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NEWS REPORT

Country:	Cyprus
Title:	The equality body finds that the restrictions imposed on asylum seekers as regards access to the labour market are discriminatory on multiple grounds
Date:	6 January 2017
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<u>Context</u>	
Issue at stake:	The equality body applies the equality acquis to the labour market restrictions affecting asylum seekers
Ground of discrimination:	Gender, race, ethnic origin, religion, other (family status, culture, age of children)
Source:	Report of the Commissioner for administration and human rights regarding access by women asylum seekers to labour and social welfare, File No. A/P 1799/2016, 11 November 2016
Field:	Employment; social protection
Applicable law:	The Combating of Racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004; ¹ Law on equal treatment between men and women in employment and vocational training N. 205(I)/2002; ² Law on equal treatment in employment and occupation N.58(I)/2004; ³ Law on refugees N. 6(I)/2000, articles 9IA, 9IB, 9ID, 9ITH, 9KD and 9KC; ⁴ ECHR; Geneva Convention on the status of refugees of 1951 and its Additional Protocol on the status of refugees of 1967, Recast Asylum Reception Conditions Directive 2013/33/EC

Content

Case: In October 2016 the Equality Body received a complaint from the NGO Caritas-Cyprus regarding the situation of 18 young African women seeking asylum in Cyprus whose welfare grants were interrupted by the Social Welfare Services because they were classified as voluntarily unemployed. Ten of these women were aged under 20, six were mothers of infants, one was a mother of an infant and also pregnant and two were pregnant. The women had tried to find work through the Department of Labour but were informed that they would be referred for work in agriculture or livestock farms, where they would have to reside on the farm possibly in the same accommodation with men. The prospective employers had confirmed that the conditions in these farms were unsuitable for pregnant women and babies and there was no provision for child care

¹ Available at http://cyllaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

² Available at http://cyllaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2002_1_205/appendix-ap4ebc5978-b0b3-5d47-dbcd-445519e5c800.html&qstring=205%28I%29%20w%2F1%202002.

³ Available at http://cyllaw.org/nomoi/enop/non-ind/2004_1_58/index.html.

⁴ Available at http://cyllaw.org/nomoi/enop/non-ind/2000_1_6/index.html.

when the women were at work, and had expressed their surprise for the referral. The claimant NGO had repeatedly applied to the authorities asking for the payment of welfare benefits to the women without requiring prior registration in the record of unemployed persons given their special circumstances, their vulnerable situation and the absence of any family or other social support network. All these requests were turned down. The policy framework as regards reception conditions, which relies on a decision of the Council of Ministers in 2013, provides that welfare grants to asylum seekers will be terminated when they twice refuse an offer for work for reasons which are deemed objectively unacceptable and unjustified, but does not set out any criteria for assessing the reasons for refusing a job offer nor is there any provision for vulnerable groups. A previous decision of the Council of Ministers in 2008 provided that asylum seekers acquired the right to work six months from filing an asylum application and then work permits are granted only for work in industries where there is low demand for jobs by Cypriots: agriculture, livestock, fisheries, cleaners, petrol station attendants, waste management etc.

The Equality Body's investigation revealed that the authorities were unwilling or unable to sidestep official policy, which requires all asylum seekers to register as unemployed and to accept any employment offered, or lose reception conditions. The only exception made is for those asylum seekers who can present medical evidence that they are incapable of working. Technically, the authorities had no means of assessing whether the policy is cost effective and whether the terms of work offered are such as to avoid reliance on public benefit.

Decision of the Equality Body: The report found that asylum seekers, like other third country nationals living in a foreign country are, by presumption, in a weak and vulnerable position, because of their excessive reliance on government agencies, where they are often confronted with racism and discrimination. The labour market restrictions applied in the case of asylum seekers and the inferior working conditions widespread in the industries where they are referred to for work, although primarily aimed at discouraging bogus asylum applications and avoiding high inflows of refugees, raise issues of disproportionately differential treatment leading to unlawful racial discrimination. Such is the absence of any procedure for individual assessment of the personal circumstances and individual skills of asylum seekers in search for work, which essentially forces asylum seekers to seek informal work, exposing them to the risk of exploitation. In the case at hand, the authorities failed to examine the vulnerable condition of the young African women, who were called upon to accept employment in spite of the practical, linguistic, cultural or religious difficulties posed by the harsh working conditions, as a result of their origin, age, gender and health situation. The policy framework was obviously designed having in mind the model of a single male person with no children, without taking into account any special characteristics or difficulties which asylum seekers may face as a result of their gender, combined with their ethnic origin, culture, religion, family or personal situation, the age of their children and the grounds of persecution in their country of origin. In conclusion, the report held that the current policy framework leads to indirect discrimination on multiple grounds including gender and proposed:

- The restructuring of the assessment procedure and the adoption of an individual assessment of personal, family, social and other circumstances in order to determine to what extent each individual asylum seeker may be referred for work as a precondition for reception conditions and the nature and conditions of the work;
- The disconnection of access to welfare from the procedure of finding employment in the case of persons with "established vulnerability";
- The adoption of measures to avoid discrimination at work and to promote labour integration of women asylum seekers through the provision of accommodation and support structures for child care in safe and hygienic conditions.

The report invited the Ministry of Labour to a consultation to discuss the problem faced by the complainants as well as the adoption of its recommendations on the policy level.

Key points of analysis: The report highlights the weaknesses of the concept of the 'voluntary unemployed' which is increasingly invoked by governments throughout the EU in order to deny welfare benefits. The issue becomes of crucial significance in the fight against discrimination, in light of the refugee crisis and the economic crisis. The Equality Body's position is reaching beyond the grounds of the Directive to protect conditions of vulnerability of individuals finding themselves in the position of strangers in a new environment: culture, absence of support networks, marital status, having children, age of the children, etc all of which resonate around gender and race.

Internet link source:

[http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).