



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Cyprus
<b>Title:</b>	The equality body finds that restrictions in access to self-employment for third country nationals amount to unlawful discrimination
<b>Date:</b>	30 May 2016
<b>Expert:</b>	Corina Demetriou
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The equality body applies the Racial Equality Directive to labour market restrictions affecting third country nationals and gives a wide interpretation to the term 'racial or ethnic origin'
<b>Ground of discrimination:</b>	Race, ethnic origin, national origin
<b>Source:</b>	Report of the Equality Authority regarding discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, 15 April 2016, File number A.K.I.22/2016
<b>Field:</b>	Access to self-employment
<b>Applicable law:</b>	Law on estate agents N. 71(I)/ 2010, articles 11 and 12; Law on equal treatment in employment and occupation N.58(I)/2004; The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004

### **Content**

**Case:** In July 2015 the Equality Body received a complaint from a Ukrainian national residing in Cyprus since 1998 who was granted Cypriot nationality in 2003, against the decision of the Council for the Registration of Estate Agents to strike her off from the registry of assistant estate agents. The complainant was entered in the Registry in 2013 and was working as an assistant estate agent between 2011 and 2015, when the Council informed her that her registration was a 'mistake' as she did not meet the law's requirements to be registered as assistant estate agent. The Council invoked the provisions of the law on Estate Agents N. 71(I)/2010-2012 which required applicants to be holders of a secondary education degree obtained in a school recognised in Cyprus or in any other EU member state. The complainant objected to this decision, presenting proof that she was a holder of a university degree which had been recognised by the competent body of the Cypriot Ministry of Education. The Equality Body's investigation revealed that the Council for the Registration of Estate Agents had informed at least another 28 persons of its intention to strike them off the Registry because they were holders of certificates from schools in third countries.

This was not the first time that the Equality Body had dealt with the law regulating the licenses of estate agents, which contained provisions clearly intended to exclude non-Cypriots from the profession. The first intervention of the Equality Body in 2007 found

that the law included provisions which led to unlawful discrimination. In respect of estate agents, these included the requirement that the applicants be Cypriot or Union nationals, or spouses or children of union nationals, or third country nationals with their habitual residence in Cyprus; good knowledge of Greek or Turkish; eight years of experience in a related field; and a certificate from a school recognised in Cyprus or in any other member state.<sup>1</sup> The Council's practice excluded persons who have graduated from schools in third countries. Although Cyprus has a system of recognising university degrees obtained in third countries, it does not have a system of recognising secondary education certificates obtained abroad. In this case, the Ministry of Education certifies that a person has attended school in a third country but does not specify whether it recognises the said school, as required by the estate agents law. The nationality requirements of the law as regards *assistant* estate agents are even more restrictive than for estate agents: applicants must be either Cypriots or Union nationals, without any provision for spouses or children of Cypriots or Union nationals.<sup>2</sup> Third country nationals who acquired Cypriot nationality are also excluded since most of them have attended secondary education in a third country, as was the case of the complainant.

**Decision of the Equality Body:** Citing the law transposing the employment component of the two Equality Directives<sup>3</sup> the Equality Body interpreted the term 'racial or ethnic origin' as complemented by the terms 'language', 'race', 'colour' and 'national' origin. The prerequisites set by the estate agents as regards certified educational attainment, when there is no procedure for such certification, leads to indirect discrimination on the ground of national origin, in breach of the law transposing the Equality Acquis.<sup>4</sup> The exclusion of spouses and children of Cypriot and Union nationals from the profession of assistant estate agents amounts to direct discrimination on the ground of national origin. In light of the principle of supremacy of EU law and of the law transposing EU law, the mandatory power of the national law conflicting with EU law, in this case the estate agents law, is suspended. The Equality Body referred this law to the Attorney General asking for its revision.

**Internet link source:**

[www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922\\_2016\\_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

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<sup>1</sup> Law on estate agents (Ο περί κτηματομεσιτών νόμος) Ν. 71(Ι)/ 2010, article 11, available at [http://cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_71/index.html](http://cyllaw.org/nomoi/enop/non-ind/2010_1_71/index.html).

<sup>2</sup> Law on estate agents (Ο περί Κτηματομεσιτών νόμος) Ν. 71(Ι)/ 2010, article 12, available at [http://cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_71/index.html](http://cyllaw.org/nomoi/enop/non-ind/2010_1_71/index.html).

<sup>3</sup> Law on equal treatment in employment and occupation (Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) Ν.58(Ι)/2004, available at [http://cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://cyllaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>4</sup> Law on equal treatment in employment and occupation (Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) Ν.58(Ι)/2004, article 3, available at [http://cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://cyllaw.org/nomoi/enop/non-ind/2004_1_58/full.html).