



NEWS REPORT

Date:	14 November 2014
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Title:	Discrimination on the ground of ethnic origin in access to public services regarding administrative procedure to register a marriage
Country:	Cyprus
<u>Context</u>	
Issue at stake:	Turkish Cypriots seeking to marry in the Republic-controlled area are required to present a certificate that the immigration authorities denies to the majority of them.
Ground of discrimination:	Ethnic origin
Source:	Report of the Antidiscrimination Authority regarding the discriminatory treatment of Turkish Cypriots in the exercise of the right to marry, Ref. AKR 71/2013, dated 6 October 2014, published on 20 October 2014.
Field:	Access to public services
Legislative provisions:	Article 22 of the Constitution, article 23 of the ECHR, article 9 of the EU charter on fundamental rights (right to marry), articles 6 and 28 of the Constitution (equality provisions), the Combating of racial and other forms of discrimination (Commissioner) Law 42(I)/2004.

Content

Case: The Equality Body received a complaint from a Turkish Cypriot couple that the Department of Population Archives and Immigration (DPAI) refused to issue a marriage permit to them. As required by the law, the complainants had applied to the DPAI for a document certifying that there is no legal obstacle preventing the marriage but were informed that, based on express instructions from the Chief Immigration Officer, this document could not be issued to those who do not ordinarily reside in the Republic-controlled territories (i.e. Cypriots of Turkish origin living in the northern parts of the country). The Equality Body sought clarifications from the DPAI as to their policy on the matter and asked for the certificate to be issued without delay, pointing out that the failure to issue this document amounts to unlawful discrimination; the DPAI did not respond to the Equality Body's letters.

Decision of the Equality Body: The differential and disadvantageous treatment as regards access to a public service which the authorities reserved for a category of persons, whose description essentially implies the Turkish Cypriots, amounts to indirect discrimination against Turkish Cypriots on the ground of their ethnic origin, which is prohibited by the national law transposing Directive 2000/43/EC.¹ The fact that the bureaucratic procedure prescribed for the Turkish Cypriots in order to get

¹ Law on Equal Treatment (Race or Ethnic Origin) N. 59(I)/2004.

married made it essentially impossible for them to get married amounts to a denial of a service that is available to all other Cypriots.

The report invokes the right to marry, guaranteed under article 22 of the Constitution, under article 12 of the ECHR and article 9 of the EU Charter on Fundamental Rights, as well as the non-discrimination provisions found in these instruments and, additionally, in the International Convention for the Elimination of All Forms of Racial Discrimination and in article 6 of the Constitution.² The report also referred to the ECtHR ruling in the case of *Selim v Cyprus*³ where the applicant, a Turkish Cypriot, claimed violation of his right to marry, as there was no legislation at the time regulating the marriage of Turkish Cypriots. The dispute was settled out of court when the Cypriot government adopted a bill to fill this legal gap.⁴

The Equality Body concluded that, although it is lawful for the competent authorities to request the marriage permit demanded of the applicants in order to avoid the risk of bigamy, which is a criminal offence, the competent authority is under a duty to consider the objective obstacles faced by Turkish Cypriots not residing in the Republic-controlled areas in obtaining such a document. The authorities are thus required to be flexible as regards the submission of such a document by Turkish Cypriots not residing in the Republic-controlled area in light of the fact that the persistence on submitting this document may amount to a denial of the right to marry. In case the applicants are unable to secure the marriage permit, the risk of bigamy is addressed not through the preventive measure entailed in the presentation of this certificate but through the punitive measure of annulling the marriage in the event of bigamy, as foreseen in the criminal code.⁵

To overcome the potential obstacle of obtaining a marriage permit from the authorities, and in order to avoid the risk of bigamy, the Equality Body recommends that a circular be issued by the Minister of the Interior providing that Turkish Cypriots who do not reside in the Republic-controlled areas may submit either a marriage permit or an affidavit sworn before the Court or a statement made before the Marriage Officer. The Equality Body submitted its report to the Minister of the Interior and the Chief Immigration Officer.

Internet link source and additional information:

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument

² Article 6 of the Constitution prohibits discriminatory treatment by any organ, authority or person exercising executive power or administrative functions, against any person by virtue of being a member of a Community.

³ *Selim v. Cyprus*, Application no. 47293/99, Judgment (Friendly Settlement) 16 July 2002

⁴ The bill was approved by parliament and became the Law on the Application of the Marriage Law of 2003 to the members of the Turkish Community (Temporary Provisions) 2003 N. 120(I)/2003.

⁵ The Criminal Code, article 179.