



## Executive Summary

### Country Report Cyprus 2011 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. Between 1963 and 1974, a large number of Turkish-Cypriots gradually withdrew 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 bad state 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.

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 1-2 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. However, the confederation was afforded no role in the implementation of a 2009 law on quotas in employment and its views during consultation 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 holding public events. Sexual orientation discrimination is widespread amongst Cypriot society and homosexuals make little use of their rights under Directive 2000/78.

In 2009, Cyprus saw for the first time the emergence of a neo-Nazi party with an anti-immigrant discourse. 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 (article 28) which corresponds to Article 14 of the ECHR, but includes additionally the ground of belonging to either the 'Greek' or the 'Turkish' community. Age, disability and sexual orientation are not explicitly covered by the Constitution, although they may be deemed as included in the term "any other ground whatsoever" employed by article 28. 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 but did not provide for an implementation mechanism. 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.

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.. 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. In 2011 a body of Court decisions emerged dealing with claims of age discrimination deriving from the fixing of different retirement ages for different categories of employees, depending on their age or rank. The treatment of these claims by the Courts reveals trends and practices which are not altogether compliant with the equality *acquis*, such as widening the scope of the exceptions to the non-discrimination principle and introducing concepts such as "reasonable discrimination which must be done because of the special nature of things."

Current practice suggests that the duty to ensure that discriminatory laws, contractual provision or internal rules of organisations have been explicitly repealed, as required by the Equality Directives, is not 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; there is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives. Even when a discriminatory legislative provision is reviewed in the framework of a judicial process, this does not trigger the procedure of revision. Moreover, 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, direct and indirect discrimination, harassment, instructions to discriminate and victimisation, which are prohibited on all five grounds, follow verbatim the definitions in the Directives. Discrimination by association is not explicitly covered in the law, but an equality body decision in 2010 applied the principle established in *Coleman*, extending the prohibition of disability discrimination to the carers of persons with disability.

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 does 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. The 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 workplace but cover also: basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to built environment, public means of transport, 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.

There is no provision yet in the Cypriot legal order for multiple discrimination.

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

The anti-discrimination laws cover 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 the most vulnerable of victims for various reasons: low awareness of the anti-discrimination laws amongst victims and legal circles, the high cost of litigation and the length of time involved. From the body of decisions emerging in recent years, it appears that the more vulnerable the groups the less access they have to judicial or equality body proceedings. Thus most Court cases in 2011 dealt with claims from civil servants regarding pensions and retirement ages. There are few decisions concerning the claims of Turkish Cypriots to their properties in the south or to state grants but no cases involving migrants or Roma claiming violation of the equality *acquis*.

The equality body may complete its investigation and publish a report in a few months or sometimes with a delay of three years, depending on the subject investigated and the complications involved. No binding decision was ever issued by the Equality Body and no sanction was ever imposed; in the majority of cases, the equality body prefers to use its mediation function, as sanctions are too low to act as a deterrent.





The national laws transpose verbatim the Directives' provisions regarding the right of organisations to engage in procedures on behalf of victims. Thus, victims may address complaints directly to the equality body, where the procedure is cost-free, simple and flexible, or to NGOs or trade unions, who may then submit complaints to the equality body on their behalf. However, there are few NGOs available to file complaints on behalf of vulnerable groups and even fewer trade unions, who tend to view the equality body with suspicion. In general, more complaints are submitted by individuals rather than by organisations acting on their behalf. In the case of sexual orientation, most victims are 'closeted' and unwilling to submit complaints so as not to make their sexual orientation known to the public.

Equality body decisions are more often reported in the media than in previous years. In 2010 using PROGRESS funds the equality body set up its own websites where all its reports and other publications are now uploaded.

There is no mention in the legislation or in case law, or in any equality body decision 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.

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 investigations to establish facts.

The sanctions which Courts can impose against physical persons guilty of discrimination cannot exceed €6,835.27 and/or imprisonment of up to six months. For legal persons the maximum penalty is €1,196.72. If the offence has been committed out of gross negligence, the fine for physical persons is up to €3,417.63. For legal persons the fine is again up to €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 €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 €598. 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.



## 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.

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, awareness campaigns, research or issue codes of conduct unless external funding is secured. Thus, 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 based on the anti-discrimination legislation, in some of which its expanded mandate to decide on issues beyond the scope of the directives was utilised, endorsing 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'.