of the Land Registry Department. The Department was first established in 1858 by the Ottoman Government and is hence the oldest of Government Departments. Its original task was the settlement of all matters related to immovable property and the registration and issue of titles of ownership. Although its purposes have been greatly expanded since then, its main function still remains the registration of legal title to immovable properties.

### **Ombudsman**

82. The Ombudsman, which was introduced in Cyprus by Law 3 of 1991, performs a quasi-legal role. The duties of the Ombudsman include the protection of the rights of the citizen against acts of administrative authorities. The Ombudsman service can intervene in situations of violations of rights and act to prevent its repetition. Since May 2004, the Ombudsman service has also operated as the authority against racism and unequal treatment.

83. The Ombudsman may intervene in acts of administration. However, the authority of the service does not extend to decisions of the President or the Council of Ministers. Once a complaint is filed, the Ombudsman service researches the complaint, writes a report and delivers it to the interested parties. Although the findings of the Ombudsman are not binding on the party against whom the complaint was made, its decisions are normally complied. In 2005, 3185 complaints were recorded.

### **Legal Aid**

84. Legal aid is available in the RoC in civil and criminal cases to individuals who are unable to bear the costs of legal proceedings. The legal basis for this form of public support is the Constitution which provides that every person has a right to have access to a lawyer of his choice and free legal assistance when the interests of justice so requires. Additionally, Law 165 (2)/2002 was enacted as part of the RoC accessions process to the EU which sets out the procedure for the granting of legal aid. The provision of legal aid is means-tested and is partly dependent on the report from the Welfare Service, the evidence before the court and the court's assessment of the facts of the case and the circumstances of the applicant.

85. It is most commonly provided in the following type of cases:

- Criminal proceedings;

- Civil or criminal proceedings for specific violations of human rights;
- Family law proceedings in relation to parental responsibility, alimony, adoption and property disputes between spouses;
- Appeals if legal aid was provided for the preliminary stages of legal proceedings.

86. However, despite the technical availability of legal aid, it was not possible to get any figures about either the total amount spent on legal aid or any breakdown in terms of expenditure on civil or criminal matters or any percentages regarding the annual public budget allocated to legal aid per head of population. By comparison, figures were easily accessible for both Iceland and Malta.

87. Total number legal aid cases for the period April 2003-March 2004 was 577 according to the figures of the District Court. The breakdown of these cases for criminal matters was 559 and for civil cases 38.<sup>18</sup> A copy of the replies for the RoC is attached marked as **Appendix N.**

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<sup>18</sup> Pilot Scheme for Evaluation of Judicial Systems, European Commission For the Efficiency of Justice (CEPEJ)

## **CHAPTER III: Efficiency, Effectiveness and Accountability of the Legal and Judicial Sector**

88. The Terms of Reference for the report stipulates that a discussion of the efficiency, effectiveness and accountability of the legal and judicial sector should focus on the following areas:

- Independence and impartiality of the judiciary;
- The effective delivery of legal services and enforcement of laws;
- The transparency and accountability of the legal sector and the extent of access to justice;
- The existence of alternative dispute resolution

### **Independence and Impartiality of the Judiciary**

89. The doctrine of the separation of powers is firmly established in the Constitution of the Republic and requires an independent judiciary as an essential building block of the democratic system and the rule of law. Hence, the judiciary is constitutionally independent of the two other spheres of state authority, namely the Executive and the Legislature. The notion of the independence of the judiciary is also inherited directly from the English legal system, which also enshrines and deeply values the notion. Hence, judicial independence is not only constitutionally sanctioned but also inherited directly from the English legal system which preceded independence and was also firmly established on the island for at least a century before independence.

90. The President of the Republic appoints the President of the Supreme Court and the other 12 judges who retire at the age of 68. The choice for appointment to the Supreme Court is made from the ranks of judges who have been practicing in the subordinate courts. Although the practice of the judges of the Supreme Court being appointed by the President of the Republic may appear at first sight to impair the notion of independence of the judiciary and the separation of powers between the Executive and the Judiciary, longstanding constitutional practice has emerged as a means of dealing with this apparent inconsistency. Hence, it is customary for the President to seek the opinion of the judges of the Supreme Court as to who should be appointed. Their advice is followed as a matter of customary practice. It is believed that such practice guards against the politicization of the judiciary.

91. Article 157.2 of the Constitution provides that the power of appointment and termination of appointment, promotion, transfer, dismissal and discipline of judges of the subordinate courts rests with the Supreme Court sitting as the Supreme Council of Judicature. Hence, the judges of

the Supreme Court make the appointment of judges of the subordinate courts from lawyers who have been practicing for a minimum of 5 years.

92. There are additional constitutional provisions which all contribute to the independence of the judiciary. Hence, the salaries of judges under Article 166.1 (b) of the Constitution are a permanent charge on the consolidated fund, obviating the need for annual provision for the payment of their salaries. Similarly, the Constitution provides that terms and conditions of their employment cannot be changed to their detriment following their appointment as a judge.
93. The independence of the judiciary is also a jealously guarded notion. Hence, in *Keramourgia Ltd v. Yiannakis Christoforou*<sup>19</sup> the Court held that provisions of the Annual Holidays with Pay Law regulating the appointment of the Chairman of the Arbitration Tribunal was unconstitutional because it involved the Executive in the decision making process, hence violating Article 157.2 of the Constitution as well as the doctrine of separation of powers.
94. Constitutional provisions, customary practice and court rulings described above help to uphold the notion of an independent judiciary as one of the essential building blocks of a functioning democracy and the rule of law. Hence, the appraisal of the judiciary as part of the Republic's accession to the European Union led the latter authorities to conclude "The Judiciary is independent and the separation of powers between the executive, judicial and legislative branches respected. The standard of justice is high."<sup>20</sup>
95. Nevertheless, despite the constitutional provisions for independence, the operation of the system does in certain circumstance create the situations in which the cherished principle is in fact called into question and does lead to amendments in the law. Hence, in the case of *Kyprianou v Cyprus*<sup>21</sup>, natural rules was justice were deemed by the European Court of Human Rights to have been violated and the judges impartiality in dealing with the case questioned. The RoC amended the relevant law soon afterward the judgment in order to be comply with the findings of the European Court of Human Rights.

### **The Effective Delivery of Legal Services and Enforcement of Laws with Reference to Objective of Fairness**

96. The traditional ideological approach to the judiciary in Western liberal democracies has been characterized by a judicial system which is

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<sup>19</sup> *Keramourgia Ltd v. Yiannakis Christoforou* (1975) 1 C.L.R. 38 F.B.

<sup>20</sup> Constitutionalism, Human Rights, Separation of Powers, the Cyprus Precedent, by Georghios M. Piki, page 5.

<sup>21</sup> ECHR, *Kyprianou v Cyprus*, 27/1/2004

independent of both the executive and the legislature and a judiciary which, as a result of its independence, can act to protect individual human and constitutional rights. This key concern with independence was traditionally seen as the key determinant in guaranteeing fundamental human rights such as the right to a fair trial and fair dispute resolution within the rule of law, be it civil or criminal.

97. However, there has gradually developed, especially since the 1980's, an increasing emphasis by political actors and citizens on concepts such as value for money, effectiveness and efficiency in the provision of legal services. Hence, the traditional focus on the independence of the judiciary as the ultimate guarantor of rights began to shift. Judicial independence is no longer seen as synonymous with effective access to justice.

98. The Woolf Report in England and Wales in 1996 identified organizational barriers to access to justice and inequalities in access to justice because of the costs of lengthy and inefficient litigation. Similarly, the Leemhuis Committee in the Netherlands focused on failures of the judicial system and the subsequent backlogs of cases. The European Court of Human Rights also started to deal with a significant number of cases in which the main complaint was unreasonable delays in the national courts which was interpreted as a violation of the right to a fair trial as guaranteed by Article 6 (1) of the Convention. These developments gradually led to an increasing emphasis on concepts such as 'quality organizations', 'quality indicators', 'monitoring', 'evaluation' and 'customer-orientated' services.

99. A report<sup>22</sup> into the administration and management of judicial systems in Europe noted the following issues in relation to the RoC:

- There is an annual activity report which enables the compilation of databases on the numbers of incoming and outgoing cases in order to facilitate some degree of control over timeframes and length of proceedings.
- The annual activity report is addressed to the Judicial Council made up of judges of the Supreme Court who are charged with overall supervision of such reporting mechanisms.
- There are performance criteria and indicators, amongst which the key ones relate to fair trial within a reasonable time requirements.
- Complaint procedures across the Council of Europe members is one of the key mechanisms for ensuring a degree of public input into the efficient and client orientated evolution and development of the legal system. A copy of the presentation is attached marked as **Appendix O**.

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<sup>22</sup> Report by Pim Albers, Special Adviser to CEPEJ, European Commission for the efficiency of justice, 2009.

100. The RoC replies to a European Commission of Justice questionnaire<sup>23</sup> on the efficiency of the judicial system, already attached as Appendix N, noted the following findings:

- That a court 'automation system', accompanied by the legal information system, was in the process of being put into place as at 2004;
- That there was no public, free of charge and personalized information system, managed by either the police or the justice system, on the follow-up provided for complaints of victims of crime;
- That there is a public compensation fund for victims of crime;
- That there was no organized polling system in place to ascertain public trust or satisfaction of the users or legal professionals (judges, lawyers, etc.) of the legal services;
- That there is no national or local procedure for making complaints about performance of the judiciary;
- That the numbers of professional judges sitting in court were as follows:
  - Supreme Court: 13
  - District Court: 68
  - Family Court: 8
  - Rent Control Court: 3
  - Industrial Disputes Court: 3
  - Military: 1
- That the number of non-judge administrative staff was 273 as at 2004;
- That the annual budget allocated to all the courts as at 2002 was £7.361,419;
- That the budget had increased from £6.976,394 in 2001 to £14.697,000 in 2004;
- That the budget of the court is included in the National Comprehensive Budget and is controlled by the administrative staff of the courts, supervised by the Chief Registrar;
- That the total number of criminal cases received by the public prosecutor in 2002 was 102.403;
- That the total number of criminal cases dropped by the public prosecutor in 2002 was 38.632;
- That the total number of cases which were concluded by a sanction/measure in 2002 was 18;
- That the total number of incoming civil and administrative cases in 2002 was 34,122, with 32,852 being civil cases and 1260 administrative cases;
- That the total number of judicial decisions in civil and administrative cases in 2002 was 34,788 of which 31,903 had been

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<sup>23</sup> Pilot Scheme for the Evaluation of Judicial Systems, European Commission For the efficiency of Justice (CEPEJ)

withdrawn or settled, 308 had gone to a partial hearing and 510 had gone to a full hearing;

- That the number of civil cases which had been the subject of an appeal was 303, of which 160 had gone to a full hearing and 143 had been either withdrawn or dismissed;
- That there was a level of computerization already in place as at 2002;
- That the Supreme Court collected monthly and annual statistics regarding the functioning of the courts;
- That persons have a right to an interpreter in the course of judicial proceedings if they do not understand the language of the court;
- That there is an effective remedy in all cases of recourse to a superior jurisdiction
- That reasons are always given for a custodial sentence;
- That the average number of days as at 2002, from formal beginning to appellate judgment, were as follows:  
Robbery: 1 year 6 months  
Divorce: 2 years and 4 months  
Employment/Dismissal: 1 year and 6 months
- That there was in place a system for measuring the backlog of cases

101. The only available institutional mechanism for a complaint in the RoC is a complaint against the judge. Such a complaint needs to be made to the Supreme Council of Judicature.

102. A report<sup>24</sup> on the efficiency of justice identified the following relevant matters in relation to the effective delivery of legal services and enforcement of laws in the RoC:

- The number of geographic court locations per 100,000 inhabitants was 2.3 whereas the equivalent figure for Malta and Iceland was 0.5 and 3.0 respectively, suggesting good coverage and geographical accessibility (also see page 8 of Appendix O);
- The level of computerization and communication facilities of the courts was in the fourth and last category, suggesting poor performance in this area (also see page 9 of Appendix O);
- The number of professional judges in Cyprus per 100,000 inhabitants is 12.7 whereas the equivalent figure for Malta and Iceland are 8.3 and 15.7 respectively (also see page 10 of Appendix O);
- The number of non-judge staff per professional judge stood at 4.5 and was the 6<sup>th</sup> highest from amongst the 45 states, with the equivalent figures for Malta being 10.4 (the highest) and Iceland 1.3 (the lowest) (also see page 11 of Appendix O);

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<sup>24</sup> CEPEJ 2010

- The total number of incoming criminal cases (including serious and petty crimes) was 93,170 which works out as 11691.6 crimes per 100,000 inhabitants, the highest figure amongst polled states with the average figure being 2573.5 and the median figure being 1717.6.
- The number of incoming civil (non) litigious cases and decisions per 100,000 inhabitants was 3509, effectively occupying 6<sup>th</sup> place amongst the polled 45 states (also see page 12 of Appendix O);
- The average civil cases disposition time (in days) in contentious and non-contentious matters was 672 and the second highest in the 45 states, suggesting poor performance (also see page 14 of Appendix O);
- The number of lawyers per 100,000 inhabitants was 227 and the 6<sup>th</sup> highest of the 45 states, with the equivalent figures for Malta and Iceland being 192 and 159 respectively.
- It is one of 18 countries that has not introduced a court users satisfaction survey, suggesting slow and poor compliance with the increasing emphasis on quality and efficiency concerns;
- There is no operational and comprehensive quality control system which is integral to the court, with only two countries out of the 45 states with such a system (Finland and Netherland).

### **Transparency and Accountability of the Legal and Judicial Sector and Extent of Access to Justice**

103. The transparency of the legal system of a country has traditionally been viewed as a key indicator of the rule of law. The main components of this transparency are a set of laws that are clearly accessible, strong enforcement structures, an independent judiciary which will protect individuals against arbitrary use of power and open court requirements and reasoned decisions.
104. The accountability of the legal and judicial sector is interlinked to transparency and can be said to be satisfied by ‘the hearing of almost all matters in open court, by the freedom of the media to report on such proceedings, by the critical view of academic commentators and the possibility of being overruled by higher courts.’<sup>25</sup>
105. Additionally, it can be said that the degree of public trust in the judiciary and the judicial sector is an indicator of the transparency and accountability of the system.
106. The laws in force in the Republic of Cyprus can be said to be easily accessible because of the existence of a number of different websites

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<sup>25</sup> H. Corder, ‘Seeking Social Justice: Judicial Independence and Responsiveness in a changing South Africa’

through which they can be accessed. A full list of the different websites has already been provided. Moreover, the good geographical coverage of the courts and the relatively high number of lawyers per head of population, as reported above, can be said to contribute to the accessibility of the law to the individual.

107. The enforcement mechanisms available, partially inherited from the English legal system and partially augmented by the process of European Community integration, can also be said to be good. As regards enforcement of domestic judgments, a party against whom a judgment is issued must fully satisfy the judgment. In the event of failure to do so, there is a range of enforcement and execution measures which can be taken against them such as:

- Writs of execution for sale of movables;
- Garnishee proceedings;
- Registration of a charge against immovable property;
- Writ of delivery of goods to the judgment creditor;
- Writ of possessions of land to be delivered to judgment creditor;
- Writ of sequestration;
- Bankruptcy/liquidation proceedings against judgment debtor;

108. As regards enforcement of foreign judgments, the general rule has been that the foreign judgment has no direct operation in the RoC unless specific provision is made for it in a specific piece of legislation or the common law principles. However, this is also an area which has been subject to significant reform as a result of the Republic's accession to the European Community. Hence, in the light of EC Regulation 44/2001, once a judgment is issued in any EU Member State, it now has to be recognized in all other EU Member States without any special procedures. Any dispute relating to the issue of enforceability can be clarified within the context of proceedings brought forward to declare the judgment enforceable. Furthermore, EC Regulation No 2201/2003 means that judgments in relation to matrimonial matters or issues of parental responsibility issued in a court of EU Member State are recognized and enforceable in other Member States.

109. In a report<sup>26</sup> on the efficiency of justice, RoC was noted to have 6.3 enforcement agents per 100,000 inhabitants in 2008, with the equivalent figures for Malta and Iceland being 6.0 and 7.5 and the European average figure being 7.5 and the median figure being 5.1.

110. Judgments of the Supreme Court are binding on all inferior courts. Therefore, any interpretation of law provided by the Supreme Court must be followed.

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<sup>26</sup> CEPEJ 2010

111. Finally, Article 30 of the Constitution provides that in the determination of an individual's civil rights and obligations or of any criminal charges against him, the person is entitled to 'public hearing'. This requirement of open court in the legal process is an essential requirement of a transparent legal system and can only be limited in strictly defined circumstances such as interests of national security, public order or private life, as provided by the Constitution.
112. Furthermore, the constitutional requirement of a detailed and properly reasoned judgment contributes significantly to the transparency of the judicial process.
113. The court structure of the Republic of Cyprus provides for an effective appeal system of all decisions of the subordinate courts such as the District Courts and the Assize Courts, hence contributing significantly to the accountability. Hence, any judgment issued by a subordinate court may be appealed by any party to the action within six weeks of the date of its delivery if it is a final decision. The time limits are shorter for interlocutory judgments made by summons (14 days) and interlocutory judgments which are ex parte (4 days). By virtue of Section 25 of Law 3 and 118 (1) of 2008, all civil judgments and orders of court, irrespective of whether they are decisive of the parties' rights and irrespective of whether they are final or interlocutory, are subject to appeal to the Supreme Court.
114. As regards academic freedoms relating to the reporting of judicial decisions and/or pronouncements, the record of the Cyprus judiciary can be said to be relatively good and there are few, if any, examples of interference with this right. Moreover, an increasing number of Universities and Law Faculties in the RoC is contributing to an increasing level of discussion of court judgments and the local legal system.
115. On the issue of the confidence and trust of the public in the judiciary and the judicial sector, which can be said to be an indicator of its independence, transparency and accountability, the following findings were identified in a report, a copy of which is attached marked as **Appendix P**.<sup>27</sup>
- RoC was one of only two countries which did not conduct any public opinion research into public confidence of the judiciary and the prosecutors office;

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<sup>27</sup> Report of the Working Group on Public Confidence for the European Network of Councils for the Judiciary (ENCJ) involving replies from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England and Wales, Estonia, Finland, Hungary, Italy, Lithuania, Netherlands, Poland, Romania, Spain, Sweden, Turkey.

- That in all respondent countries there existed regulations guaranteeing accessibility and transparency of the courts to the public, with the possibility, in some of the countries, to restrict this accessibility in certain circumstances.
- That in all respondent countries, the judge has a role in providing oral and written explanation of the verdict and ensuring its communication to the parties concerned.
- The RoC was the only respondent country which did not have press offices in the courts with responsibility for explaining to the public and the media the work and decisions of the judiciary and the legal sector.
- The RoC was in a minority of two from the respondent states which took no active steps to disseminate legal knowledge or popularize legal culture.

### **The Availability of Alternative Dispute Resolution**

116. Litigation continues to be the predominant method of resolving disputes in Cyprus. However, alternative dispute resolution is becoming increasingly popular, especially in matters relating to commercial activities, overseas and cross-border transactions and competition law matters. It is also increasing in popularity in contractual disputes in the building industry. However, criminal law and family law matters are currently not arbitrable.
117. The increasing awareness of the availability of alternative dispute resolution has also led to a change in attitude from the judiciary who are becoming increasingly reluctant to hear cases which require specific or scientific knowledge of the subject. In such cases, there is an increasing tendency of judges to refer matters to arbitration.
118. Arbitration Law 1944 provides the legal and regulatory framework for arbitration proceedings in Cyprus. For disputes with an international aspect, provisions of the International Commercial Arbitration Law (L.101/87) are applicable. Hence, by law, an agreement between the parties to arbitration is an essential prerequisite for the commencement of arbitration proceedings. Moreover, the arbitration agreement needs to be in writing. An agreement to commence such proceedings is usually irrevocable and binding unless a contrary provision is provided in the agreement or there is a court order to such an effect.

119. If any party commences legal proceedings in a court of law against an arbitration agreement, the Court has discretionary power to stay the proceedings under Article 8 of the domestic law.
120. Arbitration awards, once registered and enforced, have the same sort of legal standing as a court judgment. The registration of the arbitration award may be affected by an application by summons being filed by one of the parties. Once registered, the arbitration award becomes binding on the parties.
121. Alternative dispute mechanisms are available for the use of the public in the sense that the relevant laws governing the matter are publicly available for all to view and understand. Moreover, many lawyers are now publishing articles and publicizing the availability of the mechanisms for alternative dispute resolution and hence raising the public's awareness of the procedures.
122. Mediation and conciliation are two other forms of alternative dispute resolution and can be used for all business and commercial matters. It may also extend to family matters. However, unlike arbitration or litigation, the results of mediation and conciliation mechanisms are not binding on the parties concerned.
123. Mediation and conciliation is normally used when parties to a dispute voluntarily refer their disagreement to an independent third party. The role of the third party is to facilitate a compromise which is acceptable to the parties to the dispute.
124. However, unlike arbitration, mediation is not recognized or referred to by parties to the same extent. The success of such mediation or conciliation efforts often depends on the willingness of the parties to the dispute to settle their differences and on the skill and tenacity of the independent third party to persuade the parties of the desirability of a compromise.
125. There are no official bodies that administer alternative dispute resolution in the Republic of Cyprus.
126. There is a proposal by the European Commission for a Directive on certain aspects of mediation in civil and commercial matters (COM (2004) 718 final). Article 3.1 of the draft Directive provides that a court, before an action is brought, may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. It is not clear at the moment whether the proposal be made into law.

127. Arbitration awards are enforceable in Cyprus on the basis of the Convention of the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) which was ratified by the Republic of Cyprus by Law 84 of 1979. Under the law, the intervention of the courts is minimal since, after the delivery of an award, a court may only set it aside or refuse to recognize it on a number of narrowly defined grounds.

## **CHAPTER IV: The Current Legal and Judicial Reform Agenda**

128. The Terms of Reference for this report stipulates that an account of the major legal and judicial reform agenda should focus on the following areas:

- What have been the drivers of reform?
- Which aspects of the legal and judicial sector have been subject to reform?
- How have the reforms been managed, that is, in which institutional environments and through which tools?
- What, if any, institutions have been created or are being created as a result of the reform agenda and which functions will they serve?
- What, if any, organizations/functions have been abolished or are to be abolished or underwent drastic change?
- What is the current reform agenda and which priorities and strategies have informed the reform agenda
- What are the impacts of the concerned reforms? Is there a specific evaluation/assessment process regarding these impacts?

### **What Have Been The Drivers of Reform?**

129. A review of the main body of recent reforms which have been undertaken suggest that the main driver of reform and change has been the process of European Community accession. The main body of reforms can be summarized as a series of constitutional and legal reforms as well as a series of new or reformed institutions which enabled the RoC to comply with its accession obligations towards the European Union.

### **Which Aspects of the Legal and Judicial Sector Have Been the Subject of Reform**

130. The most significant recent legal reforms in the legal and judicial sector have come about as a result of the Republic's accession to the European Community. In particular, over 1000 pieces of new legislation and legal changes had to be introduced in order to adapt the RoC to *acquis communautaire*.<sup>28</sup>The most crucial of these reforms was Law 127 (1) which was enacted in 2006 and provided for a new Article 1A of the Constitution. In essence, it provides that the Republic is obliged to have the same aims as the European Community and observe all its obligations resulting from its membership. It reads: "No provision of the Constitution shall be deemed to have annulled laws enacted, acts done or measures taken by the Republic that are deemed necessary due to its obligations as a Member State of the European Union, neither does it prevent

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<sup>28</sup> George Vasiliou, "Five Years After Cyprus's Accession to the EU", *Filelefteros* (Nicosia daily), 10 May 2009

Regulations, Directives or other Acts or binding measures of a legislative character, adopted by the European Union or by their institutions or competent bodies thereof on the basis of the Treaties establishing the European Communities or the Treaty on European Union, from having legal effect in the Republic.” Through this amendment of the Constitution, the Republic was enabled to meet its obligations towards the European Union, including obligations to conform to aspects of criminal law and procedure. For example, it was this amendment to the Constitution which enabled adherence to requests for extradition under the European Arrest Warrant, which had previously faced problems with enforcement because of inadequate provision in either the Constitution or any national laws.

131. The new law also revised Article 11 (2) (f) of the Constitution which protects right to liberty and security of persons. This amendment permits the arrest of a Cypriot offender for the purpose of extradition in accordance with a European Arrest Warrant whereas the former Constitutional provision only provided for the arrest of a foreigner. The necessity for this amendment came about as a result of a Supreme Court ruling in the *AG v Constantiniou* case<sup>29</sup> where it had been decided that a request from the judicial authorities of the United Kingdom for the execution of a European Arrest Warrant against a Cypriot citizen could not be complied with because the court could not rely on Framework Decisions of the EU which contradicted the Constitution.
132. The new law also amended Article 140 of the Constitution. The relevant article had given the right to the President of the Republic to refer any matters relating to the constitutionality of any law or parliamentary decision to the Supreme Court. The amendment extended this right to any apparent or possible contradiction between such matters and EU law.
133. The new law also added paragraph (4) to Article 169 of the Constitution which provides that the Republic of Cyprus has the right to make its own decisions subject to provisions of the Treaty of Rome, the Treaty of Maastricht and any other treaties which amended or replaced them.
134. Finally, the new law amended paragraphs (1) and (2) of Article 179 to provide for the supremacy of the Constitution subject to the new Article 1 (A) of the Constitution as well as declare the obligations of the Republic to the EU.
135. There was further amendment in 2010 to Article 17 (2) of the Constitution which provides for the right to respect for, and the secrecy of, an individual’s correspondence and communication. Law 51 (1) of 2010 provides for interference with this right in relation to suspicion of

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<sup>29</sup> *AG v. Constantinou* (2005) 1B CLR 1356

offences of pre-meditated murder and manslaughter, human trafficking, child pornography, drugs or corruption.

136. The Processing of Personal Data (Protection of Individuals) Law of 2001 was also introduced as part of the harmonization process during the RoC's negotiations for EU membership. The law grants individuals certain rights in relation to information as well as the right to make a complaint in relation to the application of the law. The law was amended in 2003 in order to align domestic legislation with Directive 95/46/EC.

### **Non-EU Related Reforms**

137. The RoC has entered into 50 double-taxation treaties which is unusual high for a low-taxation jurisdiction. The general effect of these treaties is that Cyprus registered offshore entities that have tax exemptions in Cyprus will enjoy the same exemptions in the treaty countries.
138. The RoC has signed or ratified most international and regional legal instruments in the field of human rights, which cover not only individual civil, political, economic, social and cultural rights but also rights in the field of protection and respect of minorities and combatting racism. The RoC is bound by a large number multi-lateral human rights conventions, which were ratified either by law enacted by the House of Representatives (Article 169.2 of the Constitution) or under the doctrine of succession in respect of international documents which were binding on Cyprus before independence as per Section 8 of the Treaty of Establishment.

### **How Have the Reforms Been Managed?**

139. An Office for European Community Accession was established under former President George Vassiliou in March 1998 in the order to co-ordinate the accessions process and reported directly to the President of the Republic. The Government also established 23 working groups, each of which was responsible for familiarizing itself with a different chapter of the *acquis communautaire* with which the Republic would have to conform. The Working Groups reported directly to the Office for European Community Accession.
140. Simultaneously, a Parliamentary Committee of European Affairs was established by the RoC House of Representatives with sole responsibility for examining bills or regulations aimed at harmonization with the *acquis communautaire*.

141. The proposed reforms were prepared in the form of a bill by the Ministry of Justice and Public Order and submitted to the Council of Ministers for approval. Once approved, the Bill would then be introduced to the Parliamentary Committee for European Affairs for detailed examination. Following the bill's passage through the Parliamentary Committee, it would be introduced to the House of Representatives for enactment and subsequently sent to the President for promulgation by publication in the official Gazette of the Republic under Article 52 of the Constitution.
142. Similarly, reforms which are introduced as a result of international and bilateral cooperation to combat, for example, organized crime, are implemented through the drafting of an Agreement which is then subject to negotiation between the relevant parties. At the negotiations stage, the Ministry of Justice and Public Order seeks the advice of relevant Ministries/Departments (Police, Ministry of Interior, Customs and Excise, etc.). Once agreement is reached, it is submitted to the Office of the Attorney General for legal vetting. Subsequent to the comments of the Attorney General, the text is submitted to the Council of Ministers for approval. After the signing of an Agreement, a ratification bill is submitted to the House of Representatives for approval. Once approved, the Agreement comes into effect by exchanging a *Note Verbal* with the other country through the Ministry of Foreign Affairs.
143. Once the bill has been published in the official Gazette, it is deemed to be law. The implementation of the law and any reforms it may incorporate will depend on the functions it will serve. For example, the implementation of a law relating to human rights will be undertaken by the Ministry of Justice and Public Order because the Ministry's overall responsibilities include the promotion of human rights. Similarly, any new law relating to land ownership will be implemented by the Ministry of Interior because the Ministry's functions include the Department of Lands and Surveys.

### **What Institutions Have Been Created and Which Functions Do They Serve?**

144. Some of the key institutions which have recently been created are as follows:
- The Commissioner for Administration (the Ombudsman).
  - Commission for Protection of Competition: The body was first established by the Protection of Competition Law (Law 207/1989) which was later abolished following the enactment of Law 13 (1)/2008). The law identifies the Commission as the competent authority on all competition matters with specific responsibility for the application of Regulation 1/2003 and for Articles 101 and

102 of the Treaty on the Functioning of the European Union. Hence, it has exclusive competence for the harmonious operation of the market, within the rules of fair competition, as a means of boosting the economy. The Protection of Competition Law 2008 in conjunction with the Control of Concentration of Enterprises Law of 1999 and 2000, place the rules and principles whose objective is the maintenance of effective competition, within the Cypriot market. The Commission's brief, through the enforcement of the rules of fair competition, is the creation of conditions under which consumers are offered high quality goods and services at competitive prices.

- Commissioner for Personal Data: the Office for Personal Data Protection was established in 2001 to deal with issues relating to protection of personal information against unauthorized and illegal collection. The Office is the mechanism through which individuals can assert rights relating to personal data as well as make complaints relating to the application of the law.
- Office of the Commissioner for State Aid Control: the Office was established in 2001 as part of the harmonization process of Cypriot legislation with the *acquis communautaire* in the field of state aid. With the passing of the Public Aid Control Law (Law 30 (1)/2001) following a decision of the Council of Minister on 11 April 2001, Community law was directly incorporated into Cyprus legal order, making the European Commission-and not the Member State-responsible for the monitoring of state aid.
- Internal Audit Service: the Office was established by the Internal Audit Law (Law 114 (1)/2003) as an independent body for the performance of internal audits of public bodies. Following the RoC's accession to the EU, the need arose for the designation of an independent Audit Authority with responsibility for the auditing of EU funded programs. The Internal Audit Service was deemed to be meet all relevant requirements of EU Regulations and was hence designated as the Audit Authority. The Internal Audit Commissioner who is appointed by the Council of Ministers for a term of six years heads the Office. His primary responsibility is the effective implementation of the provisions of the Internal Audit Law of 2003. He is also responsible for the submission of an Annual Report, describing the activities of the service, to the Internal Audit Board.
- Cyprus Agricultural Payments Organization: The Office was established under Council Regulation (EC) No.1258 (17/5/1999) on the financing of the Common Agricultural Policy of the European Union following the enactment of "The Establishment and Operation of the Agricultural Payments Organization and other Related Matters Law (Law No. 64 (1)/2003) on 27 June 2003. The law provides for the establishment of an independent legal entity which does not come under any Government Ministry or Department. Its autonomous legal status gives the organization

considerable flexibility in responding to its EU determined work program and priorities.

- **Tender Review Authority:** The authority was established under Law 101 (1)/2003 in the context of the Government's overall policy to introduce transparency and efficiency in the public procurement of contracts. It is responsible for examining appeals lodged with the Authority against actions and decisions of Contracting Authorities which contravene the law and which take place prior to the signing of public contracts for supply, works and services. In particular, it has responsibility for the law which established it as an independent body as well as the four EU Directives on its subject area, namely Directive 2004/17/EC, Directive 2004/18/EC, Directive 89/665/EEC and Directive 2007/66/EC.
- **Commissioner of Electronic Communication and Postal Regulation:** The Office was established as part of the harmonization of RoC's laws with the *acquis communautaire* and the introduction of deregulation into the electronic communication and postal services sector. The purpose of the Office is to promote in the RoC the following:
  - (a) the provision of services and networks of electronic communication and postal services for the entire public;
  - (b) in the interests of consumers, specially in relation to quality and cost;
  - (c) the introduction of effective competition in the provision of networks and services; and
  - (d) the promotion of a large range of products and services of electronic communication.

### **What Organisations/Functions Have Been Abolished or Underwent Drastic Change?**

145. Some of the organizations which have been abolished and/or underwent drastic change as a result of the reform agenda are as follows:

- The Ombudsman service, which was initially established in 1991, was reformed in May 2004 so that it also operated as the competent authority against racism and unequal treatment;
- The Commission for the Protection of Competition, which was initially established in 1989, was re-designated in 2008 as the competent authority on all competition matters and in particular the implementation of relevant EU Regulations and laws.
- The Internal Audit Service, which was initially established in 2003, was reformed following RoC's accession to the EU so that it

became the designated independent authority for the auditing of EU funded programs.

- The Tender Review Authority, which was initially established in 2003, was reformed so that it had exclusive jurisdiction for the EU Directives relating to its remit.

### **What is the Current Reform Agenda and Which Priorities and Strategies Have Informed This Agenda?**

146. Further to the legislative changes outlined above, the RoC also participates in a range of Community wide activities such as the Justice and Home Affairs Committee. The key current policy priorities and work areas of the Committee are as follow:

- Action to safeguard human rights, democratic institutions and the rule of law. For example, the Fundamental Rights Agency helps member states to pass new laws and raise public awareness relating to the enforcement of the Charter of Fundamental Rights.
- Cooperation between national judicial authorities to ensure that legal decisions taken in one Member State are recognized and implemented in other Member States, where relevant. This is a particularly significant development in civil law areas such as divorce, child custody, maintenance claims and unpaid bills. The European Judicial Network has been established specifically to help the fight against serious crimes such as corruption, drug trafficking and terrorism. Similarly, the European Arrest Warrant is intended to replace the lengthy extradition procedures so that suspected criminals can be speedily returned to the relevant country for trial.
- The development of minimum standards and procedures in relation to immigration and political asylum as well as an EU immigration policy in response to the need to manage asylum and immigration, as more and more people cross borders and continents to escape war, persecution and natural disasters.
- The development of policies and procedures in order to address internal security challenges, in particular the fight against terrorism and organized crime. Specific measures concentrate on firearms trafficking, trafficking of human beings and the sexual exploitation of children. The EU's common security strategy has been developed in order to improve internal security by cooperation on law enforcement, border management, civil protection and disaster management. The strategy includes legislation and practical measures in order to stop criminals such as drug barons, human traffickers, money launderers and terrorist from exploiting the freedoms of the Community and to improve cooperation between national police forces, especially within the framework of the European Police Office (Europol)
- Consumer protection and marketing law: EU consumer laws guarantee that citizens are fairly treated when buying goods and

services. The Charter of Fundamental Rights and treaties agreed since the Single European Act provide for fair treatment, goods of an acceptable quality standard and a right of redress when things go wrong.

- Contract Law: National laws of contract govern sale of goods and services. However, the differences between the various legal jurisdictions make cross border trade complex as well as work to the detriment of consumers. To counteract such labor market distortions, the European Commission has proposed a Regulation on Common European Sales Law in October 2011. The Regulation will provide for a 2<sup>nd</sup> contract law regime within Member States and will allow contracting parties to a cross-border dealings to choose it as the contracting regime on a voluntary basis.
- Protection of Personal Data: Under EU law, personal data can only be collected under strict conditions and only for a legitimate purpose. Moreover, the party collecting the data must protect the personal information from misuse and must respect the rights of data owners. In 2012, the European Commission proposed a major reform of the EU legal framework for data protection. The proposal will strengthen individual rights and tackle challenges of globalization and new technologies.
- Gender equality: Equality between men and women is one of the founding values of the European Union. The Strategy for Equality Between Men and Women represents the European Commission's work program for 2012-2015 and includes thematic priorities of equal economic independence between men and women, equal pay for work of equal value, equality in decision making, dignity, integrity and ending gender violence, promoting gender equality beyond EU and horizontal issues such as gender roles, legislation and governance tools. In particular, the RoC has enacted the following laws:
  - (a) Maternity Protection Law (1997)
  - (b) Work of Equal Value Law (2002)
  - (c) Marriage Law (2003)
  - (d) Equal Treatment of Men and Women in Employment and Vocational Treatment Law (2002)
  - (e) Equal Treatment of Men and Women in Professional Social Insurance Schemes Law (2002)
  - (f) Civil Registry Law (2002)
  - (g) Parental Leave and Leave on Grounds of Force Majeure Law (2002)
  - (h) Violence in the Family Law (2000)
  - (i) Combatting of the Trafficking of Persons and Sexual Exploitation of Minors Law (2000)

## **What are the Impacts of the Concerned Reforms and What Are The Evaluation/Assessment Processes Regarding These Impacts?**

147. A general comment as an opening remark regarding the assessment and evaluation of the reforms agenda is that the reforms which were strictly focused on the accession of the RoC to the EU was successful in achieving the desired membership objective. Moreover, in terms of general compliance with the EU legal and regulatory framework, the record of the RoC can be said to be good as it has the third lowest number of infringement proceedings against it. Nevertheless, there appears to be a trend of increase in the numbers of case<sup>30</sup>. Other than this general comment, it was not possible to identify a comprehensive evaluation and/or assessment strategy as regards the wide range of reforms described in this report. However, it has been possible to identify one specific evaluation and/or assessment exercises which have been carried out by the EU. I shall outline below a summary of some of these assessment.

- An 'Impact Assessment' prepared as a Commission Staff Working Paper identified the following problems as a result of EU laws and regulations on data protection:
  - (a) Barriers for business and public authorities due to fragmentation, legal uncertainty and inconsistent enforcement;
  - (b) Difficulties for individuals to stay in control of their personal data;
  - (c) Gaps and inconsistencies in the protection of personal data in the field of police and judicial cooperation in criminal matter

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<sup>30</sup> Commision Staff Working Paper, SEC (2011) 721 Final-Assessment of the 2011 national reform programme and stability for Cyprus.

## **CHAPTER V: Conclusions**

- 148.** The legal system prevailing within RoC is the common law inherited from the pre-independence period, augmented by the constitutional framework introduced upon independence and the changes brought about as a result of EU accession and international commitments.
- 149.** Constitutional provisions for the separation of powers and an independent judiciary characterize the nature of executive-judiciary relations.
- 150.** The role and responsibilities of the Attorney General is constitutionally sanctioned and historically inherited from the common law tradition and reserved primarily for the provision of legal advice to the Government as well as the prosecution of suspected criminals.
- 151.** The role and responsibilities of the Ministry of Justice and Public Order includes the administration of the courts, overview of the promotion of a sound legal system and legal reform as well as the overall supervision of the Police and Fire Services and specific responsibilities for the EU accession process.
- 152.** The court structure of the RoC is a two-tier system with a Supreme Court, six District Courts and a number of functional courts with narrowly defined role and responsibilities. The casework administration system is under the control of the Chief Registrar.
- 153.** There has gradually developed a wide range of web based routes through which information about the legal system and the courts can be obtained, although the record of the RoC, compared with other European countries, cannot be said to be good.
- 154.** The independence and impartiality of the judiciary can be said to be good and has been acknowledged as such by the European Community.
- 155.** The RoC has also witnessed increasing emphasis on the quality of legal services and collation of data regarding this matter. However, significant weaknesses still persist, for example, in relation to adequate complaint mechanisms, determination of users views of court performance, excessive delays in the litigation process and lack of public opinion research into satisfaction of the public with the judiciary or the Attorney General's office.
- 156.** The transparency and accountability of the legal and judicial sector can be said to be good, although the unavailability of data regarding public satisfaction with the judiciary or the Attorney General's Office poses a significant question mark regarding this area.

- 157.** There is increasing awareness and use of alternative dispute resolution and legislative framework for its use although the lack of any official bodies which administer alternative dispute resolution poses a significant question mark regarding this area.
- 158.** The recent reform agenda has been dominated by the EU accession process and integration. A considerable number of new institutions have either been created or significantly reformed in order to comply with European Community requirements.
- 159.** It was not possible to identify any comprehensive evaluation strategy in identifying the impacts of the reforms which have been undertaken.

*Bu rapor KKTC Devleti hde Fonksiyonel ve Kurumsal Gözden Geçirme Projesi" (KKTC-FOKUS) kapsamında hazırlanmıştır.*

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