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Country report

Non-discrimination

Cyprus

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Country report

Non-discrimination

Cyprus

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EXECUTIVE SUMMARY

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. In 2009 the Roma community was recognised as a minority under the Framework Convention for the Protection of National Minorities; this has not led however to any change in policy or positive action in their favour; the government continues not to recognise any migrant community as a 'minority' whilst the Welfare Services deem that the Roma community is far too small to deserve separate treatment.

The Constitution functioned until 1963, when the Greek-Cypriot President proposed 13 amendments to it, effectively taking away the most basic 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, division was further embedded. The three 'religious groups' stayed in the south with the Greek-Cypriots and 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.

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, which in 2006 was afforded the status of a social partner. However, in practice the confederation is being afforded little role in processes which are of key significance to it, such as the drafting and implementation of a 2009 law on quotas in employment and the implementation of the UN Convention on the Rights of Persons with Disabilities. Until 2010 there was only one gay rights NGO, with only two of its members being 'out of the closet' to openly fight for gay rights; in 2010 a new gay rights NGO emerged, bringing together younger dynamic people who are open about their sexual orientation and holding public events. Although sexual orientation discrimination is widespread amongst Cypriot society, developments are finally picking up: after years of debates, a law was adopted recognising civil unions of couples outside marriage, covering both same sex couples and all other couples who choose a registered partnership for other reasons.¹ A number of neo Nazi groups appeared in recent years with a strong anti-immigrant discourse and regular implication in racial crime. One of these groups, ELAM was registered as a political party has for the past few years been contesting elections and winning a few thousand votes.

¹ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cyllaw.org/nomoi/arith/2015_1_184.pdf.

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 are deemed as included in the term "any other ground whatsoever" in article 28.

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 the Employment Equality Directive;²
- a law rendering discrimination in employment unlawful, roughly transposing the Employment Equality Directive on four grounds (i.e. excluding disability which is dealt with separately);³
- a law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment);⁴ 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.⁵ However, the wide mandate of the Equality Body does not include the provision of independent assistance to victims or the power to represent victims in Court.

In July 2006 the Cypriot Constitution was amended to give supremacy to EU laws. Until then, the Constitution was the supreme law of the country. Prior to that, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that positive action violated the principle of equality enshrined in the Constitution. During 2015 judicial trend begun to shift towards recognising that positive action does not infringe the equality principle and that it is in fact a necessary element in order to achieve equality.⁶ The most commonly used legal route to challenge discrimination remains the Constitution, rather than the laws transposing the equality acquis, as lawyers tend to rely primarily on Article 28 of the Constitution and largely ignore the anti-discrimination directives, which have rarely been invoked in Court. This sometimes leads to the emergence of legal norms of doubtful validity, like the use of concepts such as "reasonable discrimination" which is allowed and necessary "because of the special nature

² Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁵ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(1)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁶ Cyprus, Supreme Court, Eleni Paroutsi v. Educational Service Committee, Case No. 5700/2013, 30 October 2015, available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015; Cyprus, Supreme Court, Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service, Ref. Nos 1519/2010 και 1520/10, 3 September 2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%F9%FA%E1%E9%F9%EC%E1%2A%20and%202015.

of things.” In 2014 there was a sharp decline in discrimination claims, attributed to the economic crisis, the general lowering of fundamental rights standards and the rising unemployment.

Current practice suggests that the duty to ensure that discriminatory laws, provision or 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. Even when a discriminatory legislative provision is reviewed in the framework of a judicial process, this does not trigger the procedure of revision. If the equality body finds that a provision is contrary to the directives, the procedure for repealing it does not always bear fruit. A decision issued by the Supreme Court in 2014 which established that the Attorney is not at liberty to ignore the Equality Body’s recommendation for amendment of a discriminatory law, was promising to change the picture⁷ but this did not happen in 2015.

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 anti-discrimination laws, but is covered by Protocol 12 to the ECHR; in addition, equality body decisions in 2010 and in 2015 applied the principle established in *Coleman*,⁸ extending the prohibition of disability discrimination to the primary carers of persons with disability even if they are not parents or spouses of the person with disability.⁹

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 practice, age limits apply in job recruitments and promotions, particularly within the police force, aimed less at serving labour market policy goals and more at addressing the deterioration of physical fitness of employees, which allegedly comes with age.

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.

⁷ Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

⁸ CJEU, Case C-303/06, S. Coleman v Attridge Law and Steve Law, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

⁹ Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

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.¹⁰

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. The law was further amended in 2014 in order to extend the duty to provide reasonable accommodation to fields beyond employment, provided the burden is not disproportionate or unjustified.¹¹ The fields of application of the new duty to provide reasonable accommodation are: the 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, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc (article 4); Equality in the provision of goods services and facilities where this is 'justified' (article 6); telephone services especially adapted for persons with disability and television programs accessible to deaf persons (article 8).

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

4. Material scope

The anti-discrimination laws cover both the private and the public sector and include 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 take the form of an application for judicial review 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 vulnerable groups for various reasons: low awareness of the anti-discrimination laws amongst victims and legal circles, the high cost of litigation and restrictions in accessing legal aid which is subject to the 'means test', and the length of time involved. In 2013 and 2014, the number of employment-related complaints to the Equality Body dropped almost by half compared to previous years, which is attributed to the rising unemployment and the fear of victims that they may lose their jobs if they complain. 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 anti-discrimination claims brought before the Court are filed by civil servants regarding promotions, pensions and retirement ages. There are a few Court decisions concerning the claims of Turkish Cypriots to their properties in

¹⁰ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹¹ Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

the south or to state grants but no cases involving migrants or Roma claiming violation of the equality *acquis*.

The limited resources allocated to the equality body has led to delays in investigating of complaints of up to three to four years; by then third party rights may have been created, rendering justice for the victim impossible, whilst the victim meanwhile becomes time-barred from applying to the courts. 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. In each annual report, the Equality Body dedicates a special section to describe its mediation efforts, setting out a number of examples of successful mediation.¹²

The national laws transpose verbatim the directives' provisions regarding the right of organisations to engage in procedures on behalf of victims. 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, some of whom tend to view the equality body with suspicion; for instance, the Equality Body reports that trade unions view with suspicion its interventions in labour related issues, which they interpret as an interference with the free bargaining of the terms of the collective agreements.¹³ 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.

There is no mention in the legislation, in case law, or in equality body decisions 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, although the Courts often do allow technicalities to place obstacles in the delivery of justice. 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.

The burden of proof may be reversed in judicial proceedings where the laws transposing the directives are involved; a claimant who invokes the constitution or uses other laws as the basis of his or her claim cannot benefit from the principle of the reversal of the burden of proof. The burden of proof is not reversed 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 found 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. These fines,

¹² See for example: Equality Authority Annual Report 2014, p. 16, available at <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; Anti-discrimination Authority Annual Report 2014, p.23, available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIKRISON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIKRISON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf).

¹³ Equality Authority Annual Report 2007-2008, available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

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.

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. Although a quasi-judicial body with powers to issue binding decisions, the Equality Body resorts to mediation and/or to non-binding recommendations as more effective means of tackling problems rather than the small fines foreseen in the law. It has the power to conduct independent surveys, compile reports and issue recommendations but lacks the power to offer independent assistance to victims, as required by the Racial Equality Directive.

The equality body comprises of two departments: the Equality Authority, which deals with all grounds in the employment field and the Anti-discrimination Authority which deals with all grounds in all fields beyond employment. A number of new functions were added to its mandate from 2009 onwards without adding to its budget or resources. These functions include the National Human Rights Institute (NHRI), the independent mechanism for the prevention of torture, the independent mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities and the independent authority for the implementation of the Return Directive. Insufficient funds allocated to the Equality Body's office 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.

7. Key issues

- The additional functions/mandate extensions assigned to the Equality Body/Ombudsman without an increase in its budget has led to considerable delays in decision making, to the extent that the effectiveness and impact of the institution is now at question. The freezing in recruitments to the public sector, imposed as a result of the economic crisis, has meant that it cannot hire personnel even if only to replace those who resign from the service. Also, many of the officers of the Equality Body are not legally trained, which is reflected in the reports published: references to laws and case law are usually lacking whilst legal responsibility for clearly unlawful acts is hardly ever pinned on the perpetrators. The shortages in human resources has also meant that the monitoring of compliance with the decisions is adversely affected.
- The requirement of the Racial Equality Directive that the specialized body should be in a position to offer assistance to victims is still not transposed, more than 10 years after the directive was transposed, as the Equality Body cannot represent victims in Court. To be able to do so, in addition to a new mandate, the Equality Body should be afforded the necessary budget and human resources which it is now lacking.
- Very rarely do discrimination cases make it to the courts. In those cases, where they do, the anti-discrimination legal framework is not being invoked; instead recourse is made to the 40-year old constitutional provisions (judicial review of administrative acts; and/or the general equality provision of article 28) which do not offer the far-

reaching protection of the directives. The decision is often based on problematic legal doctrines arbitrarily developed by the courts which do not comply with the directives and which deny victims the protection offered by the directives.

- Litigation is not sufficiently used, owing to the cost and time length involved, the fact that legal aid is made available only subject to insufficient means, and to the lack of awareness of the anti-discrimination laws amongst the legal profession. Given the fact that the equality body's decisions so far were mere recommendations, victims of discrimination are, in practice, not afforded the mandatory legal protection foreseen in the directives. In recent years, the government has completely abandoned efforts to raise awareness about the directives, to promote anti-discrimination initiatives or to consult with civil society. The 2014-2020 package of the EU's structural funds will not be used to fund new projects promoting anti-discrimination but only to fund existing 'horizontal policies' for which the beneficiaries have expressed fierce criticism, like the disability classification system ICF.
- There is no procedure in place for regular reviewing or revising of discriminatory laws/regulations. In practice, review is only triggered off once a complaint is submitted to the equality body. In such a case, the law requires the equality body to refer discriminatory laws/regulations to the Attorney General who is then under a duty to prepare the amending legislation. This procedure however is very rarely followed, to the effect that several discriminatory laws remain in place.
- Issues deriving from the unresolved 'Cyprus problem' the de facto division of the country have been the source of on-going ethnic discrimination, particularly since the opening of the sealed border in 2003. These relate to the Turkish Cypriots' access to their properties in the south and the exercise of various constitutional rights, the violation of Greek-Cypriot (G/C) rights by Turkey and a certain tendency of the authorities and of the courts to "seek revenge" for the Turkish invasion of Cyprus by denying Turkish Cypriots basic fundamental rights. The G/C resentment of the constitutional quota system for T/Cs in the public sector, the history of ethnic conflict and the continuous application and expansion of the 'doctrine of necessity' by the authorities and the courts subordinates equality issues to political expediencies and place a disproportionately strong emphasis on state sovereignty. The equality body has so far been reluctant to address the extensive use of the 'doctrine of necessity' by the administration and by the Courts, which leads to serious systemic gaps and weaknesses in the realisation of equality.

RÉSUMÉ

1. Introduction

Chypre a acquis son indépendance en 1960 en se dotant d'une Constitution qui établit un système de strict partage des pouvoirs entre les «Grecs», d'une part, et les «Turcs», d'autre part. La Constitution reconnaît ces deux «communautés», et trois «groupes religieux»: les maronites, les chrétiens arméniens et les latins. Les «groupes religieux» ont été obligés d'opter pour l'une des «communautés» et ont choisi l'appartenance à la communauté grecque. La communauté rom présente à Chypre n'a pas été invitée à faire de choix et les autorités ont considéré qu'elle appartenait à la communauté turque en raison de la langue (turque) et de la religion (islamique) qu'elle est supposée partager avec les Chypriotes turcs. En 2009, la communauté rom a été reconnue en tant que minorité au sens de la Convention-cadre pour la protection des minorités nationales, mais cela ne s'est traduit par aucun changement en termes de politique ou d'action positive en sa faveur. Le gouvernement ne reconnaît aucune communauté immigrée en tant que «minorité» et les services d'aide sociale considèrent que la communauté rom est beaucoup trop petite pour mériter un traitement distinct.

La Constitution a fonctionné jusqu'en 1963, date à laquelle le président chypriote grec a proposé treize amendements ayant pour effet de priver les Chypriotes turcs de leurs droits les plus élémentaires. Ceux-ci ont réagi en se retirant du gouvernement en signe de protestation et la situation a dégénéré en violences interethniques de 1963 à 1967. En 1964, la Cour suprême a dit pour droit que le gouvernement devait continuer de fonctionner sur la base de la «doctrine de nécessité», qui prévoit principalement la «suspension» des dispositions constitutionnelles garantissant la représentation des droits des Chypriotes turcs dans les prises de décisions politiques. Entre 1963 et 1974, de nombreux Chypriotes turcs se sont retirés dans des enclaves. La division s'est ancrée davantage encore en 1974 par suite des interventions militaires de la Grèce et de la Turquie. Les trois «groupes religieux» sont restés dans le Sud avec les Chypriotes grecs, et les Roms ont rejoint les Chypriotes turcs, déplacés vers le Nord, jusqu'au début des années 2000 – époque à laquelle un grand nombre de Roms sont retournés dans le Sud pour s'installer dans des implantations qui leur étaient spécifiquement destinées et qui étaient connues pour leur état de misère et de délabrement. La ségrégation en termes de logement a inévitablement entraîné la ségrégation éducative des enfants roms, qui n'avaient d'autre choix que celui de s'inscrire dans les écoles situées à proximité de leur domicile. Malgré les améliorations en matière de logement et les mesures éducatives à l'intention des Roms, ceux-ci demeurent les Chypriotes les plus vulnérables et souffrant de la plus grande exclusion sociale.

Peu d'ONG exercent leur activité dans le domaine de la lutte contre les discriminations. Aucune ne s'occupe de défendre les droits des Chypriotes turcs et des Roms, et une ou deux seulement se chargent de défendre les droits des réfugiés et des demandeurs d'asile. Les ONG de loin les mieux organisées sont celles qui traitent du handicap; leurs actions de lobbying sont coordonnées par une confédération nationale, qui a obtenu en 2006 le statut de partenaire social. En pratique toutefois, elle ne peut jouer qu'un rôle très limité dans les processus qui l'intéressent au premier plan, tels l'élaboration et la mise en œuvre d'une loi de 2009 sur les quotas en matière d'emploi et l'application de la Convention des Nations unies relative aux droits des personnes handicapées. Jusqu'en 2010, le pays ne comptait qu'une seule ONG de défense des droits des homosexuels dont deux membres seulement étaient «sortis du placard» pour défendre ouvertement leurs droits. Une nouvelle ONG de défense des droits des homosexuels a vu le jour en 2010: elle regroupe des jeunes qui affichent ouvertement leur orientation sexuelle et organisent de nombreuses manifestations publiques. Même si la discrimination fondée sur l'orientation sexuelle reste très répandue au sein de la société chypriote, des évolutions s'amorcent enfin: après des années de débat, une loi reconnaissant les unions civiles de couples en dehors du mariage, qui couvre à la fois les couples de même sexe et tout couple choisissant un partenariat

enregistré pour d'autres raisons, a été adoptée.¹⁴ Chypre a vu émerger ces dernières années un certain nombre de groupes néo-nazis tenant des discours fortement anti-immigrants et régulièrement impliqués dans des actes de violence raciale. L'un de ces groupes (ELAM) a été inscrit en tant que parti politique et se présente aux élections depuis quelques années en remportant quelques milliers de voix.

2. Législation principale

La Constitution chypriote contient une disposition générale de lutte contre la discrimination (article 28) qui correspond à l'article 14 de la CEDH, mais inclut, en outre, le motif de l'appartenance à la communauté «grecque» ou à la communauté «turque». L'âge, le handicap et l'orientation sexuelle ne sont pas explicitement couverts par la Constitution, même s'ils sont présumés inclus dans l'expression «tout autre motif quelconque» figurant à l'article 28.

Chypre a ratifié la plupart des grandes conventions internationales relatives à la discrimination. Une loi fondamentale défendant les droits des personnes handicapées, y compris l'interdiction de toute discrimination à leur égard, est entrée en vigueur en 2000, mais elle ne prévoit aucun mécanisme de mise en œuvre. Les deux directives de lutte contre la discrimination ont été transposées en 2004 sous la forme de quatre lois nationales distinctes, à savoir:

- une loi modifiant la loi existante sur le handicap, afin d'aligner cette dernière sur les dispositions de la directive 2000/78/CE;¹⁵
- une loi rendant illégale la discrimination dans le travail et l'emploi, transposant grosso modo la directive 2000/78/CE en retenant quatre motifs de discrimination au lieu de cinq (le handicap étant exclu car couvert par ailleurs);¹⁶
- une loi rendant illégale toute discrimination fondée sur l'origine ethnique ou raciale dans les domaines couverts par la directive 2000/43/CE (sauf l'emploi);¹⁷ et
- la loi désignant le Médiateur en tant qu'organisme de promotion de l'égalité de traitement habilité à enquêter sur les plaintes pour discrimination conformément aux dispositions de l'article 13 de la directive 2000/43/CE; son mandat s'étend bien au-delà des exigences minimales de ladite directive puisqu'il inclut la protection des droits garantis par la Constitution ou par les conventions ratifiées par Chypre comprenant le protocole n° 12 de la CEDH et surtout la nationalité.¹⁸ Le large mandat de l'organisme de promotion de l'égalité n'inclut cependant pas l'apport d'une aide indépendante aux victimes ni l'habilitation à représenter celles-ci en justice.

La Constitution chypriote a été amendée en juillet 2006 afin de conférer la primauté à la législation de l'UE. Jusqu'alors, la Constitution avait été la loi suprême du pays et la disposition antidiscrimination figurant en son article 28 avait été interprétée par les tribunaux comme signifiant qu'une action positive transgressait le principe d'égalité consacré par la Constitution. On a observé en 2015 une réorientation de cette tendance judiciaire puisqu'il est admis désormais que l'action positive n'enfreint pas le principe

¹⁴ Chypre, loi n° 184(I)/2015 sur les mariages civils (*Ο περί Πολιτικής Συμβίωσης Νόμος του*) du 9 décembre 2015. Disponible sur http://cylaw.org/nomoi/arith/2015_1_184.pdf.

¹⁵ Chypre, loi n° 127(I)/2000 relative aux personnes handicapées (*Ο Περί Ατόμων με Αναπηρίες Νόμος*). Disponible sur www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶ Chypre, loi n° 58(I)/2004 relative à l'égalité de traitement en matière d'emploi et de travail (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*). Disponible sur www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁷ Chypre, loi n° 59(I)/2004 sur l'égalité de traitement (origine raciale ou ethnique) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*]. Disponible sur www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

¹⁸ Chypre, loi n° 42(1)/2004 sur la lutte contre la discrimination raciale et autres formes de discrimination (Commissaire) [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*]. Disponible sur www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

d'égalité et qu'elle s'avère en réalité nécessaire à la réalisation de l'égalité.¹⁹ La voie légale la plus fréquemment empruntée pour contester une discrimination reste la Constitution plutôt que la législation transposant l'acquis en matière d'égalité du fait que les avocats continuent de s'appuyer principalement sur l'article 28 de la Constitution et ignorent largement les directives antidiscrimination, lesquelles n'ont été que rarement invoquées en justice. Cette situation conduit parfois à l'émergence de normes juridiques d'une validité douteuse: on peut citer à cet égard le recours à des notions telles que la «discrimination raisonnable» autorisée et nécessaire «en raison de la nature particulière des choses». Une forte diminution du nombre de plaintes pour discrimination a été constatée en 2014 – phénomène que l'on attribue à la crise économique, à l'abaissement général des normes en matière de droits fondamentaux et à la montée du chômage.

La pratique actuelle fait penser que l'obligation de veiller à l'abrogation explicite des lois, dispositions et règlements d'organisations ayant un caractère discriminatoire, spécifiée par les directives sur l'égalité, n'est pas entièrement respectée. Le processus d'abrogation officielle des lois ou réglementations non conforme aux directives n'est déclenché qu'à la suite du dépôt d'une plainte auprès de l'organisme de promotion de l'égalité de traitement. Même l'établissement du caractère discriminatoire d'une disposition législative dans le cadre d'une procédure judiciaire n'engendre pas de processus de révision. Lorsque l'organisme de promotion de l'égalité constate qu'une disposition enfreint les directives, la procédure visant à l'abroger ne porte pas toujours ses fruits. On pouvait espérer qu'un arrêt rendu par la Cour suprême en 2014, établissant que le Procureur ne peut se permettre d'ignorer la recommandation de l'organisme de promotion de l'égalité réclamant la modification d'une loi discriminatoire, ferait évoluer cette situation,²⁰ mais il n'en a rien été en 2015.

3. Principes généraux et définitions

Toutes les définitions de la «discrimination» figurant dans les directives sont quasiment reproduites dans la législation nationale. C'est ainsi que les définitions de la discrimination directe et indirecte, du harcèlement, de l'injonction de discriminer et des rétorsions, qui sont interdits pour l'ensemble des cinq motifs, suivent textuellement celles des directives. La discrimination par association n'est pas explicitement couverte par les lois antidiscrimination, mais elle est couverte par le protocole n° 12 à la Convention européenne des droits de l'homme; des décisions de l'organisme pour la promotion de l'égalité ont appliqué en outre en 2010 et en 2015 le principe établi dans *Coleman*²¹ en vertu duquel l'interdiction de discrimination fondée sur le handicap s'étend aux aidants principaux de personnes handicapées, même s'il ne s'agit pas de parents ou de conjoints de ces dernières.²²

¹⁹ Chypre, Cour suprême, Eleni Paroutsi c. Comité du service éducatif, arrêt n° 5700/2013, 30 octobre 2015, disponible sur www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%E9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015; Chypre, Cour suprême, Costas Tsikas et al c. la République de Chypre au travers du Comité du service éducatif, réf. 1519/2010 και 1520/10, 3 septembre 2015. Disponible sur http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

²⁰ Chypre, Cour suprême, Nicoletta Charalambidou c. la République de Chypre, le ministre des Finances et le Procureur général (*Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), arrêt n° 1695/2009, 17 décembre 2014. Disponible sur [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058\(%E9\)#.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058(%E9)#.)

²¹ CJUE, affaire C-303/06, S. Coleman c. Attridge Law & Steve Law, disponible sur <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=150145>

²² Chypre, Autorité pour l'égalité, Rapport de l'Autorité pour l'égalité concernant la proposition de transfert d'un agent administratif l'éloignant de son lieu de résidence permanente où elle est l'aidante principale d'une personne souffrant d'un handicap psychosocial, 16 octobre 2015, réf. A.K.I. 38/2015. Disponible sur

Les lois transposant la directive 2000/78/CE autorisent un traitement différencié fondé sur les motifs de l'origine raciale ou ethnique, de la religion ou des convictions, de l'âge, du handicap et de l'orientation sexuelle lorsque la nature d'activités professionnelles particulières ou le contexte dans lequel celles-ci s'exercent sont tels qu'une caractéristique spécifique constitue une condition préalable d'emploi essentielle et déterminante pour autant que l'objectif soit légitime et l'exigence proportionnée. En ce qui concerne l'âge, ces dispositions ne s'appliquent pas aux forces armées, dans la mesure où la fixation d'une limite d'âge est justifiée par la nature et les obligations de la fonction. En pratique, des limites d'âge sont appliquées lors de l'embauche et de la promotion professionnelle, au sein des forces de police en particulier: elles visent moins à servir les objectifs du marché du travail qu'à tenir compte de la dégradation de l'état physique du personnel que l'avancée en âge est censée causer.

Dans le cas d'activités professionnelles exercées dans le cadre d'Églises ou d'autres organisations privées ou publiques dont la philosophie est fondée sur la religion ou les convictions, une différence de traitement fondée sur la religion ou les convictions d'une personne ne constitue pas une discrimination lorsque, en raison de la nature de ces activités ou du contexte dans lequel elles sont exercées, la religion ou les convictions représentent une exigence professionnelle essentielle, légitime et justifiée, compte tenu de la philosophie de l'organisation.

Le champ d'application de la loi relative aux personnes handicapées exclut les activités pour lesquelles, en vertu de leur nature ou de leur contexte, une caractéristique ou une capacité que ne possède pas une personne handicapée, constitue une condition préalable essentielle et déterminante pour autant que l'objectif soit légitime et la condition préalable proportionnée, compte tenu de la possibilité d'adopter des «mesures raisonnables», au sens que leur donne cette loi. Celle-ci ne s'applique pas aux forces armées, dans la mesure où la nature du travail est telle qu'elle exige des aptitudes spéciales qui ne peuvent être exercées par des personnes handicapées.²³

La loi relative aux personnes handicapées a été modifiée en 2007 afin d'imposer aux employeurs l'obligation de prévoir un aménagement raisonnable pour autant que celui-ci ne représente pas pour eux une charge disproportionnée. La loi a fait l'objet d'une nouvelle modification en 2014 en vue d'étendre l'obligation d'aménagement raisonnable au-delà du domaine de l'emploi pour autant que la charge ne soit pas disproportionnée ou injustifiée.²⁴ La nouvelle obligation d'aménagement raisonnable s'applique aux domaines suivants: le droit de mener une vie autonome, le diagnostic et la prévention du handicap, l'aide personnelle avec dispositifs d'assistance, services, etc., l'accessibilité des logements, des bâtiments, des rues, de l'environnement, des transports en commun, de l'éducation, de l'information et de la communication au moyen de dispositifs spéciaux, des services d'insertion sociale et économique, de la formation professionnelle, de l'emploi sur le marché ouvert, etc. (article 4); l'égalité en termes de fourniture de biens, de services et d'équipements lorsque cela «se justifie» (article 6); des services téléphoniques spécialement adaptés aux personnes handicapées et des programmes de télévision accessibles aux personnes malentendantes (article 8).

L'ordre juridique chypriote ne contient aucune disposition visant la discrimination multiple.

4. Champ d'application matériel

[www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

²³ Chypre, loi n° 127(I)/2000 relative aux personnes handicapées (*Ο Περί Ατόμων με Αναπηρίες Νόμος*). Disponible sur www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁴ Chypre, loi n° 63(I)/2014 modifiant la loi relative aux personnes handicapées, 23 mai 2014. Disponible sur www.cylaw.org/nomoi/arith/2014_1_63.pdf.

Les lois antidiscrimination couvrent tant le secteur public que le secteur privé et l'ensemble des domaines visés par les directives. Aussi la discrimination fondée sur un quelconque des cinq motifs est-elle interdite dans l'emploi, l'accès à la formation professionnelle, les conditions de travail, y compris la rémunération, et l'affiliation à un syndicat ou à une autre association. De surcroît, la discrimination fondée sur l'origine ethnique ou raciale est interdite dans le domaine de la protection sociale, des soins médicaux, des services sociaux, de l'éducation et de l'accès aux biens et services mis à la disposition du public, y compris le logement. Sous certaines conditions, la loi relative aux personnes handicapées accorde le droit à un traitement égal en matière de fourniture de biens, d'équipements et de services.

5. Mise en application de la loi

Les victimes ont la possibilité de déposer plainte auprès de l'organisme de promotion de l'égalité de traitement ou auprès des tribunaux. Les contentieux peuvent prendre la forme d'une demande de contrôle juridictionnel en vertu de l'article 146 de la Constitution, ou d'une requête adressée au tribunal de district ou au tribunal du travail conformément aux lois transposant les deux directives, ou d'une requête adressée au tribunal de district pour non-respect d'une disposition constitutionnelle antidiscrimination. De nombreuses raisons font cependant que les groupes vulnérables saisissent rarement la justice: on peut citer à cet égard la méconnaissance par les victimes et les milieux juridiques des dispositions légales en matière de lutte contre la discrimination, ainsi que le coût élevé et la durée des procédures et les restrictions à l'obtention d'une assistance juridique, laquelle est soumise à un critère de ressources. En 2013 et 2014, le nombre de plaintes en matière d'emploi adressées à l'organisme de promotion de l'égalité a chuté de près de moitié par rapport aux années précédentes, et ce phénomène est attribué à la montée du chômage et à la crainte des victimes de perdre leur emploi si elles portent plainte. Il ressort de la jurisprudence récente que plus les groupes sont vulnérables, moins ils ont accès aux procédures judiciaires ou aux procédures relevant de l'organisme pour la promotion de l'égalité. C'est ainsi que la plupart des affaires dont les juridictions ont été saisies concernaient des plaintes introduites par des fonctionnaires à propos de leur promotion, de leur pension et de leur âge d'admission à la retraite. Quelques décisions judiciaires ont concerné les requêtes de Turcs chypriotes réclamant leurs biens dans le Sud, ou des subventions publiques, mais aucune n'a concerné des affaires dans lesquelles des migrants ou des Roms invoquent une violation de l'acquis européen en matière d'égalité.

Les maigres ressources allouées à l'organisme de promotion de l'égalité de traitement entraînent un retard dans l'examen des plaintes qui peut aller jusqu'à trois ou quatre ans – délai à l'issue duquel les droits des tiers peuvent avoir été établis et il devient impossible de rendre justice à la victime, dont le droit de recours en justice est frappé entre-temps de prescription. Aucune décision contraignante n'a jamais été prise – ni aucune sanction imposée – par l'organisme en charge de l'égalité qui préfère, le plus souvent, exercer sa fonction de médiateur, les amendes étant trop faibles pour avoir un caractère dissuasif. L'organisme pour la promotion de l'égalité consacre un chapitre de chacun de ses rapports annuels à la description des efforts déployés en matière de médiation en les illustrant de plusieurs exemples de cas où cette procédure a eu une issue positive.²⁵

Les lois nationales reprennent textuellement les dispositions des directives concernant le droit des organisations d'engager des procédures au nom des victimes. Les victimes peuvent adresser leur plainte directement à l'organisme pour la promotion de l'égalité, dont les procédures sont gratuites, simples et souples, ou à des ONG ou des syndicats, qui

²⁵ Voir par exemple le rapport annuel 2014 de l'Autorité pour l'égalité, p. 16, disponible sur <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; le rapport annuel 2014 de l'Autorité pour la lutte contre la discrimination, p.23, disponible sur [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf)

peuvent alors déposer plainte en leur nom auprès de cet organisme. Rares sont néanmoins les ONG qui se montrent prêtes à déposer des plaintes pour le compte de groupes vulnérables, et plus rares encore les syndicats, dont certains tendent à envisager l'organisme pour la promotion de l'égalité avec une certaine suspicion; c'est ainsi notamment que cet organisme signale que les syndicats considèrent avec une certaine méfiance ses interventions sur des questions liées au travail, estimant qu'il s'agit d'une interférence dans la liberté de négociation des termes des conventions collectives.²⁶ De manière générale, les plaintes déposées par des personnes individuelles sont plus nombreuses que celles déposées par des organisations agissant en leur nom. En ce qui concerne l'orientation sexuelle, la plupart des victimes ne sont «pas sorties du placard» et ne sont dès lors pas disposées à introduire une plainte qui rendrait publique leur orientation sexuelle.

On ne trouve nulle mention dans la législation, dans la jurisprudence ou dans les décisions de l'organisme de promotion de l'égalité de traitement de l'utilisation du test de situation et de données statistiques. Lorsqu'un argument en faveur de la recevabilité de ce type de preuve est utilisé au tribunal, ladite preuve sera vraisemblablement autorisée, même si les juridictions ont tendance à permettre à des subtilités d'ordre technique de faire obstacle à la bonne administration de la justice. Les règles générales en matière de preuve pour les procédures pénales et civiles sont d'application. La recevabilité du test de situation comme méthode permettant de prouver une discrimination devant les tribunaux sera vraisemblablement soumise au test général de «pertinence» et de «la règle de la meilleure preuve», mais il est impossible d'affirmer pour autant que les tribunaux considéreront qu'il s'agit d'une preuve recevable pour prouver l'existence d'une discrimination.

La charge de la preuve peut être renversée lors de procédures judiciaires lorsque sont invoquées les lois transposant les directives; une partie requérante invoquant la Constitution ou fondant sa plainte sur d'autres lois ne peut se prévaloir du principe du renversement de la charge de la preuve. Il n'y a pas renversement de la charge de la preuve dans le cadre de procédures devant l'organisme pour la promotion de l'égalité, étant donné que son mandat couvre le droit de procéder à une enquête pour établir des faits.

Les sanctions que les tribunaux peuvent imposer aux personnes physiques coupables de discrimination ne peuvent dépasser 6 835,27 euros et/ou une peine d'emprisonnement de six mois maximum. Pour les personnes morales, le montant maximum de l'amende est de 1 196,72 euros. Si l'infraction a été commise par négligence grave, l'amende pour les personnes physiques peut atteindre 3 417,63 euros. Pour les personnes morales, l'amende est également de 3 417,63 euros pour l'administrateur délégué, le président du conseil d'administration, le directeur général, le secrétaire ou tout autre responsable si l'on peut prouver que l'infraction a été commise avec son assentiment, plus une amende supplémentaire pouvant atteindre 6 835,27 euros pour l'entreprise ou l'organisation. Toutefois, seuls les tribunaux peuvent imposer ces amendes. L'organisme de promotion de l'égalité de traitement ne peut pour sa part imposer que de modestes amendes d'un montant maximum de 598 euros, et il n'est pas habilité à octroyer des indemnisations aux victimes de discrimination.

6. Organismes de promotion de l'égalité de traitement

En 2004, le Médiateur a été désigné en tant qu'organisme national de promotion de l'égalité de traitement, habilité à combattre la discrimination raciale ainsi que la discrimination

²⁶ Rapport annuel 2007-2008 de l'Autorité pour l'égalité, disponible sur [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

interdite par la loi et, de façon générale, la discrimination fondée sur la race, la communauté, la langue, la couleur, la religion, les convictions politiques ou autres et l'origine ethnique ou nationale; à promouvoir l'égalité de jouissance des droits garantis par la Constitution ou par les conventions ratifiées par Chypre (y compris le protocole n° 12 de la CEDH et la Convention internationale sur l'élimination de toutes les formes de discrimination raciale), sans distinction de race, de communauté, de langue, de couleur de peau, de religion, de convictions politiques ou autres et d'origine nationale ou ethnique; et à promouvoir l'égalité des chances indépendamment des motifs précités et des motifs liés à des besoins particuliers ou à l'orientation sexuelle. Le champ d'application de cette disposition couvre non seulement les domaines visés par la directive 2000/78/CE, mais également la sécurité sociale, les soins médicaux, l'éducation et l'accès aux biens et aux services, y compris le logement. Bien qu'il soit un organe quasi-judiciaire habilité à prononcer des décisions contraignantes, l'organisme de promotion de l'égalité de traitement recourt à la médiation et/ou à des recommandations non contraignantes en tant que moyens plus efficaces de régler les problèmes que les modestes amendes prévues par la loi. Il est habilité à mener des études indépendantes, à publier des rapports et à formuler des recommandations, mais il n'est pas autorisé à apporter une aide indépendante aux victimes – ce qu'exige pourtant la directive sur l'égalité raciale.

L'organisme de promotion de l'égalité de traitement comprend deux services: l'Autorité pour l'égalité, qui traite de tous les motifs dans le domaine de l'emploi, et l'Autorité pour la lutte contre la discrimination, qui s'occupe de l'ensemble des motifs dans tous les domaines hormis l'emploi. Son mandat a été complété en 2009 d'une série de nouvelles fonctions, mais son budget et ses ressources n'en ont pas été augmentées pour autant. Ces fonctions supplémentaires couvrent notamment l'Institution nationale de protection des droits de l'homme, le mécanisme indépendant pour la prévention de la torture, le mécanisme indépendant pour la mise en œuvre de la Convention des Nations unies relative aux droits des personnes handicapées et l'autorité indépendante pour la mise en œuvre de la directive «retour». En raison de l'insuffisance des fonds qui lui sont alloués, l'organisme de promotion de l'égalité de traitement ne peut se doter d'un personnel adéquat; enregistre du retard dans le rendu de ses décisions; et ne peut mener des enquêtes et des campagnes de sensibilisation, effectuer des recherches ou publier des codes de bonne conduite sans obtenir de financements externes.

7. Points essentiels

- L'élargissement des fonctions/du mandat à remplir par l'organisme pour la promotion de l'égalité/le Médiateur sans augmentation de son budget engendre des retards considérables au niveau des décisions au point que l'efficacité et l'impact de l'institution sont aujourd'hui mis en cause. Le gel du recrutement dans le secteur public, imposé en raison de la crise économique, a eu pour effet que l'organisme pour l'égalité de traitement/le Médiateur n'a même pas pu engager de personnel pour remplacer les personnes quittant son service. De surcroît, de nombreux responsables au sein de l'organisme pour l'égalité n'ont pas de formation juridique, ce qui ressort clairement des rapports publiés – lesquels ne font généralement référence ni à la législation ni à la jurisprudence, et épinglent rarement la responsabilité des auteurs d'actes manifestement illégaux. La pénurie de ressources humaines a également eu des répercussions négatives sur le suivi de la bonne exécution des décisions.
- L'exigence de la directive sur l'égalité raciale stipulant que l'organisme spécialisé doit être en mesure d'apporter une assistance aux victimes n'est toujours pas transposée – plus de dix ans après la transposition de la directive – puisque l'organisme pour l'égalité ne peut représenter les victimes en justice. Pour y être habilité, cet organisme devrait être doté non seulement d'un nouveau mandat, mais également des ressources budgétaires et humaines nécessaires, qui lui font actuellement défaut.
- Il est très rare que des affaires de discrimination parviennent jusqu'aux tribunaux et, lorsqu'elles y arrivent, ce n'est pas le cadre juridique antidiscrimination qui est invoqué: il est plutôt fait appel à des dispositions constitutionnelles datant de

quarante ans (contrôle juridictionnel des actes administratifs et/ou disposition générale en matière d'égalité figurant à l'article 28) qui n'offrent pas une protection aussi étendue que les directives. La décision se fonde souvent sur des doctrines juridiques problématiques qui, arbitrairement développées par les tribunaux, ne se conforment pas aux directives et refusent aux victimes la protection prévue par celles-ci.

- Plusieurs raisons sous-tendent le faible recours aux procédures judiciaires: le coût et la durée des dites procédures; le fait qu'une aide juridique soit uniquement accordée en cas de ressources personnelles insuffisantes; et la méconnaissance de la législation antidiscrimination au sein de la profession juridique. Étant donné que les décisions de l'organisme pour l'égalité n'ont été à ce jour que de simples recommandations, les victimes de discrimination ne bénéficient pas, concrètement, de la protection juridique obligatoire prévue par les directives. Le gouvernement a totalement cessé depuis quelques années tout effort visant à accroître la sensibilisation à l'égard des directives, à encourager des initiatives antidiscrimination ou à consulter la société civile. Le paquet des fonds structurels de l'UE pour la période 2014-2020 ne servira pas à financer de nouveaux projets de lutte contre la discrimination: ils seront uniquement utilisés pour soutenir des «politiques horizontales» existantes à propos desquelles les bénéficiaires ont exprimé les plus vives critiques (système de classification du handicap (CIF) notamment).
- Aucune procédure n'est en place pour procéder régulièrement au réexamen ou à la révision des lois/réglementations discriminatoires. Dans la pratique, un réexamen n'est déclenché qu'après le dépôt d'une plainte auprès de l'organisme pour l'égalité. La législation exige dans ce cas que l'organisme pour l'égalité renvoie les lois/réglementations discriminatoires en cause devant le Procureur général, qui est tenu de préparer une modification législative. Il est extrêmement rare que cette procédure soit suivie, ce qui a pour conséquence que plusieurs actes législatifs discriminatoires demeurent en vigueur.
- Les problématiques découlant de la non-résolution de la «question chypriote», à savoir la division de facto du pays, sont à l'origine d'une discrimination ethnique permanente, surtout depuis l'ouverture en 2003 de la frontière jusque-là hermétique. Il s'agit notamment de l'accès des Chypriotes turcs à leurs biens dans le Sud et de l'exercice de divers droits constitutionnels, de la violation des droits des Chypriotes grecs par la Turquie et d'une certaine tendance des autorités et des tribunaux de «se venger» de l'invasion turque de Chypre en refusant certains droits fondamentaux aux Chypriotes turcs. Le ressentiment des Chypriotes grecs à l'égard du système constitutionnel de quotas pour les Chypriotes turcs dans le secteur public, l'historique du conflit ethnique et l'application persistante, voire de plus en plus large, de la «doctrine de nécessité» par les autorités et les tribunaux subordonnent les questions d'égalité aux intérêts politiques et confèrent une importance disproportionnée à la souveraineté de l'État. L'organisme pour l'égalité a manifesté jusqu'ici une certaine réticence à s'attaquer à l'usage intensif de la «doctrine de nécessité» par l'administration et la magistrature, lequel est à l'origine de lacunes systémiques et de faiblesses majeures dans la réalisation de l'égalité.

ZUSAMMENFASSUNG

1. Einleitung

Zypern erhielt seine Unabhängigkeit im Jahr 1960 mit einer Verfassung, die ein System der Gewaltenteilung mit einer strengen kommunalen Trennung zwischen „Griechen“ und „Türken“ begründet. Die Verfassung kennt zwei „Gemeinschaften“, die Griechen und die Türken, und drei „religiöse Gruppen“, die Maroniten, die Armenier und Latiner. Die „religiösen Gruppen“, die sich für eine der beiden „Gemeinschaften“ entscheiden mussten, haben sich der griechischen Gemeinschaft angeschlossen. Die Roma-Gemeinschaft in Zypern erhielt keine Wahlmöglichkeit, sondern wurde aufgrund der Annahme einer gemeinsamen Sprache (Türkisch) und Religion (Islam) zu den türkischen Zypernern gezählt. 2009 wurden die Roma als Minderheit gemäß dem Rahmenübereinkommen zum Schutz nationaler Minderheiten anerkannt; dies hat jedoch nicht zu einer neuen Politik oder zu positiven Maßnahmen zugunsten der Roma geführt. Die Regierung erkennt weiterhin keine migrantische Gemeinschaft als „Minderheit“ an und die Sozialdienste halten die Roma-Gemeinschaft für viel zu klein, um ihnen eine Sonderbehandlung zu gewähren.

Die Verfassung funktionierte bis 1963, als der zyperngriechische Präsident 13 Verfassungsänderungen vorlegte und damit den Zyperntürken die wichtigsten Grundrechte entzog. Die Zyperntürken verließen daraufhin aus Protest die Regierung und die Jahre 1963 bis 1967 waren von einer Welle der Gewalt zwischen den beiden Ethnien geprägt. 1964 forderte der Oberste Gerichtshof in einem Urteil eine Fortsetzung der Regierung nach der „Doktrin der Notwendigkeit“, wobei im Wesentlichen die Verfassungsartikel, die das Recht der Zyperntürken zur Teilhabe an politischen Entscheidungsprozessen begründen, „suspendiert“ wurden. Zwischen 1963 und 1974 zog sich der Großteil der Zyperntürken schrittweise in Enklaven zurück. 1974 wurde die Teilung der Insel durch militärische Interventionen Griechenlands und der Türkei weiter zementiert. Die drei „religiösen Gruppen“ blieben im Süden bei den Zyperngriechen und die Roma schlossen sich den Zyperntürken an, die in den Norden umsiedelten. Erst seit dem Jahr 2000 kehren viele Roma wieder in den Süden zurück und lassen sich in speziellen Roma-Siedlungen nieder, die für Schmutz, Armut und schlechten Unterhalt berüchtigt sind. Die Wohnsegregation führte unvermeidbar zur schulischen Segregation, weil die Kinder der Roma verpflichtet sind, Schulen in der Nähe ihres Wohnorts zu besuchen. Trotz Verbesserungen der Wohnsituation und gezielter Fördermaßnahmen für Roma im Bildungsbereich bleiben die Roma die am stärksten sozial ausgegrenzte und benachteiligte Gruppe in Zypern.

Nur wenige NROs sind im Kampf gegen Diskriminierung aktiv. Es gibt keine NRO für die Rechte der Zyperntürken oder der Roma und nur ein bis zwei NROs für die Rechte von Migranten oder Asylsuchenden. Am besten organisiert sind NROs, die sich für die Rechte von Menschen mit Behinderungen einsetzen. Ihre Lobbyarbeit wird von einem nationalen Verband koordiniert, der 2006 den Status eines Sozialpartners erhielt. In der Praxis wird der Verband in wichtige politische Prozesse, wie die Ausarbeitung und Umsetzung des Gesetzes von 2009 über Quoten im Beschäftigungsbereich und die Umsetzung des Übereinkommens über die Rechte von Menschen mit Behinderungen, jedoch kaum einbezogen. Bis 2010 gab es nur eine NRO für die Rechte Homosexueller, von deren Mitgliedern sich nur zwei „geoutet“ hatten und offen für Schwulenrechte eintraten. 2010 wurde eine neue NRO für die Rechte homosexueller Menschen gegründet, in der sich vor allem junge dynamische Menschen engagieren, die ihre sexuelle Ausrichtung offen leben und öffentliche Veranstaltungen durchführen. Obwohl Diskriminierung aufgrund der sexuellen Ausrichtung in der Gesellschaft Zyperns weit verbreitet ist, nimmt der Kampf dagegen endlich Fahrt auf: Nach jahrelanger Diskussion wurde ein Gesetz verabschiedet, das eingetragene Partnerschaften – sowohl für gleichgeschlechtliche Paare als auch für Paare, die sich aus anderen Gründen für eine solche Partnerschaft entscheiden –

ermöglicht.²⁷ In den letzten Jahren sind zahlreiche neonazistische Gruppen entstanden, die gegen Immigranten hetzen und regelmäßig rassistisch motivierte Straftaten begehen. Eine dieser Gruppen, die ELAM, ist als politische Partei registriert und konnte in den Wahlen der letzten Jahre mehrere tausend Stimmen gewinnen.

2. Wichtigste Gesetze

Die zyprische Verfassung enthält ein allgemeines Diskriminierungsverbot (Artikel 28), das dem Artikel 14 der EMRK entspricht, jedoch als zusätzlichen Diskriminierungsgrund die Zugehörigkeit zur „griechischen“ oder „türkischen“ Gemeinschaft aufführt. Alter, Behinderung und sexuelle Ausrichtungen werden in der Verfassung nicht ausdrücklich erwähnt, man geht jedoch davon aus, dass sie durch die Formulierung „alle sonstigen Gründe“ in Artikel 28 abgedeckt sind.

Zypern hat die meisten wichtigen internationalen Übereinkommen gegen Diskriminierung ratifiziert. Im Jahr 2000 trat ein grundlegendes Behindertengesetz in Kraft, das ein Diskriminierungsverbot einführt, jedoch keine Mechanismen zu dessen Durchsetzung. 2004 wurden die beiden Antidiskriminierungsrichtlinien in vier gesonderten zyprischen Gesetzen umgesetzt:

- ein Gesetz zur Anpassung des bestehenden Behindertengesetzes an die Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung;²⁸
- ein Gesetz, das Diskriminierung im Beschäftigungsbereich verbietet und die wesentlichen Punkte der Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung für vier Diskriminierungsgründe umsetzt (d. h. nicht den Grund Behinderung, der gesondert behandelt wird);²⁹
- ein Gesetz, das Diskriminierung aufgrund der Rasse bzw. der ethnischen Herkunft in den sachlichen Anwendungsbereichen der Richtlinie 2000/43/EG verbietet (außer Beschäftigung)³⁰ und
- das Gesetz, das den Ombudsmann zur Gleichbehandlungsstelle ernennt, die für die Untersuchung von Diskriminierungsbeschwerden nach Artikel 13 der Richtlinie 2000/43 zuständig ist. Seine Zuständigkeit geht über die Mindestanforderung der Richtlinie hinaus und umfasst den Schutz der Rechte, die durch die Verfassung oder die von Zypern ratifizierten Übereinkommen, einschließlich des 12. Protokolls der EMRK, garantiert werden und insbesondere Schutz vor Diskriminierung aufgrund der Nationalität.³¹ Allerdings fällt unter die Zuständigkeit der Gleichbehandlungsstelle nicht die unabhängige Unterstützung von Diskriminierungsopfern oder die Vertretung dieser Opfer vor Gericht.

Im Juli 2006 erhielt das EU-Recht durch eine Verfassungsänderung Vorrang vor dem nationalen Recht. Bis dahin war die Verfassung das oberste Gesetz des Landes. Vor dieser Änderung legten die Gerichte das Diskriminierungsverbot in Artikel 28 der zyprischen Verfassung als absoluten Gleichbehandlungsgrundsatz aus, der auch keine positiven Maßnahmen erlaubt. 2015 begann sich in der Rechtsprechung zunehmend die Sichtweise durchzusetzen, dass positive Maßnahmen nicht gegen den Gleichheitsgrundsatz verstoßen,

²⁷ Zypern, Gesetz über die bürgerliche Ehe von 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9. Dezember 2015; abrufbar unter http://cyllaw.org/nomoi/arith/2015_1_184.pdf.

²⁸ Zypern, Behindertengesetz (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) Nr. 127(I)/2000; abrufbar unter www.cyllaw.org/nomoi/arith/2000_1_127.pdf.

²⁹ Zypern, Gesetz über Gleichbehandlung in Beschäftigung und Beruf (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004; abrufbar unter www.cyllaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁰ Zypern, Gleichbehandlungsgesetz (Rasse oder ethnische Herkunft) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004; abrufbar unter www.cyllaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³¹ Zypern, Gesetz (über den Kommissar) zur Bekämpfung von Rassendiskriminierung und anderen Diskriminierungsformen (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*) Nr. 42(1)/2004; abrufbar unter www.cyllaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

sondern vielmehr ein notwendiges Element sind, um Gleichstellung zu erreichen.³² Der am häufigsten beschrittene Rechtsweg, um gegen Diskriminierung vorzugehen, ist nach wie vor die Verfassung und nicht die Gesetze, mit denen der Besitzstand in Sachen Gleichstellung umgesetzt wurde: Anwälte stützen sich in der Regel vor allem auf Artikel 28 der Verfassung, während die Antidiskriminierungsrichtlinien weitgehend unberücksichtigt bleiben und vor Gericht bisher nur selten herangezogen wurden. Dies führte zur Entstehung von Rechtsnormen von zweifelhafter Gültigkeit, bei denen unter anderem Begriffe wie „angemessene Diskriminierung“ verwendet werden, die „aufgrund der speziellen Umstände“ erlaubt und notwendig ist. Im Jahr 2014 fiel die Zahl der Diskriminierungsklagen stark ab, vorwiegend aufgrund der Wirtschaftskrise, der allgemeinen Verminderung von Menschenrechtsstandards und der steigenden Arbeitslosigkeit.

Die aktuelle Rechtspraxis deutet darauf hin, dass die auch in den Gleichbehandlungsrichtlinien geforderte Pflicht zur Aufhebung diskriminierender Gesetze, Vorschriften oder Satzungen nicht zur Gänze umgesetzt wird. Verfahren zur formellen Aufhebung von Gesetzen oder Vorschriften werden nur nach entsprechenden Beschwerden bei der Gleichstellungsstelle eingeleitet. Selbst wenn eine diskriminierende Rechtsvorschrift im Rahmen eines Verfahrens überprüft wird, führt dies nicht automatisch zu einer Überarbeitung der Vorschrift. Wenn die Gleichbehandlungsstelle der Ansicht ist, dass eine Vorschrift gegen die Richtlinien verstößt, trägt das Verfahren zu deren Aufhebung nicht in jedem Fall Früchte. Ein Urteil des Obersten Gerichtshof von 2014, nach dem der Staatsanwalt die Empfehlungen der Gleichbehandlungsstelle zur Überarbeitung diskriminierender Gesetze nicht einfach ignorieren darf, ließ Hoffnung aufkommen, dass sich die Situation verändern würde,³³ was 2015 jedoch nicht geschah.

3. Wichtigste Grundsätze und Begriffe

Alle Definitionen von Diskriminierung in den Richtlinien werden in den zyprischen Gesetzen praktisch wiederholt. Das heißt, die Bestimmungen zu unmittelbarer und mittelbarer Diskriminierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung, die für alle fünf Diskriminierungsgründe verboten sind, folgen wörtlich den Definitionen der Richtlinien. Diskriminierung durch Assoziierung wird in den Antidiskriminierungsgesetzen nicht ausdrücklich erfasst, wohl aber im 12. Protokoll der EMRK; außerdem ergingen 2010 und 2015 Entscheidungen der Gleichbehandlungsstelle, in denen der in *Coleman*³⁴ aufgestellte Grundsatz angewandt und das Verbot von Diskriminierung aufgrund einer Behinderung auf Personen ausgeweitet wurde, die das Sorgerecht für eine Person mit Behinderung ausüben, auch wenn sie nicht deren Eltern oder Ehepartner sind.³⁵

³² Zypern, Oberster Gerichtshof, *Eleni Paroutsis gegen den Ausschuss für Unterricht und Erziehung*, Rechtssache Nr. 5700/2013, 30. Oktober 2015; abrufbar unter www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015; Zypern, Oberster Gerichtshof, *Costas Tsikas et al gegen die Republik Zypern, hier: den Ausschuss für Unterricht und Erziehung*, Az. 1519/2010 και 1520/10, 3. September 2015; abrufbar unter [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015;)

³³ Zypern, Oberster Gerichtshof, *Nicoletta Charalambidou gegen die Republik Zypern, den Finanzminister und den Generalstaatsanwalt (Nikoléta Charalambidou v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα)*, Nr. 1695/2009, 17. Dezember 2014; abrufbar unter [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

³⁴ EuGH, Rechtssache C-303/06, *S. Coleman gegen Attridge Law und Steve Law*; abrufbar unter <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=150145>.

³⁵ Zypern, Gleichstellungsbehörde, Bericht der Gleichstellungsbehörde über die geplante Wegversetzung einer Verwaltungsbeamtin von dem Bezirk ihres ständigen Wohnsitzes, obgleich sie Sorgeberechtigte einer Person mit psychosozialer Behinderung ist, 16. Oktober 2015, A.K.I. 38/2015; abrufbar unter [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

Die Gesetze zur Umsetzung der Richtlinie 2000/78/EG erlauben Ungleichbehandlung aufgrund von Rasse oder ethnischer Zugehörigkeit, Religion oder Weltanschauung, Alter, Behinderung und sexueller Ausrichtung, wenn das Merkmal aufgrund der Art einer bestimmten beruflichen Tätigkeit oder der Bedingungen ihrer Ausübung eine wesentliche und entscheidende berufliche Anforderung darstellt, sofern es sich um einen rechtmäßigen Zweck und eine angemessene Anforderung handelt. In Bezug auf Alter gilt diese Bestimmung nicht für die Streitkräfte, sofern die Festlegung einer Altersgrenze durch Art und Pflichten der Tätigkeit gerechtfertigt ist. In der Praxis kommen Altersgrenzen bei Einstellungs- und Beförderungsverfahren vor, insbesondere bei der Polizei; sie dienen weniger der Erreichung arbeitsmarktpolitischer Ziele, sondern sind eine Reaktion auf die Verschlechterung der körperlichen Fitness der Angestellten, die mit dem Alter assoziiert wird.

In Bezug auf berufliche Tätigkeiten innerhalb von Kirchen und anderen öffentlichen oder privaten Organisationen, deren Ethos auf religiösen Grundsätzen oder Weltanschauungen beruht, stellt eine Ungleichbehandlung wegen der Religion oder Weltanschauung einer Person keine Diskriminierung dar, wenn die Religion oder die Weltanschauung nach der Art dieser Tätigkeiten oder der Umstände ihrer Ausübung eine wesentliche, rechtmäßige und gerechtfertigte berufliche Anforderung angesichts des Ethos der Organisation darstellt.

Das Behindertengesetz gilt nicht für Tätigkeiten, bei denen eine bestimmte Fähigkeit aufgrund der Art der Tätigkeit oder der Bedingungen ihrer Ausübung eine wesentliche und entscheidende Voraussetzung darstellt, sofern es sich um einen rechtmäßigen Zweck handelt und die Voraussetzung angemessen ist, wobei die Möglichkeit „angemessener Vorkehrungen“ im Sinne des Gesetzes berücksichtigt werden muss. Es gilt insoweit nicht für die Streitkräfte, als eine Tätigkeit von ihrer Art her spezielle Fertigkeiten erfordert, die Personen mit Behinderung nicht aufweisen.³⁶

Im Behindertengesetz wurde 2007 eine Pflicht für Arbeitgeber eingeführt, angemessene Vorkehrungen zu treffen, sofern diese den Arbeitgeber nicht unverhältnismäßig belasten. Im Jahr 2014 wurde diese Pflicht zu angemessenen Vorkehrungen auf weitere Lebensbereiche ausgedehnt, sofern dies den Betroffenen nicht unverhältnismäßig und ungerechtfertigt belastet.³⁷ Die Pflicht zu angemessenen Vorkehrungen gilt in den folgenden Bereichen: das Recht auf eine eigenständige Lebensführung, Diagnose und Prävention von Behinderungen, persönliche Unterstützung durch Hilfsmittel, Dienstleistungen usw., barrierefreier Zugang zu Wohnraum, Gebäuden, Straßen, der Umwelt, öffentlichen Transportmitteln, Bildung, Information und Kommunikation über spezielle Mittel, Dienstleistungen zur sozialen und wirtschaftlichen Eingliederung, berufliche Bildung, Beschäftigung auf dem offenen Arbeitsmarkt usw. (Artikel 4), Gleichstellung beim Zugang zu Gütern, Dienstleistungen und Einrichtungen, sofern dies „gerechtfertigt“ ist (Artikel 6), spezielle Telefondienstleistungen für Menschen mit Behinderungen und Fernsehprogramme, die gehörlosen Personen zugänglich sind (Artikel 8).

Das zyprische Rechtssystem enthält keine Bestimmungen über Mehrfachdiskriminierung.

4. Sachlicher Anwendungsbereich

Die Antidiskriminierungsgesetze gelten für den privaten und den öffentlichen Sektor und decken alle in den Richtlinien geforderten Bereiche ab. Das heißt Diskriminierung wegen aller fünf Diskriminierungsgründe ist in der Beschäftigung, beim Zugang zu beruflicher Bildung, bei den Arbeitsbedingungen und Gehältern und bei der Mitgliedschaft in Gewerkschaften und anderen Vereinigungen verboten. Außerdem ist Diskriminierung

³⁶ Zypern, Behindertengesetz (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) Nr. 127(I)/2000; abrufbar unter www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁷ Zypern, Gesetz zur Änderung des Behindertengesetzes, N. 63(I)/2014, 23. Mai 2014; abrufbar unter www.cylaw.org/nomoi/arith/2014_1_63.pdf.

aufgrund der Rasse bzw. ethnischen Zugehörigkeit in den Bereichen Sozialschutz, Gesundheitsdienste, Sozialleistungen, Bildung sowie Zugang zu Gütern und Dienstleistungen, die der Öffentlichkeit zur Verfügung stehen, einschließlich von Wohnraum, verboten. Unter bestimmten Bedingungen garantiert das Behindertengesetz das Recht auf Gleichbehandlung bei der Bereitstellung von Gütern, Einrichtungen und Dienstleistungen.

5. Rechtsdurchsetzung

Opfer können eine Klage bei der Gleichbehandlungsstelle oder bei Gericht einreichen. Sie können entweder einen Antrag auf richterliche Kontrolle nach Artikel 146 der Verfassung stellen, vor einem Amts- oder Arbeitsgericht eine Klage aufgrund eines der Gesetze einreichen, die die beiden Richtlinien umsetzen, oder vor dem Amtsgericht wegen eines Verstoßes gegen das in der Verfassung verankerte Gleichbehandlungsgebot klagen. Aus den folgenden Gründen reichen besonders benachteiligte Gruppen nur selten Klagen ein: geringe Kenntnis der Antidiskriminierungsgesetze bei Opfern und in Rechtskreisen, hohe Prozesskosten und beschränkter Zugang zu Prozesskostenhilfe, die von „Mittelprüfung“ und der Dauer des Verfahrens abhängt. 2013 und 2014 fiel die Anzahl der Beschwerden aus dem Beschäftigungsbereich bei der Gleichbehandlungsstelle um fast die Hälfte im Vergleich zu den Vorjahren. Dies liegt vermutlich an der steigenden Arbeitslosigkeit und der Angst der Opfer, ihre Stelle zu verlieren, wenn sie sich beschweren. Die Urteile der letzten Jahre deuten darauf hin, dass eine Gruppe umso weniger Zugang zu Rechtsverfahren oder Verfahren vor der Gleichbehandlungsstelle hat, je stärker sie benachteiligt ist. Die meisten Diskriminierungsklagen vor Gericht werden von Beamten eingereicht und betreffen Beförderungen, Pensionen und das Pensionsalter. Es gibt einige wenige Gerichtsurteile über die Ansprüche von Zyperntürken auf Immobilien im Süden oder auf staatliche Zuschüsse, aber keine Fälle, in denen Migranten oder Roma aufgrund von Verstößen gegen den *Besitzstand* der Union im Bereich der Gleichbehandlung klagen.

Infolge der begrenzten Mittel der Gleichbehandlungsstelle kann die Untersuchung von Beschwerden im schlimmsten Fall drei bis vier Jahre dauern. In dieser Zeit entstehen möglicherweise Rechte Dritter, wodurch das Opfer seine Rechte nicht mehr durchsetzen kann und das Vergehen gleichzeitig verjährt ist. Die Gleichbehandlungsstelle hat noch nie rechtskräftige Urteile gesprochen oder Sanktionen verhängt. In der Mehrzahl der Fälle nimmt die Gleichbehandlungsstelle lieber eine Schlichterrolle ein, weil ihre Sanktionsmöglichkeiten zu gering sind, um abschreckend zu wirken. In jedem Jahresbericht widmet die Gleichbehandlungsstelle einen speziellen Abschnitt den geführten Schlichtungsverfahren und zählt eine Reihe gelungener Schlichtungen auf.³⁸

Das zyprische Recht setzt die Bestimmungen der Richtlinien über die Rechte von Organisationen zur Beteiligung an Verfahren im Namen von Opfern wortwörtlich um. Opfer können ihre Beschwerde direkt an die Gleichbehandlungsstelle richten, deren Verfahren kostenlos, einfach und flexibel ist, oder an NROs oder Gewerkschaften, die in ihrem Namen bei der Gleichbehandlungsstelle Beschwerde einreichen. Allerdings gibt es nur wenige NROs, die im Namen benachteiligter Gruppen Beschwerden einreichen, und noch weniger Gewerkschaften. Einige Gewerkschaften stehen der Gleichbehandlungsstelle kritisch gegenüber. So berichtet die Gleichbehandlungsstelle beispielsweise, dass Gewerkschaften ihre Einlassungen zu Themen im Bereich Beschäftigung als Behinderung der freien Tarifverhandlungen auffassen.³⁹ Grundsätzlich werden mehr Beschwerden von

³⁸ Siehe z. B.: Jahresbericht der Gleichstellungsbehörde 2014, S. 16, abrufbar unter <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; Jahresbericht der Antidiskriminierungsstelle 2014, S. 23, abrufbar unter [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf).

³⁹ Jahresbericht der Gleichstellungsbehörde 2007-2008, abrufbar unter [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CF%91%CF%81%CF%87%CF%AE%20%CF%99%CF%83%CF%8C%CF%84%CF%B7%CF%84%CF%B1](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CF%91%CF%81%CF%87%CF%AE%20%CF%99%CF%83%CF%8C%CF%84%CF%B7%CF%84%CF%B1)

Einzelpersonen eingereicht, als von Organisation, die einzelne Opfer vertreten. Wenn es um die sexuelle Ausrichtung geht, bekennen sich die meisten Opfer nicht dazu, sondern scheuen vor einer Beschwerde zurück, um ihre sexuelle Ausrichtung nicht öffentlich bekannt zu machen.

Weder in den Rechtsvorschriften noch im Fallrecht oder in den Entscheidungen der Gleichbehandlungsstelle wird die Verwendung von Situationstests oder statistischen Daten erwähnt. Allerdings dürften die Gerichte diese Verfahren vermutlich als Beweise zulassen, obwohl sie den Lauf der Gerechtigkeit gerne mit Formalitäten behindern. Es gelten die üblichen Beweisregeln für Straf- und Zivilverfahren. Ob Situationstests zum Nachweis von Diskriminierung vor Gericht zugelassen werden, wird vermutlich durch die übliche Prüfung der „Relevanz“ und nach der Regel der „besten Beweise“ entschieden. Daher lässt sich nicht mit Sicherheit sagen, ob die Gerichte diese Form der Beweisführung zum Nachweis von Diskriminierung zulassen.

Bei Gerichtsverfahren, die sich auf die Gesetze zur Umsetzung der Richtlinien beziehen, ist die Beweislast umgekehrt. Klägern, die ihre Klage auf die Verfassung oder andere Gesetze stützen, kommt das Prinzip der umgekehrten Beweislast nicht zugute. Auch bei den Verfahren von der Gleichbehandlungsstelle ist die Beweislast nicht umgekehrt, da die Stelle dafür zuständig ist, die Tatsachen durch Untersuchungen festzustellen.

Natürliche Personen, die vor Gericht wegen Diskriminierung schuldig gesprochen werden, können zu einer Geldstrafe von höchstens 6835,27 Euro und/oder bis zu sechs Monaten Haft verurteilt werden. Bei juristischen Personen liegt der Höchstbetrag bei 1196,72 Euro. Wenn die Tat aus grober Fahrlässigkeit begangen wurde, beläuft sich die Geldstrafe für natürliche Personen auf 3417,63 Euro. Für juristische Person erhöht sich die Geldstrafe auf 3417,63 Euro für Geschäftsführer, Vorsitzende, Direktoren, Sekretäre oder andere Führungskräfte, wenn nachgewiesen werden kann, dass die Tat mit deren Zustimmung erfolgt ist, zuzüglich einer weiteren Geldstrafe von bis zu 6835,27 Euro für das Unternehmen bzw. die Behörde. Diese Geldstrafen können allerdings nur von Gerichten verhängt werden, die Gleichbehandlungsstelle kann nur kleine Geldbußen bis zu 598 Euro verhängen. Die Gleichbehandlungsstelle kann den Opfern von Diskriminierung keine Entschädigung zusprechen.

6. Gleichbehandlungsstellen

Im Jahr 2004 wurde der Ombudsmann zur nationalen Gleichbehandlungsstelle ernannt. Zu seiner Zuständigkeit gehören der Kampf gegen Rassendiskriminierung, gesetzlich verbotene Diskriminierung und allgemein gegen Diskriminierung aufgrund der Rasse, Gemeinschaft, Sprache, Hautfarbe, Religion, politischen oder sonstigen Überzeugung und nationaler oder ethnischer Herkunft, die Förderung der Gleichstellung bei Ausübung der Rechte, die durch die Verfassung oder die von Zypern ratifizierten Übereinkommen (zu denen auch das 12. Protokolle der EMRK und das Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung gehören) ungeachtet der Rasse, Gemeinschaft, Sprache, Hautfarbe, Religion, politischen oder sonstigen Überzeugung und nationaler oder ethnischer Herkunft sowie die Förderung der Chancengleichheit ungeachtet der eben genannten Gründe sowie ungeachtet besonderer Bedürfnisse und der sexuellen Ausrichtung. Dabei umfasst seine Zuständigkeit nicht nur die Anwendungsbereiche der Richtlinie 2000/78/EG, sondern auch die Bereiche Sozialversicherung, Gesundheitsdienste, Bildung und den Zugang zu Gütern und Dienstleistungen, einschließlich von Wohnraum. Obwohl die Gleichstellungsstelle als außergerichtliche Stelle befugt ist, verbindliche Urteile zu sprechen, nutzt sie im Kampf für Gleichstellung statt der im Gesetz vorgesehenen geringen Geldbußen lieber die Mittel der Mediation und/oder nicht verbindliche Empfehlungen. Die Stelle kann unabhängige Studien durchführen, Berichte erstellen und

Empfehlungen aussprechen, ist jedoch nicht berechtigt, Opfern unabhängige Unterstützung anzubieten, wie von der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse gefordert.

Die Gleichbehandlungsstelle besteht aus zwei Abteilungen: der Gleichstellungsbehörde, die Diskriminierung aus allen Gründen im Bereich Beschäftigung behandelt, und der Antidiskriminierungsstelle, die die übrigen Anwendungsbereiche abdeckt. Seit 2009 hat die Stelle einige neue Funktionen übernommen, wobei weder ihre Mittel noch ihre Ressourcen aufgestockt wurden. Zu diesen Funktionen gehören die einer nationalen Menschenrechtsinstitution (NHRI), unabhängige Mechanismen zur Prävention von Folter, ein unabhängiger Mechanismus zur Umsetzung des Übereinkommens über die Rechte von Menschen mit Behinderungen der Vereinten Nationen und die Funktion einer unabhängigen Stelle für die Umsetzung der Rückführungsrichtlinie. Da der Gleichbehandlungsstelle nur ungenügende Mittel und damit zu geringe personelle Ressourcen zur Verfügung stehen, trifft sie Entscheidungen erst nach langer Wartezeit und kann Befragungen, Aufklärungskampagnen, Forschungsprojekte oder die Erstellung von Verhaltenskodizes nur mit Hilfe externer Finanzierung leisten.

7. Wichtige Punkte

- Die zusätzlichen Aufgaben und Zuständigkeiten der Gleichbehandlungsstelle bzw. des Ombudsmanns ohne entsprechende Budgeterhöhungen haben dazu geführt, dass Entscheidungen extrem lange auf sich warten lassen und inzwischen Effizienz und Glaubwürdigkeit der Stelle insgesamt in Frage stehen. Aufgrund einer Einstellungssperre für den öffentlichen Dienst, die als Reaktion auf die Wirtschaftskrise eingeführt wurde, kann sie inzwischen nicht einmal mehr ausscheidende Mitarbeiter ersetzen. Auch haben viele Beamte der Gleichbehandlungsstelle keine juristische Ausbildung, was sich in ihren Berichten niederschlägt: Es fehlen Verweise auf Gesetze und Fallrecht und Täter müssen so gut wie nie die rechtliche Verantwortung für eindeutig rechtswidrige Handlungen übernehmen. Die fehlenden personellen Mittel schränken auch die Fähigkeit der Stelle ein, die Umsetzung der eigenen Entscheidungen zu kontrollieren.
- Die Vorgabe der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse, dass die zuständige Stelle Opfern Unterstützung anbieten soll, ist auch über 10 Jahre nach der Umsetzung der Richtlinie noch nicht erfüllt, weil die Gleichbehandlungsstelle Opfer vor Gericht nicht vertreten darf. Um dies zu ermöglichen, würde die Gleichbehandlungsstelle neben einem neuen Mandat auch die notwendigen finanziellen und personellen Mittel benötigen, die derzeit noch fehlen.
- Diskriminierungsfälle werden nur sehr selten vor Gericht gebracht. Wenn dies dennoch geschieht, berufen sich die Kläger nicht auf die Antidiskriminierungsgesetze, sondern auf die 40 Jahre alten Verfassungsregeln (richterliche Kontrolle behördlicher Entscheidungen und/oder das allgemeine Gleichbehandlungsgebot in Artikel 28), die nicht denselben weitreichenden Rechtsschutz gewähren wie die Richtlinien. Urteile beruhen häufig auf einer problematischen Rechtslehre, die von den Gerichten willkürlich entwickelt wurde, gegen die Richtlinien verstößt und den Opfern den von den Richtlinien garantierten Schutz verweigert.
- Aufgrund der hohen Kosten und langen Verfahrensdauern, der Tatsache, dass Prozesskostenhilfe nur Personen gewährt wird, die nicht selbst über die nötigen Mittel verfügen, und der mangelhaften Kenntnis der Antidiskriminierungsgesetze unter Juristen werden nur selten Klagen eingereicht. Angesichts der Tatsache, dass die Urteile der Gleichbehandlungsstelle bisher bloße Empfehlungen darstellen, genießen die Opfer von Diskriminierung in der Praxis nicht den Rechtsschutz, der ihnen nach den Richtlinien zusteht. In den vergangenen Jahren hat die Regierung sämtliche Maßnahmen eingestellt, die die Bekanntheit der Richtlinie erhöhen, Initiativen zur Bekämpfung von Diskriminierung fördern oder die Zivilgesellschaft in den politischen Prozess einbeziehen sollten. Der Strukturfonds der EU für 2014-2020 wird nicht zur Finanzierung neuer Projekte zum Kampf gegen Diskriminierung eingesetzt, sondern

- zur Finanzierung bestehender „übergreifender Maßnahmen“, wie des Systems „ICF“ zur Klassifizierung von Behinderung, das die Begünstigten scharf kritisieren.
- Es gibt kein Verfahren zur regelmäßigen Überprüfung oder Überarbeitung diskriminierender Gesetze bzw. Vorschriften. Verfahren zur formellen Aufhebung von Gesetzen oder Vorschriften werden nur nach entsprechenden Beschwerden bei der Gleichstellungsstelle eingeleitet. In diesem Fall leitet die Gleichbehandlungsstelle das diskriminierende Gesetz bzw. die Vorschrift an den Generalstaatsanwalt weiter, der dann verpflichtet ist, die Rechtsvorschrift zu überarbeiten. Dieses Verfahren wird aber nur äußerst selten eingehalten, weshalb mehrere diskriminierende Gesetze weiterhin unverändert in Kraft sind.
 - Das ungelöste „Zypernproblem“, d. h. die faktische Teilung des Landes ist eine ständige Quelle ethnischer Diskriminierung, insbesondere seit der Öffnung der Grenze im Jahr 2003. Dies betrifft den Zugang der Zyperntürken zu ihren Immobilien im Süden und ihre verfassungsmäßigen Rechte, die Verletzung der Rechte griechischer Zyprioten durch die Türkei und eine gewisse Neigung der Behörden und Gerichte, sich für die türkische Besetzung Zyperns zu „rächen“, indem sie Zyperntürken ihre Grundrechte vorenthalten. Die Ablehnung der Zyperngriechen gegenüber den in der Verfassung verankerten Quoten für Zyperntürken im öffentlichen Dienst, der lange ethnische Konflikt und die fortdauernde Anwendung und Ausweitung der „Doktrin der Notwendigkeit“ durch Behörden und Gerichte unterwerfen die Gleichbehandlungsthematik der politischen Zweckmäßigkeit und führen zu einer übermäßigen Betonung der staatlichen Souveränität. Die Gleichbehandlungsstelle hat es bisher nicht gewagt, die übermäßige Berufung auf die „Doktrin der Notwendigkeit“ durch Behörden und Gerichte ernsthaft zu kritisieren. Aus diesem Grund weist der Kampf für Gleichbehandlung schwere systemische Lücken und Schwächen auf.

INTRODUCTION

The national legal system

The Cypriot Constitution contains a far reaching equality provision which purports to prohibit discrimination on, inter alia, any ground whatsoever.⁴⁰ However, this provision has been interpreted restrictively by the Courts as prohibiting differential treatment only where this was deemed 'unreasonable'⁴¹ or only where two 'equal' things were being compared.⁴² This restrictive approach has led the Court to legitimise differences in retirement ages for employees of different rank or different age and to allow lower awards to disabled athletes compared to non-disabled athletes, introducing a rather wide spectrum of exceptions which go far beyond the exceptions allowed by the two equality directives. In 2015 the tide begun to turn, as the Courts appeared ready to uphold that positive action measures, and in particular, quotas in employment in favour of persons with disabilities, do not violate the equality principle but on the contrary are a necessary step towards achieving equality.⁴³ However, the elements of 'reasonable' and 'unreasonable' differential treatment were still there, giving the courts a much wider margin of discretion than the narrowly defined exceptions found in the Employment Equality Directive.

Age discrimination in the national pensions system received considerable attention in 2015, as a number of cases reached the national courts which invariably upheld the position of the national authorities that the Directive permits member states a wide margin of appreciation regarding the measures to be adopted in the field of social policy.⁴⁴ The Courts endorsed the position that where two employees have the same date of appointment, it is lawful for seniority to be determined on the basis of the employees' age.⁴⁵

By far the most popular legal channel used by lawyers in Cyprus in order to challenge discrimination is the judicial review process foreseen under article 146 of the Constitution. This process rarely leads to the satisfaction of the applicant victim of discrimination, though, because it does not entitle the Court to look into the merits of the contested decision but merely to assess the legality of the decision-making process; it also has the disadvantage that it cannot be used to challenge discrimination in the private sector, which

⁴⁰ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), 11 February 1959, Article 28. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html. Accessed 21 April 2015.

⁴¹ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (*Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*), No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=%EC%E%F4%E8%E1%E9*%20and%201497%20w/1%202008. Accessed 21 April 2015.

⁴² Cyprus, Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*) 18 June 2010, No. 111/2007. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0315.htm&qstring=%F0%EF%F4%E1%EC%E9.%F4*%20and%2018%20and%20%E9%EF%F5%ED*%20and%202010. The claimant in this case was a Paralympics athlete who had been awarded a sum of 1/5 of the amount payable to the Olympics athletes. Although his discrimination claim was deemed valid by the trial Court, the appeal Court found that the trial Court had erroneously tried to compare two unequal things whilst article 28 only requires equal treatment of equal situations.

⁴³ *Costas Tsikas et al v The Republic of Cyprus through the Educational Service Committee*, Supreme Court, Review Jurisdiction, Case No. 1519/2010 and 1520/10, 3 September 2015.

⁴⁴ After the cut off date of this report, the CJEU found Cyprus guilty of infringing articles 45 TFEU and 48 TFEU and Article 4(3) TEU because an age-related criterion in the national pensions law deters workers from leaving their Member State of origin in order to work abroad, effectively leading to unequal treatment between migrant workers on the one hand, and civil servants who have worked in Cyprus, on the other: CJEU, C-515/14 (*European Commission v Cyprus*), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

⁴⁵ Cyprus, *Charis Christodoulidou v Republic of Cyprus through the Public Service Committee*, Case No. 12/10, 3 April 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%F4%E9%E1%FA%E1%E9%F3*%20and%202015.

remains an unexplored potential more than 10 years after the non-discrimination directives were transposed.

In 1963 the Greek-Cypriot President proposed 13 amendments to the Constitution, which removed the consociational element by limiting the communal rights of the Turkish Cypriots. The Turkish Cypriots withdrew from the administration in protest; since then, the administration of the Republic has been carried out by the Greek Cypriots. In the leading case of *Ibrahim* 1964,⁴⁶ the Supreme Court ruled that the functioning of the government must continue on the basis of the “doctrine of necessity” which effectively suspends the communal rights which the Constitution had granted to the Turkish Cypriot community. A decade later, this doctrine was extended by the Courts to legitimise measures affecting Turkish Cypriots which are of questionable legality. In the years that followed and even until presently, the Courts keep extending this doctrine into new areas, primarily in order to deny Turkish Cypriots access to their properties located in the areas controlled by the Republic⁴⁷ but also in order to deny Turkish Cypriots state provisions available to other Cypriot citizens. Until 2006 Turkish Cypriots were also denied the right to vote, based on the doctrine of necessity; however, the Republic was forced to change this law⁴⁸ following the ECHR ruling in the case of *Aziz v. Cyprus*.⁴⁹

List of main legislation transposing and implementing the directives

The two anti-discrimination directives were transposed on the eve of Cyprus’ accession to the EU, through four different laws:

- Disability: The law on persons with disabilities (amendment) N. 57(I)/2004 was adopted on 31 March 2004 and entered into force on 1 May 2004, amending the existing legislation on disability (N. 127(I)/2000). The amending legislation transposed the disability component of the Employment Equality Directive (2000/78/EC) by introducing the directive’s prohibition of discrimination in employment. The law was amended in 2014 (through Law 63(I)/2014) to extend its reasonable accommodation provisions to fields beyond employment and in 2015 (through Law 22(I)/2015) to provide for preferential parking for persons with disability.
- Racial and ethnic origin religion or belief, age, sexual orientation: On 31 March 2004 the Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 was adopted, which came into force on 1 May 2004, in order to transpose the Employment Equality Directive (2000/78/EC) minus the disability component. Its scope covers the field of employment. The law was amended last in 2009 in order to rectify a problem that had arisen regarding the jurisdiction of the labour tribunal to try disputes under this law.
- Racial and ethnic origin: On 31 March 2004 the Equal Treatment (Racial or Ethnic Origin) Law No. N. 59 (1)/2004 was adopted, which entered into force on 1 May 2004 in order to transpose the Racial Equality Directive (2000/43/EC) in all the fields foreseen by this directive minus employment, i.e. social protection, medical and

⁴⁶ Cyprus, *Attorney General of the Republic v. Mustafa Ibrahim and Others* (1964). Available at www.cylaw.org/cylr/1964/1964_1_195.pdf.

⁴⁷ Trimikliniotis, N. and Demetriou, C. (2012), *Displacement in Cyprus – Consequences of Civil and Military Strife, Report 3, Legal framework in the Republic of Cyprus*, PRIO Cyprus Centre, <http://www.prio-cyprus-displacement.net/images/users/1/Report%203%20-%20TRIM.DEM%20ENG.WEB.pdf>.

⁴⁸ Cyprus, Law on the exercise of the right to elect and be elected by the members of the Turkish Community who have their normal residence in the government-controlled area (*Ο περί Άσκησης του Δικαιώματος του Εκλέγειν και Εκλέγεσθαι από Μέλη της Τουρκικής Κοινότητας που Έχουν Συνήθη Διαμονή σε Ελεύθερο Έδαφος της Δημοκρατίας (Προσωρινές Διατάξεις) Νόμος του 2006*] N. 2(I)/2006, 21 January 2006. Available at www.cylaw.org/nomoi/indexes/2006_1_2.html.

⁴⁹ ECHR/ no. 69949/01, 22 June 2004. Available at <http://echr.ketse.com/doc/69949.01-en-20040622/view/>. The decision of the ECtHR in the case of *Aziz*, that the ‘doctrine of necessity’ must be exercised in a manner that does not violate the nucleus of rights or the principle of equality, 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.

medicinal care, social provisions, education, and access to goods and services including housing. The law was last amended in 2006 to rectify a transposition problem as regards the reversal of the burden of proof.

- All grounds: On 19 March 2004 the Combating of Racial and other Forms of Discrimination (Commissioner) Law N. 42 (1)/2004 was adopted, which entered into force on 1 May 2004 in order to transpose article 13 of the Racial Equality Directive (2000/43/EC). The Equality Body's mandate is said to cover the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under a list of international conventions ratified by Cyprus. Although the mandate of the Equality Body goes far beyond that foreseen in article 13 in terms of grounds and fields of application, it does not include the provision of independent assistance to victims in pursuing their complaints in Court. More importantly, and as repeatedly highlighted by international monitoring bodies, the limited resources afforded by the state to the Equality Body severely restrict its institutional capacity which has since its inception been inadequately staffed to meet the increasing range of its tasks and increasing volume of work.⁵⁰

⁵⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

1 GENERAL LEGAL FRAMEWORK

The Cypriot constitution includes the following articles dealing with non-discrimination:

Article 28(1) provides that all persons are equal before the law, the administration and justice and are entitled to equal protection from these and to treatment by these. Article 28(2) guarantees the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties foreseen in the Constitution without any direct or indirect discrimination against any person 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.

Article 6 provides that no law or decision of the House of Representatives or of any of the Communal Chambers (no longer active), and no act or decision of any organ, authority or person exercising executive power or administrative functions, shall discriminate against any of the two 'Communities' or any person by virtue of being a member of a 'Community'.⁵¹

By inference, these provisions apply to all areas covered by the directives; their material scope is in fact broader than those of the directives albeit their application is limited as a result of restrictive judicial practices. The constitutional anti-discrimination provision in article 28 is directly applicable and can be enforced against private actors.⁵²

⁵¹ The term 'Community' is used in the Constitution as meaning either the Greek or the Turkish Community of Cyprus.

⁵² Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (*Τάκη Γιάλλουρου ν Ευγένιου Νικολάου*) No. 9331, 08 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

Article 28 of the Constitution prohibits 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.

The Law on persons with disability N. 127(I)/2000 as amended covers only disability.

The Equal Treatment (Racial or Ethnic Origin) Law No. N. 59 (1)/2004 covers racial and ethnic origin.

The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 covers racial and ethnic origin religion or belief, age and sexual orientation.

The Combating of Racial and other Forms of Discrimination (Commissioner) Law N. 42 (1)/2004 which sets out the mandate of the Equality Body, defines this mandate as covering the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under the following international conventions ratified by Cyprus: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

Disability

Disability is defined in the Law on Persons with Disabilities N.127(I)2000 as 'any form of deficiency or disadvantage that may cause bodily, mental or psychological limitation permanently or for an indefinite duration which, considering the background and other personal data of the particular person, substantially reduces or excludes the ability of the person to perform one or more activities or functions that are considered normal or substantial for the quality of life of any person of the same age that does not experience the same deficiency or disadvantage'.

When comparing the above definition with the concept of disability adopted in *Skouboe Werge and Ring*,⁵³ the definition in the Cypriot law falls short of incorporating the juxtaposition of the *impairment* with the *barriers* that impede effective participation; instead, the definition of the Cypriot law requires disability to cause permanent or indefinite limitations when juxtaposed with the person's background and other personal data, but not when juxtaposed with external factors such as structural barriers. This essentially means that the Cypriot definition imposes a more stringent test to be satisfied in order for a disadvantage to be deemed as 'disability' and thus be offered protection under the law.

⁵³ CJEU, Judgment in Joined Cases C-335/11 and C-337/11, *Jette Ring and Lone Skouboe Werge*, 11 April 2013, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=944535>.

Also, when comparing the above definition of disability in the Cypriot law to the definition adopted in the *Chacón Navas*⁵⁴ case, it emerges that the CJEU focused equally on the source of the limitation ('physical, mental or psychological impairments') and on the impact ('which hinders the participation of the person concerned in professional life'). The definition in the Cypriot law first describes the characteristics of this condition in a liberal fashion ('deficiency that *may* cause indefinite or permanent, mental or psychological or bodily limitation') and then goes on to describe the impact in a rather restrictive mode (substantially reducing or excluding the ability to perform an activity that is 'normal' or substantial for the quality of life).

The social insurance law defines disability as 'loss of health, strength or the ability to enjoy life'.⁵⁵ This should not however be seen as an exhaustive definition of disability but rather to determine eligibility to disability benefit under the particular law.

The Law on Public Service which provides for employment opportunities in favour of persons with disabilities in the public sector, defines a 'disabled' person as 'a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs.'⁵⁶ This definition follows the restrictive tradition of the Article 2 of Law N.127(I)/2000 and it is arguably more restrictive than the more liberal approach taken by the CJEU in *Chacón Navas* and in *Skouboe Werge and Ring*.

A law which came into force in late 2009 introducing quotas in favour of persons with disability in the public sector defines 'person with disability' as a person who, following an assessment by a multidisciplinary committee, is found to be suffering from a permanent or indefinite insufficiency or disadvantage causing physical, intellectual or mental restrictions in finding and keeping suitable employment.⁵⁷ In 2015, when the Supreme Court was asked to review an administrative decision to reject a disabled applicant from inclusion in the catalogue of persons entitled to a quota position in the public service, the court ruled that the appointing body was not justified in disregarding medical opinion which had classified the applicant as a person with disability. The court therefore annulled the administrative act by which the applicant's request to be included in the quota list had been rejected, thus paving the way for the applicant to submit a fresh application.⁵⁸

The Ombudsman's Annual Report for 2005⁵⁹ refers to two cases in which the welfare services discontinued the payment of a benefit to persons with a disability on the ground that the disability could potentially be remedied through an operation and that the disability was not permanent, respectively. In both cases, the Ombudsman found that the complainants' disabilities did fit the definition of the term as found in the law because the

⁵⁴ CJEU, Case C-13/05, *Sonia Chacón Navas v. Eurest Colectividades SA*, 11 July 2006, available at <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=56459&pageIndex=0&doclang=EN&mode=lst&dir=&oc=first&part=1&cid=945467>.

⁵⁵ Cyprus, Law on social insurance (Ο περί Κοινωνικών Ασφαλίσεων Νόμος) 2010, N. 59(I)/2010-2014, article 2(1). Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/full.html.

⁵⁶ Cyprus, Law on public service (Περί Δημόσιας Υπηρεσίας Νόμος) N. 1/1990, 1990-2014, article 2. Available at www.cylaw.org/nomoi/enop/non-ind/1990_1_1/full.html.

⁵⁷ Cyprus, Law introducing special provisions for the hiring of persons with a disability in the wider public sector (Special Provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] N. 146(I)/2009, article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

⁵⁸ Cyprus, Supreme Court, *Eleni Paroutsis v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015, available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015.

⁵⁹ Although the Ombudsman is also the Equality Body, reference here is the Annual Report of the Ombudsman.

inference that can be drawn from the medical certificates was that the disability in question was of indefinite duration.⁶⁰

An Equality Body decision in 2007⁶¹ criticised a scheme of the Ministry of Labour for the provision of care to tetraplegic persons, where tetraplegia was defined as paralysis of the lower limbs resulting from injury to or illness of the bone marrow. The decision found the scheme discriminatory as it treated differently tetraplegic persons whose condition resulted from different reasons and excluded for instance persons whose tetraplegia is due to brain injuries, muscular condition or multiple sclerosis. A 2010 decision of the Equality Body included a speech impediment as falling within the definition of disability as found in the Law on Persons with Disabilities N.127(I)/2000.⁶²

During 2014 a new law was adopted replacing the welfare grant known as 'public benefit' with the 'minimum guaranteed income'. To be eligible for this grant, applicants must meet the law's definition which, on the one hand, endorses the concept introduced by the CRPD on impairments which hinder equal participation in society when interacting with barriers, but on the other hand renders eligibility conditional upon passing the test of the System of Classification of Disability.⁶³ This is a new system of assessing disability on the basis of functionality based on an international standard known as ICF (International Classification of Functioning, Disability and Health) operated by the Ministry of Labour, Welfare and Social Insurance⁶⁴ which has attracted criticism from the disability movement for adopting the medical rather than the social model of addressing disability.

Racial/ethnic origin

Racial/ethnic origin is only defined in the law ratifying the International Convention on the Elimination of All forms of Racial Discrimination⁶⁵ which incorporates the Convention's definition. The Convention defines neither race nor ethnic origin but offers a wide definition of racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."⁶⁶

In 2015 the Equality Body issued a report on discrimination against Greek nationals residing in Cyprus.⁶⁷ In its legal justification section, the report relied on the Racial Equality Directive. Upon an enquiry sent from the national expert to the Equality Body as to whether the latter considers that the Racial Equality Directive applies to Union nationals residing in Cyprus, the Equality Body responded positively adding that the Equality Directives is based on article 13 of the Treaty on European Union and article 19 of the Treaty on the functioning of the European Union. The Equality Body letter states that the Directives cannot be

⁶⁰ Cyprus, Ombudsman, Annual Report 2005, case nos. A/P 2175/04 and A/P 368/05.

⁶¹ Cyprus, Anti-discrimination Authority, No. A.K.I 58/2007, A.K.I. 59/2007, A.K.I. 60/2007, A.K.I. 61/2007 and A.K.I. 64/2007, 19 June 2007.

⁶² Cyprus, Ombudsman, Nos. A/P 2898/2007, A.K.I. 10/2010, 23 February 2010.

⁶³ Cyprus, Law on the minimum guaranteed income and generally on social provisions of 2014 (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N. 109(I)/2014. Available at http://www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

⁶⁴ Cyprus, Implementation of new system of assessing disability and functionality (*Εφαρμογή στην Κύπρο ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument.

⁶⁵ Cyprus, Law Ratifying the International Convention for the Elimination of All forms of Racial Discrimination N.12/1967, 30 March 1967.

⁶⁶ International Convention for the Elimination of Racial Discrimination, article 1, available at www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

⁶⁷ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

interpreted as excluding Union citizens from their scope and that Union citizens are primarily granted protection by the two Equality Directives.⁶⁸

There are no officially recognised ethnic minorities in Cyprus. The Constitution recognises three 'religious groups', the Armenians, the Maronites and the Latins, and two 'communities', the Greek Cypriots and the Turkish Cypriots. The Roma are deemed to be part of the Turkish Cypriot community. Modern perceptions of evolving identities conceptualise these groups as having multiple identities: the religious groups are also ethnic groups and national minorities, whilst the Turkish Cypriots are at the same time both a community and a minority in the southern part of Cyprus. Ethnicity is inherent in the identity of five groups who may therefore claim protection under the Racial Equality Directive. The Equality Body has invariably extended protection under the Racial Equality Directive to all of these groups irrespective of their official denomination.

In November 2015 the Ministry of Education published a code of conduct for handling racial incidents at schools which provides non-legal definitions for the following terms: identity, diversity, race, prejudice, stereotype, discrimination, racism xenophobia, nationalism, intolerance, homophobia, transphobia, bullying, hate speech, underreporting and racial incident.⁶⁹

Identity is defined in the Code as the perception of a person as being part of a specific group with common characteristics; such perception is accompanied by relevant emotional significance attributed to this group and to the group characteristics and includes the perception of a person by others. Possible variations between how a group defines itself and how it is perceived by others may lead to tensions, conflicts or misunderstandings, as identities are multiple and constructed through actions, words, and our political and social life.

Diversity is defined in the Code as a product or the result of one's perception or perspective which differentiates between other persons. The criteria of differentiation may include gender, colour/ appearance, nationality, community or religious group, immigration status, origin, religious or other belief, disability, age, sexual orientation, language, accent, customs, profession, socioeconomic situation, culture, etc.

Race is, according to the Code, a manufactured product used to categorise persons on the basis of assumed physical and cultural similarities originating from their common descent. According to the Code, the term 'race' is a construct with no biological or literal status and, scientifically speaking, has no application to the human kind, despite the fact that it is widely used for social action, policy development and justification for differential treatment of groups in relation to other groups.

Prejudice is defined as negative predisposition against a group based on arbitrary, incorrect and rigid generalizations and stereotyped beliefs and images as a result of membership of a cultural, ethnic, religious or other group, such as negative attitudes towards Muslims because they supposedly have a tendency to violence and terrorism.

Discrimination is defined as unequal treatment or behavior of individuals or groups of people according to their diversity and can be direct or indirect, such as practices or policies that appear "neutral" or "fair" because they treat everyone equally but have adverse effects on a particular group.

Racism is defined in the Code as the process of marginalization, exclusion and discrimination against those considered to be 'different' or 'diverse'. Racism does not have

⁶⁸ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

⁶⁹ For more details see http://www.moec.gov.cy/agogi_ygeias/pdf/kodikas_symperiforas/kodikas_symperiforas_ratsismou.pdf.

to be intentional and is not static. It can take many different forms, some obvious and direct, such as national denominations, religious or other superiority form or violent attacks against individuals or groups deemed as "others", while some are indirect and less obvious, such as institutional racism, the various forms of discrimination imposed by governments, companies or other large essential organizations against non-privileged population groups like minorities and immigrants.

Religion/belief

Although there is no definition of what 'religion' is for the purposes of the anti-discrimination legislation, Equality Body decisions have established that the term includes atheism. In particular, a 2010 decision of the Equality Body criticised a set of school regulations which provides for exempting students from the religious class only if they are '*not of Christian Orthodox faith*', adding that the regulation forcing students and parents to reveal their religious convictions (in order for the students to be granted exemption from the religious class) is incompatible with the principle of freedom of thought, conscience and religion.⁷⁰ Extending this principle further, in 2011 an Equality Body report dealing with religious confessions at schools found that the participation of students in ceremonies forming part of religious convictions creates fertile ground for discrimination, as the non-participation inevitably leads to conclusions as to one's religious convictions and thus revelation of personal sensitive data, as well as to the labelling and categorization of some students as 'good Christians' and others not.⁷¹ A further intervention of the Equality Body in 2015 on religious freedom at schools criticised the initiative of the Education Ministry to encourage the setting up of teams of children to assist with the religious ceremony in church as a violation of the children's freedom of religion, challenging the position of the Ministry that the activity was not obligatory and that it was intended to promote volunteerism. The Equality Body questioned whether there can be such a thing as 'free consent' in the context of the school environment and accused the Ministry of clearly favouring one religion over others and restricting religious freedom, which inevitably leads to discrimination against all those who do not belong to it.⁷²

'Belief' is a rather neglected ground; it is not defined in the law transposing the Employment Equality Directive nor has it been the subject of any decision either of the court or of the equality body. The new law adopted in 2015 on the political participation of employees in the public sector purports to safeguard the right of such employees to 'freely express their political beliefs, political views and convictions'.⁷³ This however should not be viewed as exhaustive of the definition of 'belief' as found in the law transposing the Employment Equality Directive, particularly in light of the fact that legislation transposing the EU acquis ranks higher than other national laws.

Age

Although no definition is provided anywhere, Equality Body decisions as well as Court decisions appear to endorse the view that the victim need not be either young or old and that *any* discrimination on the ground of age is prohibited. Thus a funding scheme for the cost of repair of countryside houses excluding single persons under the age of 35 was

⁷⁰ Cyprus, Anti-discrimination Authority, Report no. A.K.R. 135/2009, 07 November 2010.

⁷¹ Cyprus, Anti-discrimination Authority, Report no. 42/2010, 29 July 2011.

⁷² Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

⁷³ Cyprus, Law providing for the political rights of public servants, local authority employees and employees of public organisations (*Ο περί των Πολιτικών Δικαιωμάτων Δημόσιων Υπαλλήλων, Εκπαιδευτικών Λειτουργών, Δημοτικών Υπαλλήλων, Κοινοτικών Υπαλλήλων και Υπαλλήλων Νομικών Προσώπων Δημόσιου Δικαίου Νόμος του 2015*) N.102(I)/2015, article 3, 10 July 2015. Available at www.cylaw.org/nomoi/enop/non-ind/2015_1_102/full.html.

deemed by the Equality Body in 2006 to be discriminatory on the ground of age;⁷⁴ whilst the question of age seniority was found by the Court to be a permissible criterion for a job promotion where the two competing candidates had the same or similar qualifications.⁷⁵

Sexual orientation

No definition is provided anywhere. This term does not appear in any piece of legislation other than the law transposing Directive 2000/78/EC. An Equality Body decision in 2005 found that employment advantages granted only to married employees were discriminatory by virtue of Article 28 of the Constitution, as well as by virtue of the law transposing Directive 2000/78/EC on the ground of inter alia sexual orientation, thus extending the definition of this ground to cover potential situations of LGBT persons, whose sexual orientation may be presumed by their decision not to get married.⁷⁶ The new law on civil unions does not provide any definitions whatsoever, since it applies equally to all persons who choose to register their relationship in this manner, irrespective of sexual orientation.⁷⁷

An Equality Body report in December 2014⁷⁸ regarding the CJEU ruling on the procedure of assessment of the credibility of asylum seekers claiming fear of persecution on the ground of their sexual orientation⁷⁹ endorsed the CJEU ruling and excluded procedures which infringe upon a person's privacy and dignity, safeguarded by articles 7 and 1 of the EU Charter respectively. Although the debate at the CJEU concerned asylum,⁸⁰ it is reasonable to assume that the same philosophy of respect to one's privacy should govern discrimination-related claims.

2.1.2 Multiple discrimination

In Cyprus prohibition of multiple discrimination is not explicitly included in the law. There is no legislation or Court decisions on the matter. The Ministry of Justice has advised that there are no plans for the adoption of legislation to deal with multiple discrimination.

⁷⁴ Cyprus, Anti-discrimination Authority, State subsidy provided to single persons in the frame of a housing scheme for the revitalization of communities with up to 200 residents (*Κρατική χορηγία που παρέχεται σε μονήρη άτομα στα πλαίσια στεγαστικού σχεδίου για αναζωογόνηση κοινοτήτων με κατοίκους μέχρι 200 άτομα*), Ref. 127/2005, contained in the Annual Report of the Anti-discrimination Authority for 2006, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%BF%CF%85%20%CE%A1%CE%B1%CF%84%CF%83%CE%B9%CF%83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CE%B9%20%CF%84%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%BF%CF%85%20%CE%A1%CE%B1%CF%84%CF%83%CE%B9%CF%83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CE%B9%20%CF%84%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf).

⁷⁵ Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%202015; Supreme Court, Maria Shambarta v Republic of Cyprus (*Μαρία Σιαμάρτα ν Κυπριακής Δημοκρατίας*) No. 417/2010, 4 October 2010.

⁷⁶ Cyprus, Equality Authority (2005), Report regarding the application forms for appointment in the Central Forum for the Equal Distribution of Burdens, Ref. A.K.I. 26/2005. Not available online.

⁷⁷ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf.

⁷⁸ Cyprus, Position of the Anti-discrimination Authority regarding the decision of the CJEU on the conditions of assessment of the credibility of asylum seekers as regards their sexual orientation, Ref. AKR TOP 3/2014, 17 December 2014, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/\\$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement).

⁷⁹ CJEU, Joined Cases C-148/13 to C-150/13, 2 December 2014, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

⁸⁰ CJEU, Joined Cases C-148/13 to C-150/13, 2 December 2014, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

An Equality Body decision in 2008 found that the age restrictions contained in a disability benefit scheme were discriminatory⁸¹ but did not look into the specificities created by the combination of the two grounds. With reference to the same case, in January 2016 the Supreme Court also ruled that the age restriction in the disability scheme amounts to unlawful age discrimination; however, the court also failed to address the case from the perspective of multiple discrimination.⁸²

There is no law, practice or precedent in Cyprus which takes into consideration the unique situation arising under the intersectionality of grounds. Given the generally low levels of awareness in Cyprus of anti-discrimination provisions, it is not certain at all that additional laws alone would remedy the problem. Extensive awareness raising and training would have to be carried out for policy makers and members of the legal profession to promote understanding of anti-discrimination in general and the specific situation arising when there is more than one ground at play.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Cyprus, the laws transposing the equality Directives⁸³ do not expressly make provision for assumed and associated discrimination. However, the concept of discrimination itself, virtually replicating the directive, defines 'direct discrimination' in the following way: "where one person is treated less favourably than another is, has been or would be treated in a comparable situation". Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide.

The law on persons with disabilities defines disability as treatment based on characteristics which generally belong to a person with such disability or based on an assumed characteristic which generally belongs to a person with such disability or based on an assumed characteristic generally attributed to a person with such disability.⁸⁴ The other two laws transposing the Directives do not contain an equivalent provision; they merely reproduce the wording of the Directives.

There has been no case in which this matter was considered by a Cypriot court or by the national Equality Body.

b) Discrimination by association

In Cyprus, there is no law or case law explicitly prohibiting discrimination based on association with persons with particular characteristics and no judicial interpretation of any related terms or concepts. However:

- All three laws transposing the equality directives (N. 58(I)/2004, N. 59(I)/2004 and N. 127(I)/2000 as amended) contain protection against victimisation in line with the

⁸¹ Equality Body decision Ref. 114/2007, 10 November 2008.

⁸² Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

⁸³ Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁸⁴ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 3. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

said directives. The spirit of the prohibition against victimisation may be extended to cover discrimination by association.

- Freedom of association is protected by the Cypriot Constitution (article 21). All constitutional rights are to be enjoyed without discrimination, according to article 28 of the Constitution.
- Article 1 (1) of Protocol 12 to the ECHR, which Cyprus has ratified, includes 'association with a national minority' as one of the prohibited grounds of discrimination. Such association may involve various forms, including living with the community and / or otherwise sharing in their misfortunes or being assumed by the perpetrator to be of a particular ethnic minority origin, in line with the ruling of the CJEU in *Chez Razpredelenie*, which established that the Racial Equality Directive covers "those who, without possessing that [ethnic] origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure".⁸⁵
- The law setting up the Equality Body defines the mandate of the Equality Body as including the promotion of equality in the enjoyment of rights and freedoms safeguarded by the Conventions ratified by Cyprus and referred to explicitly in the law⁸⁶ which include Protocol 12, irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.⁸⁷ It may then be inferred from this provision that then association becomes a prohibited ground of discrimination at least vis-à-vis the Equality Body; however the grounds expressly affected by this provision are those related to race/ethnic origin (language, colour, religion etc.) and do not seem to extend to disability, age or sexual orientation.

An Equality Body decision in 2010 established that discrimination against the main carer of a person with a disability, in this case the mother of a child with a disability, is unlawful discrimination under the law transposing the Employment Equality Directive (Law N.58(I)/2004), along the lines of the principle established by *Coleman v Attridge Law and Steve Law*⁸⁸ to which this report referred to explicitly.⁸⁹ The difference between the case examined by the Equality Body and *Coleman v Attridge Law and Steve Law* is that the latter case involves direct discrimination whilst in the former case the complainant was refused preferential treatment as regards her job posting. However, the principle was established nevertheless and was reiterated by the Equality Body in the Code of Conduct on disability it issued in September 2010,⁹⁰ thus making it harder for the Courts to ignore if and when such a case is presented before them. In 2015 the Equality Body dealt with discrimination by association again, in relation to a woman employee in the public sector who was to be transferred to a post in another city, far away from her brother with psychosocial disability of whom she was the primary carer.⁹¹ The policy of the

⁸⁵ CJEU, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, Case C-83/14, 6 July 2015, paragraph 129.1, Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=516528>.

⁸⁶ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

⁸⁷ Cyprus, *The Combating of Racial and Some Other Forms of Discrimination* (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁸⁸ CJEU Case C-303/06, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

⁸⁹ Cyprus, Anti-discrimination Authority, Report No. A.K.I. 82/2009, 25 June 2010.

⁹⁰ The Code can be downloaded at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_qia_diakriseis_logo_anapirias_ergasia.pdf.

⁹¹ Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

administration was to transfer employees to different districts on rotation. Whilst the system of transfers provided for consideration of the family circumstances of the employee to be transferred, the term ‘family’ did not extend beyond spouse and children, as that would, in the opinion of the competent administrative body, infringe upon the principle of proportionality. The administrative body insisted that any exception to this rule would amount to preferential treatment of an employee in relation to others. The Equality Body pointed out that the complainant’s brother was in need of 24-hour supervision and care and had been declared by the court as an ‘incapable person’; the complainant had been appointed by the court as the person in charge of all his affairs but was also his only close relative in Cyprus and his sole carer, taking care of all his survival needs around the clock. The Equality Body relied on the strengthening of the Employment Equality Directive by the CJEU decision in the *Coleman* case to establish that the restrictive interpretation given to this legal framework by the administration, by limiting the application of discrimination by association only to spouses and children, was violating the principle established by the CJEU the ruling of which was clearly intended to cover any type of discrimination by association to a person with disability under the care of the complainant. The Equality Body found that any other interpretation of the Directive would truly weaken the scope of protection, pointing out a number of examples of other member states which have extended the principle of discrimination by association to relationships beyond the sphere of the family, covering third persons acting as carers of persons with disabilities. The Equality Body invited the administration to look at the facts of each case separately before deciding on each transfer and to prioritise respect of fundamental rights over other considerations.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Cyprus, direct discrimination is prohibited in national law virtually replicating the wording of the directive.⁹²

The same wording is followed in the Law on Persons with Disability which defines direct discrimination 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.⁹³

b) Justification of direct discrimination

Generally speaking, the law does not permit justification of direct discrimination, save for specific situations in relation to the grounds of:

1. Religion in the cases of “occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief”, where “due to the nature of these activities or framework within which they are exercised, the religion or belief constitutes a genuine, legitimate and justified occupational requirement”, as provided in the Employment Equality Directive.⁹⁴

⁹² Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 6(1)(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁹³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3(2)(a)-(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁹⁴ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 7. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

2. Age: this follows the exact wording provided for by Article 6 of the Employment Equality Directive.⁹⁵

However, a number of Court decisions interpreting article 28 of the Constitution attempt to establish a norm which essentially deviates from the approach of the two anti-discrimination directives and their CJEU interpretations. The norm emerging from a list of Supreme Court decisions is that equality must be applied only to equal situations and that 'different things ... can only be dealt with differently,' with references to 'reasonable discrimination which must be done because of the special nature of things'.⁹⁶ Court decisions have additionally introduced the test of 'reasonableness' which essentially provides that discrimination which is 'reasonable' is lawful.⁹⁷ This theory is applied by the Courts across the board without taking into consideration the provisions of the directives and often results in allowing discriminatory treatment that is clearly prohibited by the directives. Following this judicial tradition, in 2015 the Supreme Court reiterated the doctrine that the equality principle safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. Here, however, the Court also cited the CJEU ruling in the case of *Johnston v. Chief Constable of the Royal Ulster Constabulary*, to find that any exception to such differential treatment must be narrowly construed as the EU gives emphasis to individual rights recognized by EU law.⁹⁸ The judgement marks a departure from previous court rulings on discrimination which had essentially ignored the entire corpus of EU anti-discrimination law and jurisprudence.

2.2.1 Situation testing

a) Legal framework

In Cyprus the law is silent on situation testing and there is no case law.

Below is an analysis derived from the general rules of evidence as developed by case law.

The Law on Evidence Cap. 9, which codifies the sources of law, defines the hierarchy of laws for both criminal and civil procedure as follows: the Constitution, the legislation of the Republic since 1960, Common Law and equity and the statutes of U.K. prior to independence.⁹⁹ In July 2006 the Constitution was amended to give supremacy to EU Regulations, directives or other binding legal measures enacted by the EU or its bodies.

The admissibility of situation testing as a method of proving discrimination in courts will be subjected to the general test of 'relevance' and 'the best evidence rule'. A number of factors need to be considered before concluding on how the courts are likely to treat situation

⁹⁵ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁹⁶ Cyprus, Supreme Court, Cyprus Athletics Organisation v. Andreas Potamitis (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*) No. 111/2007, 18 June 2010; Cyprus, Supreme Court, Antonis Aresti v. Cyprus Athletics Organisation (*Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού*) No. 1406/2008, 10 February 2010; Cyprus, Supreme Court, Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice (*Τάσος Τρατονικόλα v. Κυπριακής Δημοκρατίας μέσω Διευθυντή Τμήματος Φυλακών και του Υπουργείου Δικαιοσύνης*), No. 135/07, 13 April 2011; Costakis Charalambous v. Republic of Cyprus through the Chief of Police (*Κωστάκης Χαραλάμπους v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας*), No. 1334/2008, 19 September 2011.

⁹⁷ Cyprus, Supreme Court, George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order (*Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*) No. 1497/2008, 30 April 2012). In this case the Court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

⁹⁸ CJEU, C- 222/84, 15 May 1986, available at <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-222/84&td=ALL>.

⁹⁹ Cacoyannis, G. (1983) *Η Απόδειξη*, Limassol, Cyprus; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

testing. If situation testing is to 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, then the court may treat situation testing as corroborative evidence. The test will be the extent to which this methodology ascertains a probative value as to the behaviour of the defendant. General common law principles are defined in a series of criminal law cases.¹⁰⁰

In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations¹⁰¹ or as an indication of *habitual* behaviour.¹⁰² It is up to the party who asserts to prove whether the *particular* behaviour is *systematic* or mere *coincidence* or *circumstantial*, that will determine the relevance to the particular fact at stake. If, however, the situation test is to be relied directly as real evidence of discrimination in action against perpetrators, this is a matter that would require legal argument on the basis of authorities in Europe, U.K. and U.S.A. which would have to prove that the particular test is widely used in Court as direct evidence of discrimination.

b) Practice

In Cyprus situation testing is not used in practice.

Situation testing is an unknown concept in Cyprus and is not used by anyone yet. Most if not all NGOs active in the field of anti-discrimination do not have the resources, human or financial capital,¹⁰³ in order to use such methods. The Equality Body was not aware of this concept but its officers stated that they were open to the idea of using situation testing where the circumstances demand or allow.¹⁰⁴ An incident in 2005 which is not precisely situation testing but which carries certain elements of it concerned the refusal of insurance companies to insure drivers of Pontian Greek origin because they considered them to be 'high risk'. Two persons of Pontian Greek origin had called up several insurance companies in order to investigate whether they would sell car insurance policies to them. The result was that none of the companies contacted was willing to sell such policies to Pontian Greeks or, if they did, they wanted to charge them with premiums up to two or three times the amount charged to Greek-Cypriots with similar data. They then filed a complaint to the Equality Body which wrote to the insurance companies involved asking them to declare their policies on the matter. It emerged that some of the companies investigated considered persons of Pontian origin to be bad drivers, unreliable and generally 'high risk' and that there was a policy in place to avoid insuring persons of Pontian origin unless 'guaranteed' or 'recommended' by a Greek-Cypriot. In its report issued on 23 June 2005, the Equality Body declared this practice as discriminatory and illegal and recommended that the insurance companies revise their policies warning that it would refrain from imposing penalties at that stage, but that it would not hesitate to impose penalties in the event that the insurance companies do not comply with this recommendation. The process of rectifying this practice did not move further, as the Equality Body did not receive any further complaints about the insurance companies' policy in this field.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

¹⁰⁰ United Kingdom, *R.v. Hartley* (1941) 1 KB 5; United Kingdom, *R v. Mitchel* (1952) 36 Cr App. R 79.

¹⁰¹ United Kingdom, *Bereford v. St. Albans* (1905) T L R 1.

¹⁰² United Kingdom, *Joy V Phillips* (1916) 1 K.B 849 Mills 2 C.

¹⁰³ Legal aid in Cyprus is subject to means and for this and other reasons very few discrimination cases end up in Court. Thus in order for an NGO to test a case, it would have to apply to the Courts on behalf of a complainant. This would involve both the know-how, the technical skills and the funds to cover legal and judicial costs.

¹⁰⁴ Interview with Mrs. Elisa Savvidou, former Head of the Equality Authority at the Ombudsman's Office and currently Ombudsman and Head of the Equality Body, 19 January 2006.

In Cyprus, indirect discrimination is prohibited in national law.¹⁰⁵ For all five grounds except disability, indirect discrimination is defined by replicating the wording of the directives.¹⁰⁶

The disability law incorporates the directives' definition but also contains an additional provision which, although not termed as a definition, offers elements of what would constitute discrimination, without clarifying whether these are to form an exhaustive description. The wording reads: 'a person discriminates against another if he treats that person: (a) in a more unfavourable way than what he treats or would treat other persons without disability in the same or in a similar situation; (b) on the basis of characteristics generally belonging to person with such disability or based on a presumed characteristic which generally belongs to a person with such disability or based on a presumed characteristic which is generally attributed to a person with disability; or (c) based on the fact that this person does not satisfy or is not in a position to satisfy a condition, the nature of which is such that a high percentage of persons who do not have such disability satisfy or are in a position to satisfy, when compared to persons who do have such disability and the existence of such a condition is not justified by the circumstances of the case.'¹⁰⁷ This provision appears to be narrower than the directive's requirement which extends to any "apparently neutral provision, criterion or practice [that] would put persons having a particular [disability]" at a disadvantage, but since the directive's definition is also incorporated no issue of compliance with the directive arises.

b) Justification test for indirect discrimination

Although this issue was not directly dealt with by the Courts so far, we may nevertheless assume, on the basis of Cypriot case law on gender discrimination, of European court decisions, as well as from persuasive authority of UK court decisions, that the 'but for test' is likely to apply. The test involves asking the question as to how the victim would be treated had s/he not had the special characteristic, such as the particular ethnic origin or disability or religion or age or sexual orientation that s/he had.

There is no judicial precedent on what test must be used in order for employers to justify a requirement, criterion or practice which results in discrimination. The case law on the subject is not particularly enlightening. A Supreme Court decision in 2008, where the claimant contested his obligatory retirement at 55 based on his low rank, failed to consider either the aim or the legitimacy of the contested provision or whether the means were appropriate or necessary; instead, the Court's decision was premised upon the rather odd theory that the applicant failed to prove that the differential treatment was not based on reasonable discrimination.¹⁰⁸ In other cases, the Courts allowed exceptions to the non-discrimination principle which are wider than those foreseen in directive, such as 'unequal' situations which must be treated 'unequally', without offering any definitions of the terms found in the laws transposing the two Anti-discrimination directives. Judicial practice may evolve, however, following a more recent Supreme Court decision of January 2016 where the justification of the poor state of public finances, offered by the authorities in support

¹⁰⁵ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 5. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 6(1)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁰⁶ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁰⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁰⁸ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης)*, No. 1497/2008, 30 April 2012.

of an age criterion in a disability scheme, was rejected by the court as failing to meet the test of reasonableness, proportionality and objectivity.¹⁰⁹

By contrast, the Equality Body has issued a number of reports pursuant to complaints on age discrimination, where the tendency is to uphold the general principle of equality and to approach the issue from a fundamental rights perspective. The Equality Body's decisions show a good understanding and articulation of the concepts of legitimate aim and appropriate means as well as of decisions and debates at the EU level. Following below are examples of how the Equality Body has over the years assessed the allegations of employers as to what amounts to 'legitimate aim' and how the "appropriate and necessary measure" is interpreted:

- The conditions for the promotion of police officers contained an age limit of 40 years as a prerequisite for appointment in the specialized position. The Equality Body found that, although the aim of seeking to secure the operational readiness of the police force was legitimate, the means used to attain it were neither appropriate nor necessary.¹¹⁰
- The age limit of 60 for school traffic wardens was found by the Equality Body to be based on a legitimate aim (the safety of the school children) but the choice of the age limit as a measure for achieving this aim was neither appropriate nor necessary, because age is not necessarily the ideal criterion for assessing one's physical condition.¹¹¹
- The age limit of 40 set as a condition of eligibility in a scheme of financial support for artificial insemination, was found by the Equality Body to be discriminatory, based on the reasoning that the exclusive use of the age criterion is not the most appropriate means for achieving the legitimate aim of supporting under-fertile couples.¹¹²
- A legislative provision in the Pensions Law which provides for a less favourable retirement package for public servants under 45 who choose to take early retirement, was found by the Equality Body to be disproportionate, as it covers 2/3 of the public service workforce; the aim served was not legitimate because the shortages in scientific personnel invoked have since been covered.¹¹³ The issue was the subject of a Court decision in 2014¹¹⁴ and of infringement proceedings initiated by the Commission against the Cypriot government which resulted in a ruling against Cyprus.¹¹⁵
- The Equality Body found the policy of insurance companies not to insure persons over 70 to drive cars or if they do insure them to charge a higher premium, unjustified and unsupported by reliable statistical evidence to prove that persons over 70 have more accidents than younger persons.¹¹⁶
- A legislative provision allowing the dismissal without compensation of employees who have reached retirement age was found to be discriminatory. The argument of

¹⁰⁹ Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

¹¹⁰ Cyprus, Equality Authority, Report no. A.K.I. 32/2008, 6 April 2012.

¹¹¹ Cyprus, Equality Authority, Report No. A.K.I. 76/2009, 11 March 2010.

¹¹² Cyprus, Anti-discrimination Authority, Report No. A.K.R. 126/2009, 27 April 2010.

¹¹³ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009.

¹¹⁴ Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058(%E9)#).

¹¹⁵ CJEU, C-515/14 (European Commission v Cyprus), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

¹¹⁶ Cyprus, Anti-discrimination Authority, Report No. 125/2007, 21 October 2008.

the Ministry of Labour that this measure was justified because employees aged 65 plus are secured through their pension and provident fund benefits was rejected.¹¹⁷

c) Comparison in relation to age discrimination

National law does not specify how a comparison is to be made in relation to age discrimination.

Apart from the labour tribunal decision in the case of *Hadjiavraam*,¹¹⁸ there is no other source of interpretation of how the comparison is to be made. In this case the court found that there was no real person in the selection procedure that could be compared with the applicant; thus the only comparator is a hypothetical candidate with the same qualifications as the applicant but aged under 26 years, which was the maximum age set in the job advertisement forming the subject matter of the lawsuit.

One of the very first Equality Body decisions from 2004 may also be relevant in interpreting this provision. In a decision relating to the fixing of a maximum age in a public service post, the test used by the Equality Body in order to determine whether age discrimination existed or not was whether the nature of the job justified the fixing of a maximum age limit and whether similar positions in other contexts (i.e. of equivalent seniority, in similar fields etc.) carry an age limit. The case concerned the age limit of 60 fixed in respect of the appointment of members of the Commission on Educational Service and the test applied was whether the functions performed by the public service committee (where no age limit applies) are substantially different to those of the education committee. As the answer to this question was negative, the report concluded that there was no reasonable justification in permitting an age limit for the latter.¹¹⁹ Similarly, a decision pursuant to a complaint for age discrimination in the fixing of age limit for the position of temporary postal distributor at the public post office, found the age limit unjustified, inter alia, because the post of permanent postal distributor does not carry any age limit.¹²⁰

2.3.1 Statistical evidence

a) Legal framework

In Cyprus there are national rules restricting data collection.

There is a general rule prohibiting the collection of data that derives from article 8 of the ECHR and is also contained in article 15 of Constitution, unless specifically provided under certain circumstances. Data protection laws prohibit the collection and processing of sensitive personal data and list the circumstances under which this is exceptionally allowed.¹²¹ Three of these are relevant to this context: (a) Processing is necessary for the satisfaction of lawful interest which is superior to the rights and fundamental freedoms of the subject of the data;¹²² (b) Processing concerns exclusively data that the subject of it has published or is necessary for the recognition or the exercise of a right before a court;¹²³

¹¹⁷ Cyprus, Equality Authority, Report No. A.K.I. 13/2005, 11 April 2007.

¹¹⁸ Cyprus, Labour Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου)* No. 258/05, 30 July 2008.

¹¹⁹ Cyprus, Equality Authority, Report dated 08 November 2004.

¹²⁰ Cyprus, Equality Authority, Report No. Ref. A.K.I. 68/2007, A.K.I. 78/2007, A.K.I. 108/2007, 05 December 2007.

¹²¹ Cyprus, Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001. Available at www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html.

¹²² Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001, Article 5(1)(e). Available at www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html.

¹²³ Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001, Article 6(2)(e). Available at www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html.

(c) Processing concerns exclusively statistical, research, scientific or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.

Although most of the grounds covered by the anti-discrimination directives are classified in the data protection law as constituting sensitive data and at points this law covers grounds beyond those of the anti-discrimination directives, age is missing from the protected characteristics. 'Sensitive data' is defined in the law as data concerning racial or national¹²⁴ origin, political belief, religious or philosophical conviction, participation in an organisation, association or trade union, health (which is much wider in scope than 'disability'), sex-life and sexual orientation, criminal prosecution or criminal conviction.¹²⁵

"Personal data" is defined in the law as any information referring to the subject of data, i.e. a physical person, who is still in life. Aggregate data of a statistical nature, from which the subjects of the data can no longer be detected, are not considered as 'personal data'.

Under article 6(3) of Law 138(I)/2001, the Council of Ministers may issue regulations following a proposal by the Personal Data Protection Commissioner, on the processing of data in cases other than the ones provided for under the law when there are serious reasons of public interest involved.

In response to an enquiry which the author made to the Cypriot Commissioner for the Protection of Personal Data, the Commissioner informed that: 'The collection and keeping by employers of data of their employees in respect of their ethnic or racial origin, disability, religion or belief or sexual orientation (sensitive data) as a rule is prohibited. It is permitted if this is necessary so that the employer fulfils his/her obligations in the field of employment law and s/he obtains a license for this purpose from the Personal Data Commissioner (Article 6(1) (2) (a) of the Law on processing of Personal Data)'.¹²⁶ One may conclude that the employee's written authorisation is not necessary in the aforesaid cases. Presumably the same principle would apply outside the employment field. Based on the Commissioner's statement as aforesaid, one may safely assume that the law will be interpreted and applied by the courts in a way compatible with the Data Commissioner's interpretation.

In order to apply the regulation concerning access to the labour market by various categories of workers, the Labour Office of the Ministry of Labour maintains records concerning country of origin, ethnic origin and whether they are asylum seekers or not.

In the non-employment field, data on ethnic origin is kept at the national level for various purposes. For instance, the population censuses carried out by the Statistical Service of the Republic keeps figures on each of the ethnic and religious communities of Cyprus (Greek-Cypriots, Turkish Cypriots, Maronites, Armenians and Latins) as well as on the names and countries of origin of third country nationals. The research conducted by the Statistical Service of the Republic for the purposes of the 2011 population census did collect information from the interviewees as regards their religion but this was neither processed nor published due to recent trends in regarding religion as personal sensitive data.¹²⁷ The Roma are not classified separately nor identified as such by the educational system, as

¹²⁴ The reference to 'national' origin, as opposed to 'ethnic' origin, may well be a reflection of the fact that in Greek the two terms have a similar sound and many people tend to use them interchangeably, as the distinction between the two may not be widely known in Cyprus. From the context, one may perhaps conclude that 'ethnic' would have been a better word, since personal data on national origin are widely used and processed.

¹²⁵ Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] Ν. 138(I)/2001, Article 2. Available at www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html.

¹²⁶ Cyprus, Letter from the Commissioner for the protection of personal data, 13 December 2005.

¹²⁷ Information supplied through consultation with officers at the Statistical Service of the Republic and at the Ministry of Interior. Although the processing of personal data without permission was prohibited as of 2001, the notion that in a multicultural society religion is a personal matter was not widely embedded in social culture. Contrary to the policy adopted as regards the 2011 population census, the population census of 2001 did publish data on religion.

they are considered to be part of the Turkish Cypriot community. Constitutionally, the Roma do in fact form part of the Turkish-Cypriot community, since by virtue of the Constitution they could only belong to one or the other community; however, the same applies to the Maronites, the Latins and the Armenians, who are constitutionally part of the Greek-Cypriot community, and they are nevertheless afforded a separate classification from the state's Statistical Service.¹²⁸ The Ministry of Education also maintains data on school children according to their ethnic (as well as their national) origin; again the Roma are not classified separately but are integrated into the figure for Turkish-Cypriots. In some tables supplied by the Ministry, a group of pupils are classified as 'Turkish-speaking'; this term would include primarily Turkish-Cypriots but to some extent also Roma and Kurdish pupils. The records which are publicly accessible do not show names of individuals, only numbers per ethnic origin.

In some cases, particularly relating to positive measures in education there is evidence suggesting that statistical data is used in order to design positive action measures. For instance, in order for the Ministry of Education to place a school within the "Educational Priority Zone", an investigation is carried out into poverty levels in the area, concentration of non-native Greek speakers, dropout rates etc.¹²⁹ Similarly, data is kept on the native language (i.e. ethnic origin) of the members of the school population in order to determine where and to what extent Greek language classes must be introduced in an effort to foster inclusion and the cohesion of the classroom. Also, in order to decide whether to open a Turkish speaking school, in compliance with the request of the UN Peace Keeping Force in Cyprus (UNFICYP), the government carried out a survey amongst the Turkish speaking families of the area concerned in order to establish whether they wanted to send their children to such a school. The survey showed that the parents preferred to send their children to the mainstream Greek school, and thus the government decided not to set up a Turkish school.¹³⁰ In the confrontation between the Ministry of Education and Maronite community regarding the Ministry's failure to raise the subsidies for school fees of Maronite students attending private schools, statistical evidence was used by the representative of the Maronite community in order to prove that only a small percentage of the Maronite students enrolled at the minority schools for which subsidies were offered. In 2010, this confrontation led to an Equality Body recommendation to the authorities that the claim of the minorities for increasing the school fees subsidy for the private secular schools should be favourably considered.¹³¹ Generally speaking, however, Cypriot authorities do not systematically collect data and when they do they do not use them for policy development. In the case of racial incidents at schools, and despite criticisms repeatedly directed against the Ministry by national and international monitoring bodies¹³² for failing to record these incidents, the Ministry has set up a system of handling racial incidents at schools without

¹²⁸ Upon the establishment of the Republic, all religious groups were asked to choose as to whether they wanted to "belong" to the Greek Cypriot community or the Turkish Cypriot community. They opted to belong to the former. The Roma were not asked to choose; they were simply assumed to belong to the Turkish Cypriot community because of their common religion (Muslim) and language.

¹²⁹ This measure, which has been in place for some years now, aims at placing in a special category certain schools where special attention and particular measures are needed to address certain educational needs, such as pupils coming from particularly poverty-stricken areas, high concentration of non-native Greek speakers, high dropout rate etc. Schools classified as falling within ZEP receive extra teaching hours and other measures where needed. The institution of ZEP aims at reducing inequalities for pupils attending schools in disadvantaged areas with an increased proportion of immigrants, combating school failure and illiteracy.

¹³⁰ A survey carried out by UNFICYP into the same matter produced the opposite result, i.e. that the parents did want their children to attend a Turkish school. Also the results of the governmental survey were disputed by the Union of Turkish Cypriot teachers K.T.O.S. who subsequently proceeded to sue the government in Court for violating the right of Turkish Cypriot children to education.

¹³¹ Cyprus, Anti-discrimination Authority, Report No. A.K.R. 114/2005, 08 November 2010.

¹³² See for instance: Council of Europe, ECRI Report on Cyprus, Fourth monitoring cycle, 31 May 2011, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf>; Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015, available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

publishing any statistics about the incidents¹³³ even though this system requires teachers to regularly submit to the ministry data about racial incidents at their schools. Similarly, an Observatory for School Violence set up in 2009 is yet to publish statistics about the incidents recorded.¹³⁴ There have been no new policies relying on knowledge derived from the data collected.

In 2010 an Equality Body report criticised the procedure for exemption of pupils from the religious class at schools, and particularly the fact that the pupils' parents are asked to declare their religion, pointing out that a person's religion constitutes sensitive personal data that need not be revealed unless there is objective and reasonable justification serving a legitimate aim. The report recommended that students be exempted from the religious class without having to reveal their religious beliefs and for reasons of conscience and that a special form should be introduced for parents to complete when requesting exemption from the religious class expressly stating that there is no obligation to reveal one's religion.¹³⁵ The issue remained open by the end of 2015, as the Ministry failed to comply with the Equality Body's requirements, which promoted the latter to revert with another report, warning the Ministry of its intention to issue a binding decision against it.¹³⁶

In 2010 the Ombudsman¹³⁷ issued a report pursuant to a complaint submitted a month earlier by a lawyer on behalf of a migrant woman who was an HIV carrier and had been detained for the purposes of deportation, after her asylum application had been rejected.¹³⁸ The guards at the detention centre informed all other inmates that she was suffering from HIV/AIDS and should therefore be using a separate washroom. The Ombudsman's report concluded that sensitive data concerning the complainant's health were revealed to third parties unlawfully and without her consent. The fears expressed by the members of staff that the non-revelation of the complainant's condition would have endangered the health of other persons using the same space were not seen as valid, since the medical certificate which the complainant was issued by the state hospital and which had been notified to the management of the detention centre expressly stated that the complainant did not suffer from any contagious disease endangering public health. Similarly, in 2011 an Ombudsman's report¹³⁹ on access to the labour market by HIV carriers revealed that the low response of HIV persons to a special scheme for employment in the public sector ten years after its introduction was largely attributed to the fact that the procedure foreseen in the scheme involved the registration of prospective applicants with the Labour Office declaring that they are HIV positive, a fact which is in turn communicated to the Minister of Labour for further communication to the Ministry involved and to the Head of Department where the applicant is applying for employment. The Ombudsman noted that the declaration of the applicant's health condition to a number of persons every time s/he applies for a job position may deter an applicant from taking advantage of the said scheme but may also be a reason for rejection of a job application, urging the authorities to remove this obstacle from the procedure.¹⁴⁰

In the field of disability, where positive measures often take the form of grants, there is little evidence of the use of statistical data in order to design positive measures. A new

¹³³ For more details see

http://www.moec.gov.cy/agogi_ygeias/pdf/kodikas_symperiforas/kodikas_symperiforas_ratsismou.pdf.

¹³⁴ See the relevant page of the website of the Ministry of Education at www.moec.gov.cy/paratiritirio_via/.

¹³⁵ Cyprus, Anti-discrimination Authority, Report No. 135/2009, 07 November 2010.

¹³⁶ Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

¹³⁷ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹³⁸ Cyprus, Ombudsman, Report No. AP 1188/2010, 8 July 2010.

¹³⁹ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹⁴⁰ Cyprus, Ombudsman, Report No. A/P 587/2010, A/P 1616/2010, A/P 2309/2010, 17 October 2011.

measure introduced during 2010, involving the covering of the costs for escorts for persons with disability was designed after the disability organisations submitted, upon the request of the Ministry of Labour, details on the numbers amongst their members that would make use of such service. The funding granted was commensurate with the numbers of persons with disabilities that would be benefiting from the services of the escorts. Other measures in the disability field which do not involve the granting of monetary benefits, such as the preferential parking provided in the disability law,¹⁴¹ appear to be the result of pressure from the disability movement rather than the result of the use of statistical data.

b) Practice

In Cyprus statistical evidence in order to establish indirect discrimination is not widely used in practice. Court practice does not generally involve argumentation on ethical or methodological issues, although litigants may use statistical evidence to support their line of argument.

The Equality Body does use statistical data occasionally to demonstrate the depth or intensity of a problem. Once such case concerned discrimination against female migrant domestic workers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.¹⁴² In the reasoning of this decision, the Equality Body also made reference to the low salaries paid to migrant domestic helpers¹⁴³ compared to Cypriot workers, pointing out that the number of migrant female domestic workers now in Cyprus is about 18,000.¹⁴⁴ The data was used in this report in order to highlight the acuteness of the problem, based on the large size of this group and on the disparity in the salaries of migrants and locals, rather than to determine whether an act is or is not discriminatory. During 2010 the Equality Body commissioned a survey into the vocational training needs of the female migrant domestic workers which rendered a series of interesting results on the profile of this highly vulnerable group. Although the purpose of choosing to focus on vocational training needs is not clear, the interest of the Equality Body in the use of statistical data is obvious. Opinion surveys were also commissioned by the Equality Body in previous years, mainly in order to assess public opinion towards various vulnerable groups (LGBT persons, Pontian-Greeks, persons with disability) although the results were used more for awareness raising rather than for reaching a legal decision.

In 2008 the Equality Body examined an age discrimination complaint against several insurance companies whose policy was to refuse to insure persons over 70 to drive cars or to charge them higher premiums. The Equality Body's decision found that the practice or policy complained of, *unsupported by reliable statistical evidence*, is not reasonably and objectively justified and therefore amounts to discrimination.¹⁴⁵ It follows that had statistical evidence shown that persons over 70 are indeed more accident prone, then the difference in treatment would have been justified and therefore not discriminatory. Thus the Equality Body appears to have been prepared to accept statistical evidence in order to decide whether discrimination had taken place or not.

There is no evidence suggesting that the Courts are reluctant to allow the use of statistical data as evidence. There have been cases where statistical evidence was introduced and

¹⁴¹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 7A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴² Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005. The Minister of Interior has informed us that he has issued the relevant order for the pay increase but is waiting for the relevant Government department to estimate the costs involved for pensioners who employ domestic helpers so that their benefit is increased accordingly. The decision of the Equality Body is still not complied with.

¹⁴³ Calculated at CYP0.82 per hour, contrasted with CyP4 –CyP 5 per hour for Cypriots carrying out the same work: Cyprus Ombudsman Report File No. A.K.I 2/2005, 4 November 2005, page 4.

¹⁴⁴ This figure is based on data of the Ministry of Interior, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17.955.

¹⁴⁵ Cyprus, Equality Body Report No. 125/2007, 21 October 2008.

deemed admissible, although this is not so common as a practice. There is no case law on the use of statistical evidence in the anti-discrimination field, although there is case law on the use of statistical evidence in other areas of the law: In *Kaskavallis*¹⁴⁶ the Supreme Court rejected an appeal against a decision of the Licensing Authority by which the appellant's application for a taxi license was turned down based, inter alia, on statistics of the Cyprus Tourism Organisation about tourist arrivals for the period in question. The decision impliedly accepted the use of statistics by the Licensing Authority in order to decide on the appellant's application for a taxi license.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Cyprus, harassment is prohibited in national law.¹⁴⁷ It is defined in a variety of legislative instruments which are set out below.

As a concept, harassment was first introduced into Cyprus law in 2002 with Law N. 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training that came into force on 1st January 2003. This law introduced "harassment based on sex" as part of the definition of "sexual harassment". Later, in amending Law N. 40(I)/2006, the two terms were defined separately.

In the legislation transposing the equality directives, 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".¹⁴⁸

The Criminal Code¹⁴⁹ provides for a number of offences that relate to harassment and may potentially be used to prosecute discrimination falling under the scope of the directives:

- Article 138 prohibits damage to a place of worship or to an object held sacred by any class of persons with the intention of insulting the religion of any class of persons;
- Article 139 prohibits the disturbing of religious assemblies;
- Article 140 prohibits trespassing on burial places with the intention of insulting the religion of any person;
- Article 141 prohibits the uttering of words, the making of any sound or any gesture with the intent of wounding the religious feelings of any person;
- Article 142 prohibits publications insulting any religion;
- Article 51A prohibits public incitement to violence amongst residents and the cultivation of a spirit of intolerance;
- Article 47(1)(b) prohibits action taken publicly with the intention of promoting

¹⁴⁶ Cyprus, Supreme Court, Andreas Kaskavalis v. The Republic of Cyprus through the Ministry of Transport and Public Works and the Licensing Authority (*Ανδρέας Κασκαβάλης ν. Κυπριακής Δημοκρατίας μέσω του Υπουργείου Συγκοινωνιών και Δημοσίων Εργων και της Αρχής Αδειών*) N. 1132/2005, 10 August 2007.

¹⁴⁷ Cyprus, Law amending the law on persons with disabilities [*Ο Περί Ατόμων με Αναπηρίες Νόμος (Τροποποιητικός)*] No. 57(I)/2004) article 3(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 5(2)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 6(1)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁴⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁴⁹ Cyprus, The Criminal Code (*Ο Ποινικός Κώδικας*), Cap 154. Available at www.cylaw.org/nomoi/enop/non-ind/0_154/index.html.

feelings of hostility amongst communities or religious groups due to race, religion, colour or gender.

At the level of international and EU law, a number of legislative instruments transposed or ratified by Cyprus contain provisions that may be used to prosecute harassment. In 1992 a law was introduced amending the Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination of 1967, rendering certain public statements a criminal offence, which bear similarity to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or in any other way, intentionally incites acts which may cause discrimination, hatred or violence against persons or groups of persons for the sole reason of their racial or ethnic origin or their religion, is guilty of a criminal offence.¹⁵⁰

In addition, the following laws contain provisions that may be used to prosecute acts that may be termed as harassment:

- the Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law N. 134(I)/2011,¹⁵¹ which purports to transpose the corresponding Framework Decision;¹⁵²
- the Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems, N.26(III)/2004; and
- The Law ratifying the Convention on the Prevention and Punishment of the Crime of Genocide N. 59/1980.

No case has been adjudicated in Court so far under any of the above provisions.

In Cyprus harassment does explicitly constitute a form of discrimination.¹⁵³

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Cyprus the employer is liable.

Under article 13 of the Law on Civil Offences (Cap 148)¹⁵⁴ a 'master' is responsible for the actions or omissions of his 'servant' for acts authorised or approved by the former or for acts carried out by the servant in the course of his work. The terms 'master' and 'servant' used in the text of the law mean employer and employee respectively. The master is not responsible for the actions of persons to whom the servant has assigned work without the authorisation of the employer. An act is deemed to have been conducted in the course of one's work if it was committed by a servant in his capacity as such and whilst he was carrying out the normal tasks of his work, irrespective of whether the act was the result of negligent performance of a task assigned by the employer. An act is not deemed to have been committed in the course of one's work when it is conducted by a servant who was

¹⁵⁰ Cyprus, Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) 1967, Article 2A(1).

¹⁵¹ Cyprus, Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law of 2011 (*Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος του 2011*) N. 134(I)/2011. Available at www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

¹⁵² Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

¹⁵³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁵⁴ Cyprus, the Civil Offences Law (*Περί Αστικών Αδικημάτων Νόμος*), Cap 148. Available at http://www.cylaw.org/nomoi/enop/non-ind/0_148/full.html.

acting for his own purposes and not on behalf of his master. None of these provisions affect the servant's liability for any acts committed by him.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Cyprus, instructions to discriminate are prohibited in national law.¹⁵⁵ Instructions are not defined.

In Cyprus instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Cyprus the instructor is liable.

Although the laws transposing the directives are silent on the employers' liability as regards the actions of their employees, under the general principles of labour law employers are vicariously liable for the actions of their employees. An employee who has discriminated because s/he has received an instruction to discriminate is not explicitly covered by the laws transposing the directives, however it is likely that such employee will be held liable for direct or indirect discrimination, irrespective of whether the motive was to follow the employer's instructions, depending on the circumstances and on what choices the employee had. The dismissal of an employee because s/he refuses to carry out an unlawful instruction, such as an instruction to discriminate, is unlawful and gives rise to compensation.

2.6 Reasonable accommodation duties (Article 2(2) (b) (ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Cyprus, the duty to provide reasonable accommodation is included in the law. It is defined.

Prior to the transposition of the Employment Framework Directive, the disability law provided for the duty to adopt "reasonable measures" to the extent and where the local economic and other circumstances allow.¹⁵⁶ 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.);¹⁵⁷ (b). employment including access to, working conditions, training etc.;¹⁵⁸ (c). supply of goods and services, including the facilitation of accessibility for safe and comfortable use

¹⁵⁵ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 5(2)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 6(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁵⁶ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

of such services, etc.;¹⁵⁹ transport;¹⁶⁰ and telecommunications.¹⁶¹ An amendment to the law adopted in 2014 now provides that the rights set out in the foregoing provisions (articles 4, 5, 6 and 8) must be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation' for the purposes of this provision means necessary and suitable amendments and adjustments which do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms.¹⁶²

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".¹⁶³

The above provisions did not entirely transpose the spirit of the directive which provided for a mandatory duty to provide reasonable accommodation. Thus, an amendment to the disability law in 2007 added a new article which provides that, in order for the principle of equal treatment of persons with disabilities to be implemented, the employer must take reasonable measures depending on the needs arising in any particular case, so that a person with a disability has access to an employment post, to carry out his/her profession or to be promoted, or to undergo training, so long as these measures do not lead to disproportionate burden for the employer.¹⁶⁴

b) Practice

A burden is not disproportionate when it is sufficiently balanced by measures taken in the framework of state policy in favour of persons with disability.¹⁶⁵ The 2014 amendment to the disability law essentially extends the right to reasonable accommodation to a number of areas beyond employment, provided the burden is not disproportionate or unjustified, abandoning the old approach which rendered the right to reasonable accommodation beyond employment subject to "where the local economic conditions allow" and "subject to public finances", both of which are currently in a pretty bad state. However, the amendment falls short of creating a mandatory regime as the defence of the disproportionate burden is likely to be successfully invoked by service providers or merchants in court in order to avoid any kind of expenditure, in light of the economic crisis.

Over the years, the Equality Body has interpreted the duty to provide reasonable accommodation as follows:

- A 2006 decision regarding accommodation for dyslectic pupils in school exams found that the Ministry of Education wrongly viewed the credibility and prestige of the exam and the need to avoid giving the dyslectic pupil an unfair advantage as priority

¹⁵⁹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 6. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁰ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 7. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶¹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 8. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶² Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

¹⁶³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(2)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁵ Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

considerations and recommended that dyslectic students be given additional accommodation to the mere extra time of 30 minutes at the exam.¹⁶⁶ In another decision on a similar complaint, the Equality Body found that the principle of reasonable accommodation is founded upon the premise that the measure must be such so as to ensure equality in opportunity and not in the result.¹⁶⁷

- The policy of the Ministry of Education to transfer public education teachers based solely on the needs of the service without reference to the existence or not of any disability, and disregarding the complainant's need to work in a stable and safe environment amounts to indirect discrimination on the ground of disability.¹⁶⁸
- The revocation by the employer of the right initially granted to an employee with multiple sclerosis to take two afternoons off in order to undergo physiotherapy was found to be discriminatory. Citing a landmark ECtHR ruling,¹⁶⁹ the decision stressed that the treatment of persons without a disability in relation to persons with a disability cannot be the same, if equality is to be attained.¹⁷⁰
- In 2009, a complaint was submitted to the Equality Body by a job applicant who had achondroplasia, whose job application was rejected as a result of her height. The Equality Body concluded that the employer had an obligation to place files in shelves which would be accessible by the complainant and/or provide a ladder to enable her to reach files in high shelves.¹⁷¹
- The reduction in teaching hours can constitute reasonable accommodation, provided the symptoms of the disability render teaching painful or exhausting.¹⁷²

The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 provides that the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure equality in opportunity and not in the result, therefore the measure must be such so as to offer the person with disability the same opportunity as all other persons, e.g. persons with arthritis applying for the position of a typist must be given a special keyboard in order to be able to compete with the other applicants on the typing speed. Also persons with a disability who take exam for the purposes of a selection procedure for a job must be given such facilities so as to enable them to compete with the non-disabled candidates on equal terms. The employer's obligation to provide reasonable accommodation affects regulations or criteria set by the employer as well as the way in which the workplace is organized (e.g. offering a wheelchair user the chance to work on the ground floor of a building where this is available). The Code offers a non-exhaustive list of guidelines on reasonable accommodation measures: changes or adaptations to the building infrastructure (ramps and toilets for wheelchair users, Braille language on the buttons in the elevators etc.); re-allocation of duties amongst employees so as to allocate to employees with disabilities duties they can perform; transfer to another job position if available; sick leave for the purposes of therapy; vocational training including training related to a person's disability e.g. use of new technologies or new equipment or logistics that can upgrade a disabled person's skills; facilitating the participation in trade unions; the upgrading of existing equipment; other forms of support or assistance.¹⁷³ The law setting out the mandate of the Equality Body

¹⁶⁶ Cyprus, Equality Authority, File No. AKI 24/2006, AKI 27/2006, 31 October 2006.

¹⁶⁷ Cyprus, Equality Authority, Report No. A.K.I. 37/2008, 8 October 2008.

¹⁶⁸ Cyprus, Equality Authority, File No. 9/2007, 12 September 2007.

¹⁶⁹ *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000. Available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:\[%22001-58561%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:[%22001-58561%22]}).

¹⁷⁰ Cyprus, Equality Authority, Report No. Decision dated 04.09.2007, Ref. A.K.I. 65/2007.

¹⁷¹ Cyprus, Equality Authority, Report No. A.K.I. 12/2009, 21 September 2009. A summary of this case in English is available at the Equality Authority's Annual Report for the year 2009, p. 47, available at: www.no-discrimination.ombudsman.gov.cy/sites/default/files/etesia_ekth_aim_2009_0.pdf.

¹⁷² Cyprus, Equality Authority, File A.I.T. 1/2009, 20 September 2009. A summary of the case in English is available at the Equality Authority's Annual Report for the year 2009, pp. 50-52, at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/etesia_ekth_aim_2009_0.pdf.

¹⁷³ Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και

foresees the issue of Codes of Conduct by the Equality Body which can impose specific duties on persons in the public or private sector.¹⁷⁴ However, such codes must be appended to regulations issued with the approval of the Council of Ministers; this procedure was not followed in the case of the Code of Practice on Disability Discrimination and in essence this code has the character of a clarification document rather than a binding set of rules. The Court may refer to the Code and derive guidance from the examples contained in it, but it is not legally bound to do so and in fact the Code has never been referred to in Court or in any official documents.

In 2015 the Equality Body issued a report against the state TV company Cyprus Broadcasting Corporation (CyBC) because the lack of accessibility features in their building, which dates back to the 1950s, had prevented an employee who was a wheelchair user from carrying out his work. The employee, who became tetraplegic following an accident, was asked to work in a different department than before performing different tasks. In his new position, the rooms were more accessible than in his previous post but even there he was unable to perform the tasks assigned to him because in order to supervise the flow of TV programs he needed access to two other rooms which he didn't have because those rooms were not accessible to wheelchair users. He was forced into resignation and filed a discrimination complaint against CyBC. The Equality Body found that the delay of CyBC to respond to their obligation as employers to provide reasonable accommodation amounted to direct discrimination and advised CyBC to proceed to all necessary structural modifications to make their building accessible.¹⁷⁵

c) Definition of disability and non-discrimination protection

The definition of disability applicable does not differ when claiming reasonable accommodation from when claiming general protection from discrimination.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Cyprus, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.¹⁷⁶ The definition of disproportionate burden in fields beyond employment does not differ from that used in the context of employment.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Cyprus failure to meet the duty of reasonable accommodation may be interpreted as amounting to discrimination.

Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, this may be inferred from the wording of the law, which stipulates that, *in order to comply with the principle of equal treatment*, reasonable accommodation is foreseen and for this purpose the employer must take all necessary measures so as the person with disability may have access to a job position, may exercise his profession or may attend training, provided the burden is not

την απασχόληση). Available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_qia_diakriseis_logo_anapirias_ergasia.pdf.

¹⁷⁴ Cyprus, Law on Combating Racial and other Forms of Discrimination (Commissioner) of 2004 (Ο Περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004) N. 42(I)/2004, article 40. Available at www.cylaw.org/nomoi/enop/ind/2004_1_42/section-sce220abc3-c0c8-c38b-6534-cc2265a17e12.html.

¹⁷⁵ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

¹⁷⁶ Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

unreasonable.¹⁷⁷ No case has ever been adjudicated in Court on this point but this interpretation is invariably followed by the equality body.¹⁷⁸

If one adopts the interpretation that breach of the duty to provide reasonable accommodation amounts to discrimination, it follows that breach of such duty leads to the sanctions foreseen in the law for discrimination.¹⁷⁹ In the case of both discrimination and breach of the duty to provide reasonable accommodation, the sanctions are imposed where the perpetrator has acted without reasonable cause.¹⁸⁰ The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in 2010 explicitly provides that the employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination and is punishable with a fine of up to CY£ 4,000 (=€ 6,834) or imprisonment of up to six months, as in all other forms of discrimination.¹⁸¹

There is no explicit provision in the law for the reversal of the burden of proof in cases where there was a breach of the duty to provide reasonable accommodation. However, if one adopts the view that breach of this duty amounts to discrimination, then the reversal of the burden of proof foreseen in the law for discrimination cases¹⁸² applies. It should be noted that the burden of proof is reversed only in employment related cases and not in fields beyond employment.

No case was ever tried by the Courts on reasonable accommodation. However, the decisions of the Equality Body on this issue consider the failure to meet this duty as discrimination prohibited by law, even before the 2007 change of the law, which rendered the duty to provide reasonable accommodation as a binding obligation on the employer. Thus, a complaint from a blind person working as a telephonist in the hospital, who was moved to a new hospital and had to cope with a more complicated telephone system, with more telephone lines and with a less favourable working schedule was found by the Equality Body to be well founded. The Equality Body decided that the hospital authorities ought to have transferred to the new post one of the other employees without a disability and to leave the blind employee at the post where he was familiar with the system. The report called on the hospital authorities to explain, in a manner satisfactory to the Equality Body, why the employee had to be moved to the new hospital, failing which a decision would be issued against them by the Equality Body.¹⁸³

An Equality Body report published in 2012 regarding the adequacy of school units for autistic children concluded that the provision of education and training to children with disabilities, under circumstances where the school infrastructure is so lacking that their special needs are not met, amounts to a violation of the principle of equality, since the children are prevented from equal opportunity to develop their personality and skills.¹⁸⁴

¹⁷⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁷⁸ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

¹⁷⁹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁸⁰ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁸¹ Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (*Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση*). Available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_diakriseis_logou_anapirias_ergasia.pdf.

¹⁸² Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁸³ Cyprus, Equality Authority, Report No. A.K.I. 58/2005, 8 December 2005. A summary of the case is available at the Equality Authority's Annual Report for the year 2005 at pp.12-13. Available at www.no-discrimination.ombudsman.gov.cy/sites/default/files/greek2005.pdf.

¹⁸⁴ Cyprus, Anti-discrimination authority, Report No. AKI 50/2011, 27 July 2012.

A 2009 decision of the Equality Body on a complaint from the representative of the Maronite community regarding the inadequate arrangements at the Maronite school, found that special treatment involves deviations from the principle of equality, which take the form of positive measures or special rights targeting a certain group aiming at the elimination of discrimination. The decision criticised the line of argumentation of the Ministry of Education which offered the Maronite community only equal treatment before the law, adding that the protection of national minorities must go beyond that, to recognise and promote rights of a collective character.¹⁸⁵

f) Duties to provide reasonable accommodation in respect of other grounds

In Cyprus there is no duty to provide reasonable accommodation in respect of other grounds in either the public or the private sector.

Nevertheless, the Equality Body recognises such a right in respect of religion or at least recommends to the relevant authorities to respect religious freedom for students and for prisoners by providing reasonable accommodation to them to practice their faith. This approach of the Equality Body is premised more on the conviction that religion is a sensitive issue rather than an interpretation of the law as granting such a right.

In December 2005 following a complaint on behalf of a Jehovah's Witness pupil against the behaviour of the religious instruction teacher towards her, the Equality Body criticized the practice of restricting pupils exempted from the religious lesson into the library and recommended that more creative occupation be sought for the exempted pupils.¹⁸⁶ In 2010 another Equality Body report criticised the procedure for exemption of pupils from the religious class and for the fact that the handling of the exemption request by the school led to the stigmatisation of the student-complainant, as she was for several months isolated from her classmates.¹⁸⁷ In its reports, the Equality Body does not cite the anti-discrimination laws, which clearly do not impose a duty to provide reasonable accommodation on the ground of religion, but article 18 from the Cypriot Constitution which provides that all religions are equal before the law;¹⁸⁸ Article 14 of the International Convention for the rights of Child; and Article 9 of the ECHR.¹⁸⁹ The situation escalated in 2012, when a circular from the Ministry of Education required pupils exempted from the religious class to remain in the class during the lesson. This formed a regression from the previous policy which enabled exempted pupils to engage in alternative creative activities elsewhere in the school building under teachers' supervision. Based on this circular, a school prohibited a pupil who was a Jehovah's Witness to leave the classroom during this lesson. The pupil decided to leave the classroom anyway and was repeatedly sanctioned with expulsion for every time that she left the classroom, risking to accumulate so many expulsions that she would be unable to graduate. The Equality Body was quick to take dynamic measures against the school and against the Ministry of Education, threatening them with fines for every day of non-compliance with its recommendations. Its position was that exempted pupils should be offered alternative supervised creative activities that would not lead to their stigmatisation and their alienation from the school environment, as was the solution proposed by the Ministry (to remain in the classroom).¹⁹⁰ The crisis between the Equality Body and the Ministry of Education eventually diffused itself when the Ministry official who vehemently opposed exemptions from the religious class retired in 2013. The dispute as to whether the students exempted from the class will sit in classroom or perform another activity has still not been resolved, but often teachers find an ad hoc solution by asking the student concerned what he or she prefers to do; in fact,

¹⁸⁵ Cyprus, Anti-discrimination Authority, Report No. A.K.R. 93/2005, 12 May 2009.

¹⁸⁶ Cyprus, Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

¹⁸⁷ Cyprus, Anti-discrimination Authority, Report No. 135/2009, 07 November 2010.

¹⁸⁸ Cyprus, Constitution of the Republic of Cyprus, article 18, available at <http://cylaw.org/nomoi/enop/non-ind/syntagma/full.html>.

¹⁸⁹ Cyprus, Anti-discrimination Authority, Report No. 31/2005, 02 November 2005.

¹⁹⁰ Cyprus, Anti-discrimination Authority, Report no. A.K.R. 93/2012, 03 December 2012.

some exempted students choose to remain in the class and do something else rather than leave the classroom and be stigmatised. The general practice is for the exempted student to be accommodated in another classroom to attend a different class; in the case of non-native Greek speakers this is usually support Greek language class. In recent years, the Equality Body has toned down its requirement for schools to provide alternative creative occupation for exempted pupils, presumably as a result of the staff shortages that emerge from the government measures to address the economic crisis. A more recent report of the Equality Body on the religious freedom of pupils at school focused on the absence of a culture of neutrality in school activities which clearly favour the dominant religion and on the fact that the right to be exempted from the religious class is reserved only to those pupils who are not Christian orthodox.¹⁹¹ The odd cases where teachers or headmasters adopt the extreme position and exert pressure on the student, as was the case investigated by the Equality Body cannot be excluded, but remain the exception rather than the rule.¹⁹²

In 2012 the Ombudsman¹⁹³ investigated a series of complaints from prison inmates who alleged being prevented from practicing their religion. The complaints were Greek nationals of Pontic origin who were denied the right to visit the prison church to celebrate a special holiday for them; and a group of Nigerian inmates who were denied the right to be visited by an Evangelical priest. In both of these cases, the Ombudsman rejected the justification put forward by the prison authorities and urged them to respect the religious rights of detainees and facilitate the practice of any religion they choose.¹⁹⁴ A recent report on Cyprus by the U.S. Department of State indicated that although a mosque and a church are available in the central prison, there is no opportunity and no facilities for detainees in any detention centre to practice their religion.¹⁹⁵

Along the same lines, in 2015 decision the Equality Body found that the failure of the authorities to address the request of a Jehovah's Witness for bloodless treatment in accordance with his religious beliefs, amounted to a failure to provide equal access to health care.¹⁹⁶

g) Accessibility of services, buildings and infrastructure

In Cyprus national law requires services available to the public, buildings and infrastructure to be designed with *some* accessibility features.

In Cyprus national law contains a general duty to provide accessibility by anticipation for people with disabilities. The disability law provides that the failure to carry out alterations to services or facilities which renders their use by a person with a disability unjustifiably difficult does not amount to equal treatment and is therefore prohibited by law.¹⁹⁷

¹⁹¹ Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

¹⁹² Consultation with Giorgoula Zenonos, teacher in public education.

¹⁹³ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹⁹⁴ Cyprus, Ombudsman Report no. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, 09 April 2012.

¹⁹⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, 2015 Human Rights Reports: Cyprus, released on April 13, 2016. Available at <http://www.state.gov/j/drl/rls/hrrpt/2015/eur/252835.htm>.

¹⁹⁶ Cyprus, Report of the Anti-discrimination Authority regarding the handling of the Ministry of Health for the provision of suitable health care to a Jehovah's Witness, File No.22/2015, 22 December 2015. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/\\$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement).

¹⁹⁷ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 6(2)(d)(ii). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

The disability law also provides for the right to accessibility to housing, buildings, streets and generally the natural environment and to public transport.¹⁹⁸ None of these rights are absolute however; instead, they are to be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation for the purposes of this provision means necessary and suitable amendments and adjustments which do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms. A burden is not disproportionate when it is sufficiently balanced by measures taken in the framework of state policy in favour of persons with disability.'¹⁹⁹

The accessibility of persons with disabilities to public buildings is further regulated by the Regulations on Streets and Buildings of 1999, which were issued by virtue of Article 19 of the Streets and Buildings law.²⁰⁰ Regulation 61G defines a person with disability as a person facing temporary or permanent difficulty in accessing a building or a street due to physical weakness or deficiency; the definition is intended to be wide enough to secure accessibility to build infrastructure not only for persons with a disability in the narrow sense of the term but persons generally encountering obstacles in access, such as the elderly. In 2014 the Ministry of the Interior drafted a paper on accessibility and user-safety, to be adopted as an annex to Regulation 61H of the Streets and Buildings Regulations, submitted to the Attorney General for legal processing.²⁰¹ The paper is entitled "Accessibility and User Safety" and constitutes the document by which the Reader,²⁰² being an architect or a civil engineer duly authorized by the competent authority, designs streets and buildings in a manner so as to ensure accessibility and user safety by all persons including persons with disability and with reduced mobility.²⁰³ The report purports to amend Regulation 61H of the Streets and Buildings Regulation²⁰⁴ and aims at harmonizing national legislation with EU Directive 89/106/EC, according to which structural projects must be designed and constructed in such a way so as to avoid the risk of accident or injury and render them safe and accessible by all persons. When adopted, the paper will have the strength of legislation.

The Streets and Buildings Regulations apply to public buildings as well as to those buildings where entry to the public is allowed, to commercial centres, to buildings which include shops and/or offices, to educational institutions, clinics, doctors' offices and generally to any building which the competent authority decides that these Regulations should apply. The Regulations set the minimum necessary specifications for the erection of all the aforesaid buildings and aim at securing the comfortable access of all persons with disability to the main entrance of such buildings and to the spaces within such buildings. The Regulations provide analytically the construction specifications for ramps to the main entrance, for the pavements, the staircases, the common use corridors, the elevators, the lavatories and other spaces where the public may go in, including the parking areas. However, failure to comply with these regulations does not amount to discrimination.

In spite of this legislative framework, an Equality Body decision in 2012 dealt with accessibility to sports grounds and carried out an on-site investigation of these premises, most of which were found to be inaccessible.²⁰⁵ Also, an Equality Body investigation in

¹⁹⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(2)(c). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁹⁹ Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

²⁰⁰ Cyprus, The Streets and Buildings Regulation 61H. Available at www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument.

²⁰¹ At the time of writing, the paper was still in draft form and not available online.

²⁰² Cyprus, Law Regulating Streets and Buildings, Cap 96, article 2. Available at http://www.cylaw.org/nomoi/enop/non-ind/0_96/full.html.

²⁰³ Cyprus, Ministry of Interior, Technical Services, Approved Document - Streets and Buildings Regulations, Annex III, Accessibility and User Safety. Not available online.

²⁰⁴ Cyprus, The Streets and Buildings Regulation 61H. Available at www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument.

²⁰⁵ Cyprus, Equality Authority, Report No. A.K.I. 30/2010 and A.I.T 1/2012, 29 May 2012.

2009 regarding access to a disabled toilet in the common areas of the building where the complainant resided revealed that the management company of the building did not view accessibility as an unconditional entitlement, because it had asked the complainant to produce a number of documents to prove his disability before they grant him permission to use the disabled communal toilet. The Equality Body report stressed that the law does not set any preconditions which must be met in order for persons facing mobility obstacles to have access to communal toilets, nor does it require such persons to produce any documents to prove their disability.²⁰⁶

h) Accessibility of public documents

The disability law contains a number of vague provisions regarding accessibility, such as the right to access information and communication with special means where this is necessary for special groups of persons,²⁰⁷ but does not foreseeing for an enforcement mechanism. Beyond these general provisions, which may be used in order to claim Braille translation of basic documents required by law, such as tax declarations, there is no specific legal obligation and no practice for public authorities to provide translation of any documents either in Braille or in sign language. The practice is for the NGOs of blind persons and of deaf persons respectively to provide such services as and when requested by their members.

²⁰⁶ Cyprus, Equality Authority, Report No. A.K.I. 91/2008, 14 May 2009.

²⁰⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(2)(e). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In Cyprus, national legislation has incorporated the directives' residence/citizenship/nationality preconditions for protection under the relevant national laws transposing the directives. Each of the three laws transposing the two directives provides that its scope does not cover differential treatment due to nationality, nor does it affect provisions or conditions regarding the entry and stay of third country nationals and stateless persons, or the treatment derived from the legal status of such third country nationals or stateless persons.²⁰⁸

In spite of the above, Protocol 12 to the ECHR which Cyprus has ratified, guarantees "the enjoyment of all rights set forth by law" without discrimination, inter alia, of 'national or ethnic origin'. Under Law N.42 (1)/2004 which sets up the Equality Body, there are no residence or citizenship/nationality prerequisites in the body's mandate in order to extend protection under the national laws transposing the directives. The Equality Body is empowered to promote equality of the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by the Conventions ratified by Cyprus and referred to in the Law²⁰⁹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.²¹⁰ We therefore have a situation where as regards the Equality Body's mandate nationality is a protected ground, but as regards the scope of the laws transposing the two directives, the exception of the directives as regards nationality applies. In its decisions, the Equality Body has made considerable use of its extended mandate and considered nationality discrimination as prohibited by international laws; on several occasions nationality and ethnic origin has been used interchangeably. The Cypriot Equality Body considers that Union citizens are protected by the two Equality Directives²¹¹ and relies on these Directives in examining complaints submitted by Union citizens.²¹²

Article 32 of the Constitution stipulates that "nothing in this Part²¹³ contained shall preclude the Republic from regulating by law any matter relating to aliens in accordance with international law." This provision, combined with the wide provisions of Cypriot immigration law, is often implemented with a tendency to considerably enlarge the scope of state discretion.

Complaints by EU citizens are often filed with the Equality Body alleging nationality discrimination, possibly reflecting the fact that these persons are more familiar with the

²⁰⁸ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) Article 3A(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 4(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁰⁹ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

²¹⁰ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19.03.2004), Article 3(1)(b), Part I.

²¹¹ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

²¹² Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

²¹³ Part II of the constitution contains the human rights and fundamental freedoms.

Equality Body procedure than most third country nationals. Some examples of Equality Body decisions concern the failure of the authorities to advise EU citizens of their need to register themselves in the electoral rolls in order to be allowed to vote in municipal elections; the request of the road transport department for EU nationals to present immigration documents evidencing 6 months' stay in Cyprus in order to acquire a driving license; the refusal of the Ministry of Education to accept the candidacy of a Greek national for an honorary grant;²¹⁴ a University's rejection of a job application because the applicant was a Greek national; the attempts of the immigration authorities to expel Greek nationals who had settled legally in Cyprus before Cyprus' EU accession for not to have sufficient financial resources to maintain themselves;²¹⁵ the requirement of good knowledge of Greek as a prerequisite for accessing public sector jobs or for starting a business; and the refusal of the recruitment bodies in the public sector to recognise prior work experience of applicants who are Greek nationals.²¹⁶

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Cyprus anti-discrimination laws offer protection to persons who meet the definition foreseen in the respective laws. In the case of disability, the definition is clearly met only by natural persons²¹⁷ but organisations with a legitimate interest have the right to apply to court or the equality body in order bring a discrimination claim on behalf of a victim.²¹⁸ Similarly, all natural persons are protected from religious, age or sexual orientation discrimination only at the workplace²¹⁹ since only natural persons meet the definition of an employee, but organisations can represent victims in their claims before the court and the equality body.²²⁰ As regards race/ethnic origin, although no explicit provision is made in the law as to whether victims of ethnic/racial discrimination can be legal or only natural persons, there is no reason why protection may not be extended to organisations of persons who are victims of racial or ethnic discrimination. The law offers explicit protection to individuals who are treated disadvantageously due to their ethnic or racial origin²²¹ and, in line with article 7(2) of the Racial Equality Directive, organisations may apply to court on behalf of such individuals.²²²

In all fields and on all five grounds, the perpetrators of discrimination can be either legal or physical persons. The disability law defines 'employer' as any legal or physical person

²¹⁴ Reference A.K.P 73/2008, dated 30 December 2009.

²¹⁵ Ref. AK 168/2008, AK 199/2008, AK 80/2009, AK 43/2010, AK 48/2010, AK 93/2010, AK 114/2010, ΑΠ 2358/2010, dated 01.11.2011, available in Greek at <http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr>.

²¹⁶ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

²¹⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2, available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

²¹⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D, available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

²¹⁹ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²⁰ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²¹ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Articles 2 and 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²²² Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

of the public or the private sector.²²³ An identical definition of the term can also be found in the law prohibiting discrimination employment discrimination.²²⁴ The scope of the law prohibiting ethnic/racial discrimination in fields beyond employment includes “all persons in the public and the private sector”.²²⁵ The provisions on criminal sanctions, which are identical in all three laws, explicitly foresee that legal persons as well as natural persons can also be liable for discrimination.²²⁶ The fines which the Court may impose vary on whether the perpetrators are physical or legal persons. Natural person may be fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both.²²⁷ If a legal person is found guilty of discrimination, the managing director, chairman, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both, if it is established that the offence is committed with their consent or collaboration or mere tolerance. In addition, a legal person can be fined with up to 7,000 Cyprus pounds (11,962 Euros).²²⁸ There is also a provision for ‘gross negligence’ with fines of up to 2,000 Cyprus pounds (3,417 Euros) for individuals and 4,000 Cyprus pounds (6,835 Euros) for legal persons.²²⁹

b) Private and public sector including public bodies

In Cyprus persons in both the private and public sector can be liable for discrimination, including public bodies. Law 58(I)/2004 (employment field, all grounds minus disability,) defines (in article 2) an employer as meaning “the Government of the Republic, the Local Self-governance Authorities and any natural or legal person or organisation of public or practice law in any public or private sector or industry which employed or employee’s workers.” An identical provision is found in article 2 of the Law on Persons with Disability N. 127(I)/2000. Law 59(I)/2004 (race/ethnic origin, fields beyond employment) defines in article 4(1) the scope of the law as covering all persons in the public and private sector including public organisations, local self-governance authorities and public and private law organisations in the fields of social protection, health care, social provision, education and access to goods and services.

²²³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 2, available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²²⁴ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²⁵ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 4(1), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²²⁶ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5(5), available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15(2), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13(2), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²²⁷ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5(4), available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²²⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Articles 15(1) and 15(2), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Articles 13(1) and 13(2), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²²⁹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Articles 5(4) and 5(5), available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13(3), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

No explicit provision is made as to who is protected from discrimination but clearly where no protection is foreseen for legal persons, then likewise no protection is available for public sector organisations.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Cyprus, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, holding statutory office, with the exception of military service.²³⁰ As regards military service, the law provides an exception to the prohibition of age discrimination, where the fixing of an age limit is justified by the nature and the duties of the position.²³¹

The scope of Law N. 58(I)/2004 (transposing the Employment Equality Directive minus the ground of disability) includes conditions of access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion; access to vocational guidance and training, including practical work experience; employment and working conditions, including dismissals and pay; membership in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

A law enacted in 2009 introducing quotas in favour of persons with disability in the wider public sector excludes those sections of the public service where “all physical, mental or intellectual restrictions must necessarily be absent”²³² which are the army, the police, the fire brigade and the prisons.

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law²³³ which sets out the mandate of the Equality Body, provides that the implementation of Protocol 12 is within such mandate and therefore the Equality Body is empowered to apply this to military service issues.

This law also provides that the Equality Body is vested with powers to tackle discrimination in the areas of 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, as required by Article 3.1 of the directives.

Both laws transposing the Employment Equality Directive define an ‘employee’ as ‘any person who works or is trained in full time or part-time occupation, fixed time or permanent employment, continuous or otherwise, irrespective of the place of employment, including home employees but excluding self-employment.’²³⁴

²³⁰ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²³¹ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²³² Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

²³³ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²³⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment

Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. Comparing article 3.1 (b) of the Employment Equality Directive, Article 5 of ICERD provides for the right to training, whereas the directive focuses on access to all types and to all levels of vocational guidance, (advanced) vocational training and retraining. The comparison between Article 5 of the ICERD and Article 3.1(c) of the directive reveals that the former does not include employment and working conditions relating to dismissal. Article 5 of the ICERD limits itself to the right to form and join trade unions, whilst Article 3.1(d) of the directives is broader in the types of organisation that one can be a member of or involved in and further includes the benefits provided by such organisation or association.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Cyprus, national legislation includes conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.²³⁵

Despite the formal adoption of the four main laws on anti-discrimination, there are no provisions for the facilitation or improvement of conditions for access as required by Article 3(1) (a) of the Employment Equality Directive. There is no tradition of anti-discrimination and there are no specialist lawyers on the subject, nor are there any special mechanisms in the various Government departments created for the implementation of the above provisions. There are currently no measures or mechanisms in order to monitor and collect data on such matters.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Cyprus, national legislation includes working conditions including pay and dismissals, for all five grounds and for both private and public employment.²³⁶

3.2.3.1 Occupational pensions constituting part of pay

The Law on Pensions of 1997-2001, as amended, which regulates the payment of occupational pensions to public employees contains no protection against discrimination. In fact, the Pensions Law itself contains discriminatory provisions, as it provides for less favourable terms for employees aged under 45 who want to take early retirement, compared to older employees.²³⁷

and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²³⁵ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 5(1)(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 4(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²³⁶ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 5(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 4(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²³⁷ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009; Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

A Supreme Court decision of 2007²³⁸ found that the Pensions Law of 1967 (N.9/67) as amended by Law N.69(1)/2005, introducing differential treatment between persons attaining the age of 60 at different periods, was deemed to be outside the scope of the law transposing the Employment Equality Directive and thus could not be revised as discriminatory. Since then, a number of Court decisions followed suit, where the Courts ruled that pension schemes fixing different retirements ages for different employees, depending on the date of their birth²³⁹ or their rank in their service²⁴⁰ were outside the scope of the directive and thus no discrimination claim could be allowed. A technical problem that arose in many of these Court cases was that, rather than bring a claim for discrimination under the law transposing the Employment Equality Directive, the claimants would either use the judicial review procedure foreseen by Article 146 of the Constitution or they would seek to have the legal provision affecting them declared unconstitutional. In all these cases, the Court ruled that it had no power to amend the allegedly discriminatory law and/or that annulling a law or a regulation that contains discrimination would not benefit the applicant because it would mean cancelling the legal basis which the desired retirement age derived from. From the Court's reasoning in cases where applicants complain of discrimination in the amount of pension received, it appears that the Courts were unaware of or were unwilling to take into account the CJEU's ruling in *Maruko*²⁴¹ that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In the case of *Michalakīs Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic*, the Court rejected the applicant's claim of age discrimination in respect of his retirement pay, which was lower for persons forced to retire at 61 rather than 62 or 63, on the ground that the directive expressly excludes retirement age from its scope, even though the applicant had not sought to change his retirement age but rather to raise the lump sum payable upon retirement.²⁴² A Court decision in 2012 found that the retirement age of 55 applicable for lower rank police officers was lawful as the applicant failed to prove that this differential treatment is not reasonable.²⁴³ A Supreme Court decision in 2014 regarding a claim against reduced benefits for a public employee who chose to retire before reaching the age of 45 sought to change the landscape created by the previous Court decisions in this area; the Court not only found that the legal provision for reduced pension benefits for younger retiring employees was unlawful, but it also ruled that the Attorney General was under a duty to proceed with the amendment of this law following the Equality Body's recommendation to that effect.²⁴⁴ Although this decision had prepared the ground for further decisions affirming the principle that pension schemes should be free from provisions leading to age discrimination, no more cases appeared before the Court in 2015 in order to test this principle. Instead, the Supreme Court reverted to older judicial practices, upholding that age seniority was a legitimate consideration in

²³⁸ Cyprus, Supreme Court, Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus (Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας) (joined cases) Case Nos 1795/2006 and 1705/2006, 01 June 2007. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006.

²³⁹ Cyprus, Supreme Court, Eleni Kyriakidou v Cyprus Broadcasting Corporation (Ελένη Κυριακίδου v. Π.Ι.Κ.) No. 18/2008, 03 December 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF*.

²⁴⁰ Nicos Elia v. The Republic of Cyprus through the Chief of Police, Supreme Court Case No. 1718/2008, dated 08 October 2010.

²⁴¹ CJEU, Case No. C-267/06, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

²⁴² Case no. 1223/2007, 19 September 2011.

²⁴³ George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order, Ref. 1497/2008, dated 30 April 2012, summarized above under section 0.3.

²⁴⁴ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009; Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%F1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%F1%EA%F1%E9%F3*%20and%2058(%E9)#).

assessing applications for promotion in the public service.²⁴⁵ This judicial trend is likely to be challenged in 2016 in light of developments at the level of the CJEU.²⁴⁶

Maruko case

During 2015 a new law was adopted regulating the civil union of both heterosexual and homosexual couples.²⁴⁷ The law provides for the legal recognition of partnerships registered in accordance with the provisions of this law and applies equally to all persons who choose this procedure, including not only same sex couples but also opposite sex couples who for whatever reason, including reasons of religion or belief choose not to get married. The law provides that unless otherwise stated in the text of the law and with the exception of the law on adoptions, a civil union entered into under this law will have all the corresponding results and consequences of a marriage under the Marriage Law, which regulates civil marriages between heterosexual couples.

The law includes detailed provisions regarding the payment of alimony and the distribution of property in the event of dissolution of the civil union, which are almost identical to those provided under the corresponding law for heterosexual married couples.²⁴⁸ Matters of inheritance are to be regulated by applying the law on wills and succession which applies to married heterosexual couples.²⁴⁹ In addition to the fields of application expressly mentioned in the law, the state recognition of these relationships will, by inference, inevitably have an impact in other areas of access to state and private services and benefits, including employment-related benefits, occupational pensions, succession in rental and other contracts, access to health as a dependent of a beneficiary and others, even though not explicitly mentioned in the law.

The rationale of the CJEU in the Maruko case²⁵⁰ that the surviving partners of deceased employees who had lived with the deceased "in a union of mutual support and assistance which is formally constituted for life" should be entitled to the same benefits as surviving spouses, would probably now be extended to same sex partners who have registered their relationship in accordance with the new law.

However, the new law does not fully equate civil unions with marriages. A gap remains on the issue of adoption of children which is expressly excluded from the law and which amounts to direct discrimination against persons choosing the civil union and indirect discrimination against same sex partners. Under this law, a person is deemed incapable of entering into a civil union if he or she has not reached 18 years of age. This differs from the law which regulates the marriage of heterosexual couples and is a potential source of age discrimination: in the case of heterosexual couples, where marriage age is also set at 18, persons under 18 may still marry if they both have completed their sixteenth year of

²⁴⁵ Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015.

²⁴⁶ After the cut-off date the CJEU ruled against Cyprus on infringement proceedings initiated by the Commission as regards an age criterion in the national pensions law, which may turn the tide of judicial practice away from the doctrine of upholding state discretion: CJEU, C-515/14 (European Commission v Cyprus), 21 January 2016, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>. This ruling is expected to drive future judicial practice away from state discretion.

²⁴⁷ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 26 November 2015. Available at www.hadjiviannis.net/admin/uploads/anpdf/pdfgr86.pdf.

²⁴⁸ Cyprus, Law on the regulation of property relations between spouses of 1991-1999 (*Οι περί Ρυθμίσεως των Περιουσιακών Σχέσεων των Συζύγων Νόμοι του 1991 έως 1999*) N. 232/1991. Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_232/full.html.

²⁴⁹ Cyprus, Law on wills and succession (*ο περί Διαθηκών και Διαδοχής Νόμος*) Cap. 195. Available at www.cylaw.org/nomoi/enop/non-ind/0_195/full.html.

²⁵⁰ CJEU, Case No. C-267/06, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

age and the persons who have parental responsibility over them consent in writing towards this; where the parents or guardians unjustifiably withhold their consent, the Court may authorise its conclusion.²⁵¹ This option is not available under this law, presumably because under the Criminal Code intercourse between men under 17 is still a crime punishable with imprisonment,²⁵² a potential source of discrimination against male homosexuals, as there is no corresponding prohibition for sex between lesbians.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Cyprus, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

The Law on persons with Disability prohibits discrimination in access to all kinds and levels of vocational guidance, vocational training, educational training, reorientation and professional apprenticeship.²⁵³ The Law on Equal Treatment in Employment and Occupation contains an identical provision as regards the remaining four grounds.²⁵⁴

Neither of the aforesaid provisions specifies whether or not such training must be part of an employment relationship or not. In the absence of a provision restricting the scope to training within employment, it may safely be assumed that the law does apply to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments, including life-long learning courses. The Equality Body has interpreted this provision as meaning training outside and independently of an employment relationship: in a legal opinion supplied by the Equality Body in 2006 upon the request of a governmental department, it was established that the anti-discrimination laws apply to access to training even if this does not take place within an employment relationship. The case concerned a trainee air traffic controller who suffered vision impairment as a result of which he would probably never be able to work as an air traffic controller. The Equality Body ruled that he should continue his training nevertheless, because denying him access to training on the ground of his disability would amount to discrimination prohibited by law.²⁵⁵ Other Equality Body decisions found unlawful discrimination in the fixing of an age limit for applying for state scholarships and in the exclusion of persons with disability from admission to the state nursing school. In a 2010 decision the Equality Body stated explicitly that access to an Open University adult life-long learning course amounts to access to vocational training.²⁵⁶

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

²⁵¹ Cyprus, Law on marriage of 2003 (Ο περί γάμου νόμος του 2003) N.104(I)/2003, article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2003_1_104/full.html.

²⁵² Cyprus, Criminal Code (Ποινικός Κώδικας) Cap. 154, article 171. Available at http://www.cylaw.org/nomoi/enop/ind/0_154/section-scc47fc16b-adff-47f7-a516-80893c67659b.html.

²⁵³ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 5(1)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁵⁴ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 4(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²⁵⁵ Cyprus, Equality Authority, Report No. AKI 28/2006, 20 September 2006.

²⁵⁶ Cyprus, Equality Authority, Report No. A.K.I. 74/2009, 22 November 2010.

In Cyprus, national legislation includes membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.²⁵⁷

On 4.11.2005 the Equality Body issued a decision with regard to a clause in the standard employment contract used for the employment of migrant domestic workers, the specimen for which is issued by the Ministry of Labour, which prohibits their involvement in trade unions. The decision found the said clause discriminatory and asked for its deletion from the contract.²⁵⁸ The prohibition of joining trade unions was finally removed from the standard employment contract of foreign domestic workers but the prohibition of engaging in political activity remains.²⁵⁹

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Cyprus, national legislation includes social protection, social security and healthcare as formulated in the Racial Equality Directive.

National law explicitly prohibits discrimination in the field of social protection, social security and healthcare only on the ground of race/ethnic origin.²⁶⁰ Article 3(a) of Law 58(I)/2004 (transposing to a large extent the Employment Equality Directive), as well as the Law on Persons with Disability (N.127(I)/2000) seek to rely on the exception in Article 3(3) of the Employment Equality Directive.

The Equality Body's mandate, however, does cover discriminatory treatment in social protection on the grounds of religion/belief, age, disability and sexual orientation and there have been numerous interventions from the Equality Body in this area. Protocol 12 to the ECHR, which becomes operative through the powers granted to the Equality Body²⁶¹ prohibits discrimination on all grounds protected under the Protocol in social protection, social security and medical care, without any of the exceptions allowed for above.

In a 2005 decision, the Equality Body found that the refusal of public assistance to an asylum-seeker because of his nationality amounted to indirect discrimination on the ground of race or ethnic origin in the area of social protection and social welfare.²⁶² The refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVF) was also held to be discriminatory.²⁶³ As far as health is concerned, the Equality Body has ruled that the refusal to issue a health card (which entitles free treatment at public hospitals) to asylum-seekers due to the fact that they did not have their 'pink

²⁵⁷ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4 (d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5 (1) (d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁵⁸ Cyprus, Commissioner for Administration in its capacity as National Human Rights Independent Authority (2013), Position regarding the status of domestic workers in Cyprus (*Τοποθέτηση Επιτρόπου Διοικήσεως ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων αναφορικά με το καθεστώς των νοικοκυριών εργαζομένων στην Κύπρο*), File No. Α/Δ3/2013, 2 July 2013. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/\\$file/%CE%91%CE%943_2013_02072013.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/$file/%CE%91%CE%943_2013_02072013.doc?OpenElement).

²⁵⁹ The standard contract for the employment of foreign domestic workers is available at [www.moi.gov.cy/moi/CRMD/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/\\$file/%CE%A3%CE%A5%CE%9C%CE%92%CE%9F%CE%9B%CE%91%CE%99%CE%9F.pdf](http://www.moi.gov.cy/moi/CRMD/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/$file/%CE%A3%CE%A5%CE%9C%CE%92%CE%9F%CE%9B%CE%91%CE%99%CE%9F.pdf).

²⁶⁰ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004 Article 4(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁶¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*] Νόμος No. 42(I)/ 2004, Article 6(2)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁶² Cyprus, Equality Authority, Report No. AKI 131/2005 and AKI 8/2005.

²⁶³ Cyprus, Anti-discrimination Authority, Report No. AKP 54/2004.

slip' (residence permit) was discriminatory on the ground of ethnic origin.²⁶⁴ In response, the Ministry of Health sent instructions to public hospitals to issue health cards to asylum seekers even in the absence of pink slips, where there is an emergency.²⁶⁵ Two Equality Body decisions in 2010 established that the fixing of the age limit of 65 for funding radical prostatectomy and the fixing of the age limit of 40 as a condition of eligibility for financial support for artificial insemination were both discriminatory.²⁶⁶ In 2012, the Supreme Court also found that there was unlawful discrimination in a scheme which set an age limit as a precondition for entitlement to grant towards taxes and duties related to the acquisition of a car. Using the general prohibition of discrimination of article 28 of the Constitution (which does not explicitly cover age) the Court found that the applicant's exclusion from the scheme because he was over 70 amounted to unlawful discrimination.²⁶⁷ More recently in 2015 the Court also found that an age criterion in a disability scheme amounted to discrimination and that the justification of poor state of public finances was insufficient to fall within the exceptions foreseen by the Directives.²⁶⁸ The Equality Body has repeatedly issued decisions on access to healthcare by Jehovah's Witnesses, establishing that the failure of the health authorities to respect their religious beliefs in medical treatment amounted to discrimination.²⁶⁹

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Cyprus, national legislation includes social advantages as formulated in the Racial Equality Directive and does not cover any grounds other than racial or ethnic origin.²⁷⁰

In Cyprus, the lack of definition of social advantages does not raise problems. However, the term 'social advantage' was translated by the official translation unit of the European Commission as 'social provisions' and finds its way in the national legislation in this form.

'Social provision' or 'social advantage' is not included in the scope of the Equality Body's mandate, which explicitly covers all areas covered by Article 3 of the Racial Equality Directive save for 'social advantage'. Social advantage may however be implied into the mandate of the Equality Body as this covers "any field whatsoever".²⁷¹ To the extent that 'social advantage' is state provided, the Ombudsman (which is also the national Equality

²⁶⁴ The three cases were the following: A Palestinian granted subsidiary protection, whose wife was refused medical care even though she was at the very last stage of her pregnancy because she did not have in her possession the temporary residence permit (File No A/P 1339/05). The second complaint came from an Indian asylum seeker whose wife was also in the last month of her pregnancy (File No A/P 1363/05). The third case involved a Kurdish couple from Syria with two underage children who applied for asylum. The wife was also in her last stage of pregnancy but was refused access to medical care because she did not have a health card (File No A/P 1487/05).

²⁶⁵ Cyprus, Ministry of Health, Letter Ref. YY11.23.03, 12 December 2005.

²⁶⁶ Equality Body Decision dated 24 November 2010, Ref. AKR 164/2008, AKR 63/2010 and Ref. A.K.R. 126/2009, dated 27 April 2010 respectively.

²⁶⁷ Cyprus, Supreme Court, Mikis Lakatamitis v. The Republic through the Minister of Finance (*Μίκης Λακαταμίτης ν. Υπουργείου Οικονομικών*), No. 1477/2010, 04 September 2012. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-1477-10.htm&qstring=διακρισι*.

²⁶⁸ Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

²⁶⁹ Cyprus, Report of the Anti-discrimination Authority regarding the handling of the Ministry of Health for the provision of suitable health care to a Jehovah's Witness, File No.22/2015, 22 December 2015. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/\\$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement).

²⁷⁰ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνότητα) Καταγωγή*] Νόμος Ν. 59(I)/2004, Article 4(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁷¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

Body) is empowered to deal with it, as part of its mandate to investigate allegations for maladministration in the public sector.

Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus* which established that differential treatment based on the place of residence (i.e. north or south of Cyprus) is unlawful, the approach followed both by the Courts²⁷² and the Equality Body is that persons residing in the north of Cyprus, in other words the Turkish Cypriots, are not entitled to state benefits, even if they work in the south and pay their social insurance contributions to the state.²⁷³ In *Gonul Ertalu & Imge Ertalu v. Ministry of Finance*, the claimant's application for a student grant was rejected because eligibility depends on residence in the south of the country and the claimant was a Turkish Cypriot residing in the north.²⁷⁴ The Court followed the same approach in *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance* where the argument of the claimant that the law was unconstitutional for violating the equality principle was rejected because, in the absence of a positive legislative provision entitling the claimant to a student grant, the claimant will derive no benefit if the law is declared unconstitutional.²⁷⁵

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Cyprus, national legislation includes education as formulated in the Racial Equality Directive.

The national laws transposing the directives explicitly prohibit discrimination in education only in the case of race/ethnic origin.²⁷⁶ The mandate of the Equality Body covers discrimination in inter alia education on the grounds of race or ethnic origin, religion, belief, community, language, colour, special needs (which covers disability), age and sexual orientation.²⁷⁷ The Equality Body has repeatedly applied this provision by finding in favour of complainants who alleged discrimination in education on the grounds of not only racial or ethnic origin but also sexual orientation, disability and religion. In recent years, the Equality Body has devoted special attention to homophobia in schools offering a series of recommendations on systemic approaches of addressing the problem.²⁷⁸

a) Pupils with disabilities

In Cyprus the general approach to education for pupils with disabilities does raise problems. Access to integrated education is stipulated as a basic right for all persons with disability but failure to provide such a right is not termed as discrimination.²⁷⁹

²⁷² Cyprus, Supreme Court, Mehmed and Meral Birinci v. The Republic of Cyprus (Mehmed και Meral Birinci v. Κυπριακής Δημοκρατίας, No. 911/2004, 14 February 2006.

²⁷³ Cyprus, Anti-discrimination Authority, Report No. A.K.R. 27/2005, 19 April 2006, where the Equality Body found that the Finance Ministry's rejection of the complainant's application for a child benefit was justified and that no discrimination existed, because it was not possible for the authorities to carry out the checks necessary to verify whether the information supplied by the applicant is true or not, adding that those Turkish-Cypriots residing in the areas under the control of the government are not subjected to discriminatory treatment in the field of state benefits.

²⁷⁴ Cyprus, Supreme Court, Gonul Ertalu & Imge Ertalu v. Ministry of Finance (*Gonul Ertalu & Imge Ertalu v. Υπουργείου Οικονομικών*) Appeal no. 104/2008, 17 November 2011.

²⁷⁵ Cyprus, Supreme Court, Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance (*Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Υπουργείου Οικονομικών*) Case No. 2411/2006, Appeal No. 73/2009, 02 February 2012.

²⁷⁶ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 4(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁷⁷ The Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(f). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁷⁸ Cyprus, Anti-discrimination Authority, Report No. AKR 63/2011, AKR 131/2011, 20 November 2012.

²⁷⁹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

As from September 2001 the Ministry of Education applies the Training and Education of Children with Special Needs Law of 1999 (N.113(I)/1999) and Regulations of 2001. In the framework of the said law as amended, as well as the Regulations on the Mechanism for the timely diagnosis of children with special needs of 2001 assistance is provided to children with special needs in all fields, particularly the psychological, social, educational, prevocational and vocational training at schools, where this is possible. The state is under an obligation to provide special training and education to persons with special needs from the age of three until completion of their studies. Such special training and education is provided in the following forms:

- In a public school, at an ordinary class, in circumstances of full inclusion with support. In such a case, the school programme and curriculum is adjusted accordingly and a liaison officer is responsible for the child.
- In a public school, at a special unit, in circumstances of partial inclusion. The special units are comfortable and accessible spaces in normal schools. The number of children in each unit is determined taking into consideration the special needs, particularities and smooth operation of the unit.
- In a special school. This is a special private or public school staffed by specialised personnel (psychologists, speech therapists, doctors, physiotherapists etc.) equipped with modern means to accomplish their mission. The educational policy of these schools includes a system of constant contact of these schools with the normal schools of the same area and the holding of common activities. The special schools are housed in the same premises as normal schools unless the Council of Ministers decides otherwise.
- By providing services in other premises. This is an arrangement done in cooperation with the parents and is applicable to children who for health reasons cannot attend any other school.²⁸⁰

Children with disabilities, physical and intellectual, are as a matter of general policy placed in integrated schools, where necessary with an escort, unless their condition is such that requires that they be placed in a special school. The decision as to whether a pupil with a disability will be placed in one of the special schools is made by a district public committee,²⁸¹ comprising of civil servants from a variety of disciplines and departments. The procedure followed by the aforesaid committee is, first, the appointment of a first instance multi-discipline group of experts from the public or the private sector who will evaluate the pupil's need for special education or special support within mainstream education. For the purposes of this evaluation, the group is furnished with medical reports from the Ministry of Health, the history of the pupil and any information which the parents may wish to supply.

Each member of the group will then deliver a report on the pupil setting out the tools and methodology used for the evaluation as well as their findings as to the nature and extend of needed support, in case they consider that such is necessary.²⁸² The experts' reports are considered by the district committee who will, following consultation with the parents, make the decision as to whether special schooling is necessary for the pupil in question or not. The author was unofficially informed by the national organisation for the blind that the committee will usually take the following considerations into account when making their decision: the wish of the parents, the assessment of the teachers at the school which the pupil in question is attending, the existence of any learning difficulties or multiple disabilities, or in the case of visual disability the desire of the pupil to learn Braille, which is not offered at mainstream schools. None of these considerations constitute an absolute criterion and each case is looked upon separately. As a matter of state policy, children with

²⁸⁰ http://www.moec.gov.cy/eidiki_ekpaidefsi/eidiki_agogi_ekpaidefsi.html.

²⁸¹ Set up by Regulations N. 186/2001 issued by the House of Parliament by virtue of the Law on Education of Children with Special Needs N. 113(I)/1999 and 69(I)/2001.

²⁸² Section 9 of Regulations N. 186/2001.

disabilities cannot be denied access to education on the ground that they are unable to learn.

Integrated education has been the focus of both the Ombudsman and the Child Commissioner²⁸³ in recent years, who have repeatedly criticised the inadequate structures and processes of schools to receive and support children with disabilities, urging the authorities to improve the training of teachers, to increase awareness and enhance coordination amongst professionals, to establish a credible recording mechanism²⁸⁴ and to create a more effective structure for diagnosis and placement of children in the schools which better address their needs. The fragmentation in support services for both children with disabilities and their parents has in recent years led to a trend towards special education, where the provision of support services is free and more adequate. The economic crisis, the budget cuts and staff shortages at schools are impeding any efforts to improve inclusive education.²⁸⁵

b) Trends and patterns regarding Roma pupils

Roma segregation in schools in Cyprus appears to be an unintended consequence of the state housing policy and in part reflecting discriminatory attitudes, the 'cultural capital' and socio-economic and family conditions of the Roma in Cyprus. The Roma children continue to be treated as pupils with special language requirements, in spite of the fact that Cyprus has ratified a number of international conventions on human rights²⁸⁶ as well as on specific rights in the field of education.²⁸⁷

The only complaint ever submitted to the Equality Body regarding the situation of the Roma was filed on 31 January 2008. The resulting investigation by the Equality Body revealed that although the Cypriot government recognised the Roma as a minority within the meaning of the Framework Convention on National Minorities (CNM), the Ministry of Education does not consider the Roma as a separate ethnic group but as belonging to the Turkish Cypriot community, which is why no measures were taken to enhance their Roma identity and culture.²⁸⁸ Measures for the integration of Romani children are taken in the field of education, albeit targeting all "Turkish-speaking" pupils and not the Roma specifically; there is nothing in the school curriculum on Roma culture or history. These measures consist mainly of Turkish language support teaching, free school uniforms, lunch at school, transport to school etc., in order to encourage school attendance.

Most of the Roma pupils attending public schools today are concentrated in one school, the 18th Primary School in Limassol. According to one study, Greek-Cypriot parents try move their children to other schools when they there is a high number of migrant or non-Greek-

²⁸³ Cyprus, Commissioner for the Rights of the Child, Position regarding training and education of children with disabilities: Result of public consultation, Nicosia, December 2011. Available at www.childcom.org.cy/ccr/ccr.nsf/DMLpapers_gr/DMLpapers_gr?OpenDocument&Start=1&Count=1000&Expand=2.

²⁸⁴ For a critique on the absence of a single registry of all children with disabilities see Playbell S (2010), Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities, National Report of Cyprus, December 2010, available at http://inclusion-europe.org/images/stories/documents/Project_CRC/Results/National_Reports/Cyprus_EN.pdf.

²⁸⁵ Demetriou C. (2015), 'Country Report on Cyprus for the Study on Member States policies for children with disabilities, project led by Milieu, commissioned by the European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and constitutional affairs, Civil Liberties, Justice and Home Affairs. Available at <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>.

²⁸⁶ Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Also Cyprus ratified the European Convention against Torture and Inhuman or Degrading Treatment or Punishment, together with Protocols No. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).

²⁸⁷ The Convention against Discrimination in Education (ratified by Law 18/1970).

²⁸⁸ Report ref. AKR 18/2008 dated 27 September 2011.

Cypriot pupils in their school;²⁸⁹ if they cannot succeed to move them away, they instruct them to avoid contact with Roma children.²⁹⁰ Many Greek-Cypriot children do in fact demonstrate racial prejudice towards the Roma children, whilst educationalists believe that they are incapable of integrating.²⁹¹ Research with Greek-Cypriot teachers illustrates that many teachers would openly admit being racist.²⁹² Another study²⁹³ which reflects on the experiences gained from a training project, report that Roma children tend to be marginalized in school, despite official policies of non-segregation and the introduction of supportive measures.

The Third ECRI Report on Cyprus noted that "...the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of the Roma by the local communities."²⁹⁴ In 2014, ECRI issued an interim report on Cyprus²⁹⁵ in an effort to follow up on the progress made as regards the implementation of its recommendations under its Fourth Report on Cyprus. The interim report focuses on a specific Cypriot public school, the 18th Primary School in Limassol, whose student population is largely made up of Turkish speakers, many of Roma origin. Back in 2011, ECRI had suggested that the authorities assign Turkish-speaking teachers to each class and Turkish-speaking classroom assistants to work alongside and assist the Greek-speaking teachers; employ specialist Greek language teachers; and open the school in the afternoons as an "all day school" to permit children who need special support to benefit from extra classes. In response, the authorities informed ECRI that additional support to pupils had been provided and that the number of pupils per class is small (between eight and 19) while the average class size of schools is 25, allowing teachers to cater for the individual needs of pupils more effectively. The system of the optional all-day school was established, offering afternoon tutoring including support language classes, mathematics and computers, as well as a wide range of recreational activities such as physical education, cooking and housekeeping, music, art, theatre, foreign languages and journalism. Teachers receive mandatory in-service training, including teaching Greek as a second language and crisis management. Breakfast, lunch and a snack are provided free of charge to pupils whose families qualify under the new income-related criteria. A physical education teacher was employed by the school to offer classes to Roma pupils four times a week and books for teaching Turkish were acquired. In addition, the school continues to employ an interpreter to help staff communicate better with the parents of Turkish Cypriot pupils. ECRI noted that, in spite of the improvements,

²⁸⁹ Their research is based on an empirical study of one primary school in Limassol with a high concentration of non-indigenous pupils. To quote the research: "the head teacher reported that the observed school used to be: a high profile school and everyone in the area considered it to have high standards where children could acquire the necessary academic skills. More recently, due to the increasing number of registrations from non-indigenous pupils, many Greek Cypriot parents have stopped sending their children to this school." See C. Panayiotopoulos and M. Nicolaidou (2007), "At a crossroads of civilizations: multicultural educational provision in Cyprus through the lens of a case study", *European Journal of Intercultural studies*, Volume 18 , Issue 1, March 2007, pages p. 69.

²⁹⁰ N. Trimikliniotis (2004) 'Institutional Discrimination in Cyprus', Work Package 4, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophob, EU Fifth Framework Programme 2002-2005.

²⁹¹ N. Trimikliniotis (2003) 'Discriminated Voices - Cyprus Report', Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophob, EU Fifth Framework Programme 2002-2005; S. Spyrou. (2004) *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS (February-March 2004); A. Keskenidou. and M. Tsakiri (2003) *Η ετερότητα του πολιτισμικού κεφαλαίου των Αθιγγάνων ως πλαίσιο συμμετοχής στην εκπαίδευση*, University of Cyprus.

²⁹² Zembylas, M. (2010) "Greek-Cypriot teachers' constructions of Turkish-speaking children's identities: critical race theory and education in a conflict-ridden society", *Ethnic and Racial Studies*.

²⁹³ See Loizos Symeou, Yiasemina Karagiorgi, Eleni Roussounidou and Chrystalla Kaloyirou Symeou, L., Karagiorgi, Y., Roussounidou, E., & Kaloyirou, C. (2009) "Roma and their education in Cyprus: reflections on INSETRom teacher training for Roma inclusion", *Intercultural Education*, 20(6), 511-521. Available at <http://www.tandfonline.com/doi/abs/10.1080/14675980903448551>.

²⁹⁴ ECRI (2011) *Report on Cyprus*, published on 31 May 2011, Fourth Monitoring Cycle. Available at: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf.

²⁹⁵ ECRI (2014) *Conclusions on the implementation of the recommendations in respect of Cyprus subject to interim follow-up*, adopted on 19 March 2014. Available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-IFU-IV-2014-021-ENG.pdf>.

there continue to be inadequacies in the teaching staff employed at the school, as there are shortages in Turkish-speaking teachers and assistants and in specialist Greek language teachers.

The 2015 report on Cyprus by the Advisory Committee on the Framework Convention on National Minorities expressed concern over a number of issues regarding the situation of the Roma in education including:²⁹⁶

- The absence of structured dialogue with Roma representatives and the absence of any comprehensive efforts on behalf of the authorities to systematically obtain more information on their specific background and the particular problems facing Roma children in education. The report refers to a deterioration in the general climate of solidarity and respect for diversity in society as a result of the economic crisis, adding that the efforts by the authorities to promote multi-cultural education remain insufficient.
- Reports of incidents of racial prejudice against Roma in schools and of Greek parents removing their children from certain schools perceived as having 'too many' non-Greek Cypriot students.
- Equal access to education and equal opportunities in the education system remain elusive for Roma children, as several of the challenges documented in older studies, such as irregular school attendance, early drop-outs, overall low academic achievement and small numbers of students continuing to secondary school, remained.
- No efforts have been made to include information on the Roma and their distinct cultural heritage and history in Cyprus in the school curriculum and education materials.

A report published by the Commissioner for the Rights of the Child at the end of 2013 also recorded a rather problematic situation at the school.²⁹⁷ The report, issued in response to a complaint by the head of the school on behalf of the staff, criticised the head master and school staff for the tone of their letter of complaint which was described as 'insulting for the Roma children, if not racist'. In particular, the Commissioner criticised the headmaster's allegations that Roma children have no inclination towards learning, they constantly create problems due to their antisocial behaviour, their parents have no interest in the education of their children and as a result all the other children are deprived of their basic education. The Commissioner's investigation identified the following problems at the school:

- The school staff is not adequately trained on managing or teaching in multicultural settings.
- The Roma children are not recognised as Roma or as Muslim but merely as Turkish-Cypriots. When they are first enrolled to the school, they have no knowledge of Greek.
- Due to language barriers, the school staff cannot communicate with the parents of the Roma children. The school authorities blame the parents for constantly moving from place to place, resulting in their children having a fragmented school experience. The parents are seen by the school authorities as failing to support their children to take the school seriously.
- The school does not offer adequate teaching support hours for the pupils.

²⁹⁶ Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

²⁹⁷ *Cyprus, Commissioner for the Rights of the Child, Report on the conditions of education at the 18th Primary School Ayios Antonios of Limassol* (Έκθεση της Επιτροπής Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο ΙΗ' Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17. 07.02.79, 28 December 2013, File. Available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/A7E3A4A2C357B76CC2257C9F003E6E6D?Opendocument>.

- The teachers blame the housing and living conditions of the Roma pupils and issues of domestic violence for the Roma children's problems at school.
- The support offered by the Welfare Services and by the Educational Psychology Service of the Ministry of Education is inadequate.
- The Roma children's mother tongue is a mixture between Turkish and the local Roma dialect, Kurbertcha, which is not recognised as a language of instruction.
- The continuous reduction of the school's Greek Cypriot population demonstrates that the school has failed to convince of its potential as a model multicultural setting.

No figures are available as regards the number of Roma children in education, because the Roma are seen by the authorities as inseparable from the Turkish Cypriots and no separate data are maintained for them. In September 2012, 18th Primary School in Limassol enrolled 73 children, of whom 40 were 'Turkish Cypriots', 23 were Greek Cypriots and the rest were from other countries.²⁹⁸

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

In Cyprus, national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive.²⁹⁹ In addition, the law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, provides that any person who supplies goods and services by way of profession and refuses such goods or services to any person solely due to his/her racial or ethnic origin or religion is guilty of a criminal offence.³⁰⁰

3.2.9.1 Distinction between goods and services available publicly or privately

In Cyprus national laws do not distinguish between goods and services available to the public and those only available privately and it can safely be assumed that they apply to both.

Disability

National legislation also provides for equality of treatment of persons with disabilities with the rest of the citizens of the Republic in the provision of goods, facilities or services; differential treatment amounts to discrimination when the reason for such treatment is related to the person's disability and it is not "justified".³⁰¹ No duty is cast on manufacturers to manufacture products which are easily useable by persons with disabilities although there is an obligation on service providers to make adaptations and to offer facilities in order to make premises or services accessible to persons with disabilities.³⁰² The disability law provides that public transport must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs. However, the application of this provision should be regulated with regulations issued by the Council

²⁹⁸ Cyprus, Commissioner for the Rights of the Child, Report on the conditions of education at the 18th Primary School Ayios Antonios of Limassol (Έκθεση της Επιτροπής Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο 18^ο Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17. 07. 02. 79, 28 December 2013, File. Available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/A7E3A4A2C357B76CC2257C9F003E6E6D?OpenDocument>.

²⁹⁹ Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 4(1)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³⁰⁰ Cyprus, Law Ratifying the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, Law No. 11/1992, Article 2A(4).

³⁰¹ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 6(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf, Article 6(1).

³⁰² Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 6(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf, Article 6(2)(d).

of Ministers; no such regulations have as yet been issued and public transport remains to a large extent inaccessible.³⁰³

The disability law also requires that the competent governmental departments must, within a short period of time, proceed to the installation of a suitable system of telephone services which assists persons with a hearing disadvantage or with any other disability of the senses or other speech disability to communicate through the telephone system in a manner proportionate to those persons without such disadvantages. Under the same provision, there must be public means of telecommunication accessible to persons with disabilities, including persons using wheelchairs; and television stations must make arrangements so that at certain hours sign language is available for news broadcasts.³⁰⁴

The law which sets out the mandate of the Equality Body prohibits direct and indirect discrimination on all five grounds foreseen by the directives plus community, language and colour, in all fields covered by the directives including the supply of goods and services.³⁰⁵

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Cyprus, national legislation includes housing discrimination as formulated in the Racial Equality Directive.

Discrimination on the ground of race and ethnic origin in housing is prohibited by article 4(1)(e) of Law 59(I)/2004 (transposing the Racial Equality Directive). The relevant provision refers to “the access to goods and services available to the public and the supply thereof, including housing” as one of the fields of application. Housing discrimination forms part of the mandate of the Equality Body on all five grounds foreseen by the directives plus community, language and colour.³⁰⁶ Also, the wide ambit of the general prohibition of discrimination found in article 28 of the Constitution may be used to pursue a housing discrimination claim on ‘any ground whatsoever’.

Access to one’s own property is not deemed by the Courts to fall within the meaning of the term ‘housing’. A 2007 Supreme Court decision on an application for referral to the CJEU of the question whether article 2 of the Racial Equality Directive could be interpreted in a manner permitting an EU member state to deny the lawful owner of a property the right to sell it was rejected in a decision where the judge stated that the issue at stake (access to property) was deemed to be outside the scope of the directive.³⁰⁷

Some restrictions apply in the field of acquisition of immovable property by non-Cypriots, under the Acquisition of Immovable Property (Aliens) Law, which require non-Cypriots to apply for permit before they can register immovable property in their name.

3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Cyprus there are patterns of housing segregation and discrimination against the Roma.

³⁰³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 7(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁰⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 8(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁰⁵ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(g). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³⁰⁶ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(g). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³⁰⁷ Cyprus, Supreme Court, *Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou* through his attorney Charalambos Zoppos (*Perihan Mustafa Korkut ή Eyiam Perihan v. Απόστολου Γεωργίου δια του πληρεξουσίου αντιπροσώπου του Χαράλαμπου Ζόππου*) No. 303/2006, 17 December 2007. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2007/1-200712-303-06.htm&qstring=Perihan%20and%20Mustafa%20and%20Korkut.

In 1999-2000, a large number of Roma migrated from the Turkish-Cypriot controlled north of Cyprus to the south. Once they crossed over, most of them settled in abandoned and derelict properties within old Turkish quarter of Limassol which the Turkish Cypriots were forced to vacate several decades ago. Many of these houses were without doors or windows, sanitary system, electricity or water supply. By 2003, approximately 360 Roma persons had settled in these properties, without any preceding repair works.

The arrival of the Roma families in the south 1990-2000 was greeted with fear and suspicion by the local communities as well as by the authorities.³⁰⁸ The then Minister of Justice alleged in a public statement that the Roma families may well be 'Turkish spies'³⁰⁹ whilst the then Minister of the Interior assured Greek-Cypriots that the authorities would "ensure that they will be moved to an area that is far away from any place where there are people living."³¹⁰ The Third ECRI Report on Cyprus notes that "...the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of Roma by the local communities."³¹¹ At the beginning of this influx, some Roma families were detained in Central Prison; this practice was discontinued when the Attorney General ruled it as illegal.³¹²

In addition, two more settlements were created in two remote villages within the Paphos district (Makounda and Polis Chrysochoos) where the housing conditions are also appalling.³¹³ In her Annual Report for 2003 the Ombudsman³¹⁴ referred to an investigation carried out by her office into these settlements where most families were residing in temporary structures set up by themselves made of corrugated iron, wood, carton and plastic and without electricity and pointed out that for the purpose of harmonisation with the EU acquis the authorities must compile an action plan using a holistic approach for eliminating ethnic segregation and for respecting the diversity of the Roma.³¹⁵ A subsequent report released by the Ombudsman on 30.06.2003 expressed concerns about the failure of the authorities to implement policies decided in March 2000 that were designed to tackle homelessness and unemployment amongst the Roma.³¹⁶

Over the past few years there has been an effort to regenerate the old Turkish Cypriot quarter of Limassol and some of the old houses were repaired. Some of the houses inhabited by the Roma have been maintained and repaired by the government, but the pace of repairs is slow and the condition of the houses remains substandard and often unfit for human habitation. Also a multi-purpose community centre was set up in the Turkish quarter, which aimed at taking action towards integrating the Roma and promoting their participation within the local community. However, the building remains closed most of the time as no arrangements or budget were allocated for a full timer to be present. In recent

³⁰⁸ Hadjicosta, M. (2001) "Fears over gypsy influx", *The Cyprus Weekly*, 13-19 April 2001 available at *Dom Research Centre* <http://www.domresearchcenter.com/news/cyprus/index.html>.

³⁰⁹ Remarks by former Justice Minister Koshis in Matthews, J. (2001) "More gypsies crossing from north as Koshis warns about spies", *The Cyprus Mail*, 03 April 2001, available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

³¹⁰ Editorial (2001) "Our reaction to Gypsies raises some awkward questions", in *The Cyprus Mail*, 10 April 2001, available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

³¹¹ Third ECRI Report on Cyprus, adopted on 16 December 2005, Strasbourg 16 May 2006, Council of Europe, p. 25.

³¹² Hadjicosta, M. (2001) "Gypsies released from remand cells", *The Cyprus Weekly*, 20-26 April 2001.

³¹³ Although the Interior Ministry claims that it has successfully carried out a housing plan for setting up pre-fabricated units in various communities in Limassol and Paphos with all necessary facilities, hepatitis incidents in 2005 and incidents of visceral leishmaniasis in 2006 in the Roma settlement of Makounda are attributed to poor hygienic conditions in the settlement: Nanos, C. (2005): "Se eksetaseis oloi oi athigganoi" in *Politis* (24 September 2005); Theodoulou, J. (2006): "Authorities play down rare disease in Gypsy camp" in *The Cyprus Mail* (26 May 2006).

³¹⁴ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman, referring to the Ombudsman's activity for the particular year.

³¹⁵ Cyprus, Ombudsman Annual Report 2003, p.37.

³¹⁶ The Cyprus Ombudsman's report was quoted in: Amnesty International, Report on Cyprus covering events from January-December 2004.

years, reports of evictions of Roma families from the old Turkish quarter of Limassol, on the justification that intelligence reports have shown them to own properties in the Turkish-occupied north of the country have coincided with a general increase in property value in the region, as a result of the creation of an ambitious commercial project nearby.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Cyprus national legislation provides an exception for genuine and determining occupational requirements.³¹⁷ In addition, the disability law excludes from its scope activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability lacks, constitute a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures'.³¹⁸

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Cyprus national law provides an exception for employers with an ethos based on religion or belief.³¹⁹

Article 110 of the Cypriot Constitution provides for complete autonomy of the established religious organisations/churches of the two Cypriot communities, the Christian Orthodox church for the Greeks and the Vakf for the Muslim Turks. Under Article 110.1, the "Autocephalous Greek-Orthodox Church of Cyprus" has "the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right". Similarly, under Article 110.2 "the institution of Vakf and the Principles and Laws of, and relating to, Vakfs are recognised by this constitution". From the above Article it is apparent that the extent of the autonomy and right to self-regulation granted to the Church under the Constitution is wider than that allowed by Article 7 of Law 58(I)/2004. Pursuant to a law which came into force in July 2006 amending the Constitution to the effect that EU directives and regulations prevail over national legislation (including the Constitution), it can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as the former transposes an EU directive. However, and in spite of the constitutional amendment, the Courts in Cyprus are not always willing to prioritise laws transposing the *acquis* over national legislation; there are several examples where in the case of conflict the Courts chose to apply the national law rather than the law transposing the *acquis*.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Cyprus there are no specific provisions or case law on conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

However, the autonomy of Greek orthodox religious bodies to manage their affairs may raise issues of compatibility with the directives. Although there is no relevant court decision or Equality body statement, one may safely assume that church organisations: are unlikely to employ non-Orthodox Christians in key positions since they cannot become priests in the orthodox church of Cyprus; will not hire women since they are not allowed to become priests; and will not hire homosexuals since homosexuality continues to be considered by

³¹⁷ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³¹⁸ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3A(1)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³¹⁹ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 7. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

the church as a sin. In practice, organisations with an ethos based on religion, such as the Bishopricks, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the fields owned by the Bishopricks.³²⁰

Under article 7 of Law N. 58(I)/2004, "in the case of occupational activities within churches and other public or private organisations 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 where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos". This exception does not cover sexual orientation and the scope of this Law does not cover gender. Therefore, any difference in treatment at the workplace on the ground of gender or sexual orientation is unlawful. In the case of religion, difference in treatment is lawful if the test laid down in article 7 of Law 58(I)/2004 is satisfied. There have not been any cases in court or examined by the Equality Body as regards the clash between religion and sexual orientation, however the Orthodox Church repeatedly expressed its opposition to the civil cohabitation law, which were not taken on board by the legislators.

– Religious institutions affecting employment in state funded entities

In Cyprus religious institutions are not officially permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State.

There is however public discourse on church intervention particularly at schools and criticisms against the church for trying to interfere with selection of candidates for a job placement and with the hiring process either by using its influence or by financing positions at the University of Cyprus in order to be filled by a person of their choice.

Given that by far the most powerful of religious institutions in Cyprus is the Greek-orthodox church, and the dominant community in Cyprus is the Greek Cypriot, whose members are mostly of Greek orthodox religion, the issue of conflict or contestation does not often arise; the intervention of the Greek orthodox church, where such intervention takes place, is rather intended to promote a particular person for a specific job for reasons which are not exclusively of a religious nature, given that the Cypriot church operates businesses of significant capital such as banks and hotels.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Cyprus national legislation provides an exception for the armed forces in relation to age or disability discrimination. The disability 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.³²¹ The same exception appears as a reservation by the Republic of Cyprus in the ratification of the U.N. Convention on the Rights of Persons with Disabilities, ratified in 2011.

Law 58(I)/2004 transposing the Employment Equality Directive provides that the prohibition of discrimination on the ground of age shall 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.³²²

³²⁰ Interview with Petros Lazarou, secretary of the Morphou Bishopric, 16 January 2005.

³²¹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(1)(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³²² Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

A law which came into force in late 2009 introducing a quota system in favour of persons with disability in the wider public sector excludes from its scope those sections of the public service where “all physical, mental or intellectual restrictions must necessarily be absent”, which are the army, the police, the fire department and the prisons.³²³

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Cyprus the national law transposing the equality Directives includes the Directives' exceptions relating to difference of treatment based on nationality.³²⁴

However, nationality is explicitly mentioned as a protected ground in the law ratifying Protocol No. 12 to the ECHR, article 1 of which provides for freedom from discrimination on the grounds of, inter alia, national or social origin, association with a national minority birth or other status.³²⁵ A similar provision is also to be found in the law setting up the Equality Body which bestows the Equality Body with the task of promoting equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin and of protecting individuals from discrimination by public as well as by private bodies on the grounds provided in the law, which include nationality.³²⁶

On 16 January 2007 a complaint was submitted to the Equality Body alleging that the law on the acquisition of citizenship by descent is discriminatory. The said law provides that children born to parents, one of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus even if the other parent holds or would have been entitled to Cypriot citizenship; that these children can become citizens only following a decision of the Council of Ministers.³²⁷ This provision is intended to vest the Council of Ministers with the power to decide whether or not to grant nationality to children born to a Turkish Cypriot parent and a Turkish parent, where the latter is deemed to fall within the category of “Turkish settlers”. The complaint alleged that the said provision was discriminatory contrary to the Constitution and international obligations of the Republic, as the rendering of a child's nationality conditional on the status of ‘legality’ or ‘illegality’ of the parents, or even worse of one of the two parents, not only violates the rights of the child, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect. Due to the lack of transparency in these procedures, it is not possible to assess the impact or to monitor implementation of this law. The Equality Body's decision recognised that the examination of applications under the said provision are often unnecessarily delayed but given that the Council of Minister's decision is governmental policy, it cannot intervene any further. The allegation for

³²³ Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009. Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomo/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

³²⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(3). Available at www.cylaw.org/nomo/arith/2000_1_127.pdf; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(1). Available at www.cylaw.org/nomo/enop/non-ind/2004_1_58/full.html; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 4(2). Available at www.cylaw.org/nomo/enop/non-ind/2004_1_59/full.html.

³²⁵ Cyprus, Law ratifying Protocol 12 to the European Convention on Human Rights N. 13(III)/2002, 19 April 2002.

³²⁶ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at www.cylaw.org/nomo/enop/non-ind/2004_1_42/full.html.

³²⁷ Art. 109 Population-data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.

discrimination was not examined, as the report accepted that children may legitimately be discriminated against when one of the two parents entered Cyprus under the status of the "Turkish settler".³²⁸

The Third ECRI Report on Cyprus³²⁹ notes that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate' noting that the relevant provisions of the nationality law are contrary to art. 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign, and contrary to the general prohibition of discrimination in article 1 of Protocol 12 to the ECHR.

In 2011 the Equality Body dealt with several complaints from Turkish Cypriots regarding the granting of Cypriot nationality to their children. Although this report makes extensive reference to ECRI's position on the matter, the Equality Body does not entirely adopt ECRI's position that discrimination exists. Instead, the Equality Body adopted the governmental position that the current policy is necessary in order to address Turkey's policy of demographic change, but urged the authorities to speed up the processing of applications and to promptly notify failed applicants in order to avoid claims for maladministration and discrimination.³³⁰

Over the years, the Equality Body has issued a number of decisions applying the two Equality Directives to Union citizens.³³¹ Indeed, the interpretation given by the Equality Body to the Directives is that their scope does not exclude Union citizens.³³²

b) Relationship between nationality and 'race or ethnic origin'

In its decisions, the Equality Body has made use of its extended mandate and considered nationality discrimination as prohibited by international laws; in some occasions nationality and ethnic origin has been used interchangeably, in the sense that whilst the case at stake was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives. The interaction between nationality and race/ethnic origin is nowhere more apparent than in the case of the Turkish Cypriots who, although Cypriot citizens under the Constitution, appear to have an 'inferior' form of citizenship due to their ethnicity, as illustrated by the restrictions they face in exercising their voting rights, in the grant of nationality for their children, in accessing their properties in the Republic controlled areas, etc.

An Equality Body decision has established that the exclusion of non-Cypriot EU citizens from a scheme of granting housing allowance amounted to discrimination on the basis of race or ethnic origin as well as of national origin under Protocol 12 to the ECHR.³³³ Similarly, the exclusion of a Greek national from the list of persons eligible to be awarded honorary artistic pensions was found by the Equality Body to be discriminatory.³³⁴ Also, the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin.³³⁵ More recently, the Equality Body found that an employment scheme with a stringent Greek language requirement amounted to a breach of the Law on Combating Racial and Other Forms of

³²⁸ Cyprus, Anti-discrimination Authority, Report No. 10/2007, 24 March 2008.

³²⁹ ECRI (2006), Third Report on Cyprus, Adopted on 16 December 2005, Strasbourg 16 May 2006.

³³⁰ Cyprus, Anti-discrimination Authority, Report on the handling of applications for citizenship by Turkish Cypriots, 30 November 2011.

³³¹ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

³³² Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

³³³ Cyprus, Anti-discrimination Authority, Report Nos. AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

³³⁴ Cyprus, Anti-discrimination Authority, Report No. A.K.P 73/2008, 30 December 2009.

³³⁵ Cyprus, Anti-discrimination Authority, Report No. AKP 75/2005 and AKP 78/2005.

Discrimination³³⁶ in combination with the Law on Equal Treatment in Employment and Occupation,³³⁷ as it resulted in discrimination against EU citizens and third country nationals.

In 2012 the Supreme Court also ruled on nationality discrimination but not from the perspective of the discriminated victim: the case concerned a Cypriot landlord who applied to the Rent Control Court in order to evict his Romanian tenant. The Rent Control Court denied having jurisdiction, because the scope of the Rent Control Act does not include non-Cypriots. The Supreme Court reversed this decision, stating that the reference in the law to Cypriots should be read as including all EU nationals.³³⁸ The exclusion of third country nationals from the scope of the Rent Control Act has been the subject of an investigation from the Equality Body which recommended its revision³³⁹ and has also been criticised by the UN Committee on Eliminating Racial Discrimination.³⁴⁰

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Cyprus it would probably not constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married, as this issue is not explicitly dealt with by any law, although a single person who was subjected to differential treatment on account of his or her marital status could invoke the general anti-discrimination provision of the Cypriot Constitution, whose scope covers 'any ground whatsoever'. There is no academic discussion or jurisprudence on the scope of the meaning of this open-ended provision but it has been repeatedly cited in Court to claim discrimination even in contexts where no particular ground was invoked.

The payment of work-related family benefits by employers is not expressly regulated by law in either the public or the private sector. In order to determine the legality of any provision or non-provision of work-related benefits, recourse must be made to the general anti-discrimination principles contained in the framework legislation. 'Family condition' is included in the prohibited grounds of discrimination in Article 28 of the Constitution which, under the *Yiallourou* case³⁴¹ is applicable per se both in the public and the private sector. Apart from those sectors in which collective agreements are in force, all other benefits provided by employers must be considered as part of the employment contract, the conditions of which may legitimately vary from employee to employee. In practice, both in the private as well as in the public sector, free or subsidised medical care schemes are commonly made available to employees' spouses. This may result in unfavourable

³³⁶ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³³⁷ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³³⁸ Cyprus, Supreme Court, *Diogenis Christophorou Ltd v. Giosa Victoria Mikaela* (*Διογένης Χριστοφόρου ν. Γiosa Victoria Mikaela*), No. 161/2009, 05 June 2012.

³³⁹ Report of the Anti-discrimination Authority regarding discrimination on the ground of ethnic origin in the Rent Control Law, dated 30 January 2012, Ref. AKR 226/2008, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/\\$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement).

³⁴⁰ U.N. Committee on the Elimination of Racial Discrimination (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus*, adopted by the Committee at its eighty-third session (12-30 August 2013), published on 23 September 2013 (CERD/C/CYP/CO/17-22), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2fCYP%2FCO%2f17-22&Lang=en.

³⁴¹ Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (*Τάκη Γιάλλουρου ν Ευγένιου Νικολάου*) No. 9331, 08 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

treatment of the unmarried employees but there is no record of such practices to lead to any conclusions as to unmarried spouses are in fact excluded and to what extent; furthermore, the granting of benefits to married couples only, amounts to indirect discrimination on the grounds of sexual orientation, given that same sex couples are unable to marry in Cyprus. The new law on civil unions³⁴² does not specifically cover work-related benefits, presumably because there is no legislation regulating these for opposite-sex couples either. However, the new law in combination with the principle established by the CJEU in *Maruko*,³⁴³ which precludes legislation depriving the surviving partner from a survivor's benefit equivalent to that granted to a surviving spouse, may presumably be used in order to afford same sex partners who have registered their cohabitation in accordance with the new law on civil unions, the same benefits as regards work related benefits with those accruing to married couples.

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) Regulations of 1987 to 1994 sets the family condition of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base. A decision of the Equality Body regarding this provision found that the differential treatment of unmarried employees vis-à-vis married employees without children amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation, in other words it amounts to discrimination on the ground of belief and/or sexual orientation. The Equality Body asked for this regulation to be revised³⁴⁴ but until the date of writing no steps had been taken in that direction.

b) Benefits for employees with opposite-sex partners

In Cyprus there is no law regulating the payment of benefits to employees in the private sector. Generally speaking, benefits are seen as forming part of an employment relationship that may legitimately differ from employee to employee. Under article 28 of the Constitution, a person subjected to differential treatment on any ground whatsoever may bring an action for discrimination and collect damages, subject to producing evidence that the differential treatment was the result of discriminating between two equals, as it is normal and legitimate for employees at different ranks of the hierarchy to receive different benefits. The recently adopted law on civil unions which enables same sex or opposite sex couples to register their relationship does not explicitly cover work-related benefits but it provides impetus for employers to treat these employees equally, compared to the previous regime of unregistered relationships. The issue of benefits to employees increasingly becomes an academic one as Cypriot economy sinks further and further into crisis and austerity becomes a harsh reality for those still in employment, who see benefits and labour rights vanish into an uncertain future.

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Cyprus there are exceptions in relation to disability and health and safety.

³⁴² Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf

³⁴³ CJEU, Case No. C-267/06, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

³⁴⁴ Cyprus, Equality Authority, Report No. A.K.I 11/2004.

The disability law excludes from its scope measures for the protection of “health and the rights and freedoms of others”.³⁴⁵ The same law further provides that the principle of equal treatment does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.³⁴⁶

Law 58(I)/2004 transposing the Employment Equality Directive also excludes from its scope measures provided by national legislation which are necessary for, inter alia, the “protection of health and the rights and freedoms of others”, unless the differential treatment is due to a person’s racial or ethnic origin, in which case it presumably constitutes unlawful discrimination.³⁴⁷

No exceptions are allowed relating to religion or other grounds where issues of dress or personal appearance are concerned. It should be noted, however, that for the moment there are no such issues or debates in Cyprus, as there are hardly any ethnic communities using symbols of religion or culture. Up until recently, the vast majority of Muslims of Cyprus, which are basically the Turkish-Cypriots, the Roma, migrant workers and asylum seekers from the Middle East were either secular or simply not using symbols in their appearance, however there have been increasing NGO reports recently about members of Nicosia’s growing Muslim population being unable to find work as a result of wearing their religious symbols (headscarf, dress etc.).³⁴⁸

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Cyprus national law provides an exception for direct discrimination on age.

a) Justification of direct discrimination on the ground of age

In Cyprus it is possible in specified circumstances, to justify direct discrimination on the ground of age; national law contains exactly the same exception for age as found in Article 6 of the Employment Equality Directive.³⁴⁹ No case has so far been presented before the Cypriot Courts or the Cypriot Equality Body raising the issues examined in Mangold or in Kucukdeveci, nor are there any national laws providing for the conclusion of fixed term contracts once an employee reaches a certain age or for ignoring the period of employment completed by an employee before reaching 25 when calculating the notice period for dismissal.

A study of the relevant cases decided by the Court and by the Equality Body reveals significant differences between the treatments afforded to this issue by the two bodies. Court decisions in recent years have sought to justify differences in retirement ages for employees of different rank or different age, introducing a rather wide spectrum of

³⁴⁵ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁴⁶ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3B(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁴⁷ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(3)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁴⁸ U.S. State Department (Bureau of Democracy, Human Rights, and Labor) Report, *Cyprus: Country Report on Human Rights Practices 2009*, 11 March 2010. Available at www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm.

³⁴⁹ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

exceptions premised upon a doctrine that 'unequal' situations must be treated differently and/or that discrimination must be unreasonable in order to be prohibited.³⁵⁰ By contrast, the Equality Body appears better informed about the relevant provision in the law transposing Directive 2000/78 and about legal developments in the CJEU and will use the test provided in the law (objectively and reasonably justified by a legitimate aim and means must be appropriate and necessary); the Equality Body is more likely to find that there is prohibited age discrimination in differential treatment on the ground of age rather than the Courts.³⁵¹ A Supreme Court decision in late 2014 regarding a claim against reduced benefits for a public employee who chose to retire before reaching the age of 45 may mark a new departure for Court decisions in this area, as the Court found that the legal provision for reduced pension benefits for younger retiring employees was discriminatory and thus unlawful.³⁵² The same provision was also the subject of a CJEU ruling against Cyprus which found that it led to discrimination between different categories of employees.³⁵³

b) Permitted differences of treatment based on age

In Cyprus national laws may permit differences of treatment based on age for activities within the material scope of Directive 2000/78.

Although the exception of Article 6(2) of the Employment Equality Directive is not specifically invoked in national legislation, there are provisions in the law regulating the payment of benefits under pension schemes in the public service, which depend at least partly on age. In particular, the Law Amending the Pensions Laws of 1997-2001 N. 69(I)2005 provides that the lump sum payable to public servants upon retirement is paid upon the attainment of certain ages in combination with the completion of a certain term of service. This provision was the subject of an application to the Supreme Court claiming that it ought to be annulled for non-compliance with the equality principle, which was rejected by the Court on the ground that retirement ages fall outside the scope of the Employment Equality Directive and that the lump sum which the claimant was contesting at stake was related to the duration of his service and not to his contributions.³⁵⁴ Entitlement to other benefits is linked to the term of service but also, in some cases, to the mandatory pensionable age, which is determined by this law. Article 49(2) of the Public Service Laws 1990-1996 provides that the element of age seniority may be taken into consideration as a criterion for selection of the candidate to be promoted, as a last resort where the candidates are otherwise deemed as equal.

Besides this law, there is a long list of laws regulating the payment of benefits under pension schemes to employees in the various governmental and semi-governmental bodies, most of which follow the pattern of the aforesaid law, i.e. benefits become payable upon completion of a certain term of service and/or upon attainment of a certain age and/or upon attainment of pensionable age. A decision of the Equality Body in 2009 found

³⁵⁰ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (*Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*) No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=1497%20w/1%202008.

³⁵¹ Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May .2012; Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 06 April 2012.

³⁵² Cyprus, Supreme Court, *Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General* (*Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

³⁵³ CJEU, C-515/14 (*European Commission v Cyprus*), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

³⁵⁴ Cyprus, Supreme Court, *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic* (*Μιχαλάκης Ραφτόπουλος v. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας*) No. 1223/2007, 22 November 2011, Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007.

that the provision of the Pensions Law providing for fewer benefits for employees under 45 wishing to take early retirement, compared with employees over 45, was in violation of the equality principle, which was later confirmed by the Supreme Court.³⁵⁵ The Equality Body, however, appears willing to accept the criterion of the number of years in service as a determining factor differentiating groups of employees, by recommending the adoption of a condition that pension benefits are payable upon completion of certain years of service irrespective of age, which is also indirectly related to age.³⁵⁶ In 2015 the Supreme Court ruled that, all other things being equal, age seniority is a legitimate criterion in determining promotions in the public service.³⁵⁷

- c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Cyprus national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2).³⁵⁸

In the public sector benefits under pension schemes depend at least partly on age. In the private sector, pension schemes are regulated either by collective agreements (where such exist in the particular sector) or by individual employment contracts, where the conditions of eligibility for benefits are impossible to monitor. It is possible that any collective or individual agreement which discriminates on other grounds will be held unlawful on the basis of article 4(c) of Law 58(I)/2004, transposing article 3.1(c) of the Employment Equality Directive on conditions of employment, subject of course to the exception in article 6(2) of the Directive (transposed by article 8(3) of Law 58(I)/2004).

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Cyprus there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for working persons with dependents in order to ensure their protection. Law 58(I)/2004 transposing the Employment Equality Directive provides that differential treatment in the form of special conditions for access to employment and vocational training, employment and occupation including dismissal and remuneration conditions, for young and old persons and for working persons with dependents, so as to promote their vocational integration or ensure their protection, shall not constitute discrimination.³⁵⁹

However, no such measures or special conditions are actually provided by this law or by any other law or regulation. A 2010 decision of the Equality Body adopted the principle expounded by the CJEU in *Coleman*³⁶⁰ that discrimination against a person with caring

³⁵⁵ Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

³⁵⁶ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009.

³⁵⁷ Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015.

³⁵⁸ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(3). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁵⁹ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(2)(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁶⁰ CJEU Case C-303/06, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mod=e&lst&dir=&occ=first&part=1&cid=150145>.

responsibilities towards a person with disability is discrimination prohibited by law.³⁶¹ This principle has also been recorded in the Code of Conduct for disability discrimination at the workplace issued by the Equality Body in September 2010 which has a binding effect.³⁶² A more recent Equality Body decision found that in order for the principle of discrimination by association to apply, there is no need for the carer to be the parent or the spouse of the person with disability; instead, one needs to look into the facts of each individual case and determine whether the person discriminated is in fact the primary carer of the person with disability.³⁶³

4.7.3 Minimum and maximum age requirements

In Cyprus there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training. The law allows the fixing of minimum age limits, professional experience or seniority and the fixing of maximum limits for access to employment based on the training required for the particular position or the need for a reasonable period of employment prior to retirement, provided the measure is objectively justified by a legitimate aim and the means are necessary and legitimate.³⁶⁴ In addition, the law provides an exception relating to the armed forces, where the principle of non-discrimination on the ground of age is stated to be inapplicable to the extent that the fixing of an age limit is justified by the nature and the duties of the work.³⁶⁵ The law does not specify the age limit applicable in this case, which is determined by the service schemes of the armed forces.

Also, the 2009 law setting quotas in favour of persons with disability in the wider public sector excludes the army, the police, the fire department and the prisons from the ambit of the law.³⁶⁶

In 2008 a Labour tribunal found that the fixing of an upper age limit in a job advertisement by a credit institution was unlawful but awarded the claimant only a small fraction of the compensation sought (€ 1,500 as opposed to her claim of € 555,754).³⁶⁷ Upon appeal,³⁶⁸ the Supreme Court confirmed the trial court's finding on this point, because the claimant would not have been hired anyway since the other candidates were better qualified, based on the principle expounded by the ECJ in the case of *Draehmpaehl*.³⁶⁹ In 2012, the Equality

³⁶¹ Cyprus, Equality Authority, Report No. A.K.I. 82/2009, 25 June 2010.

³⁶² Cyprus, Equality Authority (2010), Code of Conduct for discrimination on the ground of disability in employment and occupation (*Κώδικας Καλής Πρακτικής για τις Διακρίσεις λόγω Αναπηρίας στην Εργασία και την Απασχόληση*). Available at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_diakriseis_logo_anapirias_ergasia_kai_tin_apascholiση.pdf.

³⁶³ Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

³⁶⁴ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(2)(b) and (c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁶⁵ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁶⁶ Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

³⁶⁷ Cyprus, Labour Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνη Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), No. 258/05.

³⁶⁸ Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνη Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

³⁶⁹ Case C-180/95 [1997] ECR I-2195.

Body found that the age limit of 55 for recruitment in the position of a cultural attaché at the House of Cyprus in Athens was unlawful.³⁷⁰

More recently the Court ruled that the maximum age of 65 for claiming benefit under a disability scheme was unlawful³⁷¹ and the Ministry of Health adopted the Equality Body's recommendation to remove the age limit of 65 for eligibility to state sponsorship for robotic prostatectomy.³⁷²

4.7.4 Retirement

a) State pension age

In Cyprus there is a state pension age, at which individuals must begin to collect their state pensions.

If an individual wish to work longer, the pension cannot be deferred.

Contributions to the state social insurance scheme can only be paid until the person reaches 'pensionable age'.³⁷³ In the private sector an individual can collect a pension and still work; this is a matter regulated by the individual employment contract. Public sector employees may not work past their retirement limit.³⁷⁴ However, it is possible for retired public servants to be appointed to another paid public post without losing their state pension. Although a law introduced in 2011 sought to reduce the state pension of public sector employees who take up another paid public position after retirement,³⁷⁵ a Supreme Court decision in 2014 found this law unconstitutional and restored the state pensions for this category of pensioners.³⁷⁶

b) Occupational pension schemes

In Cyprus, there is no normal age when private sector employees can begin to receive payments from occupational pension schemes or from other employer-funded pension arrangements. The private sector has up until now generally considered the age of 65 as retirement age, although this is not mandatory and deviations are not prohibited.

The content of private pension schemes is regulated by private agreements and no generalisations can be made as to the terms customarily used.

³⁷⁰ Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May 2012.

³⁷¹ Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

³⁷² Report of the Anti-discrimination Authority regarding the application of age criteria in sponsoring medical expenditure, File No. A.K.R. 93/2012, 5 June 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/EA83B43532605E83C2257E7B001B6229/\\$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/EA83B43532605E83C2257E7B001B6229/$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement).

³⁷³ Cyprus, Law on social insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, articles 2 and 35, available at http://cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁷⁴ Cyprus, Law on pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, article 9, available at www.cyllaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

³⁷⁵ Cyprus, Law on pensions of state officials (General Principles) [Ο περί συντάξεων κρατικών αξιωματούχων (Γενικές Αρχές) Νόμος] N.88(I)/2011. Available at http://www.cyllaw.org/nomoi/arith/2011_1_88.pdf.

³⁷⁶ Cyprus, Supreme Court, Maria Koutselini-Ioannidou et al v. The Republic of Cyprus, Ref. 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12, 587/12, 7 October 2014. Available at www.cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2014/3-201410-740-11etc_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED*.

If an individual wish to work longer, payments from such occupational pension schemes can be deferred, if this is foreseen in the terms of the employee's pension scheme.

In the private sector, an individual can collect a pension and still work. However, upon reaching retirement age, employees lose their right to compensation for unlawful dismissal.³⁷⁷

Different private pension schemes provide different terms as regards the deferral of payments where a person wishes to work beyond retirement age. There is no law regulating these schemes and no generalisations can be made as regards common practice.

c) State imposed mandatory retirement ages

In Cyprus there is a mandatory retirement age set by law only for public sector employees. Different mandatory retirement ages apply for different employees in the public sector, depending on the profession, the rank and their year of joining the service.³⁷⁸

A number of Supreme Court decisions since 2007³⁷⁹ found that the different retirement age for employees of different ages does not amount to age discrimination.

In the public sector, retirement ages are mandatory and employees may not work past their retirement limit.³⁸⁰ Late retirement is prohibited by law for public employees, semi-governmental organisations employees and employees of public education institutions.

d) Retirement ages imposed by employers

In Cyprus national law does not prohibit the setting of retirement ages (or ages at which the termination of an employment contract is possible) in individual employment contracts or in collective agreements,

There is no statutory retirement age in Cyprus for employees in the private sector. Up until now, the majority of private sector workers retired on their 65th year, which is the pensionable age prescribed by the Social Insurance Law.³⁸¹ A person may choose to defer the payment of his or her pension until he or she reaches the age of 68, in which case the amount of the pension is increased by 0,5% for every month of deferral.³⁸²

e) Employment rights applicable to all workers irrespective of age

The Law on Termination of Employment provides that the right to protection from unfair dismissal is lost upon reaching pensionable age.³⁸³ This effectively means that the employer is free to dismiss an employee or force him/her to retire at any time after he/she has reached pensionable age without having to pay any compensation. In 2007, the

³⁷⁷ Cyprus, Law on termination of employment N. 24/1967, article 4, available at www.cylaw.org/nomoi/enop/ind/1967_1_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html.

³⁷⁸ Cyprus, Law on Pensions (Ο περί Συντάξεως Νόμος) N. 97(I)/1997 as amended, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

³⁷⁹ Cyprus, Supreme Court, Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus (Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας) (joined cases) Case Nos 1795/2006 and 1705/2006, 01 June 2007. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006.

³⁸⁰ Cyprus, Law on pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, article 9, available at www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

³⁸¹ Cyprus, Social Insurance Law (Ο περί κοινωνικών ασφαλίσεων νόμος) N.59(I)/2010, Article 2(1). Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁸² Cyprus, Social Insurance Law (Ο περί κοινωνικών ασφαλίσεων νόμος) N.59(I)/2010, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁸³ Cyprus, Law on termination of employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Article 4. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

Equality Body found the said provision discriminatory and referred it to the Attorney General for revision. However, no measures were taken and the said provision continues to remain in force. Under the current conditions of deep recession and rising youth unemployment, it is unlikely that this provision will be revised now.

f) Compliance of national law with CJEU case law

In Cyprus national legislation is not in line with the CJEU case law on age regarding compulsory retirement.

Regarding the ruling in *Wolf*:³⁸⁴

National legislation does not preclude legislative or other instruments which set a maximum limit for recruitment. Article 8(1) of Law 58(I)/2004 (transposing Directive 2000/78) sets out the general exception of article 6(1) of the directive, that differential treatment is permissible where the aim is legitimate and the means appropriate and necessary. Article 8(2) of Law 58(I)/2004 sets out the examples of the directive as to what may constitute permissible differential treatment. Although the list is not intended to be exhaustive, the focus is clearly on labour market policy and not on the need to have full physical capacity to perform the work. Besides, the Cypriot legislator chose to specify in the law only the armed forces as the profession where the exception applies. Thus, although it is possible to justify an age limit for recruitment for goals which relate to physical capacity and readiness rather than labour market policies, the appropriateness and necessity of the measure does not follow automatically, as it does in the case of labour market policies.

In Cyprus, both the police force and the fire service have a maximum entry age of 28, unless the applicant is a University degree holder in which case the age limit is raised to 40. These particular provisions have not been tested by the Equality Body or the Courts. However, the Equality Body has rejected the age limit of 40 as a criterion for a promotion position in the police force, on the ground that the means to achieve the legitimate aim of physical capacity and readiness of the police force were not appropriate or necessary.³⁸⁵ The Equality Body has also in the past repeatedly rejected the stereotype that younger persons are by definition healthier, fit and capable. Therefore, if these age limits are subjected to the Equality Body's scrutiny, it is possible that they may be deemed not to withstand the test of appropriateness and necessity.

Regarding the ruling in *Andersen*:³⁸⁶

There are no provisions in Cypriot law for a severance pay for employees who have worked for the same employer for many years. Employees who are unfairly dismissed are entitled to a compensation; in the private sector, this right is lost when the employee reaches retirement age (65 years). Employees who are lawfully dismissed are not entitled to any pay; this is up to the discretion of the employer and in practice is used only for highly placed managerial staff (known as 'the golden handshake'). In the public sector, employees may be dismissed either for misconduct (in which case they receive no severance pay) or because of redundancy (in which case the employee is entitled to a redundancy pay from the government calculated by the number of years in service).

³⁸⁴ CJEU, C-229/08 *Colin Wolf v Stadt Frankfurt am Main*, available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-229/08>.

³⁸⁵ Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 06 April 2012.

³⁸⁶ CJEU, Case No. C-499/08, *Ingeniørforeningen i Danmark*, acting on behalf of *Ole Andersen v Region Syddanmark*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78727&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=147363>.

So although it is hard to envisage a situation like that of *Andersen* arising in Cyprus, it may be presumed that at least in the private sector the right to a severance pay may be lost upon reaching retirement age, in the same way that the right to compensation for unfair dismissal is lost. The Equality Body has already found that this provision is contrary to the directive and has asked for its revision but the provision remains in force more than a decade after this recommendation.

Regarding the ruling in *Mangold*:³⁸⁷

There are no national laws or practices for the conclusion of fixed term contracts once an employee reaches a certain age.

Regarding the ruling in *Kücüdevici*:

There are no national laws or practices for ignoring the period of employment completed by an employee before reaching 25 when calculating the notice period for dismissal.

Regarding the ruling in *Palacios de la Villa*:³⁸⁸

Compulsory retirement age is common in Cyprus both in collective agreements as well as in legislation regulating the retirement age in the public service and the wider public service. These measures do not explicitly state what the legitimate aim is that is being served by the retirement age. In those cases, where the Court was called upon to adjudicate on compulsory retirement age, the ruling was always that retirement age in general fell under the exceptions foreseen in the directive and was not subject to the Court's scrutiny.

There is no law in Cyprus to regulate collective agreements; these are based on the principle of free bargaining.

Regarding the ruling in *The Incorporated Trustees of the National Council on Ageing*:³⁸⁹

As stated above, it is common for measures to provide for compulsory retirement without specifying the aim that is served. Clearly, in many of these cases, one may read that the (admittedly legitimate) aim of meeting social policy objectives is present, which can justify derogation from the non-discrimination principle. In other cases, the aim can, in addition to the social policy objectives, be the physical fitness of the service, which is not mentioned in the non-exhaustive list provided in the directive. However, the ruling in this case juxtaposed the social policy objective, which is deemed legitimate, with the personal aims of employers, which is not legitimate. In this context, the physical fitness of a service (such as the police force or the fire service) will fall in the former category, i.e. that of legitimate aims.

Regarding the ruling in *Rosenblatt*:³⁹⁰

³⁸⁷ CJEU Case No. C-144/04, *Werner Mangold v Rüdiger Helm*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=56134&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=147683>.

³⁸⁸ CJEU Case No. C-411/05 *Félix Palacios de la Villa v Cortefiel Servicios SA*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70359&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=148165>.

³⁸⁹ CJEU Case C-388/07, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=77505&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148887>.

³⁹⁰ CJEU Case C-45/09, *Gisela Rosenblatt v Oellerking Gebäudereinigungsges. mbH*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78726&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149095>.

Collective agreements and legislative instruments can provide for compulsory retirement age which may not be expressly, directly or necessarily attributed to labour market policies; instead they may relate more to the physical capacity of the employee to carry out the tasks assigned to him/her. This ruling seems inclined to accept only the former as a legitimate aim, which would render the practice in Cyprus incompatible with this decision.

On 16 February 2013 the Ministerial Cabinet approved a bill granting the right to the Minister of Labour to extend sectoral collective agreements and render them obligatory for the whole sector. The right to extend a collective agreement may be requested from the workers or the employers' unions or from the Ministry of Labour itself and the request will be examined by a Tripartite Committee. The bill endorses the claim of the workers' unions who believe that this regulation will help eliminate competition between workers and enterprises and combat the phenomenon of replacing workers covered by collective agreements with vulnerable workers (mainly from other EU countries) who are forced by their employers to work with inferior working conditions. There is however no provision in the bill as regards protection from discrimination. The Ministerial Cabinet approved the bill just days before the presidential elections which replaced the previous left-wing government with a new right wing government, whose cabinet members mainly originate from the employers' unions. A few weeks after the adoption of this bill, the collapse of the banking system and the haircut of bank deposits brought about the downfall of the economy; therefore, although this bill became law it was never implemented in practice.

Regarding the ruling in *Georgiev*:³⁹¹

There are no measures in Cyprus that allow or provide for fixed term contracts to be concluded after a certain age. Such a measure has perhaps not been considered as necessary because employers in the private sector are in any case free to dismiss employees who reach retirement age without having to compensate them. In spite of this measure having been found by the Equality Body as not complying with the directive, the relevant law has not been modified.

Regarding the ruling in *Fuchs*:³⁹²

In Cyprus the retirement of public prosecutors is governed by the Pensions Law applicable to all civil servants, the provisions of which are in fact similar to the Law on the civil service of the *Land* Hessen in the *Fuchs* case. The new law which came into force on 01.01.2013³⁹³ as part of the austerity package provides for extended compulsory retirement age for all civil servants. In article 3(1) the law states that it aims at the containment of public expenditure. Although under other circumstances this would be assessed as beneficial only for the employer and not in the public interest, at times of deep recession as currently experienced in Cyprus, this must be seen as a legitimate aim. No other aims or considerations are mentioned in the law and in fact the extension of the retirement age can hardly be seen as conducive to encouraging entry of young persons in the labour market.

³⁹¹ CJEU Joined Cases C-250/09 and C-268/09, Vasil Ivanov Georgiev v Tehnicheski universitet - Sofia, filial Plovdiv, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=83844&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=149384>.

³⁹² CJEU, Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10) v Land Hessen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=107924&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149632>.

³⁹³ Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) [*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*] Ν.216(Ι)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html.

Regarding the ruling in *Prigge*:³⁹⁴

Labour traditions in Cyprus regard an earlier retirement age as an advantage, hence the negative reaction from the trade unions when the government proposed extending the retirement age in order to contain public spending. Having said that, it is possible in Cyprus to opt out of a collective agreement and enter a private agreement with the employer, but that is up to the employer to accept or not. In the event that there is a conflict between a national law and a collective agreement, the former prevails. The law fixing the retirement ages of public servants is stated to apply notwithstanding any provision to the contrary anywhere else.³⁹⁵

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Cyprus national law does not permit or prohibit seniority or age to be taken into account in selecting workers for redundancy. The Termination of Employment Law which regulates redundancies does not provide for seniority or age to be taken into account in selecting workers for redundancy.

However, there is extensive case law evidencing that the principle of “first in- last out” is accepted by the Courts and is used as a criterion for determining whether the right worker or workers have been selected for redundancy. In a significant number of cases, there is a collective agreement in force explicitly providing for this principle, which however must be used in conjunction with the ability and efficiency of a particular worker, in other words the provision in the collective agreement states that the person to be made redundant must be the last one appointed, having taken into account significant differences in the ability and efficiency of the work of the workers who are about to be dismissed.³⁹⁶ All other things being equal, however, the Court will apply the principle of “first in-last out”³⁹⁷ although in other instances the Court has ruled that seniority alone cannot prevent the selection of a worker for redundancy.³⁹⁸

b) Age taken into account for redundancy compensation

In Cyprus national law provides for compensation for redundancy. This is not directly affected by the age of the worker.

The general rule of law is that the following criteria are used to determine the amount of compensation payable in the case of redundancy: the number of years of service in the same employer;³⁹⁹ whether the period of employment was before 01 January 1964, as no compensation is payable for work before that date;⁴⁰⁰ whether employment was

³⁹⁴ CJEU Case C-447/09, Reinhard Prigge and Others v Deutsche Lufthansa AG, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=109381&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149820>.

³⁹⁵ Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) [*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*] N.216(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html.

³⁹⁶ Cyprus, Labour Court, Andreas Hadjidemetriou v. 1. Publishing company “To Vima” Ltd, 2. Redundancy Fund (*Ανδρέας Χατζηδημητρίου v. 1. Εκδοτικής Εταιρείας ‘Το Βήμα’, 2. Ταμείο Πλεονάζοντος Προσωπικού*), Case No. 107/85.

³⁹⁷ Cyprus, Labour Court, Chrysostomos Stavrou v. Redundancy Fund (*Χρυσόστομος Σταύρου v. Ταμείο Πλεονάζοντος Προσωπικού*), Case No. 328/92.

³⁹⁸ Charalambous v. Famagusta General Agency Ltd (*Χαραλάμπους v. Famagusta General Agency Ltd*) Case No. 490/95.

³⁹⁹ Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Section 1. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴⁰⁰ Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

continuous;⁴⁰¹ and the amount of weekly salary earned.⁴⁰² It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Termination of Employment Law provides that redundancy does not generate the right to compensation if the worker so dismissed was of retirement age on the date of termination of his/her employment. Also, in accordance with Article 19(2) of the same law, when a worker's employment is terminated within twelve months prior to his/her retirement age, the amount of compensation payable is reduced by one twelfth for every completed month of age during this 12-month period.⁴⁰³

There are a number of cases decided by the Courts where age was used as a criterion in order to assess the worker's application for compensation from the redundancy fund where there was an offer by the employer for an alternative job position.

In the case of a 58-year old stock-keeper who was made redundant but was offered by the same employer an alternative position as a door-to-door salesman, the Courts held that due to his advanced age he was right to reject that offer and was therefore entitled to compensation.⁴⁰⁴ Similarly, a middle aged woman who was offered by her employer an alternative position at another location, which involved thirty minutes' walk from her residence, was held by the Courts as reasonable in rejecting it and was therefore entitled to compensation.⁴⁰⁵ By contrast, a young woman who rejected her employer's offer for an alternative position which involved thirty minutes' walk from her residence to the workplace was held to have acted unreasonably because of her young age and good health and her application for redundancy compensation was rejected.⁴⁰⁶

The same principle is applied where the employer introduces new or more advanced technology and requires the employee to accept training and/or adapt to the new methods: if the employee is young, his/her refusal to adapt to the new technology is held unreasonable and therefore redundancy compensation is not paid, whilst if the employee is old, the Court will afford more understanding to his/her inability or refusal to adapt and redundancy compensation is paid.⁴⁰⁷ It is presumed that the same rule would be applied by the Courts in the case of employees with disabilities, although no such case has been brought before the Courts so far, bearing in mind that in cases of employees with disabilities the employer is obliged to provide 'reasonable accommodation' to enable the employee to adapt to the new technology.

No cases have yet been presented before the Courts seeking to reverse the above rules on the basis of the anti-discrimination laws transposing the EU acquis and it is not clear whether or not these rules would withstand such a scrutiny.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

⁴⁰¹ Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 3. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴⁰² Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 4. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴⁰³ Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Article 19. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴⁰⁴ Cyprus, Labour Court, Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund (*Ανδρέας Χαράλαμπος v. 1. ΖΑΚΟ Λτδ και 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No. 295/96.

⁴⁰⁵ Cyprus, Labour Court, Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund (*Κυριακούλα Δημητρίου v. 1. Σώτου Λοιζίδη και 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No 634/96.

⁴⁰⁶ Cyprus, Labour Court, Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund (*Φρόσια Χατζηγεωργίου v. 1. Lizonic Fashion Center, 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No. 1164/97.

⁴⁰⁷ Cyprus, Labour Court, Fotis Mikellides v. Redundancy Fund (*Φώτης Μικελλίδης v. Ταμείου Πλεονάζοντος Προσωπικού*) Case No 577/90.

In Cyprus national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Law 58(I)/2004 transposing roughly the Employment Equality Directive transposed the provision in Article 2(5) of the Directive verbatim.⁴⁰⁸ The same provision is also to be found in the disability law.⁴⁰⁹ There are no other provisions in Cypriot legislation relying on the exception of Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Cyprus, other exceptions to the prohibition of discrimination (on any ground) provided in national law concern the positive action provisions which are discussed below.

⁴⁰⁸ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 5(3)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁰⁹ Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 3A(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Cyprus positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

Positive action provisions exist in all three laws transposing the two anti-discrimination directives.⁴¹⁰ The provisions render differential treatment lawful under conditions but fall short from creating a mandatory duty to adopt positive action measures.

Law N.59(I)/2004, which more or less transposes the Racial Equality Directive, renders non-discriminatory and therefore lawful any differential treatment or the introduction or maintaining of special measures which, although indirectly appearing as discriminatory, aim at preventing or compensating for disadvantages linked to ethnic or racial origin.⁴¹¹

Along the same lines, Law 58(I)/2004, which more or less transposes the Employment Equality Directive, renders non-discriminatory and therefore lawful any preferential treatment in employment which, although prima facie discriminatory, aims at preventing or compensating for disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation.⁴¹²

The disability law renders non-discriminatory and therefore lawful any preferential treatment in occupation which although appearing prima facie discriminatory, aims at preventing or compensating for disadvantages due to disability. The same law provides that the principle of non-discrimination does not prevent the maintenance or introduction of regulations for the protection of health and safety at work or any measures aimed at promoting the labour market integration of persons with disability.⁴¹³

On 26 September 2002 the Supreme Court of Cyprus declared void and unconstitutional, a set of legal provisions granting priority to employment in the public sector to persons with disabilities⁴¹⁴ on a the basis of a quota system. The Court's reasoning was based on an interpretation of Article 28 of the Constitution that such priority discriminates against other candidates eligible for appointment in the public service. By the end of the following year, the Supreme Court had ruled that Law 87(I)/2004 (granting priority to war-disabled persons) was also unconstitutional, on the ground that it introduced a class of beneficiaries (the war-related disabled, etc.) that is favoured against others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution.⁴¹⁵ A

⁴¹⁰ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴¹¹ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισης μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 6. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴¹² Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴¹³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3B(1) and 3B(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁴¹⁴ Cyprus, Law amending the Public Education Services Laws of 1969 (*Νόμος τροποποιών τους Περί Δημόσιας Εκπαιδευτικής Υπηρεσίας Νόμους του 1969*) N.245/1987. Available at http://www.cylaw.org/nomoi/enop/non-ind/1969_1_10/full.html.

⁴¹⁵ Cyprus, Supreme Court, Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service (*Χαράλαμπος Κιττής κ.α. v. Επιτροπής Δημόσιας Υπηρεσίας*) No. 56/06, 8 December 2006. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2006/3-200612-56-06artemides.htm&qstring=56_w/1_06.

law granting priority in employment to blind telephonists⁴¹⁶ had strangely survived the wave of declaring all positive measures unconstitutional; however in 2009 the Equality Body found this law to be discriminating against persons with other disabilities and has asked for its revision.⁴¹⁷

When the Employment Equality Directive was transposed, the government and the parliament were initially reluctant to introduce quotas in employment for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the CJEU decision in the *Kalanke* case.⁴¹⁸ In response to these concerns, in 2006 the Constitution was amended so as to give priority to EU regulations and directives over all domestic legislation (including the Constitution). However, several Court decisions which followed took little notice of this development and continued to apply the Constitution as if it was the supreme law of the country. The culture of positive action in order to offer opportunities to historically disadvantaged groups had hardly begun to develop, when Cyprus sank into an economic crisis and recruitments in the public service were frozen, as a measure to contain public expenditure.

In 2009 an Equality Body decision has raised again the issue of the compatibility of positive action measures with the equality principle. The decision found that a law introducing quotas in employment for blind telephonists discriminates against persons with other disabilities and has asked for its revision. In February 2011 a new law came into force providing for an annual grant of € 3.675,48 to every family with a blind child. This is unlikely to be contested as incompatible with the equality principle, however, partly because different grants apply for different types of disability and partly, and more importantly, because grants especially as small as these are not seen as paramount as quotas in employment, a key issue for the disability movement.

A law which came into force towards the end of 2009 introduced quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent of the aggregate of employees per department.⁴¹⁹ Before it had the chance of being implemented, the austerity measures adopted in response to the economic crisis have led to the freezing of all new recruitments in the public sector.⁴²⁰ The disability movement has however reported that disabled job applicants who applied for jobs invoking the provisions of this law were met with reluctance from public officials, who openly told them that the law is unconstitutional and will not remain in force for long.⁴²¹ In spite of these predictions, the quotas law was not declared unconstitutional and in 2015, the Court rejected an application from two non-disabled claimants who had sought to challenge the decision to appoint as teachers under the quotas law two persons with disability. The Court rejected the claimants' argument that the quotas were unconstitutional or that they violated the equality principle and disagreed with the claimants' submission that previous Supreme Court judgements had established that laws providing for quotas were unconstitutional.

⁴¹⁶ Cyprus, Law Providing for the Hiring of Trained Blind Telephonists in the Public and the Educational Sector and in Public Bodies (Special Provisions) [*Ο περί Προσλήψεως Εκπαιδευμένων Τυφλών Τηλεφωνητών στη θέση Τηλεφωνητή στη Δημόσια και Εκπαιδευτική Υπηρεσία και στα Νομικά Πρόσωπα Δημοσίου Δικαίου (Ειδικά Διατάξεις) Νόμος*] N. 17/1988. Available at http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/1988_1_17/section-sca3de2252-cd55-40db-ac5c-f65d0c9d60e0.html&qstring=17%20w/1%201988.

⁴¹⁷ Cyprus, Equality Authority, Report No. 2/2009, dated 19 November 2009.

⁴¹⁸ Case No. C-450/93.

⁴¹⁹ Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

⁴²⁰ Law providing for the prohibition of fulfilment of vacant posts in the public and in the wider public sector and in public law legal entities [*Ο Περί της Απαγόρευσης Πλήρωσης Κενών Θέσεων στο Δημόσιο και στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] N. 21(I)/2013, 18 April 2013. Available at http://www.cylaw.org/nomoi/enop/non-ind/2013_1_21/full.html.

⁴²¹ Consultation with the President of KYSOA, the Cypriot Confederation of Disability Organisations.

The Court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. In such cases, the Court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but on the contrary to a practical implementation of, the equality principle; in this case the priority given to persons with disabilities was seen as falling within the boundaries of reasonable differentiation precisely for implementing equality.⁴²²

b) Main positive action measures in place on national level

Social Policy measures

The Department of Social Inclusion of Persons with Disabilities under the Ministry of Labour and Social Insurance offers several schemes for persons with disability. The schemes lay down general conditions of eligibility (e.g. severe kinetic disability) but are subject to approval from a special committee or a medical council, presided over by the Head of the Department for the Social Integration of Persons with Disabilities, that examines each individual application. The main schemes are:

- A scheme of financial assistance in order to acquire technical devices covering 80% of the cost of such equipment, up to a maximum amount which is fixed at different levels from time to time. In exceptional circumstances of persons with very low income, 100% of the cost of the equipment applied for will be covered. The scheme does not cover the cost of prosthetic or orthotic members.⁴²³ This scheme includes a wide range of equipment including closed circuit televisions, special reading screens for persons with visual disability, elevators, assistive equipment for walking and for bathing, ramps, conversion of cars in order to be driven by persons with kinetic disabilities, computers, special alarm clocks, multi-equipment for persons with hearing disability and special communication systems for persons with intellectual disability. Eligibility to this scheme does not depend on the type or degree of the disability; an applicant may apply more than once during the year for different technical or other assistive equipment.⁴²⁴ Equipment that is returned to the Department of Social Integration for Persons with Disabilities under the above scheme may be offered to other persons with disability on loan, subject to approval from a special committee that examines each case on an ad hoc basis. Persons who take up such equipment on loan are also responsible for their maintenance.⁴²⁵
- A scheme of a monthly cash payment of € 316,59 (to be adjusted periodically according to the cost of living) payable to Cypriots and other EU nationals with a severe kinetic disability aged between 12-65, subject to approval from a medical council.⁴²⁶

⁴²² Cyprus, Supreme Court, Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service, Ref. Nos1519/2010 και 1520/10, 3 September 2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

⁴²³ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme of financial assistance for the acquisition of technical means, devices and other assistive equipment to persons with disabilities (Σχέδιο οικονομικής βοήθειας για την παροχή τεχνικών μέσων, οργάνων και άλλων βοηθημάτων στα άτομα με αναπηρίες). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd19_gr/dsipd19_gr?OpenDocument.

⁴²⁴ Letter from Andreas Demosthenous, Department for the Social Integration of Persons with Disabilities, Ministry of Labour, Welfare and Social Insurance, 6 May 2015.

⁴²⁵ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities Scheme for the management/provision of technical means, devices and other assistive equipment to persons with disabilities (Σχέδιο διαχείρισης/παροχής τεχνικών μέσων και άλλων βοηθημάτων στα άτομα με αναπηρίες). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd20_gr/dsipd20_gr?OpenDocument.

⁴²⁶ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a severe kinetic disability grant (Σχέδιο Παροχής Βαριάς

- A monthly mobility allowance which varies according to the type of disability, mainly for students or persons in employment or occupation, to assist with the cost of transport to and from their place of work or education. For persons with severe kinetic problems at their feet, the sum paid is € 51 monthly; for blind persons € 102; for tetraplegic persons € 102 irrespective of whether they are working or studying.⁴²⁷
- Scheme for the payment of a grant in order to acquire a wheelchair for persons with a severe problem in walking. The scheme funds four types of wheelchairs, budgeted between € 700 and € 13,500 depending on the needs of the applicants, as these needs are assessed by their physiotherapist. If a particular wheelchair is necessary the cost of which exceeds the maximum € 13,500, the scheme will pay only 50 % of the cost in excess of the € 13,500.⁴²⁸ A scheme for providing wheelchairs to persons with disabilities on loan is also available.⁴²⁹
- Tetraplegic persons with no movement in their upper and lower limbs are entitled to financial assistance of € 854,30 per month irrespective of income, to assist them with securing services of care and practical help in the home. Persons residing in a governmental institution where the cost of care services is covered by the state budget are excluded from this scheme.⁴³⁰ A scheme of subsidising disability organisations and measures to assist with the labour integration of persons with disability, such as vocational training, supported employment, the provision of financial incentives for the creation and operation of small units for the self-employment of people with disabilities.⁴³¹
- Since 2011 a scheme for the provision of social escorts for adult persons with visual disability is operated by the Pan Cyprian Organisation of the Blind and funded by the Ministry of Labour, Welfare and Social Insurance. The scheme involves the hiring of persons for the purpose of escorting blind and blind/deaf persons to various public services (governmental and semi-governmental departments) and other venues such as banks, the post office, hospitals, law offices, shopping, conferences, cultural etc. to assist them in the carrying out of personal tasks for which vision is absolutely necessary. Escorts will also read and write the escorted person's personal correspondence, transcribe short texts, letters, articles etc., archive, and copy digital or audio texts or enlarged texts and will buy books, tape, CDs, memory cards and other audio-visual equipment and stationary. The beneficiaries of this service are persons whose vision in their best eye is lower than 6/60 with corrective lenses if such are used, including persons with additional disability (kinetic, psychosocial, psychological). The escort services are managed by the Pan Cyprian Organisation of the Blind whose officers assess each request separately and will act depending on the seriousness of each case.⁴³²

Κινητικής Αναπηρίας). Available at

www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd10_gr/dsipd10_gr?OpenDocument.

⁴²⁷ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a mobility allowance (*Σχέδιο Παροχής Επιδόματος Διακίνησης*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd14_gr/dsipd14_gr?OpenDocument.

⁴²⁸ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a grant to acquire a wheelchair (*Σχέδιο παροχής οικονομικής βοήθειας για την προμήθεια τροχοκαθισμάτων*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd16_gr/dsipd16_gr?OpenDocument.

⁴²⁹ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, *Scheme for the management of wheelchairs and criteria for providing wheelchairs on loan to persons with kinetic disability* (*Σχέδιο διαχείρισης τροχοκαθισμάτων και κριτήρια παροχής τροχοκαθισμάτων με δανεισμό σε άτομα με κινητική αναπηρία*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd17_gr/dsipd17_gr?OpenDocument.

⁴³⁰ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a grant for the care of tetraplegic persons irrespective of income (*Σχέδιο παροχής επιδόματος φροντίδας σε τετραπληγικά άτομα ανεξαρτήτως εισοδημάτων*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd11_gr/dsipd11_gr?OpenDocument.

⁴³¹ For more details, see www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/All/22639CC7EC3343F9C2257A7C002D273F?OpenDocument&highlight=εργοδοτηση%20στηριξη.

⁴³² Source: Interview with Christakis Nikolaides, president of the Pancyprian Organisation of the Blind dated 28 February 2011.

Quotas

- A new law enacted in 2009 introduces quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent of the aggregate of employees per department. The quota applies to first appointment positions (i.e. excluding promotions) at the introductory scale (i.e. low in hierarchy) and is specifically drafted to exclude areas where special provisions in favour of persons with disability are already in place (more specifically the quota in favour of blind telephonists- see below) and sections of the public service where "all physical, mental or intellectual restrictions must necessarily be absent"⁴³³ (the army, the police, the fire department and the prisons). As previously stated, this law is now essentially defunct, since recruitments to the public service are frozen as part of the austerity package intended to contain public spending.
- The Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (L. 17/1988), Article 3, provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators⁴³⁴ are given priority in appointment. The same law also provides that for the appointment of a non-blind person to the post of telephone operator, the Pan Cyprian Organisation for the Blind must give its prior written confirmation that there are no blind telephone operators as candidates for the specific post. Article 3 of the same law also provides that in case there are no blind telephone operators as candidates for the said position, other candidates with disability will be preferred. These provisions have worked fairly well and have significantly contributed to the vocational rehabilitation and labour integration of blind persons, as the job of telephone operator continues to be the job of the majority of the blind persons in Cyprus. This law, which has resulted in the employment about 55 blind persons since its enactment in 1988, applies to telephone operators who have completed training at the School for Telephone Operators of the School of the Blind. It is considered by the Pan Cyprian Organisation of the Blind as a significant positive measure, despite the fact that it refers to a relatively low status type of work that may fall short of utilising the affected persons' full potential. Recent technological developments in telephone services may present a risk for this institution and could mean that training may have to be channelled in other directions.⁴³⁵

Preferential treatment

The following measures are in place in relation to certain groups of persons with disability:

- Exemption from fees for medical purposes in public medical institutions;
- Special parking tickets that secure preferential parking for persons with disability;
- Exemption from certain charges concerning telecommunications and telephone services;
- Preferential treatment is offered by semi-governmental organisations to all persons with disability: the Cyprus Telecommunications Authority offers reduced subscriptions for land lines; the Electricity Authority of Cyprus offers reduced electricity rates.

⁴³³ Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] No. 146(I)/2009. Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-bd194767d5c2.html&qstring=146%28I%29%20w/1%202009.

⁴³⁴ Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. Also, the Pancyprian Organisation for the Blind, a non-governmental organisation, offers further training free of charge.

⁴³⁵ Florentzos, M. (2005) The Legal and Social Position of Persons with Disability in the new Legal order of the Republic of Cyprus as a Member State of the European Union, Nicosia, p.151.

Roma and Minority rights based measures

- There are no positive action measures in place for the Roma community or for any other community, except the provision of free housing in some cases and provisions related to the education of the Turkish-speaking children, consisting mainly of language classes, plus a small subsidy for school uniforms, the provision of meals at school and transport to and from the school. The aforesaid are not provided to this group in their capacity as Roma but in their capacity as 'Turkish speaking' people; no special classes are offered on Roma history and culture.
- A few measures are in place regarding the three constitutionally recognised 'religious groups': the Armenians, the Maronites and the Latins. The public broadcasting service CyBC (Cyprus Broadcasting Corporation) has for several years been airing radio programmes especially prepared for the Maronites, the Armenians and the Latins, albeit in Greek. There are however some measures in place to promote the use of the languages of the religious groups. As from October 2009, lessons in the Armenian language are being offered to the public by the Ministry of Education in evening classes. The most important measure however was the codification of Cypriot Maronite Arabic. On 9-10 November 2007, the Ministry of Interior and the Ministry of Education held a Symposium for the codification of the Cyprus-Maronite Arabic under the auspices of the Law Commissioner. For the first time in 2007 an alphabet was developed by an expert linguist and specialist in Cypriot Maronite Arabic based on the Latin alphabet and taking into account the specificities of the Cypriot Maronite Arabic language. This was launched by the Maronite community in December 2007. Following the codification, some news articles in Cypriot Maronite Arabic now appear in the Maronite periodicals.⁴³⁶

In 2008 a Committee of Experts on Cypriot Maronite Arabic was set up to look into the codification of the Cypriot Maronite Arabic. A Cypriot Maronite Arabic revitalisation group was set up, which is composed of the team of experts, representatives of the Cypriot Maronite Arabic-speakers and a representative of the Ministry of Education and Culture who acts as a co-ordinator. In addition, the Council of Ministers has decided to formally set up a team of experts which will be responsible for drafting and implementing an action plan for Cypriot Maronite Arabic.⁴³⁷ Other measures include the repair and maintenance of places of worship, cemeteries and schools, small grants for newspapers and other print media published by Maronites, Armenians and Latins and for the creation and upgrade of their websites, the funding of a monument in Larnaca to commemorate the Armenian Genocide, the funding of a documentary for the Latins of Cyprus, etc.

⁴³⁶ Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus, 23 September 2009.

⁴³⁷ The Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus of 23 September 2009 regrets the fact that the team of experts works without remuneration and the measures for the promotion of the newly codified language have been only partially funded by the government. The report pointed out that for the action plan to be implemented and the work of the team of experts and the revitalisation group to be carried out effectively in the long-run, more financial resources need to be allocated.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Cyprus the following three procedures exist for enforcing the principle of equal treatment:

The Equality Body: Via the 'extra-judicial' process before the Equality Body whereby individuals and organisations may submit complaints which the Equality Body has a duty to investigate and issue decisions or recommendations.⁴³⁸ Complaints may be submitted by natural or legal persons alleging discrimination on any of the prohibited grounds (EU directives, Protocol 12 to the ECHR, the Cyprus Constitution) in any of the fields within the scope of the laws. The Equality Body is empowered to issue binding decisions and/or make recommendations and impose small fines. The Equality Body also has a duty to monitor the enforcement of the orders it issues,⁴³⁹ which are published in the Official Gazette.⁴⁴⁰ The Equality Body is further empowered to impose fines for failure to comply with its recommendations,⁴⁴¹ which are however so low that they can hardly be seen as a deterrent. For this reason, it nearly always chooses to mediate or issue recommendations and has never so far imposed a fine, apart from once in a gender discrimination case, concerning a temporary worker who was dismissed from the public service whilst pregnant.⁴⁴² The decisions of the Equality Body may only be challenged in Court by way of judicial review of administrative action at the Supreme Court under article 146 of the Cyprus Constitution.⁴⁴³ If after investigation the Equality Body finds that a certain law or regulation contravenes the anti-discrimination laws, the Equality Body will refer the discriminatory law or regulation to the Attorney General in order to draft an amendment. This procedure does not always bear fruit.

Whilst the Equality Body's powers and mandate are exactly the same for claims against the public and the private sector, it receives very few complaints against the private sector.

⁴³⁸ S Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 9G. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴³⁹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 24(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁴⁰ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁴¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 26(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html. The Equality Body may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendations and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

⁴⁴² Cyprus, Report of the Equality Authority regarding a complaint for the dismissal of a pregnant temporary employee in the public sector (*Εκθεση της Αρχής Ισότητας αναφορικά με την καταγγελία για την απόλυση εγγύου έκτατης υπαλλήλου από τη δημόσια υπηρεσία*), 17 August 2007, Ref. A.K.I. 4/07. Reported in the Annual Report of the Equality Authority for 2007, p.57, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

⁴⁴³ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 23. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

This is attributed by the officers of the Equality Body to the fact that the public is largely unaware of the existence and the powers of the Equality Body, often confusing it with the institution of the Ombudsman (whose competencies are restricted to the public sector), which has so far overshadowed the Equality Body.

There are no time bars or other restrictions in applying to the Equality Body which is a rather flexible, informal and user friendly procedure (although a time bar of 12 months applies for submitting complaints to the Ombudsman).⁴⁴⁴

The judicial process:

- Labour law and issues relating to employment matters are dealt with by the Labour Tribunal.⁴⁴⁵ The Labour Tribunal consists of three persons: a judge, who chairs the hearing and two wing members, who come from the side of the trade unions and the employers' organisations. The procedure in the tribunal is similar to a district court, but less formal. However, the labour tribunal decision of 2008 in the case of *Hadjiavraam*⁴⁴⁶ rejected a claim for discrimination in the hiring procedure and found that it has no jurisdiction to try cases where no employment relationship exists. The legal vacuum which resulted from this decision was remedied in 2009 by an amendment of the law on Equal Treatment and Employment and Occupation (N.58(I)/2004) which transposes the Employment Equality Directive minus the disability component of the directive to the effect that all disputes arising under this law must be deemed as labour disputes. The disability law was not amended in the same manner as a result of which the legal gap created by the *Hadjiavraam* case remains in the case of disability: persons with disability have no competent Court to apply to for employment related claims where no employment relationship exists. Upon appeal, the Supreme Court reversed the finding of the trial court regarding jurisdiction but did not provide a specific finding as to the labour court's jurisdiction as regards the Law on Persons with Disability.⁴⁴⁷
- Criminal law procedures are available in relation to discrimination related offences under the Penal Code. These procedures must be instigated by the police, although there is also in some cases the possibility of conducting a private criminal law case.
- Law 59(I)/2004 (more or less transposing the Racial Equality Directive) provides in article 8(1) for resort to the District Court, for violation of the law's provisions. This is a civil procedure for the adjudication of compensation claims.
- Rights guaranteed by the Constitution, such as the anti-discrimination provision of article 28, are according to legal precedent⁴⁴⁸ actionable in Court per se against, inter alia, individuals.

⁴⁴⁴ Cyprus, Law amending and unifying the Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/91 as amended, Article 5(1)(a). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁴⁵ For any of the employment directive grounds: Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 12(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html. For disability discrimination Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9B(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁴⁴⁶ Cyprus, Labour Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou *Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*, 30 July 2008, Case No. 258/05.

⁴⁴⁷ Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

⁴⁴⁸ Cyprus, Supreme Court, Yiallourou v. Evgenios Nicolaou (*Τάκη Γιάλλουρου ν Ευγένιου Νικολάου*) No. 9331, 08 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

- All administrative acts can be challenged before the Supreme Court, via Article 146 of the Constitution.⁴⁴⁹ Persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,⁴⁵⁰ apply to the Supreme Court to set aside the act complained of. In practice, this is the procedure most often used by complainants, presumably because it is the one that most lawyers are familiar with. The person in whose favour a decision under 146 has been made may institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court.

There is a number of restrictions in place as regards the judicial process: time bars; high fees and legal aid restrictions; security for costs; language barriers including issues relating to accessibility for persons with disabilities (e.g. blind, deaf and other persons); the issue of *locus standi* or legitimate interest; the immunity enjoyed by certain individuals under the Constitution such as elected and appointed state officers, diplomats, lawyers on issues relating to the conduct of cases they handle, etc.; and various country-specific structural problems that in practice undermine the right of access, such as the doctrine of necessity.

The inspectorate process: The Minister of Labour is empowered to appoint Inspectors for the purpose of the better implementation of the law in terms of addressing employment discrimination issues. However, this process is yet to be implemented, as the regulations regarding the powers vested in the Chief inspector and inspectors are yet to be issued. It would seem reasonable to assume that the Labour Relations Department of the Ministry of Labour and Social Insurance would be the department in charge of implementing this provision,⁴⁵¹ given also that this department's mandate includes the setting up of enforcement mechanisms (Inspectors, Research and Evaluation Committee etc.) only in relation to gender equality.⁴⁵² Nevertheless, the department responsible for Laws N. 57(I)/2004 and 58(I)/2004 is the Department of Labour of the Ministry of Labour. The Minister has not yet utilised her powers to appoint inspectors.

The Labour Inspection unit of the Ministry of Labour which deals with issues relating to health and safety at work has no mandate to investigate discrimination.⁴⁵³ A special department within the Ministry of Labour, the Promotion of Equality at the Workplace, has a mandate to address gender discrimination. This body is nevertheless mandated also with the implementation of Law 58(I)/2004 roughly transposing the Employment Equality Directive⁴⁵⁴ and can receive and investigate discrimination complaints on all six grounds minus disability, although no procedure or rules have been set as regards such investigation. Regulations are currently under preparation in order to set this unit into motion to examine discrimination complaints, which are almost identical to the regulations concerning gender discrimination.⁴⁵⁵ The department is however understaffed and under-resourced and in light of the economic crisis the budgetary situation is likely to deteriorate

⁴⁴⁹ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 12(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 9B. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 8(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁵⁰ The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts or omissions.

⁴⁵¹ This derived from (a) the fact it is an employment matter, (b) a reading of the text of law 58(I)/2004 provides that the Minister in charge is the Minister of Labour and Social Insurance [see article 2 of the law]; moreover, the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same Minister, who also responsible for submitting a report on the implementation of the said law.

⁴⁵² Letter from the Ministry of Labour to the national expert, dated 20 January 2006.

⁴⁵³ www.mlsi.gov.cy/mlsi/dli/dliup.nsf/index_en/index_en?OpenDocument.

⁴⁵⁴ Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁵⁵ Consultation with officer from the Department for the Promotion of Equality at the Workplace.

rather than improve. The inspectors currently appointed and working in the field (albeit now only for gender discrimination) are also tasked with other duties and do not have adequate time or resources to properly address the issue of gender discrimination, a problem likely to accentuate when their mandate is extended to cover four additional grounds.

No record is kept by any agency as to how many discrimination cases are brought before the Courts. Only the Equality Body publishes annually data regarding the number of complaints received, the ground complained of, the outcome etc. The ombudsman's office also publishes statistics about complaints received and investigated in its capacity as ombudsman but it is not always clear from the data which of these complaints concern discrimination and which concern maladministration.

The inadequate provision of legal aid,⁴⁵⁶ the low awareness of the anti-discrimination laws among legal and judicial circles and the length of time required for litigation to be completed, renders the use of the judicial process very rare and accessible only to a privileged group amongst the vulnerable, usually civil servants alleging age discrimination in promotion or retirement.

The judicial as well as the inspectorate process lead to binding decisions.

The Equality Body has, by law, the power to issue legally binding decisions. However, in practice the decisions issued are usually mere recommendations because, in the opinion of the Equality Body, better results can be achieved through mediation. Such recommendations, although not legally binding, tend to be complied with at least by individuals. In some cases, the Equality Body is vested with the power to impose fines but this power has not been used yet for cases under the anti-discrimination directives.

b) Barriers and other deterrents faced by litigants seeking redress

Procedures before the Court are complex, costly and lengthy. Although in theory it is possible for litigants to litigate the case themselves and not engage the services of a lawyer, in practice there are very few persons able and willing to represent themselves in Court, given the complexity of the procedure. Migrants and the Roma community have little or no information as regards legal aid and no access to justice, hence the fact that they have never pursued a non-discrimination case in Court. Even for those who can afford a lawyer, one major obstacle is that there is hardly any specialisation in the market on discrimination law, which is a novel field that is not offered by any University and does not attract many clients. In those few cases examined by the Courts, counsel for the claimants hardly ever invoke the anti-discrimination laws, preferring to use the more familiar procedure of judicial review foreseen in the Constitution. The time bars are set out in paragraph (c) above. The Courts buildings are not accessible to persons with disability (visual, kinetic, hearing impairment etc.) nor are any court documents made available in Braille.

Different time bars apply for different types of actions.⁴⁵⁷ For civil offences and contracts, the time bar is six years. The Court has discretion not to apply the statute of limitation for

⁴⁵⁶ The Law on Provision of Legal Aid (2002) N. 165(I)/2002 provides for legal aid only for criminal and civil law cases: subject to a couple of exceptions, administrative recourses are excluded minus in cases concerning deportations or challenging asylum decisions, although a recent ECtHR decision found that "a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention" and that "there is *a priori* no reason why it should not be made available in spheres other than criminal law" (Marangos v. Cyprus, Application no. 12846/05, dated 04 December 2008). The legal aid law extends to human rights violations covered by the Constitution and by a number of international conventions including the Convention for the Elimination of All Forms of Discrimination, but not to the laws transposing the two anti-discrimination Directives.

⁴⁵⁷ Law on the Limitation Period for actionable rights (*Ο περί Παραγραφής Αγωγίμων Δικαιωμάτων Νόμος*) N. 66(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_66/full.html.

two years where the claim is for bodily injury or death and the claimant was late in filing an action as a result of a delay in securing the necessary data or due to incapacity to handle the case. However, the time frame applicable to complainants who want to file a case in court is not suspended during examination of their complaint by the Equality Body, to enable a complainant to first apply to the Equality Body and then, if necessary, to Court to claim compensation without being time-barred. The time limits for lodging an appeal are strictly adhered to: 42 days from the date of the judgement for an appeal from the final determination; 14 for interlocutory injunctions; 75 days for an application to set aside an administrative decision under Article 146 of the Constitution.

The Laws on the Commissioner for Administration which set out the mandate of the Ombudsman state that the complaint must be submitted to the ombudsman's office within twelve months from the date on which the complainant received notice of the activities or omissions for which he/she is applying to the Ombudsman.⁴⁵⁸ There is no express provision on limitations as regards complaints to the Equality Body.

Whether the employment relationship has ended or not at the time of submitting the complaint is immaterial, although the equality body, in the process of investigating a complaint, *will* take into account the surrounding circumstances of each case and whether the complainant has acted reasonably in respect of the timing of lodging his/her complaint.⁴⁵⁹ The Court on the other hand is less likely to take the liberal approach adopted by the equality body and more likely to adopt a conservative approach; this was the case in the decision of the labour tribunal in the case of *Hadjiavraam*, where the labour tribunal rejected the claim because the labour tribunal's mandate covers only employment relations and not access to employment, as was the case with *Hadjiavraam*.⁴⁶⁰ Upon appeal, the Supreme Court reversed the trial court's findings as regards jurisdiction by stating that the trial court failed to attribute due weight to the fact that the court is mentioned in Law 58(I)/2004 as the competent court to try the case. No mention was made to the fact that Law 58(I)/2004 ranks more highly than national laws because it transposes the *acquis*.⁴⁶¹

c) Number of discrimination cases brought to justice

In Cyprus there are no statistics are maintained on the number of cases related to discrimination brought to justice. There are no estimates of the number of discrimination cases brought to justice in any journals or textbooks.

d) Registration of discrimination cases by national courts

In Cyprus discrimination cases are not registered as such by national courts.

Courts maintain registers of cases tried, which are partly accessible to the public through a rather bureaucratic and discretionary procedure which involves writing letters to the Courts Registrar. The Court's archive is not organised by subject but only by reference number or names of the parties, which makes a search impossible unless one already has the coordinates of the judgement. In recent years, two electronic data bases have been compiled, containing all court decisions, which can be searched through key words. One of these databases is subscription-based (www.leginet.com) and the other is completely open (www.cylaw.org).

⁴⁵⁸ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁵⁹ Interview with Elisa Savvides, former Head of Equality Commission at the Ombudsman's office, dated 18 January 2006 and now Ombudsman and head of the Equality Body.

⁴⁶⁰ Cyprus, Labour Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου)* No. 258/05, 30 July 2008.

⁴⁶¹ Cyprus, Appeal Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου)*, Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging on behalf of victims of discrimination (representing them)

In Cyprus organisations are entitled to act on behalf of victims of discrimination under conditions.

Organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a claimant in the proceedings.⁴⁶² Although no special definition of the claimant is provided, to the extent that a person or company or an organisation can act as a claimant, then such claimant may be represented by the organisation with the legitimate interest.

b) Engaging in support of victims of discrimination

In Cyprus organisations are entitled to act in support of victims of discrimination.⁴⁶³

The anti-discrimination laws do not go into any lengths to describe the type of entities that may act on behalf or in support of victims; they merely provide that organisations with a legitimate interest and with the victim's permission can represent a victim of discrimination in proceedings both before the Equality Body and before the Court. It is presumed that such organisations must at the very least be registered, or else they lack legal personality and legal capacity. The presumption is reinforced by the fact that Law 59(I)/2004 (roughly transposing the Racial Equality Directive), article 12, requires that in order for organisations or other legal persons to be able to represent and act on behalf of persons in applying to the courts or the Equality Body, such organisations must (in addition to the victim's permission) have a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. The Equality Body may investigate cases following applications by NGOs, chambers, organisations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.⁴⁶⁴

Article 14 of Law 58(I)/2004 which roughly transposes the Employment Equality Directive provides that workers' organisations or other organisations with a legitimate interest can act on behalf of their members with the members' permission in claiming their right to resort to the Courts or to the Equality Body. Similarly, article 9D of the disability Law N. 127(I)/2007 as amended by Law 57(I)/2004, provides that workers' organisations or other organisations with a legitimate interest can, with their members' permission, exercise on their behalf the right to recourse to the courts or to the Equality Body. No other 'legitimate interest' is required under this law. For actions on the ground of race/ethnic origin, as stated under paragraph (a) above, the law roughly transposing the Racial Equality Directive

⁴⁶² Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁶³ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 004 N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁶⁴ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*] Νόμος. 42(I)/ 2004, Article 34(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

(59(I)/2004), article 12, requires that organisations must have both the victim's permission and a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. No distinction is made between the two types of standing (on behalf/in support). There are no membership or permanency or other requirements in the law.

Associations have made little use of this opportunity so far, with only a handful of NGOs filing complaints to the Equality Body on behalf of victims which they formally or informally represent. The Equality Body follows a flexible approach and does not demand to see permission from the victim or copies of articles of association in order to ensure that the law's requirements are met before investigation begins. No case involving an organisation acting in support of or on behalf of a victim has ever been presented in Court, so it is hard to say how the Court will interpret the term 'organisation' and whether any required features will be attached to the concept. The Equality Body which has examined a number of complaints from organisations does not impose any restrictions and has no requirements; for instance, it has investigated complaints from organisations acting on behalf of a group of persons, which do not have to be named specifically (e.g. 'asylum seekers', 'children with disabilities' etc.). However, this liberal approach is not indicative of the stand which the Courts are likely to take when hearing such a case.

With regard to legitimate interest, again the Equality Body raises no such issues but the Courts do in a substantive way. In three different cases, the Court rejected the applicants' claim for, inter alia, lack of legitimate interest: in two cases the claim concerned an athletic award for disabled athletes which was lower than that of other athletes, where the claimant had not at the time of filing the application become entitled to it;⁴⁶⁵ and in the third case the applicant was deemed to lack a legitimate interest since there was no positive legislative provision entitling her to claim the right of extending a regulation on the age of retirement so as to include her age group.⁴⁶⁶

In general, individuals who have been *personally* aggrieved, have a legitimate interest in Cypriot administrative law to engage in proceedings. Under Article 146(2) of the Constitution: "such recourse may be made by a person whose existing legitimate interest, which he has either as a person, or by virtue of being a member of a community, is adversely and directly affected by such decision or omission". Since 1999 the common law provisions have been codified into a single law that summarises the existing practice (Law 158(I)/99).

The interpretation of Article 146(2) of the Constitution by the Supreme Court has restricted the right of recourse to physical and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives were not considered to have legitimate interest and the term "community" is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution. The original test for an association to possess an "existing legitimate interest" was hard to satisfy, as it required that the specific administrative act '*directly affects*' the whole or part of the membership, whereas if it only affects one member or if there are conflicting interests between members then the association has no legitimate interest.⁴⁶⁷

⁴⁶⁵ Cyprus, Supreme Court, Antonis Aresti v. Cyprus Athletics Organisation (Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού) No. 1406/2008, 10 February 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201002-1406-2008.htm&qstring=1406%20w/1%202008; Cyprus, Supreme Court, Andreas Potamitis et al v. Cyprus Sports Organisation (Ανδρέας Ποταμίτης κ.α. v. Κυπριακού Οργανισμού Αθλητισμού) No. 1377/2008, 30 January 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201201-1377-08.htm&qstring=1377%20w/1%202008.

⁴⁶⁶ Cyprus, Supreme Court, Eleni Kyriakidou v Cyprus Broadcasting Corporation (Ελένη Κυριακίδου v. Ρ.Ι.Κ.) No. 18/2008, 03 December 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF*.

⁴⁶⁷ The Police Association v. The Republic.

c) *Actio popularis*

In Cyprus national law does not explicitly allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent.

In the absence of an express provision it is unlikely that the Courts will accept such an action, given that in the past they did reject claims because the law did not expressly provide for the right sought by the applicant.⁴⁶⁸

The Equality Body does accept and investigate complaints from associations (e.g. the RAXEN National Focal Point, the confederation of disability organisations KYSOA, anti-racist NGOs, the Social Welfare Committee of the Parliament of the Elderly) acting in the public interest on their own behalf without a specific victim to support (e.g. 'Roma pupils' in general or 'female migrant workers' in general, 'persons with disability', 'migrants', 'drivers aged over 70' respectively, etc.). This should however be attributed to the liberal approach followed by the Equality Body rather than an interpretation of the law allowing *actio popularis*.

d) Class action

In Cyprus national law does not explicitly allow organisations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event. The Courts of Justice Law, which regulates the mandate of all courts in Cyprus, regulates the powers of the court to adjudicate claims, award compensation or other remedy, issue orders and recognise rights, whether a remedy is being requested or not.⁴⁶⁹ There has never been a legal precedent on class actions and it is therefore impossible to conclude whether, in the absence of a special legislative provision, such will be accepted by the courts.

The laws transposing the Anti-discrimination directives are silent on the possibility of organisations representing more than one complainants at the same time but do not expressly prohibit this either. Law No. 58(I)/2004 transposing roughly the Employment Equality Directive states, in Article 14, that organisations may, with their members' permission, exercise the right to apply to the Courts or to the Equality Body on behalf of their members. The plural is used when referring to 'members' but it is not clear whether this enables class actions to be taken out by organisations in their members' names. The equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (article 12). The Civil Procedure Rules make provision for joinder of actions but only when these refer to the same subject-matter. In particular, the rules provide that all persons may be joined in a single action as claimants for remedies arising out of the same transaction or series of transactions, whether jointly, severally or in the alternative, unless such joinder would embarrass or delay the trial. Also, where there are numerous persons having the same interest in one cause, one or more of such persons may be authorized by the Court to sue or defend on behalf or for the benefit of all persons so interested; organisations which are unincorporated or operating for profit are excluded.⁴⁷⁰ The Equality Body does accept and investigate complaints from associations acting in the interest of more than one victim.

⁴⁶⁸ In *Eleni Kyriakidou v Cyprus Broadcasting Corporation* (Supreme Court case no. 18/2008, dated 03 December 2010) the Supreme Court found the applicant lacked legitimate interest because there was no express legislative provision giving her the right she was seeking to enforce through the Courts. A summary of the case in English is available at the Legal Network's Cyprus Country Report for 2010.

⁴⁶⁹ Cyprus, Courts of Justice Law (*Ο περί Δικαστηρίων Νόμος*) N. 14/1960, Articles 31-41, available at www.cylaw.org/nomoi/enop/non-ind/1960_1_14/index.html.

⁴⁷⁰ Cyprus, Civil Procedure Rules (*Θεσμοί Πολιτικής Δικονομίας*), Article 9, available at www.cylaw.org/cpr.html.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Cyprus national law permits a shift of the burden of proof from the complainant to the respondent.⁴⁷¹ However, the courts have never so far been faced with a claim for the reversal of the burden of proof and there is no judicial precedent on how this will be applied.

The Equality Body does not reverse the burden of proof; however, since it has the power to carry out its own investigations to establish the facts of a case, the procedure may be said to fall within the exception of Article 8(5) of the Racial Equality Directive and therefore reversal of the burden of proof is not required.

Provisions for shifting the burden of proof to the employer once a prima facie case of dismissal is established can also be found in Cypriot labour law. The Termination of Employment Law 1967, as amended, is phrased in such a way that imposes the burden of proof on the employer, i.e. the employer has to prove that an employee had been dismissed for one of the reasons that permit summary dismissal. If the alleged unreasonableness, resulting in dismissal, is based on discrimination, the burden of proof is on the employer to prove, on the balance of probabilities that s/he had acted reasonably.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Cyprus there are legal measures for protection against victimisation.

Identical provisions against victimisation are to be found in all three laws enacted to transpose the directives.⁴⁷² The victimisation provisions are not restricted to the employment field. The Law on Equal Treatment irrespective of racial or ethnic N.58(I)/2004, which includes protection against victimisation,⁴⁷³ covers the fields of social protection, health care, education, social provision and access to goods and services. The protection against victimisation in the disability law is not restricted to the employment field⁴⁷⁴ and by implication extends to the entire scope of this law. 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. Therefore, any person involved in the procedure in a capacity other than as a complainant (e.g. as a witness or as a lawyer or as a person helping a victim to present a complaint) is also covered by the protection against victimisation.

The Laws on the Commissioner for Administration (Ombudsman) provide a more detailed description of the scope of the protection against victimisation: 'Anyone who refuses to employ, dismisses or threatens to dismiss from work, influences or threatens to influence, frightens or forces any other person or imposes any monetary or other punishment to any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Ombudsman; (ii) has supplied or presented or intends to supply or

⁴⁷¹ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 7. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 11. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁷² Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 9E. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 11. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 10. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁷³ Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 11, available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁷⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9E. Available at www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html.

submit any information or documents to the Ombudsman; (iii) has testified or intends to testify before the Ombudsman, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP300⁴⁷⁵ or to both penalties."⁴⁷⁶

The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 defines victimization as the unfavourable treatment of a person (who may or may not have a disability) owing to the fact that: s/he gave evidence or testified against an employer in judicial or other procedures for investigation of discrimination complaints by persons with disabilities; s/he alleged that some employer is in breach of the law against a person with a disability; s/he encouraged or supported a person with a disability to submit a complaint or bring a legal action for discrimination. It is not necessary for the victim to have actually assisted in the investigation of a complaint against the employer; it is sufficient to prove that the employer treated him/her unfairly believing or suspecting that s/he did so or was intending to do so.⁴⁷⁷ A decision of the Equality Body in 2015 extended the principle of discrimination of a primary carer by association with a person with a disability to situations of victimisation.⁴⁷⁸

The legal framework against victimisation is not being utilised in order to put an end to the practice of the authorities of arresting and deporting migrant female domestic workers who file complaints against their employers.⁴⁷⁹

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

The Equality Body does not have the power to award damages to victims of discrimination.

Strictly speaking, the Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages; however, very few discrimination claims have been tried by the Courts in Cyprus and damages were awarded only to one of these cases,⁴⁸⁰ which does not allow for any conclusions to be drawn with regard to judicial practice. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cypriot Courts tend to be rather low compared to the damages awarded in other countries.

In addition to or in lieu of damages, a victim of discrimination may apply to the Labour Disputes Tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, but this is a remedy rarely sought or used.

⁴⁷⁵ Approximate Euro equivalent: 520 Euros.

⁴⁷⁶ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 11(f). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁷⁷ Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (*Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση*). Available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_qia_diakriseis_logo_anapirias_ergasia.pdf.

⁴⁷⁸ Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

⁴⁷⁹ Cyprus, Ombudsman (2012) 'Arrest and detention of migrant worker for bringing complaint against her employer', Report No. A.P. 588/2012, 05 June 2012.

⁴⁸⁰ Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

Law 42(I)/2004 vests the Equality Body with powers beyond those prescribed by the two EU directives: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit not exceeding 90 days from publication in the official Gazette⁴⁸¹ and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions:

- where the act complained of is pursuant to another law or regulation, in which case the Equality Body advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation;⁴⁸²
- where discrimination did not occur exclusively as a result of violation of the relevant law;
- where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties;
- where the eradication cannot take place without violating contractual obligations of persons of private or public law;
- where the complainant does not wish for an order to be issued; or
- where the situation complained of no longer subsists.⁴⁸³

The Equality Body is further empowered to impose small fines which cannot exceed CYP350 (Euros 598) for discriminatory behaviour, treatment or practice; CYP250 (Euros 427) for racial discrimination in the enjoyment of a right or freedom; CYP350 (Euros 598) for non-compliance with the recommendation within the specified time limit; and CYP50 (Euros 85.44) daily for continuing non-compliance after the deadline set by the Equality Body.⁴⁸⁴ Generally speaking, the fines are very low; they offer little deterrence to potential perpetrators and they never imposed by the Equality Body.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged and to supervise compliance with orders issued against persons found guilty of discrimination.⁴⁸⁵ It is possible for the Equality Body to recommend school desegregation plans or the instigation of disciplinary proceedings against teachers or other persons guilty of discrimination; in practice, however, the Equality Body's recommendations generally do not propose measures as drastic as that and there is a clear tendency towards 'diplomacy' and mediation, evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed.

All orders, fines and recommendations issued or imposed under this Law are subject to annulment⁴⁸⁶ by the Supreme Court of Cyprus upon an appeal lodged by a person with a

⁴⁸¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 28. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸² Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 39(3) and 39(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸³ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 14(2) and 14(3). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸⁴ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 18, 26(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸⁵ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 24(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸⁶ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 23. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

'vested interest'.⁴⁸⁷ There is no requirement for special measures to be adopted in order to ensure that persons with disabilities have access to the Equality Body.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues on its own right where it deems that any particular case that came to its attention may constitute a violation of the law.⁴⁸⁸ The Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. In fact, all cases investigated by the Equality Body until now have led to *recommendations*, as opposed to binding *decisions*. The recommendations have often taken the form of suggesting to the authorities or to the private sector to revise their practices over specific issues. Reports issued by the Equality Body have, for instance, recommended to insurance companies to revise their practice of refusing to insure persons of Pontian Greek origin; to employers to remove the maximum age limit fixed for advertised jobs; to the public nursing school to revise its entry requirements so as not to exclude persons with disabilities; to the immigration authorities to remove from the standard contract of employment of migrant workers a clause prohibiting them from joining trade unions; to insurance companies to revise their policy of not insuring persons over 70 to drive cars or of charging a higher premium for it, etc. The recommendations of the Equality Body tend to be complied with by both the private and the public sector, even though in many cases they come with 3-4 years of delay, in which case compliance is impossible because third party rights were meanwhile created or because compliance would no longer make sense. The immigration authorities are a notable exception to the rule: although many of the recommendations of the Equality Body/Ombudsman are directed against this body, compliance is very rare whilst letters, warnings and notices are ignored, as often noted by the Equality Body.

The findings and reports of the Equality Body must be communicated to the Attorney General who will, in turn advise on the adoption or not of appropriate legislative or administrative measures, taking into account the state's international law obligations and who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision. The findings of the Equality Body are also communicated to the House of the Representatives.

Under Law N.59 (I)/2004 transposing (roughly) the Racial Equality Directive, the competent courts for discrimination cases at first instance are the District Courts.⁴⁸⁹ The same law also provides for the complainant's right to lodge a complaint to the Equality Body.⁴⁹⁰ Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,⁴⁹¹ appeal to the Supreme Court of Cyprus for an order to set aside the administrative decision complained of. This procedure however has a number of disadvantages compared to the laws transposing the directives: it applies only to the public sector, it does not reverse the burden of proof and can have only an annulling effect on the administrative act complained of. Under Law N.58 (I)/2004 transposing the Employment Equality Directive (minus the disability component), the competent court to try discrimination cases at first instance is the Labour Disputes Tribunal.

⁴⁸⁷ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for judicial review of an administrative act.

⁴⁸⁸ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 33. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸⁹ Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 8(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁹⁰ Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁹¹ The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts.

The legal vacuum which had been created in 2008 by the decision in the case of *Hadjiavraam* was remedied in 2009 for all grounds except disability, by an amendment of the law, which now provides that all disputes arising under this law must be deemed as labour disputes.

Under law 59(I)/2004 (transposing the Race Directive minus the employment component) the penalty to be imposed by the Court against a physical person found to be guilty, is a maximum of 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 CYP2000 for physical persons. If the offence has been committed out 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.⁴⁹²

Under law 58(I)/2004 (transposing the Employment Equality Directive) the penalties are identical to those provided for the law transposing the Racial Equality Directive.⁴⁹³ Same applies to procedures and penalties under the disability law.⁴⁹⁴ No such fines have been imposed by the Courts so far.

There are also penal remedies against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent amendments (Law 11(III)/92 and Law 28(III)/99), Cyprus established, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination, 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 provision⁴⁹⁵ 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.

As a result of these amendments, it is no longer necessary that the incitement to racial hatred is intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence, it is no longer necessary that race be the sole ground of discrimination.⁴⁹⁶ The Criminal Code (Cap.154) Article 51A provides that whoever publicly and in any way "procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine."⁴⁹⁷

⁴⁹² Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁹³ Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁹⁴ Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Articles 5(3), 5(4) and 5(5). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁴⁹⁵ Cyprus, Law ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A(4).

⁴⁹⁶ Cyprus, Law ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A (4): 'Any person who supplies goods or services by profession and refuses such supply to another by reason of his racial or ethnic origin or his religion, or who makes such supply subject to a condition relating to the racial or ethnic origin or to the religion of a person is guilty of an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding four hundred pounds or to both such punishments' [about 6700 euro].

⁴⁹⁷ Cyprus, The Criminal Code (Ποινικός Κώδικας) Cap. 154, article 51A. Available at http://www.cylaw.org/nomoi/enop/ind/0_154/section-sc53450b99-ae78-4921-a120-4fdd2ae92654.html.

The law ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems⁴⁹⁸ also creates a number of criminal offences, each of which is punishable with a prison sentence of up to five years and/or a fine of up to CYP20,000 (Euros 34,176.35):

- Article 4 criminalises the dissemination of racist and xenophobic material through a computer system;
- Article 5 criminalises racially and xenophobically motivated threat disseminated through a computer system;
- Article 6 criminalises racist and xenophobically motivated insult;
- Article 7 criminalises the denial, gross minimisation, approval or justification of genocide or crimes against humanity;
- Article 8 criminalises the aiding and abetting of any of the crimes provided for in Articles 4-7 of the law.

There are no distinctions as to sanctions in the private and the public domain, at least in the legislation, nor does the law make any differentiation as to the sanctions within and beyond employment.

Under Law N.134(I)/2011 which transposes the Framework Decision on Combating Hate Crimes through Criminal Law, a person who wilfully and publicly disseminates and publicly incites violence or hatred directed against a group of persons or a member of a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin, in a manner that disturbs public order or which is of a threatening, abusive or insulting character, is guilty of an offence and if convicted is subject to a penalty of imprisonment not exceeding five (5) years or to a fine not exceeding ten thousand euro (€ 10,000) or to both such sentences. Same sanctions apply for other offences created by this law such as the approval or denial or gross downplaying of crimes of genocide, crimes against humanity and war crimes.⁴⁹⁹

b) Ceiling and amount of compensation

In Cyprus there is no ceiling on the maximum amount of compensation that can be awarded, but in general, compensations awarded by Cypriot Courts tend to be very low compared to compensations awarded by other national Courts. With just one Court decision awarding damages in over ten years,⁵⁰⁰ since the directives were transposed, it is not possible to draw conclusions on judicial trends as regards the amounts of compensation awarded.

c) Assessment of the sanctions

The Equality Body is not entitled to award compensation. Since the anti-discrimination directives were transposed, the Court awarded compensation for discrimination in only one case, that of *Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou*. The claimant, whose job application at the respondent bank was declined due to her age,

The fines are up to 1,000 Cyprus Pounds for individuals and 3,000 pounds for legal persons [1,000 Cyprus Pounds amounts to 1,708 Euros; 3,000 Cyprus Pounds amount to 5,126 Euros].

⁴⁹⁸ Cyprus, Law ratifying the Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems N. 26(III)/2004.

⁴⁹⁹ Cyprus, Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law (Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος) N. 134(I)/2011. Available at www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

⁵⁰⁰ Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

was not awarded compensation at first instance, as the Labour Disputes Tribunal claimed lack of jurisdiction. The tribunal nevertheless proceeded to give its reasoning on the merits of the case. On the issue of measurement of compensation, the tribunal found that the sum of 1,500 Euros would be appropriate as this represents three salaries which would have been paid to the applicant had she been hired. In order to arrive at this conclusion, the tribunal relied on the CJEU decision in the Case C-180/95 Draehmpaehl [1997] ECR I-2195 which established that three salaries are sufficient to satisfy the three preconditions which the amount of compensation awarded must satisfy (essential protection, deterrent and proportional to the damage) in those cases where the job candidate would not have been hired even in the absence of age discrimination. Upon appeal, the Supreme Court endorsed the tribunal's measurement of compensation and awarded the appellant the equivalent of three months' salaries amounting to a total of € 1,500 because, as it had established, the applicant would not have been hired to this post even in the absence of the age discrimination in the advert.⁵⁰¹

In the absence of a body of case law on discrimination and awards of damages where discrimination was the operative factor, it is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive. The law does not provide for 'punitive damages' to be paid by the perpetrator to the victim to act as (a) disincentive for offenders and (b) incentive for victims to complain (and in particular as incentive for lawyers to specialise). It is safe to state, however, that the sanctions which the Equality Body is allowed to levy are too low to have any dissuasive effect; the main incentive for compliance with Equality Body decisions remains public image.

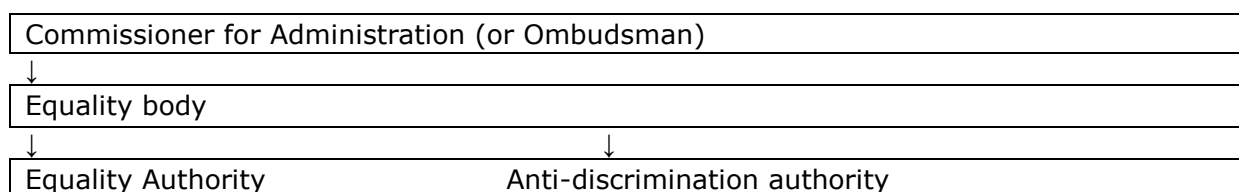
⁵⁰¹ Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

When the equality acquis was transposed in 2004, the legislator appointed the Commissioner for Administration (also referred to as 'the Ombudsman') as the national Equality Body, in line with Article 13 of the Racial Equality Directive. Although the mandate of the Equality Body extends beyond the minimum required by the Racial Equality Directive, it lacks the power to represent victims in Court or otherwise provide independent assistance.⁵⁰²

Two separate departments are set up within the Equality Body: the 'Equality Authority' and the 'Anti-discrimination authority', dealing respectively with employment issues and with fields beyond employment and in practice constitute the national anti-discrimination body according to the Racial Equality Directive. In this report, for ease of reference, both and each of these bodies are referred to as the 'Equality Body'.



- b) Status of the designated body/bodies – general independence

The body primarily mandated with the investigation of discrimination complaints is the Equality Body, afforded by the legislation a wide mandate to combat discrimination, well beyond the minimum required by article 13 of the Racial Equality Directive, on all grounds and in all fields but afforded very limited resources to do so. Currently the same office carries out the following additional functions: Ombudsman, National Human Rights Institute (NHRI), Independent Authority for the Prevention of Torture under the relevant Convention, Independent Mechanism for the monitoring of the implementation of the UN Convention on the rights of persons with disability, Monitoring Body for the implementation of the Return Directive. No additional budget has ever been allocated to this office every time its mandate was extended to include a new function. In its latest report on Cyprus, ECRI expressed concern over the fact that the Equality Body/Ombudsman lacks sufficient human and financial resources, does not enjoy the freedom to appoint its own staff and is not well known to vulnerable groups.⁵⁰³ Due to its serious understaffing problem, which is highlighted in several national and international reports,⁵⁰⁴ discrimination complaints take three or more years to be examined, essentially leaving the complainant without a remedy, as in the meantime third party rights are often created whilst the complainant will be time-barred from seeking redress through the courts. The Equality Body does not have the capacity or mandate to represent victims in court or to otherwise provide assistance to

⁵⁰² Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁰³ ECRI, Fourth Country Report on Cyprus, Strasbourg 31 May 2011. Available at www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf.

⁵⁰⁴ In 2015, the Advisory Committee for the FCNM expressed its deep concern over the «continued lack of adequate resources of the Equality Body [which] raises serious concerns regarding the ability of the institution to effectively and independently perform its important tasks”: Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

victims. Its power to impose fines is so restricted that it exclusively resorts to mediation rather than to issuing binding decisions.

In 2014 the law regulating the Ombudsman's mandate was amended to provide for the powers of the Ombudsman to carry out consultations for the implementation of his or her recommendations and, in the event that the competent authority does not respond or fails to adopt the recommendations within the deadline set for reasons which the Ombudsman finds unjustified, to submit the result of the consultations to the Council of Ministers and the Parliament.⁵⁰⁵ The law further enables the Ombudsman to publicise the refusal or failure of the competent authority to comply with the Ombudsman's recommendations and to bring such refusal or failure to the attention of the minister in charge, who must take measures to ensure the cooperation of the competent authority with the work of the Ombudsman. Under the new law, the refusal of any state officer to co-operate with the Ombudsman when required is a disciplinary offence, whilst the fines and term of imprisonment foreseen for persons failing to cooperate with the Ombudsman or victimising a person who has submitted a complaint or supplied information to the Ombudsman are increased from CY£ 300 to € 5,000 and from six months to one year respectively.⁵⁰⁶

By far the cheapest and most effective procedure is the complaint to the Equality Body. All court actions entail costs and other necessities such as the need to instruct a lawyer if one is to have any chance to succeed against a generally speaking more powerful institution or employer, who are likely to be legally represented. There are also other deterrents in seeking redress in Court, such as strict time limits and complex procedures, the fact that legal procedures are generally slow, the difficulty in securing witnesses willing to testify. Even the procedure before the Labour tribunals, originally designed to be informal and easy and accessible to ordinary working people is lengthy, complex and costly, although to a lesser extent than the other courts. The Equality Body will accept complaints submitted to it in English. The Court will require all documents to be in Greek, although during the hearing an interpreter will be provided by the Court. However, in a case before the Supreme Court, the court accepted the pleadings submitted by the Turkish Cypriot applicants in the Turkish language and instructed the Attorney General to serve pleadings to the applicants in Turkish.

The same rules apply in both the private and the public sector. The Ombudsman, in his/her capacity as such, will investigate complaints of maladministration and discrimination from public bodies/state organs towards individuals; in his/her capacity as the national Equality Body, s/he will investigate complaints in both the private as well as the public sector.

The Ombudsman is appointed by the President of the Republic for a fixed term of office which is six years, following a recommendation from the Council of Ministers and with the prior written agreement of the majority of the House of Parliament.⁵⁰⁷ The Ombudsman can only be dismissed, during the term of his/her service, in the same way as Supreme Court judges are dismissed.⁵⁰⁸ According to the Cypriot Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until he/she reaches the age of sixty-eight⁵⁰⁹ and may only "be retired"⁵¹⁰ due to such mental or physical incapacity

⁵⁰⁵ Although the Ombudsman is also the national Equality Body, this particular law amends the mandate of the Ombudsman only.

⁵⁰⁶ Cyprus, Law amending the Law on the Commissioner for Administration 1991-2011 (*Νόμος που τροποποιεί τους Περί Επιτρόπου Διοικήσεως Νόμους του 1991 έως 2011*) N.45(I)/2014, 11 April 2014. Available at http://www.cylaw.org/nomoi/arith/2014_1_45.pdf.

⁵⁰⁷ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 3(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html section 3(1).

⁵⁰⁸ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 3(7). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁵⁰⁹ The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 7(1). Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

⁵¹⁰ This is the term used in the official translation of the Cyprus Constitution. Presumably, it means "be obliged to retire".

or infirmity as would render him incapable of discharging his duties, or may be dismissed on the ground of misconduct.⁵¹¹

The budget for the Ombudsman's office comes from the state national budget. The Equality Body does not have its own budget; it is operating within the budget of the Ombudsman, with whom the Equality Body shares office premises, personnel and the person at the top of the hierarchy, which is the same for both bodies. The figures in the table below represent the budget for all functions under the Ombudsman's office and not only for the Equality Body. The slight increase in the budget from year to year covers only the index-linked salary and other cost increases and does not allow for the hiring of additional personnel or the carrying out of any additional activities.

Occasionally, the Ombudsman (in his/her capacity as Equality Body) applies for and is awarded EU funds for particular projects, such as the two opinion surveys it carried out in 2007, the code of conduct on disability discrimination and the guidelines for the media it published in 2010. The Ombudsman is an independent officer and is not answerable to any other body, although it is required to submit an annual Activity Report to the President of the Republic and to the House of Representatives.

Staffing and budgeting arrangements

Below are the budgeting and staffing arrangements of the Equality Body annually since its inception. It should be noted that the staff and budget shown are not exclusively devoted to the Equality Body: with the same staff and budget a number of other authorities operate from within the same office (Ombudsman, NHRI, Independent Authority for the Prevention of Torture, Monitoring Body for the implementation of the Return Directive, Monitoring Body for the implementation of the CRPD) in a manner that makes any allocation of staff and budget to any particular authority impossible. The multiple mandates and insufficient resources have led to long delays in examining complaints, often leaving victims without an effective redress because third party rights are meanwhile created and the limitation period to apply to the court has expired. The statistical data does not allow conclusions as to whether one particular mandate receives more attention than the other, but very often victims submit complaints without specifying which of the authorities they are addressing and it is up to the Ombudsman to decide which authority will handle each complaint.

Table 1: Staff and Budget of the Ombudsman and Equality Body, 2004-2014

Source: Table compiled by the expert based on information supplied by the equality body

Year	No. of employees	No. of professional/legal staff	Budget (€)
2004 (operations commenced on 01.05.2004)	6 officers + 2 supporting staff, total 8	6	885,000
2005	6 officers + 2 supporting staff, total 8	6	1,186,000
2006	6 officers + 2 supporting staff, total 8	6	1,395,000
2007	6 officers + 2 supporting staff, total 8	6	1,527,000
2008	6 officers + 2 supporting staff, total 8	6	1,669,885

⁵¹¹ The Constitution of the Republic of Cyprus (*To Σύνταγμα της Κυπριακής Δημοκρατίας*), Articles 7(3) and 7(4). Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

2009	7 officers + 2 supporting staff, total 9	7	1,877,000
2010	8 officers + 2 supporting staff, total 10	8	2,046,330
2011	7 officers + 2 supporting staff, total 9	7	2.085.182
2012	7 officers + 2 supporting staff, total 9	7	1.922.034
2013	9 Officers + 2 supporting staff, total 11	9	2.003.434
2014	10 Officers + 2 supporting staff, total 12	10	2.090.869
2015	12 Officers +2 supporting staff, total 14	12	2,111,146

The law setting up the Equality Body (N.42(I)/2004) does not expressly provide for the independence of this body; however, this is implied from several provisions which essentially give the power and obligation to the body to apply and implement the obligations undertaken by the Republic under the EU *acquis* as well as under international law. The law governing the duties and powers of the Ombudsman (customarily referred to in Cyprus as "Commissioner of Administration")⁵¹² provides that the Ombudsman is not allowed to hold any other office or carry out any other work with remuneration.⁵¹³ Article 4(2) of the same law provides that the members of staff of the Ombudsman's office are civil servants, to be appointed in accordance with the Law on Civil Service. Although since its inception there was never an issue as regards the independence and impartiality of the members of staff working at the Ombudsman/Equality Body, the fact that the body lacks the power to choose its own members of staff is generating discontent amongst the body itself⁵¹⁴ and has also attracted criticisms from ECRI⁵¹⁵ and from the Advisory Committee for the FCNM.⁵¹⁶ Another issue potentially affecting its independence is the fact that its infrastructure budget is exclusively provided by the Ministry of Finance; but perhaps the most crucial factor of all as regards the institution's independence is the fact that the Ombudsman (and Head of Equality Body) is appointed by the President of the Republic and must be acceptable to the majority of the political forces. During 2011, when the term of the former ombudsman expired and a new ombudsman had to be appointed, the body remained headless for several months until the political forces would agree on the person to be appointed.

c) Grounds covered by the designated body/bodies

The grounds which the Equality Body has a mandate to deal with are: Race, community, language, colour, religion, political or other beliefs, ethnic or national origin (which is equated with nationality), special needs, age, sexual orientation, national origin, all rights guaranteed in ECHR and all its protocols (including article 1(1) of Protocol 12 to the ECHR), in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the

⁵¹² Although the Ombudsman is also the Equality Body, the reference here is to the Ombudsman only.

⁵¹³ Laws on the Commissioner for Administration (Οι περί Επιτρόπου Διοικήσεως Νόμοι) N. 3/1991, Article 3(3). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁵¹⁴ Focus group with the Head of the Anti-discrimination Authority and Head of the Equality Authority respectively 05 May 2010 for the purposes of a study on Equality Bodies coordinated by Human European Consultancy and the Boltzman Institute for Human Rights in 2010 (VT/2009/012).

⁵¹⁵ The Fourth ECRI report on Cyprus published in 2011 states in p.7: "The Office of the Commissioner for Administration (Ombudsman) lacks sufficient human and financial resources and does not enjoy the freedom to appoint its own staff."

⁵¹⁶ Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>

International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities.

In practice, it also deals with gender, gender identity, community as well as rights and freedoms contained in the Cypriot Constitution and in most international conventions ratified by Cyprus.

d) Competences of the designated body/bodies – and their independent exercise

The Equality Body lacks both competence and resources to provide independent assistance to victims or to represent victims on Court. It is vested with the power to (i) combat racist and indirectly racist 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,⁵¹⁷ (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law⁵¹⁸ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁵¹⁹ and (iii) promote equality of opportunity irrespective of grounds listed in the preceding section (to which the grounds of special needs⁵²⁰ and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

At the level of the Equality Body, there appears to be a trend towards a more socio-legal approach that involves less the invocation, interpretation and application of legal provisions than in previous years, perhaps reflecting the non-legal specialisation of the members of staff of the Equality Body in this period. An interesting development may nevertheless be observed in the dynamic intervention of the Equality Body as regards the efforts of certain circles within the Ministry of Education to revoke exemption from the religious instruction class which was previously available to those students who would apply for it. For the first time, the Equality Body appears ready to impose the sanctions foreseen in its mandate, in order to restore the right to exemption from this class, as a means of safeguarding religious freedom in schools.⁵²¹

Its limited resources and budgetary restrictions have restricted the Equality Body's work mostly in the area of complaints investigation, although efforts are made to provide assistance and guidance to victims in spite of the constraints. In recent years a system was introduced whereby the various officers of this body take turns in answering phone calls from the public and offer oral advice on rights and procedures available.

⁵¹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 3(1)(a).

⁵¹⁸ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

⁵¹⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004 (19 March 2004), Section 3(1)(b), Part I.

⁵²⁰ 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including psycho-social disabilities. In Cyprus, the term 'disability' is not understood to include psycho-social disability which is considered to be a special category requiring more sensitive treatment.

⁵²¹ Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

The Equality Body may carry out independent investigations into various issues⁵²² on its own right where it deems that any particular case may constitute a violation of the law.⁵²³ The Equality Body may also issue codes of good practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.⁵²⁴

The Equality Body has the duty to make recommendations to the competent Minister, the parliament and affected groups of persons on, inter alia, the amendment of any legal provision or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right⁵²⁵ or following a specific complaint to that effect referred to the Equality Body. It also has the power to conduct independent surveys and compile reports on any matter within its competency concerning any activity or practice in the public or private domain.⁵²⁶

In addition, the law casts an obligation on the Equality Body to communicate its findings and reports to the Attorney General who will, in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures and prepare legislation for the abolition or substitution of the legislative provision which is contrary to the anti-discrimination law.⁵²⁷ However, as it is currently phrased, the law allows the discriminatory law to remain in force until officially amended by the House of Parliament. This is a discrepancy in the law that renders compliance with the directives questionable, because it allows for the law to remain in force even if the Attorney General delays or omits to take steps for its amendment. In December 2014 the Supreme Court ruled that this provision can only be interpreted so as to mean that the Attorney General is under a duty to inform the executive regarding changes in the legislation deemed necessary by the Equality Body and that had the legislator intended to give power to the Attorney General to reject the recommendations of the Equality Body, the wording of the law would have explicitly provided that the Attorney General may adopt, amend or reject the recommendation.⁵²⁸ This development has not as yet been tested in order to conclude that the Attorney General will adopt this interpretation and proceed with the change of laws as recommended by the Equality Body.

The Equality Body can make binding recommendations⁵²⁹ ordering the guilty party to take steps to rectify the discrimination, for instance in the form of ordering the provision of goods and services which had been denied to the victim, including housing, education,

⁵²² E.g. Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31 May 2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26 May 2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 02 February 2005.

⁵²³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004 (19 March 2004), Section 33.

⁵²⁴ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 40, 41 and 42, Part VI. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵²⁵ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 35(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵²⁶ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 44. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵²⁷ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵²⁸ Cyprus, *Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General*, Case No. 1695/2009, 17 December 2014, available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

⁵²⁹ This applies only to the Cyprus Anti-discrimination Body and the Equality Body operating from within the Ombudsman's office and not to the other tasks and powers of the Ombudsman.

health care⁵³⁰ and in the form of requesting the discontinuation of a certain practice that causes discrimination.⁵³¹

The Equality Body has the power and the duty to monitor compliance with its decisions and to impose fines for non-compliance within the prescribed period. The Equality Body's orders must be published in the Official Gazette.

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. Also, where there is a disciplinary offence, the Equality Body has the duty to refer this to the competent authority: for instance, if the offender is a public servant, the Equality Body must refer the case to the Minister in charge, so as to take action.

e) Legal standing of the designated body/bodies

In Cyprus the Equality Body does not have legal standing to bring discrimination complaints on behalf victims, whether identified or not, or to intervene in legal cases concerning discrimination, although its officers may appear as expert witnesses. The legal officers of the Equality Body have repeatedly expressed their regret over the fact that they are not mandated to take cases to the Courts. Under the existing legislation, the Equality Body's duty is confined to referring cases to the Attorney General's office so as for the latter to decide whether criminal charges must be instigated, whilst civil lawsuits are clearly the responsibility of the litigants themselves. So far, no charges have been brought against any person by the Attorney General invoking the anti-discrimination legislation.

f) Quasi-judicial competences

In Cyprus the Equality Body is a quasi-judicial institution.⁵³² It is clearly an administrative organ but does have the power to issue binding decisions as well as sanctions, although these powers have not so far been utilised. The Equality Body prefers to use its mediation function where possible or to issue recommendations where mediation is not possible. A decision of the Equality Body can be appealed against through a recourse to the Supreme Court for judicial review of an administrative act under article 146 of the Constitution.

Although no evaluation or assessment has been made publicly available nor are compliance rates published, generally speaking the recommendations of the Equality Body are taken seriously into consideration by the private sector and to a certain extent by the public sector. Since the organisation's inception in 2004, the immigration authorities have undoubtedly the lowest rate of compliance amongst all public authorities. In previous years, the police also had a low compliance rate although in recent years a closer collaboration with the police developed over joint initiatives in the fight against racism and homophobia has improved the police's compliance rates.

g) Registration by the body/bodies of complaints and decisions

In Cyprus the Equality Body records the number of complaints received and the reports issued by ground and field of application as well as by the ethnic origin of the complainant. The statistical record as regards reports issued or other action taken can be fragmented

⁵³⁰ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(Ι)/ 2004, Article 16(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵³¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(Ι)/ 2004, Article 21(1)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵³² This view is also shared by the Equality Body itself (Consultation with Equality Body Officers dated 06 June 2014).

and confusing as the outcome of the investigation and whether discrimination was found to exist may not always be extractable.

The statistical record is available to the public and is set out in the Equality Body's annual reports which are posted on its website albeit with some delay, usually at the end of the year following the year concerned.

h) Roma and Travellers

Although not a number one priority, the Equality Body is concerned with the situation of the Roma and has on two occasions in 2003 conducted self-initiated investigations into their housing conditions. In 2011 it has published a report on discrimination against Roma children in education, in response to a complaint submitted in 2008.

No measures have been taken to raise awareness amongst the Roma community of rights and procedures available to them under the new antidiscrimination legislation, presumably as a result of the restricted budget and limited resources of the Equality Body and the practical difficulties involved in accessing the Roma communities (language problem, illiteracy, Roma settlements in remote locations). Although there are inherent difficulties in commencing a structured dialogue and consultation with the Roma community, which is a measure strongly recommended by the Fourth ECRI Report on Cyprus published in 2011, the Equality Body is in a unique position to launch such an initiative; under the current circumstances of austerity however, the Equality Body can hardly manage with its existing workload.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

There have not been any government activities during 2015 to disseminate information on non-discrimination and no good practices in the field either.

Generally speaking, on issues of policy making, consultation with NGOs is either poor or non-existing. In 2015 there was no policy making or law making in the field of anti-discrimination.

Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Dialogue with social partners on issues of discrimination at the workplace is lacking; no code of conduct has been agreed upon nor is there any system for workforce monitoring.

Addressing the situation of Roma and Travellers.

The government has not taken any measures to specifically target the Roma in terms of dissemination of information or dialogue. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded under the European Union Structural Funds for the period 2014–2020 and there will be no allocation of funds for this priority.⁵³³ Cyprus has no specific Roma integration strategy and no policies vis-a-vis the Roma community except in the field of education. The general approach of government policy is to promote Roma integration through horizontal measures targeting vulnerable groups in general in the frame of existing wider policies and structures for social inclusion, such as general integration policies, the National Reform Programme and the National Strategy for Social Policy 2014-2020, targeting the increase in employment and decrease of poverty and social exclusion. It is questionable whether any of these measures have any actual impact on the Roma, who continue to live in extreme poverty and exclusion, with no efforts made by the authorities towards the preservation of their cultural identity or towards raising awareness and respect for their distinct identity and culture amongst society or towards engaging with their representatives in order to consult them on policies and impact.⁵³⁴

Given that there are no policies targeting the Roma, there are no separate mechanisms monitoring the implementation of policies vis-a-vis the Roma. The Welfare Services, who act as the national contact point for the implementation of the national Roma Integration strategies, estimate that there 650-700 Roma who are Cypriot citizens in the area under the control of the Republic of Cyprus, out of a total of 1250 Roma in the whole of Cyprus; there are no estimates as regards the number of migrant Roma or Sinti residing in Cyprus. Overall the Welfare Services consider that the number of Roma residing in Cyprus is rather small to deserve a separate and distinct approach from other vulnerable groups.⁵³⁵

The recognition in 2009 by the Cypriot government of the Roma as a minority within the meaning of the Framework Convention on National Minorities has not led to a change of

⁵³³ Letter from the General Directorate of European Programmes, Coordination and Development, 1 December 2014.

⁵³⁴ Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>

⁵³⁵ Oral and written exchange of communication with the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance, 27-28 November 2014.

policy or any measures to improve the situation of the Roma, a fact regretted by the Advisory Committee's Third Opinion on Cyprus. The opinion states that the Roma continue to face serious prejudice and difficulties in many fields, such as employment, housing, education and access to health services, whilst the establishment of a dialogue between the government and the Roma remains problematic. The Committee urged the government to identify ways to establish a structured dialogue with the Roma and to obtain up-to-date information regarding their ethnic, linguistic and religious affiliation. The government responded by stating that "issues regarding the Cyprus Roma are part of the overall policy planning of the Government" without indicating any specific policies to address the problems highlighted.⁵³⁶ The Fourth ECRI report on Cyprus published in 2011 also urged the authorities to engage into consultation with the Roma community in order to address problems of housing, employment and education. By 2015, when the Advisory Committee for the FCNM published its report on Cyprus, no progress had been made in this direction.⁵³⁷

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

The existing constitutional practice is such that any law or regulation contrary to the principle of equal treatment, as guaranteed by Article 28 of the Constitution, and the human rights sections of the constitution, is unconstitutional, as the principle underlies all relevant laws. Once declared by the Court as unconstitutional the law is considered null and void. However, in order to trigger this provision, an application must be filed in court by a person who has been wronged as a result of the implementation of a law which runs contrary to the Constitution, seeking to have the law declared unconstitutional. So far, no law has been declared unconstitutional by reason of non-compliance with the equality provision of the Constitution (article 28), except laws providing for positive action measures in favour of persons with disabilities.

The provisions contained in the international treaties, signed and ratified by the Republic, take precedence over any municipal law and therefore override any provisions that are contrary to the principle of equal treatment. Also, by virtue of a 2006 amendment of the Constitution, all EU directives and regulations are deemed to take precedence over all domestic legislation including the Constitution itself.

There is no procedure for a regular monitoring or screening of old or new laws, collective agreements, contracts or rules etc. in order to ensure their compliance with the anti-discrimination laws. Practice shows that the procedure for assessing compliance of a particular law, contract, practice etc. with the anti-discrimination laws is triggered off only when a specific complaint is submitted on this matter. The mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended is contained in the law setting out the mandate of the Equality Body.⁵³⁸ This procedure requires the Equality Body to refer to the Attorney General all laws, regulations and practices containing discrimination; the Attorney General is then obliged to advise the Minister concerned and prepare the necessary amendment in the discriminatory law or practice. The procedure foreseen by article 39 does not appear to be

⁵³⁶ The Third Opinion of the Advisory Committee is available at www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf. The comments of the government of Cyprus on Third opinion are available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Cyprus_en.pdf.

⁵³⁷ Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵³⁸ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(Ι)/ 2004, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

particularly well known to legal and judicial circles, who tend to go for the constitutionality test, i.e. to request the Court to annul a provision or a law as 'unconstitutional', for non-compliance with article 28 of the Constitution which contains the equality principle. As a result of restrictive interpretations by the Court, this procedure has never borne fruit for the victims of discrimination, nor has it ever resulted in annulling a law containing discrimination.⁵³⁹

The Equality Body's referrals to the Attorney General under article 39 were not always taken up and often laws and regulations containing discriminatory provisions remain unaffected as a result. It is expected that the 2014 ruling of the Supreme Court in *Nicoletta Charalambidou*, which established that the Attorney is not at liberty not to pursue the Equality Body's recommendation for amendment of a discriminatory law, will change the practice so far followed by the Attorney General's office.⁵⁴⁰

b) Rules contrary to the principle of equality

There was never any exhaustive scan of laws or regulations to assess their consistency with the anti-discrimination directives or their compliance with the equality principle in general. A problem of non-compliance usually surfaces when a complaint is filed with the Equality Body but even in such case there is no system for recording the non-compliant laws or rules in a single database.

No exhaustive list of laws or regulations that are contrary to the equality principle can be drawn up, since the legislative and policy framework has not been thoroughly scanned for compliance with the directives. A series of complaints have triggered recommendations from the Equality Body to the Attorney General to proceed with law reforms, many of which were not pursued. Based on the cases of non-compliance highlighted by the Equality Body, there are job advertisements in the public service which carry an age limit; job descriptions which require "excellent knowledge of Greek" as a prerequisite or where the criterion to test knowledge of Greek can only be met by graduates of Cypriot schools; rent control laws which exclude third country nationals from their scope; restrictions in the retirement benefits paid to public employees aged under 45 who take early retirement in order to join EU institutions; the Termination of Employment law which deprives persons reaching pensionable age from their right to compensation for unlawful dismissal; and no doubt many others in respect of which no complaint was submitted and thus no decision of the Equality Body was issued to highlight the need for repeal.

⁵³⁹ Cyprus, Supreme Court, Michalakakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic (*Μιχαλάκης Ραφτόπουλος ν. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας*) No. 1223/2007, 22 November 2011, Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007;); Cyprus, Supreme Court, Andreas Kattos v. The Republic of Cyprus through the Minister of Justice and Public Order and the Chief of Police (*Ανδρέας Κάττος ν. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*), Case N. 349/2010, 7 April 2011. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201104-349-10.htm&qstring=349%20w/1%202010.

⁵⁴⁰ Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

9 COORDINATION AT NATIONAL LEVEL

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the anti-discrimination laws. Several ministries are involved depending on the issue at stake: the Ministry of Labour and Social Insurance deals with issues such as employment and social insurance benefits; the Ministry of Justice and Public Order deals with issues of legislation drafting and interpretation; the Ministry of Education and the Ministry of the Interior with their respective competencies. The annual reports of the Ministry of Justice and Public Order sum up the Ministry's activities in this field in providing information that feeds into various national and European level reports.⁵⁴¹ There has never been any national Action Plan on anti-racism or anti-discrimination.

⁵⁴¹ For the latest available annual report of the Ministry of Justice, which is for the year 2012, see [http://www.mipo.gov.cy/mipo/mipo.nsf/3E7D11C068594790C2257C99003FB470/\\$file/Annual_Report_2012.pdf](http://www.mipo.gov.cy/mipo/mipo.nsf/3E7D11C068594790C2257C99003FB470/$file/Annual_Report_2012.pdf). The relevant references are in pages 19-20.

10 CURRENT BEST PRACTICES

Code of Conduct against Racism and Guide for Handling and Recording Racist Incidents

This initiative sets up a system of monitoring, recording and intervening to combat racial and other intolerant incidents at schools.

The Code sets out basic principles of respect for multiple identities and of the need to combat intolerant incidents on the grounds of ethnicity, religion, culture, gender, sexuality, belief and disability. It explains in simple terms various forms of racial, xenophobic and other types of intolerance and defines concepts such as identity, diversity, race, prejudice, stereotype, discrimination, racism, xenophobia, nationalism, intolerance, homophobia, transphobia, bullying/threatening, hate speech, under-reporting and racial incidents.

The Guide aims at developing a mechanism for recording and reporting racial and other intolerant incidents, addressing all stakeholders, allocating to each group specific responsibility in recording and responding to the incidents. Moreover, it provides for a step-by-step system of handling racial incidents as well as a nine-step sanction system based on the degree of seriousness and the repetition of the prohibited conduct. The Code and the Guide were launched in June 2014. Implementation was commenced on a pilot basis in seven primary schools during 2015,⁵⁴² With the intention of expanding to other schools in the years to follow. At the time of writing, the Ministry of Education had not published any data regarding the incidents recorded or any evaluation as regards the impact of this initiative.

Educational Priorities Zones (ZEP)

The Educational Priorities Zones (ZEP), a measure which has been in existence since 2003, promotes literacy and school achievement in economically and socially depressed areas throughout Cyprus and addresses youth delinquency and early school leaving.⁵⁴³ Schools selected to join ZEP are those where delinquency and illiteracy in secondary education can be traced back to; the aim is to prevent these two phenomena at primary education and pre-school before they appear at secondary education. The institution has secured funding from the European Commission through the European Social Fund for the project "Programme against Early Abandonment of school, against School Failure and Delinquency in Educational Priority Zones", which has enabled ZEP to employ additional teachers to operate smaller units in the morning, to employ teachers to implement programmes of creative occupation in the afternoons and to set up in every district Centres for information and psychosocial support. The measure brings extra hours of teaching at the school for the weaker students, free breakfast, afternoon supervision for homework and generally extra state funds to enable the school to cope with disadvantaged areas and families, Cypriot or non-Cypriot, having to survive on low budgets; in practice the measure mostly benefits migrant children.

For the year 2014-15, nine secondary education schools throughout the country were included under ZEP. The number of third country national pupils attending these schools in 2014-2015 was 2,505.

Opinions vary as regards the effectiveness of the practice of ZEP. Educationalists have noted that ZEP carries a stigma which leads certain schools to reject the Ministry's offer to join the institution. But criticisms from educationalists are mainly focused on the fact that in practice the measure has promoted segregation of migrant students into specific schools,

⁵⁴² www.moec.gov.cy/agogi_ygeias/kodikas_kata_ratsismou.html.

⁵⁴³ For more information, see Demetriou, C. (2011), Report on measures to combat discrimination: Cyprus, Country Report 2011.

which are staffed with the lowest quality of educationalists, because the migrant parents are not organised and do not have a strong lobby, as in other schools attended by Cypriots, and are thus unlikely to complain to the Ministry of Education or to school inspectors about problematic school practices.⁵⁴⁴

⁵⁴⁴ Consultation with stakeholders in public education.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives

1. The additional functions/mandate extensions assigned to the Equality Body/Ombudsman without an increase in its budget has led to considerable delays in decision making, to the extent that the effectiveness and impact of the institution is now at question. The freezing in recruitments to the public sector, imposed as a result of the economic crisis, has meant that it cannot hire personnel even if only to replace those who resign from the service. Also, many of the officers of the Equality Body are not legally trained, which is reflected in the reports published: references to laws and case law are usually lacking whilst legal responsibility for clearly unlawful acts is hardly ever pinned on the perpetrators. The shortages in human resources has also meant that the monitoring of compliance with the decisions is adversely affected.
2. The requirement of Article 13 of the Racial Equality Directive that the specialized body should be in a position to offer assistance to victims is still not transposed, more than 10 years after the directive was transposed, as the Equality Body cannot represent victims in Court. To be able to do so, in addition to an expanded mandate, the Equality Body should be afforded the necessary budget and human resources which it is now lacking. In addition, the Equality Body has not issued a single binding decision or imposed any fine for more than 10 years since it was set up, resorting only to mediation or non-binding recommendations. In the case of fines, this may be partly attributed to the fact that the fines foreseen in the legislation are too low to be seen by the perpetrator as a disincentive.
3. Very rarely do discrimination cases make it to the courts. In those cases, where they do, the anti-discrimination legal framework is not being invoked; instead recourse is made to the 40-year old constitutional provisions (judicial review of administrative acts; and/or the general equality provision of article 28) which do not offer the far-reaching protection of the directives. The decision is often based on problematic legal doctrines arbitrarily developed by the courts which do not comply with the directives and which deny victims the protection offered by the directives.
4. Litigation is not sufficiently used, owing to the cost and time length involved, the fact that legal aid is made available only subject to insufficient means, and to the lack of awareness of the anti-discrimination laws amongst the legal profession. The sanctions foreseen in the law for discrimination are neither dissuasive nor effective and, given the fact that the equality body's decisions so far were mere recommendations, victims of discrimination are, in practice, not afforded the mandatory legal protection foreseen in the directives. There is little coordination between NGOs and lawyers for effective handling of cases.
5. In recent years, the government has completely abandoned efforts to raise awareness about the directives, to promote equality initiatives or to consult with civil society. This is the case even with KYSOA, the confederation of disability organisations, which in 2006 was afforded the status of a social partner. In the case of disability and age, the equality agenda is subsumed into a 'welfarism' mentality governed by 'charitable' approaches which seem to be prevalent amongst policy makers and some sectors of civil society.
6. As a concept, positive action continues to be viewed with suspicion by the Courts and by policy makers alike, who appear willing to apply it only to persons wronged by the Turkish invasion (war veterans, persons with a disability resulting from the war) as part of the national project of promoting their sense of 'victimhood' but otherwise find that it violates the equality principle enshrined in the Constitution.
7. There is no procedure in place for regular reviewing or revising of discriminatory laws/regulations. In practice, review is only triggered off once a complaint is submitted to the equality body. In such a case, the law requires the equality body to refer discriminatory laws/regulations to the Attorney General who is then under a duty to prepare the amending legislation. In spite of the several referrals to the Attorney General, few of the laws found by the equality body to be discriminatory

- have been amended. This procedure however is very rarely followed, to the effect that several discriminatory laws remain in place.
8. Following the labour tribunal decision in 2008 establishing that it has no jurisdiction to hear claims of discrimination in the selection process for a job placement, the law transposing Directive 78/2000 (minus the disability component) was amended. However, the authorities failed to amend the law on disability. In considering an appeal against the first instance decision of the tribunal, the Supreme Court disagreed with the tribunal's findings as regards its jurisdiction, but did not explicitly rule that the labour court has jurisdiction to try all discrimination cases irrespective of whether an employment relationship exists or not.
 9. Regarding discrimination at the workplace, the inequality of power between the employers' lobby and workers' unions, despite the apparent strength of the latter, is accentuated by the fact that Cyprus has a very large SME sector, whose individual members generally lack professionalism and awareness on issues of labour rights and discrimination. This sector is one of the worst hit by the economic crisis and the violation of workers' rights has become commonplace.
 10. There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination or imposing a general anti-discrimination public duty on authorities. Many complaints directed against various governmental departments are simply not addressed or dealt with, without any consequences for the departments concerned and serious instances of discrimination go unpunished.

11.2 Other issues of concern

1. Judicial practice on discrimination claims often deviates from the letter and the spirit of the directives, rejecting discrimination claims by using the 'reasonableness' test. The use of this test has led the courts to reject direct discrimination claims which were thought to be 'reasonable', in breach of the equality directives which allow only a limited range of exceptions.
2. As the economic crisis deepens and unemployment rises, anti-immigrant sentiments are being hyped. The new government's declarations upon assuming office in March 2013, that Cyprus would cease to be 'a migrant's paradise' have not only met with the tacit acceptance of the social partners but have also led to a gentleman's agreement amongst the social partners that employers should employ 'primarily Cypriots'. In 2013-2014 employment-related complaints to the Equality Body dropped by half compared to previous years, whilst there were no discrimination court cases from employees against their employers; both must be attributed to underreporting owing to fear of losing their jobs amidst the deep recession. The austerity package has also affected pensions and welfare benefits for the elderly, the majority of whom live below poverty levels.
3. On 20 November 2014 the Cypriot police entered a gallery operated by the Nicosia municipality and confiscated an entire exhibition of photographs taken by a transsexual photographer and activist, depicting male nude in an artistic fashion. The exhibition had been organised by the national gay movement Accept LGBT Cyprus. The police pressed charges against the president of Accept LGBT Cyprus under a law dating back to 1963 regarding the publication of obscene material.⁵⁴⁵ The Ombudsman, whose representative was a speaker at the opening of the exhibition, condemned the actions of the police and asked for the revision of the law on obscene publications under which the president of Accept had been charged.⁵⁴⁶ Following the Ombudsman's intervention, the Attorney General publically criticised the police for

⁵⁴⁵ Law on the publication of obscene matters of 1963 (Ο περί δημοσιεύσεως αισχρών θεμάτων Νόμος του 1963) N. 35/1963. Available at http://www.cylaw.org/nomoi/enop/non-ind/1963_1_35/full.html.

⁵⁴⁶ Cyprus, The Office of the Commissioner for Administration and Human Rights (2014), Position of the National Independent Authority for Human Rights regarding the confiscation of photographs in the frame of the photography exhibition "Correction" (Τοποθέτηση Εθνικής Ανεξάρτητης Αρχής Ανθρωπίνων Δικαιωμάτων σχετικά με την αποκαθήλωση φωτογραφιών στα πλαίσια της φωτογραφικής έκθεσης «Διόρθωση») File No. A/D/12/2014, 26 November 2014.

- this action and instructed them to drop the charges and return the confiscated exhibition items to the artist. No action was taken against the police officers involved in the operation nor was the law on obscene publications revised, suggesting a lack of political will to deal decisively with homophobia amongst law enforcement officers.
4. The national specificities of Cyprus are the result of what can be termed as country-specific structural problems. These consist mostly of issues deriving from the unresolved 'Cyprus problem', which creates problems of discrimination resulting from the de facto division of the country e.g. failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish-Cypriots (T/Cs) in access to property and in the exercise of various constitutional rights, the violation of Greek-Cypriot (G/C) rights by Turkey and a certain tendency of the authorities and of the courts to "seek revenge" for the Turkish invasion of Cyprus. The Cyprus problem can also be blamed, at least partly, for a general lack of tradition in equality issues deriving from the 40-year old persistent predominance of the Cyprus problem in the public sphere. The G/C resentment of the constitutional quota system for T/Cs in the public sector, the history of ethnic conflict and the continuous application and expansion of the 'doctrine of necessity' by the authorities and the courts subordinate's equality issues to political expediencies and place a disproportionately strong emphasis on state sovereignty. The legal vacuum created by these 'Cyprus problem'-related practices is also used in order to deny basic rights to immigrants who, according to the latest census (2011) currently form 21% of the Cypriot population.
 5. The comprehensive educational reform that commenced in 2008, soon after the former government took office came to a halt when the new government came into power in March 2013. The new curriculum developed under the reform, aiming at rendering the school democratic, inclusive and multicultural has been abandoned, alongside with the pioneering methods of teaching, as the system has reverted to the old curriculum and the old methods used before the reform was implemented. Tensions as regards the teaching of the religious class, which had in previous years been toned down, were hyped again in 2015 following an initiative of the Ministry of Education to encourage students to assist with the conducting of the Christian orthodox ceremony which received lengthy criticism from the Equality Body.⁵⁴⁷ The Ministry initiative, however, and the arguments offered by the Ministry in its defence, may suggest that religious intolerance in education is deeply rooted in obsolete mentalities and stereotypes maintained by the teachers themselves.
 6. The pressing needs of the Roma and migrant children in education are no longer debated, nor are there any new policies to address their needs. Instead, the phenomenon of migrant children being forcibly separated from their mothers by the immigration authorities, as mothers are massively deported for illegal stay, is on the rise and has become the subject of public debate and of a number of international monitoring reports. Interestingly, this particular method of the immigration authorities is the only one criticized, and the critique mainly emanates from women activists, women politicians and women journalists.

⁵⁴⁷ Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

12 LATEST DEVELOPMENTS IN 2015

12.1 Legislative amendments

The duty to provide reasonable accommodation is extended

During 2014, the disability law was amended to extend the duty to provide reasonable accommodation to fields beyond employment.⁵⁴⁸ Please refer to section 2.6 above for details.

During 2015, three new laws were adopted seeking to protect specific groups of people from specific forms of discrimination:

- The criminal code was amended to criminalise incitement of hatred or violence on the ground of sexual orientation or gender identity;⁵⁴⁹
- A new law was adopted regulating the political rights of public sector employees providing for their right to express political or other beliefs freely outside their working hours, to participate in political parties and to be nominated or be elected in office within any political party.⁵⁵⁰
- A new law now regulates the civil union (or 'cohabitation agreement', as is the term used in the law) of both heterosexual and homosexual couples,⁵⁵¹ implicitly benefiting not only same sex couples but also couples who for any reason whatsoever choose not to get married.

The minimum guaranteed income and the ICF test

In 2014 a new system of assessing disability was introduced by the Ministry of Labour, Welfare and Social Insurance, which relies on the logic of functionality and is based on an international standard known as ICF (International Classification of Functioning, Disability and Health).⁵⁵² The introduction of this system coincides with the comprehensive reform of the welfare system in 2014 that replaced the public benefit previously available to vulnerable group with the minimum guaranteed income, introducing stringent conditions of eligibility. The law on the minimum guaranteed income (MGI) adopted the perception of disability introduced by the CRPD but also requires that eligibility to this benefit depends on being certified as having a serious or total disability by the System of Classification of Disability,⁵⁵³ thus essentially combining two conflicting views on disability. This provision will most negatively affect those who are not already public assistance receivers, like the newcomers to the welfare system, who will not be entitled to the minimum guaranteed income unless they pass the test of the System of Classification of Disability. Persons with disability who are already deemed eligible for public assistance will be deemed as automatically eligible for the minimum income until they are called upon to undergo the

⁵⁴⁸ Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_63.pdf.

⁵⁴⁹ Cyprus, Law amending the Criminal Code (*Νομός που τροποποιεί τον Ποινικό Κώδικα*) N. 87(I)/2015, 16 July 2015. Available at www.cylaw.org/nomoi/arith/2015_1_87.pdf.

⁵⁵⁰ Cyprus, Law providing for the political rights of public servants, local authority employees and employees of public organisations (*Ο περί των Πολιτικών Δικαιωμάτων Δημόσιων Υπαλλήλων, Εκπαιδευτικών Λειτουργών, Δημοτικών Υπαλλήλων, Κοινοτικών Υπαλλήλων και Υπαλλήλων Νομικών Προσώπων Δημόσιου Δικαίου Νόμος του 2015*) N.102(I)/2015, 10 July 2015. Available at www.cylaw.org/nomoi/enop/non-ind/2015_1_102/full.html.

⁵⁵¹ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf.

⁵⁵² Cyprus, Implementation of new system of assessing disability and functionality (*Εφαρμογή στην Κύπρο ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας*). Available at http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsidp06_gr/dsidp06_gr?OpenDocument.

⁵⁵³ Cyprus, Law on the minimum guaranteed income and generally on social provisions of 2014 (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N. 109(I)/2014. Available at http://www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

classification test, in which case they must also pass the test in order to retain their eligibility.

The confederation of disability organisations KYSOA opposes the new system of classification. KYSOA, who is designated as a social partner to be consulted on all disability related matters,⁵⁵⁴ believes that the system will exclude a significant number of persons with disabilities from public assistance and lead them into marginalisation.⁵⁵⁵ KYSOA also finds that a classification system based on functionality is closer to the much criticised 'medical model' and deviates from the social model of approaching disability, which is promoted by the CRPD. KYSOA's repeatedly calls on the government to enter into a round of consultation in order to reach a consensus as to the system of assessing disability have not been answered so far. KYSOA demands that the system of assessing disability be in line with the philosophy of the CRPD, according to which disability is acquired through interaction with the physical and social barriers. Based on this, policy development must be focused on removing the barriers and not on introducing functionality assessment systems which are unlikely to lead to any benefit for persons with disabilities.

In spite of the objections of the disability movement, the government will be allocating the entire amount to be received by the EU's structural funds (ESF) package for 2014-2020 for disability discrimination for the operation of the ICF system. The application of the ESF in Cyprus generally suffers from a lack of transparency; it is virtually impossible to retrieve information from the competent body handling these funds⁵⁵⁶ or from any their source and consultation with NGOs, stakeholders or the Equality Body regarding the application of the funds is virtually inexistent.

The implementation of the law on the MGI revealed further gaps and weaknesses of the law. When initially adopted, the law required applicants with intellectual disability to submit their applications only through a legally authorised representative; this provision essentially forced potential applicants to apply to the Court to be declared 'incapable' in order to become eligible to the minimum guaranteed income. Following criticisms from the disability movement and from the Equality Body,⁵⁵⁷ the law was amended to provide that applications could now be submitted through the applicant's representative, without providing a definition of such representative or a procedure for his or her appointment.⁵⁵⁸ The Ministry of Labour and Social Insurance (the ministry) issued instructions to the Social Welfare Services (SWS) to refrain from demanding 'incapacity' court orders in those cases where the applicant with intellectual disability had a joint bank account with another person.⁵⁵⁹

⁵⁵⁴ Cyprus, Law on the process of consultation of state and other services regarding persons with disability of 2006 (*Ο περί της Διαδικασίας Διαβούλευσης Κρατικών και Άλλων Υπηρεσιών σε Θέματα που Αφορούν Άτομα με Αναπηρία Νόμος του 2006*) N. 143(I)/2006. Available at http://www.cylaw.org/nomoi/enop/non-ind/2006_1_143/full.html.

⁵⁵⁵ Consultation with president of KYSOA, the confederation of disability organisations, 28 November 2014.

⁵⁵⁶ See http://www.dgepcd.gov.cy/dgepcd/dgepcd.nsf/page09_gr/page09_gr?OpenDocument.

⁵⁵⁷ Position of the independent authority for the promotion of the rights of persons with disabilities regarding the requirement of the Ministry of Labour, Welfare and Social Insurance to produce a court order of incapacity and appointment of an administrator in order to ensure access by adult persons with intellectual or psychosocial disabilities to the Minimum Guaranteed Income (*Τοποθέτηση Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων Ατόμων με Αναπηρίες σχετικά με την απαίτηση, από το Υπουργείο Εργασίας, Πρόνοιας και Κοινωνικών Ασφαλίσεων, να προσκομίζεται δικαστικό διάταγμα ανικανότητας και διορισμού διαχειριστή, προκειμένου να διασφαλιστεί η πρόσβαση ενήλικων ατόμων με νοητικές ή και ψυχοκοινωνικές αναπηρίες στο Ελάχιστο Εγγυημένο Εισόδημα*) Ref. A/P 2354/2014 et al, 7 April 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/\\$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement).

⁵⁵⁸ Cyprus, Law amending the law on minimum guaranteed income and generally on social provisions (*Νόμος που τροποποιεί τον Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) 118(I)/2015, article 4(3). Available at http://www.cylaw.org/nomoi/enop/ind/2014_1_109/section-sce28b579e-7244-6231-357a-c03c23572dc4.html.

⁵⁵⁹ Ministry of Labour, Welfare and Social Insurance, Circular No. EEE-7/2016, 9 June 2015.

This policy measure however did not address the situation of applicants without such a joint account. The Committee for the Protection of Persons with Mental Handicap⁵⁶⁰ (the committee) reported that, in spite of the legislative amendment, the SWS continued to request court orders in order to pay the MGI to persons with intellectual disabilities who did not have a joint bank account with another. The committee identified gaps which persisted in spite of the reforms, highlighting the fact that the SWS now required that a relative of that person or a member of staff of the institution/home where the person resides be appointed by the court as administrators of that person's estate in order to collect the cheque. The committee also criticised the fact that banks refuse to open accounts for persons with intellectual disability residing with their families on the justification that they are not in a position to manage the bank account. The committee requested the ministry to resolve the issue by specifying the procedure for appointing a representative and for making the payments of the MGI either to the families or to the institutions or homes in the community where applicant resides.

Meanwhile the Equality Body, in its capacity as independent authority for the promotion of the rights of persons with disabilities, published a report on the implementation of the CRPD, highlighting the gaps and weaknesses of the law on the administration of the property of incapable persons. The report concluded that this law contravenes article 12 of the CRPD and results in discrimination as it renders persons with disabilities particularly vulnerable to being declared 'incapable' by the court, which deprives them from equal enjoyment of rights. The report stressed that the law ratifying the CRPD ranks higher than the law on the administration of the property of 'incapable' persons and must be annulled and calls on stakeholders to assist in the process of developing structures and mechanisms and bringing those changes to the legislative framework that will render national law and practice compliant with the CRPD.⁵⁶¹

The ministry issued another circular to the SWS⁵⁶² instructing them to request persons representing applicants with intellectual disability to sign a statement assuming responsibility for handling the MGI payable to the beneficiary without a court order, following which a cheque can be issued in favour of the first degree relative who has signed such a statement. Persons with disability without a first degree relative can be represented by another close relative or another person who signs the statement provided the SWS is satisfied that this is in the interests of the beneficiary. The reasoning behind this procedure, as explained in this circular is to avoid having the applicant with intellectual disability sign any document whatsoever or deciding who will represent him or her because the legal capacity of such person is legally questionable. There is no particular procedure nor is there any test prescribed for the determination of the interests of the beneficiary and there is no mechanism in place for supported decision making, which essentially means that the SWS is once again vested with discretion to make this decision on behalf of the person with disability.

12.2 Case law

Court Decisions

Quotas in favour of persons with disabilities

⁵⁶⁰ <http://www.cpmmental.com.cy/epnka/page.php?pageID=7&langID=0>.

⁵⁶¹ Position of the Independent Authority for the Promotion of the Rights of Persons with Disability regarding the implementation of obligations under the ratified UN Convention on the Rights of Persons with Disabilities and in particular article 4 ("General Obligations") and article 12 ("Equal Recognition before the Law") [Τοποθέτηση της Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων ΑμεΑ αναφορικά με την υλοποίηση των υποχρεώσεων που απορρέουν από την κυρωθείσα, από την Κυπριακή Δημοκρατία, Σύμβαση του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρίες και ειδικότερα τα Άρθρα 4 («Γενικές Υποχρεώσεις») και 12 («Ίση Αναγνώριση ενώπιον του Νόμου») αυτής], File No. ΑΥΤ.4/2015, 25 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/\\$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement).

⁵⁶² Ministry of Labour, Welfare and Social Insurance, Circular No. ΕΕΕ-12/2015, 25 September 2015.

Name of the court: Supreme Court, Review Jurisdiction

Date of decision: 3 September 2015

Name of the parties: Costas Tsikas et al v The Republic of Cyprus through the Educational Service Committee

Reference number: Case No. 1519/2010 and 1520/10

Webpage: [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015)

[10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015)

Brief summary: The claimants applied to the Court seeking to annul a decision of the respondents which had appointed two persons with disability as teachers in public schools under a law providing for quotas in favour of persons with disabilities. The claimants argued that the quotas law violates articles 20 and 21 of the Fundamental Rights Charter, article 14 of the ECHR and article 28 of the Constitution because it results in unfair differentiation between candidates on the basis of personal characteristics and not on the basis of their ability to fulfil the duties of the position they compete for. They also argued that the quota of 10% introduced by the quotas law does not take into account the percentage of disabled persons in relation to the total number of candidates with the necessary qualifications, which violates the equality principle as it excludes suitably qualified non-disabled persons from securing a position in the public sector.

The Court rejected the argument that quotas are unlawful and disagreed with the submission of the claimants that previous Supreme Court judgements had established that laws providing for quotas were unconstitutional. The Court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. In such cases, the Court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but on the contrary to a practical implementation of, the equality principle; in this case the priority given to persons with disabilities falls within the boundaries of reasonable differentiation precisely for implementing equality. The Court adopted the reasoning of the ECtHR that protection from discrimination is violated when a state fails to offer different treatment to persons whose circumstances are significantly different⁵⁶³ and referred to the right of states to adopt positive action as established in the equality Directives. The claimants' application was rejected and the decision to appoint the interested parties in the public service was confirmed.

Age seniority as a criterion for promotion

Name of the body: Supreme Court, Appellate jurisdiction

Date of decision: 3 April 2015

Name of the parties: Charis Christodoulidou v Republic of Cyprus through the Public Service Committee

Reference number: 12/10

Webpage: [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%F7%E1%F1%E9%F3%20and%20%F7%F1%E9%F3%F4%EF%E4%EF%F5%EB%E9%E4%EF%2A)

[10.htm&qstring=%F7%E1%F1%E9%F3%20and%20%F7%F1%E9%F3%F4%EF%E4%EF%F5%EB%E9%E4%EF%2A](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%F7%E1%F1%E9%F3%20and%20%F7%F1%E9%F3%F4%EF%E4%EF%F5%EB%E9%E4%EF%2A)

Brief summary: The appellant, a public servant, had applied for a promotion position but the Public Service Committee selected another candidate who was older. She appealed against this decision claiming that to the extent that it relied exclusively or primarily on age seniority it violated the Employment Equality Directive and the law transposing it. The Court rejected the first instance application, on the ground that the Public Service Committee's reference to age seniority does not appear to be the determining factor in selecting another candidate for promotion. The trial court added that taking age seniority

⁵⁶³ The cases cited were *Thlimmenos v Greece*, Case No. 34369/97 and *Pretty v United Kingdom*, Case No. 2346/02.

into account not only is lawful but it is sanctioned by the public service law⁵⁶⁴ which provides that where two employees have the same date of appointment, seniority is determined on the basis of the employees' age. The appellant appealed against the trial court's decision, on the ground that the consideration of an employee's biological age, as distinct from their seniority in the particular employment in question, in order to determine selection for promotion between employees with the same date of appointment, amounts to age discrimination which violates the Directive. Citing article 267 of the Treaty for the Functioning of the European Union, the appellant requested a preliminary referral to the CJEU of the following two questions:

- Can articles 1 and 2(2), 3 and 6(1) of the Directive be interpreted as permitting national legislation providing that promotion applications are examined on the basis of inter alia seniority and where this is the same amongst competing appellants then to be assessed on the basis of age?
- If the answer to the above question is affirmative, does the non-promotion of a person who meets all requirements and has all qualifications exclusively on the ground of age amount to unlawful discrimination?

The appeal pointed out that given that the decision of the Appeal Court will be of the final instance, article 267 of the Treaty imposes a duty on the Court to refer these questions to the CJEU. The Court found that the issue is *acte claire* and does not require CJEU interpretation since the question does not concern an interpretation of Union law but rather an examination of the compatibility of the Civil Service Law (N. 1/90, article 49) with the Directive, which is beyond the remit of the CJEU.

In her appeal, the appellant relied on the Directive and on the CJEU rulings in *Küçükdeveci*, *Mangold*, *Palacios de la Villa* and *Age Concern England* to argue that:

- The first instance Court decision failed to examine whether the criterion of seniority in the sense of biological age which is foreseen by the Civil Service Law amounts to discrimination on the ground of age in violation of the Directive;
- The trial Court's conclusion that seniority in the sense of age was not the determining factor in the decision was wrong.

The Appeal Court rejected both arguments on the ground that the Directive permits member states a wide margin of appreciation regarding the measures to be adopted in the field of social policy, provided the measures do not violate the principle of non-discrimination, citing the CJEU rulings in *Mangold*, *Palacios de la Villa* and *Age Concern England*. The Court concluded that the regulation of the issue of seniority by the Civil Service Law cannot be deemed as violating the principle of non-discrimination, since it does not place any particular civil servant or a group of civil servants to a disadvantageous position. The provision in the Civil Service Law is, according to the Court, a fair and objective regulation of the issue of seniority, applied to all cases of employees in the same position and does not result in discrimination against the appellant.

Age restriction in a disability scheme

Name of the body: Supreme Court, Review Jurisdiction

Date of decision: 27 January 2016

Name of the parties: Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance

Reference number: 2005/2012

Webpage: http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016

Brief summary: In 2012 the claimant applied to the authorities for a grant under a welfare scheme for severe kinetic disability indicating that he had suffered a stroke that confined

⁵⁶⁴ Law on Public Service No. 1/1990, Article 49.

him to a wheelchair after his 65th year of age. The scheme in question excludes applicants aged under 12 and over 65 years unless they have become eligible before they turned 65⁵⁶⁵ and the claimant's application was therefore rejected. In July 2012 his son contacted the Department for Social Integration of Persons with Disability of the Ministry of Labour (DSIPD) asking for the deletion of the age limit in the scheme. The DSIPD responded that they were aware that some of their schemes needed modifications but due to restrictions in finances as a result of the economic crisis they were "unable to immediately modernize the scheme". The claimant applied to the Supreme Court for judicial review seeking to set aside the rejecting decision, claiming age discrimination in violation of article 28 of the Constitution, of the CRPD and of the law setting up the Equality Body.⁵⁶⁶ In justification of the age restriction, the respondents said the age restriction was intended to reduce the number of eligible applicants due to poor state finances and argued that no discrimination had occurred because the claimant was treated in the same way as other persons in his position and his age group. The Court ruled that the age restriction in the scheme violated the Law on Persons with Disabilities N. 127(I)/2000 which could not be justified by the measures to address the economic crisis, as the fiscal interests of the state cannot be equated with the general public interest, adding that deviations from the equality principle are only allowed to the extent that the constitutional provisions themselves allow and subject to the proportionality principle. The court also dismissed the respondent's argument that the grant foreseen in the scheme was not protected by a constitutional right as it was discretionary in nature. The Court annulled the rejecting decision affecting the applicant but, as the procedure review process does not go further than setting aside of the administrative decision, could not order the revision of the scheme in question.

Limits of administrative authority in recruitments under quotas law

Name of the court: Supreme Court

Date of decision: 30 October 2015

Name of the parties: Eleni Paroutsi v. Educational Service Committee

Reference number: 5700/2013

Webpage: www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015

Brief summary: The quotas law adopted in 2009 (the Law)⁵⁶⁷ provides for the appointment in the public sector of those persons with a disability who are listed in a special catalogue of candidates through an application to the appointing body; in the case of teachers, the appointing body is the Educational Service Committee, (the respondent). Applicants are assessed for compliance with the Law's definition of 'a person with disabilities'. The Law further provides for the creation of a special multi-thematic committee (MTC) comprising of medical professionals. The MTC gives expert opinion as regards the applicant's disability and suitability for the job. A Greek teacher with a visual disability whose application for inclusion in the catalogue of teachers with a disability was rejected, applied to the court for judicial review of the rejecting decision. She had submitted medical certificates showing that she suffered from degenerative lesion macular in both eyes and that her visual acuteness is 1/20 after correction. Her case was referred for examination to the MTC as foreseen by article 5 of the Law. The MTC assessed the applicant on the basis of its "Protocol of Evaluation" and found her to meet the Law's definition of a person with disabilities. The MTC's opinion was communicated to the respondent who interviewed the applicant and decided to reject her application, relying on their conclusion that her health problem does not place her in a disadvantageous position compared to other candidates. The rejecting decision of the Educational Service Committee was subjected to

⁵⁶⁵ For details, see the terms of the scheme at

http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd10_en/dsipd10_en?OpenDocument.

⁵⁶⁶ The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004.

⁵⁶⁷ Cyprus, Law on appointment of persons with disabilities in the wider public sector (Special Provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] 2009 N. 146(I)/2009. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

judicial review upon application by the applicant in 2014; the court decided to annul it due to lack of investigation and justification and as a result of an error of law.⁵⁶⁸ This decision was subsequently appealed against and the determination of the appeal was pending at the time of writing.

Meanwhile, the applicant's vision deteriorated upon which she re-applied for inclusion in the special catalogue and was again rejected, this time on the justification that her health condition renders her unsuitable for working as a teacher. She applied again to the court for judicial review, arguing that the decision of the respondent lacked proper investigation, was not justified and was taken in violation of the procedure, as the respondent failed to take into account the opinion of the MTC. The respondent claimed that the opinion of the multi-thematic committee was not binding and that it retained the right to carry out its own investigation; it further argued that the mere fact that applicant met the definition of 'person with disabilities' did not impose a duty on the administration to take MTC's advice and include her in the special catalogue of candidates.

The court rejected the respondent's arguments as regards the non-binding nature of the opinion of the multi-thematic committee establishing that the appointing body is compelled to take into consideration the opinion of the multi-thematic committee. If the multi-thematic committee found that the applicant met the definition of disability foreseen in the Law and found her suitable for appointment, and these findings coincided with the conclusions of the medical certificates submitted by the applicant, the interview carried out by the respondent and the questions put to the applicant did not provide any insights into the question at hand, which was the applicant's health condition. The Court ruled in favour of the applicant and annulled the rejecting decision, for not having been properly investigated, for lacking justification and for relying upon an error of law.

*Reports of the Equality Body/ Ombudsman / NHRI/ Independent Authority for the rights of persons with disability*⁵⁶⁹

Equality Body report on the rights of Jehovah's Witnesses to equal access to health care

Name of the court: Anti-discrimination Authority

Date of decision: 22 October 2015

Name of the parties: N/A

Reference number: 22/2015

Webpage:

[www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/048DDA1B614BE873C2257EFC00339466/\\$file/%CE%91%CE%9A%CE%A122_2015_22102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/048DDA1B614BE873C2257EFC00339466/$file/%CE%91%CE%9A%CE%A122_2015_22102015.doc?OpenElement)

Brief summary: A Jehovah's Witness filed a complaint at the Equality Body against the Ministry of Health regarding the medical treatment provided to him and to Jehovah's Witnesses in general and the refusal of the ministry to cover the costs of medical treatment in the private sector, where treatment in accordance with his religious beliefs could be provided. In 2011 the complainant had applied to be placed on the waiting list of a public hospital for an operation. Even though he had declared from the beginning that he was a Jehovah's Witness and that, for religious reasons, he required a that blood transfusions would not be performed during the operation, he was placed in the waiting list of a hospital that did not have the necessary equipment for this kind of operations. In 2014 when he discovered this he applied to the Ministry of Health for referral to another hospital that had the necessary equipment available for a "bloodless operation". The new hospital however refused to share any information as regards to the method and equipment to be used. The events created a doubt as to whether public hospitals could adequately respond to his demand for a "bloodless operation" and he applied to the ministry again for coverage of the costs in order to have the operation in the private sector. His application was rejected at the first and second instance.

⁵⁶⁸ Supreme Court, Eleni Paroutsi v. the Republic of Cyprus, Case No. 1449/2012, 14 March 2014.

⁵⁶⁹ These three authorities operate from within the office of the Ombudsman.

The report issued by the Equality Body stated the right of a person to choose a medical treatment that may pose health risks was recognised by the ECtHR in a 2010 decision⁵⁷⁰ where the imposition of a medical treatment contrary to a person's consent was found to infringe article 8 of the ECHR. The issues surrounding the medical treatment of Jehovah's Witnesses had been raised by the Equality Body in 2007⁵⁷¹ with a report which included recommendations for equal access to state services which had been ignored by the health authorities. The failure of the authorities to consider and address the complainant's request for "bloodless treatment" and the refusal of the health authorities to provide him with the requested information amounted to a failure to provide equal access to health care. The delay of several years and the entire unsatisfactory handling of his case by the health ministry created a reasonable doubt in the complainant's mind as to whether public hospitals could provide a service that would be respectful of his religious convictions. The report concluded that the complainant was denied access to state health services on the ground of his religious convictions and ruled that the state was under an obligation to cover the costs of treatment in the private sector in order to ensure access to health services that complied with his religious beliefs and do not violate his religious freedom.

Conditions of welfare eligibility for persons with intellectual disability

Name of the body: Independent Authority for the Promotion of the Rights of Persons with Disabilities (Ombudsman's office)

Date of decision: 7 April 2015

Name of the parties: N/A

Reference number: A/P 2354/2014, A/P 162/2015, A/P 483/2015

Webpage:

[www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/\\$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/78F6368F0F1FEEB9C2257E7B0024E278/$file/2354.2014%CE%BA.%CE%B1-7415.doc?OpenElement)

Brief summary: In 2014 the Cypriot welfare system was comprehensively reformed through the adoption of a new law that replaced the system of benefits payable to vulnerable groups with the 'minimum guaranteed income'⁵⁷² (the MGI law). Amongst other new conditions of eligibility, the MGI law required persons with intellectual disability to present a court order under the law on the administration of the property of "incapable" persons⁵⁷³ declaring them 'incapable' and appointing a person as their legal representative for managing their affairs. Without such a court order, the applications of intellectually disabled applicants could not be considered. The Committee for the Protection of Intellectually Retarded Persons⁵⁷⁴ and several groups of parents of persons with intellectual disabilities complained to the Ombudsman's office. The Ombudsman, who examined this complaint in her capacity as Independent Authority for the Rights of Persons with Disabilities, appointed under article 33(2) of the CRPD, found that this requirement is an obstacle to equal access to the minimum guaranteed income on the ground of disability; obtaining such a court order required considerable cost and time, and was forcing persons with intellectual disability to sign off their legal capacity, thus abolishing their rights in a number of other fields. The Ministry of Labour, Welfare and Social Insurance (hereinafter the ministry) informed the Ombudsman that the purpose of this provision was to satisfy the concerns of banks who had raised an issue regarding the legality of depositing the

⁵⁷⁰ ECtHR, *Jehovah's Witnesses of Moscow and others v. Russia* (2010), Application no. 302/02, 10 June 2010.

⁵⁷¹ Report of the Anti-discrimination Authority regarding the treatment and blood transfusion of a patient who is a Jehovah's Witness at the Larnaca General Hospital and the general treatment of Jehovah's Witnesses at public hospitals on the ground of their religious beliefs (*Έκθεση Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με τη νοσηλεία και μετάγγιση αίματος σε ασθενή Μάρτυρα του Ιεχωβά στο Γενικό Νοσοκομείο Λάρνακας και τη γενικότερη ιατρική μεταχείριση που τυγχάνουν οι Μάρτυρες του Ιεχωβά στα κρατικά νοσηλευτήρια λόγω των θρησκευτικών τους πεποιθήσεων*) File No. AKP 46/2006, 11 December 2007.

⁵⁷² Cyprus, Law on minimum guaranteed income and generally on social provisions (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N.109(I)/2014. Available at www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

⁵⁷³ Cyprus, Law on the administration of the property of incompetent Persons of 1996 (*Ο Περί Διαχείρισης της Περιουσίας Ανίκανων Προσώπων Νόμος του 1996*) N. 23(I)/1996. Available at www.cylaw.org/nomoi/enop/non-ind/1996_1_23/full.html.

⁵⁷⁴ For more information, see: www.cpmmental.com.cy/epnka/page.php?pageID=186.

welfare payments accruing to persons with intellectual disability into the bank accounts of their parents who lacked legal authorisation to manage these funds. The ministry had sought the Attorney General's opinion as regards this practice, who confirmed that persons representing persons with intellectual disability in any activity, including the managing of their property, must be duly authorized to do so through a court order.

The Ombudsman's report found that both the ministry and the Attorney General's office failed to consider whether this practice was compatible with the non-discrimination laws and the CRPD. The Ombudsman pointed out that the CRPD required states to provide support to persons with disability whenever they face difficulties in decision-making, enabling them to decide for themselves about issues affecting them, rather than resort to the unjustified deprivation of their legal capacity. The Ombudsman equated the duty to provide support to persons with disability to exercise their legal capacity with the duty to provide reasonable accommodation, breach of which amounts to unlawful discrimination. By contrast, the court order which the ministry requires in order to consider an application for the minimum guaranteed income cancels in an absolute and irrevocable way the person's legal capacity and his or her right to equality before the law. In essence, persons with intellectual and psychosocial disorders were forced to choose between the minimum guaranteed income and their legal capacity which is a prerequisite for their access to other fundamental rights and an important factor in their equal participation and integration. The Ombudsman described this measure as "violent and massive, perpetuating obsolete stereotypes and prejudices". In conclusion, the Ombudsman asked for the revision of the MGI law and for a practical interim solution to ensure access of all adult persons with intellectual or psychosocial disability to the minimum guaranteed income without the adverse consequences of losing their legal capacity.

In response to the criticisms raised by the Ombudsman and by the disability movement, the law was amended by removing the requirement for a 'legal authorisation' of the applicant's representative.⁵⁷⁵ The law now provides that the application for the MGI may be submitted by 'a representative' of the applicant with intellectual disability, without providing a definition of such representative or a procedure for his or her appointment. The Ministry of Labour, Welfare and Social Insurance (the ministry) issued instructions to the Social Welfare Services (SWS) to refrain from demanding an 'incapacity' court order in those cases where the applicant with intellectual disability had a joint bank account with another person and to pay the minimum guaranteed income into such account.⁵⁷⁶ This policy measure did not address the situation of applicants without such an account.

The absence of any regulation meant that the problem remained largely unaddressed. The Committee for the Protection of Persons with Mental Handicap,⁵⁷⁷ (the committee), reported that, in spite of the legislative amendment, the SWS continued to request court orders in order to pay the minimum guaranteed income to persons with intellectual disabilities who did not have a joint bank account with another person.

In a letter submitted to the ministry, the committee identified the following gaps which persisted in spite of the legislative and policy reform:

- a) Whilst previously these institutions/homes were able to cash the cheques issued in the name of their residents, the SWS now required that a relative of the applicant or a staff member of the institution/home where the person resides be appointed through the court as administrators of that person's estate in order to collect the

⁵⁷⁵ Cyprus, Law amending the law on minimum guaranteed income and generally on social provisions (Νόμος που τροποποιεί τον *Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) 118(I)/2015, article 4(3). Available at http://www.cylaw.org/nomoi/enop/ind/2014_1_109/section-sce28b579e-7244-6231-357a-c03c23572dc4.html.

⁵⁷⁶ Ministry of Labour, Welfare and Social Insurance, Circular No. EEE-7/2016, 9 June 2015.

⁵⁷⁷ <http://www.cpmmental.com.cy/epnka/page.php?pageID=7&langID=0>.

cheque. A large amount of cheques was returned to the SWS uncashed, because the residents of the institution/home did not have a legal representative formally appointed. In other instances, relatives of the person who were appointed by the Court as legal representatives refused to pay the fees due to the institution/home where the person was residing, which in the long term is likely to jeopardize the financial sustainability of these structures.

- b) Banks refuse to open accounts for adult persons with intellectual disability residing with their families on the justification that they are not in a position to manage the bank account. The committee is highly critical of the fact that the assessment of the person's abilities is made by a bank official without expertise and without following any set procedure.

To assist with the efforts of finding a solution, the Equality Body in its capacity as independent authority for the promotion of the rights of persons with disabilities carried out a self-initiated investigation into the implementation of the CRPD, focusing in particular on articles 4 (general obligations) and 12 (equal recognition before the law). The report highlighted the gaps and weaknesses of the law on the administration of the property of incapable persons,⁵⁷⁸ adopted over a decade before the CRPD was ratified, which promotes the concept of the 'incapacity' rather than supported decision-making. The report concluded that this law contravenes article 12 of the CRPD and at the same time raises issues of disability discrimination as it renders persons with disabilities particularly vulnerable to being rendered 'incapable' by the court, which deprives them of equal enjoyment of rights. The report further stressed that the law ratifying the CRPD ranks higher than the law on the administration of the property of 'incapable' persons and describes extensively the framework for supported legal capacity, as this emerges from article 12 of the CRPD and from the observations by the UN Committee.⁵⁷⁹

There were no cases brought by Roma or Travellers in 2015.

⁵⁷⁸ Cyprus, Law on the administration of the property of incompetent Persons of 1996 (*Ο Περί Διαχείρισης της Περιουσίας Ανίκανων Προσώπων Νόμος του 1996*) N. 23(I)/1996. Available at www.cylaw.org/nomoi/enop/non-ind/1996_1_23/full.html.

⁵⁷⁹ Cyprus, Position of the Independent Authority for the Promotion of the Rights of Persons with Disability regarding the implementation of obligations under the ratified UN Convention on the Rights of Persons with Disabilities and in particular article 4 ("General Obligations") and article 12 ("Equal Recognition before the Law") [*Τοποθέτηση της Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων ΑμεΑ αναφορικά με την υλοποίηση των υποχρεώσεων που απορρέουν από την κυρωθείσα*

⁵⁷⁹ *από την Κυπριακή Δημοκρατία, Σύμβαση του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρίες και ειδικότερα τα Άρθρα 4 («Γενικές Υποχρεώσεις») και 12 («Ίση Αναγνώριση ενώπιον του Νόμου»)] αυτής], File No, ΑΥΤ.4/2015, 25 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/\\$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/E103BD75A6A1308EC2257E82002E4317/$file/%CE%91%CE%A5%CE%A44_2015_25052015doc.doc?OpenElement).*

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Cyprus

Date: 31 December 2015

Title of legislation (including amending legislation)	Title of the law: Law on Persons with Disabilities N. 127(I)/2000 as amended by: Law N. 57(I)/2004; 72(I)/2007; 102(I)/2007; 63(I)/2014; 22(I)/2015. Abbreviation: Law N. 127(I)/2000 as amended Date of adoption:2000 Latest amendments: 2015 Entry into force:2000 Web link: www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html Grounds covered: Disability
	Civil law
	Material scope: Public and private employment
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, duty to provide reasonable accommodation in employment and beyond.
Title of legislation (including amending legislation)	Title of the law: The Constitution of the Republic of Cyprus Abbreviation: Constitution Date of adoption: 16.06.1960 Latest amendments: 2013 Entry into force:16.08.1960 Web link: www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html Grounds covered: Community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever
	Civil and administrative law
	Material scope: Mostly the public sector, although there is legal authority establishing that constitutional rights can be actionable per se against individuals [Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08 May 2001]
	Principal content: <i>General prohibition of discrimination on several grounds and in unspecified fields; declaration of rights along the lines of the ECHR</i>
Title of legislation (including amending legislation)	Title of the law: The Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004, as amended by Law N. 147(I)/2006 Abbreviation: Law 59(I)/2004 Date of adoption: 31.03.2004 Latest amendments: 2006 Entry into force:01.05.2004 Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html Grounds covered: Racial/ethnic Origin
	Civil law
	Material scope: Social protection, medical and medicinal care, social provisions, education, and access to goods and Services including housing
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Title of legislation (including amending legislation)	Title of the law: The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004, as amended by Laws N. 50(I)/2007 and 86(I)/2009 Abbreviation: Law 58(I)/2004 Date of adoption: 31.03.2004 Latest amendments: 2009 Entry into force:01.05.2004

	<p>Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html</p> <p>Grounds: Racial and ethnic origin religion or belief, age, sexual orientation</p>
	Civil law
	Material scope: Conditions of access to employment, access to vocational orientation and training, working conditions and terms of employment and membership to trade unions
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Title of legislation (including amending legislation)	<p>Title of the law: The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004</p> <p>Abbreviation: Law 42(I)/2004</p> <p>Date of adoption: 31.03.2004</p> <p>Latest amendments: 2006</p> <p>Entry into force: 01.05.2004</p> <p>Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html</p> <p>Grounds covered: Race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation.</p>
	Civil law
	Material scope: Combating of racist discrimination and of discrimination forbidden by law; promotion of equality of the enjoyment of rights and freedoms safeguarded by the Constitution or by the Conventions ratified by Cyprus; and promote equality of opportunity in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing
	Principal content: Creation of specialized body

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Cyprus

Date: 31 December 2015

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	16.12.1961	06.10.1962	None	Yes	Yes
Protocol 12, ECHR	04.11.2000	30.04.2002	None	Yes	Yes
Revised European Social Charter	03.05.1996	27.09.2000	None	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	19.12.1966	02.04.1969	None	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	04.06.1996	None	N/a	Yes
International Covenant on Economic, Social and Cultural Rights	09.01.1967	02.04.1969	None	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	12.12.1966	21.04.1967	None	Yes	Yes
Convention on the Elimination of Discrimination	23.07.1985*	23.07.1985*	None	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
n Against Women					
ILO Convention No. 111 on Discrimination	02.02.1968	02.02.1968	None	Yes	Yes
Convention on the Rights of the Child	05.10.1990	07.02.1991	None	Yes	Yes
Convention on the Rights of Persons with Disabilities	03.03.2007	17.02.2011	Yes	Yes	Yes

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