

REPORT

by

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on

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a visit to Cyprus from 22 to 29 August to enquire into the situation
regarding the Rule of Law in Cyprus, and in particular the abduction
of the Minister of Justice, and numerous allegations of ill-treatment
of detained persons.

Introduction

In making any comment on the situation in Cyprus it is necessary to recognize the long history of difficulties which the country has experienced in striving to establish a democratic system, and to appreciate the deep divisions not only between the Greek and Turkish Cypriots but also between those who desire to live in an independent Unitary State having a close alliance with Greece and those who aim at total identification with the Greek State. These divisive factors are both separately and in combination - irreconcilable and have no doubt contributed substantially to the present unrest and growing disregard for the Rule of Law. The functions of the U.N. force and the willingness of the Turkish population to stand aloof are helpful contributions to stability and it is plain that any long term solution of this problem can only be achieved by a steady reduction of tensions and a firm but just use of proper legal procedures with rejection by all groups of the use of violence for any purpose.

As is well known, the tension in Cyprus has been seriously aggravated during the last year following the return to the island of General Grivas, who embarked upon a campaign of illegal violence and subversion in order to bring pressure on President Makarios either to resign or to alter his policies towards more speedy "enosis", or union with Greece. The activities of Grivas' forces have included the raiding and blowing up of police stations, hunting up of police and seizure of arms and ammunition.

In response to this, the government created at the beginning of this year an auxiliary or reserve police force to combat the Grivas forces. Whether due to lack of confidence in the loyalty of the existing police forces or in their efficacy, this auxiliary force was created as an autonomous para-military force. Most of the complaints of brutality towards prisoners have been made against members of this auxiliary force.

The situation as found contains the following elements which are discussed in more detail below. All are in varying degrees inimical to the Rule of Law.

1. The use of violent methods (bombs - shootings - abductions) as a means of enforcing particular views.
2. Excessive and brutal violence by the para-military auxiliary police force, which is not subject to any proper control.
3. A lack of will or ability on the part of Government to take the initiative in dealing effectively and impartially with complaints of malpractices.
4. Some weaknesses in the existing law and its interpretation which hamper the full protection of Human Rights.
5. Intimidation - both physical and economic of those believed to hold views not approved by Government.
6. Excessive use of both legal and illegal power to interfere with the freedom of the Press.

1. The Use of Violence for Political Ends.

The illegal and violent activities of the close supporters of General Grivas and his armed group are well known, though the use of such methods has been greatly reduced in recent weeks. Fanatical supporters of the President, however, have also resorted to such methods and are still doing so. This has been admitted publicly by the President himself. In some cases at least, the perpetrators are believed to be known but no action has been taken against them.

During the week of this mission to Cyprus, the offices of a lawyer known to be opposed to the Government were blown up, an attempt was made to plant a bomb at the house of a well known supporter of the rule of law, another opposition lawyer was forcibly detained for some hours, apparently in order to prevent his appearance in court, and various shooting incidents against opposition persons were reported.

In the recent past the abduction of the Minister of Justice was a serious act of violence by the Grivas faction, which naturally provoked a strong reaction, taking the form of widespread arrests of suspects. Happily the Minister was released unharmed following a call for his freedom and for the abandonment of violence on all sides.

It is certain that no progress towards the Rule of Law can be made so long as violence is used as a political weapon and is directly or indirectly condoned.

2. Brutal Violence by Para-Military Forces.

Activities by the Grivas armed group are at a low ebb and are said by some to have ceased. This may in part be due to the activities of the armed counter force created by the President in the form of the Auxiliary Reserve Police (including the special Palace Guard). This force is extremely active. There is clear evidence that its members have been guilty of gross abuse of power and maltreatment of prisoners. Its constitutional base is the power to enlist special police to the Regular Force, but it is not under the control of that Force. Rather, it is superior to it. It may truly be said to be outside any form of control. There is a large body of evidence of extreme brutality during arrests and up to the time when prisoners are handed over to the custody of the Regular Police or the Prison authorities. Such conduct is known to the President and other ministers and high authorities but tends to be discounted as isolated cases of minor excesses due to provocation or resisting arrest. The evidence received indicates the contrary and is fully documented and established. Some enquiries have been carried out under the direction of the Attorney General, but all these enquiries have been conducted by the Police (usually by the Auxiliary Police themselves or by the C.I.D. which appears to be very much identified with the Auxiliaries). They have not resulted in a single prosecution.

In some cases gross acts have been perpetrated by men who are known or easily identifiable but no action has been taken.

Some instances of brutality will serve to show the cause of growing public revulsion against the Auxiliary Force.

- Men whose condition on arrest was perfectly sound have appeared in Court a few hours later almost unconscious, showing many signs of heavy violence and injuries.

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- Men have been illegally abducted from prison under pretence of interrogation and heavily beaten up and tortured in fields or car parks before return to prison.
- Ruthless beatings and violent attacks during conveyance to police H.Q. - even in public, in police yards and in the presence of regular police who were unable to prevent them.
- Illegal interrogation methods, including hooding, long periods of "wall standing", beating with hands and various weapons, kicking, burning with cigarettes.
- Continuous use of threats to use shooting, poison and bombs, and to take reprisals against relatives.
- Arrest and detention "on suspicion" of a person admitted by the Police to be innocent. This was done in order to bring pressure on a person not in custody.

Such conduct is not only inexcusable on any grounds but also contributes greatly to tension and counter violence.

3. Lack of Official initiative in respect of complaints and known malpractices.

The legal position is that only the Attorney General can prosecute and his power to do so is discretionary. He may act on his own initiative or on complaints (with sufficient evidence) brought to him. He is aware of acts of violence by the Auxiliary Police both as a result of complaints and as matters of public knowledge (e.g. the malicious destruction of the printing machinery of an opposition newspaper, and many instances of visible serious injuries to men brought before Judges for remand), but so far as is known no single prosecution has been started.

The Attorney General's staff is limited and the number of matters brought to his notice now seems to be far beyond the capabilities of his office for obtaining effective enquiry and either credible exoneration of the Police or prosecutions. In many cases his demand for "evidence and names" as a prerequisite for taking action is an effective bar since for obvious reasons victims are usually unable to identify their assailants. In cases where evidence and names have been offered action has been slow or non-existent and enquiries by the Police even if done by the Regular Police (which is not usually the case) produced either negative or unconvincing results. Medical evidence also presents difficulties for reasons explained under item 5.

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The Attorney General has given a categorical promise to investigate cases brought to his notice and the good faith of that promise is not impugned in any way. The Attorney General is a permanent appointment independent of Government and constitutionally safeguarded, but for the reasons given his effectiveness in this sphere seems to be limited. Several persons of high authority expressed the view that there have been many instances where official action should have been taken either on the Attorney General's own initiative or on Government request. Reliance on the ability of private citizens to provide the material for action is manifestly unsatisfactory.

The private citizen has two other remedies before the law - a civil action for damages, or a personal action against the state without naming individual offenders. The first is plainly too slow, too expensive and too far detached from the necessary 'disciplinary' element to offer much if any hope for most of the individuals who suffer. The second is a heavy and difficult weapon to use but in certain cases would be appropriate and has been or is about to be tried. Even so the current political atmosphere and the continued menace of the Auxiliary Police may reduce to vanishing point the value of this course. In any case it is equally hampered in many cases by difficulties in the way of collecting 'independent' evidence.

The Attorney General himself initiated the establishment of a sub-committee of the Bar Council to investigate complaints and bring them forward for prosecution. This sub-committee of 3 contains a Government supporter, an opposition supporter and a 'neutral'. This is in itself a sound and constructive step, but the members interviewed confessed themselves almost powerless to achieve useful results. They are obviously busy men with their own professional duties to perform and therefore cannot provide adequate administrative staff and facilities to enable this heavy burden to be discharged. More important however is their inability to obtain sufficient co-operation from the Police in carrying out adequate preliminary investigations. The Minister of the Interior was receptive of a request to urge the Police - even in their own interests - to give full co-operation, but it is clear that where -as in almost every case- the complaint is against the Police, and having regard to what has already been said of the Auxiliary Police and C.I.D., only truly independent powers of investigation (such as were afforded to the Commission's representative) would suffice.

There is a possibility under the Constitution (CAP.44) to appoint a Commission of Enquiry but it would appear that this course would be too cumbersome for the present purpose.

It is therefore suggested that the best method of improving the situation would be to build upon the constructive base of the Bar Council Sub-Committee by:-

- (a) providing it from official sources with the required administrative backing and cost.
- (b) granting its representatives full powers of investigation and enquiry and the right to interview persons in custody.
- (c) requiring the Police of all groups to co-operate and facilitate enquiries - e.g. by identifying persons on duty at particular times and places and making available official records.

It is worth noting that several members of the Regular Police Force intimated that they would welcome independent enquiry.

4. The existing Law.

Cyprus has ratified the European Convention of Human Rights (but without the right of individual petition) and its terms are incorporated with some minor variants in the Constitution which is of course modern and sound though with some laws inherited from colonial rule. It is to be noted with approval that the Government has not put any emergency powers into force. The exercise of such powers usually enhances rather than reduces tension. The present situation however is, in its results, not very different.

The entire legal profession - Greek and Turkish - numbers about 400. Recognising the unavoidable facts that some of these are relatively inexperienced and that all types of legal expertise are required it is clear that their number is entirely inadequate in present conditions. One consequence - apart from sheer lack of numbers to deal with the large quantity of serious cases coming before the courts - is that there may be some lack of strength and experience in the lower ranks of the Judiciary.

There is evidence that some advocates do not sufficiently use the available processes of cross-examination, seeking special orders, and appeal (which is open as of right from any order of a District Court).

It must also be said that some politically motivated victims of maltreatment seek to use the medium of publicity rather than correct legal process.

Three particular aspects of the existing law are relevant to the present troubles.

A. Part II of the Constitution establishes Fundamental Rights and Liberties. Article 11 proclaims the right to liberty and security of person and defines the permitted exceptions. Paragraph 2(c) of the article permits -

"the arrest or detention of a person for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

Paragraph 6 also requires that -

"the judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest".

The Criminal Procedure Act, Section 24, provides -

"Where it shall be made to appear to a judge that the investigation into the commission of an offence for which a person has been arrested has not been completed it shall be lawful for the judge, whether or not he has jurisdiction to deal with the offence for which an investigation is made, upon application by a police officer, not below the rank of an inspector, to remand, from time to time, such arrested person in the custody of the police for such time not exceeding eight days at any one time as the court shall think fit, the day following the remand being counted as the first day".

Section 25(1) provides -

"Any police officer may, without warrant -

(a) detain and search any person whom he reasonably suspects of carrying, conveying or concealing any article or document in respect of which any offence is about to be committed or is being committed or has recently been committed;

(b) enter upon and search any place

(i) if he has reason to believe that an offence punishable with death or imprisonment exceeding two years is about to be committed or is being committed, or has recently been committed, therein or that any instrument with which any such offence has recently been committed anywhere may be found therein.

(ii) (iii) (iv)

"(2) Anything which is found during a search carried out under sub-section (1) of this section and which might be seized had the search been carried out under a search warrant may be seized and dealt with in the same manner as if it were a thing seized during a search under a search warrant and the provisions of Section 32 of this law shall apply, mutatis mutandis, shall apply to any such thing".

The essence of these passages is found in the expressions "reasonable suspicion" "reasonably considered" "made to appear" "reasonably suspects" and "reason to believe". These phrases are not unique to Cyprus and are not necessarily objectionable. They must however be seen in the light of current conditions and the fact that so long as an arrested man is brought before a court within 24 hours of arrest he can be held in custody on successive remands for up to 3 months without ever being actually charged.

Proper provision for bail exists, but release on bail while investigations are said to be uncompleted and/or there is "reasonable suspicion" of a further offence, is never granted. It was unheard of in the long recent series of arrests in connection with allegations of "political" offences.

The difficulty lies in the interpretation of the word reasonable and the nature of a Judge's "prompt enquiries". Some comments have recently been made from the Supreme Court on the need for careful consideration and adequate evidence of the grounds for suspicion. Nevertheless it is plain that when a Judge is told by a senior police officer that there is reasonable ground for suspicion and that further details would hamper enquiries, it is difficult for him to reject the request for remand. This is particularly so when the nature of the 'suspected' offence has

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has the essentially vague quality of 'subversion' 'conspiracy' or 'membership of an illegal organisation'. The result is that remand proceedings in these cases are rather perfunctory.

To the 'suspicion' leading to arrest is added further 'suspicion' and in the absence of any positive evidence and specific charge a false atmosphere of guilt is constructed out of nothing substantial. The supposed safeguard of applications for remand being made by a police officer 'not below the rank of inspector' is almost nugatory where the officer is acting as prosecuting advocate and the 'evidence' is given by a member of the C.I.D. or the Auxiliary Force (as was actually heard by the Commission's investigator) mainly in response to leading questions.

Convincing evidence was received that in some cases police officers had abused the powers which these provisions give them in order to secure the temporary detention of persons against whom they knew that they had no evidence.

The effect of Section 25(2) coupled with the whole problem of 'suspicion' gives rise to serious risk of the 'planting' of articles and documents. There is ample evidence of searches being carried out in the absence of the householder and many complaints that during such searches items have been 'found' of which the individual denies all knowledge.

B. The Constitutional provisions for Fundamental Rights and Liberties contain detailed provisions for the minimum rights of persons charged. Currently many people are not charged at all but are detained for long periods 'on suspicion'. Additionally, Article 11 Paragraph 6 provides that every person arrested shall be informed at the time of his arrest ... of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing. In practice, lawyers are seldom able to see their clients until 5 minutes or less before their first appearance in court. In many cases this is due to positive obstruction by the police authorities; in others, to movement of the suspect between different police premises, and the carrying out of interrogations.

C. The Law against subversive activities etc. contains provisions which render it an offence to publish anything which is insulting to the Head of State or the members of the Government. It is not necessary to prove any ulterior motive or to establish that prosecution is in the public interest and there is no available

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defence other than mere denial (e.g. truth, public interest, or fair comment). It is clear that in circumstances of weakness or danger public figures can become too sensitive to 'insult'. It appears however that it has become common to adopt the view that mere insults can undermine the authority and security of Government. The possibility is of course there, but the dividing line is difficult to define and should be a matter of judicial decision. There is reason to believe that there has been excessive use of this law to stifle criticism by individuals and to suppress opposition newspapers.

It would be an important safeguard of fundamental rights if it could be established either by amendment of the law or by authorised judicial practice that (a) the prosecution should be required to satisfy the court that prosecution is necessary in the public interest and (b) defences such as truth, public interest and fair comment should be admissible.

5. Intimidation.

In this sphere proof is necessarily difficult. Many oral and written complaints were received, backed up with convincing detail. It was also noticeable that many of the people who complained were very far from being activists in respect of any subversive or illegal group. Many were in fact only in opposition to the Government on limited grounds and some confirmation was forthcoming from men of high authority.

Reference has been made already to some specific acts of violent intimidation against lawyers. Others - on the evidence of reliable colleagues - have been harassed threatened and intimidated and were afraid to come forward for fear of further reprisals. When arrangements were being made (with the full authority of the President and the Minister of the Interior) to interview men in prison, the officer in charge of interrogation refused to allow any defence lawyer to be present as interpreter on the grounds that none could be trusted to interpret honestly. (Many hours of questioning of prisoners were in fact undertaken in the presence of an official of the Attorney General's office). Many persons complaining of maltreatment also complained of the inability to obtain any or any true medical reports from any but the few available private doctors. The allegation that many hospital doctors in state employment are intimidated by fear for their jobs or of other

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reprisals was widely confirmed by reliable persons. Some supporting evidence was obtained by examining 'official' certificates in comparison with private doctors' certificates and with personal inspection of individuals.

Numerous statements were received that persons in Government employment - civil servants, teachers and other officials - together with others expressing or believed to hold views not entirely in accord with the Government have suffered harrassment and economic pressures.

There is no doubt that there is considerable underlying truth in these complaints. The whole truth could only be established by extensive judicial enquiries, but for reasons which should already be apparent from this report the available machinery and the requisite safeguards are not adequate to encourage such procedure.

6. Interference with the Press.

Some reference to this has already been made under heading 4. It is always true that the freedom of the press is endangered most by its own irresponsible use and no doubt in the circumstances that have existed for some time in Cyprus there have been some impossible and perhaps even subversive misuses of the press. Nevertheless it appears clear that the available law has been provocatively over used and attempts made to silence opinions rather than solely to protect State Security.

In the immediate aftermath of the abduction of the Minister of Justice, action was taken against the two main opposition newspapers which went far beyond legal powers, but this has not been the subject of legal process initiated by the State. The details of the raids on these newspaper offices have been carefully examined and both show the use of unjustified and unprovoked violence. In one case the press on which the newspaper was published was smashed up during the night by the auxiliary police. Since there can be no doubt about the identity of the persons concerned, it is hard to see why some form of official enquiry has not been publicly undertaken. The newspapers concerned are not 'underground' subversive news sheets but genuine publications of a responsible even if strongly political nature.

Summary and Conclusion

Since all acts of violence or unlawful deprivation of liberty are contrary to

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the Rule of Law it cannot be doubted that in recent months many serious breaches of the Rule have occurred in Cyprus. The Grivas extremists are by their own admission unlawful and should be dealt with accordingly. On the other hand there has been illegal violence by supporters of the Government and a systematic abuse of power by the Government's auxiliary police forces. This has included unjustifiable violence and maltreatment of persons under detention; torture and intimidation; and unlawful abduction from police custody. Coupled with these violent acts there has been serious abuse of the legal process designed for the protection of all citizens. These matters are known to those in authority and there appears to be a regrettable lack of effort on the part of the Government to bring the law to bear on the persons responsible for such behaviour.

The first necessity is to disband all para-military forces and to provide such additional capability as may be required by strengthening and using only the Regular Police Force.

Thereafter every possible effort should be made to ensure that the constitutionally protected rights of citizens should be made truly effective in terms of the existing laws.

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