



NEWS REPORT

Date:	13 November 2014
Expert:	Corina Demetriou
Title:	Court rejects application seeking to enforce an Equality Body decision on Muslim religious school holidays.
Country:	Cyprus
<u>Context</u>	
Issue at stake:	The Supreme Court rejects an application for a mandamus order seeking to enforce an Equality Body recommendation against the English School governing board for failure to respect the Muslim religious holidays.
Ground of discrimination:	Religion
Source:	Report of the Anti-discrimination Authority regarding the Bayram holiday at the English School, File No. AKR 60/2013, dated 4 February 2014; Decision of the Supreme Court dated 24 September 2014 on the ex parte application of Costas Constantinou and Cenk Ahmet Nevzat for permit to lodge an application for a mandamus order (Civil application N. 160/2014).
Field:	Education.
Legislative provisions:	The Combating of Racial and Other Forms of Discrimination (Commissioner) Law N. 42(I)/2004; Law on the English School (Administration and Control) Cap.167, article 3(1)(a)(ii).

Content

Case: After the opening of the sealed border between north and south of the country in 2003, a significant number of Turkish Cypriots enrolled at the English School, making it the only bi-communal school in the country. In 2009 the Advisory Committee of the School suggested to the governing board to adopt one of the two days of the Muslim religious holiday known as the Bayram as a holiday for the entire school.¹ The governing board agreed, specifying that this arrangement would affect only that particular school year and that a further decision would have to be made in the following year as to whether this arrangement was to become permanent. Whilst no decision was made in the following year or in any years thereafter, the Armenian Christmas holiday of 7th January was added to the school's holidays. In September 2013 the governing board decided by majority not to include the Bayram in the school's holidays, in deviation of the practice followed in the past few years, but instead to allow the Muslim students not to attend school for one day without

¹ The school had been the target of extremist violence, vandalism and unrest over the years, because of the attendance by the Turkish Cypriot children. The governing board sought to relieve tensions by introducing various measures to promote a culture of equality and respect for diversity. Amongst these was the introduction of the Muslim bayram as a school holiday.

registering them as unjustifiably absent; at the same time, teachers were instructed not to carry out tests or teach new material during that day. According to the Equality Body's investigations, these instructions were not complied with by all teachers. Following the intervention of the Presidential Commissioner for the Affairs of Religious Groups, who recommended to the English School's governing board to officially celebrate the Bayram in order to convey a positive message to the Turkish Cypriots, the board decided to grant to Muslim students and teachers only three days of justified absence from the school in order for them to celebrate the Bayram at home.

Following this development, a complaint was filed at the Equality Body by parents of Turkish Cypriot students attending the English School claiming that the decision violates the right to religious freedom of their children and the right of the parents to offer their children education that is compatible to their religious and philosophical beliefs. At the same time, they argued that the decision is discriminatory as it treats Muslims in a disadvantageous manner in comparison to Christians (Orthodox and Armenians) attending the school whose religious holidays are holidays for the entire school, including teachers. The Equality Body recommended that the school adds the two days of the Bayram as official school holidays not only as an equality measure but also as an important and symbolic act of religious tolerance and pluralism, preparing and familiarizing students with the values of an open and multi-religious society. The governing board did not endorse this recommendation.

In light of the above, the applicants filed an application for mandamus² at the Supreme Court, seeking to compel the governing board to comply with the Equality Body's decision. The applicants claimed that, since the law regulating the Equality Body's mandate³ provides that the Equality Body's decisions are legally binding, a mandamus order ought to be issued compelling the school's governing board to implement the Equality Body's decision.

Decision of the Court: The law regulating the Equality Body's mandate grants to the Equality Body the power to issue an order which is published in the Gazette, to publish a report for the investigation it has carried out, issue a recommendation, impose a fine or enforce its recommendation. However, in the present case, the Equality Body restricted itself to a recommendation towards the governing board of the school without issuing any particular order. Furthermore, the law regarding the running of the school⁴ provides that "the character of the school shall be Christian but non-dogmatic and all students including the Muslims shall be facilitated as regards the exercise of *their own religion*" (emphasis added by the Court). In conclusion, the mandamus order requested would essentially seek to replace the discretion of the

² According to Halsbury's Law of England, 3rd Edition, Vol. 11, pp. 84-85, the order of mandamus is an order issued from the Court directed to any persons asking them to do some particular act within their mandate and is in the nature of a public duty. Its purpose is to supplement defects of justice, where there is a specific legal right and no specific legal remedy, or where there is an alternative legal remedy but the mode of redress is less convenient, beneficial or effectual.

³ The Combating of Racial and Other Forms of Discrimination (Commissioner) Law N. 42(I)/2004.

⁴ Law on the English School (Administration and Control) Cap.167, article 3(1)(a)(ii).



Equality Body beyond the provisions of Law 42(I)/2004 and to extend the obligations of the school beyond Cap.167. Given that the school does not prohibit the exercise of the religious duties of Muslims, the application for a mandamus order must fail.

Internet link source and additional information: The Supreme Court decision is available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2014/1-201409-160-2014.htm&qstring=%F6%F5%EB%E5%F4%E9%EA*