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REPUBLIC OF CYPRUS

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Introduction

1. ADF International (registered name “Alliance Defending Freedom”) is a global alliance-building legal organization that advocates on behalf of religious freedom, life, and marriage and the family in front of national and international institutions. As well as having ECOSOC consultative status with the United Nations, ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains that there is no “right to abortion” in international law and recommends that Cyprus respects the freedom of conscience of medical personnel and institutions. It also calls on the authorities of the occupied part of Cyprus to protect religious sites from demolition and to respect the cultural rights and freedom of religion of their inhabitants, as well as to bring the perpetrators of religious vandalism before the competent courts, so that justice is carried out.

(a) Right to life

3. Before the latest amendment, the Cypriot Criminal Code (Ποινικού Κώδικα Νόμος (ΚΕΦ.154) in sections 167-169 and 169A, as amended in 1986 (Law No. 186)¹, permitted termination of pregnancy in the following situations: if the pregnancy was deemed to threaten the life of the mother, or if it could cause greater physical or mental injury to her or her other children, or if there was a substantial risk that the child would be born with a serious physical or psychological abnormality, or in the case of rape and under other circumstances in which the pregnancy would seriously jeopardize the social status of the woman or of her family.² The authorization of health professionals and, in pregnancies involving rape, a police report that rape occurred were necessary.
4. On 30 March 2018, the House of the Representative of the Republic of Cyprus passed a new amendment of the Criminal Code further decriminalizing abortion.³ The new law presents broader legal grounds for abortion by allowing on-demand abortions up to 12 weeks, without having to prove a risk to the life

¹ Amendment available at http://www.cylaw.org/nomoi/arith/1986_1_186.pdf, 28 June 2018.

² See as well: United Nations, ABORTION POLICIES – A GLOBAL REVIEW, accessed on <http://www.un.org/esa/population/publications/abortion/profiles.htm> , 25 June 2018.

³ The Criminal Code Law (ΚΕΦ.154), Amendment 23 (I) / 2018, Article 169A, available at http://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html, 28 June 2018.

or health of the mother, and up to 19 weeks in cases of rape and incest, without the requirement of a police report.⁴

5. There is no explicit or implicit “right to abortion” in the Constitution of the Republic of Cyprus. On the contrary, article 7 of the Constitution states that “every person has the right to life and corporal integrity.”⁵ Abortion is an invasive procedure that harms the mother and ends the child’s life. Broadening legal grounds for abortion does not contribute to greater respect of the fundamental right to life.

The right to life in international law

6. Article 6(1) of the ICCPR states that “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” Under the ICCPR, all other adult women may be subject to the death penalty, therefore this clause must be understood as recognizing the unborn’s distinct identity from the mother and protecting the unborn’s right to life.
7. As the travaux préparatoires⁶ of the ICCPR state, “The principal reason for providing in paragraph 4 [now article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”⁷ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child[.]”⁸
8. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”

⁴ G. Psyllides, PARLIAMENT DECRIMINALISES ABORTION (UPDATED), <https://cyprus-mail.com/2018/03/30/parliament-decriminalises-abortion/> (25 June 2018).

⁵ The Constitution of the Republic of Cyprus, English version accessed on [http://www.presidentcy.gov.cy/presidentcy/presidentcy.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY_Constitution.pdf](http://www.presidentcy.gov.cy/presidentcy/presidentcy.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf), 27 June 2018.

⁶ In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

⁷ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

⁸ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

9. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child but does not provide a lower limit on when the status of “child” attaches. Moreover, article 6 of the CRC holds, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both articles 1 and 6 of the CRC indicate recognition of, and protection for, unborn life.
10. The previous legal framework concerning abortion had no effect on the availability of good maternal health care in Cyprus. Indeed, Cyprus has been one of the safest places in the world for an expectant mother to give birth. The maternal mortality ratio (MMR) diminished markedly in the last 25 years and is currently at 7 per 100,000 live births.⁹ The MMR in Cyprus was below average at 12 per 100,000 live births in 2015.¹⁰

(b) Conscientious objection

11. The Cypriot Constitution protects freedom of conscience in article 18 (1), but it is not clear whether the law explicitly protects conscientious objections to life-ending medical procedures.
12. Freedom of conscience is recognized as a fundamental freedom in all major human rights treaties. The Universal Declaration of Human Rights (UDHR)¹¹ states in its very first article that ‘all human being are... endowed with reason and conscience’, in addition to a specific provision protecting conscience in article 18. The International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976 and has 168 State Parties, has a similar provision in article 18, protecting thought, conscience, and religion.¹² In Europe, the European Convention on Human Rights provides that ‘everyone has the right to freedom of thought, conscience and religion’.¹³
13. Turning specifically to the question of conscientious objection in the health sector, the ECtHR has yet to rule specifically on the matter, but has clearly anticipated the existence of such rights of conscientious objection in holding:

⁹ WHO et al., MATERNAL MORTALITY IN 1990-2015, CYPRUS, available at http://www.who.int/gho/maternal_health/countries/cyp.pdf, 26 June 2018.

¹⁰ WHO et. al., TRENDS IN MATERNAM MORTALITY: 1990-2015, p. 17, available at http://apps.who.int/iris/bitstream/handle/10665/194254/9789241565141_eng.pdf;jsessionid=0274340CBD27BD987FF7D573E4BA246A?sequence=1, 26 June 2018.

¹¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III))

¹² See, for example, the position in favour of conscientious objection adopted by the Human Rights Committee in 1993: Human Rights Committee, General Comment No. 22, para. 11.

¹³ European Convention on Human Rights, Article 9.

“States are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services”.¹⁴ Moreover, the Parliamentary Assembly of the Council of Europe (PACE) adopted unequivocal language in Resolution 1763 (2010), entitled “The right to conscientious objection in lawful medical care”: “No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason”.¹⁵

(c) Destruction of religious sites

14. Cyprus, with its historical Christian roots, possesses some of the oldest and finest collections of Byzantine art in the world. A significant number of churches, chapels and monasteries are decorated with very old and priceless mosaics, frescoes and icons.
15. The 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage underlines that cultural heritage is an important component of cultural identity and of social cohesion, and that its intentional destruction may have adverse consequences for human dignity and human rights.
16. In 1974, the Turkish army invaded Cyprus and occupied 36.2 per cent of the northern part of Cyprus, which declared its independence in 1983. Although the invasion was condemned by the international community¹⁶ and the self-declared state remains unrecognized, Turkey still occupies part of the island.¹⁷
17. The military regime in Northern Cyprus put all Christian church-property under the Muslim foundation of Vakufs, known as Evkav, thus violating Article 23, paragraph 9 of the Constitution of the Republic of Cyprus, according to which any Church property in Cyprus is indisputable. The evidence collected by researchers, contained in multiple sources¹⁸, proves the fact that a

¹⁴ RR v. Poland, no 27617/04, 26 May 2011, § 83 (emphasis added).

¹⁵ Council of Europe Parliamentary Assembly, ‘The right to conscientious objection in lawful medical care’ (Resolution 1763, 2010).

¹⁶ Resolutions of the Security Council of the United Nation 541 (1983) and 550 (1984), Resolution of November 17th, 1983 of the European Parliament, Resolution of November 23rd-29th, 1983 of the British Commonwealth.

¹⁷ C. G. Chotzakoglou, RELIGIOUS MONUMENTS IN TURKISH OCCUPIED CYPRUS, Lefkosia 2008, p. 21-24.

¹⁸ See C. G. Chotzakoglou, RELIGIOUS MONUMENTS IN TURKISH OCCUPIED CYPRUS, Lefkosia 2008; A. G. Marangou, THE DESTRUCTION OF RELIGIOUS MONUMENTS BY THE TURKISH ARMY IN THE OCCUPIED PART OF CYPRUS, Reprint, Zavalis Litho Ltd, 2008; L. Zaphiriou et. al., THE LOSS OF A CIVILISATION, available at http://www.mfa.gov.cy/mfa/embassies/embassy_

considerable number of religious sites have been partially or completely demolished by the Turkish military regime. The rich cultural heritage that such Christian churches, monasteries and cemeteries presents is being destroyed, plundered and left to decay.

18. More than 500 churches and monasteries have been looted or destroyed: more than 15,000 icons of saints, innumerable sacred liturgical vessels, gospels and other objects of great value have literally vanished. Some Christian places of worship have been turned into mosques, museums, hay barns, stockyards or even hotels. At least three monasteries have been turned into barracks for the Turkish army (Ayios Chrysostomos in the Pentadactylos Mountains, Acheropoiitos in Karavas and Ayios Panteleimonas in Myrtou). Wall-paintings and mosaics of rare artistic and historical value have been removed from church walls and sold illegally in America, Europe and Japan.¹⁹ Important cultural monuments and places of worship continue to be completely inaccessible as they are located within the “military zones” of the Turkish occupation army.²⁰
19. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict states in article 4(3) that the occupying power undertakes to ‘prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of any acts of vandalism directed against, cultural property’. Both the Republic Cyprus and Turkey are contracting parties to the Convention.
20. Article 15 of the International Covenant on Economic, Social and Cultural Rights, of which Cyprus and Turkey are contracting parties, recognizes the rights of each person to take part in cultural life and to the freedom indispensable for creative activity.
21. Cyprus has also ratified the International Covenant on Civil and Political Rights, which protects rights bearing an important cultural dimension, in particular the rights to freedom of thought, conscience and religion (article 18), freedom of opinion and expression (article 19) and the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language (article 27).

stockholm.nsf/A64B1EE900605967C22578B90025C290/\$file/Destruction%20of%20cultural%20heritage%20(English%20version).pdf, 27 June 2018.

¹⁹ L. Zaphiriou et. al., THE LOSS OF A CIVILISATION, p. 10.

22. The Report of the Special Rapporteur in the field of cultural rights on her mission to Cyprus A/HRC/34/56/Add.1 of 2 March 2017 stressed the importance of "...the right to access and enjoy cultural heritage as a human right." The Special Rapporteur further stated that "the destruction of cultural heritage must be considered a violation of cultural rights" and that "the destruction of cultural heritage has created huge impediments to the exercise of the right to access and enjoy cultural heritage, and jeopardizes the rights of future generations".²¹
23. The Special Rapporteur has also voiced her concern "that one purpose of the patterns of destruction has been to deprive displaced people of anything to which they could return, as well as to erase the history of their presence and claim a monopoly or monolithic identity in particular locales".²²
24. The 1960 Constitution of the Republic of Cyprus contains no specific provisions expressly protecting the right to participate in cultural life. However, according to the Special Rapporteur, the provisions regarding freedom of movement (article 13), freedom of thought, conscience and religion (article 18), freedom of speech and expression (article 19), the right to education (article 20), freedom of peaceful assembly (article 21), and the right to non-discrimination and equality before the law (article 28), are important for cultural rights.
25. In light of the above, Cyprus should take effective steps to stop the destruction of cultural heritage and bring the perpetrators of such crimes to justice.²³

Recommendations:

26. In light of the aforementioned, ADF International suggests the following recommendations be made to Cyprus:
 - a) Affirm that there is human right to abortion under international law and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all stages of development;
 - b) Recognize and respect the right to conscientious objection of medical professionals in law and practice, especially with regard to life-ending medical procedures;

²¹ The Report of the Special Rapporteur in the field of cultural rights on her mission to Cyprus A/HRC/34/56/Add.1 from 2nd March 2017, p. 10.

²² Ibid.

²³ See Ibid., p. 13.

- c) Recognize and respect the freedom of health care institutions not provide services that are against their foundational beliefs;
- d) Take steps to ensure the preservation of the cultural and religious heritage in the occupied areas of Cyprus, and undertake effective steps to fully ensure all political, economic, social and cultural rights of its inhabitants.
- e) Ensure the preservation of the cultural and religious heritage, investigate cases of destruction of cultural property and bring perpetrators to justice.



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