



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

NEWS REPORT

Country:	Cyprus
Title:	The criminal code is amended to provide for aggravated sentences where a motivation of prejudice is established
Date:	16 June 2017
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	The motive of prejudice becomes an aggravating factor in determining sentences for any crime
Ground of discrimination:	Race/ethnic origin, religion/belief, sexual orientation and other (colour, national origin, genetic origin and gender identity)
Source:	Law amending the Criminal Code N.31(I)/2017. The new provision was added as article 35A into the annotated law, The Criminal Code Cap. 154, available at http://cylaw.org/nomoi/enop/non-ind/0_154/index.html
Field:	Other
Applicable law:	The Criminal Code Cap. 154, article 35A

Content

Legislative development: In April 2017, the Criminal Code was amended to introduce the motivation of prejudice as an aggravating factor in measuring the sentence to be imposed. The new provision vests the Court with the power (but falls short from imposing a duty) to take into account as an aggravating factor when measuring the convicted person's sentence, the motivation of prejudice against a group of persons who are identified on the basis of race, colour, national or ethnic origin, religious or other beliefs, genetic origin, sexual orientation or gender identity.

Discussions on this bill commenced in February 2017, when the Legal Committee of the House of Parliament discussed the amendment submitted by the Ministry of Justice without the participation of the Equality Body. When the Equality Body was informed about this discussion, it sent a note to Parliament with its positions on the issue,¹ following which the parliamentary committee invited the Equality Body to attend its forthcoming discussion on the bill. The Equality Body's intervention led to the inclusion of the grounds of religion or other belief, genetic origin, sexual orientation and gender identity into the new bill that was finally adopted.²

¹ Cyprus, Commissioner for Administration and Human Rights, Note submitted to the meeting of the Parliamentary Legal Committee on 15.02.2017 on "Hate Crimes" (Υπόμνημα που υποβλήθηκε σε συνεδρίαση της Κοινοβουλευτικής Επιτροπής Νομικών, στις 15/2/2017, με θέμα «Αδίκημα Μίσους»), available at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/00C52AB1AD771083C22580DB00322DE6?OpenDocument.

² Complementary report of the Parliamentary Legal Committee on the bills "Law amending the Criminal Code (No.4) of 2016" and "Law on combating certain forms and expressions of racism and xenophobia through Criminal Law (Amendment)(No.2) of 2016", 20 March 2017, available at http://www2.parliament.cy/parliamentqr/008_5h/008_05_4951.htm.

Simultaneously, with a law that was adopted on the same day, a similar provision in the law transposing the Framework Decision on Racism and Xenophobia was removed from the text of the law.³ The provision-now-deleted had been phrased so as to cast a duty on the Courts to take into account as an aggravated factor racist and xenophobic bias. According to the representative from the Attorney General's office who attended the parliamentary committee meeting preceding the adoption of this amendment, the imposition of a legal duty on the judge to take any factor into account was an unlawful interference of the legislature into the work of the judiciary and amounted to an infringement of the principle of separation of powers.

The term 'genetic origin' (in Greek: γενεαλογική καταβολή) was copied from the law transposing the Framework Decision on Racism and Xenophobia which defines this term as the genetic origin of persons or groups of persons who may be identified on the basis of certain characteristics such as race or colour but not necessarily all of these characteristics still exist. This is arguably narrower than the definition of 'descent' found in the Framework Decision which makes no reference to genetics.

Key points of analysis: Although this amendment must be seen as a positive development potentially marking a new trend in judicial tradition and covering a wide scope of application, it is undermined by the fact that what was previously a duty on the judge to take these factors into account is now reduced to a mere option.

However, what emerges as a more significant gap was that no measure was adopted to address the fact that no cases have ever been decided by the court on any of the grounds legislated through this amendment, which undermines the entire foundation of the laws transposing the Equality Directives and the Framework Decision. The parliamentary committee did not record any concerns from recent developments in the public sphere which undermine the equality principle, such as the failure of the Attorney General to prosecute the Archbishop for homophobic comments, in line with the request of the LGBT group 'Accept'. It is recalled that in 2016, 'Accept' filed a complaint to the Attorney General against the Archbishop for homophobic speech urging him to proceed with his prosecution, which the Attorney General has not yet acknowledged.⁴

Internet link source:

The parliamentary report in support of the amendment is available at http://www2.parliament.cy/parliamentgr/008_5h/008_05_4951.htm.

The annotated law containing the amendment is available at http://cylaw.org/nomoi/enop/non-ind/0_154/index.html.

The Equality Body's position on the draft of the law is available at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/00C52AB1AD771083C22580DB00322DE6?OpenDocument.

³ Cyprus, Law on combating certain forms and expressions of racism and xenophobia through Criminal Law (Amendment)(No.2) N.30(I)/2017.

⁴ The Cyprus Weekly (2017), 'Cyprus LGBT group hits out against Archbishop', 17 May 2017, available at <http://in-cyprus.com/cyprus-lgbt-group-hits-out-against-archbishop/>.