

## Executive Summary

### Country Report Cyprus 2010 on measures to combat discrimination

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#### 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 and the Turks and three 'religious groups', the Maronites, the Armenians and the Latins. The 'religious groups' were obliged to opt to belong to one of the 'communities' and opted to belong to the Greek community. The Roma community of Cyprus was not invited to opt but was deemed to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim) with the Turkish Cypriots.

The above legal order remained in place until 1963, when 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 inter-ethnic violence ensued between 1963 and 1967. 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 1964 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 were moved into enclaves. In 1974, following the military interventions from Greece and Turkey, the division was further embedded. The three 'religious groups' stayed in the south with the Greek-Cypriots. The Roma joined the Turkish-Cypriots who were moved to the north, until early 2000, when many Roma returned to the south and settled in specifically designated Roma settlements, renowned for their squalor, poverty and lack of repair. The housing segregation inevitably led to the schooling segregation of Roma children, who are obliged to attend schools close to their residence. Despite improvements to the housing situation and measures in education targeting the Roma, they remain the most socially excluded and vulnerable Cypriots.

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, to settle in the south or just to visit. This has resulted in a novel situation, which opens up the possibility on-going discrimination against Turkish Cypriots at different levels and in different forms. This development has signalled tension over the issue of Turkish Cypriot properties in the south which have since the de facto division placed in the custody of the "Custodian", until resolution of the Cyprus problem.

An ECtHR decision in 2004 pursuant to a successful application from a Turkish Cypriot on the Turkish Cypriots' right to vote ruled that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality; this principle, however, was not consistently followed either by the Courts in Cyprus or by the equality body, as both have issued decisions upholding the 'doctrine of necessity' as legal justification for the suspension of the constitutional rights of the Turkish Cypriots.

Governmental measures in the non-discrimination field have been limited to a handful of one-off awareness raising events and leaflet publication. Few NGOs are active in the non-discrimination field. There are no NGOs for the rights of the Turkish Cypriots or the Roma and only 2-3 NGOs for the rights of migrants and asylum seekers. By far the most organised are the disability NGOs, whose lobbying actions are coordinated by a national confederation, recently afforded the status of a social partner. In spite of this, however, the confederation was afforded no role in the implementation of a new law on quotas and its views during the consultation process were largely ignored. Until 2010 there was only one gay rights NGO, with only two of its members being 'out of the closet' to fight openly for gay rights; in 2010 a new gay rights NGO emerged, bringing together younger people who are open about their sexual orientation and engaging in numerous public awareness events. Nevertheless, discrimination on the ground of sexual orientation is widespread amongst Cypriot society, despite decriminalisation of homosexuality since 2000. Homosexuals make little use of their rights created under Directive 2000/78. The year 2008 saw a marked change in attitudes as three complaints were submitted to the equality body for sexual orientation discrimination, all three of which were deemed to be well-founded. In 2010 the equality body issued a report recommending that the authorities recognise relationships of cohabiting homosexual couples, which has sparked off considerable public debate and a number of homophobic public statements.

The educational reform was formally adopted in spite of reactions and tensions by stakeholders, particularly the teachers' unions, some parents' associations and right wing political parties. Some of its measures were implemented on a pilot basis in 2010 and the plan is that the full program will be implemented in full in 2011. Reactions by teachers were mainly focused on measures of reconciliation with the Turkish Cypriot community and on the changing of the history books in order to present a more objective account of events in the region, seen by the teachers as an effort to 'de-hellenise' education.

In 2009, Cyprus saw for the first time the emergence of a neo-Nazi party with an anti-immigrant discourse, contesting the European Parliament elections. In 2010 more far right groups started to organise and some engaged in outright and unprovoked violence against migrants and Turkish Cypriots, finding support for their anti-immigrant agenda in various mainstream right wing politicians and in the head of the Orthodox Church.

## 2. Main legislation

The Cypriot Constitution contains a general anti-discrimination provision which corresponds to Article 14 of the European Convention on Human Rights (ECHR), but includes additionally the ground of belonging to either the 'Greek' or the 'Turkish' community. Age, disability and sexual orientation are not covered by the Constitution. The Constitution recognises only two 'communities' (the Greek and the Turkish) and three 'religious groups' (the Latins, the Maronites and the Armenians). The Roma community is deemed to form part of the Turkish community and until the end of 2009 it was not afforded any special status. The Roma were recently recognised by the Cypriot government as a minority within the meaning of the Framework Convention on the Protection of National Minorities; however this policy change did not bring about any actual measures in their favour. The government does not recognise any migrant community as a 'minority'.

Cyprus has ratified most major international conventions on discrimination. In 2000 the basic disability law came into force which included the prohibition of discrimination. Until 2004, the grounds of sexual orientation and age were not covered by any law. In 2004 the two anti-discrimination Directives were transposed into four separate national laws:

- a law amending the existing disability law in order to bring it in line with Directive 2000/78;
- a law rendering discrimination in employment unlawful, roughly transposing Directive 2000/78, but on four instead of five grounds (i.e. excluding disability which is dealt with by a separate law);
- a law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment which is covered by the aforesaid law); and
- the law appointing the Ombudsman as the equality body empowered to investigate complaints of discrimination in accordance with article 13 of Directive 2000/43, the mandate of which goes well beyond the minimum prescribed by the said Directive to include the safeguarding of rights guaranteed by the Constitution or by the Conventions ratified by Cyprus, which include Protocol 12 of the ECHR and most notably nationality as a prohibited ground of discrimination (please see section 6 below for more details).

The above laws (except the equality body law) have been repeatedly amended over the years in order to correct inadequate transposition measures.

In July 2006, pursuant to the Cypriot government's obligation to give supremacy to EU regulations and directives, the Cypriot Constitution was amended to give supremacy to EU laws. Until then, the Constitution was the supreme law of the country. Prior to this development, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the principle of equality enshrined in the Constitution.

The amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28, although the body of law emerging from the decided cases tends to ignore the anti-discrimination Directives and to establish norms which are of doubtful validity when seen through the lenses of the anti-discrimination *acquis*. In particular, despite the aforesaid constitutional amendment, there continue to be Court decisions issued which reject positive action in favour of vulnerable groups on the reasoning that they violate the principle of equality. Based on these precedents, a new law enacted in late 2009 introducing quotas in employment in favour of persons with disability is also at risk of being declared unconstitutional. Although the disability law transposing Directive 2000/78 clearly states that quotas and positive measures do not violate the equality principle, this does not seem to affect court decisions who continue to treat the Constitution as the highest form of law in the country. Also, a decision of the equality body in 2009 found that an older law setting quotas in employment for blind persons discriminates against persons with other types of disability and has asked for its revision; no such revision took place in 2010 however, as the equality body's recommendations for law reforms are not always taken board by the Attorney General.

Current practice indicates that the duty to ensure that discriminatory laws, contractual provision or internal rules of organisations have been explicitly repealed, as required by article 16 of Directive 2000/78, and article 14 of Directive 43/200, is not been fully complied with. The process of formal repeal of laws or regulations is triggered off only after a complaint is submitted to the equality body, in other words there is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives. Even where the equality body finds that a certain law or regulation violates the Directives, the procedure for repealing them, which is for the equality body to refer them to the Attorney General who will then inform the competent Minister and prepare the amending legislation, does not always bear fruit. As a result we have a situation where a number of discriminatory laws and regulations against which a decision of the equality body has been issued, remain in force pending formal repeal.

### 3. Main principles and definitions

All definitions of 'discrimination' contained in the Directives are virtually replicated in the national laws. Thus, discrimination is defined as less favourable treatment than the treatment afforded to another person in a similar situation. In the case of disability, direct discrimination is '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'. Discrimination by association is not explicitly covered in the law. Also, the grounds for discrimination, except disability, are not defined anywhere in the national law.

Indirect discrimination also copies verbatim the wording of Directives, as an apparently neutral provision, criterion or practice which would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a 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 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’. Instructions to discriminate and victimisation, also prohibited on all five grounds, again follow verbatim the definition of the Directives.

The laws transposing Directive 2000/78 allow 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 that 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 is a genuine, legitimate and justified occupational requirement, having regard to the organization’s ethos.

The scope of the Law on Persons with Disabilities excludes 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. 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 disability law was amended in 2007 to impose an obligation on employers to provide reasonable accommodation so long as the burden on the employer is not disproportionate. In addition to that provision, the law provides for the duty to adopt ‘reasonable measures’ beyond the employment field to the extent and where the local economic and other circumstances allow.

These measures are not restricted to the work place but cover also: 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); supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services; and telecommunications. The duty to adopt 'reasonable measures' beyond employment is so widely phrased that it falls short from creating a mandatory regime. The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination, except in the field of employment, where the employer has a binding obligation to provide reasonable accommodation to employees. 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 and/or to a prison sentence, none of which has ever been imposed so far.

There is no provision in the Cypriot legal order for multiple discrimination and no plans for the adoption of laws or regulations to deal with situations of multiple discrimination as yet.

#### **4. Material scope**

The scope of the anti-discrimination laws covers both the private and the public sector and includes all fields provided in the Directives. Thus, discrimination on all five grounds is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations.

In addition, discrimination on the ground of racial/ethnic origin is forbidden in the field of social protection, medical care, social provision, education and access to goods and services available to the public including housing. Subject to conditions, the disability law provides for the right to equal treatment in the provision of goods, facilities and services.

#### **5. Enforcing the law**

Victims have the option of submitting a complaint to the equality body or to the courts. Litigation could either be in the field of administrative law, via recourse to the Supreme Court to set aside an administrative act under article 146 of the Constitution, or to the district court or labour tribunal in accordance with the laws transposing the two Directives, or to the district court for violation of the constitutional anti-discrimination provision. Litigation is hardly ever used by victims of discrimination for various reasons: low awareness of the anti-discrimination laws amongst legal circles, the high cost of litigation and the length of time involved.



The vast majority of discrimination cases reaching the Courts do not invoke the anti-discrimination laws transposing the *acquis* or they only do so in passing; the most frequently used legal basis is article 146 of the Constitution, alleging violation of the Constitution's equality provision (article 28).

The equality body may complete its investigation and issue a decision in a few months or sometimes with a delay of a couple of years, depending on the subject investigated and the complications involved. A large number of complaints are withdrawn before final determination because there was compliance by the perpetrator or other satisfaction of the complainant. In the majority of cases, the equality body uses its mediation function in order to reach a solution.

Given the low fines foreseen by the law, the equality body prefers to use its mediation function in order to achieve results, rather than to impose sanctions. There are public authorities who persistently fail to comply with the recommendations of the equality body in cases of racial discrimination, such as the immigration authorities and the police.

Victims may address complaints either to NGOs or trade unions, who may then submit complaints to the equality body on their behalf, or directly to the equality body, where the procedure is cost-free, simple and flexible. The national laws transpose verbatim the Directives' provisions regarding the right of organisations to engage in procedures on behalf of their members.

There is a number of NGOs available to initiate and support victims' complaints in the field of disability, including the confederation of all disability NGOs itself. There are fewer NGOs (2-3) supporting the complaints of migrants and asylum seekers but none to support the complaints of Turkish Cypriots or Roma. Regarding the other grounds, there are few or no NGOs to take up cases on behalf of their members. In the case of sexual orientation, most complainants are unwilling to submit complaints so as not to make their sexual orientation known to the public. In general, more complaints are submitted by individuals rather than by organisations acting on their behalf. The outcome of the case is not affected by whether the party initiating the complaint is the victim him/herself or an organisation representing him/her.

Equality body decisions are more often reported in the media than in previous years. Some of these decisions are uploaded on the Ombudsman's website and some appear in the equality body's annual reports which are available to the public. In 2010 using PROGRESS funds the equality body set up its own websites where all its reports and other publications will from now on be uploaded.

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 was deemed admissible in other EU 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.

Although in 2004, upon transposition of the two Directives, the burden of proof provision was incorrectly transposed, amending legislation was introduced in 2006 and 2007 that brought national law in line with the Directives. The burden of proof is only reversed in judicial proceedings and not in procedures before the equality body, since the latter's mandate includes the right to carry out its own investigation to establish the facts.

The sanctions which Courts can impose against physical persons found to be guilty of discrimination cannot exceed CYP4,000 (Euros 6,835.27) and/or imprisonment of up to six months. For legal persons the maximum penalty is CYP7,000 (Euros 1,196.72).

An offence committed, under the same law, out of gross negligence carries a penalty of up to CYP2,000 for physical persons. If the offence has been committed out of gross negligence, the fine for physical persons is up to CYP2,000 (Euro 3,417.63); for legal persons, there is a fine of up to CYP2,000 (Euro 3,417.63) 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 (Euro 6,835.27) for the company or organisation.

The aforesaid fines, however, can only be imposed by the Courts; the Equality Body can only impose small fines which cannot exceed CYP350 (Euros 598) and such powers have so far been used in only one case concerning gender discrimination. Generally speaking, the fines are very low, offer little deterrence to potential perpetrators and they have never been imposed by the equality body (except in one case concerning gender).

The Equality body does not have the power to award compensation to victims of discrimination, but its decisions may be relied upon to seek damages for unlawful discrimination in a district Court or a labour tribunal. This has only been done once since the laws were enacted in 2004; however the labour tribunal decided that it had no jurisdiction to try the case as it was not a 'labour dispute', given that it concerned access to employment and no employment relationship existed between the parties. An amendment to the law in 2009 filled the gap created by this decision but not for the ground of disability, where the legal gap still remains.



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 on the ground of racial ethnic origin is an offence. Under the Criminal Code some discriminatory acts are punishable offences.

## 6. Equality bodies

In 2004, the Ombudsman was appointed as the national equality body, empowered:

- to combat 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;
- to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol 12 of the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination) irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin;
- to promote equality of opportunity irrespective of the aforesaid grounds plus the grounds of special needs and sexual orientation.

The scope of this provision covers not only the fields of Directive 2000/78 but additionally social insurance, medical care, education and access to goods and services including housing.

The equality body comprises of two departments: the Equality Authority, which deals with all grounds in the field of employment and the Anti-discrimination Authority which deals with all grounds in fields beyond employment.

The equality body does not have the power to award compensation but its decisions may be relied upon to seek damages in Court. 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. 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.

Insufficient funds allocated to the Equality Body's office from the state budget resulted in inadequate staffing arrangements, in delays in issuing decisions, in an inability to conduct surveys, research or issue codes of conduct unless external funding is secured.

Despite the limited resources, the Equality Body has in recent years conducted a number of surveys using EU funds; in 2010 it issued a code of conduct on disability discrimination at the workplace and a set of guidelines for the media on how to avoid racist stereotyping. Also in 2010 it issued several reports during 2010 based on the 2004 anti-discrimination legislation. In some of these reports, the equality body uses its expanded mandate to decide on issues beyond the scope of the directives and endorses the policy priorities of the European Union, most notably those expressed in the Proposal for a new Council Directive on discrimination beyond employment, using mediation rather than sanctions and binding decisions. However, the equality body has so far been reluctant to adequately deal with cases that are considered to touch upon the so-called 'doctrine of necessity' or the 'Cyprus problem'.

In late 2010 a controversy arose regarding the appointment of the new Ombudsman and head of the equality body, as the term of office of the previous Ombudsman came to an end. Tensions rose between the government and the opposition as the candidate proposed by the former was not accepted by the latter. Finally the issue was resolved in early 2011 with the appointment of the senior legal officer heading the Equality Authority of the equality body. It is expected that the new Ombudsman will bring considerable changes and improvements to the institution in the coming years, having the longest serving experience in Cyprus at the Ombudsman's office and significant exposure to EU level debates, EU priorities and the *acquis*.