



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

NEWS REPORT

Country:	Cyprus
Title:	The decision of the Commissioner for Administration and Human Rights (Ombudsman – equality body) finds that the restrictions imposed on asylum seekers, especially women, regarding access to the labour market amount to discrimination based on multiple grounds.
Date:	17 January 2017
Expert:	Lia Georgiades
Context	
Issue at stake:	The Commissioner applies the equality legislation to the labour market restrictions affecting asylum seekers.
Ground of discrimination:	Sex, National origin, race, other (family status, culture)
Source:	National Equality body ¹
Field:	Employment; other
Applicable law:	The Combating of Racism and Other Discrimination (Commissioner) Law No. 42(I)/2004; ² The Equal Treatment of Men and Women in Employment and Vocational Training Law No. 205(I)/2002 as amended; ³ the Equal Treatment in Employment and Occupation Law No. 58(I)/2004, as amended; ⁴ Law on refugees No. 6(I)/2000 as amended by Law No. 105(I)/2016, ⁵ Articles 8,9-9'KZ' and 10; ECHR; Geneva Convention on the status of the refugees of 1951 and its Additional Protocol on the status of refugees of 1967, Recast Asylum Reception Conditions Directive 2013/33/EC.

Content

Case development: The present flash report adopts the content of the flash report of the expert Corina Demetriou (Cyprus) from December 2016, which deals with 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 protection of the rights of refugees and asylum seekers is a duty of Cyprus provided through a number of binding international and European conventions to which the state

¹ 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.

² Available at http://cyllaw.org/nomoi/enop/non-ind/2004_1_42/full.html

³ 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

⁴ Available at http://cyllaw.org/nomoi/enop/non-ind/2004_1_58/index.html

⁵ Available at http://cyllaw.org/nomoi/enop/non-ind/2000_1_6/index.html

has acceded. These rights are guaranteed by the Law on Refugees No. 6(I)/2000 as amended, and the Refugees (Reception Conditions of Applicants) Regulations of 2005.⁶

The asylum applicants have to follow specific procedures in order to acquire the right to access to the labour market. (1) After the passing of six months from the date of the submission of the asylum application (the time limit has been increased to nine months by Law No. 105(I)/2016) the applicant is only allowed to be employed in specific employment sectors in which there is a low demand from the local workforce. These employment sectors are: (a) Agriculture, livestock and fisheries; (b) Animal feed production; (c) Waste management and garbage, recycling and processing of animal waste and slaughterhouse by-products; (d) Trade (petrol station workers, laundry workers and wholesale); (e) Other activities (building and outdoor cleaning workers, advertising or information material distributors and fast food workers).

(2) The asylum applicant may also be registered to the Register of Unemployment of the Public Employment. Until the date of placement in one of the abovementioned sectors, the applicant is supported by the Social Welfare Services. This support is terminated when the offered employment is rejected twice by the applicant, and the asylum seeker is subsequently removed from the unemployment register. The criteria based on which any refusal of employment to an asylum applicant is evaluated, are not specified and there is no specific protection for vulnerable groups. (3) The asylum applicants who are either unable, or do not wish to work in the abovementioned employment sectors are not allowed to be registered to the register of unemployed persons. The employment service of the Ministry of Labour, Welfare and Social Security, as the competent department, has to find suitable employment for those applicants who have declared that they are willing and available to work in the employment sectors concerned.

The abovementioned rules and conditions are contained in the decision of the Council of Ministers dated 18 July 2013. The Social Welfare Services have prepared the referral of the relevant Notification, which was published in the Official Gazette of the Republic of Cyprus.

Law No. 105(I)/2016, which amends Law No. 6(I)/2000, based on the Directive 2013/33/EC literally repeats the provision of the Directive on the specific situation of vulnerable persons, including persons with disabilities, pregnant women, people who have suffered torture, rape and other forms of psychological or sexual violence etc. It is specifically noted in relation to female asylum applicants, who are recognised both on an international and European level, as a vulnerable group in the refugee crisis. States are obliged to incorporate and implement measures and policies to protect and strengthen female refugees and asylum applicants, as well as to provide for their active participation and inclusion in their host society.

However, the legal system of Cyprus does not include any regulations governing the rights and protection of female asylum applicants and refugees. Article 3 of Law No. 205(I)/2002 as amended, explicitly provides for the "principle of equal treatment" and prohibits any direct or indirect discrimination on grounds of sex. Moreover, according to Article 2 of the same Law, indirect sex discrimination occurs when a provision, criterion or practice which is *prima facie* neutral, sets individuals of one sex at a particular disadvantage.

Decision of the Ombudsman: The Ombudsman, through its investigation notes, *inter alia*, that although the employment sectors available to asylum seekers are enough in theory, in practice, asylum seekers are mainly referred to agriculture and livestock jobs. According to the contract between the employer and employee and if a collective agreement exists, housing and food expenses are cut from the salary of those employed

⁶ Available at: http://www.cylaw.org/nomothesia/par_3/meros_1/2005/4774.pdf

in the employment sectors concerned, while transport expenses are excluded and not paid by the employer. It should also be noted that the relevant contract usually provides accommodation facilities for the employees, which are available to everyone, but often mainly suitable for single men.

The Ombudsman, based on the complaint, and after examination and investigation of the issue at stake, has reached conclusions and made recommendations which include inter alia the following:

(1) The process that female asylum applicants have to follow in order to have access to economic support, is connected to the process of registration of these women on the list of persons seeking employment in specific employment sectors. (2) The restriction of employment opportunities for asylum seekers to specific areas, and under terms and conditions of employment which are clearly inferior to those of all Cypriot and European citizens, raises issues of disproportionate discrimination. (3) By failing to assess individual skills or qualifications of asylum applicants seeking employment, affects not only human dignity, but also the ability of the state to benefit from the knowledge and experiences of these people. (4) Female asylum applicants who seek employment, should indicate their willingness and availability to work mainly as farmers. If, despite the obstacles arising because of their origin, age, sex and state of health, are eventually able to be employed, they have no other choice but to live within the workplace in common areas along with their children and other male workers. (5) The practice which is being followed during the last years in relation to the procedures for the access of asylum seekers to employment and social support, is open to abuse and acts to the detriment of the applicants who are indisputably vulnerable and entirely dependent on the state. Especially with regards to female asylum applicants, it is apparent that the policy followed in labour issues is entirely based on the model of the male asylum applicant. It has also been noted that the specific features and difficulties related to sex have not been considered. Neither in defining the employment sectors available to female asylum seekers, nor for the review process followed for the applications for social support by women.

(6) In the Ombudsman's view, all the above amounts to indirect sex discrimination, since they pose female asylum applicants seeking employment at a much more difficult position compared to male asylum seekers. At the same time, the practice which is being followed is in contrast with provisions of the recast Directive 2013/33/EC, as interpreted by the European Court of Justice which is also integrated into Cypriot law. (7) The recent amendment of the Law on Refugees should lead to restructuring the entire regulatory framework for asylum seekers' access to employment, particularly for the vulnerable groups of asylum seekers, including female applicants, seeking work and social care.

(8) Some issues that should be considered under the new law are, inter alia, (a) The individual evaluation process of every asylum seeker applying for employment, including their family, social and other personal conditions. (b) The process must be governed by a common protocol and an evaluation form, which should include all possible vulnerability factors (health, gender, marital status, history, social factors). (c) Readjustment of the sectors and conditions of employment in a manner sensitive to the applicants' gender, as well as to conditions such as pregnancy, lactation, motherhood and previous experiences of violence based on gender (physical, sexual and psychological). (d) Apply policies and measures aiming to prevent discrimination based on sex, and to the integration of female asylum applicants in vocational training and the labour market, while also providing facilities and support structures for the healthy development of their children.

The Ombudsman submitted its findings and recommendations to the Ministry of Labour, Welfare and Social Security and to the Asylum Service for further consultations.

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), accessed 17 January 2016.