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NEWS REPORT

Country:	Cyprus
Title:	Ombudsman report on legislation precluding persons with intellectual disability from acquiring Cypriot citizenship
Date:	10 March 2017
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<u>Context</u>	
Issue at stake:	The Ombudsman in her capacity as independent mechanism for monitoring the implementation of the CRPD found that a legislative provision requiring 'full capacity' as a precondition for naturalization violates the CRPD
Ground of discrimination:	Disability, nationality
Source:	Report of the Independent Authority for the Promotion of the Rights of Persons with Disability, File No. S.A.A. 40/2016, 26 January 2017
Field:	Access to state services
Applicable law:	Law on population archives N. 141(I)/2001 article 111; UN Convention on the rights of persons with disability (CRPD), The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004 article 39

Content

Case: The claimant was the mother of a 36-year-old man with intellectual disability ('the son'). She filed a complaint with the Ombudsman's office against the rejection by the Ministry of Interior of her son's application for the acquisition of Cypriot citizenship. The claimant and her family live in Cyprus since 1999. They have all acquired Cypriot citizenship through naturalisation, except for the son, whose application for citizenship was rejected in 2013 on the justification that he was not of 'full capacity'. The rejecting letter cited the Archives and Population Law which sets 'full capacity' as a precondition for the grant of citizenship.¹

Ombudsman's decision: With references to articles 3, 12(1), 12(2) and 18(1) of the CRPD and of the ratifying law,² the Ombudsman established that disability cannot justify exclusion of any person from naturalisation procedures, highlighting the obligation of all signatories to the CRPD, as expressed in article 4(1)(b) of the CRPD and of the ratifying law, to amend and adapt legislation, regulations, customs and practices which lead to discrimination against persons with disability. The report cites a recent UN paper on the meaning of discrimination in the CRPD³ which establishes that the CRPD requires the

¹ Cyprus, Law on population archives (N. 141(I)/2001, article 111, available at http://cyllaw.org/nomoi/enop/ind/2002_1_141/section-sc1884ab23-838d-dc25-776c-ec2739536ae9.html.

² Cyprus, Law ratifying the Convention for the Rights of Persons with Disabilities and the Optional Protocol to the Convention N. 8(III)/2011.

³ UN Office of the High Commissioner for human rights (2016), *Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities*, 9 December 2016, available at www.refworld.org/docid/58ad862d4.html.

transformation of existing social structures, systems and conceptions, such as ableism, that perpetuate discrimination against persons with disability. The UN paper stresses that many obstacles are premised upon attitudes often deeply embedded in the convictions of public officers, which are in turn reflected in legislation and policies preventing equal treatment and favouring discrimination in violation of the CRPD. The report states that this law is a typical example of such attitudes, leading to multiple discrimination where disability is intertwined with nationality in an inseparable way, since the precondition of 'full capacity' does not apply to Cypriots; as such the discrimination which occurred is far more serious. Citizenship becomes a right and a privilege only for the 'able', which is an attitude of stereotyping and prejudice falling within the concept of ableism and infringing the spirit and the letter of the CRPD. Further, the report notes that every reference to legal capacity as a precondition for access to rights infringes article 12 of the CRPD.

The report concluded that the Archives and Population law contravenes article 12 of the CRPD, which ranks higher than any law on national level.⁴ As such, the law must be interpreted as precluding discrimination on the ground of disability and the applicant's application for naturalisation must be re-examined in light of this. In addition, the Ombudsman filed a request to the Attorney General under article 39(I) of the law setting out its anti-discrimination mandate⁵ with a recommendation to proceed with preparing a legislative amendment, removing the requirement of 'full capacity' from the prerequisites for naturalisation.

Key points of analysis: The Ombudsman has on several occasions in the past investigated and criticised administrative practices towards persons with intellectual disability which are premised upon the concept of 'incapacity', often embedded in a court order stripping persons of their legal rights (known as 'the incapacity order'). The report makes extensive references to the CRPD, essentially delegitimising the concept of 'incapacity' which relies on the medical approach to disability. The 'medical' model, on the basis of which 'incapacity' or 'capacity' are determined, is not yet discredited in public administration practices in Cyprus, which continue to view disability as a medical condition, hence the adoption of the controversial standard known as International Classification of Functioning for determining access to welfare.⁶

Internet link source:

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/\\$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement)

Last accessed 07/03/2017.

⁴ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), article 169(3), available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc2303cc31-228c-9064-8ac3-d84db42e47d9.html>.

⁵ Cyprus, Law on combating racial and other forms of discrimination (Commissioner) [ο περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επιτροπος) Νόμος] N. 42(I)/2004, available at http://cylaw.org/nomoi/enop/ind/2004_1_42/section-sc225d534d-b19b-b3e2-748b-a68d02297762.html.

⁶ 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/dsipd06_gr/dsipd06_gr?OpenDocument.