



## **Executive Summary**

### **Cyprus Country report on measures to combat discrimination by Nicos Trimikliniotes**

#### **1. Introduction**

Cyprus was granted independence in 1960 with a Constitution that set out a power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'. The Constitution recognises two 'communities', the Greeks (who at the time constituted about 78% of the population) and the Turks (at the time 18%), and three 'religious groups', the Maronites, the Armenians and the Latins (3,2%). The 'religious groups' were obliged to opt to belong to one of the 'communities' and opted to belong to the Greek community. The few Roma of Cyprus were deemed to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim).

The above legal order remained in place only for three years. In 1963 the Greek-Cypriot President proposed 13 amendments to the Constitution, effectively taking away some of the rights of the Turkish-Cypriots. The Turkish-Cypriots reacted by withdrawing from the Government in protest and ethnic violence ensued between 1963 and 1967. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the 'doctrine of necessity' which mainly provides for the 'suspension' of those constitutional provisions that guaranteed the rights of Turkish-Cypriots to be represented in decision-making. Although an official language of the Republic, Turkish ceased to be used from 1963 onwards and Greek became the only language of the state. Between 1963 and 1974, a large number of Turkish-Cypriots gradually vacated their villages and moved into enclaves, to escape from inter-communal violence. Cypriot society was forcefully divided in 1974, following the military interventions from Greece and Turkey. The three 'religious groups' stayed in the south with the Greek-Cypriots and the Roma joined the Turkish-Cypriots in the north, until early 2000, when many of them returned to the south in search for a better life. In April 2003 a partial lifting of the ban in freedom of movement allowed several thousands of Turkish-Cypriots to cross the dividing line from north to south on a daily basis to work, to access public services or just to visit. This has resulted in a novel situation, which opens up the possibility for rapprochement as well as on-going ethnic discrimination.

Upon Cyprus' accession to the EU, new laws were enacted transposing Directives 2000/43EC and 2000/78/EC. With few exceptions, the laws copy verbatim the wording of the Directives and generally comply with the Directives' requirements. The new laws appoint the Ombudsman as the national 'Equality Body' with a wide mandate covering both Directives but also going beyond these. The complaints procedures created by the laws are being widely used by individual victims as well as by NGOs with some success. However, more needs to be done in terms of bringing the new laws and procedures to the attention of vulnerable groups who are, to a large extent, still unaware of their new rights either because they don't speak Greek or due to a disability or other reason. Discrimination on the ground of sexual orientation and prejudice is widespread despite decriminalisation of homosexuality since 2000 to the effect that homosexuals make little or no use of their new rights and the procedures created. Moreover, a crucial consideration is a possible ongoing indirect ethnic discrimination against Turkish-Cypriots due to Government failure to use Turkish in official

documents and signs, an official language. Generally, the dialogue between the authorities and NGOs remains at low levels, whilst discrimination is hardly ever at the centre of public debates.

## 2. Main legislation

Article 28 of the Cypriot Constitution contains a general anti-discrimination provision which corresponds to Article 14 of the European Convention on Human Rights (ECHR). Article 28 outlaws direct and indirect discrimination on the grounds of community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides. Also, Article 6 Constitution specifically prohibits discrimination against any person on the ground of belonging to one or the other community. Age, disability and sexual orientation are not covered by the Constitution. The Fundamental Rights and Liberties are contained in Part II of the Constitution and Cyprus has ratified all relevant international and European conventions: Protocol 12 to the ECHR, the Revised European Social Charter, the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, ILO Convention No. 111 on Discrimination, the Convention on the Rights of the Child and the Framework Convention for the Protection of National Minorities. With regard to the Framework Convention for the Protection of National Minorities however, the Constitution does not recognise any 'national minorities' and classifies groups of diverse ethnic origin or religion either as 'communities' (in the case of the Turkish-Cypriots) or as 'religious groups' (in the case of the Latins, the Maronites and the Armenians).

In 2000 the Law on the rights of persons with disabilities came into force on, including the right not to be discriminated against. The only mechanisms available until 2004 were via judicial review of an administrative act in the public domain and/or through an action in civil courts against perpetrators of discrimination for recovery of, inter-alia, just and reasonable compensation for pecuniary and non-pecuniary damage. The volume of case law in the non-discrimination field is rather small. The legal aid legislation requires that legal aid be made available in human rights cases, but only in criminal proceedings, which does not benefit victims of discrimination.

On 01.05.2004 four new laws came into force transposing the two anti-discrimination Directives: a law amending a previously enacted law on disability, 57(I)/2004, the law transposing the Employment Directive, 58(I)/2004, the law transposing the Race Directive 59(I)/2004 and the law appointing the Ombudsman as the Equality Body empowered to investigate complaints of discrimination 43(I)/2004. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law appoints the Commissioner for Administration (or *the Ombudsman*). The grounds covered by the Cyprus law adopted in order to transpose the directives are 'racial or ethnic origin', 'religion' or 'belief', 'age', 'disability' and 'sexual orientation'.

## 3. Main principles and definitions

The Cypriot law transposing the Race Directive 59(I)/2004 replicates the wording of the Directive, save for the scope of employment which is covered by another law, 58(I)/2004, which transposes the employment directive, including race or ethnic origin, religion, sexual orientation and age. Disability is covered by a relevant amendment, 57(I)/2004, to the law on disability.

The definition of 'discrimination' contained, virtually replicates the Directive as 'less favourable treatment afforded to a person due to [any recognised ground] than the treatment afforded to another person in a similar situation'. The amendment concerning the Law on persons with disabilities is a replica of the above. It also provides definitions of direct and indirect discrimination, instruction to discriminate and harassment. Direct discrimination is defined as 'unfavourable treatment' when compared to 'a person without disability in the same or similar situation', or on the basis of 'characteristics which generally belong to persons with such disability', or 'alleged characteristics', or 'in contravention of a code of practice'. However, discrimination by association is not explicitly covered.

In the anti-discrimination laws indirect discrimination is defined in the same way. All the laws use the same wording as Article 2(b)(i) of the EU directives, as an apparently neutral provision, criterion or practice which would put persons having a particular race or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment is a prohibited form of discrimination and is defined as 'unwanted conduct related to any of the [recognised] ... grounds ... with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'. National law prohibits instructions to discriminate on the grounds of race/ethnic origin, age, religion or belief, sexual orientation. The Law on disability does not contain any provision rendering instructions to discriminate unlawful. Identical provisions against victimisation are found in all three laws recently enacted to transpose Directives 78/2000 and 43/2000. The said provisions prohibit any adverse treatment or consequence towards any person who files a complaint or is involved in a procedure aiming at implementing the principle of equal treatment.

The Law transposing the employment directive allows for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the particular occupational activities or the context within which these are carried out is such that a specific characteristic constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. With regard to age, these provisions do not apply to the armed forces, to the extent to which the fixing of an age limit is justified by the nature and the duties of the occupation. In the case of occupational activities of churches or other public or private organizations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination when, due to the nature of the context of these activities, religion or belief are a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.

The Law on Persons with Disabilities provides that this law does not apply, inter alia, to those activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. There is no authoritative explanatory material on the subject. Also the same law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.

The duty to provide 'reasonable accommodation' is provided to the extent and where the local economic and other circumstances allow. These measures are not restricted to the working place but cover: (a) basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to housing, buildings, streets, the environment, public means of transport, etc, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc); (b) employment including access to, working conditions, training etc; (c) supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services; transport; and telecommunications.

Specifically with regard to reasonable accommodation at the working place, the law provides that 'equal treatment' means, inter alia, 'the obligation to provide reasonable access and facilities in the working environment, including: (i) the necessary modifications or adjustments of accessibility to existing facilities so as to make them accessible to persons with disabilities; (ii) the reshaping of work by creating working schedules of part-time occupation or modified working hours, with the acquisition of new or the modification of existing equipment, machinery, tools, means and any facilities or services'. The law defines the factors which must be taken into account in order to determine whether a measure is reasonable or not, as follows: (1) The nature and required cost for the adoption of the measures; (2) the financial sources of the person who has the obligation to adopt the measures; (3) the financial situation and other obligations of the state in those cases where the obligation for the adoption of measures refers to the state; (4) the provision of donations by the state or other sources as a contribution towards the total cost of the said measures; (5) the socio-economic situation of the disabled. The socio-economic situation of the disabled must not be taken into account as regards the principle of non-discrimination in employment.

The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. However, a person who *without due cause* commits or omits an act which amounts to discrimination against a person with a disability is guilty of an offence and liable to a fine or to a prison sentence. As 'due cause', the law defines those cases where it was not possible to take measures for reasonable accommodation or where simply no such measures were taken. The test of reasonableness is much wider in the Cyprus law than in the Employment Directive (which provides only for the test of 'disproportionate burden on the employer') and clearly falls short of creating a full-blown mandatory regime. No case has actually been examined in court so far to assess how courts would determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'. When comparing the provisions under the Directive, which provide for a test of whether 'such measures would impose a disproportionate burden on the employer' to the criterion introduced into Cyprus law regarding the socio-economic situation of the disabled (Article 9), the disparity between the Cyprus law and the Employment Equality Directive is apparent.

All the grounds for discrimination are provided for as grounds within the authority of the Equality Body. However, the meaning of each of the recognised grounds for discrimination is not defined, as the terms 'racial or ethnic origin', 'religion' or 'belief', 'age', 'sexual orientation' are not defined in the anti-discrimination laws. The concept of 'discrimination' replicates the Directive as regards 'direct' and 'indirect discrimination', 'harassment' and 'instruction to discriminate'.



#### 4. Material scope

The scope of the anti-discrimination laws in Cyprus covers all sectors of public and private employment and occupation, including contract work, self-employment and those holding statutory office, with the exception of military service. Discrimination on all the grounds listed in the Employment Equality Directive is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Moreover, the Ombudsman's powers extend beyond the grounds covered in the Directive, so as to implement inter alia the grounds referred to in the constitution and Protocol 12, such as community, language, colour, religion, political or other conviction and national or ethnic descent. Military service issues are covered as they are not specifically exempted.

#### 5. Enforcing the law

In cases of discrimination there is a simple procedure where the victim would address the complaint to the Ombudsman, who investigates and issues a recommendation. Alternatively there is the court procedure, which is lengthy and costly, hence it has been rarely used. There are NGOs for each ground which support them in their complaint. Depending on what the organisation's constitution, organisations have legal standing to start or support a complaint. No case on behalf of or in support of victims has taken place so far.

Cases are often brought to the attention of the public via the media.

There is no mention in the legislation or in case law, or in any decision of the Equality Body on the use of situation testing and statistical data. If an argument in favour of admitting such evidence is used in Court, it is likely to be allowed if it is shown that it is admitted in other European and US jurisdictions. The general rules of evidence for, criminal and civil procedure apply. The admissibility of situation testing as a method of proving discrimination in courts will presumably be subjected to the general test of 'relevance' and 'the best evidence rule'. However, it is not possible to state with certainty whether the courts will consider this as admissible evidence in order to prove discrimination. It may well be that it may be relied upon as a methodology that merely indicates a tendency as to the 'general' or 'systematic' behaviour of the defendant which is based on *previous* and/ or *similar* occasions, which will be persuasive but not necessarily binding.

National law requires that in a civil procedure there is a shift of the burden of proof from the complainant to the respondent, once the complainant has established a *prima facie* case of discrimination was established. The respondent must then rebut the presumption of *prima facie* discrimination by disproving the allegations. For cases involving racial discrimination in fields other than employment and occupation, the law provides that should the respondent fail to rebut the presumption, the District Court considers that the breach is established; the complainant will then present on oath to the court the relevant facts to assess damages.

Under laws transposing the Directives the penalty to be issued against a physical person found to be guilty, is a maximum of CYP4.000 (approximate Euro: 6.900) and/or imprisonment of up to six months. For legal persons the maximum is CYP7.000 (approximate Euro 12.000). An offence committed under the same law out of gross negligence carries a penalty of up to CYP2000 for physical persons. If the offence has been committed out of gross negligence, the fine for physical persons is up to CYP2.000 (approximate Euro 3.500); for legal persons, there is a fine of up to CYP2.000 (approximate Euro 3.500) for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was



committed with his/her consent plus an additional fine of up to CYP4.000 (approximate Euro: 6.900) for the company or organisation.

There are penal remedies available against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent 11 amendments, a number of offences relevant to combating racism and intolerance, such as incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services. The scope of this latter provision is stated to extend to goods or services supplied by a person in the course of his/her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training. Refusal to provide goods and services is an offence, which has resulted in at least one conviction. Under the Criminal Code some discriminatory acts are punishable offences.

There are no distinctions as to the sanctions between the private and the public domain, at least in the legislation. Nor are there any distinctions as to the sanctions within and beyond employment. It is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive as there has not been a case in Court yet.

## 6. Equality bodies

The Ombudsman is an independent body designated as the national specialised Equality Body, who is empowered to cover all grounds (as well as gender). Its mandate includes the power to combat racial and indirectly racial discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin. Its mandate covers all five grounds of the two anti-discrimination Directives but extends even further to include gender, nationality, community as well as rights and freedoms contained in the Cyprus Constitution and in international conventions ratified by the Republic of Cyprus. The Equality Body has the mandate to make independent reports, surveys and to make recommendations.

The Equality Body does not have the power to award damages to victims of discrimination, but the Body's report may be relied upon to seek damages for unlawful discrimination in a district Court or a labour tribunal. The Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages but no case of discrimination relying on the new laws has been decided in Courts yet. Punitive damages are rarely awarded. A victim of discrimination may apply to the labour tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, a remedy rarely sought or used.

The Equality Body is empowered to impose small fines for discriminatory behaviour, treatment or practice and for non-compliance with the recommendation within the specified time line given. The fines are very low and offer little deterrence to potential perpetrators. In practice, however, the Equality Body has never imposed any sanctions, nor has she made any binding decisions. It is odd that the fines provided by the law for racial discrimination are lower than those for other types of discrimination. The Equality Body has no power to impose criminal sanctions.

There are certain weaknesses in the present framework which affect its overall effectiveness. Insufficient funds to the Equality Body's office resulted in inadequate staffing arrangements. Moreover, the Equality Body is reluctant to properly deal with cases that are considered to touch upon the so-called 'doctrine of necessity' or the 'Cyprus problem'.