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# Country report

## Non-discrimination

Cyprus

2017

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**EUROPEAN COMMISSION**

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# **Country report**

# **Non-discrimination**

# **Cyprus**

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Reporting period 1 January 2016 – 31 December 2016

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## EXECUTIVE SUMMARY

### 1. Introduction

Cyprus was granted independence in 1960 with a Constitution that set out a power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'. The Constitution recognises two 'communities', the Greeks and the Turks and three 'religious groups', the Maronites, the Armenians and the Latins. The 'religious groups' were obliged to opt to belong to one of the 'communities' and opted to belong to the Greek community. The Roma community of Cyprus was not invited to opt but was deemed to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim) with the Turkish Cypriots. The government does not recognise the Roma as a separate ethnic community nor does it adopt or apply policies targeting the Roma, who are expected to benefit from horizontal policies intended for the entire population. The government also does not to recognise any migrant community as a 'minority'.

The Constitution functioned until 1963, when the Greek-Cypriot President proposed 13 amendments to it, effectively taking away the most basic rights of the Turkish-Cypriots. The Turkish-Cypriots reacted by withdrawing from the Government in protest and inter-ethnic violence ensued between 1963 and 1967. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the 'doctrine of necessity' which mainly provides for the 'suspension' of those constitutional provisions that guaranteed the rights of Turkish-Cypriots to be represented in decision-making. Between 1963 and 1974, a large number of Turkish-Cypriots gradually withdrew into enclaves. In 1974, following the military interventions from Greece and Turkey, division was further embedded. The three 'religious groups' stayed in the south with the Greek-Cypriots and the Roma joined the Turkish-Cypriots who were moved to the north, until early 2000, when many Roma returned to the south and settled in specifically designated Roma settlements, renowned for their squalor, poverty and bad state of repair. The housing segregation inevitably led to the schooling segregation of Roma children, who are obliged to attend schools close to their residence. Despite improvements to the housing situation and measures in education targeting the Roma, they remain the most socially excluded and vulnerable Cypriots.

Few NGOs are active in the non-discrimination field. There are no NGOs for the rights of the Turkish Cypriots or the Roma and only a handful of NGOs for the rights of migrants and asylum seekers. By far the most organised are the disability NGOs, whose lobbying actions are coordinated by a national confederation, which in 2006 was afforded the status of a social partner. However, in practice the confederation is being afforded little role in processes which are of key significance to it, such as the drafting and implementation of a 2009 law on quotas in employment and the implementation of the UN Convention on the Rights of Persons with Disabilities. Until 2010 there was only one gay rights NGO, with only two of its members being 'out of the closet' to openly fight for gay rights; in 2010 a new LGBT rights NGO emerged, bringing together younger dynamic people who are open about their sexual orientation and holding successful public events. Although sexual orientation discrimination is widespread amongst Cypriot society, developments are finally picking up: after years of debates, a law was adopted recognising civil unions of couples outside marriage, covering both same sex couples and all other couples who choose a registered partnership for other reasons.<sup>1</sup> A number of neo Nazi groups appeared in recent years with a strong anti-immigrant discourse and regular implication in racial crime. One of these groups, ELAM<sup>2</sup> was registered as a political party. In the 2016 parliamentary elections, ELAM won two seats and entered parliament, having benefited from the climate of heightened anti-immigrant sentiment which followed the economic crisis. In 2016 ELAM

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<sup>1</sup> Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at [http://cylaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cylaw.org/nomoi/arith/2015_1_184.pdf).

<sup>2</sup> The initials stand for 'National Popular Front', in Greek: Εθνικό Λαϊκό Μέτωπο.

managed to pass through parliament, with the votes of the 'centrist' parties and the abstention of the ruling party MPs, a regulation for celebrating in schools the 1950 referendum for union with Greece. This brought the collapse of the on-going UN brokered negotiations with the Turkish Cypriot leadership for the resolution of the Cyprus problem, with all major political powers admitting in the aftermath that it was 'a mistake'. Efforts to overturn this development and restart the negotiations were still ongoing at year's end.

## 2. Main legislation

The Cypriot Constitution contains a general anti-discrimination provision (article 28) which corresponds to Article 14 of the ECHR, but includes additionally the ground of belonging to either the 'Greek' or the 'Turkish' community. Age, disability and sexual orientation are not explicitly covered by the Constitution, although they are deemed as included in the term 'any other ground whatsoever' of article 28.

Cyprus has ratified most major international conventions on discrimination. In 2004 the two anti-discrimination directives were transposed into four separate national laws:

- a law amending the existing disability law in order to bring it in line with the Employment Equality Directive;<sup>3</sup>
- a law rendering discrimination in employment unlawful, roughly transposing the Employment Equality Directive on four grounds (i.e. excluding disability which is dealt with separately;<sup>4</sup>
- a law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment);<sup>5</sup> and
- the law appointing the Ombudsman as the equality body empowered to investigate complaints of discrimination in accordance with article 13 of Directive 2000/43, the mandate of which goes beyond the minimum prescribed by the said directive to include rights guaranteed by the Constitution and by the international law.<sup>6</sup> The wide mandate of the Equality Body does not include the provision of independent assistance to victims or the power to represent victims in Court.

In July 2006 the Cypriot Constitution was amended to give supremacy to EU laws. Until then, the Constitution was the supreme law of the country. Prior to that, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that positive action violated the principle of equality enshrined in the Constitution. During 2015 judicial trend begun to shift towards recognising that positive action does not infringe the equality principle and that it is in fact a necessary element in order to achieve equality.<sup>7</sup> The most commonly used legal route to challenge discrimination remains the Constitution, rather than the laws transposing the equality acquis, as lawyers tend to ignore the anti-discrimination directives, which have rarely been invoked in Court.

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<sup>3</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>4</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>5</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>6</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(1)/ 2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>7</sup> Cyprus, Supreme Court, Eleni Paroutsi v. Educational Service Committee, Case No. 5700/2013, 30 October 2015, available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;) Cyprus, Supreme Court, Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service, Ref. Nos1519/2010 και 1520/10, 3 September 2015, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015).



This sometimes leads to the emergence of legal norms of doubtful validity, like the use of concepts such as 'reasonable discrimination' which is allowed and necessary 'because of the special nature of things.' Along the same lines, the Supreme Court ruled that age is a legitimate criterion to determine seniority for the purposes of deciding promotions in public service. An additional problem of the judicial review process is that it requires applicants to have a 'legitimate interest', which essentially precludes applications from organisations acting on behalf of victims. From 2014 onwards there was a sharp decline in discrimination claims, attributed to the economic crisis, the general lowering of fundamental rights standards and the rising unemployment.

Current practice suggests that the duty to ensure that discriminatory laws, provision or rules of organisations have been explicitly repealed is not fully complied with. The process of formal repeal of laws or regulations is triggered off only after a complaint is submitted to the equality body. Even when a discriminatory legislative provision is reviewed in the framework of a judicial process, this does not trigger the procedure of revision. If the Equality Body finds that a provision is contrary to the directives, the procedure for repealing it does not always bear fruit. A decision issued by the Supreme Court in 2014 which established that the Attorney is not at liberty to ignore the Equality Body's recommendation for amendment of a discriminatory law, was promising to change the picture<sup>8</sup> but this did not happen in 2015.

### 3. Main principles and definitions

All definitions of 'discrimination' contained in the directives are virtually replicated in the national laws. Thus, direct and indirect discrimination, harassment, instructions to discriminate and victimisation, which are prohibited on all five grounds, follow verbatim the definitions in the directives. Discrimination by association is not explicitly covered in the anti-discrimination laws, but is covered by Protocol 12 to the ECHR; in addition, equality body decisions in 2010 and in 2015 applied the principle established in *Coleman*,<sup>9</sup> extending the prohibition of disability discrimination to the primary carers of persons with disability even if they are not parents or spouses of the person with disability.<sup>10</sup>

The laws transposing Directive 2000/78 allow for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the particular occupational activities or the context within which these are carried out is such that a specific characteristic constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. With regard to age, these provisions do not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and the duties of the occupation. In practice, age limits apply in job recruitments and promotions, particularly within the police force, aimed less at serving labour market policy goals and more at addressing the deterioration of physical fitness of employees, which allegedly comes with age.

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<sup>8</sup> Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

<sup>9</sup> CJEU, Case C-303/06, S. Coleman v Attridge Law and Steve Law, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

<sup>10</sup> Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

In the case of occupational activities of churches or other public or private organizations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief does not constitute discrimination when, due to the nature of the context of these activities, religion or belief is a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.

The scope of the Law on Persons with Disabilities excludes activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. The law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.<sup>11</sup>

The disability law was amended in 2007 to impose an obligation on employers to provide reasonable accommodation so long as the burden on the employer is not disproportionate. The law was further amended in 2014 in order to extend the duty to provide reasonable accommodation to fields beyond employment, provided the burden is not disproportionate or unjustified.<sup>12</sup> The fields of application of the new duty to provide reasonable accommodation are: the right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to housing, buildings, streets, the environment, public means of transport, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc (article 4); Equality in the provision of goods services and facilities where this is 'justified' (article 6); telephone services especially adapted for persons with disability and television programs accessible to deaf persons (article 8).

There is no provision in the Cypriot legal order for multiple discrimination, although the concept was repeatedly raised in Equality Body decisions, concerning migrants with disabilities applying for nationality, young asylum seeking women with babies forced to work in agriculture and women of foreign national origin subjected to harassment at work.

#### **4. Material scope**

The anti-discrimination laws cover both the private and the public sector and include all fields provided in the directives. Thus, discrimination on all five grounds is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations. In addition, discrimination on the ground of racial/ethnic origin is forbidden in the field of social protection, medical care, social provision, education and access to goods and services available to the public including housing. Subject to conditions, the disability law provides for the right to equal treatment in the provision of goods, facilities and services.

#### **5. Enforcing the law**

Victims have the option of submitting a complaint to the equality body or to the courts. Litigation could either take the form of an application for judicial review under article 146 of the Constitution, or to the district court or labour tribunal in accordance with the laws transposing the two directives, or to the district Court for violation of the constitutional anti-discrimination provision. Litigation is hardly ever used by vulnerable groups for various reasons: low awareness of the anti-discrimination laws amongst victims and legal circles, the high cost of litigation and restrictions in accessing legal aid which is subject to the

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<sup>11</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>12</sup> Cyprus, Law amending the Law on Persons with Disabilities No. 63(I)/2014, 23 May 2014. Available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

'means test', and the length of time involved which is prohibitive for persons with a short term stay in Cyprus such as migrants. In 2013 and 2014, the number of employment-related complaints to the Equality Body dropped almost by half compared to previous years and thereafter remained at low levels, which is attributed to the rising unemployment and the fear of victims that they may lose their jobs if they complain. From the body of decisions emerging in recent years, it appears that the more vulnerable the groups the less access they have to judicial or equality body proceedings. Thus most anti-discrimination claims brought before the Court are filed by civil servants regarding promotions, pensions and retirement ages. There are a few Court decisions concerning the claims of Turkish Cypriots to their properties in the south or to state grants but no cases involving migrants or Roma claiming violation of the equality *acquis*.

The limited resources allocated to the equality body has led to delays in investigating of complaints of up to three to four years; by then third party rights may have been created, rendering justice for the victim impossible, whilst the victim meanwhile becomes time-barred from applying to the courts. No binding decision was ever issued by the Equality Body and no sanction was ever imposed; in the majority of cases, the equality body prefers to use its mediation function, as sanctions are too low to act as a deterrent. In each annual report, the Equality Body dedicates a special section to describe its mediation efforts, setting out a number of examples of successful mediation.<sup>13</sup>

The national laws transpose verbatim the directives' provisions regarding the right of organisations to engage in procedures on behalf of victims. Victims may address complaints directly to the equality body, where the procedure is cost-free, simple and flexible, or to NGOs or trade unions, who may then submit complaints to the equality body on their behalf. However, there are few NGOs available to file complaints on behalf of vulnerable groups and even fewer trade unions, some of whom tend to view the equality body with suspicion; for instance, the Equality Body reports that trade unions view with suspicion its interventions in labour related issues, which they interpret as an interference with the free bargaining of the terms of the collective agreements.<sup>14</sup> In general, more complaints are submitted by individuals rather than by organisations acting on their behalf. In the case of sexual orientation, the tide is beginning to turn after the legalisation of same-sex partnerships, with an increasingly higher number of LGB persons willing to come forward with their complaints, which are mostly related to harassment at the workplace.

There is no mention in the legislation, in case law, or in equality body decisions on the use of situation testing and statistical data. If an argument in favour of admitting such evidence is used in Court, it is likely to be allowed, although the Courts often do allow technicalities to place obstacles in the delivery of justice. The general rules of evidence for criminal and civil procedure apply. The admissibility of situation testing as a method of proving discrimination in courts will presumably be subjected to the general test of 'relevance' and 'the best evidence rule'. However, it is not possible to state with certainty whether the courts will consider this as admissible evidence in order to prove discrimination.

The burden of proof may be reversed in judicial proceedings where the laws transposing the directives are involved; a claimant who invokes the constitution or uses other laws as the basis of his or her claim cannot benefit from the principle of the reversal of the burden

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<sup>13</sup> See for example: Equality Authority Annual Report 2014, p. 16, available at <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; Anti-discrimination Authority Annual Report 2014, p.23, available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIKRISON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIKRISON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf).

<sup>14</sup> Equality Authority Annual Report 2007-2008, available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

of proof. The burden of proof is not reversed in procedures before the equality body, since the latter's mandate includes the right to carry out investigations to establish facts.

The sanctions which Courts can impose against physical persons found guilty of discrimination cannot exceed € 6,835.27 and/or imprisonment of up to six months. For legal persons the maximum penalty is € 1,196.72. If the offence has been committed out of gross negligence, the fine for physical persons is up to € 3,417.63. For legal persons the fine is again up to € 3,417.63 for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was committed with his/her consent plus an additional fine of up to € 6,835.27 for the company or organisation. These fines, however, can only be imposed by the Courts; the Equality Body can only impose small fines which cannot exceed € 598. The Equality body does not have the power to award compensation to victims of discrimination, this is the exclusive jurisdiction of the district courts and the labour court

## **6. Equality body**

In 2004, the Ombudsman was appointed as the national equality body, empowered to combat racial discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin; to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol 12 of the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination) irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin; to promote equality of opportunity irrespective of the aforesaid grounds plus the grounds of special needs and sexual orientation. The scope of this provision covers not only the fields of Directive 2000/78 but additionally social insurance, medical care, education and access to goods and services including housing. Although a quasi-judicial body with powers to issue binding decisions, the Equality Body resorts to mediation and/or to non-binding recommendations as more effective means of tackling problems rather than the small fines foreseen in the law. Since its inception, the Equality Body has not issued a single fine or imposed a single sanction on perpetrators; its reports are permeated by the logic of mediation rather than seek to pin responsibility on perpetrators. A number of new functions were added to its mandate from 2009 onwards without adding to its budget or resources. These functions include the National Human Rights Institute (NHRI), the independent mechanism for the prevention of torture, the independent mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities and the independent authority for the implementation of the Return Directive. Insufficient funds allocated to the Equality Body's office resulted in inadequate staffing arrangements, in delays in issuing decisions, in an inability to conduct surveys, awareness campaigns, research or issue codes of conduct unless external funding is secured.

## **7. Key issues**

- The additional functions/mandate extensions assigned to the Equality Body/Ombudsman without an increase in its budget has led to considerable delays in decision making, to the extent that the effectiveness and impact of the institution is now at question. The freezing in recruitments to the public sector, imposed as a result of the economic crisis, has meant that it cannot hire personnel even if only to replace those who resign from the service. Many of the officers of the Equality Body are not legally trained, which is reflected in the reports published.
- The requirement of the Racial Equality Directive that the specialized body should be in a position to offer assistance to victims is still not transposed, more than 10 years after the directive was transposed, as the Equality Body lacks both the legal mandate and the human capacity to represent victims in Court.

- Very rarely do discrimination cases make it to the courts. In those cases, where they do, the anti-discrimination legal framework is not being invoked; instead recourse is made to the 40-year old constitutional provisions (judicial review of administrative acts; and/or the general equality provision of article 28) which do not offer the far-reaching protection of the directives and which is restricted to persons with a 'legitimate interest'. The decision is often based on problematic legal doctrines arbitrarily developed by the courts which do not comply with the directives and which deny victims the protection offered by the directives.
- Litigation is not sufficiently used, owing to the cost and time length involved, the fact that legal aid is made available only subject to insufficient means, and to the lack of awareness of the anti-discrimination laws amongst the legal profession. In recent years, the government has completely abandoned efforts to raise awareness about the directives, to promote anti-discrimination initiatives or to consult with civil society. The 2014-2020 package of the EU's structural funds will not be used to fund new projects promoting anti-discrimination but only to fund existing 'horizontal policies' for which the beneficiaries have expressed fierce criticism, like the disability classification system ICF.
- There is no procedure in place for regular reviewing or revising of discriminatory laws/regulations. In practice, review is only triggered off once a complaint is submitted to the equality body. In such a case, the law requires the equality body to refer discriminatory laws/regulations to the Attorney General who is then under a duty to prepare the amending legislation. This procedure however is very rarely followed, to the effect that several discriminatory laws remain in place.
- Issues deriving from the unresolved 'Cyprus problem' have been the source of on-going ethnic discrimination, especially in regard to the Turkish Cypriots' access to their properties and the exercise of various constitutional rights.
- The transposition in 2016 of two asylum related Council Directives (the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33) introduced into the national asylum law provisions leading to discrimination on the grounds of ethnic origin, disability and sexual orientation in the fields of education, freedom from detention and access to the asylum procedure.

## RÉSUMÉ

### 1. Introduction

Chypre a acquis son indépendance en 1960 en se dotant d'une Constitution qui établit un système de strict partage des pouvoirs entre les «Grecs», d'une part, et les «Turcs», d'autre part. La Constitution reconnaît ces deux «communautés», et trois «groupes religieux»: les maronites, les chrétiens arméniens et les latins. Les «groupes religieux» ont été obligés d'opter pour l'une des «communautés» et ont choisi l'appartenance à la communauté grecque. La communauté rom présente à Chypre n'a pas été invitée à faire de choix et les autorités ont considéré qu'elle appartenait à la communauté turque en raison de la langue (turque) et de la religion (islamique) qu'elle est supposée partager avec les Chypriotes turcs. Le gouvernement ne reconnaît pas les Roms en tant que communauté ethnique distincte et n'adopte ni n'applique aucune mesure à leur intention, considérant qu'ils sont censés bénéficier de mesures horizontales visant l'ensemble de la population. Le gouvernement ne reconnaît par ailleurs aucune communauté immigrée en tant que «minorité».

La Constitution a fonctionné jusqu'en 1963, date à laquelle le président chypriote grec a proposé treize amendements ayant pour effet de priver les Chypriotes turcs de leurs droits les plus élémentaires. Ceux-ci ont réagi en se retirant du gouvernement en signe de protestation et la situation a dégénéré en violences interethniques de 1963 à 1967. En 1964, la Cour suprême a dit pour droit que le gouvernement devait continuer de fonctionner sur la base de la «doctrine de nécessité», qui prévoit principalement la «suspension» des dispositions constitutionnelles garantissant la représentation des droits des Chypriotes turcs dans les prises de décisions politiques. Entre 1963 et 1974, de nombreux Chypriotes turcs se sont retirés dans des enclaves. La division s'est ancrée davantage encore en 1974 par suite des interventions militaires de la Grèce et de la Turquie. Les trois «groupes religieux» sont restés dans le Sud avec les Chypriotes grecs, et les Roms ont rejoint les Chypriotes turcs, déplacés vers le Nord, jusqu'au début des années 2000 – époque à laquelle un grand nombre de Roms sont retournés dans le Sud pour s'installer dans des implantations qui leur étaient spécifiquement destinées et qui étaient connues pour leur état de misère et de délabrement. La ségrégation en termes de logement a inévitablement entraîné la ségrégation éducative des enfants roms, qui n'avaient d'autre choix que celui de s'inscrire dans les écoles situées à proximité de leur domicile. Malgré les améliorations en matière de logement et les mesures éducatives à l'intention des Roms, ceux-ci demeurent les Chypriotes les plus vulnérables et souffrant de la plus grande exclusion sociale.

Peu d'ONG exercent leur activité dans le domaine de la lutte contre les discriminations. Aucune ne s'occupe de défendre les droits des Chypriotes turcs et des Roms, et quelques-unes d'entre elles seulement se chargent de défendre les droits des réfugiés et des demandeurs d'asile. Les ONG de loin les mieux organisées sont celles qui traitent du handicap; leurs actions de lobbying sont coordonnées par une confédération nationale, qui a obtenu en 2006 le statut de partenaire social. En pratique toutefois, elle ne peut jouer qu'un rôle très limité dans les processus qui l'intéressent au premier plan, tels l'élaboration et la mise en œuvre d'une loi de 2009 sur les quotas en matière d'emploi et l'application de la Convention des Nations unies relative aux droits des personnes handicapées. Jusqu'en 2010, le pays ne comptait qu'une seule ONG de défense des droits des homosexuels dont deux membres seulement étaient «sortis du placard» pour défendre ouvertement leurs droits. Une nouvelle ONG de défense des droits des personnes LGBT a vu le jour en 2010: elle regroupe des jeunes qui affichent ouvertement leur orientation sexuelle et organisent avec succès des manifestations publiques. Même si la discrimination fondée sur l'orientation sexuelle reste très répandue au sein de la société chypriote, des évolutions s'amorcent enfin: après des années de débat, une loi reconnaissant les unions civiles de couples en dehors du mariage, qui couvre à la fois les couples de même sexe et

tout couple choisissant un partenariat enregistré pour d'autres raisons, a été adoptée.<sup>15</sup> Chypre a vu émerger ces dernières années un certain nombre de groupes néo-nazis tenant des discours fortement anti-immigrants et régulièrement impliqués dans des actes de violence raciale. L'un de ces groupes, l'ELAM,<sup>16</sup> s'est inscrit en tant que parti politique. Lors des élections parlementaires de 2016, il a remporté deux sièges et a donc fait son entrée au parlement, ayant tiré parti d'un climat caractérisé par un sentiment anti-immigrants que la crise économique a renforcé. En 2016, l'ELAM est parvenu à faire adopter par le Parlement, grâce aux votes des partis «centristes» et à l'abstention des députés du parti au pouvoir, un règlement prévoyant la célébration dans les écoles du référendum de 1950 sur l'union avec la Grèce – ce qui a entraîné l'échec des négociations en cours avec les leaders chypriotes turcs, et la médiation des NU, en vue de résoudre le problème de Chypre; les principales puissances politiques ont toutes admis par la suite qu'il s'agissait d'une «erreur», et des efforts pour tenter de revenir en arrière et reprendre les négociations étaient toujours déployés en fin d'année.

## 2. Législation principale

La Constitution chypriote contient une disposition générale de lutte contre la discrimination (article 28) qui correspond à l'article 14 de la CEDH, mais inclut, en outre, le motif de l'appartenance à la communauté «grecque» ou à la communauté «turque». L'âge, le handicap et l'orientation sexuelle ne sont pas explicitement couverts par la Constitution, même s'ils sont présumés inclus dans l'expression «tout autre motif quelconque» figurant à l'article 28.

Chypre a ratifié la plupart des grandes conventions internationales relatives à la discrimination. Les deux directives de lutte contre la discrimination ont été transposées en 2004 sous la forme de quatre lois nationales distinctes, à savoir:

- une loi modifiant la loi existante sur le handicap, afin d'aligner cette dernière sur les dispositions de la directive 2000/78/CE;<sup>17</sup>
- une loi rendant illégale la discrimination dans le travail et l'emploi, transposant grosso modo la directive 2000/78/CE en retenant quatre motifs de discrimination au lieu de cinq (le handicap étant exclu car couvert par ailleurs);<sup>18</sup>
- une loi rendant illégale toute discrimination fondée sur l'origine ethnique ou raciale dans les domaines couverts par la directive 2000/43/CE (sauf l'emploi);<sup>19</sup> et
- la loi désignant le Médiateur en tant qu'organisme de promotion de l'égalité de traitement habilité à enquêter sur les plaintes pour discrimination conformément aux dispositions de l'article 13 de la directive 2000/43/CE; son mandat s'étend au-delà des exigences minimales de ladite directive puisqu'il inclut les droits garantis par la Constitution et par le droit international.<sup>20</sup> Le large mandat de l'organisme de promotion de l'égalité n'inclut cependant pas l'apport d'une aide indépendante aux victimes ni l'habilitation à représenter celles-ci en justice.

La Constitution chypriote a été amendée en juillet 2006 afin de conférer la primauté à la législation de l'UE. Jusqu'alors, la Constitution avait été la loi suprême du pays et la

<sup>15</sup> Chypre, loi n° 184(I)/2015 sur les mariages civils (*Ο περί Πολιτικής Συμβίωσης Νόμος του*) du 9 décembre 2015. Disponible sur [http://cylaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cylaw.org/nomoi/arith/2015_1_184.pdf).

<sup>16</sup> L'acronyme signifie «Front populaire national» en grec: Εθνικό Λαϊκό Μέτωπο.

<sup>17</sup> Chypre, loi n° 127(I)/2000 relative aux personnes handicapées (*Ο Περί Ατόμων με Αναπηρίες Νόμος*). Disponible sur [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>18</sup> Chypre, loi n° 58(I)/2004 relative à l'égalité de traitement en matière d'emploi et de travail (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*). Disponible sur [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>19</sup> Chypre, loi n° 59(I)/2004 sur l'égalité de traitement (origine raciale ou ethnique) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*]. Disponible sur [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>20</sup> Chypre, loi n° 42(1)/2004 sur la lutte contre la discrimination raciale et autres formes de discrimination (Commissaire) [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*]. Disponible sur [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).



disposition antidiscrimination figurant en son article 28 avait été interprétée par les tribunaux comme signifiant qu'une action positive transgressait le principe d'égalité consacré par la Constitution. On a observé en 2015 une réorientation de cette tendance judiciaire puisqu'il est admis désormais que l'action positive n'enfreint pas le principe d'égalité et qu'elle s'avère en réalité nécessaire à la réalisation de l'égalité.<sup>21</sup> La voie légale la plus fréquemment empruntée pour contester une discrimination reste la Constitution plutôt que la législation transposant l'acquis en matière d'égalité du fait que les avocats tendent à ignorer les directives antidiscrimination, lesquelles n'ont été que rarement invoquées en justice. Cette situation conduit parfois à l'émergence de normes juridiques d'une validité douteuse: on peut citer à cet égard le recours à des notions telles que la «discrimination raisonnable» autorisée et nécessaire «en raison de la nature particulière des choses». Dans le même ordre d'idée, la Cour suprême a dit pour droit que l'âge constituait un critère légitime pour déterminer l'ancienneté aux fins de décider des promotions dans la fonction publique. Un problème supplémentaire se pose au niveau du contrôle juridictionnel dans la mesure où ce processus requiert que les demandeurs aient un «intérêt légitime», ce qui exclut par essence les demandes émanant d'organisations agissant au nom de victimes. Une forte diminution du nombre de plaintes pour discrimination a été constatée depuis 2014 – phénomène que l'on attribue à la crise économique, à l'abaissement général des normes en matière de droits fondamentaux et à la montée du chômage.

La pratique actuelle fait penser que l'obligation de veiller à l'abrogation explicite des lois, dispositions et règlements d'organisations ayant un caractère discriminatoire, spécifiée par les directives sur l'égalité, n'est pas entièrement respectée. Le processus d'abrogation officielle des lois ou réglementations non conforme aux directives n'est déclenché qu'à la suite du dépôt d'une plainte auprès de l'organisme de promotion de l'égalité de traitement. Même l'établissement du caractère discriminatoire d'une disposition législative dans le cadre d'une procédure judiciaire n'engendre pas de processus de révision. Lorsque l'organisme de promotion de l'égalité constate qu'une disposition enfonce les directives, la procédure visant à l'abroger ne porte pas toujours ses fruits. On pouvait espérer qu'un arrêt rendu par la Cour suprême en 2014, établissant que le Procureur ne peut se permettre d'ignorer la recommandation de l'organisme de promotion de l'égalité réclamant la modification d'une loi discriminatoire, ferait évoluer cette situation,<sup>22</sup> mais il n'en a rien été en 2015.

### 3. Principes généraux et définitions

Toutes les définitions de la «discrimination» figurant dans les directives sont quasiment reproduites dans la législation nationale. C'est ainsi que les définitions de la discrimination directe et indirecte, du harcèlement, de l'injonction de discriminer et des rétorsions, qui sont interdits pour l'ensemble des cinq motifs, suivent textuellement celles des directives. La discrimination par association n'est pas explicitement couverte par les lois antidiscrimination, mais elle est couverte par le protocole n° 12 à la Convention européenne des droits de l'homme; des décisions de l'organisme pour la promotion de

<sup>21</sup> Chypre, Cour suprême, Eleni Paroutsis c. Comité du service éducatif, arrêt n° 5700/2013, 30 octobre 2015, disponible sur [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;) Chypre, Cour suprême, Costas Tsikas et al c. la République de Chypre au travers du Comité du service éducatif, réf. 1519/2010 και 1520/10, 3 septembre 2015. Disponible sur [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.)

<sup>22</sup> Chypre, Cour suprême, Nicoletta Charalambidou c. la République de Chypre, le ministre des Finances et le Procureur général (*Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), arrêt n° 1695/2009, 17 décembre 2014. Disponible sur [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%F1%E9%F3%\\*%20and%2058\(%E9\)#.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%F1%E9%F3%*%20and%2058(%E9)#.)



l'égalité ont appliqué en outre en 2010 et en 2015 le principe établi dans *Coleman*<sup>23</sup> en vertu duquel l'interdiction de discrimination fondée sur le handicap s'étend aux aidants principaux de personnes handicapées, même s'il ne s'agit pas de parents ou de conjoints de ces dernières.<sup>24</sup>

Les lois transposant la directive 2000/78/CE autorisent un traitement différencié fondé sur les motifs de l'origine raciale ou ethnique, de la religion ou des convictions, de l'âge, du handicap et de l'orientation sexuelle lorsque la nature d'activités professionnelles particulières ou le contexte dans lequel celles-ci s'exercent sont tels qu'une caractéristique spécifique constitue une condition préalable d'emploi essentielle et déterminante pour autant que l'objectif soit légitime et l'exigence proportionnée. En ce qui concerne l'âge, ces dispositions ne s'appliquent pas aux forces armées, dans la mesure où la fixation d'une limite d'âge est justifiée par la nature et les obligations de la fonction. En pratique, des limites d'âge sont appliquées lors de l'embauche et de la promotion professionnelle, au sein des forces de police en particulier: elles visent moins à servir les objectifs du marché du travail qu'à tenir compte de la dégradation de l'état physique du personnel que l'avancée en âge est censée causer.

Dans le cas d'activités professionnelles exercées dans le cadre d'Églises ou d'autres organisations privées ou publiques dont la philosophie est fondée sur la religion ou les convictions, une différence de traitement fondée sur la religion ou les convictions d'une personne ne constitue pas une discrimination lorsque, en raison de la nature de ces activités ou du contexte dans lequel elles sont exercées, la religion ou les convictions représentent une exigence professionnelle essentielle, légitime et justifiée, compte tenu de la philosophie de l'organisation.

Le champ d'application de la loi relative aux personnes handicapées exclut les activités pour lesquelles, en vertu de leur nature ou de leur contexte, une caractéristique ou une capacité que ne possède pas une personne handicapée, constitue une condition préalable essentielle et déterminante pour autant que l'objectif soit légitime et la condition préalable proportionnée, compte tenu de la possibilité d'adopter des «mesures raisonnables», au sens que leur donne cette loi. Celle-ci ne s'applique pas aux forces armées, dans la mesure où la nature du travail est telle qu'elle exige des aptitudes spéciales qui ne peuvent être exercées par des personnes handicapées.<sup>25</sup>

La loi relative aux personnes handicapées a été modifiée en 2007 afin d'imposer aux employeurs l'obligation de prévoir un aménagement raisonnable pour autant que celui-ci ne représente pas pour eux une charge disproportionnée. La loi a fait l'objet d'une nouvelle modification en 2014 en vue d'étendre l'obligation d'aménagement raisonnable au-delà du domaine de l'emploi pour autant que la charge ne soit pas disproportionnée ou injustifiée.<sup>26</sup> La nouvelle obligation d'aménagement raisonnable s'applique aux domaines suivants: le droit de mener une vie autonome, le diagnostic et la prévention du handicap, l'aide personnelle avec dispositifs d'assistance, services, etc., l'accessibilité des logements, des bâtiments, des rues, de l'environnement, des transports en commun, de l'éducation, de l'information et de la communication au moyen de dispositifs spéciaux, des services d'insertion sociale et économique, de la formation professionnelle, de l'emploi sur le

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<sup>23</sup> CJUE, affaire C-303/06, *S. Coleman c. Attridge Law & Steve Law*, disponible sur <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=150145>

<sup>24</sup> Chypre, Autorité pour l'égalité, Rapport de l'Autorité pour l'égalité concernant la proposition de transfert d'un agent administratif l'éloignant de son lieu de résidence permanente où elle est l'aidante principale d'une personne souffrant d'un handicap psychosocial, 16 octobre 2015, réf. A.K.I. 38/2015. Disponible sur [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

<sup>25</sup> Chypre, loi n° 127(I)/2000 relative aux personnes handicapées (*Ο Περί Ατόμων με Αναπηρίες Νόμος*). Disponible sur [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>26</sup> Chypre, loi n° 63(I)/2014 modifiant la loi relative aux personnes handicapées, 23 mai 2014. Disponible sur [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

marché ouvert, etc. (article 4); l'égalité en termes de fourniture de biens, de services et d'équipements lorsque cela «se justifie» (article 6); des services téléphoniques spécialement adaptés aux personnes handicapées et des programmes de télévision accessibles aux personnes malentendantes (article 8).

L'ordre juridique chypriote ne contient aucune disposition visant la discrimination multiple, bien que cette notion ait été régulièrement évoquée dans les décisions de l'organisme de promotion de l'égalité à propos de migrants handicapés faisant une demande de nationalité; de jeunes demandeuses d'asile avec des bébés forcées de travailler dans le secteur agricole; et de femmes d'origine nationale étrangère soumises à un harcèlement au travail.

#### **4. Champ d'application matériel**

Les lois antidiscrimination couvrent tant le secteur public que le secteur privé et l'ensemble des domaines visés par les directives. Aussi la discrimination fondée sur un quelconque des cinq motifs est-elle interdite dans l'emploi, l'accès à la formation professionnelle, les conditions de travail, y compris la rémunération, et l'affiliation à un syndicat ou à une autre association. De surcroît, la discrimination fondée sur l'origine ethnique ou raciale est interdite dans le domaine de la protection sociale, des soins médicaux, des services sociaux, de l'éducation et de l'accès aux biens et services mis à la disposition du public, y compris le logement. Sous certaines conditions, la loi relative aux personnes handicapées accorde le droit à un traitement égal en matière de fourniture de biens, d'équipements et de services.

#### **5. Mise en application de la loi**

Les victimes ont la possibilité de déposer plainte auprès de l'organisme de promotion de l'égalité de traitement ou auprès des tribunaux. Les contentieux peuvent prendre la forme d'une demande de contrôle juridictionnel en vertu de l'article 146 de la Constitution, ou d'une requête adressée au tribunal de district ou au tribunal du travail conformément aux lois transposant les deux directives, ou d'une requête adressée au tribunal de district pour non-respect d'une disposition constitutionnelle antidiscrimination. De nombreuses raisons font cependant que les groupes vulnérables saisissent rarement la justice: on peut citer à cet égard la méconnaissance par les victimes et les milieux juridiques des dispositions légales en matière de lutte contre la discrimination, ainsi que le coût élevé et la durée des procédures et les restrictions à l'obtention d'une assistance juridique, laquelle est soumise à un critère de ressources, ce qui s'avère prohibitif pour les personnes séjournant à court terme à Chypre (migrants notamment). En 2013 et 2014, le nombre de plaintes en matière d'emploi adressées à l'organisme de promotion de l'égalité a chuté de près de moitié par rapport aux années précédentes pour se maintenir ensuite à des niveaux peu élevés – un phénomène attribué à la montée du chômage et à la crainte des victimes de perdre leur emploi si elles portent plainte. Il ressort de la jurisprudence récente que plus les groupes sont vulnérables, moins ils ont accès aux procédures judiciaires ou aux procédures relevant de l'organisme pour la promotion de l'égalité. C'est ainsi que la plupart des affaires dont les juridictions ont été saisies concernaient des plaintes introduites par des fonctionnaires à propos de leur promotion, de leur pension et de leur âge d'admission à la retraite. Quelques décisions judiciaires ont concerné les requêtes de Turcs chypriotes réclamant leurs biens dans le Sud, ou des subventions publiques, mais aucune n'a concerné des affaires dans lesquelles des migrants ou des Roms invoquent une violation de l'acquis européen en matière d'égalité.

Les maigres ressources allouées à l'organisme de promotion de l'égalité de traitement entraînent un retard dans l'examen des plaintes qui peut aller jusqu'à trois ou quatre ans – délai à l'issue duquel les droits des tiers peuvent avoir été établis et il devient impossible de rendre justice à la victime, dont le droit de recours en justice est frappé entre-temps de prescription. Aucune décision contraignante n'a jamais été prise – ni aucune sanction

imposée – par l’organisme en charge de l’égalité qui préfère, le plus souvent, exercer sa fonction de médiateur, les amendes étant trop faibles pour avoir un caractère dissuasif. L’organisme pour la promotion de l’égalité consacre un chapitre de chacun de ses rapports annuels à la description des efforts déployés en matière de médiation en les illustrant de plusieurs exemples de cas où cette procédure a eu une issue positive.<sup>27</sup>

Les lois nationales reprennent textuellement les dispositions des directives concernant le droit des organisations d’engager des procédures au nom des victimes. Les victimes peuvent adresser leur plainte directement à l’organisme pour la promotion de l’égalité, dont les procédures sont gratuites, simples et souples, ou à des ONG ou des syndicats, qui peuvent alors déposer plainte en leur nom auprès de cet organisme. Rares sont néanmoins les ONG qui se montrent prêtes à déposer des plaintes pour le compte de groupes vulnérables, et plus rares encore les syndicats, dont certains tendent à envisager l’organisme pour la promotion de l’égalité avec une certaine suspicion; c’est ainsi notamment que cet organisme signale que les syndicats considèrent avec une certaine méfiance ses interventions sur des questions liées au travail, estimant qu’il s’agit d’une interférence dans la liberté de négociation des termes des conventions collectives.<sup>28</sup> De manière générale, les plaintes déposées par des personnes individuelles sont plus nombreuses que celles déposées par des organisations agissant en leur nom. En ce qui concerne l’orientation sexuelle, le vent commence à tourner suite à la légalisation des partenariats de même sexe: un nombre croissant de personnes LGB se montrent en effet résolues à faire valoir leurs plaintes, lesquelles portent le plus souvent sur un harcèlement sur le lieu de travail.

On ne trouve nulle mention dans la législation, dans la jurisprudence ou dans les décisions de l’organisme de promotion de l’égalité de traitement de l’utilisation du test de situation et de données statistiques. Lorsqu’un argument en faveur de la recevabilité de ce type de preuve est utilisé au tribunal, ladite preuve sera vraisemblablement autorisée, même si les juridictions ont tendance à permettre à des subtilités d’ordre technique de faire obstacle à la bonne administration de la justice. Les règles générales en matière de preuve pour les procédures pénales et civiles sont d’application. La recevabilité du test de situation comme méthode permettant de prouver une discrimination devant les tribunaux sera vraisemblablement soumise au test général de «pertinence» et de «la règle de la meilleure preuve», mais il est impossible d’affirmer pour autant que les tribunaux considéreront qu’il s’agit d’une preuve recevable pour prouver l’existence d’une discrimination.

La charge de la preuve peut être renversée lors de procédures judiciaires lorsque sont invoquées les lois transposant les directives; une partie requérante invoquant la Constitution ou fondant sa plainte sur d’autres lois ne peut se prévaloir du principe du renversement de la charge de la preuve. Il n’y a pas renversement de la charge de la preuve dans le cadre de procédures devant l’organisme pour la promotion de l’égalité, étant donné que son mandat couvre le droit de procéder à une enquête pour établir des faits.

Les sanctions que les tribunaux peuvent imposer aux personnes physiques coupables de discrimination ne peuvent dépasser 6 835,27 euros et/ou une peine d’emprisonnement de

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<sup>27</sup> Voir par exemple le rapport annuel 2014 de l’Autorité pour l’égalité, p. 16, disponible sur <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; le rapport annuel 2014 de l’Autorité pour la lutte contre la discrimination, p.23, disponible sur [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf)

<sup>28</sup> Rapport annuel 2007-2008 de l’Autorité pour l’égalité, disponible sur [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

six mois maximum. Pour les personnes morales, le montant maximum de l'amende est de 1 196,72 euros. Si l'infraction a été commise par négligence grave, l'amende pour les personnes physiques peut atteindre 3 417,63 euros. Pour les personnes morales, l'amende est également de 3 417,63 euros pour l'administrateur délégué, le président du conseil d'administration, le directeur général, le secrétaire ou tout autre responsable si l'on peut prouver que l'infraction a été commise avec son assentiment, plus une amende supplémentaire pouvant atteindre 6 835,27 euros pour l'entreprise ou l'organisation. Toutefois, seuls les tribunaux peuvent imposer ces amendes. L'organisme de promotion de l'égalité de traitement ne peut pour sa part imposer que de modestes amendes d'un montant maximum de 598 euros, et il n'est pas habilité à octroyer des indemnités aux victimes de discrimination – ce qui relève de la compétence exclusive des tribunaux de district et des juridictions du travail.

## **6. Organisme de promotion de l'égalité de traitement**

En 2004, le Médiateur a été désigné en tant qu'organisme national de promotion de l'égalité de traitement, habilité à combattre la discrimination raciale ainsi que la discrimination interdite par la loi et, de façon générale, la discrimination fondée sur la race, la communauté, la langue, la couleur, la religion, les convictions politiques ou autres et l'origine ethnique ou nationale; à promouvoir l'égalité de jouissance des droits garantis par la Constitution ou par les conventions ratifiées par Chypre (y compris le protocole n° 12 de la CEDH et la Convention internationale sur l'élimination de toutes les formes de discrimination raciale), sans distinction de race, de communauté, de langue, de couleur de peau, de religion, de convictions politiques ou autres et d'origine nationale ou ethnique; et à promouvoir l'égalité des chances indépendamment des motifs précités et des motifs liés à des besoins particuliers ou à l'orientation sexuelle. Le champ d'application de cette disposition couvre non seulement les domaines visés par la directive 2000/78/CE, mais également la sécurité sociale, les soins médicaux, l'éducation et l'accès aux biens et aux services, y compris le logement. Bien qu'il soit un organe quasi-judiciaire habilité à prononcer des décisions contraignantes, l'organisme de promotion de l'égalité de traitement recourt à la médiation et/ou à des recommandations non contraignantes en tant que moyens plus efficaces de régler les problèmes que les modestes amendes prévues par la loi. De toute son existence, l'organisme de promotion de l'égalité n'a pas fixé une seule amende ni imposé la moindre sanction à l'encontre des auteurs de faits discriminatoires: il ressort clairement de ses rapports que la logique de médiation prévaut sur une volonté d'établir la responsabilité des auteurs. Son mandat a été complété en 2009 d'une série de nouvelles fonctions, mais son budget et ses ressources n'en ont pas été augmentées pour autant. Ces fonctions supplémentaires couvrent notamment l'Institution nationale de protection des droits de l'homme, le mécanisme indépendant pour la prévention de la torture, le mécanisme indépendant pour la mise en œuvre de la Convention des Nations unies relative aux droits des personnes handicapées et l'autorité indépendante pour la mise en œuvre de la directive «retour». En raison de l'insuffisance des fonds qui lui sont alloués, l'organisme de promotion de l'égalité de traitement ne peut se doter d'un personnel adéquat; enregistre du retard dans le rendu de ses décisions; et ne peut mener des enquêtes et des campagnes de sensibilisation, effectuer des recherches ou publier des codes de bonne conduite sans obtenir de financements externes.

## **7. Points essentiels**

- L'élargissement des fonctions/du mandat à remplir par l'organisme pour la promotion de l'égalité/le Médiateur sans augmentation de son budget engendre des retards considérables au niveau des décisions au point que l'efficacité et l'impact de l'institution sont aujourd'hui mis en cause. Le gel du recrutement dans le secteur public, imposé en raison de la crise économique, a eu pour effet que l'organisme pour l'égalité de traitement/le Médiateur n'a même pas pu engager de personnel pour remplacer les personnes quittant son service. De nombreux responsables au sein de

l'organisme pour l'égalité n'ont pas de formation juridique, ce qui ressort clairement des rapports publiés.

- L'exigence de la directive sur l'égalité raciale stipulant que l'organisme spécialisé doit être en mesure d'apporter une assistance aux victimes n'est toujours pas transposée – plus de dix ans après la transposition de la directive – puisque l'organisme pour l'égalité manque à la fois du mandat légal et des capacités humaines pour représenter les victimes en justice.
- Il est très rare que des affaires de discrimination parviennent jusqu'aux tribunaux et, lorsqu'elles y arrivent, ce n'est pas le cadre juridique antidiscrimination qui est invoqué: il est plutôt fait appel à des dispositions constitutionnelles datant de quarante ans (contrôle juridictionnel des actes administratifs et/ou disposition générale en matière d'égalité figurant à l'article 28) qui n'offrent pas une protection aussi étendue que les directives et se limitent aux personnes ayant un «intérêt légitime». La décision se fonde souvent sur des doctrines juridiques problématiques qui, arbitrairement développées par les tribunaux, ne se conforment pas aux directives et refusent aux victimes la protection prévue par celles-ci.
- Plusieurs raisons sous-tendent le faible recours aux procédures judiciaires: le coût et la durée des dites procédures; le fait qu'une aide juridique soit uniquement accordée en cas de ressources personnelles insuffisantes; et la méconnaissance de la législation antidiscrimination au sein de la profession juridique. Le gouvernement a totalement cessé depuis quelques années tout effort visant à accroître la sensibilisation à l'égard des directives, à encourager des initiatives antidiscrimination ou à consulter la société civile. Le paquet des fonds structurels de l'UE pour la période 2014-2020 ne servira pas à financer de nouveaux projets de lutte contre la discrimination: ils seront uniquement utilisés pour soutenir des «politiques horizontales» existantes à propos desquelles les bénéficiaires ont exprimé les plus vives critiques (système de classification du handicap (CIF) notamment).
- Aucune procédure n'est en place pour procéder régulièrement au réexamen ou à la révision des lois/réglementations discriminatoires. Dans la pratique, un réexamen n'est déclenché qu'après le dépôt d'une plainte auprès de l'organisme pour l'égalité. La législation exige dans ce cas que l'organisme pour l'égalité renvoie les lois/réglementations discriminatoires en cause devant le Procureur général, qui est tenu de préparer une modification législative. Il est extrêmement rare que cette procédure soit suivie, ce qui a pour conséquence que plusieurs actes législatifs discriminatoires demeurent en vigueur.
- Les problématiques découlant de la non-résolution de la «question chypriote» sont à l'origine d'une discrimination ethnique permanente, surtout lorsqu'il s'agit de l'accès des Chypriotes turcs à leurs biens et de l'exercice de divers droits constitutionnels.
- La transposition en 2016 de deux directives du Conseil en rapport avec l'asile (directive 2013/32 relative aux procédures d'asile (refonte) et directive 2013/33 relative aux conditions d'accueil (refonte)) a introduit dans le droit national en matière d'asile des dispositions conduisant à une discrimination fondée sur l'origine ethnique, le handicap et l'orientation sexuelle dans les domaines de l'éducation, du non-maintien en détention et de l'accès aux procédures d'asile.

## ZUSAMMENFASSUNG

### 1. Einleitung

Zypern erhielt seine Unabhängigkeit im Jahr 1960 mit einer Verfassung, die ein System der Gewaltenteilung mit einer strengen kommunalen Trennung zwischen „Griechen“ und „Türken“ begründet. Die Verfassung kennt zwei „Gemeinschaften“, die Griechen und die Türken, und drei „religiöse Gruppen“, die Maroniten, die Armenier und Latiner. Die „religiösen Gruppen“, die sich für eine der beiden „Gemeinschaften“ entscheiden mussten, haben sich der griechischen Gemeinschaft angeschlossen. Die Roma-Gemeinschaft in Zypern erhielt keine Wahlmöglichkeit, sondern wurde aufgrund der Annahme, dass sie Sprache (Türkisch) und Religion (muslimisch) mit den Zyperntürken teilt, der türkischen Gemeinschaft zugerechnet. Die Regierung erkennt weder die Roma als eigenständige ethnische Gruppe an, noch beschließt oder ergreift sie politische Maßnahmen zugunsten der Roma, die von horizontalen Maßnahmen, die für die Gesamtbevölkerung bestimmt sind, profitieren sollen. Die Regierung erkennt auch keine migrantische Gemeinschaft als „Minderheit“ an.

Die Verfassung funktionierte bis 1963, als der zyperngriechische Präsident 13 Verfassungsänderungen vorlegte und damit den Zyperntürken die wichtigsten Grundrechte entzog. Die Zyperntürken verließen daraufhin aus Protest die Regierung und die Jahre 1963 bis 1967 waren von einer Welle der Gewalt zwischen den beiden Ethnien geprägt. 1964 forderte der Oberste Gerichtshof in einem Urteil eine Fortsetzung der Regierung nach der „Doktrin der Notwendigkeit“, wobei im Wesentlichen die Verfassungsartikel, die das Recht der Zyperntürken zur Teilhabe an politischen Entscheidungsprozessen begründen, „suspendiert“ wurden. Zwischen 1963 und 1974 zog sich der Großteil der Zyperntürken schrittweise in Enklaven zurück. 1974 wurde die Teilung der Insel durch militärische Interventionen Griechenlands und der Türkei weiter zementiert. Die drei „religiösen Gruppen“ blieben im Süden bei den Zyperngriechen und die Roma schlossen sich den Zyperntürken an, die in den Norden umsiedelten. Erst seit dem Jahr 2000 kehren viele Roma wieder in den Süden zurück und lassen sich in speziellen Roma-Siedlungen nieder, die für Schmutz, Armut und schlechten Unterhalt berüchtigt sind. Die Wohnsegregation führte unvermeidbar zur schulischen Segregation, weil die Kinder der Roma verpflichtet sind, Schulen in der Nähe ihres Wohnorts zu besuchen. Trotz Verbesserungen der Wohnsituation und gezielter Fördermaßnahmen für Roma im Bildungsbereich bleiben die Roma die am stärksten sozial ausgegrenzte und benachteiligte Gruppe in Zypern.

Nur wenige NROs sind im Kampf gegen Diskriminierung aktiv. Es gibt keine NRO für die Rechte der Zyperntürken oder der Roma und nur eine Handvoll NROs für die Rechte von Migranten oder Asylsuchenden. Am besten organisiert sind NROs, die sich für die Rechte von Menschen mit Behinderungen einsetzen. Ihre Lobbyarbeit wird von einem nationalen Verband koordiniert, der 2006 den Status eines Sozialpartners erhielt. In der Praxis wird der Verband in wichtige politische Prozesse, wie die Ausarbeitung und Umsetzung des Gesetzes von 2009 über Quoten im Beschäftigungsbereich und die Umsetzung des Übereinkommens über die Rechte von Menschen mit Behinderungen, jedoch kaum einbezogen. Bis 2010 gab es nur eine NRO für die Rechte Homosexueller, von deren Mitgliedern sich nur zwei „geoutet“ hatten und offen für Schwulenrechte eintraten. 2010 wurde eine neue NRO für die Rechte von LGBT-Personen gegründet, in der sich vor allem junge dynamische Menschen engagieren, die ihre sexuelle Ausrichtung offen leben und erfolgreiche öffentliche Veranstaltungen durchführen. Obwohl Diskriminierung aufgrund der sexuellen Ausrichtung in der Gesellschaft Zyperns weit verbreitet ist, nimmt der Kampf dagegen endlich Fahrt auf: Nach jahrelanger Diskussion wurde ein Gesetz verabschiedet, das eingetragene Partnerschaften – sowohl für gleichgeschlechtliche Paare als auch für Paare, die sich aus anderen Gründen für eine solche Partnerschaft entscheiden –

ermöglicht.<sup>29</sup> In den letzten Jahren sind einige neonazistische Gruppenaufgetaucht, die gegen Immigranten hetzen und regelmäßig rassistisch motivierte Straftaten begehen. Eine dieser Gruppen, ELAM,<sup>30</sup> wurde als politische Partei registriert. Bei den Parlamentswahlen 2016 gewann ELAM zwei Sitze und zog ins Parlament ein, weil sie von dem Klima einer zunehmend einwanderungsfeindlichen Stimmung profitierte, die eine Folge der Wirtschaftskrise war. 2016 gelang es ELAM, mit den Stimmen der „Zentrums“-Parteien und der Enthaltung der Abgeordneten der Regierungspartei eine Verordnung vom Parlament verabschieden zu lassen, wonach in den Schulen das Referendum von 1950 über die Vereinigung mit Griechenland gefeiert werden sollte. Dies führte zum Zusammenbruch der laufenden UN-vermittelten Verhandlungen mit der türkisch-zyprischen Führung über die Lösung des Zypern-Konflikts, wobei alle wichtigen politischen Kräfte in der Folge einräumten, dass es „ein Fehler“ gewesen sei. Die Bemühungen, diese Entwicklung rückgängig zu machen und die Verhandlungen wieder aufzunehmen, waren am Jahresende noch im Gange.

## 2. Wichtigste Gesetze

Die zyprische Verfassung enthält ein allgemeines Diskriminierungsverbot (Art. 28), das dem Artikel 14 der EMRK entspricht, jedoch als zusätzlichen Diskriminierungsgrund die Zugehörigkeit zur „griechischen“ oder „türkischen“ Gemeinschaft aufführt. Alter, Behinderung und sexuelle Ausrichtungen werden in der Verfassung nicht ausdrücklich erwähnt, man geht jedoch davon aus, dass sie durch die Formulierung „aus welchem anderen Grund auch immer“ in Artikel 28 abgedeckt sind.

Zypern hat die meisten wichtigen internationalen Übereinkommen gegen Diskriminierung ratifiziert. 2004 wurden die beiden Antidiskriminierungsrichtlinien in vier gesonderten zyprischen Gesetzen umgesetzt:

- ein Gesetz zur Anpassung des bestehenden Behindertengesetzes an die Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung;<sup>31</sup>
- ein Gesetz, das Diskriminierung im Beschäftigungsbereich verbietet und die wesentlichen Punkte der Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung für vier Diskriminierungsgründe umsetzt (d. h. nicht den Grund Behinderung, der gesondert behandelt wird);<sup>32</sup>
- ein Gesetz, das Diskriminierung aufgrund der Rasse bzw. der ethnischen Herkunft in den sachlichen Anwendungsbereichen der Richtlinie 2000/43/EG verbietet (außer Beschäftigung)<sup>33</sup> und
- das Gesetz, das den Ombudsmann zur Gleichbehandlungsstelle bestellt, die befugt ist, Diskriminierungsbeschwerden gemäß Artikel 13 der Richtlinie 2000/43 zu untersuchen, wobei sein Mandat über das von der genannten Richtlinie vorgeschriebene Mindestmaß hinausgeht und Rechte einbezieht, die in der Verfassung und im Völkerrecht verankert sind.<sup>34</sup> Das breit angelegte Mandat der Gleichbehandlungsstelle umfasst nicht die unabhängige Unterstützung von Diskriminierungsopfern oder die Vertretung dieser Opfer vor Gericht.

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<sup>29</sup> Zypern, Gesetz über die bürgerliche Ehe von 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), Nr. 184(I)/2015, 9. Dezember 2015; abrufbar unter [http://cyllaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cyllaw.org/nomoi/arith/2015_1_184.pdf).

<sup>30</sup> Die Initialen stehen für „Nationale Volksfront“, auf Griechisch: Εθνικό Λαϊκό Μέτωπο.

<sup>31</sup> Zypern, Behindertengesetz (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) Nr. 127(I)/2000; abrufbar unter [www.cyllaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cyllaw.org/nomoi/arith/2000_1_127.pdf).

<sup>32</sup> Zypern, Gesetz über Gleichbehandlung in Beschäftigung und Beruf (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 Nr. 58(I)/2004; abrufbar unter [www.cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>33</sup> Zypern, Gleichbehandlungsgesetz (Rasse oder ethnische Herkunft) (*Ο περί Ίσης μεταχείρισης [Φυλετική Εθνοτική Καταγωγή] Νόμος*) Nr. 59(I)/2004; abrufbar unter [www.cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>34</sup> Zypern, Gesetz (über den Kommissar) zur Bekämpfung von Rassendiskriminierung und anderen Formen von Diskriminierung [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*] Nr. 42(1)/ 2004; abrufbar unter [www.cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/2004_1_42/full.html).



Im Juli 2006 erhielt das EU-Recht durch eine Verfassungsänderung Vorrang vor dem nationalen Recht. Bis dahin war die Verfassung das oberste Gesetz des Landes. Vor dieser Änderung legten die Gerichte das Diskriminierungsverbot in Artikel 28 der zyprischen Verfassung als absoluten Gleichbehandlungsgrundsatz aus, der auch keine positiven Maßnahmen erlaubt. 2015 begann sich in der Rechtsprechung zunehmend die Sichtweise durchzusetzen, dass positive Maßnahmen nicht gegen den Gleichheitsgrundsatz verstoßen, sondern vielmehr ein notwendiges Element sind, um Gleichstellung zu erreichen.<sup>35</sup> Der am häufigsten beschrittene Rechtsweg, um gegen Diskriminierung vorzugehen, ist nach wie vor die Verfassung und nicht die Gesetze, mit denen der Besitzstand in Sachen Gleichstellung umgesetzt wurde, da Anwälte die Antidiskriminierungsrichtlinien, die vor Gericht bisher nur selten herangezogen wurden, in der Regel außer Acht lassen. Dies führte zur Entstehung von Rechtsnormen von zweifelhafter Gültigkeit, bei denen unter anderem Begriffe wie „angemessene Diskriminierung“ verwendet werden, die „aufgrund der speziellen Umstände“ erlaubt und notwendig ist. Auf dieser Linie lag auch die Entscheidung des Obersten Gerichtshofs, dass Alter ein zulässiges Kriterium sei, um zum Zwecke der Entscheidung über Beförderungen im öffentlichen Dienst das Dienstalster zu bestimmen. Ein zusätzliches Problem bei der gerichtlichen Überprüfung liegt darin, dass die Beschwerdeführenden ein „berechtigtes Interesse“ haben müssen, was Beschwerden von Organisationen, die im Namen von Betroffenen handeln, grundsätzlich ausschließt. Ab 2014 ging die Zahl der Diskriminierungsklagen stark zurück, was der Wirtschaftskrise, der allgemeinen Absenkung der Grundrechtstandards und der steigenden Arbeitslosigkeit zuzuschreiben war.

Die aktuelle Rechtspraxis deutet darauf hin, dass die Pflicht zur Aufhebung diskriminierender Gesetze, Vorschriften oder Satzungen nicht zur Gänze umgesetzt wird. Verfahren zur formellen Aufhebung von Gesetzen oder Vorschriften werden nur nach entsprechenden Beschwerden bei der Gleichstellungsstelle eingeleitet. Selbst wenn eine diskriminierende Rechtsvorschrift im Rahmen eines Verfahrens überprüft wird, führt dies nicht automatisch zu einer Überarbeitung der Vorschrift. Wenn die Gleichbehandlungsstelle der Ansicht ist, dass eine Vorschrift gegen die Richtlinien verstößt, trägt das Verfahren zu deren Aufhebung nicht in jedem Fall Früchte. Ein Urteil des Obersten Gerichtshof von 2014, nach dem der Staatsanwalt die Empfehlungen der Gleichbehandlungsstelle zur Überarbeitung diskriminierender Gesetze nicht einfach ignorieren darf, ließ Hoffnung aufkommen, dass sich die Situation verändern würde,<sup>36</sup> was 2015 jedoch nicht geschah.

### 3. Wichtigste Grundsätze und Begriffe

Alle Definitionen von Diskriminierung in den Richtlinien werden in den zyprischen Gesetzen praktisch wiederholt. Das heißt, die Bestimmungen zu unmittelbarer und mittelbarer Diskriminierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung, die für alle fünf Diskriminierungsgründe verboten sind, folgen wörtlich den Definitionen der Richtlinien. Diskriminierung durch Assoziierung wird in den Antidiskriminierungsgesetzen nicht ausdrücklich erfasst, wohl aber im 12. Protokoll der EMRK; außerdem ergingen 2010

<sup>35</sup> Zypern, Oberster Gerichtshof, *Eleni Paroutsis gegen den Ausschuss für Unterricht und Erziehung*, Rechtssache Nr. 5700/2013, 30. Oktober 2015; abrufbar unter [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015;) Zypern, Oberster Gerichtshof, *Costas Tsikas et al gegen die Republik Zypern, hier: den Ausschuss für Unterricht und Erziehung*, Az. 1519/2010 και 1520/10, 3. September 2015; abrufbar unter [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015;)

<sup>36</sup> Zypern, Oberster Gerichtshof, *Nicoletta Charalambidou gegen die Republik Zypern, den Finanzminister und den Generalstaatsanwalt (Nikoléta Χααραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα)*, Nr. 1695/2009, 17. Dezember 2014; abrufbar unter [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%F1%E9%F3%\\*%20and%2058\(%E9\)#.](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%F1%E9%F3%*%20and%2058(%E9)#.)



und 2015 Entscheidungen der Gleichbehandlungsstelle, in denen der in *Coleman*<sup>37</sup> aufgestellte Grundsatz angewandt und das Verbot von Diskriminierung aufgrund einer Behinderung auf Personen ausgeweitet wurde, die das Sorgerecht für eine Person mit Behinderung ausüben, auch wenn sie nicht deren Eltern oder Ehepartner sind.<sup>38</sup>

Die Gesetze zur Umsetzung der Richtlinie 2000/78/EG erlauben Ungleichbehandlung aufgrund von Rasse oder ethnischer Zugehörigkeit, Religion oder Weltanschauung, Alter, Behinderung und sexueller Ausrichtung, wenn das Merkmal aufgrund der Art einer bestimmten beruflichen Tätigkeit oder der Bedingungen ihrer Ausübung eine wesentliche und entscheidende berufliche Anforderung darstellt, sofern es sich um einen rechtmäßigen Zweck und eine angemessene Anforderung handelt. In Bezug auf Alter gilt diese Bestimmung nicht für die Streitkräfte, sofern die Festlegung einer Altersgrenze durch Art und Pflichten der Tätigkeit gerechtfertigt ist. In der Praxis kommen Altersgrenzen bei Einstellungs- und Beförderungsverfahren vor, insbesondere bei der Polizei; sie dienen weniger der Erreichung arbeitsmarktpolitischer Ziele, sondern sind eine Reaktion auf die Verschlechterung der körperlichen Fitness der Angestellten, die mit dem Alter assoziiert wird.

In Bezug auf berufliche Tätigkeiten innerhalb von Kirchen und anderen öffentlichen oder privaten Organisationen, deren Ethos auf religiösen Grundsätzen oder Weltanschauungen beruht, stellt eine Ungleichbehandlung wegen der Religion oder Weltanschauung einer Person keine Diskriminierung dar, wenn die Religion oder die Weltanschauung nach der Art dieser Tätigkeiten oder der Umstände ihrer Ausübung eine wesentliche, rechtmäßige und gerechtfertigte berufliche Anforderung angesichts des Ethos der Organisation darstellt.

Das Behindertengesetz gilt nicht für Tätigkeiten, bei denen eine bestimmte Fähigkeit aufgrund der Art der Tätigkeit oder der Bedingungen ihrer Ausübung eine wesentliche und entscheidende Voraussetzung darstellt, sofern es sich um einen rechtmäßigen Zweck handelt und die Voraussetzung angemessen ist, wobei die Möglichkeit „angemessener Vorkehrungen“ im Sinne des Gesetzes berücksichtigt werden muss. Es gilt insoweit nicht für die Streitkräfte, als eine Tätigkeit von ihrer Art her spezielle Fertigkeiten erfordert, die Personen mit Behinderung nicht aufweisen.<sup>39</sup>

Im Behindertengesetz wurde 2007 eine Pflicht für Arbeitgeber eingeführt, angemessene Vorkehrungen zu treffen, sofern diese den Arbeitgeber nicht unverhältnismäßig belasten. Im Jahr 2014 wurde diese Pflicht zu angemessenen Vorkehrungen auf weitere Lebensbereiche ausgedehnt, sofern dies den Betroffenen nicht unverhältnismäßig und ungerechtfertigt belastet.<sup>40</sup> Die Pflicht zu angemessenen Vorkehrungen gilt in den folgenden Bereichen: das Recht auf eine eigenständige Lebensführung, Diagnose und Prävention von Behinderungen, persönliche Unterstützung durch Hilfsmittel, Dienstleistungen usw., barrierefreier Zugang zu Wohnraum, Gebäuden, Straßen, der Umwelt, öffentlichen Transportmitteln, Bildung, Information und Kommunikation über spezielle Mittel, Dienstleistungen zur sozialen und wirtschaftlichen Eingliederung, berufliche Bildung, Beschäftigung auf dem offenen Arbeitsmarkt usw. (Artikel 4), Gleichstellung beim Zugang zu Gütern, Dienstleistungen und Einrichtungen, sofern dies „gerechtfertigt“ ist (Artikel 6), spezielle Telefondienstleistungen für Menschen mit

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<sup>37</sup> EuGH, Rechtssache C-303/06, *S. Coleman gegen Attridge Law und Steve Law*; abrufbar unter <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=150145>.

<sup>38</sup> Zypern, Gleichstellungsbehörde, Bericht der Gleichstellungsbehörde über die geplante Wegversetzung einer Verwaltungsbeamtin von dem Bezirk ihres ständigen Wohnsitzes, obgleich sie Sorgeberechtigte einer Person mit psychosozialer Behinderung ist, 16. Oktober 2015, A.K.I. 38/2015; abrufbar unter [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

<sup>39</sup> Zypern, Behindertengesetz (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) Nr. 127(I)/2000; abrufbar unter [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>40</sup> Zypern, Gesetz zur Änderung des Behindertengesetzes, Nr. 63(I)/2014, 23. Mai 2014; abrufbar unter [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

Behinderungen und Fernsehprogramme, die gehörlosen Personen zugänglich sind (Artikel 8).

Die zyprische Rechtsordnung enthält keine Bestimmung über Mehrfachdiskriminierung. In Entscheidungen der Gleichbehandlungsstelle wurde der Begriff allerdings schon mehrfach angewandt, und zwar in Bezug auf Migrant/innen mit Behinderungen, die die Staatsbürgerschaft beantragen, junge asylsuchende Frauen mit Kleinkindern, die gezwungen sind, in der Landwirtschaft zu arbeiten, und Frauen ausländischer Herkunft, die am Arbeitsplatz belästigt werden.

#### **4. Sachlicher Geltungsbereich**

Die Antidiskriminierungsgesetze gelten für den privaten und den öffentlichen Sektor und decken alle in den Richtlinien geforderten Bereiche ab. Das heißt Diskriminierung wegen aller fünf Diskriminierungsgründe ist in der Beschäftigung, beim Zugang zu beruflicher Bildung, bei den Arbeitsbedingungen und Gehältern und bei der Mitgliedschaft in Gewerkschaften und anderen Vereinigungen verboten. Außerdem ist Diskriminierung aufgrund der Rasse bzw. ethnischen Zugehörigkeit in den Bereichen Sozialschutz, Gesundheitsdienste, Sozialleistungen, Bildung sowie Zugang zu Gütern und Dienstleistungen, die der Öffentlichkeit zur Verfügung stehen, einschließlich von Wohnraum, verboten. Unter bestimmten Bedingungen garantiert das Behindertengesetz das Recht auf Gleichbehandlung bei der Bereitstellung von Gütern, Einrichtungen und Dienstleistungen.

#### **5. Rechtsdurchsetzung**

Opfer können eine Klage bei der Gleichbehandlungsstelle oder bei Gericht einreichen. Sie können entweder einen Antrag auf richterliche Kontrolle nach Artikel 146 der Verfassung stellen, vor einem Amts- oder Arbeitsgericht eine Klage aufgrund eines der Gesetze einreichen, die die beiden Richtlinien umsetzen, oder vor dem Amtsgericht wegen eines Verstoßes gegen das in der Verfassung verankerte Gleichbehandlungsgebot klagen. Besonders benachteiligte Gruppen beschreiten aus verschiedenen Gründen kaum jemals den Rechtsweg: geringe Kenntnis der Antidiskriminierungsgesetze bei Betroffenen und in Rechtskreisen; hohe Prozesskosten und beschränkter Zugang zu Prozesskostenhilfe, die der „Bedürftigkeitsprüfung“ unterliegt; Dauer der Verfahren, die Personen mit kurzem Aufenthalt in Zypern wie zum Beispiel Migrant/innen ausschließen. 2013 und 2014 ging die Zahl der beschäftigungsbezogenen Beschwerden an die Gleichbehandlungsstelle im Vergleich zu den Vorjahren um fast die Hälfte zurück und blieb danach auf einem niedrigen Niveau. Grund dafür ist vermutlich die steigende Arbeitslosigkeit und die Angst der Betroffenen, ihre Stelle zu verlieren, wenn sie sich beschweren. Die Urteile der letzten Jahre deuten darauf hin, dass eine Gruppe umso weniger Zugang zu Rechtsverfahren oder Verfahren vor der Gleichbehandlungsstelle hat, je stärker sie benachteiligt ist. Die meisten Diskriminierungsklagen vor Gericht werden von Beamten eingereicht und betreffen Beförderungen, Pensionen und das Pensionsalter. Es gibt einige wenige Gerichtsurteile über die Ansprüche von Zyperntürken auf Immobilien im Süden oder auf staatliche Zuschüsse, aber keine Fälle, in denen Migranten oder Roma aufgrund von Verstößen gegen den Besitzstand der Union im Bereich der Gleichbehandlung klagen.

Infolge der begrenzten Mittel der Gleichbehandlungsstelle kann die Untersuchung von Beschwerden im schlimmsten Fall drei bis vier Jahre dauern. In dieser Zeit entstehen möglicherweise Rechte Dritter, wodurch das Opfer seine Rechte nicht mehr durchsetzen kann und das Vergehen gleichzeitig verjährt ist. Die Gleichbehandlungsstelle hat noch nie rechtskräftige Urteile gesprochen oder Sanktionen verhängt. In der Mehrzahl der Fälle nimmt die Gleichbehandlungsstelle lieber eine Schlichterrolle ein, weil ihre Sanktionsmöglichkeiten zu gering sind, um abschreckend zu wirken. In jedem

Jahresbericht widmet die Gleichbehandlungsstelle einen speziellen Abschnitt den geführten Schlichtungsverfahren und zählt eine Reihe gelungener Schlichtungen auf.<sup>41</sup>

Das zyprische Recht setzt die Bestimmungen der Richtlinien über die Rechte von Organisationen zur Beteiligung an Verfahren im Namen von Opfern wortwörtlich um. Opfer können ihre Beschwerde direkt an die Gleichbehandlungsstelle richten, deren Verfahren kostenlos, einfach und flexibel ist, oder an NROs oder Gewerkschaften, die in ihrem Namen bei der Gleichbehandlungsstelle Beschwerde einreichen. Allerdings gibt es nur wenige NROs, die im Namen benachteiligter Gruppen Beschwerden einreichen, und noch weniger Gewerkschaften. Einige Gewerkschaften stehen der Gleichbehandlungsstelle kritisch gegenüber. So berichtet die Gleichbehandlungsstelle beispielsweise, dass Gewerkschaften ihre Einlassungen zu Themen im Bereich Beschäftigung als Behinderung der freien Tarifverhandlungen auffassen.<sup>42</sup> Grundsätzlich werden mehr Beschwerden von Einzelpersonen eingereicht als von Organisation, die einzelne Opfer vertreten. Im Fall der sexuellen Ausrichtung beginnt sich das Blatt nach der Legalisierung gleichgeschlechtlicher Partnerschaften zu wenden: Immer mehr LGB-Menschen sind bereit, ihre Beschwerden, die meist mit Belästigung am Arbeitsplatz zu tun haben, vorzubringen.

Weder in den Rechtsvorschriften noch im Fallrecht oder in den Entscheidungen der Gleichbehandlungsstelle wird die Verwendung von Situationstests oder statistischen Daten erwähnt. Allerdings dürften die Gerichte diese Verfahren vermutlich als Beweise zulassen, obwohl sie den Lauf der Gerechtigkeit gerne mit Formalitäten behindern. Es gelten die üblichen Beweisregeln für Straf- und Zivilverfahren. Ob Situationstests zum Nachweis von Diskriminierung vor Gericht zugelassen werden, wird vermutlich durch die übliche Prüfung der „Relevanz“ und nach der Regel der „besten Beweise“ entschieden. Daher lässt sich nicht mit Sicherheit sagen, ob die Gerichte diese Form der Beweisführung zum Nachweis von Diskriminierung zulassen.

Bei Gerichtsverfahren, die sich auf die Gesetze zur Umsetzung der Richtlinien beziehen, ist die Beweislast umgekehrt. Klägern, die ihre Klage auf die Verfassung oder andere Gesetze stützen, kommt das Prinzip der umgekehrten Beweislast nicht zugute. Auch bei den Verfahren von der Gleichbehandlungsstelle ist die Beweislast nicht umgekehrt, da die Stelle dafür zuständig ist, die Tatsachen durch Untersuchungen festzustellen.

Natürliche Personen, die vor Gericht wegen Diskriminierung schuldig gesprochen werden, können zu einer Geldstrafe von höchstens 6835,27 Euro und/oder bis zu sechs Monaten Haft verurteilt werden. Bei juristischen Personen liegt der Höchstbetrag bei 1196,72 Euro. Wenn die Tat aus grober Fahrlässigkeit begangen wurde, beläuft sich die Geldstrafe für natürliche Personen auf 3417,63 Euro. Für juristische Person erhöht sich die Geldstrafe auf 3417,63 Euro für Geschäftsführer, Vorsitzende, Direktoren, Sekretäre oder andere Führungskräfte, wenn nachgewiesen werden kann, dass die Tat mit deren Zustimmung erfolgt ist, zuzüglich einer weiteren Geldstrafe von bis zu 6835,27 Euro für das Unternehmen bzw. die Behörde. Diese Geldstrafen können allerdings nur von Gerichten verhängt werden, die Gleichbehandlungsstelle kann nur kleine Geldbußen bis zu 598 Euro verhängen. Die Gleichbehandlungsstelle ist nicht befugt, Diskriminierungsopfern eine Entschädigung zuzusprechen; dies ist ausschließliche Zuständigkeit der Amtsgerichte und des Arbeitsgerichts.

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<sup>41</sup> Siehe z. B.: Jahresbericht der Gleichstellungsbehörde 2014, S. 16, abrufbar unter <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/9B52BD3F8AF79B31C2257F14003F805C?OpenDocument>; Jahresbericht der Antidiskriminierungsstelle 2014, S. 23, abrufbar unter [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf).

<sup>42</sup> Jahresbericht der Gleichstellungsbehörde 2007-2008, abrufbar unter [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CF%AE%20%CE%99%CF%83%CF%8C%CF%84%CF%B7%CF%84%CF%B1%CF%82-%CE%95%CF%84%CF%AE%CF%83%CF%B9%CF%B1%20%CE%95%CF%BA%CF%B8%CF%B5%CF%83%CF%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CF%AE%20%CE%99%CF%83%CF%8C%CF%84%CF%B7%CF%84%CF%B1%CF%82-%CE%95%CF%84%CF%AE%CF%83%CF%B9%CF%B1%20%CE%95%CF%BA%CF%B8%CF%B5%CF%83%CF%B7%202007-2008.pdf).

## 6. Gleichbehandlungsstelle

2004 wurde der Ombudsmann zur nationalen Gleichbehandlungsstelle ernannt. Zu seiner Zuständigkeit gehören der Kampf gegen Rassendiskriminierung, gesetzlich verbotene Diskriminierung und allgemein gegen Diskriminierung aufgrund der Rasse, Gemeinschaft, Sprache, Hautfarbe, Religion, politischen oder sonstigen Überzeugung und nationaler oder ethnischer Herkunft, die Förderung der Gleichstellung bei Ausübung der Rechte, die durch die Verfassung oder die von Zypern ratifizierten Übereinkommen (zu denen auch das 12. Protokolle der EMRK und das Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung gehören) ungeachtet der Rasse, Gemeinschaft, Sprache, Hautfarbe, Religion, politischen oder sonstigen Überzeugung und nationaler oder ethnischer Herkunft sowie die Förderung der Chancengleichheit ungeachtet der eben genannten Gründe sowie ungeachtet besonderer Bedürfnisse und der sexuellen Ausrichtung. Dabei umfasst seine Zuständigkeit nicht nur die Anwendungsbereiche der Richtlinie 2000/78/EG, sondern auch die Bereiche Sozialversicherung, Gesundheitsdienste, Bildung und den Zugang zu Gütern und Dienstleistungen einschließlich der Wohnraumversorgung. Obwohl die Gleichstellungsstelle als außergerichtliche Stelle befugt ist, verbindliche Urteile zu sprechen, nutzt sie im Kampf für Gleichstellung statt der im Gesetz vorgesehenen geringen Geldbußen lieber die Mittel der Mediation und/oder nicht verbindliche Empfehlungen. Seit ihrer Gründung hat die Gleichbehandlungsstelle noch keine einzige Geldbuße oder Sanktion gegen Personen verhängt, die sich einer Diskriminierung schuldig gemacht haben; statt von dem Bestreben, die Schuldigen zur Verantwortung zu ziehen, sind ihre Berichte von der Logik der Vermittlung durchdrungen. Seit 2009 hat die Stelle einige neue Funktionen übernommen, wobei weder ihre Mittel noch ihre Ressourcen aufgestockt wurden. Zu diesen Funktionen gehören die einer nationalen Menschenrechtsinstitution (NHRI), unabhängige Mechanismen zur Prävention von Folter, ein unabhängiger Mechanismus zur Umsetzung des Übereinkommens über die Rechte von Menschen mit Behinderungen der Vereinten Nationen und die Funktion einer unabhängigen Stelle für die Umsetzung der Rückführungsrichtlinie. Da der Gleichbehandlungsstelle nur ungenügende Mittel und damit zu geringe personelle Ressourcen zur Verfügung stehen, trifft sie Entscheidungen erst nach langer Wartezeit und kann Befragungen, Aufklärungskampagnen, Forschungsprojekte oder die Erstellung von Verhaltenskodizes nur mit Hilfe externer Finanzierung leisten.

## 7. Schlüsselprobleme

- Die zusätzlichen Aufgaben und Zuständigkeiten der Gleichbehandlungsstelle bzw. des Ombudsmanns ohne entsprechende Budgeterhöhungen haben dazu geführt, dass Entscheidungen extrem lange auf sich warten lassen und inzwischen Effizienz und Glaubwürdigkeit der Stelle insgesamt in Frage stehen. Aufgrund einer Einstellungssperre für den öffentlichen Dienst, die als Reaktion auf die Wirtschaftskrise eingeführt wurde, kann sie inzwischen nicht einmal mehr ausscheidende Mitarbeiter ersetzen. Viele Beamte der Gleichbehandlungsstelle haben keine juristische Ausbildung, was sich in ihren Berichten niederschlägt.
- Die Vorgabe der Antirassismusrichtlinie, wonach die zuständige Stelle in der Lage sein sollte, Betroffene zu unterstützen, ist auch mehr als zehn Jahre nach Umsetzung der Richtlinie noch nicht erfüllt, da die Gleichbehandlungsstelle weder über das gesetzliche Mandat noch über die personellen Kapazitäten verfügt, um Betroffene vor Gericht zu vertreten.
- Diskriminierungsfälle schaffen es nur sehr selten, vor Gericht zu kommen. Wenn es doch geschieht, werden nicht die Antidiskriminierungsvorschriften geltend gemacht; stattdessen werden die 40 Jahre alten Verfassungsregeln (gerichtliche Überprüfung von Verwaltungsakten und/oder das allgemeine Gleichheitsgebot in Art. 28) herangezogen, die nicht den gleichen weitreichenden Rechtsschutz wie die Richtlinien bieten und die auf Personen mit einem „berechtigten Interesse“ beschränkt sind. Urteile beruhen häufig auf einer problematischen Rechtslehre, die von den Gerichten willkürlich entwickelt wurde, gegen die Richtlinien verstößt und den Opfern den von den Richtlinien garantierten Schutz verweigert.

- Aufgrund der hohen Kosten und langen Verfahrensdauern, der Tatsache, dass Prozesskostenhilfe nur Personen gewährt wird, die nicht selbst über die nötigen Mittel verfügen, und der mangelhaften Kenntnis der Antidiskriminierungsgesetze unter Juristen werden nur selten Klagen eingereicht. In den vergangenen Jahren hat die Regierung sämtliche Maßnahmen eingestellt, die die Bekanntheit der Richtlinie erhöhen, Initiativen zur Bekämpfung von Diskriminierung fördern oder die Zivilgesellschaft in den politischen Prozess einbeziehen sollten. Der Strukturfonds der EU für 2014-2020 wird nicht zur Finanzierung neuer Projekte zur Bekämpfung von Diskriminierung eingesetzt, sondern nur zur Finanzierung bestehender „horizontaler Maßnahmen“, etwa des Systems „ICF“ zur Klassifizierung von Behinderung, was von den Nutznießern scharf kritisiert wurde.
- Es gibt kein Verfahren zur regelmäßigen Überprüfung oder Überarbeitung diskriminierender Gesetze bzw. Vorschriften. Verfahren zur formellen Aufhebung von Gesetzen oder Vorschriften werden nur nach entsprechenden Beschwerden bei der Gleichstellungsstelle eingeleitet. In diesem Fall leitet die Gleichbehandlungsstelle das diskriminierende Gesetz bzw. die Vorschrift an den Generalstaatsanwalt weiter, der dann verpflichtet ist, die Rechtsvorschrift zu überarbeiten. Dieses Verfahren wird aber nur äußerst selten eingehalten, weshalb mehrere diskriminierende Gesetze weiterhin unverändert in Kraft sind.
- Probleme im Zusammenhang mit dem ungelösten „Zypernkonflikt“ sind eine ständige Quelle ethnischer Diskriminierung, insbesondere was den Zugang der Zyperntürken zu ihren Grundstücken und die Ausübung verschiedener verfassungsmäßiger Rechte betrifft.
- Im Zuge der Umsetzung zweier asylbezogener Richtlinien des Rates (Asylverfahrensrichtlinie 2013/32 und Aufnahmerichtlinie 2013/33) im Jahr 2016 wurden Vorschriften in das nationale Asylrecht eingeführt, die zu Diskriminierung aufgrund der ethnischen Herkunft, einer Behinderung und der sexuellen Ausrichtung in den Bereichen Bildung, Schutz vor Verhaftung und Zugang zum Asylverfahren führten.

## INTRODUCTION

### The national legal system

The Cypriot Constitution contains a far reaching equality provision which purports to prohibit discrimination on, inter alia, any ground whatsoever.<sup>43</sup> However, this provision has been interpreted restrictively by the Courts as prohibiting differential treatment only where this was deemed 'unreasonable'<sup>44</sup> or only where two 'equal' things were being compared.<sup>45</sup> This restrictive approach has led the Court to legitimise differences in retirement ages for employees of different rank or different age and to allow lower awards to disabled athletes compared to non-disabled athletes, introducing a rather wide spectrum of exceptions which go far beyond the exceptions allowed by the two equality directives. In 2015 the tide begun to turn, as the Courts appeared ready to uphold that positive action measures, and in particular, quotas in employment in favour of persons with disabilities, do not violate the equality principle but on the contrary are a necessary step towards achieving equality.<sup>46</sup> However, the elements of 'reasonable' and 'unreasonable' differential treatment were still there, giving the courts a much wider margin of discretion than the narrowly defined exceptions found in the Employment Equality Directive.

Age discrimination in the national pensions system received considerable attention in 2015, as a number of cases reached the national courts which invariably upheld the position of the national authorities that the Directive permits member states a wide margin of appreciation regarding the measures to be adopted in the field of social policy.<sup>47</sup> The Courts endorsed the position that where two employees have the same date of appointment, it is lawful for seniority to be determined on the basis of the employees' age.<sup>48</sup>

By far the most popular legal channel used by lawyers in Cyprus in order to challenge discrimination is the judicial review process foreseen under article 146 of the Constitution. This process rarely leads to the satisfaction of the applicant victim of discrimination, though, because it does not entitle the Court to look into the merits of the contested decision but merely to assess the legality of the decision-making process; it also has the disadvantage that it cannot be used to challenge discrimination in the private sector, which remains an unexplored potential more than 10 years after the non-discrimination directives

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<sup>43</sup> Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), 11 February 1959, Article 28. Available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html). Accessed 21 April 2015.

<sup>44</sup> Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (*Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*), No. 1497/2008, 30 April 2012. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201204-1497-08.htm&qstring=%EC%E%F4%E8%E1%E9\\*%20and%201497%20w/1%202008](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=%EC%E%F4%E8%E1%E9*%20and%201497%20w/1%202008). Accessed 21 April 2015.

<sup>45</sup> Cyprus, Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*) 18 June 2010, No. 111/2007. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2010/rep/2010\\_3\\_0315.htm&qstring=%F0%EF%F4%E1%EC%E9.%F4\\*%20and%2018%20and%20%E9%EF%F5%ED\\*%20and%202010](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0315.htm&qstring=%F0%EF%F4%E1%EC%E9.%F4*%20and%2018%20and%20%E9%EF%F5%ED*%20and%202010). The claimant in this case was a Paralympics athlete who had been awarded a sum of 1/5 of the amount payable to the Olympics athletes. Although his discrimination claim was deemed valid by the trial Court, the appeal Court found that the trial Court had erroneously tried to compare two unequal things whilst article 28 only requires equal treatment of equal situations.

<sup>46</sup> *Costas Tsikas et al v The Republic of Cyprus through the Educational Service Committee*, Supreme Court, Review Jurisdiction, Case No. 1519/2010 and 1520/10, 3 September 2015.

<sup>47</sup> After the cut-off date of this report, the CJEU found Cyprus guilty of infringing articles 45 TFEU and 48 TFEU and Article 4(3) TEU because an age-related criterion in the national pensions law deters workers from leaving their Member State of origin in order to work abroad, effectively leading to unequal treatment between migrant workers on the one hand, and civil servants who have worked in Cyprus, on the other: CJEU, C-515/14 (*European Commission v Cyprus*), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

<sup>48</sup> Cyprus, *Charis Christodoulidou v Republic of Cyprus through the Public Service Committee*, Case No. 12/10, 3 April 2015. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2015/3-201504-12-10.htm&qstring=%F4%E9%E1%FA%E1%E9%F3\\*%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%F4%E9%E1%FA%E1%E9%F3*%20and%202015).

were transposed. An additional disadvantage of this procedure is that it can only be used by persons with a 'legitimate interest', a prerequisite that essentially excludes organisations acting on behalf of victims. The judicial review provision of the Constitution requires applicants to have *'an existing legitimate interest, which he has either as a person or by virtue of being a member of a Community [that] is adversely and directly affected by such decision or act or omission.'*<sup>49</sup> The term 'Community' is defined in the Constitution to mean either the 'Greek' or the 'Turkish' community and does not include membership of an organisation representing victims. According to all three laws transposing the Directives, the competent court to try disputes arising thereunder is the Labour Court (for labour related disputes) and the District Court for non-labour related disputes, *'without prejudice to the exclusive jurisdiction of the Supreme Court under article 146 of the Constitution'*. Therefore, although the option of applying to the district court to claim compensation is available in the legislation, the judicial review procedure of article 146 must be used in order to *annul* an administrative decision that has adversely affected an individual and this can only be used by the individual affected. In this context, the Directives' requirement that national law must grant organisations the legitimate interest necessary in order to represent victims in proceedings (article 9.2 of Directive 2000/78 and article 9.2 of Directive 2000/43) is not correctly transposed. The judicial review procedure was used in 2015 and 2016 to challenge decisions of the administration refusing to include persons in the catalogue of persons with disabilities awaiting public service appointment on the basis of the quotas procedure for persons with disability. In many of these instances, the application was successful and the administrative decision was annulled, however the reason on which the judicial decision was premised was either insufficient investigation preceding the decision challenged<sup>50</sup> or insufficient justification.<sup>51</sup>

In 1963 the Greek-Cypriot President proposed 13 amendments to the Constitution, which removed the consociational element by limiting the communal rights of the Turkish Cypriots. The Turkish Cypriots withdrew from the administration in protest; since then, the administration of the Republic has been carried out by the Greek Cypriots. In the leading case of *Ibrahim* 1964,<sup>52</sup> the Supreme Court ruled that the functioning of the government must continue on the basis of the 'doctrine of necessity' which effectively suspends the communal rights which the Constitution had granted to the Turkish Cypriot community. A decade later, this doctrine was extended by the Courts to legitimise measures affecting Turkish Cypriots which are of questionable legality. In the years that followed and even until presently, the Courts keep extending this doctrine into new areas, primarily in order to deny Turkish Cypriots access to their properties located in the areas controlled by the Republic<sup>53</sup> but also in order to deny Turkish Cypriots state provisions available to other Cypriot citizens. Until 2006 Turkish Cypriots were also denied the right to vote, based on

<sup>49</sup> Cyprus, The Constitution of the Republic of Cyprus (Το Σύνταγμα της Κυπριακής Δημοκρατίας), 11 February 1959, Article 146.2. Available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html). Accessed 5 May 2017.

<sup>50</sup> Cyprus, Administrative Court, Anna Kyriakou v. The Republic of Cyprus through the Committee of Educational Service, Case no. 627/2014, 15 November 2016, available at <http://cylaw.org/cgi-bin/open.pl?file=administrative/2016/201611-627-2014.html&qstring=%E1%ED%E1%F0%E7%F1%2A%20and%202011>.

<sup>51</sup> Cyprus, Administrative Court, Charalambia Olympiou v The Republic of Cyprus through the Committee of Educational Service, Case No. 1010/2014, 16 November 2016, available at <http://cylaw.org/cgi-bin/open.pl?file=administrative/2016/201611-1010-2014.html&qstring=%E1%ED%E1%F0%E7%F1%2A%20and%202011>; Cyprus, Administrative Court, Gondosidou Evangelia v. The Republic of Cyprus through the Committee of Educational Service, Case No. 943/2012, 12 May 2016, available at [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201605-943-12.htm&qstring=%E1%ED%E1%F0%E7%F1%2A](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201605-943-12.htm&qstring=%E1%ED%E1%F0%E7%F1%2A).

<sup>52</sup> Cyprus, Attorney General of the Republic v. Mustafa Ibrahim and Others (1964). Available at [www.cylaw.org/cir/1964/1964\\_1\\_195.pdf](http://www.cylaw.org/cir/1964/1964_1_195.pdf).

<sup>53</sup> Trimikliniotis, N. and Demetriou, C. (2012), *Displacement in Cyprus – Consequences of Civil and Military Strife, Report 3, Legal framework in the Republic of Cyprus*, PRIO Cyprus Centre, <http://www.prio-cyprus-displacement.net/images/users/1/Report%203%20-%20TRIM.DEM%20ENG.WEB.pdf>.



the doctrine of necessity; however, the Republic was forced to change this law<sup>54</sup> following the ECtHR ruling in the case of *Aziz v. Cyprus*.<sup>55</sup>

### List of main legislation transposing and implementing the directives

The two anti-discrimination directives were transposed on the eve of Cyprus' accession to the EU, through four different laws:

- Disability: The law on persons with disabilities (amendment) N. 57(I)/2004 was adopted on 31 March 2004 and entered into force on 1 May 2004, amending the existing legislation on disability (N. 127(I)/2000). The amending legislation transposed the disability component of the Employment Equality Directive (2000/78/EC) by introducing the directive's prohibition of discrimination in employment. The law was amended in 2014 (through Law 63(I)/2014) to extend its reasonable accommodation provisions to fields beyond employment and in 2015 (through Law 22(I)/2015) to provide for preferential parking for persons with disability.
- Racial and ethnic origin religion or belief, age, sexual orientation: On 31 March 2004 the Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 was adopted, which came into force on 1 May 2004, in order to transpose the Employment Equality Directive (2000/78/EC) minus the disability component. Its scope covers the field of employment. The law was amended last in 2009 in order to rectify a problem that had arisen regarding the jurisdiction of the labour tribunal to try disputes under this law.
- Racial and ethnic origin: On 31 March 2004 the Equal Treatment (Racial or Ethnic Origin) Law No. N. 59 (1)/2004 was adopted, which entered into force on 1 May 2004 in order to transpose the Racial Equality Directive (2000/43/EC) in all the fields foreseen by this directive minus employment, i.e. social protection, medical and medicinal care, social provisions, education, and access to goods and services including housing. The law was last amended in 2006 to rectify a transposition problem as regards the reversal of the burden of proof.
- All grounds: On 19 March 2004 the Combating of Racial and other Forms of Discrimination (Commissioner) Law N. 42 (1)/2004 was adopted, which entered into force on 1 May 2004 in order to transpose article 13 of the Racial Equality Directive (2000/43/EC). The Equality Body's mandate is said to cover the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under a list of international conventions ratified by Cyprus. Although the mandate of the Equality Body goes far beyond that foreseen in article 13 in terms of grounds and fields of application, it does not include the provision of independent assistance to victims in pursuing their complaints in Court. More importantly, and as repeatedly highlighted by international monitoring bodies, the limited resources afforded by the state to the Equality Body severely restrict its institutional capacity which has since its inception been inadequately staffed to meet the increasing range of its tasks and increasing volume of work.<sup>56</sup>

<sup>54</sup> Cyprus, Law on the exercise of the right to elect and be elected by the members of the Turkish Community who have their normal residence in the government-controlled area (*Ο περί Άσκησης του Δικαιώματος του Εκλέγειν και Εκλέγεσθαι από Μέλη της Τουρκικής Κοινότητας που Έχουν Συνήθη Διαμονή σε Ελεύθερο Έδαφος της Δημοκρατίας (Προσωρινές Διατάξεις) Νόμος του 2006*] N. 2(I)/2006, 21 January 2006. Available at [www.cylaw.org/nomoi/indexes/2006\\_1\\_2.html](http://www.cylaw.org/nomoi/indexes/2006_1_2.html).

<sup>55</sup> ECHR/ no. 69949/01, 22 June 2004. Available at <http://echr.ketse.com/doc/69949.01-en-20040622/view/>. The decision of the ECtHR in the case of *Aziz*, that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality, was not consistently followed either by the Courts in Cyprus or by the Equality Body, as both have issued decisions upholding the 'doctrine of necessity' as legal justification for the suspension of the constitutional rights of the Turkish Cypriots.

<sup>56</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.



## 1 GENERAL LEGAL FRAMEWORK

The Cypriot constitution includes the following articles dealing with non-discrimination:

Article 28(1) provides that all persons are equal before the law, the administration and justice and are entitled to equal protection from these and to treatment by these. Article 28(2) guarantees the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties foreseen in the Constitution without any direct or indirect discrimination against any person on the grounds of: community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.

Article 6 provides that no law or decision of the House of Representatives or of any of the Communal Chambers (no longer active), and no act or decision of any organ, authority or person exercising executive power or administrative functions, shall discriminate against any of the two 'Communities' or any person by virtue of being a member of a 'Community'.<sup>57</sup>

By inference, these provisions apply to all areas covered by the directives; their material scope is in fact broader than those of the directives albeit their application is limited as a result of restrictive judicial practices. These provisions are directly applicable and can be enforced against private actors (in addition to against the state).<sup>58</sup>

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<sup>57</sup> The term 'Community' is used in the Constitution as meaning either the Greek or the Turkish Community of Cyprus.

<sup>58</sup> Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (*Τάκη Γιαλλουρού ν Ευγένιου Νικολάου*) No. 9331, 08 May 2001. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF\\*%20and%20%E5%F5%E3%E5%ED\\*%20and%20%ED%E9%EA%EF%EB%E1%EF\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*).

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

Article 28 of the Constitution prohibits discrimination on the grounds of community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.

The Law on persons with disability N. 127(I)/2000 as amended covers only disability.

The Equal Treatment (Racial or Ethnic Origin) Law No. N. 59 (1)/2004 covers racial and ethnic origin.

The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 covers racial and ethnic origin religion or belief, age and sexual orientation.

The Combating of Racial and other Forms of Discrimination (Commissioner) Law N. 42 (1)/2004 which sets out the mandate of the Equality Body, defines this mandate as covering the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under the following international conventions ratified by Cyprus: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

##### *Disability*

Disability is defined in the Law on Persons with Disabilities N.127(I)2000 as 'any form of deficiency or disadvantage that may cause bodily, mental or psychological limitation permanently or for an indefinite duration which, considering the background and other personal data of the particular person, substantially reduces or excludes the ability of the person to perform one or more activities or functions that are considered normal or substantial for the quality of life of any person of the same age that does not experience the same deficiency or disadvantage'.

When comparing the above definition with the concept of disability adopted in *Skouboe Werge and Ring*,<sup>59</sup> the definition in the Cypriot law falls short of incorporating the juxtaposition of the *impairment* with the *barriers* that impede effective participation; instead, the definition of the Cypriot law requires disability to cause permanent or indefinite limitations when juxtaposed with the person's background and other personal data, but not when juxtaposed with external factors such as structural barriers. The definition of disability in the Cypriot law also fails to meet the test set in *Skouboe Werge and Ring* in that, according to Cypriot law, the limitation must be either 'permanent' or of 'indefinite duration', in contrast with the 'long-term' limitation set by the CJEU. This essentially means that the Cypriot definition imposes a more stringent test to be satisfied in order for a disadvantage to be deemed as 'disability' and thus be offered protection under the law.

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<sup>59</sup> CJEU, Judgment in Joined Cases C-335/11 and C-337/11, *Jette Ring and Lone Skouboe Werge*, 11 April 2013, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=944535>.

Also, when comparing the above definition of disability in the Cypriot law to the definition adopted in the *Chacón Navas*<sup>60</sup> case, it emerges that the CJEU focused equally on the source of the limitation ('physical, mental or psychological impairments') and on the impact ('which hinders the participation of the person concerned in professional life'). The definition in the Cypriot law first describes the characteristics of this condition in a liberal fashion ('deficiency that *may* cause indefinite or permanent, mental or psychological or bodily limitation') and then goes on to describe the impact in a rather restrictive mode (substantially reducing or excluding the ability to perform an activity that is 'normal' or substantial for the quality of life). The definition of disability in the Cypriot anti-discrimination law does not refer to the source of the disability and therefore may arguably include curable or incurable illnesses, as required by *Skouboe Werge and Ring*. Practice may however deviate from the principle established in *Skouboe Werge and Ring*, as persons with a disability originating from a curable illness may be denied access to welfare on the justification that their symptoms of limitation can be alleviated if they have an operation. Such was the case of a 90-year old man with limited vision resulting from cataract, whose application for welfare was rejected on the ground that his vision will improve if he has the operation.<sup>61</sup>

The social insurance law defines disability as 'loss of health, strength or the ability to enjoy life'.<sup>62</sup> This should not however be seen as an exhaustive definition of disability but rather to determine eligibility to disability benefit under the particular law.

The Law on Public Service which provides for employment opportunities in favour of persons with disabilities in the public sector, defines a 'disabled' person as 'a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs'.<sup>63</sup> This definition follows the restrictive tradition of the Article 2 of Law N.127(I)/2000 and it is arguably more restrictive than the more liberal approach taken by the CJEU in *Chacón Navas* and in *Skouboe Werge and Ring*.

A law which came into force in late 2009 introducing quotas in favour of persons with disability in the public sector defines 'person with disability' as a person who, following an assessment by a multidisciplinary committee, is found to be suffering from a permanent or indefinite insufficiency or disadvantage causing physical, intellectual or mental restrictions in finding and keeping suitable employment.<sup>64</sup> In 2015, when the Supreme Court was asked to review an administrative decision to reject a disabled applicant from inclusion in the catalogue of persons entitled to a quota position in the public service, the court ruled that the appointing body was not justified in disregarding medical opinion which had classified the applicant as a person with disability. The court therefore annulled the administrative act by which the applicant's request to be included in the quota list had been rejected, thus paving the way for the applicant to submit a fresh application.<sup>65</sup>

<sup>60</sup> CJEU, Case C-13/05, *Sonia Chacón Navas v. Eurest Colectividades SA*, 11 July 2006, available at <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=56459&pageIndex=0&doclang=EN&mode=lst&dir=&cc=first&part=1&cid=945467>.

<sup>61</sup> Consultation with KYSOA, the confederation of disability organisations, 8 May 2017.

<sup>62</sup> Cyprus, Law on social insurance (Ο περί Κοινωνικών Ασφαλίσεων Νόμος) 2010, N. 59(I)/2010-2014, article 2(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2010\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2010_1_59/full.html).

<sup>63</sup> Cyprus, Law on public service (Περί Δημόσιας Υπηρεσίας Νόμος) N. 1/1990, 1990-2014, article 44(3). Available at [www.cylaw.org/nomoi/enop/non-ind/1990\\_1\\_1/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1990_1_1/full.html).

<sup>64</sup> Cyprus, Law introducing special provisions for the hiring of persons with a disability in the wider public sector (Special Provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] N. 146(I)/2009, article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2009\\_1\\_146/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html).

<sup>65</sup> Cyprus, Supreme Court, *Eleni Paroutsis v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015, available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015).

The Ombudsman's Annual Report for 2005<sup>66</sup> refers to two cases in which the welfare services discontinued the payment of a benefit to persons with a disability on the ground that the disability could potentially be remedied through an operation and that the disability was not permanent, respectively. In both cases, the Ombudsman found that the complainants' disabilities did fit the definition of the term as found in the law because the inference that can be drawn from the medical certificates was that the disability in question was of indefinite duration.<sup>67</sup>

An Equality Body decision in 2007<sup>68</sup> criticised a scheme of the Ministry of Labour for the provision of care to tetraplegic persons, where tetraplegia was defined as paralysis of the lower limbs resulting from injury to or illness of the bone marrow. The decision found the scheme discriminatory as it treated differently tetraplegic persons whose condition resulted from different reasons and excluded for instance persons whose tetraplegia is due to brain injuries, muscular condition or multiple sclerosis. A 2010 decision of the Equality Body included a speech impediment as falling within the definition of disability as found in the Law on Persons with Disabilities N.127(I)/2000.<sup>69</sup>

In a judicial review application decided by the court in 2016, the decision of the Social Welfare Services to discontinue the payment of a disability grant to a 15-year-old child following an operation which partly improved his condition, was annulled by the court as unjustified.<sup>70</sup> According to the authorities, the child no longer met the definition of 'disability' found in the law on public grants, because, following the operation, he was able to walk without support. The law on public grants defines disability as any form of insufficiency or disadvantage which causes permanent or indefinite physical, intellectual or mental restriction, taking into account the history and other personal data of the person, and restricts substantially or excludes the possibility of one or more activities considered natural and essential for the quality of life of any person of same age with no such insufficiency or disadvantage.<sup>71</sup> The Court found that even after the operation the applicant continued to have a disadvantage compared to other children of his age because other 15 year olds could run, walk and exercise without difficulties and without having to rest at regular intervals, for an indefinite or permanent period of time. The fact that, after the operation, the applicant could walk without support did not lead to the conclusion that his functionality was not substantially restricted compared to his counterparts.

During 2014 a new law was adopted replacing the welfare grant known as 'public benefit' with the 'minimum guaranteed income'. To be eligible for this grant, applicants must meet the law's definition which, on the one hand, endorses the concept introduced by the CRPD on impairments which hinder equal participation in society when interacting with barriers, but on the other hand renders eligibility conditional upon passing the test of the System of

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<sup>66</sup> Although the Ombudsman is also the Equality Body, reference here is the Annual Report of the Ombudsman.

<sup>67</sup> Cyprus, Ombudsman, Annual Report 2005, case nos. A/P 2175/04 and A/P 368/05.

<sup>68</sup> Cyprus, Anti-discrimination Authority, No. A.K.I 58/2007, A.K.I. 59/2007, A.K.I. 60/2007, A.K.I. 61/2007 and A.K.I. 64/2007, 19 June 2007.

<sup>69</sup> Cyprus, Ombudsman, Nos. A/P 2898/2007, A.K.I. 10/2010, 23 February 2010.

<sup>70</sup> Cyprus, Supreme Court, Review Jurisdiction, Christos Theodosiou through his guardian Theodosia Theodosiou v. The Republic of Cyprus through the Director of Social Welfare Services et al, Case No. 1517/2013, 30 June 2016, available at [http://cyllaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201606-1517-2013.htm&qstring=%E1%ED%E1%F0%E7%F1%2A](http://cyllaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201606-1517-2013.htm&qstring=%E1%ED%E1%F0%E7%F1%2A).

<sup>71</sup> Cyprus, Law on public benefits and services of 2006 and 2012 (Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος 2006 και 2012) N. 95(I)/2006, article 2, available at [http://cyllaw.org/cqi-bin/open.pl?file=nomoi/enop/ind/2006\\_1\\_95/section-scd1bb10a4-bb5c-68a5-d813-b5bd55b6b547-lnb9c5298e-5300-551d-119b-c161849ec308.html&qstring=%F0%E5%F1%E9%20and%20%E4%E7%EC%EF%F3%2A%20and%20%E2%EF%E7%E8%E7%EC%E1%2A%20and%20%EA%E1%E9%20and%20%F5%F0%E7%F1%E5%F3%2A%20and%20%ED%EF%EC%F9%ED%2A%20and%20%2006%20and%20%FA%E1%E9%20and%20%2012](http://cyllaw.org/cqi-bin/open.pl?file=nomoi/enop/ind/2006_1_95/section-scd1bb10a4-bb5c-68a5-d813-b5bd55b6b547-lnb9c5298e-5300-551d-119b-c161849ec308.html&qstring=%F0%E5%F1%E9%20and%20%E4%E7%EC%EF%F3%2A%20and%20%E2%EF%E7%E8%E7%EC%E1%2A%20and%20%EA%E1%E9%20and%20%F5%F0%E7%F1%E5%F3%2A%20and%20%ED%EF%EC%F9%ED%2A%20and%20%2006%20and%20%FA%E1%E9%20and%20%2012).

Classification of Disability.<sup>72</sup> This is a new system of assessing disability on the basis of functionality based on an international standard known as ICF (International Classification of Functioning, Disability and Health) operated by the Ministry of Labour, Welfare and Social Insurance<sup>73</sup> which has attracted criticism from the disability movement for adopting the medical rather than the social model of addressing disability.

### *Racial/ethnic origin*

Racial/ethnic origin is only defined in the law ratifying the International Convention on the Elimination of All forms of Racial Discrimination<sup>74</sup> which incorporates the Convention's definition. The Convention defines neither race nor ethnic origin but offers a wide definition of racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'<sup>75</sup>

In 2015 the Equality Body issued a report on discrimination against Greek nationals residing in Cyprus.<sup>76</sup> In its legal justification section, the report relied on the Racial Equality Directive. Upon an enquiry sent from the national expert to the Equality Body as to whether the latter considers that the Racial Equality Directive applies to Union nationals residing in Cyprus, the Equality Body responded positively adding that the Equality Directives is based on article 13 of the Treaty on European Union and article 19 of the Treaty on the functioning of the European Union. The Equality Body letter states that the Directives cannot be interpreted as excluding Union citizens from their scope and that Union citizens are primarily granted protection by the two Equality Directives.<sup>77</sup>

There are no officially recognised ethnic minorities in Cyprus. The Constitution recognises three 'religious groups', the Armenians, the Maronites and the Latins, and two 'communities', the Greek Cypriots and the Turkish Cypriots. The Roma are deemed to be part of the Turkish Cypriot community. Modern perceptions of evolving identities conceptualise these groups as having multiple identities: the religious groups are also ethnic groups and national minorities, whilst the Turkish Cypriots are at the same time both a community and a minority in the southern part of Cyprus. Ethnicity is inherent in the identity of five groups who may therefore claim protection under the Racial Equality Directive. The Equality Body has invariably extended protection under the Racial Equality Directive to all of these groups irrespective of their official denomination.

In November 2015 the Ministry of Education published a code of conduct for handling racial incidents at schools which provides non-legal definitions for the following terms: identity, diversity, race, prejudice, stereotype, discrimination, racism xenophobia, nationalism,

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<sup>72</sup> Cyprus, Law on the minimum guaranteed income and generally on social provisions of 2014 (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N. 109(I)/2014. Available at [http://www.cylaw.org/nomoi/enop/non-ind/2014\\_1\\_109/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html).

<sup>73</sup> Cyprus, Implementation of new system of assessing disability and functionality (*Εφαρμογή στην Κύπρο ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06\\_gr/dsipd06\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument).

<sup>74</sup> Cyprus, Law Ratifying the International Convention for the Elimination of All forms of Racial Discrimination N.12/1967, 30 March 1967.

<sup>75</sup> International Convention for the Elimination of Racial Discrimination, article 1, available at [www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx).

<sup>76</sup> Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949\\_2013\\_%CE%91%CE%9A%CE%99%2052\\_2013\\_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

<sup>77</sup> Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

intolerance, homophobia, transphobia, bullying, hate speech, underreporting and racial incident.<sup>78</sup>

*Identity* is defined in the Code as the perception of a person as being part of a specific group with common characteristics; such perception is accompanied by relevant emotional significance attributed to this group and to the group characteristics and includes the perception of a person by others. Possible variations between how a group defines itself and how it is perceived by others may lead to tensions, conflicts or misunderstandings, as identities are multiple and constructed through actions, words, and our political and social life.

*Diversity* is defined in the Code as a product or the result of one's perception or perspective which differentiates between other persons. The criteria of differentiation may include gender, colour/ appearance, nationality, community or religious group, immigration status, origin, religious or other belief, disability, age, sexual orientation, language, accent, customs, profession, socioeconomic situation, culture, etc.

*Race* is, according to the Code, a manufactured product used to categorise persons on the basis of assumed physical and cultural similarities originating from their common descent. According to the Code, the term 'race' is a construct with no biological or literal status and, scientifically speaking, has no application to the human kind, despite the fact that it is widely used for social action, policy development and justification for differential treatment of groups in relation to other groups.

*Prejudice* is defined as negative predisposition against a group based on arbitrary, incorrect and rigid generalizations and stereotyped beliefs and images as a result of membership of a cultural, ethnic, religious or other group, such as negative attitudes towards Muslims because they supposedly have a tendency to violence and terrorism.

*Discrimination* is defined as unequal treatment or behaviour of individuals or groups of people according to their diversity and can be direct or indirect, such as practices or policies that appear "neutral" or "fair" because they treat everyone equally but have adverse effects on a particular group.

*Racism* is defined in the Code as the process of marginalization, exclusion and discrimination against those considered to be 'different' or 'diverse'. Racism does not have to be intentional and is not static. It can take many different forms, some obvious and direct, such as national denominations, religious or other superiority form or violent attacks against individuals or groups deemed as "others", while some are indirect and less obvious, such as institutional racism, the various forms of discrimination imposed by governments, companies or other large essential organizations against non-privileged population groups like minorities and immigrants.

#### *Religion/belief*

Although there is no definition of what 'religion' is for the purposes of the anti-discrimination legislation, Equality Body decisions have established that the term includes atheism. In particular, a 2010 decision of the Equality Body criticised a set of school regulations which provides for exempting students from the religious class only if they are '*not of Christian Orthodox faith*', adding that the regulation forcing students and parents to reveal their religious convictions (in order for the students to be granted exemption from the religious class) is incompatible with the principle of freedom of thought, conscience and religion.<sup>79</sup> Extending this principle further, in 2011 an Equality Body report dealing

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<sup>78</sup> For more details see

[http://www.moec.gov.cy/aqogi\\_vgeias/pdf/kodikas\\_symperiforas/kodikas\\_symperiforas\\_ratsismou.pdf](http://www.moec.gov.cy/aqogi_vgeias/pdf/kodikas_symperiforas/kodikas_symperiforas_ratsismou.pdf).

<sup>79</sup> Cyprus, Anti-discrimination Authority, Report no. A.K.R. 135/2009, 07 November 2010.



with religious confessions at schools found that the participation of students in ceremonies forming part of religious convictions creates fertile ground for discrimination, as the non-participation inevitably leads to conclusions as to one's religious convictions and thus revelation of personal sensitive data, as well as to the labelling and categorization of some students as 'good Christians' and others not.<sup>80</sup> A further intervention of the Equality Body in 2015 on religious freedom at schools criticised the initiative of the Education Ministry to encourage the setting up of teams of children to assist with the religious ceremony in church as a violation of the children's freedom of religion, challenging the position of the Ministry that the activity was not obligatory and that it was intended to promote volunteerism. The Equality Body questioned whether there can be such a thing as 'free consent' in the context of the school environment and accused the Ministry of clearly favouring one religion over others and restricting religious freedom, which inevitably leads to discrimination against all those who do not belong to it.<sup>81</sup>

'Belief' is a rather neglected ground; it is not defined in the law transposing the Employment Equality Directive nor has it been the subject of any decision either of the court or of the equality body. The new law adopted in 2015 on the political participation of employees in the public sector purports to safeguard the right of such employees to 'freely express their political beliefs, political views and convictions'.<sup>82</sup> This however should not be viewed as exhaustive of the definition of 'belief' as found in the law transposing the Employment Equality Directive, particularly in light of the fact that legislation transposing the EU *acquis* ranks higher than other national laws.

## Age

Although no definition is provided anywhere, Equality Body decisions as well as Court decisions appear to endorse the view that the victim need not be either young or old and that any discriminatory treatment taking stock of age is prohibited. Thus a funding scheme for the cost of repair of countryside houses excluding single persons under the age of 35 was deemed by the Equality Body in 2006 to be discriminatory on the ground of age.<sup>83</sup> Also a court decision in 2014 found that the reduced entitlement to pension benefits for civil servants resigning from the civil service before they turn 48 (or 45 for medical staff) amounts to age discrimination.<sup>84</sup> However, the legislative provision for the reduced

<sup>80</sup> Cyprus, Anti-discrimination Authority, Report no. 42/2010, 29 July 2011.

<sup>81</sup> Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A1%CE%BA%CE%B1%CE%84%CE%AC%20%CE%84%CE%BF%CE%85%20%CE%A1%CE%B1%CE%84%CE%83%CE%B9%CE%83%CE%BC%CE%BF%CE%8D%20%CE%BA%CE%B1%CE%B9%20%CE%84%CE%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CE%81%CE%AF%CE%83%CE%B5%CE%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A1%CE%BA%CE%B1%CE%84%CE%AC%20%CE%84%CE%BF%CE%85%20%CE%A1%CE%B1%CE%84%CE%83%CE%B9%CE%83%CE%BC%CE%BF%CE%8D%20%CE%BA%CE%B1%CE%B9%20%CE%84%CE%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CE%81%CE%AF%CE%83%CE%B5%CE%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf)

<sup>82</sup> Cyprus, Law providing for the political rights of public servants, local authority employees and employees of public organisations (*Ο περί των Πολιτικών Δικαιωμάτων Δημόσιων Υπαλλήλων, Εκπαιδευτικών Λειτουργών, Δημοτικών Υπαλλήλων, Κοινοτικών Υπαλλήλων και Υπαλλήλων Νομικών Προσώπων Δημόσιου Δικαίου Νόμος του 2015*) N.102(I)/2015, article 3, 10 July 2015. Available at [www.cylaw.org/nomoi/enop/non-ind/2015\\_1\\_102/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2015_1_102/full.html).

<sup>83</sup> Cyprus, Anti-discrimination Authority, State subsidy provided to single persons in the frame of a housing scheme for the revitalization of communities with up to 200 residents (*Κρατική χορηγία που παρέχεται σε μονήρη άτομα στα πλαίσια στεγαστικού σχεδίου για αναζωογόνηση κοινοτήτων με κατοίκους μέχρι 200 άτομα*), Ref. 127/2005, contained in the Annual Report of the Anti-discrimination Authority for 2006, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/\\$file/%CE%91%CE%81%CE%87%CE%AE%20%CE%BA%CE%B1%CE%84%CE%AC%20%CE%84%CE%BF%CE%85%20%CE%A1%CE%B1%CE%84%CE%83%CE%B9%CE%83%CE%BC%CE%BF%CE%8D%20%CE%BA%CE%B1%CE%B9%20%CE%84%CE%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CE%81%CE%AF%CE%83%CE%B5%CE%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/$file/%CE%91%CE%81%CE%87%CE%AE%20%CE%BA%CE%B1%CE%84%CE%AC%20%CE%84%CE%BF%CE%85%20%CE%A1%CE%B1%CE%84%CE%83%CE%B9%CE%83%CE%BC%CE%BF%CE%8D%20%CE%BA%CE%B1%CE%B9%20%CE%84%CE%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CE%81%CE%AF%CE%83%CE%B5%CE%89%CE%BD%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf).

<sup>84</sup> Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%E9%F3%\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%FA%E9%F3%*%20and%2058(%E9)#).

benefits<sup>85</sup> remains in force in spite of this ruling. The only procedure available in the Cypriot legal order to change a discriminatory law is for the Attorney General to promote a bill to be approved first by the Council of Ministers and then by Parliament. The Courts are not required to disapply the discriminatory law pending its official annulment by Parliament.

The question of seniority was found by the Court to be a permissible criterion for a job promotion where the two competing candidates had the same or similar qualifications.<sup>86</sup>

### *Sexual orientation*

No definition is provided either in the legislation or in any other official or unofficial document. This term does not appear in any piece of legislation other than the law transposing Directive 2000/78/EC. An Equality Body decision in 2005 found that employment advantages granted only to married employees were discriminatory by virtue of Article 28 of the Constitution, as well as by virtue of the law transposing Directive 2000/78/EC on the ground of inter alia sexual orientation, thus extending the definition of this ground to cover potential situations of LGBT persons, whose sexual orientation may be presumed by their decision not to get married.<sup>87</sup> The law on civil unions does not provide any definitions whatsoever, since it applies equally to all persons who choose to register their relationship in this manner, irrespective of sexual orientation.<sup>88</sup> The Equality Body, whose mandate does not explicitly cover intersex persons, has on occasions addressed the vulnerable situation of intersex persons under its wider mandate to deal with matters pertaining to sexual orientation and gender identity, recognising at the same time that a more specialised framework is needed for their more effective protection. A position paper published by the Equality Body in 2016 pointed out that the current governmental policy and practice towards intersex persons violates the right to free self-determination and bodily integrity.<sup>89</sup> With references to the aforesaid Equality Body report, the Commissioner for the rights of the child wrote that the principle of non-discrimination as enshrined in article 2 of the UN Convention for the rights of the Child, must be interpreted as including the right to self-determination and gender identity.<sup>90</sup>

<sup>85</sup> Cyprus, Law on pensions (Ο περί συντάξεων νόμος) N. 97(I)/1997, article 27(1), available at [http://cyllaw.org/nomoi/enop/ind/1997\\_1\\_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html](http://cyllaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html).

<sup>86</sup> Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at [http://www.cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%\\*%20and%202015](http://www.cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%202015); Supreme Court, Maria Shambarta v Republic of Cyprus (Μαρία Σιαμπάρτα v Κυπριακής Δημοκρατίας) No. 417/2010, 4 October 2010.

<sup>87</sup> Cyprus, Equality Authority (2005), Report regarding the application forms for appointment in the Central Forum for the Equal Distribution of Burdens, Ref. A.K.I. 26/2005. Not available online.

<sup>88</sup> Cyprus, Law on Civil Marriages of 2015 (Ο περί Πολιτικής Συμβίωσης Νόμος του 2015), 184(I)/2015, 9 December 2015. Available at [http://cyllaw.org/nomoi/arigh/2015\\_1\\_184.pdf](http://cyllaw.org/nomoi/arigh/2015_1_184.pdf).

<sup>89</sup> Cyprus, Position of the Anti-discrimination Authority regarding main issues affecting intersex persons from the perspective of human rights (Τοποθέτηση Αρχής κατά των Διακρίσεων σχετικά με κύρια ζητήματα που αφορούν τα intersex άτομα, από τη σκοπιά των ανθρωπίνων δικαιωμάτων), File No. AKR TOP 4/2016, 2 August 2016. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/E387D25DE6311167C22580210020DF99/\\$file/%CE%9C%CE%B5%CF%84%CE%B1%CF%87%CE%B5%CE%AF%CF%81%CE%B9%CF%83%CE%B7%20intersex%20%CE%B1%CF%84%CF%8C%CE%BC%CF%89%CE%BD.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/E387D25DE6311167C22580210020DF99/$file/%CE%9C%CE%B5%CF%84%CE%B1%CF%87%CE%B5%CE%AF%CF%81%CE%B9%CF%83%CE%B7%20intersex%20%CE%B1%CF%84%CF%8C%CE%BC%CF%89%CE%BD.doc?OpenElement).

<sup>90</sup> Cyprus, Note by the Commissioner for the rights of the child Leda Koursoumba for the discussion on the subject 'Briefing for the legal recognition of gender in Cyprus on the basis of the recommendations of the Council of Europe' (Υπόμνημα της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού, Λήδας Κουρσουμπά, στη συζήτηση του θέματος «Ενημέρωση για τη νομική αναγνώριση φύλου στην Κύπρο με βάση τις συστάσεις του Συμβουλίου της Ευρώπης»), 14 November 2016, available at [www.childcom.org.cy/ccr/ccr.nsf/0/d37a052b52f4127dc225806b002acca6/\\$FILE/%CE%95%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%20%CE%91%CE%BD%CE%B8%CF%81.%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CF%89%CE%BC%CE%AC%CF%84%CF%89%CE%BD-%CE%BD%CE%BF%CE%BC%CE%B9%CE%BA%CE%AE%20%CE%B1%CE%BD%CE%B1%CE%B3%CE%BD%CE%8E%CF%81%CE%B9%CF%83%CE%B7%20%CF%86%CF%8D%CE%BB%CE%BF%CF%85%2014.11.16.doc](http://www.childcom.org.cy/ccr/ccr.nsf/0/d37a052b52f4127dc225806b002acca6/$FILE/%CE%95%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%20%CE%91%CE%BD%CE%B8%CF%81.%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CF%89%CE%BC%CE%AC%CF%84%CF%89%CE%BD-%CE%BD%CE%BF%CE%BC%CE%B9%CE%BA%CE%AE%20%CE%B1%CE%BD%CE%B1%CE%B3%CE%BD%CE%8E%CF%81%CE%B9%CF%83%CE%B7%20%CF%86%CF%8D%CE%BB%CE%BF%CF%85%2014.11.16.doc).



An Equality Body report in December 2014<sup>91</sup> regarding the CJEU ruling on the procedure of assessment of the credibility of asylum seekers claiming fear of persecution on the ground of their sexual orientation<sup>92</sup> endorsed the CJEU ruling and excluded procedures which infringe upon a person's privacy and dignity, safeguarded by articles 7 and 1 of the EU Charter respectively. Although the debate at the CJEU concerned asylum,<sup>93</sup> it is reasonable to assume that the same philosophy of respect to one's privacy should govern discrimination-related claims.

### 2.1.2 Multiple discrimination

In Cyprus, prohibition of multiple discrimination is not explicitly included in the law.

There is no legislation or Court decisions on the matter. An Equality Body decision in 2008 found that the age restrictions contained in a disability benefit scheme were discriminatory<sup>94</sup> but did not look into the specificities created by the combination of the two grounds. With reference to the same case, in January 2016 the Supreme Court also ruled that the age restriction in the disability scheme amounts to unlawful age discrimination; however, the court also failed to address the case from the perspective of multiple discrimination.<sup>95</sup> A 2016 report of the Ombudsman on the conditions of access to the labour market by women asylum seekers criticized the policy framework which failed to take into account the multiplicity of grounds of discrimination at play (origin, age, gender, religion, maternity, health etc.) but did not term this multiplicity as an aggravated instance of discrimination.<sup>96</sup> After the cut-off date of this report, a report of the Ombudsman in her capacity as monitoring body for the implementation of the CRPD established that a legislative provision excluding persons with intellectual disability from acquiring citizenships amounts to multiple discrimination, which rendered the illegality even more serious.<sup>97</sup>

In Cyprus, there is no case law dealing with multiple discrimination.

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<sup>91</sup> Cyprus, Position of the Anti-discrimination Authority regarding the decision of the CJEU on the conditions of assessment of the credibility of asylum seekers as regards their sexual orientation, Ref. AKR TOP 3/2014, 17 December 2014, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/\\$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement).

<sup>92</sup> CJEU, Joined Cases C-148/13 to C-150/13, 2 December 2014, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

<sup>93</sup> CJEU, Joined Cases C-148/13 to C-150/13, 2 December 2014, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

<sup>94</sup> Equality Body decision Ref. 114/2007, 10 November 2008.

<sup>95</sup> Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at [http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

<sup>96</sup> 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, available at [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).

<sup>97</sup> Independent Authority for the Promotion of the Rights of Persons with Disability, Report on the rejection of an application by a person with an intellectual disability for Cypriot citizenship and infringement of the CRPD (Έκθεση αναφορικά με την απόρριψη αίτησης ατόμου με νοητική αναπηρία για απόκτηση κυπριακής υπηκοότητας και την παραβίαση της Σύμβασης του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρία), File No. S.A.A. 40/2016, 26 January 2017, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/\\$file/1%2020%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%2020%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement).

### 2.1.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In Cyprus, the laws transposing the equality Directives<sup>98</sup> do not expressly make provision for assumed and associated discrimination. However, the concept of discrimination itself, virtually replicating the directive, defines 'direct discrimination' in the following way: 'where one person is treated less favourably than another is, has been or would be treated in a comparable situation'. Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide.

The law on persons with disabilities defines disability as treatment based on characteristics which generally belong to a person with such disability or based on an assumed characteristic which generally belongs to a person with such disability or based on an assumed characteristic generally attributed to a person with such disability.<sup>99</sup> The other two laws transposing the Directives do not contain an equivalent provision; they merely reproduce the wording of the Directives.

There has been no case in which this matter was considered by a Cypriot court or by the national Equality Body.

#### b) Discrimination by association

In Cyprus, there is no law or case law explicitly prohibiting discrimination based on association with persons with particular characteristics and no judicial interpretation of any related terms or concepts. However:

- All three laws transposing the equality directives (N. 58(I)/2004, N. 59(I)/2004 and N. 127(I)/2000 as amended) contain protection against victimisation in line with the said directives. The spirit of the prohibition against victimisation may be extended to cover discrimination by association.
- Freedom of association is protected by the Cypriot Constitution (article 21). All constitutional rights are to be enjoyed without discrimination, according to article 28 of the Constitution.
- Article 1 (1) of Protocol 12 to the ECHR, which Cyprus has ratified, includes 'association with a national minority' as one of the prohibited grounds of discrimination. Such association may involve various forms, including living with the community and / or otherwise sharing in their misfortunes or being assumed by the perpetrator to be of a particular ethnic minority origin, in line with the ruling of the CJEU in *Chez Razpredelenie*, which established that the Racial Equality Directive covers 'those who, without possessing that [ethnic] origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure'.<sup>100</sup>
- The law setting up the Equality Body defines the mandate of the Equality Body as including the promotion of equality in the enjoyment of rights and freedoms safeguarded by the Conventions ratified by Cyprus and referred to explicitly in the

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<sup>98</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>99</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 3. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>100</sup> CJEU, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, Case C-83/14, 6 July 2015, paragraph 129.1, Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=516528>.

law<sup>101</sup> which include Protocol 12, irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.<sup>102</sup> It may then be inferred from this provision that then association becomes a prohibited ground of discrimination at least vis-à-vis the Equality Body; however the grounds expressly affected by this provision are those related to race/ethnic origin (language, colour, religion etc.) and do not seem to extend to disability, age or sexual orientation.

An Equality Body decision in 2010 established that discrimination against the main carer of a person with a disability, in this case the mother of a child with a disability, is unlawful discrimination under the law transposing the Employment Equality Directive (Law N.58(I)/2004), along the lines of the principle established by *Coleman v Attridge Law and Steve Law*<sup>103</sup> to which this report referred to explicitly.<sup>104</sup> The difference between the case examined by the Equality Body and *Coleman v Attridge Law and Steve Law* is that the latter case involves direct discrimination whilst in the former case the complainant was refused preferential treatment as regards her job posting. However, the principle was established nevertheless and was reiterated by the Equality Body in the Code of Conduct on disability it issued in September 2010,<sup>105</sup> thus making it harder for the Courts to ignore if and when such a case is presented before them. In 2015 the Equality Body dealt with discrimination by association again, in relation to a woman employee in the public sector who was to be transferred to a post in another city, far away from her brother with psychosocial disability of whom she was the primary carer.<sup>106</sup> The policy of the administration was to transfer employees to different districts on rotation. Whilst the system of transfers provided for consideration of the family circumstances of the employee to be transferred, the term 'family' did not extend beyond spouse and children, as that would, in the opinion of the competent administrative body, infringe upon the principle of proportionality. The administrative body insisted that any exception to this rule would amount to preferential treatment of an employee in relation to others. The Equality Body pointed out that the complainant's brother was in need of 24-hour supervision and care and had been declared by the court as an 'incapable person'; the complainant had been appointed by the court as the person in charge of all his affairs but was also his only close relative in Cyprus and his sole carer, taking care of all his survival needs around the clock. The Equality Body relied on the strengthening of the Employment Equality Directive by the CJEU decision in the *Coleman* case to establish that the restrictive interpretation given to this legal framework by the administration, by limiting the application of discrimination by association only to spouses and children, was violating the principle established by the CJEU the ruling of which was clearly intended to cover any type of discrimination by association to a person with disability under the care of the complainant. The Equality Body found that any other interpretation of the Directive would truly weaken the scope of protection, pointing out a number of examples of other member states which have extended the principle of discrimination by association to relationships beyond the sphere of the family, covering third persons acting as carers of persons with disabilities. The

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<sup>101</sup> These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

<sup>102</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>103</sup> CJEU Case C-303/06, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

<sup>104</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.I. 82/2009, 25 June 2010.

<sup>105</sup> The Code can be downloaded at: [http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas\\_gia\\_diakriseis\\_logo\\_anapirias\\_ergasia.pdf](http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_diakriseis_logo_anapirias_ergasia.pdf).

<sup>106</sup> Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

Equality Body invited the administration to look at the facts of each case separately before deciding on each transfer and to prioritise respect of fundamental rights over other considerations.

## 2.2 Direct discrimination (Article 2(2)(a))

### a) Prohibition and definition of direct discrimination

In Cyprus, direct discrimination is prohibited in national law virtually replicating the wording of the directive.<sup>107</sup>

The same wording is followed in the Law on Persons with Disability which defines direct discrimination as 'unfavourable treatment' when compared to 'a person without disability in the same or similar situation', or on the basis of 'characteristics which generally belong to persons with such disability', or 'alleged characteristics', or in contravention of a code of practice.<sup>108</sup>

### b) Justification of direct discrimination

Generally speaking, the law does not permit justification of direct discrimination, save for specific situations in relation to the grounds of:

1. Religion in the cases of 'occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief', where 'due to the nature of these activities or framework within which they are exercised, the religion or belief constitutes a genuine, legitimate and justified occupational requirement', as provided in the Employment Equality Directive.<sup>109</sup>
2. Age: this follows the exact wording provided for by Article 6 of the Employment Equality Directive.<sup>110</sup>

However, a number of Court decisions interpreting article 28 of the Constitution attempt to establish a norm which essentially deviates from the approach of the two anti-discrimination directives and their CJEU interpretations. The norm emerging from a list of Supreme Court decisions is that equality must be applied only to equal situations and that 'different things ... can only be dealt with differently,' with references to 'reasonable discrimination which must be done because of the special nature of things'.<sup>111</sup> Court decisions have additionally introduced the test of 'reasonableness' which essentially

<sup>107</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 5(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 6(1)(a). Available at [http://www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>108</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3(2)(a)-(d). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>109</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 7. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>110</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>111</sup> Cyprus, Supreme Court, Cyprus Athletics Organisation v. Andreas Potamitis (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*) No. 111/2007, 18 June 2010; Cyprus, Supreme Court, Antonis Aresti v. Cyprus Athletics Organisation (*Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού*) No. 1406/2008, 10 February 2010; Cyprus, Supreme Court, Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice (*Τάσος Τρατονικόλα v. Κυπριακής Δημοκρατίας μέσω Διευθυντή Τμήματος Φυλακών και του Υπουργείου Δικαιοσύνης*), No. 135/07, 13 April 2011; Costakis Charalambous v. Republic of Cyprus through the Chief of Police (*Κωστάκης Χαράλαμπος v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας*), No. 1334/2008, 19 September 2011.

provides that discrimination which is 'reasonable' is lawful.<sup>112</sup> This theory is applied by the Courts across the board without taking into consideration the provisions of the directives and often results in allowing discriminatory treatment that is clearly prohibited by the directives. Following this judicial tradition, in 2015 the Supreme Court reiterated the doctrine that the equality principle safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. Here, however, the Court also cited the CJEU ruling in the case of *Johnston v. Chief Constable of the Royal Ulster Constabulary*, to find that any exception to such differential treatment must be narrowly construed as the EU gives emphasis to individual rights recognized by EU law.<sup>113</sup> The judgement marks a departure from previous court rulings on discrimination which had essentially ignored the entire corpus of EU anti-discrimination law and jurisprudence.

### 2.2.1 Situation testing

#### a) Legal framework

In Cyprus, the law is silent on situation testing and there is no case law.

Below is an analysis derived from the general rules of evidence as developed by case law.

The Law on Evidence Cap. 9, which codifies the sources of law, defines the hierarchy of laws for both criminal and civil procedure as follows: the Constitution, the legislation of the Republic since 1960, Common Law and equity and the statutes of U.K. prior to independence.<sup>114</sup> In July 2006 the Constitution was amended to give supremacy to EU Regulations, directives or other binding legal measures enacted by the EU or its bodies.

The admissibility of situation testing as a method of proving discrimination in courts will be subjected to the general test of 'relevance' and 'the best evidence rule'. A number of factors need to be considered before concluding on how the courts are likely to treat situation testing. If situation testing is to be relied upon as a methodology that merely indicates a tendency as to the 'general' or 'systematic' behaviour of the defendant which is based on previous and/ or similar occasions, then the court may treat situation testing as corroborative evidence. The test will be the extent to which this methodology ascertains a probative value as to the behaviour of the defendant. General common law principles are defined in a series of criminal law cases.<sup>115</sup>

In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations<sup>116</sup> or as an indication of *habitual* behaviour.<sup>117</sup> It is up to the party who asserts to prove whether the *particular* behaviour is *systematic* or mere *coincidence* or *circumstantial*, that will determine the relevance to the particular fact at stake. If, however, the situation test is to be relied directly as real evidence of discrimination in action against perpetrators, this is a matter that would require legal argument on the basis of authorities in Europe, U.K. and U.S.A. which would have to prove that the particular test is widely used in Court as direct evidence of discrimination.

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<sup>112</sup> Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης) No. 1497/2008, 30 April 2012). In this case the Court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

<sup>113</sup> CJEU, C- 222/84, 15 May 1986, available at <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-222/84&td=ALL>.

<sup>114</sup> Cacoyannis, G. (1983) *Η Απόδειξη*, Limassol, Cyprus; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

<sup>115</sup> United Kingdom, *R.v. Hartley* (1941) 1 K.B. 589; United Kingdom, *R v. Mitchel* (1952) 36 Cr App. R 79.

<sup>116</sup> United Kingdom, *Bereford v. St. Albans* (1905) 1 T L R 1.

<sup>117</sup> United Kingdom, *Joy V Phillips* (1916) 1 K.B 849 Mills 2 C.



b) Practice

In Cyprus, situation testing is not used in practice.

Situation testing is an unknown concept in Cyprus and is not used by anyone yet. Most if not all NGOs active in the field of anti-discrimination do not have the resources, human or financial capital,<sup>118</sup> in order to use such methods. The Equality Body was not aware of this concept but its officers stated that they were open to the idea of using situation testing where the circumstances demand or allow.<sup>119</sup> An incident in 2005 which is not precisely situation testing but which carries certain elements of it concerned the refusal of insurance companies to insure drivers of Pontian Greek origin because they considered them to be 'high risk'. Two persons of Pontian Greek origin had called up several insurance companies in order to investigate whether they would sell car insurance policies to them. The result was that none of the companies contacted was willing to sell such policies to Pontian Greeks or, if they did, they wanted to charge them with premiums up to two or three times the amount charged to Greek-Cypriots with similar data. They then filed a complaint to the Equality Body which wrote to the insurance companies involved asking them to declare their policies on the matter. It emerged that some of the companies investigated considered persons of Pontian origin to be bad drivers, unreliable and generally 'high risk' and that there was a policy in place to avoid insuring persons of Pontian origin unless 'guaranteed' or 'recommended' by a Greek-Cypriot. In its report issued on 23 June 2005, the Equality Body declared this practice as discriminatory and illegal and recommended that the insurance companies revise their policies warning that it would refrain from imposing penalties at that stage, but that it would not hesitate to impose penalties in the event that the insurance companies do not comply with this recommendation. The process of rectifying this practice did not move further, as the Equality Body did not receive any further complaints about the insurance companies' policy in this field.

### 2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Cyprus, indirect discrimination is prohibited in national law.<sup>120</sup> For all five grounds except disability, indirect discrimination is defined by replicating the wording of the directives.<sup>121</sup>

The disability law incorporates the directives' definition but also contains an additional provision which, although not termed as a definition, offers elements of what would constitute discrimination, without clarifying whether these are to form an exhaustive description. The wording reads: 'a person discriminates against another if he treats that person: (a) in a more unfavourable way than what he treats or would treat other persons without disability in the same or in a similar situation; (b) on the basis of characteristics generally belonging to person with such disability or based on a presumed characteristic which generally belongs to a person with such disability or based on a presumed

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<sup>118</sup> Legal aid in Cyprus is subject to means and for this and other reasons very few discrimination cases end up in Court. Thus in order for an NGO to test a case, it would have to apply to the Courts on behalf of a complainant. This would involve both the know-how, the technical skills and the funds to cover legal and judicial costs.

<sup>119</sup> Interview with Mrs. Elisa Savvidou, former Head of the Equality Authority at the Ombudsman's Office and currently Ombudsman and Head of the Equality Body, 19 January 2006.

<sup>120</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 5. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 6(1)(b). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>121</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

characteristic which is generally attributed to a person with disability; or (c) based on the fact that this person does not satisfy or is not in a position to satisfy a condition, the nature of which is such that a high percentage of persons who do not have such disability satisfy or are in a position to satisfy, when compared to persons who do have such disability and the existence of such a condition is not justified by the circumstances of the case.<sup>122</sup> This provision appears to be narrower than the directive's requirement which extends to any 'apparently neutral provision, criterion or practice [that] would put persons having a particular [disability]' at a disadvantage, but since the directive's definition is also incorporated no issue of compliance with the directive arises.

In 2016 the decision of the parents association at the English School, a semi-public school attended by both Greek Cypriot and Turkish Cypriot students, to hold the finishers' prom on the day of the Turkish Language exam was found by the Equality Body to be discriminatory. Although apparently neutral and affecting all students in the school, the decision to hold the prom on that particular date had placed only Turkish Cypriot students in a less favourable position compared to other students in the school whose mother tongue was not Turkish and were not taking this exam. The Equality Body rejected the majoritarian logic underpinning the decision of the parents association as it is inevitably destined to always place the minority in a disadvantageous position.<sup>123</sup> Also, a law which required persons wishing to register as assistant estate agents to present a 'certified educational attainment', when there is no procedure in place for third country nationals to obtain this, was held by the Equality Body to lead to indirect discrimination against third country nationals.<sup>124</sup>

#### b) Justification test for indirect discrimination

Although this issue was not directly dealt with by the Courts so far, we may nevertheless assume, on the basis of Cypriot case law on gender discrimination, of European court decisions, as well as from persuasive authority of UK court decisions, that the 'but for test' is likely to apply. The test involves asking the question as to how the victim would be treated had s/he not had the special characteristic, such as the particular ethnic origin or disability or religion or age or sexual orientation that s/he had.

There is no judicial precedent on what test must be used in order for employers to justify a requirement, criterion or practice which results in discrimination. The case law on the subject is not particularly enlightening. A Supreme Court decision in 2008, where the claimant contested his obligatory retirement at 55 based on his low rank, failed to consider either the aim or the legitimacy of the contested provision or whether the means were appropriate or necessary; instead, the Court's decision was premised upon the rather odd theory that the applicant failed to prove that the differential treatment was not based on reasonable discrimination.<sup>125</sup> In other cases, the Courts allowed exceptions to the non-discrimination principle which are wider than those foreseen in directive, such as 'unequal' situations which must be treated 'unequally', without offering any definitions of the terms found in the laws transposing the two Anti-discrimination directives. Judicial practice may evolve, however, following a more recent Supreme Court decision of January 2016 where

<sup>122</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3(2). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>123</sup> Cyprus, Anti-discrimination authority (2016) Report on the organisation of the school leavers' prom of the English School for 2015, Ref. No. AKR 30/2015, 3 August 2016, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/\\$file/%CE%91%CE%9A%CE%A130.2015\\_03082016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement).

<sup>124</sup> Cyprus, Equality Authority (2016) Report on 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, File number A.K.I.22/2016, 15 April 2016, available at [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).

<sup>125</sup> Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012.



the justification of the poor state of public finances, offered by the authorities in support of an age criterion in a disability scheme, was rejected by the court as failing to meet the test of reasonableness, proportionality and objectivity.<sup>126</sup>

By contrast, the Equality Body has issued a number of reports pursuant to complaints on age discrimination, where the tendency is to uphold the general principle of equality and to approach the issue from a fundamental rights perspective. The Equality Body's decisions show a good understanding and articulation of the concepts of legitimate aim and appropriate means as well as of decisions and debates at the EU level. Following below are examples of how the Equality Body has over the years assessed the allegations of employers as to what amounts to 'legitimate aim' and how the 'appropriate and necessary measure' is interpreted:

- A job advertisement which stated that applicants would be assessed on the basis of their academic qualifications and experience, but in the event of applicants scoring equally they would be further assessed on the basis of their date of birth (priority was to be given to younger applicants) was held by the Equality Body to be unlawful. The resort to age differentiation as a means of resolving the dilemma of candidates scoring equally was not a legitimate aim.<sup>127</sup>
- The conditions for the promotion of police officers contained an age limit of 40 years as a prerequisite for appointment in the specialized position. The Equality Body found that, although the aim of seeking to secure the operational readiness of the police force was legitimate, the means used to attain it were neither appropriate nor necessary.<sup>128</sup>
- The age limit of 60 for school traffic wardens was found by the Equality Body to be based on a legitimate aim (the safety of the school children) but the choice of the age limit as a measure for achieving this aim was neither appropriate nor necessary, because age is not necessarily the ideal criterion for assessing one's physical condition.<sup>129</sup>
- The age limit of 40 set as a condition of eligibility in a scheme of financial support for artificial insemination, was found by the Equality Body to be discriminatory, based on the reasoning that the exclusive use of the age criterion is not the most appropriate means for achieving the legitimate aim of supporting under-fertile couples.<sup>130</sup>
- A legislative provision in the Pensions Law which provides for a less favourable retirement package for public servants under 45 who choose to take early retirement, was found by the Equality Body to be disproportionate, as it covers 2/3 of the public service workforce; the aim served was not legitimate because the shortages in scientific personnel invoked have since been covered.<sup>131</sup> The issue was the subject of a Court decision in 2014<sup>132</sup> and of infringement proceedings initiated by the

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<sup>126</sup> Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

<sup>127</sup> Cyprus, Equality Authority (2016) Report on unlawful direct discrimination on the ground of age in the announcement of vacancies by the Nicosia Municipality for 11 fixed term employees, 6 September 2016, File No. A.K.I. 18/2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/\\$file/AKI182015\\_06072016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/$file/AKI182015_06072016.doc?OpenElement).

<sup>128</sup> Cyprus, Equality Authority, Report no. A.K.I. 32/2008, 6 April 2012.

<sup>129</sup> Cyprus, Equality Authority, Report No. A.K.I. 76/2009, 11 March 2010.

<sup>130</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.R. 126/2009, 27 April 2010.

<sup>131</sup> Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009.

<sup>132</sup> Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058(%E9)#).

Commission against the Cypriot government which resulted in a ruling against Cyprus.<sup>133</sup>

- The Equality Body found the policy of insurance companies not to insure persons over 70 to drive cars or if they do insure them to charge a higher premium, unjustified and unsupported by reliable statistical evidence to prove that persons over 70 have more accidents than younger persons.<sup>134</sup>
- A legislative provision allowing the dismissal without compensation of employees who have reached retirement age was found to be discriminatory. The argument of the Ministry of Labour that this measure was justified because employees aged 65 plus are secured through their pension and provident fund benefits was rejected.<sup>135</sup>

#### c) Comparison in relation to age discrimination

National law does not specify how a comparison is to be made in relation to age discrimination.

Apart from the labour tribunal decision in the case of *Hadjiavraam*,<sup>136</sup> there is no other source of interpretation of how the comparison is to be made. In this case the court found that there was no real person in the selection procedure that could be compared with the applicant; thus the only comparator is a hypothetical candidate with the same qualifications as the applicant but aged under 26 years, which was the maximum age set in the job advertisement forming the subject matter of the lawsuit.

One of the very first Equality Body decisions from 2004 may also be relevant in interpreting this provision. In a decision relating to the fixing of a maximum age in a public service post, the test used by the Equality Body in order to determine whether age discrimination existed or not was whether the nature of the job justified the fixing of a maximum age limit and whether similar positions in other contexts (i.e. of equivalent seniority, in similar fields etc.) carry an age limit. The case concerned the age limit of 60 fixed in respect of the appointment of members of the Commission on Educational Service and the test applied was whether the functions performed by the public service committee (where no age limit applies) are substantially different to those of the education committee. As the answer to this question was negative, the report concluded that there was no reasonable justification in permitting an age limit for the latter.<sup>137</sup> Similarly, a decision pursuant to a complaint for age discrimination in the fixing of age limit for the position of temporary postal distributor at the public post office, found the age limit unjustified, inter alia, because the post of permanent postal distributor does not carry any age limit.<sup>138</sup>

### 2.3.1 Statistical evidence

#### a) Legal framework

In Cyprus, there are national rules restricting data collection.

There is a general rule prohibiting the collection of data that derives from article 8 of the ECHR and is also contained in article 15 of Constitution, unless specifically provided under certain circumstances. Data protection laws prohibit the collection and processing of sensitive personal data and list the circumstances under which this is exceptionally

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<sup>133</sup> CJEU, C-515/14 (European Commission v Cyprus), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

<sup>134</sup> Cyprus, Anti-discrimination Authority, Report No. 125/2007, 21 October 2008.

<sup>135</sup> Cyprus, Equality Authority, Report No. A.K.I. 13/2005, 11 April 2007.

<sup>136</sup> Cyprus, Labour Court, Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου*) No. 258/05, 30 July 2008.

<sup>137</sup> Cyprus, Equality Authority, Report dated 08 November 2004.

<sup>138</sup> Cyprus, Equality Authority, Report No. Ref. A.K.I. 68/2007, A.K.I. 78/2007, A.K.I. 108/2007, 05 December 2007.

allowed.<sup>139</sup> Three of these are relevant to this context: (a) Processing is necessary for the satisfaction of lawful interest which is superior to the rights and fundamental freedoms of the subject of the data;<sup>140</sup> (b) Processing concerns exclusively data that the subject of it has published or is necessary for the recognition or the exercise of a right before a court;<sup>141</sup> (c) Processing concerns exclusively statistical, research, scientific or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.

Although most of the grounds covered by the anti-discrimination directives are classified in the data protection law as constituting sensitive data and at points this law covers grounds beyond those of the anti-discrimination directives, age is missing from the protected characteristics. 'Sensitive data' is defined in the law as data concerning racial or national<sup>142</sup> origin, political belief, religious or philosophical conviction, participation in an organisation, association or trade union, health (which is much wider in scope than 'disability'), sex-life and sexual orientation, criminal prosecution or criminal conviction.<sup>143</sup>

'Personal data' is defined in the law as any information referring to the subject of data, i.e. a physical person, who is still in life. Aggregate data of a statistical nature, from which the subjects of the data can no longer be detected, are not considered as 'personal data'.

Under article 6(3) of Law 138(I)/2001, the Council of Ministers may issue regulations following a proposal by the Personal Data Protection Commissioner, on the processing of data in cases other than the ones provided for under the law when there are serious reasons of public interest involved.

In response to an enquiry which the author made to the Cypriot Commissioner for the Protection of Personal Data, the Commissioner informed that: 'The collection and keeping by employers of data of their employees in respect of their ethnic or racial origin, disability, religion or belief or sexual orientation (sensitive data) as a rule is prohibited. It is permitted if this is necessary so that the employer fulfils his/her obligations in the field of employment law and s/he obtains a license for this purpose from the Personal Data Commissioner (Article 6(1) (2) (a) of the Law on processing of Personal Data)'.<sup>144</sup> One may conclude that the employee's written authorisation is not necessary in the aforesaid cases. Presumably the same principle would apply outside the employment field. Based on the Commissioner's statement as aforesaid, one may safely assume that the law will be interpreted and applied by the courts in a way compatible with the Data Commissioner's interpretation.

In order to apply the regulation concerning access to the labour market by various categories of workers, the Labour Office of the Ministry of Labour maintains records concerning country of origin, ethnic origin and whether they are asylum seekers or not.

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<sup>139</sup> Cyprus, Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001. Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>140</sup> Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001, Article 5(1)(e). Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>141</sup> Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001, Article 6(2)(e). Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>142</sup> The reference to 'national' origin, as opposed to 'ethnic' origin, may well be a reflection of the fact that in Greek the two terms have a similar sound and many people tend to use them interchangeably, as the distinction between the two may not be widely known in Cyprus. From the context, one may perhaps conclude that 'ethnic' would have been a better word, since personal data on national origin are widely used and processed.

<sup>143</sup> Cyprus, The Processing of Personal Data (Protection of the Individual) Law [Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος] N. 138(I)/2001, Article 2. Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>144</sup> Cyprus, Letter from the Commissioner for the protection of personal data, 13 December 2005.

In the non-employment field, data on ethnic origin is kept at the national level for various purposes. For instance, the population censuses carried out by the Statistical Service of the Republic keeps figures on each of the ethnic and religious communities of Cyprus (Greek-Cypriots, Turkish Cypriots, Maronites, Armenians and Latins) as well as on the names and countries of origin of third country nationals. The research conducted by the Statistical Service of the Republic for the purposes of the 2011 population census did collect information from the interviewees as regards their religion but this was neither processed nor published due to recent trends in regarding religion as personal sensitive data.<sup>145</sup> The Roma are not classified separately nor identified as such by the educational system, as they are considered to be part of the Turkish Cypriot community. Constitutionally, the Roma do in fact form part of the Turkish-Cypriot community, since by virtue of the Constitution they could only belong to one or the other community; however, the same applies to the Maronites, the Latins and the Armenians, who are constitutionally part of the Greek-Cypriot community, and they are nevertheless afforded a separate classification from the state's Statistical Service.<sup>146</sup> The Ministry of Education also maintains data on school children according to their ethnic (as well as their national) origin; again the Roma are not classified separately but are integrated into the figure for Turkish-Cypriots. In some tables supplied by the Ministry, a group of pupils are classified as 'Turkish-speaking'; this term would include primarily Turkish-Cypriots but to some extent also Roma and Kurdish pupils. The records which are publicly accessible do not show names of individuals, only numbers per ethnic origin.

In some cases, particularly relating to positive measures in education there is evidence suggesting that statistical data is used in order to design positive action measures. For instance, in order for the Ministry of Education to place a school within the 'Educational Priority Zone', an investigation is carried out into poverty levels in the area, concentration of non-native Greek speakers, dropout rates etc.<sup>147</sup> Similarly, data is kept on the native language (i.e. ethnic origin) of the members of the school population in order to determine where and to what extent Greek language classes must be introduced in an effort to foster inclusion and the cohesion of the classroom. Also, in order to decide whether to open a Turkish speaking school, in compliance with the request of the UN Peace Keeping Force in Cyprus (UNFICYP), the government carried out a survey amongst the Turkish speaking families of the area concerned in order to establish whether they wanted to send their children to such a school. The survey showed that the parents preferred to send their children to the mainstream Greek school, and thus the government decided not to set up a Turkish school.<sup>148</sup> In the confrontation between the Ministry of Education and Maronite community regarding the Ministry's failure to raise the subsidies for school fees of Maronite students attending private schools, statistical evidence was used by the representative of the Maronite community in order to prove that only a small percentage of the Maronite students enrolled at the minority schools for which subsidies were offered. In 2010, this

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<sup>145</sup> Information supplied through consultation with officers at the Statistical Service of the Republic and at the Ministry of Interior. Although the processing of personal data without permission was prohibited as of 2001, the notion that in a multicultural society religion is a personal matter was not widely embedded in social culture. Contrary to the policy adopted as regards the 2011 population census, the population census of 2001 did publish data on religion.

<sup>146</sup> Upon the establishment of the Republic, all religious groups were asked to choose as to whether they wanted to "belong" to the Greek Cypriot community or the Turkish Cypriot community. They opted to belong to the former. The Roma were not asked to choose; they were simply assumed to belong to the Turkish Cypriot community because of their common religion (Muslim) and language.

<sup>147</sup> This measure, which has been in place for some years now, aims at placing in a special category certain schools where special attention and particular measures are needed to address certain educational needs, such as pupils coming from particularly poverty-stricken areas, high concentration of non-native Greek speakers, high dropout rate etc. Schools classified as falling within ZEP receive extra teaching hours and other measures where needed. The institution of ZEP aims at reducing inequalities for pupils attending schools in disadvantaged areas with an increased proportion of immigrants, combating school failure and illiteracy.

<sup>148</sup> A survey carried out by UNFICYP into the same matter produced the opposite result, i.e. that the parents did want their children to attend a Turkish school. Also the results of the governmental survey were disputed by the Union of Turkish Cypriot teachers K.T.O.S. who subsequently proceeded to sue the government in Court for violating the right of Turkish Cypriot children to education.

confrontation led to an Equality Body recommendation to the authorities that the claim of the minorities for increasing the school fees subsidy for the private secular schools should be favourably considered.<sup>149</sup> Generally speaking, however, Cypriot authorities do not systematically collect data and when they do they do not use them for policy development. In the case of racial incidents at schools, and despite criticisms repeatedly directed against the Ministry by national and international monitoring bodies<sup>150</sup> for failing to record these incidents, the Ministry has set up a system of handling racial incidents at schools without publishing any statistics about the incidents<sup>151</sup> even though this system requires teachers to regularly submit to the ministry data about racial incidents at their schools. An Observatory for School Violence set up in 2009 is yet to publish statistics about the incidents recorded.<sup>152</sup> There have been no new policies relying on knowledge derived from the data collected.

Practice suggests that there is reluctance at various levels to record and publish data. For the school year 2015-2016 the Code of Conduct against Racism and the Guide for Handling and Recording Racist Incidents<sup>153</sup> was applied to all schools, following its pilot operation in the year 2014-2015. Based on data supplied by the Ministry of Education upon request, at the end of the school year, only 21 schools (17 primary and four secondary schools) had submitted to the Ministry of Education statistics from their recording mechanisms. The primary schools had recorded 40 incidents and the four secondary schools recorded just one. The Ministry believes that the results are affected by under reporting either at the level of the school or at the level of the victim, who may be affected by fear, by problems in the recording mechanism or by a conviction of futility.

Although the Code clarifies that teachers are 'expected' to brief the school inspector twice a year and submit their reports to the Education Ministry annually, no sanctions are foreseen for those schools who do not record incidents or do not report these. The Code itself indirectly recognises that one of the problems in recording racial incidents is the mentality of school authorities to view incidents of racism as a failure of the school, leading them to try to hide them or underplay the racist motive, often labelling such incidents as youth delinquency. The text of the code stressed that the reporting of racial incidents is not a weakness of the schools but rather an expression of their resolve to address them, adding that the schools reporting incidents will not be treated in a negative light nor will they have any adverse consequences. The result however showed that a mere reference in a code of conduct will not suffice to reverse the decades' old mentality of sweeping racism under the carpet.

The same underreporting problem surfaced not only in relation to racist incidents but also regarding other forms of violence, like domestic violence, sexual abuse etc.<sup>154</sup> In spite of this outcome, the policy paper published by the Ministry of Education in 2016 assessed the implementation of the code for the years 2014-2016 as very positive and indicative of the sensitisation of all members of the school community on issues of racism and discrimination, evidenced by the number of racial incidents reported by the victims and by-standers, which confirm the effectiveness of the educational measures adopted.<sup>155</sup>

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<sup>149</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.R. 114/2005, 08 November 2010.

<sup>150</sup> See for instance: Council of Europe, ECRI Report on Cyprus, Fourth monitoring cycle, 31 May 2011, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf>; Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015, available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

<sup>151</sup> For more details see [http://www.moec.gov.cy/agogi\\_ygeias/pdf/kodikas\\_symperiforas/kodikas\\_symperiforas\\_ratsismou.pdf](http://www.moec.gov.cy/agogi_ygeias/pdf/kodikas_symperiforas/kodikas_symperiforas_ratsismou.pdf).

<sup>152</sup> See the relevant page of the website of the Ministry of Education at [www.moec.gov.cy/paratiritirio\\_via/](http://www.moec.gov.cy/paratiritirio_via/).

<sup>153</sup> For more details see the website of the Ministry of Education at [www.moec.gov.cy/agogi\\_ygeias/pdf/odigoi\\_ekpaideftikou/kodikas\\_symperiforas\\_ratsismou.pdf](http://www.moec.gov.cy/agogi_ygeias/pdf/odigoi_ekpaideftikou/kodikas_symperiforas_ratsismou.pdf).

<sup>154</sup> Letter from the Ministry of Education to the author, 7 October 2016.

<sup>155</sup> Ministry of Education and Culture (2016-2017) Policy paper as regards the integration of students of migrant biograpchy to the Cypriot educational system (*Κείμενο πολιτικής για την ένταξη των μαθητών/ριών*

In 2010 an Equality Body report criticised the procedure for exemption of pupils from the religious class at schools, and particularly the fact that the pupils' parents are asked to declare their religion, pointing out that a person's religion constitutes sensitive personal data that need not be revealed unless there is objective and reasonable justification serving a legitimate aim. The report recommended that students be exempted from the religious class without having to reveal their religious beliefs and for reasons of conscience and that a special form should be introduced for parents to complete when requesting exemption from the religious class expressly stating that there is no obligation to reveal one's religion.<sup>156</sup> As the Ministry failed to comply with the Equality Body's requirements, in 2015 the Equality Body reverted with another report, warning the Ministry of its intention to issue a binding decision against it.<sup>157</sup> In 2016 the Ministry of Education issued a circular to schools setting out the procedure to be followed for the exemption of students from specific classes, including the religious class, discussed in more detail in section 3.2.8 below.<sup>158</sup>

In 2010 the Ombudsman<sup>159</sup> issued a report pursuant to a complaint submitted a month earlier by a lawyer on behalf of a migrant woman who was an HIV carrier and had been detained for the purposes of deportation, after her asylum application had been rejected.<sup>160</sup> The guards at the detention centre informed all other inmates that she was suffering from HIV/AIDS and should therefore be using a separate washroom. The Ombudsman's report concluded that sensitive data concerning the complainant's health were revealed to third parties unlawfully and without her consent. The fears expressed by the members of staff that the non-revelation of the complainant's condition would have endangered the health of other persons using the same space were not seen as valid, since the medical certificate which the complainant was issued by the state hospital and which had been notified to the management of the detention centre expressly stated that the complainant did not suffer from any contagious disease endangering public health. Similarly, in 2011 an Ombudsman's report<sup>161</sup> on access to the labour market by HIV carriers revealed that the low response of HIV persons to a special scheme for employment in the public sector ten years after its introduction was largely attributed to the fact that the procedure foreseen in the scheme involved the registration of prospective applicants with the Labour Office declaring that they are HIV positive, a fact which is in turn communicated to the Minister of Labour for further communication to the Ministry involved and to the Head of Department where the applicant is applying for employment. The Ombudsman noted that the declaration of the applicant's health condition to a number of persons every time s/he applies for a job position may deter an applicant from taking advantage of the said scheme but may also be a reason for rejection of a job application, urging the authorities to remove this obstacle from the procedure.<sup>162</sup>

In the field of disability, where positive measures often take the form of grants, there is little evidence of the use of statistical data in order to design positive measures. A new measure introduced during 2010, involving the covering of the costs for escorts for persons with disability was designed after the disability organisations submitted, upon the request of the Ministry of Labour, details on the numbers amongst their members that would make

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με μεταναστευτική βιογραφία στο Κυπριακό εκπαιδευτικό σύστημα) p. 7-8, available at [www.pi.ac.cy/pi/files/anakoinoseis/2016\\_2017/metanasteftiki\\_viografia.pdf](http://www.pi.ac.cy/pi/files/anakoinoseis/2016_2017/metanasteftiki_viografia.pdf)

<sup>156</sup> Cyprus, Anti-discrimination Authority, Report No. 135/2009, 07 November 2010.

<sup>157</sup> Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11\\_2014%CE%BA%CE%B1\\_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

<sup>158</sup> Cyprus, Ministry of Education, *Procedure for securing exemptions from classes*, 15 September 2016, available at <http://enimerosi.moec.gov.cy/archeia/1/ypp4633a>.

<sup>159</sup> Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

<sup>160</sup> Cyprus, Ombudsman, Report No. AP 1188/2010, 8 July 2010.

<sup>161</sup> Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

<sup>162</sup> Cyprus, Ombudsman, Report No. A/P 587/2010, A/P 1616/2010, A/P 2309/2010, 17 October 2011.



use of such service. The funding granted was commensurate with the numbers of persons with disabilities that would be benefiting from the services of the escorts. Other measures in the disability field which do not involve the granting of monetary benefits, such as the preferential parking provided in the disability law,<sup>163</sup> appear to be the result of pressure from the disability movement rather than the result of the use of statistical data.

#### b) Practice

In Cyprus, statistical evidence in order to establish indirect discrimination is not widely used in practice. Court practice does not generally involve argumentation on ethical or methodological issues, although litigants may use statistical evidence to support their line of argument.

The Equality Body does use statistical data occasionally to demonstrate the depth or intensity of a problem. Once such case concerned discrimination against female migrant domestic workers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.<sup>164</sup> In the reasoning of this decision, the Equality Body also made reference to the low salaries paid to migrant domestic helpers<sup>165</sup> compared to Cypriot workers, pointing out that the number of migrant female domestic workers now in Cyprus is about 18,000.<sup>166</sup> The data was used in this report in order to highlight the acuteness of the problem, based on the large size of this group and on the disparity in the salaries of migrants and locals, rather than to determine whether an act is or is not discriminatory. During 2010 the Equality Body commissioned a survey into the vocational training needs of the female migrant domestic workers which rendered a series of interesting results on the profile of this highly vulnerable group. Although the purpose of choosing to focus on vocational training needs is not clear, the interest of the Equality Body in the use of statistical data is obvious. Opinion surveys were also commissioned by the Equality Body in previous years, mainly in order to assess public opinion towards various vulnerable groups (LGBT persons, Pontian-Greeks, persons with disability) although the results were used more for awareness raising rather than for reaching a legal decision.

In 2008 the Equality Body examined an age discrimination complaint against several insurance companies whose policy was to refuse to insure persons over 70 to drive cars or to charge them higher premiums. The Equality Body's decision found that the practice or policy complained of, *unsupported by reliable statistical evidence*, is not reasonably and objectively justified and therefore amounts to discrimination.<sup>167</sup> It follows that had statistical evidence shown that persons over 70 are indeed more accident prone, then the difference in treatment would have been justified and therefore not discriminatory. Thus the Equality Body appears to have been prepared to accept statistical evidence in order to decide whether discrimination had taken place or not.

There is no evidence suggesting that the Courts are reluctant to allow the use of statistical data as evidence. There have been cases where statistical evidence was introduced and deemed admissible, although this is not very common as a practice. There is no case law on the use of statistical evidence in the anti-discrimination field, although there is case law

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<sup>163</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 7A. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>164</sup> Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005. The Minister of Interior has informed us that he has issued the relevant order for the pay increase but is waiting for the relevant Government department to estimate the costs involved for pensioners who employ domestic helpers so that their benefit is increased accordingly. The decision of the Equality Body is still not complied with.

<sup>165</sup> Calculated at CYP0.82 per hour, contrasted with CyP4 –CyP 5 per hour for Cypriots carrying out the same work: Cyprus Ombudsman Report File No. A.K.I 2/2005, 4 November 2005, page 4.

<sup>166</sup> This figure is based on data of the Ministry of Interior, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17.955.

<sup>167</sup> Cyprus, Equality Body Report No. 125/2007, 21 October 2008.



on the use of statistical evidence in other areas of the law: In *Kaskavallis*<sup>168</sup> the Supreme Court rejected an appeal against a decision of the Licensing Authority by which the appellant's application for a taxi license was turned down based, inter alia, on statistics of the Cyprus Tourism Organisation about tourist arrivals for the period in question. The decision impliedly accepted the use of statistics by the Licensing Authority in order to decide on the appellant's application for a taxi license.

## 2.4 Harassment (Article 2(3))

### a) Prohibition and definition of harassment

In Cyprus, harassment is prohibited in national law.<sup>169</sup> It is defined in a variety of legislative instruments which are set out below.

As a concept, harassment was first introduced into Cyprus law in 2002 with Law N. 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training that came into force on 1<sup>st</sup> January 2003. This law introduced 'harassment based on sex' as part of the definition of 'sexual harassment'. Later, in amending Law N. 40(I)/2006, the two terms were defined separately.

In the legislation transposing the equality directives, harassment is defined as 'unwanted conduct related to any of the [recognised] ... grounds ... with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.<sup>170</sup> Although the laws refer to 'a person', there is no reason to interpret this as excluding harassment of more than one persons or indeed of a group or a community, so long as unwanted conduct violating the dignity of one or more persons can be proven. The issue as to whether this provision may be used to prosecute hate speech against ethnic or sexual minorities or other groups has never been tested in Court but cannot be ruled out.

The Criminal Code<sup>171</sup> provides for a number of offences that relate to harassment and may potentially be used to prosecute discrimination falling under the scope of the directives:

- Article 138 prohibits damage to a place of worship or to an object held sacred by any class of persons with the intention of insulting the religion of any class of persons;
- Article 139 prohibits the disturbing of religious assemblies;
- Article 140 prohibits trespassing on burial places with the intention of insulting the religion of any person;
- Article 141 prohibits the uttering of words, the making of any sound or any gesture with the intent of wounding the religious feelings of any person;
- Article 142 prohibits publications insulting any religion;

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<sup>168</sup> Cyprus, Supreme Court, *Andreas Kaskavalis v. The Republic of Cyprus through the Ministry of Transport and Public Works and the Licensing Authority* (Ανδρέας Κασκαβάλης ν. Κυπριακής Δημοκρατίας μέσω του Υπουργείου Συγκοινωνιών και Δημοσίων Εργων και της Αρχής Αδειών) N. 1132/2005, 10 August.2007.

<sup>169</sup> Cyprus, Law amending the law on persons with disabilities [Ο Περί Ατόμων με Αναπηρίες Νόμος (Τροποποιητικός)] No. 57(I)/2004) article 3(b). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 5(2)(c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 6(1)(c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>170</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 2. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>171</sup> Cyprus, The Criminal Code (Ο Ποινικός Κώδικας), Cap 154. Available at [www.cylaw.org/nomoi/enop/non-ind/0\\_154/index.html](http://www.cylaw.org/nomoi/enop/non-ind/0_154/index.html).

- Article 51A prohibits public incitement to violence amongst residents and the cultivation of a spirit of intolerance;
- Article 47(1)(b) prohibits action taken publicly with the intention of promoting feelings of hostility amongst communities or religious groups due to race, religion, colour or gender.

At the level of international and EU law, a number of legislative instruments transposed or ratified by Cyprus contain provisions that may be used to prosecute harassment. In 1992 a law was introduced amending the Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination of 1967, rendering certain public statements a criminal offence, which bear similarity to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or in any other way, intentionally incites acts which may cause discrimination, hatred or violence against persons or groups of persons for the sole reason of their racial or ethnic origin or their religion, is guilty of a criminal offence.<sup>172</sup>

In addition, the following laws contain provisions that may be used to prosecute acts that may be termed as harassment:

- the Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law N. 134(I)/2011,<sup>173</sup> which purports to transpose the corresponding Framework Decision;<sup>174</sup>
- the Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems, N.26(III)/2004; and
- The Law ratifying the Convention on the Prevention and Punishment of the Crime of Genocide N. 59/1980.

No case has been adjudicated in Court so far under any of the above provisions. An Equality Body decision in 2016, drawing on the relevant Eurofound report,<sup>175</sup> defined harassment as 'conduct which may include psychological violence consisting of either isolated incidents or systematic patterns of behaviour manifested by persons in a hierarchically higher position than the victim at the workplace'<sup>176</sup>

In Cyprus, harassment does explicitly constitute a form of discrimination.<sup>177</sup>

#### b) Scope of liability for harassment

<sup>172</sup> Cyprus, Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) 1967, Article 2A(1).

<sup>173</sup> Cyprus, Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law of 2011 (*Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος του 2011*) N. 134(I)/2011. Available at [www.cylaw.org/nomoi/enop/non-ind/2011\\_1\\_134/index.html](http://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html).

<sup>174</sup> Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>175</sup> Eurofound (2015), *Violence and Harassment in European Workplaces: Extent, impacts and policies*, available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>.

<sup>176</sup> Cyprus, Equality Authority (2016) Report of the Equality Authority regarding a complaint for harassment at work and for discrimination on the ground of gender and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945\\_2015\\_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

<sup>177</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

Where harassment is perpetrated by an employee, in Cyprus the employer is liable.

Under article 13 of the Law on Civil Offences (Cap 148)<sup>178</sup> a 'master' is responsible for the actions or omissions of his 'servant' for acts authorised or approved by the former or for acts carried out by the servant in the course of his work. The terms 'master' and 'servant' used in the text of the law mean employer and employee respectively. The master is not responsible for the actions of persons to whom the servant has assigned work without the authorisation of the employer. An act is deemed to have been conducted in the course of one's work if it was committed by a servant in his capacity as such and whilst he was carrying out the normal tasks of his work, irrespective of whether the act was the result of negligent performance of a task assigned by the employer. An act is not deemed to have been committed in the course of one's work when it is conducted by a servant who was acting for his own purposes and not on behalf of his master. None of these provisions affect the servant's liability for any acts committed by him. An Equality Body decision in 2016 held that the failure of the public TV channel CyBC to take measures against an employee who was harassing another employee gave rise to liability for the employer.<sup>179</sup>

## **2.5 Instructions to discriminate (Article 2(4))**

### **a) Prohibition of instructions to discriminate**

In Cyprus, instructions to discriminate are prohibited in national law.<sup>180</sup> Instructions are not defined.

In Cyprus, instructions explicitly constitute a form of discrimination.

### **b) Scope of liability for instructions to discriminate**

In Cyprus, the instructor is liable.

Although the laws transposing the directives are silent on the employers' liability as regards the actions of their employees, under the general principles of labour law employers are vicariously liable for the actions of their employees. An employee who has discriminated because s/he has received an instruction to discriminate is not explicitly covered by the laws transposing the directives, however it is likely that such employee will be held liable for direct or indirect discrimination, irrespective of whether the motive was to follow the employer's instructions, depending on the circumstances and on what choices the employee had. The dismissal of an employee because s/he refuses to carry out an unlawful instruction, such as an instruction to discriminate, is unlawful and gives rise to compensation.

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<sup>178</sup> Cyprus, the Civil Offences Law (Περί Αστικών Αδικημάτων Νόμος), Cap 148. Available at [http://www.cylaw.org/nomoi/enop/non-ind/0\\_148/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_148/full.html).

<sup>179</sup> Cyprus, Equality Authority (2016) Report of the Equality Authority regarding a complaint for harassment at work and for discrimination on the ground of gender and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945\\_2015\\_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

<sup>180</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 2. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 5(2)(d). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 6(1)(d). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

## 2.6 Reasonable accommodation duties (Article 2(2) (b) (ii) and Article 5 Directive 2000/78)

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Cyprus, the duty to provide reasonable accommodation is included in the law. It is defined.

Even prior to the transposition of the Employment Framework Directive, the disability law provided for the duty to adopt 'reasonable measures' to the extent and where the local economic and other circumstances allow.<sup>181</sup> These measures, which are still in place now, are not restricted to the working place but cover: (a) basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc., accessibility to housing, buildings, streets, the environment, public means of transport, etc., education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc.);<sup>182</sup> (b). employment including access to, working conditions, training etc.;<sup>183</sup> (c). Supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc.;<sup>184</sup> transport;<sup>185</sup> and telecommunications.<sup>186</sup> An amendment to the law adopted in 2014 extended the reasonable accommodation duty by providing that the rights set out in the foregoing provisions (articles 4, 5, 6 and 8) must be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation' for the purposes of this provision means necessary and suitable amendments and adjustments which do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms.<sup>187</sup>

With regard to reasonable accommodation at the working place, the law provides that 'equal treatment' means, inter alia, 'the obligation to provide reasonable access and facilities in the working environment, including: (i) the necessary modifications or adjustments of accessibility to existing facilities so as to make them accessible to persons with disabilities; (ii) the reshaping of work by creating working schedules of part-time occupation or modified working hours, with the acquisition of new or the modification of existing equipment, machinery, tools, means and any facilities or services'.<sup>188</sup>

The above provisions did not entirely transpose the spirit of the directive which provided for a mandatory duty to provide reasonable accommodation. Thus, an amendment to the disability law in 2007 added a new article which provides that, in order for the principle of equal treatment of persons with disabilities to be implemented, the employer must take reasonable measures depending on the needs arising in any particular case, so that a person with a disability has access to an employment post, to carry out his/her profession

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<sup>181</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>182</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>183</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>184</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 6. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>185</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 7. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>186</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 8. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>187</sup> Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

<sup>188</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(2)(d). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

or to be promoted, or to undergo training, so long as these measures do not lead to disproportionate burden for the employer.<sup>189</sup>

## b) Practice

A burden is not disproportionate when it is sufficiently balanced by measures taken in the framework of state policy in favour of persons with disability.<sup>190</sup> The 2014 amendment to the disability law essentially extends the right to reasonable accommodation to a number of areas beyond employment, provided the burden is not disproportionate or unjustified, abandoning the old approach which rendered the right to reasonable accommodation beyond employment subject to 'where the local economic conditions allow' and 'subject to public finances', both of which are currently in a pretty bad state. However, the amendment falls short of creating a mandatory regime as the defence of the disproportionate burden is likely to be successfully invoked by service providers or merchants in court in order to avoid any kind of expenditure, in light of the economic crisis.

Over the years, the Equality Body has interpreted the duty to provide reasonable accommodation as follows:

- A 2006 decision regarding accommodation for dyslectic pupils in school exams found that the Ministry of Education wrongly viewed the credibility and prestige of the exam and the need to avoid giving the dyslectic pupil an unfair advantage as priority considerations and recommended that dyslectic students be given additional accommodation to the mere extra time of 30 minutes at the exam.<sup>191</sup> In another decision on a similar complaint, the Equality Body found that the principle of reasonable accommodation is founded upon the premise that the measure must be such so as to ensure equality in opportunity and not in the result.<sup>192</sup>
- The policy of the Ministry of Education to transfer public education teachers based solely on the needs of the service without reference to the existence or not of any disability, and disregarding the complainant's need to work in a stable and safe environment amounts to indirect discrimination on the ground of disability.<sup>193</sup>
- The revocation by the employer of the right initially granted to an employee with multiple sclerosis to take two afternoons off in order to undergo physiotherapy was found to be discriminatory. Citing a landmark ECtHR ruling,<sup>194</sup> the decision stressed that the treatment of persons without a disability in relation to persons with a disability cannot be the same, if equality is to be attained.<sup>195</sup>
- In 2009, a complaint was submitted to the Equality Body by a job applicant who had achondroplasia, whose job application was rejected as a result of her height. The Equality Body concluded that the employer had an obligation to place files in shelves which would be accessible by the complainant and/or provide a ladder to enable her to reach files in high shelves.<sup>196</sup>
- The reduction in teaching hours can constitute reasonable accommodation, provided the symptoms of the disability render teaching painful or exhausting.<sup>197</sup>

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<sup>189</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(1A). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>190</sup> Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

<sup>191</sup> Cyprus, Equality Authority, File No. AKI 24/2006, AKI 27/2006, 31 October 2006.

<sup>192</sup> Cyprus, Equality Authority, Report No. A.K.I. 37/2008, 8 October 2008.

<sup>193</sup> Cyprus, Equality Authority, File No. 9/2007, 12 September 2007.

<sup>194</sup> *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000. Available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:\[%22001-58561%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:[%22001-58561%22]}).

<sup>195</sup> Cyprus, Equality Authority, Report No. Decision dated 04.09.2007, Ref. A.K.I. 65/2007.

<sup>196</sup> Cyprus, Equality Authority, Report No. A.K.I. 12/2009, 21 September 2009.

<sup>197</sup> Cyprus, Equality Authority, File A.I.T. 1/2009, 20 September 2009.



The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 provides that the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure equality in opportunity and not in the result, therefore the measure must be such so as to offer the person with disability the same opportunity as all other persons, e.g. persons with arthritis applying for the position of a typist must be given a special keyboard in order to be able to compete with the other applicants on the typing speed. Also persons with a disability who take exam for the purposes of a selection procedure for a job must be given such facilities so as to enable them to compete with the non-disabled candidates on equal terms. The employer's obligation to provide reasonable accommodation affects regulations or criteria set by the employer as well as the way in which the workplace is organized (e.g. offering a wheelchair user the chance to work on the ground floor of a building where this is available). The Code offers a non-exhaustive list of guidelines on reasonable accommodation measures: changes or adaptations to the building infrastructure (ramps and toilets for wheelchair users, Braille language on the buttons in the elevators etc.); re-allocation of duties amongst employees so as to allocate to employees with disabilities duties they can perform; transfer to another job position if available; sick leave for the purposes of therapy; vocational training including training related to a person's disability e.g. use of new technologies or new equipment or logistics that can upgrade a disabled person's skills; facilitating the participation in trade unions; the upgrading of existing equipment; other forms of support or assistance.<sup>198</sup> The law setting out the mandate of the Equality Body foresees the issue of Codes of Conduct by the Equality Body which can impose specific duties on persons in the public or private sector.<sup>199</sup> However, such codes must be appended to regulations issued with the approval of the Council of Ministers; this procedure was not followed in the case of the Code of Practice on Disability Discrimination and in essence this code has the character of a clarification document rather than a binding set of rules. The Court may refer to the Code and derive guidance from the examples contained in it, but it is not legally bound to do so and in fact the Code has never been referred to in Court or in any official documents.

In 2015 the Equality Body issued a report against the state TV company Cyprus Broadcasting Corporation (CyBC) because the lack of accessibility features in their building, which dates back to the 1950s, had prevented an employee who was a wheelchair user from carrying out his work. The employee, who became tetraplegic following an accident, was asked to work in a different department than before performing different tasks. In his new position, the rooms were more accessible than in his previous post but even there he was unable to perform the tasks assigned to him because in order to supervise the flow of TV programs he needed access to two other rooms which he didn't have because those rooms were not accessible to wheelchair users. He was forced into resignation and filed a discrimination complaint against CyBC. The Equality Body found that the delay of CyBC to respond to their obligation as employers to provide reasonable accommodation amounted to direct discrimination and advised CyBC to proceed to all necessary structural modifications to make their building accessible.<sup>200</sup>

### c) Definition of disability and non-discrimination protection

<sup>198</sup> Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codeofgoodpracticeondisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codeofgoodpracticeondisabilityemployment.pdf).

<sup>199</sup> Cyprus, Law on Combating Racial and other Forms of Discrimination (Commissioner) of 2004 (Ο Περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004) Ν. 42(I)/2004, article 40. Available at [www.cylaw.org/nomoi/enop/ind/2004\\_1\\_42/section-sce220abc3-c0c8-c38b-6534-cc2265a17e12.html](http://www.cylaw.org/nomoi/enop/ind/2004_1_42/section-sce220abc3-c0c8-c38b-6534-cc2265a17e12.html).

<sup>200</sup> Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

The definition of disability applicable does not differ when claiming reasonable accommodation from when claiming general protection from discrimination.

- d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Cyprus, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.<sup>201</sup> The definition of disproportionate burden in fields beyond employment does not differ from that used in the context of employment.

- e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Cyprus, failure to meet the duty of reasonable accommodation may be interpreted as amounting to discrimination.

Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, this may be inferred from the wording of the law, which stipulates that, *in order to comply with the principle of equal treatment*, reasonable accommodation is foreseen and for this purpose the employer must take all necessary measures so as the person with disability may have access to a job position, may exercise his profession or may attend training, provided the burden is not unreasonable.<sup>202</sup> No case has ever been adjudicated in Court on this point but this interpretation is invariably followed by the equality body.<sup>203</sup>

If one adopts the interpretation that breach of the duty to provide reasonable accommodation amounts to discrimination, it follows that breach of such duty leads to the sanctions foreseen in the law for discrimination.<sup>204</sup> In the case of both discrimination and breach of the duty to provide reasonable accommodation, the sanctions are imposed where the perpetrator has acted without reasonable cause.<sup>205</sup> The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in 2010 explicitly provides that the employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination and is punishable with a fine of up to CY£ 4,000 (=€ 6,834) or imprisonment of up to six months, as in all other forms of discrimination.<sup>206</sup>

There is no explicit provision in the law for the reversal of the burden of proof in cases where there was a breach of the duty to provide reasonable accommodation. However, if one adopts the view that breach of this duty amounts to discrimination, then the reversal of the burden of proof foreseen in the law for discrimination cases<sup>207</sup> applies. It should be noted that the burden of proof is reversed only in employment related cases and not in fields beyond employment.

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<sup>201</sup> Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

<sup>202</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 5(1A). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>203</sup> Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

<sup>204</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 9(3). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>205</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 9(3). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>206</sup> Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Co\\_depracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Co_depracticedisabilityemployment.pdf).

<sup>207</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 9A. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).



No case was ever tried by the Courts on reasonable accommodation. However, the decisions of the Equality Body on this issue consider the failure to meet this duty as discrimination prohibited by law, even before the 2007 change of the law, which rendered the duty to provide reasonable accommodation as a binding obligation on the employer. Thus, a complaint from a blind person working as a telephonist in the hospital, who was moved to a new hospital and had to cope with a more complicated telephone system, with more telephone lines and with a less favourable working schedule was found by the Equality Body to be well founded. The Equality Body decided that the hospital authorities ought to have transferred to the new post one of the other employees without a disability and to leave the blind employee at the post where he was familiar with the system. The report called on the hospital authorities to explain, in a manner satisfactory to the Equality Body, why the employee had to be moved to the new hospital, failing which a decision would be issued against them by the Equality Body.<sup>208</sup>

An Equality Body report published in 2012 regarding the adequacy of school units for autistic children concluded that the provision of education and training to children with disabilities, under circumstances where the school infrastructure is so lacking that their special needs are not met, amounts to a violation of the principle of equality, since the children are prevented from equal opportunity to develop their personality and skills.<sup>209</sup>

f) Duties to provide reasonable accommodation in respect of other grounds

In Cyprus, there is no duty to provide reasonable accommodation in respect of other grounds in either the public or the private sector.

Nevertheless, the Equality Body recognises such a right in respect of religion or at least recommends to the relevant authorities to respect religious freedom for students and for prisoners by providing reasonable accommodation to them to practice their faith. This approach of the Equality Body is premised more on the conviction that religion is a sensitive issue rather than an interpretation of the law as granting such a right.

A 2009 decision of the Equality Body on a complaint from the representative of the Maronite community regarding the inadequate arrangements at the Maronite school, found that special treatment involves deviations from the principle of equality, which take the form of positive measures or special rights targeting a certain group aiming at the elimination of discrimination. The decision criticised the line of argumentation of the Ministry of Education which offered the Maronite community only equal treatment before the law, adding that the protection of national minorities must go beyond that, to recognise and promote rights of a collective character.<sup>210</sup>

In December 2005 following a complaint on behalf of a Jehovah's Witness pupil against the behaviour of the religious instruction teacher towards her, the Equality Body criticized the practice of restricting pupils exempted from the religious lesson into the library and recommended that more creative occupation be sought for the exempted pupils.<sup>211</sup> In 2010 another Equality Body report criticised the procedure for exemption of pupils from the religious class and for the fact that the handling of the exemption request by the school led to the stigmatisation of the student-complainant, as she was for several months

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<sup>208</sup> Cyprus, Equality Authority, Report No. A.K.I. 58/2005, 8 December 2005. A summary of the case is available at the Equality Authority's Annual Report for the year 2005 at pp.12-13. Available at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf).

<sup>209</sup> Cyprus, Anti-discrimination authority, Report No. AKI 50/2011, 27 July 2012.

<sup>210</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.R. 93/2005, 12 May 2009.

<sup>211</sup> Cyprus, Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

isolated from her classmates.<sup>212</sup> In its reports, the Equality Body does not cite the anti-discrimination laws, which clearly do not impose a duty to provide reasonable accommodation on the ground of religion, but article 18 from the Cypriot Constitution which provides that all religions are equal before the law;<sup>213</sup> Article 14 of the International Convention for the rights of Child; and Article 9 of the ECHR.<sup>214</sup> The situation escalated in 2012, when a circular from the Ministry of Education required pupils exempted from the religious class to remain in the class during the lesson. This formed a regression from the previous policy which enabled exempted pupils to engage in alternative creative activities elsewhere in the school building under teachers' supervision. Based on this circular, a school prohibited a pupil who was a Jehovah's Witness to leave the classroom during this lesson. The pupil decided to leave the classroom anyway and was repeatedly sanctioned with expulsion for every time that she left the classroom, risking accumulating so many expulsions that she would be unable to graduate. The Equality Body was quick to take dynamic measures against the school and against the Ministry of Education, threatening them with fines for every day of non-compliance with its recommendations. Its position was that exempted pupils should be offered alternative supervised creative activities that would not lead to their stigmatisation and their alienation from the school environment, as was the solution proposed by the Ministry (to remain in the classroom).<sup>215</sup> The crisis between the Equality Body and the Ministry of Education eventually diffused itself when the Ministry official who vehemently opposed exemptions from the religious class retired in 2013. In recent years, the Equality Body has toned down its requirement for schools to provide alternative creative occupation for exempted pupils, presumably as a result of the staff shortages that emerge from the government measures to address the economic crisis. A more recent report of the Equality Body on the religious freedom of pupils at school focused on the absence of a culture of neutrality in school activities which clearly favour the dominant religion and on the fact that the right to be exempted from the religious class is reserved only to those pupils who are not Christian orthodox.<sup>216</sup>

In 2016 the Ministry of Education introduced a new policy regarding exemption of students from school classes, including religious class, to be applied in the school year 2016-2017. According to the new policy, students aged 18+ or the parents of students aged under 18 may apply for an exemption from the religious lesson if they are not Christian orthodox; applications for to exemption from the religious class for other reasons 'will be examined individually'. Where an application for exemption is approved, the students can choose either to remain in the classroom during the lesson or to leave the classroom. In the latter case, the school's headmaster will decide which other class the student must attend during this time.<sup>217</sup> There are no published rules, guidelines or criteria on how applications for exemptions are to be assessed.

The new policy must be seen as an endeavour on the part of the Ministry of Education to meet the repeated recommendations and criticisms of the Equality Body against the Ministry as regards the pro-Christian character of public education.<sup>218</sup> The policy of the

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<sup>212</sup> Cyprus, Anti-discrimination Authority, Report No. 135/2009, 7 November 2010.

<sup>213</sup> Cyprus, Constitution of the Republic of Cyprus, article 18, available at <http://cylaw.org/nomoi/enop/non-ind/syntagma/full.html>.

<sup>214</sup> Cyprus, Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

<sup>215</sup> Cyprus, Anti-discrimination Authority, Report no. A.K.R. 93/2012, 3 December 2012.

<sup>216</sup> Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11\\_2014%CE%BA%CE%B1\\_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

<sup>217</sup> Cyprus, Ministry of Education, *Procedure for securing exemptions from classes*, 15 September 2016, available at <http://enimerosi.moec.gov.cy/archeia/1/ypp4633a>.

<sup>218</sup> Cyprus Anti-discrimination authority, Report of the Anti-discrimination authority regarding the respect for religious freedom in schools of primary and secondary education (*Έκθεση της Αρχής κατά των Διακρίσεων αναφορικά με τον σεβασμό της θρησκευτικής ελευθερίας στα σχολεία Δημοτικής και Μέσης Εκπαίδευσης*), File No. AKP 1/2014, AKP 6/2014, AKP 19/2014, AKP 73/2014, 18 June 2015.

Ministry of Education on the subject had also been flagged as an 'issue of concern' by the Advisory Committee on the Framework Convention on National Minorities in its fourth opinion on Cyprus. An issue raised by the Committee was the fact that although 'non-Christian' students could be exempted from religious education, students of Armenian, Maronite or Latin background were facing difficulties in securing exemptions. The Committee further criticised the failure of schools to provide creative occupation for students who are exempted from religious classes, which made parents of minority students reluctant to pursue exemptions for fear of marginalisation of their children.<sup>219</sup>

In 2012 the Ombudsman<sup>220</sup> investigated a series of complaints from prison inmates who alleged being prevented from practicing their religion. The complaints were Greek nationals of Pontic origin who were denied the right to visit the prison church to celebrate a special holiday for them; and a group of Nigerian inmates who were denied the right to be visited by an Evangelical priest. In both of these cases, the Ombudsman rejected the justification put forward by the prison authorities and urged them to respect the religious rights of detainees and facilitate the practice of any religion they choose.<sup>221</sup> A recent report on Cyprus by the U.S. Department of State indicated that although a mosque and a church are available in the central prison, there is no opportunity and no facilities for detainees in any detention centre to practice their religion.<sup>222</sup>

Along the same lines, a 2015 decision the Equality Body found that the failure of the authorities to address the request of a Jehovah's Witness for bloodless treatment in accordance with his religious beliefs, amounted to a failure to provide equal access to health care.<sup>223</sup>

#### g) Accessibility of services, buildings and infrastructure

In Cyprus, national law requires services available to the public, buildings and infrastructure to be designed with some accessibility features.

In Cyprus, national law contains a general duty to provide accessibility by anticipation for people with disabilities. The disability law provides that the failure to carry out alterations to services or facilities which renders their use by a person with a disability unjustifiably difficult does not amount to equal treatment and is therefore prohibited by law.<sup>224</sup>

The disability law also provides for the right to accessibility to housing, buildings, streets and generally the natural environment and to public transport.<sup>225</sup> This provision is framed as a right of the individual rather than a proactive duty of the state to make all building infrastructure accessible. The individual right to accessible buildings and streets is not absolute and in fact it assumes a reactive character reminiscent of the duty to provide

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[www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11\\_2014%CE%BA%CE%B1\\_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement)

<sup>219</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

<sup>220</sup> Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

<sup>221</sup> Cyprus, Ombudsman Report no. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, 09 April 2012.

<sup>222</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, 2015 Human Rights Reports: Cyprus, released on April 13, 2016. Available at <http://www.state.gov/j/drl/rls/hrrpt/2015/eur/252835.htm>.

<sup>223</sup> Cyprus, Report of the Anti-discrimination Authority regarding the handling of the Ministry of Health for the provision of suitable health care to a Jehovah's Witness, File No.22/2015, 22 December 2015. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/\\$file/%CE%91%CE%9A%CE%A187\\_2011\\_17112015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement).

<sup>224</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 6(2)(d)(ii). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>225</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(2)(c). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

reasonable accommodation: it must be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation for the purposes of this provision means necessary and suitable amendments and adjustments which do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms. A burden is not disproportionate when it is sufficiently balanced by measures taken in the framework of state policy in favour of persons with disability.'<sup>226</sup>

The accessibility of persons with disabilities to public buildings is further regulated by the Regulations on Streets and Buildings of 1999, which were issued by virtue of Article 19 of the Streets and Buildings law.<sup>227</sup> Regulation 61G defines a person with disability as a person facing temporary or permanent difficulty in accessing a building or a street due to physical weakness or deficiency; the definition is intended to be wide enough to secure accessibility to build infrastructure not only for persons with a disability in the narrow sense of the term but persons generally encountering obstacles in access, such as the elderly. In 2014 the Ministry of the Interior drafted a paper on accessibility and user-safety, to be adopted as an annex to Regulation 61H of the Streets and Buildings Regulations, submitted to the Attorney General for legal processing.<sup>228</sup> The paper is entitled 'Accessibility and User Safety' and constitutes the document by which the Reader,<sup>229</sup> being an architect or a civil engineer duly authorized by the competent authority, designs streets and buildings in a manner so as to ensure accessibility and user safety by all persons including persons with disability and with reduced mobility.<sup>230</sup> The report purports to amend Regulation 61H of the Streets and Buildings Regulation<sup>231</sup> and aims at harmonizing national legislation with EU Directive 89/106/EC, according to which structural projects must be designed and constructed in such a way so as to avoid the risk of accident or injury and render them safe and accessible by all persons. When adopted, the paper will have the strength of legislation.

The Streets and Buildings Regulations apply to public buildings as well as to those buildings where entry to the public is allowed, to commercial centres, to buildings which include shops and/or offices, to educational institutions, clinics, doctors' offices and generally to any building which the competent authority decides that these Regulations should apply. The Regulations set the minimum necessary specifications for the erection of all the aforesaid buildings and aim at securing the comfortable access of all persons with disability to the main entrance of such buildings and to the spaces within such buildings. The Regulations provide analytically the construction specifications for ramps to the main entrance, for the pavements, the staircases, the common use corridors, the elevators, the lavatories and other spaces where the public may go in, including the parking areas. However, failure to comply with these regulations does not amount to discrimination.

In spite of this legislative framework, an Equality Body decision in 2012 dealt with accessibility to sports grounds and carried out an on-site investigation of these premises, most of which were found to be inaccessible.<sup>232</sup> Also, an Equality Body investigation in 2009 regarding access to a disabled toilet in the common areas of the building where the complainant resided revealed that the management company of the building did not view accessibility as an unconditional entitlement, because it had asked the complainant to produce a number of documents to prove his disability before they grant him permission

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<sup>226</sup> Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100626](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626).

<sup>227</sup> Cyprus, The Streets and Buildings Regulation 61H. Available at [www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument](http://www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument).

<sup>228</sup> At the time of writing, the paper was still in draft form and not available online.

<sup>229</sup> Cyprus, Law Regulating Streets and Buildings, Cap 96, article 2. Available at [http://www.cylaw.org/nomoi/enop/non-ind/0\\_96/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_96/full.html).

<sup>230</sup> Cyprus, Ministry of Interior, Technical Services, Approved Document - Streets and Buildings Regulations, Annex III, Accessibility and User Safety. Not available online.

<sup>231</sup> Cyprus, The Streets and Buildings Regulation 61H. Available at [www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument](http://www.mcw.gov.cy/mcw/dbpd/disabledaccess.nsf/dbpd05/dbpd05?OpenDocument).

<sup>232</sup> Cyprus, Equality Authority, Report No. A.K.I. 30/2010 and A.I.T 1/2012, 29 May 2012.

to use the disabled communal toilet. The Equality Body report stressed that the law does not set any preconditions which must be met in order for persons facing mobility obstacles to have access to communal toilets, nor does it require such persons to produce any documents to prove their disability.<sup>233</sup>

h) Accessibility of public documents

The disability law contains a number of vague provisions regarding accessibility, such as the right to access information and communication with special means where this is necessary for special groups of persons,<sup>234</sup> but does not foreseeing for an enforcement mechanism. Beyond these general provisions, which may be used in order to claim Braille translation of basic documents required by law, such as tax declarations, there is no specific legal obligation and no practice for public authorities to provide translation of any documents either in Braille or in sign language. The practice is for the NGOs of blind persons and of deaf persons respectively to provide such services as and when requested by their members.

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<sup>233</sup> Cyprus, Equality Authority, Report No. A.K.I. 91/2008, 14 May 2009.

<sup>234</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(2)(e). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

### 3 PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In Cyprus, national legislation has incorporated the directives' residence/citizenship/nationality preconditions for protection under the relevant national laws transposing the directives. Each of the three laws transposing the two directives provides that its scope does not cover differential treatment due to nationality, nor does it affect provisions or conditions regarding the entry and stay of third country nationals and stateless persons, or the treatment derived from the legal status of such third country nationals or stateless persons.<sup>235</sup>

In spite of the above, Protocol 12 to the ECHR which Cyprus has ratified, guarantees 'the enjoyment of all rights set forth by law' without discrimination, inter alia, of 'national or ethnic origin'. Under Law N.42 (1)/2004 which sets up the Equality Body, there are no residence or citizenship/nationality prerequisites in the body's mandate in order to extend protection under the national laws transposing the directives. The Equality Body is empowered to promote equality of the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by the Conventions ratified by Cyprus and referred to in the Law<sup>236</sup> irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.<sup>237</sup> We therefore have a situation where as regards the Equality Body's mandate nationality is a protected ground, but as regards the scope of the laws transposing the two directives, the exception of the directives as regards nationality applies. In its decisions, the Equality Body has made considerable use of its extended mandate and considered discrimination on the ground of nationality and national origin as prohibited by international law as well as by the Equality Directives; on several occasions nationality and ethnic origin has been used interchangeably. The Cypriot Equality Body considers that Union citizens are protected by the two Equality Directives<sup>238</sup> and relies on these Directives in examining complaints submitted by Union citizens.<sup>239</sup>

Article 32 of the Constitution stipulates that 'nothing in this Part<sup>240</sup> contained shall preclude the Republic from regulating by law any matter relating to aliens in accordance with international law.' This provision, combined with the wide provisions of Cypriot immigration law, is often implemented with a tendency to considerably enlarge the scope of state discretion and state sovereignty.

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<sup>235</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 5(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) Article 3A(3). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 4(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>236</sup> These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

<sup>237</sup> Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19.03.2004), Article 3(1)(b), Part I.

<sup>238</sup> Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

<sup>239</sup> Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949\\_2013\\_%CE%91%CE%9A%CE%99%2052\\_2013\\_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

<sup>240</sup> Part II of the constitution contains the human rights and fundamental freedoms.



Complaints by EU citizens are often filed with the Equality Body alleging nationality discrimination, possibly reflecting the fact that these persons are more familiar with the Equality Body procedure than most third country nationals. Some examples of Equality Body decisions where the Equality Directives were applied to EU nationals concern the failure of the authorities to advise EU citizens of their need to register themselves in the electoral rolls in order to be allowed to vote in municipal elections; the request of the road transport department for EU nationals to present immigration documents evidencing 6 months' stay in Cyprus in order to acquire a driving license; the refusal of the Ministry of Education to accept the candidacy of a Greek national for an honorary grant;<sup>241</sup> a University's rejection of a job application because the applicant was a Greek national; the attempts of the immigration authorities to expel Greek nationals who had settled legally in Cyprus before Cyprus' EU accession for not to have sufficient financial resources to maintain themselves;<sup>242</sup> the requirement of good knowledge of Greek as a prerequisite for accessing public sector jobs or for starting a business; and the refusal of the recruitment bodies in the public sector to recognise prior work experience of applicants who are Greek nationals.<sup>243</sup>

The Equality Body adopts the same liberal interpretation of 'race/ethnic origin' also in the case of third country nationals. In 2016 the Equality Body found that the law regulating the exercise of the profession of estate agents contained indirect discrimination against third country nationals in violation of the Equality Directives, because it requires applicants to submit 'certified educational attainment', when there is no procedure for such certification for diplomas issued by schools in third countries.<sup>244</sup> The Equality Body interpreted the term 'racial or ethnic origin' as complemented by the terms 'language', 'race', 'colour' and 'national' origin and found there was indirect discrimination on the ground of national origin, in breach of the law transposing the Equality Acquis.<sup>245</sup>

### 3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)

#### a) Protection against discrimination

In Cyprus, the personal scope of anti-discrimination laws offers protection to persons who meet the definition foreseen in the respective laws. In the case of disability, the definition is clearly met only by natural persons<sup>246</sup> but organisations with a legitimate interest have the right to apply to court or the equality body in order to bring a discrimination claim on behalf of a victim.<sup>247</sup> It should however be noted that although an action in the district court to claim compensation may be pursued by organisations acting on behalf of victims, an application to annul a discriminatory act of the administration may only be filed by

<sup>241</sup> Reference A.K.P 73/2008, dated 30 December 2009.

<sup>242</sup> Ref. AK 168/2008, AK 199/2008, AK 80/2009, AK 43/2010, AK 48/2010, AK 93/2010, AK 114/2010, ΑΠ 2358/2010, dated 01.11.2011.

<sup>243</sup> Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949\\_2013\\_%CE%91%CE%9A%CE%99%2052\\_2013\\_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

<sup>244</sup> Cyprus, Equality Authority (2016) Report on 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, File number A.K.I.22/2016, 15 April 2016, available at [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).

<sup>245</sup> Law on equal treatment in employment and occupation (*Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) N.58(I)/2004, article 3, available at [http://cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>246</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2, available at [http://www.cylaw.org/nomoi/enop/non-ind/2000\\_1\\_127/index.html](http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html).

<sup>247</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D, available at [http://www.cylaw.org/nomoi/enop/non-ind/2000\\_1\\_127/index.html](http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html).



individuals with a 'legitimate interest',<sup>248</sup> as discussed under section 0.1 above. Similarly, all natural persons are protected from religious, age or sexual orientation discrimination only at the workplace<sup>249</sup> since only natural persons meet the definition of an employee, but organisations can represent victims in their claims before the court and the equality body.<sup>250</sup> As regards race/ethnic origin, although no explicit provision is made in the law as to whether victims of ethnic/racial discrimination can be legal or only natural persons, there is no reason why protection may not be extended to organisations of persons who are victims of racial or ethnic discrimination. The law offers explicit protection to individuals who are treated disadvantageously due to their ethnic or racial origin<sup>251</sup> and, in line with article 7(2) of the Racial Equality Directive, organisations may apply to court on behalf of such individuals.<sup>252</sup>

#### b) Liability for discrimination

In all fields and on all five grounds, the perpetrators of discrimination can be either legal or physical persons. The disability law defines 'employer' as any legal or physical person of the public or the private sector.<sup>253</sup> An identical definition of the term can also be found in the law prohibiting discrimination employment discrimination.<sup>254</sup> The scope of the law prohibiting ethnic/racial discrimination in fields beyond employment includes 'all persons in the public and the private sector'.<sup>255</sup> The provisions on criminal sanctions, which are identical in all three laws, explicitly foresee that legal persons as well as natural persons can also be liable for discrimination.<sup>256</sup> The fines which the Court may impose vary on whether the perpetrators are physical or legal persons. Natural person may be fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both.<sup>257</sup> If a legal person is found guilty of discrimination, the managing director, chairman, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both, if it is established that the offence is

<sup>248</sup> Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), 11 February 1959, Article 146.2. Available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html). Accessed 5 May 2017.

<sup>249</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>250</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>251</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Articles 2 and 5(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>252</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>253</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 2, available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>254</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>255</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 4(1), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>256</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5(5), available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15(2), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13(2), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>257</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5(4), available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

committed with their consent or collaboration or mere tolerance. In addition, a legal person can be fined with up to 7,000 Cyprus pounds (11,962 Euros).<sup>258</sup> There is also a provision for 'gross negligence' with fines of up to 2,000 Cyprus pounds (3,417 Euros) for individuals and 4,000 Cyprus pounds (6,835 Euros) for legal persons.<sup>259</sup>

### 3.1.3 Private and public sector including public bodies (Article 3(1))

#### a) Protection against discrimination

In Cyprus, the personal scope of national law does not explicitly cover public bodies for the purpose of protection against discrimination. No explicit provision is made in legislation as to who is protected from discrimination but the definition of discrimination in all laws transposing the two Equality Directives refers to 'persons'.<sup>260</sup>

#### b) Liability for discrimination

In Cyprus, the personal scope of national law covers both the private and the public sector including public bodies for the purpose of liability for discrimination. Law 58(I)/2004 (employment field, all grounds minus disability,) defines (in article 2) an employer as meaning 'the Government of the Republic, the Local Self-governance Authorities and any natural or legal person or organisation of public or practice law in any public or private sector or industry which employed or employee's workers.' An identical provision is found in article 2 of the Law on Persons with Disability N. 127(I)/2000. Law 59(I)/2004 (race/ethnic origin, fields beyond employment) defines in article 4(1) the scope of the law as covering all persons in the public and private sector including public organisations, local self-governance authorities and public and private law organisations in the fields of social protection, health care, social provision, education and access to goods and services.

## 3.2 Material scope

### 3.2.1 Employment, self-employment and occupation

In Cyprus, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, holding statutory office, with the exception of military service.<sup>261</sup> As regards military service, the law provides an exception to the prohibition of age discrimination, where the fixing of an age limit is justified by the nature and the duties of the position.<sup>262</sup>

<sup>258</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Articles 15(1) and 15(2), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Articles 13(1) and 13(2), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>259</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Articles 5(4) and 5(5), available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13(3), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>260</sup> Cyprus, Law on Equal Treatment in Employment and occupation 58(I)/2004, article 2, available at [http://cylaw.org/nomoi/enop/ind/2004\\_1\\_58/section-sc264785e0-2764-7a62-9213-35270ec438d8.html](http://cylaw.org/nomoi/enop/ind/2004_1_58/section-sc264785e0-2764-7a62-9213-35270ec438d8.html); Law on Equal Treatment irrespective of Race or Ethnic origin N. 59(I)2004, article 2, available at [http://cylaw.org/nomoi/enop/ind/2004\\_1\\_59/section-scdec58777-9546-11ee-19e7-48dbc03ba340.html](http://cylaw.org/nomoi/enop/ind/2004_1_59/section-scdec58777-9546-11ee-19e7-48dbc03ba340.html); Law on persons with disability N. 127(I)/2000, article 2, available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_127/section-scc1148a6c-678a-be1c-6221-8e5de08dd1ee.html](http://cylaw.org/nomoi/enop/ind/2000_1_127/section-scc1148a6c-678a-be1c-6221-8e5de08dd1ee.html).

<sup>261</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(a). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(a). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>262</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

The scope of Law N. 58(I)/2004 (transposing the Employment Equality Directive minus the ground of disability) includes conditions of access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion; access to vocational guidance and training, including practical work experience; employment and working conditions, including dismissals and pay; membership in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

A law enacted in 2009 introducing quotas in favour of persons with disability in the wider public sector excludes those sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent'<sup>263</sup> which are the army, the police, the fire brigade and the prisons.

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law<sup>264</sup> which sets out the mandate of the Equality Body, provides that the implementation of Protocol 12 is within such mandate and therefore the Equality Body is empowered to apply this to military service issues.

This law also provides that the Equality Body is vested with powers to tackle discrimination in the areas of employment, access to vocational training, working conditions including pay, membership of trade unions or other associations, social insurance and medical care, education and access to goods and services including housing, as required by Article 3.1 of the directives.

Both laws transposing the Employment Equality Directive define an 'employee' as 'any person who works or is trained in full time or part-time occupation, fixed time or permanent employment, continuous or otherwise, irrespective of the place of employment, including home employees but excluding self-employment.'<sup>265</sup>

Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. Comparing article 3.1 (b) of the Employment Equality Directive, Article 5 of ICERD provides for the right to training, whereas the directive focuses on access to all types and to all levels of vocational guidance, (advanced) vocational training and retraining. The comparison between Article 5 of the ICERD and Article 3.1(c) of the directive reveals that the former does not include employment and working conditions relating to dismissal. Article 5 of the ICERD limits itself to the right to form and join trade unions, whilst Article 3.1(d) of the directives is broader in the types of organisation that one can be a member of or involved in and further includes the benefits provided by such organisation or association.

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<sup>263</sup> Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009, Article 2. Available at [www.cylaw.org/cgi-bin/open.pl?file=nomo/enop/ind/2009\\_1\\_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009](http://www.cylaw.org/cgi-bin/open.pl?file=nomo/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009).

<sup>264</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004. Available at [www.cylaw.org/nomo/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomo/enop/non-ind/2004_1_42/full.html).

<sup>265</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 2. Available at [www.cylaw.org/nomo/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomo/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at [www.cylaw.org/nomo/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomo/enop/non-ind/2004_1_58/full.html).

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Cyprus, national legislation prohibits discrimination in the following areas: access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.<sup>266</sup>

Despite the formal adoption of the four main laws on anti-discrimination, there are no provisions for the facilitation or improvement of conditions for access as required by Article 3(1) (a) of the Employment Equality Directive. There is little tradition of anti-discrimination and there are very few specialist lawyers on the subject. There are no special mechanisms in the various Government departments created for the implementation of the above provisions. There are currently no measures or mechanisms to monitor or collect data on such matters.

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

In Cyprus, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment.<sup>267</sup>

#### **3.2.3.1 Occupational pensions constituting part of pay**

The Law on Pensions of 1997-2001, as amended, which regulates the payment of occupational pensions to public employees contains no protection against discrimination. In fact, the Pensions Law itself contains discriminatory provisions, as it provides for less favourable terms for employees aged under 45 who want to take early retirement, compared to older employees.<sup>268</sup>

A Supreme Court decision of 2007<sup>269</sup> found that the Pensions Law of 1967 (N.9/67) as amended by Law N.69(1)/2005, introducing differential treatment between persons attaining the age of 60 at different periods, was deemed to be outside the scope of the law transposing the Employment Equality Directive and thus could not be revised as discriminatory. Since then, a number of Court decisions followed suit, where the Courts ruled that pension schemes fixing different retirements ages for different employees,

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<sup>266</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(1)(a). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(a). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>267</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>268</sup> Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009; Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E1%E9%E3%\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E1%E9%E3%*%20and%2058(%E9)#).

<sup>269</sup> Cyprus, Supreme Court, Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus (*Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας*) (joined cases) Case Nos 1795/2006 and 1705/2006, 01 June 2007. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006).

depending on the date of their birth<sup>270</sup> or their rank in their service<sup>271</sup> were outside the scope of the directive and thus no discrimination claim could be allowed. A technical problem that arose in many of these Court cases was that, rather than bring a claim for discrimination under the law transposing the Employment Equality Directive, the claimants would either use the judicial review procedure foreseen by Article 146 of the Constitution or they would seek to have the legal provision affecting them declared unconstitutional. In all these cases, the Court ruled that it had no power to amend the allegedly discriminatory law and/or that annulling a law or a regulation that contains discrimination would not benefit the applicant because it would mean cancelling the legal basis which the desired retirement age derived from. From the Court's reasoning in cases where applicants complain of discrimination in the amount of pension received, it appears that the Courts were unaware of or were unwilling to take into account the CJEU's ruling in *Maruko*<sup>272</sup> that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In the case of *Michalakīs Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic*, the Court rejected the applicant's claim of age discrimination in respect of his retirement pay, which was lower for persons forced to retire at 61 rather than 62 or 63, on the ground that the directive expressly excludes retirement age from its scope, even though the applicant had not sought to change his retirement age but rather to raise the lump sum payable upon retirement.<sup>273</sup> A Court decision in 2012 found that the retirement age of 55 applicable for lower rank police officers was lawful as the applicant failed to prove that this differential treatment is not reasonable.<sup>274</sup> A Supreme Court decision in 2014 regarding a claim against reduced benefits for a public employee who chose to retire before reaching the age of 45 sought to change the landscape created by the previous Court decisions in this area; the Court not only found that the legal provision for reduced pension benefits for younger retiring employees was unlawful, but it also ruled that the Attorney General was under a duty to proceed with the amendment of this law following the Equality Body's recommendation to that effect.<sup>275</sup> Although this decision had prepared the ground for further decisions affirming the principle that pension schemes should be free from provisions leading to age discrimination, no more cases appeared before the Court in 2015 or 2016 in order to test this principle. In 2015 the Supreme Court reverted to older judicial practices, upholding that seniority was a legitimate consideration in assessing applications for promotion in the public service.<sup>276</sup> In 2016 the CJEU ruled against Cyprus on infringement proceedings initiated by the Commission as regards the

<sup>270</sup> Cyprus, Supreme Court, Eleni Kyriakidou v Cyprus Broadcasting Corporation (Ελένη Κυριακίδου v. Π.Ι.Κ.) No. 18/2008, 03 December 2010. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2010/rep/2010\\_3\\_0547.htm&qstring=%E5%EB%E5%ED\\*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF*).

<sup>271</sup> Nicos Elia v. The Republic of Cyprus through the Chief of Police, Supreme Court Case No. 1718/2008, dated 08 October 2010.

<sup>272</sup> CJEU, Case No. C-267/06, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

<sup>273</sup> Case no. 1223/2007, 19 September 2011.

<sup>274</sup> George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order, Ref. 1497/2008, dated 30 April 2012, summarized above under section 0.3.

<sup>275</sup> Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 04 June 2009; Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

<sup>276</sup> Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015).



age criterion in the national pensions law.<sup>277</sup> However, at the time of writing, the discriminatory provision in the law was still unchanged.<sup>278</sup>

### Maruko case

During 2015 a new law was adopted regulating the civil union of both heterosexual and homosexual couples.<sup>279</sup> The law provides for the legal recognition of partnerships registered in accordance with the provisions of this law and applies equally to all persons who choose this procedure, including not only same sex couples but also opposite sex couples who for whatever reason, including reasons of religion or belief choose not to get married. The law provides that unless otherwise stated in the text of the law and with the exception of the law on adoptions, a civil union entered into under this law will have all the corresponding results and consequences of a marriage under the Marriage Law, which regulates civil marriages between heterosexual couples.

The law includes detailed provisions regarding the payment of alimony and the distribution of property in the event of dissolution of the civil union, which are almost identical to those provided under the corresponding law for heterosexual married couples.<sup>280</sup> Matters of inheritance are to be regulated by applying the law on wills and succession which applies to married heterosexual couples.<sup>281</sup> In addition to the fields of application expressly mentioned in the law, the state recognition of these relationships must, by inference, inevitably have an impact in other areas of access to state and private services and benefits, including employment-related benefits, occupational pensions, succession in rental and other contracts, access to health as a dependent of a beneficiary and others, even though not explicitly mentioned in the law. In addition to the adoption of the law on civil unions, the massive attendance and success of the repeated pride parades in recent years have marked a change in mentalities and attitudes of conservative Cypriot society. At the time of writing, there is no documentation of the changes which the new climate has brought to the working environment and rights of LGB people in Cyprus. However the NGO Accept LGBT Cyprus has identified a number of positive developments in the public sector: the atmosphere at the work place has improved, same sex couples who have registered their partnership as a civil union are now entitled to state subsidies available to married couples and those who work as teachers in public education are entitled to earn points under a point system for married teachers. The NGO has also reported receiving more complaints about harassment at the workplace which they attribute to a rise in the number of LGB persons prepared to go public about their sexuality, in contrast with previous decades when the vast majority were 'closeted'.

The rationale of the CJEU in the Maruko case<sup>282</sup> that the surviving partners of deceased employees who had lived with the deceased 'in a union of mutual support and assistance which is formally constituted for life' should be entitled to the same benefits as surviving spouses, would probably now be extended to same sex partners who have registered their relationship in accordance with the new law.

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<sup>277</sup> After the cut-off date the: CJEU, C-515/14 (European Commission v Cyprus), 21 January 2016, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>. This ruling is expected to drive future judicial practice away from state discretion.

<sup>278</sup> Cyprus, Law on pensions (*Ο περί συντάξεων νόμος*) N. 97(I)/1997, article 27, available at [http://cyllaw.org/nomoi/enop/ind/1997\\_1\\_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html](http://cyllaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html).

<sup>279</sup> Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), N. 184(I)/2015, 9 December 2015. Available at [http://cyllaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cyllaw.org/nomoi/arith/2015_1_184.pdf).

<sup>280</sup> Cyprus, Law on the regulation of property relations between spouses of 1991-1999 (*Οι περί Ρυθμίσεως των Περιουσιακών Σχέσεων των Συζύγων Νόμοι του 1991 έως 1999*) N. 232/1991. Available at [www.cyllaw.org/nomoi/enop/non-ind/1991\\_1\\_232/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/1991_1_232/full.html).

<sup>281</sup> Cyprus, Law on wills and succession (*ο περί Διαθηκών και Διαδοχής Νόμος*) Cap. 195. Available at [www.cyllaw.org/nomoi/enop/non-ind/0\\_195/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/0_195/full.html).

<sup>282</sup> CJEU, Case No. C-267/06, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

However, the new law does not fully equate civil unions with marriages. A gap remains on the issue of adoption of children which is expressly excluded from the law and which amounts to direct discrimination against persons choosing the civil union and indirect discrimination against same sex partners. Under this law, a person is deemed incapable of entering into a civil union if he or she has not reached 18 years of age. This differs from the law which regulates the marriage of heterosexual couples and is a potential source of age discrimination: in the case of heterosexual couples, where marriage age is also set at 18, persons under 18 may still marry if they both have completed their sixteenth year of age and the persons who have parental responsibility over them consent in writing towards this; where the parents or guardians unjustifiably withhold their consent, the Court may authorise its conclusion.<sup>283</sup> This option is not available under this law, presumably because under the Criminal Code intercourse between men under 17 is still a crime punishable with imprisonment,<sup>284</sup> a potential source of discrimination against male homosexuals, as there is no corresponding prohibition for sex between lesbians.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Cyprus, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

The Law on persons with Disability prohibits discrimination in access to all kinds and levels of vocational guidance, vocational training, educational training, reorientation and professional apprenticeship.<sup>285</sup> The Law on Equal Treatment in Employment and Occupation contains an identical provision as regards the remaining four grounds.<sup>286</sup>

Neither of the aforesaid provisions specifies whether or not such training must be part of an employment relationship or not. In the absence of a provision restricting the scope to training within employment, it may safely be assumed that the law extends to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments, including life-long learning courses. The Equality Body has interpreted this provision as including training outside and independently of an employment relationship: in a legal opinion supplied by the Equality Body in 2006 upon the request of a governmental department, it was established that the anti-discrimination laws apply to access to training even if this does not take place within an employment relationship. The case concerned a trainee air traffic controller who suffered vision impairment as a result of which he would probably never be able to work as an air traffic controller. The Equality Body ruled that he should continue his training nevertheless, because denying him access to training on the ground of his disability would amount to discrimination prohibited by law.<sup>287</sup> Other Equality Body decisions found unlawful discrimination in the fixing of an age limit for applying for state scholarships and in the exclusion of persons with disability from admission to the state nursing school. In a 2010 decision the Equality Body stated explicitly that access to an Open University adult life-long learning course amounts to access to vocational training.<sup>288</sup>

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<sup>283</sup> Cyprus, Law on marriage of 2003 (Ο περί γάμου νόμος του 2003) N.104(I)/2003, article 15. Available at [www.cylaw.org/nomoi/enop/non-ind/2003\\_1\\_104/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2003_1_104/full.html).

<sup>284</sup> Cyprus, Criminal Code (Ποινικός Κώδικας) Cap. 154, article 171. Available at [http://www.cylaw.org/nomoi/enop/ind/0\\_154/section-scc47fc16b-adff-47f7-a516-80893c67659b.html](http://www.cylaw.org/nomoi/enop/ind/0_154/section-scc47fc16b-adff-47f7-a516-80893c67659b.html).

<sup>285</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 5(1)(b). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>286</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 4(b). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>287</sup> Cyprus, Equality Authority, Report No. AKI 28/2006, 20 September 2006.

<sup>288</sup> Cyprus, Equality Authority, Report No. A.K.I. 74/2009, 22 November 2010.



### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Cyprus, national legislation prohibits discrimination in the following areas: membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.<sup>289</sup>

In spite of the above prohibition, an issue of non-compliance persists in the case of the specific contract for the employment of foreign domestic workers, which the Ministry of Interior requires in order to issue their entry and work permit. The English version of the contract prohibits any 'political activity' of the employee; the prohibition of membership to a trade union was removed following the intervention of the Equality Body.<sup>290</sup> However, the Greek version of the contract contains a general prohibition of engaging in 'any activity' without specifying its nature.<sup>291</sup> There is no trade union in Cyprus representing foreign domestic workers, despite the fact that they form the largest sector of Cyprus' migrant population, suggesting that although the prohibition of trade union membership was removed from the English version of the contract, a general climate prevails which discourages them from forming or joining a trade union.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Cyprus, national legislation prohibits discrimination in the following areas: social protection, social security and healthcare as formulated in the Racial Equality Directive.

National law explicitly prohibits discrimination in the field of social protection, social security and healthcare only on the ground of race/ethnic origin.<sup>292</sup> Article 3(a) of Law 58(I)/2004 (transposing to a large extent the Employment Equality Directive), as well as the Law on Persons with Disability (N.127(I)/2000) seek to rely on the exception in Article 3(3) of the Employment Equality Directive.

The Equality Body's mandate, however, does cover discriminatory treatment in social protection on the grounds of religion/belief, age, disability and sexual orientation and there have been numerous interventions from the Equality Body in this area. Protocol 12 to the ECHR, which becomes operative through the powers granted to the Equality Body<sup>293</sup> prohibits discrimination on all grounds protected under the Protocol in social protection, social security and medical care, without any of the exceptions allowed for above.

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<sup>289</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4 (d). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 5 (1) (d). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>290</sup> Cyprus, Commissioner for Administration in its capacity as National Human Rights Independent Authority (2013), Position regarding the status of domestic workers in Cyprus (*Τοποθέτηση Επιτρόπου Διοικήσεως ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων αναφορικά με το καθεστώς των νοικοκυριών εργαζομένων στην Κύπρο*), File No. A/D3/2013, 2 July 2013. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/\\$file/%CE%91%CE%943\\_2013\\_02072013.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/$file/%CE%91%CE%943_2013_02072013.doc?OpenElement).

<sup>291</sup> The standard contract for the employment of foreign domestic workers is available at [www.moi.gov.cy/moi/CRMD/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/\\$file/%CE%A3%CE%A5%CE%9C%CE%92%CE%9F%CE%9B%CE%91%CE%99%CE%9F.pdf](http://www.moi.gov.cy/moi/CRMD/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/$file/%CE%A3%CE%A5%CE%9C%CE%92%CE%9F%CE%9B%CE%91%CE%99%CE%9F.pdf).

<sup>292</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνότητα) Καταγωγή*] Νόμος N. 59(I)/2004 Article 4(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>293</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(e). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

In a 2005 decision, the Equality Body found that the refusal of public assistance to an asylum-seeker because of his nationality amounted to indirect discrimination on the ground of race or ethnic origin in the area of social protection and social welfare.<sup>294</sup> The refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVF) was also held to be discriminatory.<sup>295</sup> As far as health is concerned, the Equality Body has ruled that the refusal to issue a health card (which entitles free treatment at public hospitals) to asylum-seekers due to the fact that they did not have their 'pink slip' (residence permit) was discriminatory on the ground of ethnic origin.<sup>296</sup> In response, the Ministry of Health sent instructions to public hospitals to issue health cards to asylum seekers even in the absence of pink slips, where there is an emergency.<sup>297</sup> A 2016 Ombudsman report found that the refusal of the Social Welfare Service to pay a welfare grant to vulnerable female asylum seekers, relying on their refusal to accept work in agriculture under harsh and unsuitable working conditions, led to indirect discrimination on multiple grounds including gender, race, culture, health and religion.<sup>298</sup>

Two Equality Body decisions in 2010 established that the fixing of the age limit of 65 for funding radical prostatectomy and the fixing of the age limit of 40 as a condition of eligibility for financial support for artificial insemination were both discriminatory.<sup>299</sup> In 2012, the Supreme Court also found that there was unlawful discrimination in a scheme which set an age limit as a precondition for entitlement to grant towards taxes and duties related to the acquisition of a car. Using the general prohibition of discrimination of article 28 of the Constitution (which does not explicitly cover age) the Court found that the applicant's exclusion from the scheme because he was over 70 amounted to unlawful discrimination.<sup>300</sup> In 2015 the Court found that an age criterion in a disability scheme amounted to discrimination and that the justification of poor state of public finances was insufficient to fall within the exceptions foreseen by the Directives.<sup>301</sup> The Equality Body has repeatedly issued decisions on access to healthcare by Jehovah's Witnesses, establishing that the failure of the health authorities to respect their religious beliefs in medical treatment amounted to discrimination.<sup>302</sup>

<sup>294</sup> Cyprus, Equality Authority, Report No. AKI 131/2005 and AKI 8/2005.

<sup>295</sup> Cyprus, Anti-discrimination Authority, Report No. AKP 54/2004.

<sup>296</sup> The three cases were the following: A Palestinian granted subsidiary protection, whose wife was refused medical care even though she was at the very last stage of her pregnancy because she did not have in her possession the temporary residence permit (File No A/P 1339/05). The second complaint came from an Indian asylum seeker whose wife was also in the last month of her pregnancy (File No A/P 1363/05). The third case involved a Kurdish couple from Syria with two underage children who applied for asylum. The wife was also in her last stage of pregnancy but was refused access to medical care because she did not have a health card (File No A/P 1487/05).

<sup>297</sup> Cyprus, Ministry of Health, Letter Ref. YY11.23.03, 12 December 2005.

<sup>298</sup> Cyprus, Ombudsman (2016) *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, available at [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).

<sup>299</sup> Equality Body Decision dated 24 November 2010, Ref. AKR 164/2008, AKR 63/2010 and Ref. A.K.R. 126/2009, dated 27 April 2010 respectively.

<sup>300</sup> Cyprus, Supreme Court, Mikis Lakatamitis v. The Republic through the Minister of Finance (*Μίκης Λακαταμίτης v. Υπουργείου Οικονομικών*), No. 1477/2010, 04 September 2012. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201209-1477-10.htm&qstring=διακρισ\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-1477-10.htm&qstring=διακρισ*).

<sup>301</sup> Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

<sup>302</sup> Cyprus, Report of the Anti-discrimination Authority regarding the handling of the Ministry of Health for the provision of suitable health care to a Jehovah's Witness, File No.22/2015, 22 December 2015. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/\\$file/%CE%91%CE%9A%CE%A187\\_2011\\_17112015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement).

### 3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in the following areas: social advantages as formulated in the Racial Equality Directive.<sup>303</sup>

In Cyprus, the lack of definition of social advantages does not raise problems. However, the term 'social advantage' was translated by the official translation unit of the European Commission as 'social provisions' and finds its way in the national legislation in this form.

'Social provision' or 'social advantage' is not included in the scope of the Equality Body's mandate, which explicitly covers all areas covered by Article 3 of the Racial Equality Directive save for 'social advantage'. Social advantage may however be implied into the mandate of the Equality Body as this covers 'any field whatsoever'.<sup>304</sup> To the extent that 'social advantage' is state provided, the Ombudsman (which is also the national Equality Body) is empowered to deal with it, as part of its mandate to investigate allegations for maladministration in the public sector.

Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus* which established that differential treatment based on the place of residence (i.e. north or south of Cyprus) is unlawful, the approach followed both by the Courts<sup>305</sup> and the Equality Body is that persons residing in the north of Cyprus, in other words the Turkish Cypriots, are not entitled to state benefits, even if they work in the south and pay their social insurance contributions to the state.<sup>306</sup> In *Gonul Ertalu & Imge Ertalu v. Ministry of Finance*, the claimant's application for a student grant was rejected because eligibility depends on residence in the south of the country and the claimant was a Turkish Cypriot residing in the north.<sup>307</sup> The Court followed the same approach in *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance* where the argument of the claimant that the law was unconstitutional for violating the equality principle was rejected because, in the absence of a positive legislative provision entitling the claimant to a student grant, the claimant will derive no benefit if the law is declared unconstitutional.<sup>308</sup>

### 3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

The national laws transposing the directives explicitly prohibit discrimination in education only in the case of race/ethnic origin.<sup>309</sup> However, the wide mandate of the Equality Body

<sup>303</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 4(c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>304</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 6(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>305</sup> Cyprus, Supreme Court, Mehmed and Meral Birinci v. The Republic of Cyprus (Mehmed και Meral Birinci v. Κυπριακής Δημοκρατίας, No. 911/2004, 14 February 2006.

<sup>306</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.R. 27/2005, 19 April 2006, where the Equality Body found that the Finance Ministry's rejection of the complainant's application for a child benefit was justified and that no discrimination existed, because it was not possible for the authorities to carry out the checks necessary to verify whether the information supplied by the applicant is true or not, adding that those Turkish-Cypriots residing in the areas under the control of the government are not subjected to discriminatory treatment in the field of state benefits.

<sup>307</sup> Cyprus, Supreme Court, Gonul Ertalu & Imge Ertalu v. Ministry of Finance (*Gonul Ertalu & Imge Ertalu v. Υπουργείου Οικονομικών*) Appeal no. 104/2008, 17 November 2011.

<sup>308</sup> Cyprus, Supreme Court, Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance (*Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Υπουργείου Οικονομικών*) Case No. 2411/2006, Appeal No. 73/2009, 2 February 2012.

<sup>309</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 4(1)(d). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

extends to discrimination in inter alia education on the grounds of race or ethnic origin, religion, belief, community, language, colour, special needs (which covers disability), age and sexual orientation.<sup>310</sup> The Equality Body has repeatedly applied this provision by finding in favour of complainants who alleged discrimination in education on the grounds of not only racial or ethnic origin but also sexual orientation, disability and religion. The Equality Body has devoted special attention to homophobia in schools offering a series of recommendations on systemic approaches of addressing the problem.<sup>311</sup>

Other than the law transposing the Racial Equality Directive and the laws ratifying relevant international conventions, there is no national legislation dealing with racial or ethnic discrimination in education. Since the Directive was transposed over a decade ago there has been no case filed in Court invoking the provisions of this Directive or of the law transposing it. This is generally attributed to a combination of factors including lack of awareness amongst the groups at risk, the lack of expertise of lawyers, the absence of legal aid and the costs involved and the length of time involved until a decision is delivered which is often several years. Given the short term duration of the visas issued to migrants (usually up to four years), their limited resources and low awareness, litigation is not really an option for them.

a) Pupils of immigrant background

*School integration and segregation*

The education-related policies towards refugees are no different than those applied to migrant students, being mainly extra Greek language classes. In some schools with a high concentration of non-Greek speakers, the school unit also provides information, psychological support and counselling to students and parents, seminars and workshops and the introduction of multi-cultural elements in the school curricula, utilizing educational material prepared in Greece.

There are no particular policies against school segregation. On the contrary, students are obliged to attend the school closest to their place of residence, a policy which inevitably leads to school segregation. In light of the schools' limited resources as a result of austerity, teachers no longer regard segregation as completely undesirable, because it leads to a better use of the scarce services of interpreters, psychologists and support teachers.

The policy of allocating newcomers into school classrooms is to enrol them in the regular classroom according to their age. Depending on the teachers' assessment of each child individually, the child may leave the classroom at certain times in order to attend another class. No rules apply; the teachers will make individual assessments and will design a program suitable to each child's needs, which will be reviewed regularly.

In a report released in 2016, the Council of Europe's Human Rights Commissioner observed a worrying trend of increasing child poverty in Cyprus and expressed concern about the consequences of austerity, calling on the authorities to carry out impact assessments of state budgetary restrictions in the fields of, inter alia, education.<sup>312</sup> The Commissioner was particularly concerned about the impact on children's right to education as a result of budget cuts and measures taken in the context of the Economic Adjustment Programme.

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<sup>310</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 6(2)(f). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>311</sup> Cyprus, Anti-discrimination Authority, Report No. AKR 63/2011, AKR 131/2011, 20 November 2012.

<sup>312</sup> Council of Europe (2016), Report by Nils Muiznieks, Commissioner for human rights of the Council of Europe following his visit to Cyprus from 7 to 11 December 2015, Strasbourg, 10 March 2016, available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/3395F3B3F73B53AAC2257F8E00241176?OpenDocument>.

## New asylum legislation

In October 2016 the asylum legislation was amended to transpose the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33.<sup>313</sup> Prior to adoption, the Commissioner for the Rights of the Child expressed strong disagreement over some of its provisions.<sup>314</sup> The text of the law, as adopted, has incorporated some of the Commissioner's concerns but has failed to take on board others. Below, there follows a list of the most significant unaddressed concerns of the Commissioner:

- The new legislative framework that has emerged gives the authorities wide powers to detain asylum seeking unaccompanied children, in order to ascertain their identity or nationality or the facts upon which their applications are premised.<sup>315</sup> The right of families in detention to reside in separate accommodation with sufficient respect to private life is not guaranteed. The revised law provides no details as regards the children's right to recreation suitable for their age. The Commissioner was of the view that in light of the inadequacy of the structures in Cyprus detention of children should be altogether prohibited.
- The revised asylum law provides that children seeking asylum have the right to access education unless there is deportation order pending against them or against their parents. The Commissioner had noted that this provision amounts to a violation of the Convention for the rights of the child, not least because deportation can be delayed for years.<sup>316</sup> The law also provides that education can be provided in the reception centre where children reside, however the reception centres in Cyprus lack the necessary infrastructure. Purporting to transpose the duty to provide education arrangements for children whose specific situation renders access to mainstream education impossible, as foreseen in Directive article 14(3), the national law refers to an existing legislation on children with intellectual disabilities.<sup>317</sup> The specific situation of the asylum seeking child however may not necessarily coincide with the definition of the child with 'special needs' under this law, thus rendering the application of this law unsuitable in their case.
- The revised asylum law provides for restrictions to or even the withdrawal of reception conditions in cases where the parents fail to report their change of address or fail to appear at their interview or fail to submit an asylum application as soon as possible after arrival.<sup>318</sup> The Commissioner's position was that reception conditions should not be withdrawn in the case of asylum seeking children under any circumstances.
- The automatic appointment of the Social Welfare Services as guardians for all unaccompanied children<sup>319</sup> entails a conflict of interests as regards the impartial representation of children vis-à-vis other state organs and fails to create the

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<sup>313</sup> Cyprus, Law amending the Refugee Law (No.2) N. 106(I)/2016, 14 October 2016, available at [http://cylaw.org/nomoi/arith/2016\\_1\\_105.pdf](http://cylaw.org/nomoi/arith/2016_1_105.pdf); Law amending the Refugee Law N. 105(I)/2016, 4577, 14 October 2016, available at [http://cylaw.org/nomoi/arith/2016\\_1\\_105.pdf](http://cylaw.org/nomoi/arith/2016_1_105.pdf).

<sup>314</sup> Cyprus, Commissioner for the rights of the Child (2016), *Position of the Commissioner for the rights of the child on bills entitled 1. Law on refugees (Amendment) of 2015 and 2. Law on refugees (Amendment) (No. 2) of 2015* [Θέσεις της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού, Λήδας Κουρσουμπά, επί των Νομοσχεδίων με τίτλους 1. Ο περί Προσφύγων (Τροποποιητικός) Νόμος του 2015 & 2. Ο περί Προσφύγων (Τροποποιητικός) (Αρ.2) Νόμος του 2015] available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/7DFF6DA64184AC1C2257FE9003DEB67?OpenDocument>.

<sup>315</sup> Cyprus, Law on refugees (Ο περί προσφύγων νόμος) article 9ST, available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).

<sup>316</sup> Cyprus, Law on refugees (Ο περί προσφύγων νόμος) article 9(H)(1), available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).

<sup>317</sup> Cyprus, Law on education and training of children with special needs (Ο περί Αγωγής και Εκπαίδευσης Παιδιών με ειδικές ανάγκες Νόμος), available at [http://cylaw.org/nomoi/enop/non-ind/1999\\_1\\_113/index.html](http://cylaw.org/nomoi/enop/non-ind/1999_1_113/index.html).

<sup>318</sup> Cyprus, Law on refugees (Ο περί προσφύγων νόμος) article 9(K)(B), available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).

<sup>319</sup> Cyprus, Law on refugees (Ο περί προσφύγων νόμος) article 10(1), available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).



necessary conditions of trust and support which a guardian should offer to the unaccompanied child when dealing with state authorities.

b) Pupils with disabilities

In Cyprus, the general approach to education for pupils with disabilities does raise problems. Access to integrated education is stipulated as a basic right for all persons with disability but failure to provide such a right is not termed as discrimination.<sup>320</sup>

As from September 2001 the Ministry of Education applies the Training and Education of Children with Special Needs Law of 1999 (N.113(I)/1999) and Regulations of 2001. In the framework of the said law as amended, as well as the Regulations on the Mechanism for the timely diagnosis of children with special needs of 2001, assistance is provided to children with special needs in all fields, particularly the psychological, social, educational, prevocational and vocational training at schools, where this is possible. The state is under an obligation to provide special training and education to persons with special needs from the age of three until completion of their studies. Such special training and education is provided in the following forms:

- In a public school, at an ordinary class, in circumstances of full inclusion with support. In such a case, the school programme and curriculum is adjusted accordingly and a liaison officer is responsible for the child.
- In a public school, at a special unit, in circumstances of partial inclusion. The special units are comfortable and accessible spaces in normal schools. The number of children in each unit is determined taking into consideration the special needs, particularities and smooth operation of the unit.
- In a special school. This is a special private or public school staffed by specialised personnel (psychologists, speech therapists, doctors, physiotherapists etc.) equipped with modern means to accomplish their mission. The educational policy of these schools includes a system of constant contact of these schools with the normal schools of the same area and the holding of common activities. The special schools are housed in the same premises as normal schools unless the Council of Ministers decides otherwise.
- By providing services in other premises. This is an arrangement done in cooperation with the parents and is applicable to children who for health reasons cannot attend any other school.<sup>321</sup>

Children with disabilities, physical and intellectual, are as a matter of general policy placed in integrated schools, where necessary with an escort, unless their condition is such that requires that they be placed in a special school. The decision as to whether a pupil with a disability will be placed in one of the special schools is made by a district public committee,<sup>322</sup> comprising of civil servants from a variety of disciplines and departments. The procedure followed by the aforesaid committee is, first, the appointment of a first instance multi-discipline group of experts from the public or the private sector who will evaluate the pupil's need for special education or special support within mainstream education. For the purposes of this evaluation, the group is furnished with medical reports from the Ministry of Health, the history of the pupil and any information which the parents may wish to supply.

Each member of the group will then deliver a report on the pupil setting out the tools and methodology used for the evaluation as well as their findings as to the nature and extend

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<sup>320</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 4(d). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>321</sup> [http://www.moec.gov.cy/eidiki\\_ekpaidefsi/eidiki\\_agogi\\_ekpaidefsi.html](http://www.moec.gov.cy/eidiki_ekpaidefsi/eidiki_agogi_ekpaidefsi.html).

<sup>322</sup> Set up by Regulations N. 186/2001 issued by the House of Parliament by virtue of the Law on Education of Children with Special Needs N. 113(I)/1999 and 69(I)/2001.



of needed support, in case they consider that such is necessary.<sup>323</sup> The experts' reports are considered by the district committee who will, following consultation with the parents, make the decision as to whether special schooling is necessary for the pupil in question or not. The author was unofficially informed by the national organisation for the blind that the committee will usually take the following considerations into account when making their decision: the wish of the parents, the assessment of the teachers at the school which the pupil in question is attending, the existence of any learning difficulties or multiple disabilities, or in the case of visual disability the desire of the pupil to learn Braille, which is not offered at mainstream schools. None of these considerations constitute an absolute criterion and each case is looked upon separately. As a matter of state policy, children with disabilities cannot be denied access to education on the ground that they are unable to learn.

Integrated education has been the focus of both the Ombudsman and the Child Commissioner<sup>324</sup> in recent years, who have repeatedly criticised the inadequate structures and processes of schools to receive and support children with disabilities, urging the authorities to improve the training of teachers, to increase awareness and enhance coordination amongst professionals, to establish a credible recording mechanism<sup>325</sup> and to create a more effective structure for diagnosis and placement of children in the schools which better address their needs. The fragmentation in support services for both children with disabilities and their parents has in recent years led to a trend towards special education, where the provision of support services is free and more adequate. The economic crisis, the budget cuts and staff shortages at schools are impeding any efforts to improve inclusive education.<sup>326</sup>

#### c) Trends and patterns regarding Roma pupils

Roma segregation in schools in Cyprus appears to be a consequence of the state housing policy and in part reflecting discriminatory attitudes, the 'cultural capital' and socio-economic and family conditions of the Roma in Cyprus. The Roma children continue to be treated as pupils with special language requirements, in spite of the fact that Cyprus has ratified a number of international conventions on human rights<sup>327</sup> as well as on specific rights in the field of education.<sup>328</sup> The Cypriot Ministry of Education does not have an official policy against school segregation. The policy of enrolling children on the basis of their address of residence is applied rigorously, even if this results in the concentration of large numbers of Roma pupils in the same school. Given the shortage of resources and personnel, such as interpreters and additional teachers, as a result of austerity the concentration of the Roma in specific schools emerges as the only practical solution to the scarcity of resources: had the Roma pupils been dispersed into several schools, the interpreters and support teachers would not suffice to service all the different schools.

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<sup>323</sup> Section 9 of Regulations N. 186/2001.

<sup>324</sup> Cyprus, Commissioner for the Rights of the Child, Position regarding training and education of children with disabilities: Result of public consultation, Nicosia, December 2011. Available at [www.childcom.org.cy/ccr/ccr.nsf/DMLpapers\\_gr/DMLpapers\\_gr?OpenDocument&Start=1&Count=1000&Expand=2](http://www.childcom.org.cy/ccr/ccr.nsf/DMLpapers_gr/DMLpapers_gr?OpenDocument&Start=1&Count=1000&Expand=2).

<sup>325</sup> For a critique on the absence of a single registry of all children with disabilities see Playbell S (2010), Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities, National Report of Cyprus, December 2010, available at [http://inclusion-europe.org/images/stories/documents/Project\\_CRC/Results/National\\_Reports/Cyprus\\_EN.pdf](http://inclusion-europe.org/images/stories/documents/Project_CRC/Results/National_Reports/Cyprus_EN.pdf).

<sup>326</sup> Demetriou C. (2015), 'Country Report on Cyprus for the Study on Member States policies for children with disabilities, project led by Milieu, commissioned by the European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and constitutional affairs, Civil Liberties, Justice and Home Affairs. Available at <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>.

<sup>327</sup> Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Also Cyprus ratified the European Convention against Torture and Inhuman or Degrading Treatment or Punishment, together with Protocols No. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).

<sup>328</sup> The Convention against Discrimination in Education (ratified by Law 18/1970).

The only complaint ever submitted to the Equality Body regarding the situation of the Roma was filed on 31 January 2008. The resulting investigation by the Equality Body revealed that although the Cypriot government recognised the Roma as a minority within the meaning of the Framework Convention on National Minorities (CNM), the Ministry of Education does not consider the Roma as a separate ethnic group but as belonging to the Turkish Cypriot community, which is why no measures were taken to enhance their Roma identity and culture.<sup>329</sup> Measures for the integration of Romani children are taken in the field of education, albeit targeting all 'Turkish-speaking' pupils and not the Roma specifically; there is nothing in the school curriculum on Roma culture or history. These measures consist mainly of Turkish language support teaching, free school uniforms, lunch at school, transport to school etc., in order to encourage school attendance.

Most of the Roma pupils attending public schools today are concentrated in one school, the 18th Primary School in Limassol. According to one study, Greek-Cypriot parents try move their children to other schools when they there is a high number of migrant or non-Greek-Cypriot pupils in their school;<sup>330</sup> if they cannot succeed to move them away, they instruct them to avoid contact with Roma children.<sup>331</sup> Many Greek-Cypriot children do in fact demonstrate racial prejudice towards the Roma children, whilst educationalists believe that they are incapable of integrating.<sup>332</sup> Research with Greek-Cypriot teachers illustrates that many teachers would openly admit being racist.<sup>333</sup> Another study<sup>334</sup> which reflects on the experiences gained from a training project, report that Roma children tend to be marginalized in school, despite official policies of non-segregation and the introduction of supportive measures.

The Third ECRI Report on Cyprus noted that '...the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of the Roma by the local communities.'<sup>335</sup> In 2014, ECRI issued an interim report on Cyprus<sup>336</sup> in an effort to follow up on the progress made as regards the implementation of its recommendations under its Fourth Report on Cyprus. The interim report focuses on a specific Cypriot public school, the 18th Primary School in Limassol, whose student population is largely made up of Turkish speakers, many of Roma origin. Back in 2011, ECRI had suggested that the authorities assign Turkish-speaking teachers to each class and Turkish-speaking classroom assistants to work alongside and

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<sup>329</sup> Report ref. AKR 18/2008 dated 27 September 2011.

<sup>330</sup> Their research is based on an empirical study of one primary school in Limassol with a high concentration of non-indigenous pupils. To quote the research: "the head teacher reported that the observed school used to be: a high profile school and everyone in the area considered it to have high standards where children could acquire the necessary academic skills. More recently, due to the increasing number of registrations from non-indigenous pupils, many Greek Cypriot parents have stopped sending their children to this school." See C. Panayiotopoulos and M. Nicolaidou (2007), "At a crossroads of civilizations: multicultural educational provision in Cyprus through the lens of a case study", *European Journal of Intercultural studies*, Volume 18 , Issue 1, March 2007, pages p. 69.

<sup>331</sup> N. Trimikliniotis (2004) 'Institutional Discrimination in Cyprus', Work Package 4, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005.

<sup>332</sup> N. Trimikliniotis (2003) 'Discriminated Voices - Cyprus Report', Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005; S. Spyrou. (2004) *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS (February-March 2004); A. Keskenidou. and M. Tsakiri (2003) *Η ετερότητα του πολιτισμικού κεφαλαίου των Αθιγγάνων ως πλαίσιο συμμετοχής στην εκπαίδευση*, University of Cyprus.

<sup>333</sup> Zembylas, M. (2010) "Greek-Cypriot teachers' constructions of Turkish-speaking children's identities: critical race theory and education in a conflict-ridden society", *Ethnic and Racial Studies*.

<sup>334</sup> See Loizos Symeou, Yiasemina Karagiorgi, Eleni Roussounidou and Chrystalla Kaloyirou Symeou, L., Karagiorgi, Y., Roussounidou, E., & Kaloyirou, C. (2009) "Roma and their education in Cyprus: reflections on INSETRom teacher training for Roma inclusion", *Intercultural Education*, 20(6), 511-521. Available at <http://www.tandfonline.com/doi/abs/10.1080/14675980903448551>.

<sup>335</sup> ECRI (2011) *Report on Cyprus*, published on 31 May 2011, Fourth Monitoring Cycle. Available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf).

<sup>336</sup> ECRI (2014) *Conclusions on the implementation of the recommendations in respect of Cyprus subject to interim follow-up*, adopted on 19 March 2014. Available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-IFU-IV-2014-021-ENG.pdf>.

assist the Greek-speaking teachers; employ specialist Greek language teachers; and open the school in the afternoons as an 'all day school' to permit children who need special support to benefit from extra classes. In response, the authorities informed ECRI that additional support to pupils had been provided and that the number of pupils per class is small (between eight and 19) while the average class size of schools is 25, allowing teachers to cater for the individual needs of pupils more effectively. The system of the optional all-day school was established, offering afternoon tutoring including support language classes, mathematics and computers, as well as a wide range of recreational activities such as physical education, cooking and housekeeping, music, art, theatre, foreign languages and journalism. Teachers receive mandatory in-service training, including teaching Greek as a second language and crisis management. Breakfast, lunch and a snack are provided free of charge to pupils whose families qualify under the new income-related criteria. A physical education teacher was employed by the school to offer classes to Roma pupils four times a week and books for teaching Turkish were acquired. In addition, the school continues to employ an interpreter to help staff communicate better with the parents of Turkish Cypriot pupils. ECRI noted that, in spite of the improvements, there continue to be inadequacies in the teaching staff employed at the school, as there are shortages in Turkish-speaking teachers and assistants and in specialist Greek language teachers.

The 2015 report on Cyprus by the Advisory Committee on the Framework Convention on National Minorities expressed concern over a number of issues regarding the situation of the Roma in education including:<sup>337</sup>

- The absence of structured dialogue with Roma representatives and the absence of any comprehensive efforts on behalf of the authorities to systematically obtain more information on their specific background and the particular problems facing Roma children in education. The report refers to a deterioration in the general climate of solidarity and respect for diversity in society as a result of the economic crisis, adding that the efforts by the authorities to promote multi-cultural education remain insufficient.
- Reports of incidents of racial prejudice against Roma in schools and of Greek parents removing their children from certain schools perceived as having 'too many' non-Greek Cypriot students.
- Equal access to education and equal opportunities in the education system remain elusive for Roma children, as several of the challenges documented in older studies, such as irregular school attendance, early drop-outs, overall low academic achievement and small numbers of students continuing to secondary school, remained.
- No efforts have been made to include information on the Roma and their distinct cultural heritage and history in Cyprus in the school curriculum and education materials.

A report published by the Commissioner for the Rights of the Child at the end of 2013 also recorded a rather problematic situation at the school.<sup>338</sup> The report, issued in response to a complaint by the head of the school on behalf of the staff, criticised the head master and school staff for the tone of their letter of complaint which was described as 'insulting for the Roma children, if not racist'. In particular, the Commissioner criticised the headmaster's allegations that Roma children have no inclination towards learning, they

<sup>337</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

<sup>338</sup> *Cyprus, Commissioner for the Rights of the Child, Report on the conditions of education at the 18<sup>th</sup> Primary School Ayios Antonios of Limassol* (Έκθεση της Επιτροπής Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο 18<sup>ο</sup> Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17. 07.02.79, 28 December 2013, File. Available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/A7E3A4A2C357B76CC2257C9F003E6E6D?OpenDocument>.

constantly create problems due to their antisocial behaviour, their parents have no interest in the education of their children and as a result all the other children are deprived of their basic education. The Commissioner's investigation identified the following problems at the school:

- The school staff is not adequately trained on managing or teaching in multicultural settings.
- The Roma children are not recognised as Roma or as Muslim but merely as Turkish-Cypriots. When they are first enrolled to the school, they have no knowledge of Greek.
- Due to language barriers, the school staff cannot communicate with the parents of the Roma children. The school authorities blame the parents for constantly moving from place to place, resulting in their children having a fragmented school experience. The parents are seen by the school authorities as failing to support their children to take the school seriously.
- The school does not offer adequate teaching support hours for the pupils.
- The teachers blame the housing and living conditions of the Roma pupils and issues of domestic violence for the Roma children's problems at school.
- The support offered by the Welfare Services and by the Educational Psychology Service of the Ministry of Education is inadequate.
- The Roma children's mother tongue is a mixture between Turkish and the local Roma dialect, Kurbertcha, which is not recognised as a language of instruction.
- The continuous reduction of the school's Greek Cypriot population demonstrates that the school has failed to convince of its potential as a model multicultural setting.

A more recent fieldwork research on the situation of the Roma residing in the abandoned Turkish settlement of Limassol, using a sample of 52% of the Roma population in the particular area, i.e. 31 families (156 persons), found that out of the 87 children in the sample, only five were enrolled in kindergarten and only 30 children were attending elementary school; the rest of the children fell out of the educational system.<sup>339</sup> The study recorded additional issues indirectly affecting the children's smooth school integration: the poor housing conditions, material deprivation, shortages of raw materials and basic household equipment, high tensions amongst the parents attributed to the large size of the families and overcrowding of the household, excessive responsibilities of the women and financial problems, the absence of social networks in the local community, depressive symptomatology in the parents and more.

An additional study published in 2016 by a NGO based on workshops with Roma children revealed that the terrible state of the Roma housing settlements pose serious health hazards whilst their remote locations have led to their isolation from their peers and marginalisation. The children interviewed reported frequent accidents in their homes as a result of falling pieces of walls and furniture, no insulation against heat or cold, no privacy or quietness to study, no water to shower and low aspirations in relation to their education and future employment prospects. The researchers also noted a certain undermining of the Roma cultural identity, as children described themselves as 'Turkish speaking Cypriots' rather than as Roma, essentially internalising official government discourse which deprives them of their Roma identity. The report identified the Roma children's lack of proficiency in Greek as the main problem hampering their school integration and was highly critical of the absence of any policies targeting the Roma, noting that the official policy to flag existing policies of inclusion targeting the entire population of Cyprus appears to be a cover for a lack of commitment towards Roma integration.<sup>340</sup>

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<sup>339</sup> Panagiotopoulos C. & Zachariades A. (2016) *Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice*, European Journal of Social Work, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at [www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773](http://www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773).

<sup>340</sup> Hope for Children CRC Policy Centre (2016) Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation, produced in the framework of the EU funded project "PEER:

No figures are available as regards the number of Roma children in education, because the Roma are seen by the authorities as inseparable from the Turkish Cypriots and no separate data are maintained for them. The government's educational statistics show data for each community, religious group and nationality, however the number of Roma children are not shown separately as they are deemed to form part of the Turkish Cypriot community.<sup>341</sup> In September 2012, 18th Primary School in Limassol enrolled 73 children, of whom 40 were 'Turkish Cypriots', 23 were Greek Cypriots and the rest were from other countries.<sup>342</sup>

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)**

In Cyprus, national legislation prohibits discrimination in the following areas: access to and supply of goods and services as formulated in the Racial Equality Directive.<sup>343</sup> In addition, the law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, provides that any person who supplies goods and services by way of profession and refuses such goods or services to any person solely due to his/her racial or ethnic origin or religion is guilty of a criminal offence.<sup>344</sup>

#### **3.2.9.1 Distinction between goods and services available publicly or privately**

In Cyprus, national laws do not distinguish between goods and services available to the public and those only available privately and it can safely be assumed that they apply to both.

#### *Disability*

National legislation also provides for equality of treatment of persons with disabilities with the rest of the citizens of the Republic in the provision of goods, facilities or services; differential treatment amounts to discrimination when the reason for such treatment is related to the person's disability and it is not 'justified'.<sup>345</sup> No duty is cast on manufacturers to manufacture products which are easily useable by persons with disabilities although there is an obligation on service providers to make adaptations and to offer facilities in order to make premises or services accessible to persons with disabilities.<sup>346</sup> The disability law provides that public transport must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs. However, the application of this provision should be regulated with regulations issued by the Council of Ministers; no such regulations have as yet been issued and public transport remains to a large extent inaccessible.<sup>347</sup>

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Participation, Experiences and Empowerment for Roma Youth". Available at [www.peeryouth.eu/ctrl/Home/Cyprus/Policy\\_Paper\\_Cyprus\\_final\\_letter.pdf](http://www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf).

<sup>341</sup> Cyprus, Statistical Service of the Republic, Statistics of Education 2013-2014, p. 83, available at [www.mof.gov.cy/mof/cystat/statistics.nsf/All/204AA86C4060D499C22577E4002CA3E3/\\$file/EDUCATION-13\\_14-021216.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/204AA86C4060D499C22577E4002CA3E3/$file/EDUCATION-13_14-021216.pdf?OpenElement).

<sup>342</sup> Cyprus, Commissioner for the Rights of the Child, Report on the conditions of education at the 18<sup>th</sup> Primary School Ayios Antonios of Limassol (Έκθεση της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο 18<sup>ο</sup> Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17.07.02.79, 28 December 2013, File. Available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/A7E3A4A2C357B76CC2257C9F003E6E6D?Opendocument>.

<sup>343</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004. Article 4(1)(e). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>344</sup> Cyprus, Law Ratifying the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, Law No. 11/1992, Article 2A(4).

<sup>345</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 6(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf), Article 6(1).

<sup>346</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 6(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf), Article 6(2)(d).

<sup>347</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 7(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).



The disability law also requires that the competent governmental departments must, within a short period of time, proceed to the installation of a suitable system of telephone services which assists persons with a hearing disadvantage or with any other disability of the senses or other speech disability to communicate through the telephone system in a manner proportionate to those persons without such disadvantages. Under the same provision, there must be public means of telecommunication accessible to persons with disabilities, including persons using wheelchairs; and television stations must make arrangements so that at certain hours sign language is available for news broadcasts.<sup>348</sup>

The law which sets out the mandate of the Equality Body prohibits direct and indirect discrimination on all five grounds foreseen by the directives plus community, language and colour, in all fields covered by the directives including the supply of goods and services.<sup>349</sup>

### **3.2.10 Housing (Article 3(1)(h) Directive 2000/43)**

In Cyprus, national legislation prohibits discrimination in the following areas: housing as formulated in the Racial Equality Directive.

Discrimination on the ground of race and ethnic origin in housing is prohibited by article 4(1)(e) of Law 59(I)/2004 (transposing the Racial Equality Directive). The relevant provision refers to 'access to goods and services available to the public and the supply thereof, including housing' as one of the fields of application. Housing discrimination forms part of the mandate of the Equality Body on all five grounds foreseen by the directives plus community, language and colour.<sup>350</sup> Also, the wide ambit of the general prohibition of discrimination found in article 28 of the Constitution may be used to pursue a housing discrimination claim on 'any ground whatsoever'.

Although it is generally known that the quality of the accommodation units rented to migrants is low and the rents charged are disproportionately high, there are no policies or legislation in place to address this problem. There is no case law regarding housing discrimination against migrants either which, as in all other fields, may be attributed again to the lack of legal aid, low awareness and the length of time needed for a case to be tried compared to the short term visas granted to migrants.

Access to one's own property is not deemed by the Courts to fall within the meaning of the term 'housing'. A 2007 Supreme Court decision on an application for referral to the CJEU of the question whether article 2 of the Racial Equality Directive could be interpreted in a manner permitting an EU member state to deny the lawful owner of a property the right to sell it was rejected in a decision where the judge stated that the issue at stake (access to property) was deemed to be outside the scope of the directive.<sup>351</sup>

Some restrictions apply in the field of acquisition of immovable property by non-Cypriots, under the Acquisition of Immovable Property (Aliens) Law, which require non-Cypriots to apply for permit before they can register immovable property in their name.

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<sup>348</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 8(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>349</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(g). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>350</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 6(2)(g). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>351</sup> Cyprus, Supreme Court, *Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou* through his attorney Charalambos Zoppos (*Perihan Mustafa Korkut ή Eyiam Perihan v. Απόστολου Γεωργίου δια του πληρεξουσίου αντιπροσώπου του Χαράλαμπου Ζόππου*) No. 303/2006, 17 December 2007. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2007/1-200712-303-06.htm&qstring=Perihan%20and%20Mustafa%20and%20Korkut](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2007/1-200712-303-06.htm&qstring=Perihan%20and%20Mustafa%20and%20Korkut).



### 3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Cyprus, there are patterns of housing segregation and discrimination against the Roma.

In 1999-2000, a large number of Roma migrated from the Turkish-Cypriot controlled north of Cyprus to the south. Once they crossed over, most of them settled in abandoned and derelict properties within old Turkish quarter of Limassol which the Turkish Cypriots were forced to vacate several decades ago. Many of these houses were without doors or windows, sanitary system, electricity or water supply. By 2003, approximately 360 Roma persons had settled in these properties, without any preceding repair works.

The arrival of the Roma families in the south 1990-2000 was greeted with fear and suspicion by the local communities as well as by the authorities.<sup>352</sup> The then Minister of Justice alleged in a public statement that the Roma families may well be 'Turkish spies'<sup>353</sup> whilst the then Minister of the Interior assured Greek-Cypriots that the authorities would 'ensure that they will be moved to an area that is far away from any place where there are people living.'<sup>354</sup> The Third ECRI Report on Cyprus notes that '...the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of Roma by the local communities.'<sup>355</sup> At the beginning of this influx, some Roma families were detained in Central Prison; this practice was discontinued when the Attorney General ruled it as illegal.<sup>356</sup>

In addition, two more settlements were created in two remote villages within the Paphos district (Makounda and Polis Chrysochoos) where the housing conditions are also appalling.<sup>357</sup> In her Annual Report for 2003 the Ombudsman<sup>358</sup> referred to an investigation carried out by her office into these settlements where most families were residing in temporary structures set up by themselves made of corrugated iron, wood, carton and plastic and without electricity and pointed out that for the purpose of harmonisation with the EU acquis the authorities must compile an action plan using a holistic approach for eliminating ethnic segregation and for respecting the diversity of the Roma.<sup>359</sup> A subsequent report released by the Ombudsman on 30.06.2003 expressed concerns about the failure of the authorities to implement policies decided in March 2000 that were designed to tackle homelessness and unemployment amongst the Roma.<sup>360</sup>

Over the past few years there has been an effort to regenerate the old Turkish Cypriot quarter of Limassol and some of the old houses were repaired. Some of the houses inhabited by the Roma have been maintained and repaired by the government, but the pace of repairs is slow and the condition of the houses remains substandard and often unfit for human habitation. Also a multi-purpose community centre was set up in the Turkish

<sup>352</sup> Hadjicosta, M. (2001) "Fears over gypsy influx", *The Cyprus Weekly*, 13-19 April 2001 available at *Dom Research Centre* <http://www.domresearchcenter.com/news/cyprus/index.html>.

<sup>353</sup> Remarks by former Justice Minister Koshis in Matthews, J. (2001) "More gypsies crossing from north as Koshis warns about spies", *The Cyprus Mail*, 03 April 2001, available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

<sup>354</sup> Editorial (2001) "Our reaction to Gypsies raises some awkward questions", in *The Cyprus Mail*, 10 April 2001, available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

<sup>355</sup> Third ECRI Report on Cyprus, adopted on 16 December 2005, Strasbourg 16 May 2006, Council of Europe, p. 25.

<sup>356</sup> Hadjicosta, M. (2001) "Gypsies released from remand cells", *The Cyprus Weekly*, 20-26 April 2001.

<sup>357</sup> Although the Interior Ministry claims that it has successfully carried out a housing plan for setting up pre-fabricated units in various communities in Limassol and Paphos with all necessary facilities, hepatitis incidents in 2005 and incidents of visceral leishmaniasis in 2006 in the Roma settlement of Makounda are attributed to poor hygienic conditions in the settlement: Nanos, C. (2005): "Se eksetaseis oloi oi athigganoi" in *Politis* (24 September 2005); Theodoulou, J. (2006): "Authorities play down rare disease in Gypsy camp" in *the Cyprus Mail* (26 May 2006).

<sup>358</sup> Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman, referring to the Ombudsman's activity for the particular year.

<sup>359</sup> Cyprus, Ombudsman Annual Report 2003, p.37.

<sup>360</sup> The Cyprus Ombudsman's report was quoted in: Amnesty International, Report on Cyprus covering events from January-December 2004.

quarter, which aimed at taking action towards integrating the Roma and promoting their participation within the local community. However, the building remains closed most of the time as no arrangements or budget were allocated for a full timer to be present. In recent years, reports of evictions of Roma families from the old Turkish quarter of Limassol, on the justification that intelligence reports have shown them to own properties in the Turkish-occupied north of the country have coincided with a general increase in property value in the region, as a result of the creation of an ambitious commercial project nearby.

Two studies published in 2016 relying on fieldwork data revealed severe problems in the quality of housing in the Roma settlements, both as regards their remote locations as well as their appalling state of repair, posing serious health hazards for the members of the overcrowded household.<sup>361</sup>

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<sup>361</sup> Hope for Children CRC Policy Centre (2016) Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation, produced in the framework of the EU funded project "PEER: Participation, Experiences and Empowerment for Roma Youth". Available at [www.peeryouth.eu/ctrl/Home/Cyprus/Policy\\_Paper\\_Cyprus\\_final\\_letter.pdf](http://www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf); Panagiotopoulos C. & Zachariades A. (2016) *Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice*, European Journal of Social Work, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at [www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773](http://www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773).

## 4 EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4)

In Cyprus, national legislation provides for an exception for genuine and determining occupational requirements.<sup>362</sup> In addition, the disability law excludes from its scope activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability lacks, constitute a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures'.<sup>363</sup>

### 4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Cyprus, national law provides for an exception for employers with an ethos based on religion or belief.<sup>364</sup>

Article 110 of the Cypriot Constitution provides for complete autonomy of the established religious organisations/churches of the two Cypriot communities, the Christian Orthodox church for the Greeks and the Vakf for the Muslim Turks. Under Article 110.1, the 'Autocephalous Greek-Orthodox Church of Cyprus' has 'the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right'. Similarly, under Article 110.2 'the institution of Vakf and the Principles and Laws of, and relating to, Vakfs are recognised by this constitution'. From the above article it is apparent that the extent of the autonomy and right to self-regulation granted to the Church under the Constitution is wider than that allowed by Article 7 of Law 58(I)/2004. Pursuant to a law which came into force in July 2006 amending the Constitution to the effect that EU directives and regulations prevail over national legislation (including the Constitution), it can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as the former transposes an EU directive. However, and in spite of the constitutional amendment, the Courts in Cyprus are not always willing to prioritise laws transposing the *acquis* over national legislation; there are several examples where in the case of conflict the Courts chose to apply the national law rather than the law transposing the *acquis*.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Cyprus, there are no specific provisions or case law on conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

However, the autonomy of Greek orthodox religious bodies to manage their affairs may raise issues of compatibility with the directives. Although there is no relevant court decision or Equality body statement, one may safely assume that church organisations: are unlikely to employ non-Orthodox Christians in key positions since they cannot become priests in the orthodox church of Cyprus; will not hire women since they are not allowed to become priests; and will not hire homosexuals since homosexuality continues to be considered by

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<sup>362</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>363</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3A(1)(b). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>364</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 7. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

the church as a sin. In practice, organisations with an ethos based on religion, such as the Bishopricks, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the fields owned by the Bishopricks.<sup>365</sup> In 2016 a NGO supporting the rights of LGBTI persons officially requested the Attorney General to prosecute the Archbishop of the Greek Orthodox Church for homophobic hate speech. The Attorney General not only failed to prosecute the Archbishop but also ignored the NGO's request and offered no response or explanation, suggesting that church leaders are afforded an informal type of immunity from prosecution by the justice system.<sup>366</sup> The next step for the NGO will be to apply to the Equality Body following which they may consider a recourse to the ECtHR.

Under article 7 of Law N. 58(I)/2004, 'in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos'. This exception does not cover sexual orientation and the scope of this Law does not cover gender. Therefore, any difference in treatment at the workplace on the ground of gender or sexual orientation is unlawful. In the case of religion, difference in treatment is lawful if the test laid down in article 7 of Law 58(I)/2004 is satisfied. There have not been any cases in court or examined by the Equality Body as regards the clash between religion and sexual orientation, however the Orthodox Church repeatedly expressed its opposition to the civil cohabitation law, which were not taken on board by the legislators.

– Religious institutions affecting employment in state funded entities

In Cyprus, religious institutions are not officially permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State.

There is however public discourse on church intervention particularly at schools and criticisms against the church for trying to interfere with selection of candidates for a job placement and with the hiring process either by using its influence or by financing positions at the University of Cyprus in order to be filled by a person of their choice.

Given that by far the most powerful of religious institutions in Cyprus is the Greek-orthodox church, and the dominant community in Cyprus is the Greek Cypriot, whose members are mostly of Greek orthodox religion, the issue of conflict or contestation does not often arise; the intervention of the Greek orthodox church, where such intervention takes place, is rather intended to promote a particular person for a specific job for reasons which are not exclusively of a religious nature, given that the Cypriot church operates businesses of significant capital such as banks and hotels.

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Cyprus, national legislation provides an exception for the armed forces in relation to age or disability discrimination. The disability law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.<sup>367</sup> The same exception appears as a reservation by the Republic of Cyprus in the ratification of the U.N. Convention on the Rights of Persons with Disabilities, ratified in 2011.

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<sup>365</sup> Interview with Petros Lazarou, secretary of the Morphou Bishopricks, 16 January 2005.

<sup>366</sup> Accept LGBT-Cyprus, Letter to the Attorney General, 7 November 2016. Not available online.

<sup>367</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(1)(a). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

Law 58(I)/2004 transposing the Employment Equality Directive provides that the prohibition of discrimination on the ground of age shall not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and the duties of the occupation.<sup>368</sup>

A law which came into force in late 2009 introducing a quota system in favour of persons with disability in the wider public sector excludes from its scope those sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent', which are the army, the police, the fire department and the prisons.<sup>369</sup>

#### 4.4 Nationality discrimination (Article 3(2))

##### a) Discrimination on the ground of nationality

In Cyprus, the national law transposing the equality Directives includes the Directives' exceptions relating to difference of treatment based on nationality.<sup>370</sup>

However, nationality is explicitly mentioned as a protected ground in the law ratifying Protocol No. 12 to the ECHR, article 1 of which provides for freedom from discrimination on the grounds of, inter alia, national or social origin, association with a national minority, birth or other status.<sup>371</sup> A relevant provision is also to be found in the law setting up the Equality Body which bestows the Equality Body with the task of promoting equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin and of protecting individuals from discrimination by public as well as by private bodies on the grounds provided in the law, which include nationality.<sup>372</sup>

On 16 January 2007 a complaint was submitted to the Equality Body alleging that the law on the acquisition of citizenship by descent is discriminatory. The said law provides that children born to parents, one of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus even if the other parent holds or would have been entitled to Cypriot citizenship; that these children can become citizens only following a decision of the Council of Ministers.<sup>373</sup> This provision is intended to vest the Council of Ministers with the power to decide whether or not to grant nationality to children born to a Turkish Cypriot parent and a Turkish parent, where the latter is deemed to fall within the category of 'Turkish settlers'. The complaint alleged that the said provision was discriminatory contrary to the Constitution and international obligations of the Republic, as the rendering of a child's nationality conditional on the status of 'legality' or 'illegality' of the parents, or even worse of one of the two parents, not only violates the rights of the

<sup>368</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>369</sup> Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009. Article 2. Available at [www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009\\_1\\_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009](http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009).

<sup>370</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(3). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 4(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>371</sup> Cyprus, Law ratifying Protocol 12 to the European Convention on Human Rights N. 13(III)/2002, 19 April 2002.

<sup>372</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>373</sup> Art. 109 Population-data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.

child, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect. Due to the lack of transparency in these procedures, it is not possible to assess the impact or to monitor implementation of this law. The Equality Body's decision recognised that the examination of applications under the said provision are often unnecessarily delayed but given that the Council of Minister's decision is governmental policy, it cannot intervene any further. The allegation for discrimination was not examined, as the report accepted that children may legitimately be discriminated against when one of the two parents entered Cyprus under the status of the 'Turkish settler'.<sup>374</sup>

The third ECRI Report on Cyprus<sup>375</sup> notes that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate' noting that the relevant provisions of the nationality law are contrary to art. 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign, and contrary to the general prohibition of discrimination in article 1 of Protocol 12 to the ECHR.

In 2011 the Equality Body dealt with several complaints from Turkish Cypriots regarding the granting of Cypriot nationality to their children. Although this report makes extensive reference to ECRI's position on the matter, the Equality Body does not entirely adopt ECRI's position that discrimination exists. Instead, the Equality Body adopted the governmental position that the current policy is necessary in order to address Turkey's policy of demographic change, but urged the authorities to speed up the processing of applications and to promptly notify failed applicants in order to avoid claims for maladministration and discrimination.<sup>376</sup>

Over the years, the Equality Body has issued a number of decisions applying the two Equality Directives to Union citizens<sup>377</sup> Indeed, the interpretation given by the Equality Body to the Directives is that their scope does not exclude Union citizens.<sup>378</sup>

#### b) Relationship between nationality and 'race or ethnic origin'

In its decisions, the Equality Body has made use of its extended mandate treating nationality discrimination as prohibited by international laws as well as by the Racial Equality Directive; in some occasions nationality and ethnic origin has been used interchangeably, in the sense that whilst the case at stake was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives. The general treatment afforded to the issue by the Equality Body suggests that it endorses the position that the distinction between, race/ethnicity and nationality is an artificial one. Such was the case decided in 2016, where the Equality Body found that a law restricting access to the profession of assistant estate agents for persons who attended school in third country amounted to indirect discrimination in violation of the Racial Equality Directive.<sup>379</sup>

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<sup>374</sup> Cyprus, Anti-discrimination Authority, Report No. 10/2007, 24 March 2008.

<sup>375</sup> ECRI (2006), Third Report on Cyprus, Adopted on 16 December 2005, Strasbourg 16 May 2006.

<sup>376</sup> Cyprus, Anti-discrimination Authority, Report on the handling of applications for citizenship by Turkish Cypriots, 30 November 2011.

<sup>377</sup> Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority no. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949\\_2013\\_%CE%91%CE%9A%CE%99%2052\\_2013\\_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

<sup>378</sup> Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

<sup>379</sup> Cyprus, Equality Authority (2016) Report on 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, File number A.K.I.22/2016, 15 April 2016, available at [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).



The interaction between nationality and race/ethnic origin is nowhere more apparent than in the case of the Turkish Cypriots who, although Cypriot citizens under the Constitution, appear to have an 'inferior' form of citizenship due to their ethnicity, as illustrated by the restrictions they face in exercising their voting rights, in the grant of nationality for their children, in accessing their properties in the Republic controlled areas, etc.

An Equality Body decision has established that the exclusion of non-Cypriot EU citizens from a scheme of granting heating allowance amounted to discrimination on the basis of race or ethnic origin as well as of national origin under Protocol 12 to the ECHR.<sup>380</sup> Similarly, the exclusion of a Greek national from the list of persons eligible to be awarded honorary artistic pensions was found by the Equality Body to be discriminatory.<sup>381</sup> Also, the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin.<sup>382</sup> More recently, the Equality Body found that an employment scheme with a stringent Greek language requirement amounted to a breach of the Law on Combating Racial and Other Forms of Discrimination<sup>383</sup> in combination with the Law on Equal Treatment in Employment and Occupation,<sup>384</sup> as it resulted in discrimination against EU citizens and third country nationals.

In 2012 the Supreme Court also ruled on nationality discrimination but not from the perspective of the discriminated victim: the case concerned a Cypriot landlord who applied to the Rent Control Court in order to evict his Romanian tenant. The Rent Control Court denied having jurisdiction, because the scope of the Rent Control Act does not include non-Cypriots. The Supreme Court reversed this decision, stating that the reference in the law to Cypriots should be read as including all EU nationals.<sup>385</sup> The exclusion of third country nationals from the scope of the Rent Control Act has been the subject of an investigation from the Equality Body which recommended its revision<sup>386</sup> and has also been criticised by the UN Committee on Eliminating Racial Discrimination.<sup>387</sup>

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

##### **a) Benefits for married employees**

In Cyprus, there is no explicit provision rendering the granting of benefits only to married couples unlawful. A single person who was subjected to differential treatment on account of his or her marital status could invoke the general anti-discrimination provision of the Cypriot Constitution, whose scope covers 'any ground whatsoever' or the ground of 'family status', also protected by Article 28 of the Constitution. It is recalled that, under the

<sup>380</sup> Cyprus, Anti-discrimination Authority, Report Nos. AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

<sup>381</sup> Cyprus, Anti-discrimination Authority, Report No. A.K.P 73/2008, 30 December 2009.

<sup>382</sup> Cyprus, Anti-discrimination Authority, Report No. AKP 75/2005 and AKP 78/2005.

<sup>383</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>384</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>385</sup> Cyprus, Supreme Court, Diogenis Christophorou Ltd v. Giosa Victoria Mikaela (Διογένης Χριστοφόρου v. Giosa Victoria Mikaela), No. 161/2009, 05 June 2012.

<sup>386</sup> Report of the Anti-discrimination Authority regarding discrimination on the ground of ethnic origin in the Rent Control Law, dated 30 January 2012, Ref. AKR 226/2008, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/\\$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement).

<sup>387</sup> U.N. Committee on the Elimination of Racial Discrimination (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus*, adopted by the Committee at its eighty-third session (12-30 August 2013), published on 23 September 2013 (CERD/C/CYP/CO/17-22), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCYP%2fCO%2f17-22&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCYP%2fCO%2f17-22&Lang=en).

*Yiallourou* case<sup>388</sup> all constitutional rights apply per se both in the public and the private sector.

Apart from those sectors in which collective agreements are in force, all other benefits provided by employers must be considered as part of the employment contract, the conditions of which may legitimately vary from employee to employee. An employer who grants work-related benefits only to married employees could be liable for indirect discrimination on the ground of sexual orientation under the law transposing Directive 2000/78 given the fact that LGB persons could not marry. Since December 2015 same sex couples may enter into a 'civil union' and thus claim all rights available to married persons (minus the right to adopt children).<sup>389</sup> The new law on civil unions does not specifically cover work-related benefits, presumably because there is no legislation regulating these for opposite-sex couples either. However, the new law in combination with the principle established by the CJEU in *Maruko*,<sup>390</sup> which precludes legislation depriving the surviving partner from a survivor's benefit equivalent to that granted to a surviving spouse, may potentially be used in order to afford same sex partners who have registered their relationship in accordance with the new law on civil unions, the same benefits as regards work related benefits with those accruing to married couples.

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) Regulations of 1987 to 1994 sets the family condition of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base. A decision of the Equality Body in 2004 regarding this provision found that the differential treatment of unmarried employees vis-à-vis married employees without children amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation, in other words it amounts to discrimination on the ground of belief and/or sexual orientation. The Equality Body asked for this regulation to be revised<sup>391</sup> but until the date of writing no steps had been taken in that direction.

#### b) Benefits for employees with opposite-sex partners

In Cyprus, there is no law regulating the payment of benefits to employees in the private sector. Generally speaking, benefits are seen as forming part of an employment relationship that may legitimately differ from employee to employee. Under article 28 of the Constitution, a person subjected to differential treatment on any ground whatsoever may bring an action for discrimination and collect damages, subject to producing evidence that the differential treatment was the result of discriminating between two equals, as it is customary and legitimate for employees at different ranks of the hierarchy to receive different benefits. The recently adopted law on civil unions which enables same sex or opposite sex couples to register their relationship does not explicitly cover work-related benefits but it provides impetus for employers to treat these employees equally, compared to the previous regime of unregistered relationships. Against the backdrop of a rising unemployment, the issue of benefits to employees increasingly becomes an academic one as Cypriot economy sinks further and further into crisis and austerity becomes a harsh

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<sup>388</sup> Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (Τάκη Γιάλλουρου ν Ευγένιου Νικολάου) No. 9331, 08 May 2001. Available at [http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros\\_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF\\*%20and%20%E5%F5%E3%E5%ED\\*%20and%20%ED%E9%EA%EF%EB%E1%EF\\*](http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*).

<sup>389</sup> Cyprus, Law on Civil Marriages of 2015 (Ο περί Πολιτικής Συμβίωσης Νόμος του 2015), 184(I)/2015, 9 December 2015. Available at [http://cylaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cylaw.org/nomoi/arith/2015_1_184.pdf)

<sup>390</sup> CJEU, Case No. C-267/06, *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

<sup>391</sup> Cyprus, Equality Authority, Report No. A.K.I 11/2004.

reality for those still in employment, who see benefits and labour rights vanish into an uncertain future.

#### **4.6 Health and safety (Article 7(2) Directive 2000/78)**

In Cyprus, there are exceptions in relation to disability and health and safety.

The disability law excludes from its scope measures for the protection of 'health and the rights and freedoms of others'.<sup>392</sup> The same law further provides that the principle of equal treatment does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.<sup>393</sup>

Law 58(I)/2004 transposing the Employment Equality Directive also excludes from its scope measures provided by national legislation which are necessary for, inter alia, the 'protection of health and the rights and freedoms of others', unless the differential treatment is due to a person's racial or ethnic origin, in which case it presumably constitutes unlawful discrimination.<sup>394</sup>

No exceptions are allowed relating to religion or other grounds where issues of dress or personal appearance are concerned. It should be noted, however, that for the moment there are no such issues or debates in Cyprus, as there are hardly any ethnic communities using symbols of religion or culture. Up until recently, the vast majority of Muslims of Cyprus, which are basically the Turkish-Cypriots, the Roma, migrant workers and asylum seekers from the Middle East were either secular or simply not using symbols in their appearance, however there have been increasing NGO reports recently about members of Nicosia's growing Muslim population being unable to find work as a result of wearing their religious symbols (headscarf, dress etc.).<sup>395</sup>

#### **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

In Cyprus, national law provides an exception for direct discrimination on the ground of age.

##### **a) Justification of direct discrimination on the ground of age**

In Cyprus, it is possible under specified circumstances, to justify direct discrimination on the ground of age; national law contains exactly the same exception for age as found in Article 6 of the Employment Equality Directive.<sup>396</sup> No case has so far been presented before the Cypriot Courts or the Cypriot Equality Body raising the issues examined in Mangold or in Kucukdeveci, nor are there any national laws providing for the conclusion of fixed term

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<sup>392</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3A(2). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>393</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 3B(2). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>394</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(3)(b). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>395</sup> U.S. State Department (Bureau of Democracy, Human Rights, and Labor) Report, *Cyprus: Country Report on Human Rights Practices 2009*, 11 March 2010. Available at [www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm).

<sup>396</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

contracts once an employee reaches a certain age or for ignoring the period of employment completed by an employee before reaching 25 when calculating the notice period for dismissal.

A study of the relevant cases decided by the Court and by the Equality Body reveals significant differences between the treatments afforded to this issue by the two bodies. Court decisions in recent years have sought to justify differences in retirement ages for employees of different rank or different age, introducing a rather wide spectrum of exceptions premised upon a doctrine that 'unequal' situations must be treated differently and/or that discrimination must be unreasonable in order to be prohibited.<sup>397</sup> By contrast, the Equality Body appears better informed about the relevant provision in the law transposing Directive 2000/78 and about legal developments in the CJEU and will use the test provided in the law (objectively and reasonably justified by a legitimate aim and means must be appropriate and necessary); the Equality Body is more likely to find that there is prohibited age discrimination in differential treatment on the ground of age rather than the Courts.<sup>398</sup> A Supreme Court decision in late 2014 regarding a claim against reduced benefits for a public employee who chose to retire before reaching the age of 45 may mark a new departure for Court decisions in this area, as the Court found that the legal provision for reduced pension benefits for younger retiring employees was discriminatory and thus unlawful.<sup>399</sup> The same provision was also the subject of a CJEU ruling against Cyprus which found that it led to discrimination between different categories of employees.<sup>400</sup> At the time of writing, however, the law sanctioning the discriminatory treatment had not been amended.<sup>401</sup>

b) Permitted differences of treatment based on age

In Cyprus, national laws may permit differences of treatment based on age for activities within the material scope of Directive 2000/78.

Although the exception of Article 6(2) of the Employment Equality Directive is not specifically invoked in national legislation, there are provisions in the law regulating the payment of benefits under pension schemes in the public service, which depend at least partly on age. In particular, the Law Amending the Pensions Laws of 1997-2001 N. 69(I)2005 provides that the lump sum payable to public servants upon retirement is paid upon the attainment of certain ages in combination with the completion of a certain term of service. This provision was the subject of an application to the Supreme Court claiming that it ought to be annulled for non-compliance with the equality principle. This claim was rejected by the Court on the ground that retirement ages fall outside the scope of the Employment Equality Directive and that the lump sum which the claimant was contesting was related to the duration of his service and not to his contributions.<sup>402</sup> Entitlement to

<sup>397</sup> Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης) No. 1497/2008, 30 April 2012. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201204-1497-08.htm&qstring=1497%20w/1%202008](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=1497%20w/1%202008).

<sup>398</sup> Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May 2012; Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 06 April 2012.

<sup>399</sup> Cyprus, Supreme Court, *Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General* (Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%20and%2058(%E9)#).

<sup>400</sup> CJEU, C-515/14 (*European Commission v Cyprus*), available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

<sup>401</sup> Cyprus, Law on pensions (Ο περί συντάξεων νόμος) N. 97(I)/1997, article 27(1), available at [http://cylaw.org/nomoi/enop/ind/1997\\_1\\_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html](http://cylaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html).

<sup>402</sup> Cyprus, Supreme Court, *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic* (Μιχαλάκης Ραφτόπουλος v. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας) No. 1223/2007, 22 November 2011, Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007).

other benefits is linked to the term of service but also, in some cases, to the mandatory pensionable age, which is determined by this law. Article 49(2) of the Public Service Laws 1990-1996 provides that the element of age seniority may be taken into consideration as a criterion for selection of the candidate to be promoted, as a last resort where the candidates are otherwise deemed as equal. In 2015 the Supreme Court ruled that, all other things being equal, seniority is a legitimate criterion in deciding promotions in the public service.<sup>403</sup> The Court ruled in particular that taking seniority into account is not just lawful but it is in fact required by the public service law<sup>404</sup> which provides that where two employees are equally 'senior' because they have the same date of appointment, seniority is to be determined by taking into account the employees' age.

Besides this law, there is a long list of laws regulating the payment of benefits under pension schemes to employees in the various governmental and semi-governmental bodies, most of which follow the pattern of the aforesaid law, i.e. benefits become payable upon completion of a certain term of service and/or upon attainment of a certain age and/or upon attainment of pensionable age. A decision of the Equality Body in 2009 found that the provision of the Pensions Law providing for fewer benefits for employees under 45 wishing to take early retirement, compared with employees over 45, was in violation of the equality principle, which was later confirmed by the Supreme Court. The Equality Body, however, appears willing to accept the criterion of the number of years in service as a determining factor differentiating groups of employees, by recommending the adoption of a condition that pension benefits are payable upon completion of certain years of service irrespective of age, which is also indirectly related to age.<sup>405</sup>

- c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Cyprus, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2).<sup>406</sup>

In the public sector benefits under pension schemes depend at least partly on age. In the private sector, pension schemes are regulated either by collective agreements (where such exist in the particular sector) or by individual employment contracts, where the conditions of eligibility for benefits are impossible to monitor. It is possible that any collective or individual agreement which discriminates on other grounds will be held unlawful on the basis of article 4(c) of Law 58(I)/2004, transposing article 3.1(c) of the Employment Equality Directive on conditions of employment, subject of course to the exception in article 6(2) of the Directive (transposed by article 8(3) of Law 58(I)/2004).

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

In Cyprus, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for working persons with dependents in order to ensure their protection. Law 58(I)/2004 transposing the Employment Equality Directive provides that differential treatment in the form of special conditions for access to employment and vocational training, employment and occupation including dismissal and remuneration conditions, for young and old persons and for working persons with

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<sup>403</sup> Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015).

<sup>404</sup> Law on Public Service No. 1/1990, Article 49.

<sup>405</sup> Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 4 June 2009.

<sup>406</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(3). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).



dependents, so as to promote their vocational integration or ensure their protection, shall not constitute discrimination.<sup>407</sup>

However, no such measures or special conditions are actually provided by this law or by any other law or regulation. A 2010 decision of the Equality Body adopted the principle expounded by the CJEU in *Coleman*<sup>408</sup> that discrimination against a person with caring responsibilities towards a person with disability is discrimination prohibited by law.<sup>409</sup> This principle has also been recorded in the Code of Conduct for disability discrimination at the workplace issued by the Equality Body in September 2010 which has a binding effect.<sup>410</sup> A more recent Equality Body decision found that in order for the principle of discrimination by association to apply, there is no need for the carer to be the parent or the spouse of the person with disability; instead, one needs to look into the facts of each individual case and determine whether the person discriminated is in fact the primary carer of the person with disability.<sup>411</sup>

#### 4.7.3 Minimum and maximum age requirements

In Cyprus, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training. The law allows the fixing of minimum age limits, professional experience or seniority and the fixing of maximum limits for access to employment based on the training required for the particular position or the need for a reasonable period of employment prior to retirement, provided the measure is objectively justified by a legitimate aim and the means are necessary and legitimate.<sup>412</sup> In addition, the law provides an exception relating to the armed forces, where the principle of non-discrimination on the ground of age is stated to be inapplicable to the extent that the fixing of an age limit is justified by the nature and the duties of the work.<sup>413</sup> The law does not specify the age limit applicable in this case, which is determined by the service schemes of the armed forces.

In 2008 a Labour tribunal found that the fixing of an upper age limit in a job advertisement by a credit institution was unlawful but awarded the claimant only a small fraction of the compensation sought (€ 1,500 as opposed to her claim of € 555,754).<sup>414</sup> Upon appeal,<sup>415</sup> the Supreme Court confirmed the trial court's finding on this point, because the claimant

<sup>407</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(2)(a). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>408</sup> CJEU Case C-303/06, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

<sup>409</sup> Cyprus, Equality Authority, Report No. A.K.I. 82/2009, 25 June 2010.

<sup>410</sup> Cyprus, Equality Authority (2010), Code of Conduct for discrimination on the ground of disability in employment and occupation (Κώδικας Καλής Πρακτικής για τις Διακρίσεις λόγω Αναπηρίας στην Εργασία και την Απασχόληση). Available at: [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

<sup>411</sup> Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

<sup>412</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(2)(b) and (c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>413</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(4). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>414</sup> Cyprus, Labour Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), No. 258/05.

<sup>415</sup> Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).



would not have been hired anyway since the other candidates were better qualified, based on the principle expounded by the ECJ in the case of *Draehmpaehl*.<sup>416</sup> In 2012, the Equality Body found that the age limit of 55 for recruitment in the position of a cultural attaché at the House of Cyprus in Athens was unlawful.<sup>417</sup>

In 2016 the Court ruled that the maximum age of 65 for claiming benefit under a disability scheme was unlawful.<sup>418</sup> At the time of writing, the age restriction in this scheme was still in place.<sup>419</sup> By contrast, the Ministry of Health adopted the Equality Body's recommendation to remove the age limit of 65 for eligibility to state sponsorship for robotic prostatectomy.<sup>420</sup>

#### 4.7.4 Retirement

##### a) State pension age

In Cyprus, there is a state pension age, at which individuals must begin to collect their state pensions. Pensionable age for the purposes of the state pension is currently at 65,<sup>421</sup> although persons who meet a list of criteria as regards their social insurance contributions, may receive their state pension at 63.<sup>422</sup> These age limits are adjusted every five years on the basis of life expectancy at retirement age the first adjustment due to take place in 2018. The adjustment is an upward increase of six months every five years until 2023. Person may choose to defer the payment of his or her pension until he or she reaches the age of 68, in which case the amount of the pension is increased by 0,5% for every month of deferral.<sup>423</sup>

If an individual wishes to work longer, the pension cannot be deferred.

Contributions to the state social insurance scheme can only be paid until the person reaches 'pensionable age'.<sup>424</sup> In the private sector an individual can collect a pension and still work; this is a matter regulated by the individual employment contract. Public sector employees may not work past their retirement limit, so their pensionable age coincides with their retirement age.<sup>425</sup> Public servants may not work past their pensionable age. However, it is possible for public servants past their pensionable age to be appointed to another paid public post without losing their state pension. Although a law introduced in 2011 sought to reduce the state pension of public sector employees who take up another paid public position after retirement,<sup>426</sup> a Supreme Court decision in 2014 found this law

<sup>416</sup> Case C-180/95 [1997] ECR I-2195.

<sup>417</sup> Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May 2012.

<sup>418</sup> Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at [http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

<sup>419</sup> Cyprus, Department for the social integration of persons with disability, Severe kinetic disability grant, available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsidp10\\_gr/dsidp10\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsidp10_gr/dsidp10_gr?OpenDocument).

<sup>420</sup> Report of the Anti-discrimination Authority regarding the application of age criteria in sponsoring medical expenditure, File No. A.K.R. 93/2012, 5 June 2015, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/FA83B43532605E83C2257E7B001B6229/\\$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/FA83B43532605E83C2257E7B001B6229/$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement).

<sup>421</sup> Cyprus, Law on social insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, article 2, available at [http://cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_59/index.html](http://cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html).

<sup>422</sup> Cyprus, Law on social insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, article 35, available at [http://cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_59/index.html](http://cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html).

<sup>423</sup> Cyprus, Social Insurance Law (Ο περί κοινωνικών ασφαλίσεων νόμος) N.59(I)/2010, Article 39. Available at [www.cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_59/index.html](http://www.cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html).

<sup>424</sup> Cyprus, Law on social insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, articles 2 and 35, available at [http://cyllaw.org/nomoi/enop/non-ind/2010\\_1\\_59/index.html](http://cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html).

<sup>425</sup> Cyprus, Law on pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, article 9, available at [www.cyllaw.org/nomoi/enop/non-ind/1997\\_1\\_97/full.html](http://www.cyllaw.org/nomoi/enop/non-ind/1997_1_97/full.html).

<sup>426</sup> Cyprus, Law on pensions of state officials (General Principles) [Ο περί συντάξεων κρατικών αξιωματούχων (Γενικές Αρχές) Νόμος] N.88(I)/2011. Available at [http://www.cyllaw.org/nomoi/arith/2011\\_1\\_88.pdf](http://www.cyllaw.org/nomoi/arith/2011_1_88.pdf).

unconstitutional and restored the state pensions for this category of pensioners.<sup>427</sup> Legislators are reported to be in search of a solution to this issue since then, amidst public discontent over a legal vacuum that allows a small group of privileged individuals to receive a double pay from the public payroll at a time of economic crisis and austerity.

#### b) Occupational pension schemes

In Cyprus, there is no normal age when private sector employees can begin to receive payments from occupational pension schemes or from other employer-funded pension arrangements. The private sector has up until now generally considered the age of 65 as pensionable age, although this is not mandatory and deviations are not prohibited.

The content of private pension schemes is regulated by private agreements and no generalisations can be made as to the terms customarily used.

If an individual wish to work longer, payments from such occupational pension schemes can be deferred, if this is foreseen in the terms of the employee's pension scheme.

In the private sector, an individual can collect a pension and still work. However, upon reaching pensionable age, employees lose their right to compensation for unlawful dismissal.<sup>428</sup>

Different private pension schemes provide different terms as regards the deferral of payments where a person wishes to work beyond pensionable age. There is no law regulating these schemes and no generalisations can be made as regards common practice.

#### c) State imposed mandatory retirement ages

In Cyprus, there is a mandatory retirement age set by law only for public sector employees. Different mandatory retirement ages apply for different employees in the public sector, depending on the profession, the rank and their year of joining the service.<sup>429</sup>

A number of Supreme Court decisions since 2007<sup>430</sup> found that the different retirement age for employees of different ages does not amount to age discrimination.

In the public sector, retirement ages are mandatory and employees may not work past their retirement limit.<sup>431</sup> Late retirement is prohibited by law for public employees, semi-governmental organisations employees and employees of public education institutions.

#### d) Retirement ages imposed by employers

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<sup>427</sup> Cyprus, Supreme Court, Maria Koutselini-Ioannidou et al v. The Republic of Cyprus, Ref. 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12, 587/12, 7 October 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2014/3-201410-740-11etc\\_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2014/3-201410-740-11etc_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED*).

<sup>428</sup> Cyprus, Law on termination of employment N. 24/1967, article 4, available at [www.cylaw.org/nomoi/enop/ind/1967\\_1\\_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html](http://www.cylaw.org/nomoi/enop/ind/1967_1_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html).

<sup>429</sup> Cyprus, Law on Pensions (Ο περί Συντάξεως Νόμος) N. 97(I)/1997 as amended, Article 12. Available at [www.cylaw.org/nomoi/enop/non-ind/1997\\_1\\_97/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html).

<sup>430</sup> Cyprus, Supreme Court, Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus (Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας) (joined cases) Case Nos 1795/2006 and 1705/2006, 01 June 2007. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006).

<sup>431</sup> Cyprus, Law on pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, article 9, available at [www.cylaw.org/nomoi/enop/non-ind/1997\\_1\\_97/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html).

In Cyprus, national law does not prohibit the fixing of retirement ages (or ages at which the termination of an employment contract is possible) in individual employment contracts or in collective agreements.

There is no statutory retirement age in Cyprus for employees in the private sector; employer and employee are free to agree on a retirement age of their choice. Up until now, the majority of private sector workers retired on their 65<sup>th</sup> year, which is the pensionable age prescribed by the Social Insurance Law.<sup>432</sup>

e) Employment rights applicable to all workers irrespective of age

The Law on Termination of Employment provides that the right to protection from unfair dismissal is lost upon reaching pensionable age.<sup>433</sup> This effectively means that the employer is free to dismiss an employee or force him/her to retire at any time after he/she has reached pensionable age without having to pay any compensation. In 2007, the Equality Body found the said provision discriminatory and referred it to the Attorney General for revision. However, no measures were taken and the said provision continues to remain in force. Under the current conditions of deep recession and rising youth unemployment, it is unlikely that this provision will be revised now.

f) Compliance of national law with CJEU case law

In Cyprus, national legislation is not in line with the CJEU case law on age regarding compulsory retirement.

Regarding the ruling in *Wolf*:<sup>434</sup>

National legislation does not preclude legislative or other instruments which set a maximum limit for recruitment. Article 8(1) of Law 58(I)/2004 (transposing Directive 2000/78) sets out the general exception of article 6(1) of the directive, that differential treatment is permissible where the aim is legitimate and the means appropriate and necessary. Article 8(2) of Law 58(I)/2004 sets out the examples of the directive as to what may constitute permissible differential treatment. Although the list is not intended to be exhaustive, the focus is clearly on labour market policy and not on the need to have full physical capacity to perform the work. Besides, the Cypriot legislator chose to specify in the law only the armed forces as the profession where the exception applies. Thus, although it is possible to justify an age limit for recruitment for goals which relate to physical capacity and readiness rather than labour market policies, the appropriateness and necessity of the measure does not follow automatically, as it does in the case of labour market policies.

In Cyprus, both the police force and the fire department have a maximum entry age of 28, unless the applicant is a university degree holder in which case the age limit is raised to 40. These particular provisions have not been tested by the Equality Body or the Courts. However, the Equality Body has rejected the age limit of 40 as a criterion for a promotion position in the police force, on the ground that the means to achieve the legitimate aim of physical capacity and readiness of the police force were neither appropriate nor necessary.<sup>435</sup> The Equality Body has also in the past repeatedly rejected the stereotype that younger persons are by definition healthier, fit and capable. Therefore, if these age

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<sup>432</sup> Cyprus, Social Insurance Law (*Ο περί κοινωνικών ασφαλίσεων νόμος*) N.59(I)/2010, Article 2(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2010\\_1\\_59/index.html](http://www.cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html).

<sup>433</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Article 4. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>434</sup> CJEU, C-229/08 Colin Wolf v Stadt Frankfurt am Main, available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-229/08>.

<sup>435</sup> Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 6 April 2012.

limits are subjected to the Equality Body's scrutiny, it is possible that they may be deemed not to withstand the test of appropriateness and necessity.

Regarding the ruling in *Andersen*:<sup>436</sup>

There are no provisions in Cypriot law for a severance pay for employees who have worked for the same employer for many years. Employees who are unfairly dismissed are entitled to a compensation; in the private sector, this right is lost when the employee reaches retirement age (65 years). Employees who are lawfully dismissed are not entitled to any pay; this is up to the discretion of the employer and in practice is used only for highly placed managerial staff (known as 'the golden handshake'). In the public sector, employees may be dismissed either for misconduct (in which case they receive no severance pay) or because of redundancy (in which case the employee is entitled to a redundancy pay from the government calculated by the number of years in service).

So although it is hard to envisage a situation like that of *Andersen* arising in Cyprus, it may be presumed that at least in the private sector the right to a severance pay may be lost upon reaching retirement age, in the same way that the right to compensation for unfair dismissal is lost. The Equality Body has already found that this provision is contrary to the directive and has asked for its revision but the provision remains in force more than a decade after this recommendation.

Regarding the ruling in *Mangold*:<sup>437</sup>

There are no national laws or practices for the conclusion of fixed term contracts once an employee reaches a certain age.

Regarding the ruling in *Kücüdevici*:

There are no national laws or practices for ignoring the period of employment completed by an employee before reaching 25 when calculating the notice period for dismissal.

Regarding the ruling in *Palacios de la Villa*:<sup>438</sup>

Compulsory retirement age is common in Cyprus both in collective agreements as well as in legislation regulating the retirement age in the public service and the wider public service. These measures do not explicitly state what the legitimate aim is that is being served by the retirement age. In those cases, where the Court was called upon to adjudicate on compulsory retirement age, the ruling was always that retirement age in general fell under the exceptions foreseen in the directive and was not subject to the Court's scrutiny.

There is no law in Cyprus to regulate collective agreements; these are based on the principle of free bargaining.

Regarding the ruling in *The Incorporated Trustees of the National Council on Ageing*:<sup>439</sup>

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<sup>436</sup> CJEU, Case No. C-499/08, *Ingeniørforeningen i Danmark, acting on behalf of Ole Andersen v Region Syddanmark*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78727&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=147363>.

<sup>437</sup> CJEU Case No. C-144/04, *Werner Mangold v Rüdiger Helm*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=56134&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=147683>.

<sup>438</sup> CJEU Case No. C-411/05 *Félix Palacios de la Villa v Cortefiel Servicios SA*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70359&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=148165>.

<sup>439</sup> CJEU Case C-388/07, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*, available at

As stated above, it is common for measures to provide for compulsory retirement without specifying the aim that is served. Clearly, in many of these cases, one may read that the (admittedly legitimate) aim of meeting social policy objectives is present, which can justify derogation from the non-discrimination principle. In other cases, the aim can, in addition to the social policy objectives, be the physical fitness of the service, which is not mentioned in the non-exhaustive list provided in the directive. However, the ruling in this case juxtaposed the social policy objective, which is deemed legitimate, with the personal aims of employers, which is not legitimate. In this context, the physical fitness of a service (such as the police force or the fire service) will fall in the former category, i.e. that of legitimate aims.

Regarding the ruling in *Rosenbladt*:<sup>440</sup>

Collective agreements and legislative instruments can provide for compulsory retirement age which may not be expressly, directly or necessarily attributed to labour market policies; instead they may relate more to the physical capacity of the employee to carry out the tasks assigned to him/her. This ruling seems inclined to accept only the former as a legitimate aim, which would render the practice in Cyprus incompatible with this decision.

On 16 February 2013 the Ministerial Cabinet approved a bill granting the right to the Minister of Labour to extend sectoral collective agreements and render them obligatory for the whole sector. The right to extend a collective agreement may be requested from the workers or the employers' unions or from the Ministry of Labour and the request will be examined by a Tripartite Committee. The bill endorses the claim of the workers' unions who believe that this regulation will help eliminate competition between workers and enterprises and combat the phenomenon of replacing workers covered by collective agreements with vulnerable workers (mainly from other EU countries) who are forced by their employers to work with inferior working conditions. There is however no provision in the bill as regards protection from discrimination. The Ministerial Cabinet approved the bill just days before the presidential elections which replaced the previous left-wing government with a new right-wing government, whose cabinet members mainly originate from the employers' unions. A few weeks after the adoption of this bill, the collapse of the banking system and the haircut of bank deposits brought about the downfall of the economy; therefore, although this bill became law it was never implemented in practice.

Regarding the ruling in *Georgiev*:<sup>441</sup>

There are no measures in Cyprus that allow or provide for fixed term contracts to be concluded after a certain age. Such a measure has perhaps not been considered as necessary because employers in the private sector are in any case free to dismiss employees who reach retirement age without having to compensate them. In spite of this measure having been found by the Equality Body as not complying with the directive, the relevant law has not been modified.

Regarding the ruling in *Fuchs*:<sup>442</sup>

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<http://curia.europa.eu/juris/document/document.jsf?text=&docid=77505&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148887>.

<sup>440</sup> CJEU Case C-45/09, Gisela Rosenbladt v Oellerking Gebäudereinigungsges. mbH, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78726&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149095>.

<sup>441</sup> CJEU Joined Cases C-250/09 and C-268/09, Vasil Ivanov Georgiev v Tehnicheski universitet - Sofia, filial Plovdiv, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=83844&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=149384>.

<sup>442</sup> CJEU, Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10) v Land Hessen, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=107924&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149632>.

In Cyprus, the retirement of public prosecutors is governed by the Pensions Law applicable to all civil servants, the provisions of which are in fact similar to the Law on the civil service of the *Land* Hessen in the *Fuchs* case. The new law which came into force on 01.01.2013<sup>443</sup> as part of the austerity package provides for extended compulsory retirement age for all civil servants. In article 3(1) the law states that it aims at the containment of public expenditure. Although under other circumstances this would be assessed as beneficial only for the employer and not in the public interest, at times of deep recession as currently experienced in Cyprus, this must be seen as a legitimate aim. No other aims or considerations are mentioned in the law and in fact the extension of the retirement age can hardly be seen as conducive to encouraging entry of young persons in the labour market.

Regarding the ruling in *Prigge*:<sup>444</sup>

Labour traditions in Cyprus regard an earlier retirement age as an advantage, hence the negative reaction from the trade unions when the government proposed extending the retirement age in order to contain public spending. Having said that, it is possible in Cyprus to opt out of a collective agreement and enter a private agreement with the employer, but that is up to the employer to accept or not. In the event that there is a conflict between a national law and a collective agreement, the former prevails. The law fixing the retirement ages of public servants is stated to apply notwithstanding any provision to the contrary anywhere else.<sup>445</sup>

#### 4.7.5 Redundancy

##### a) Age and seniority taken into account for redundancy selection

In Cyprus, national law does not permit or prohibit seniority or age to be taken into account in selecting workers for redundancy. The Termination of Employment Law which regulates redundancies does not provide for seniority or age to be taken into account in selecting workers for redundancy.

However, there is extensive case law evidencing that the principle of 'first in- last out' is accepted by the Courts and is used as a criterion for determining whether the right worker or workers have been selected for redundancy. In a significant number of cases, there is a collective agreement in force explicitly providing for this principle, which however must be used in conjunction with the ability and efficiency of a particular worker, in other words the provision in the collective agreement states that the person to be made redundant must be the last one appointed, having taken into account significant differences in the ability and efficiency of the work of the workers who are about to be dismissed.<sup>446</sup> All other things being equal, however, the Court will apply the principle of 'first in-last out'<sup>447</sup>

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<sup>443</sup> Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) [*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*] N.216(I)/2012. Available at [www.cylaw.org/nomoi/enop/non-ind/2012\\_1\\_216/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html).

<sup>444</sup> CJEU Case C-447/09, Reinhard Prigge and Others v Deutsche Lufthansa AG, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=109381&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149820>.

<sup>445</sup> Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) [*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*] N.216(I)/2012. Available at [www.cylaw.org/nomoi/enop/non-ind/2012\\_1\\_216/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html).

<sup>446</sup> Cyprus, Labour Court, Andreas Hadjidemetriou v. 1. Publishing company "To Vima" Ltd, 2. Redundancy Fund (*Ανδρέας Χατζηδημητρίου v. 1. Εκδοτικής Εταιρείας 'Το Βήμα', 2. Ταμείο Πλεονάζοντος Προσωπικού*), Case No. 107/85.

<sup>447</sup> Cyprus, Labour Court, Chrysostomos Stavrou v. Redundancy Fund (*Χρυσόστομος Σταύρου v. Ταμείο Πλεονάζοντος Προσωπικού*), Case No. 328/92.



although in other instances the Court has ruled that seniority alone cannot prevent the selection of a worker for redundancy.<sup>448</sup>

b) Age taken into account for redundancy compensation

In Cyprus, national law provides for compensation for redundancy. This is not directly affected by the age of the worker.

The general rule of law is that the following criteria are used to determine the amount of compensation payable in the case of redundancy: the number of years of service in the same employer;<sup>449</sup> whether the period of employment was before 01 January 1964, as no compensation is payable for work before that date;<sup>450</sup> whether employment was continuous;<sup>451</sup> and the amount of weekly salary earned.<sup>452</sup> It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Termination of Employment Law provides that redundancy does not generate the right to compensation if the worker so dismissed was of retirement age on the date of termination of his/her employment. Also, in accordance with Article 19(2) of the same law, when a worker's employment is terminated within twelve months prior to his/her retirement age, the amount of compensation payable is reduced by one twelfth for every completed month of age during this 12-month period.<sup>453</sup>

There are a number of cases decided by the Courts where age was used as a criterion in order to assess the worker's application for compensation from the redundancy fund where there was an offer by the employer for an alternative job position.

In the case of a 58-year old stock-keeper who was made redundant but was offered by the same employer an alternative position as a door-to-door salesman, the Courts held that due to his advanced age he was right to reject that offer and was therefore entitled to compensation.<sup>454</sup> Similarly, a middle aged woman who was offered by her employer an alternative position at another location, which involved thirty minutes' walk from her residence, was held by the Courts as reasonable in rejecting it and was therefore entitled to compensation.<sup>455</sup> By contrast, a young woman who rejected her employer's offer for an alternative position which involved thirty minutes' walk from her residence to the workplace was held to have acted unreasonably because of her young age and good health and her application for redundancy compensation was rejected.<sup>456</sup>

The same principle is applied where the employer introduces new or more advanced technology and requires the employee to accept training and/or adapt to the new methods: if the employee is young, his/her refusal to adapt to the new technology is held unreasonable and therefore redundancy compensation is not paid, whilst if the employee

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<sup>448</sup> Charalambous v. Famagusta General Agency Ltd (*Χαραλάμπους v. Famagusta General Agency Ltd*) Case No. 490/95.

<sup>449</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Section 1. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>450</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 2. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>451</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 3. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>452</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Article 4. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>453</sup> Cyprus, Law on termination of employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Article 19. Available at [www.cylaw.org/nomoi/enop/non-ind/1967\\_1\\_24/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html).

<sup>454</sup> Cyprus, Labour Court, Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund (*Ανδρέας Χαραλάμπους v. 1. ΖΑΚΟ Λτδ και 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No. 295/96.

<sup>455</sup> Cyprus, Labour Court, Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund (*Κυριακούλα Δημητρίου v. 1. Σώτου Λοιζίδη και 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No 634/96.

<sup>456</sup> Cyprus, Labour Court, Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund (*Φρόσια Χατζηγεωργίου v. 1. Lizonic Fashion Center, 2. Ταμείου Πλεονάζοντος Προσωπικού*) Case No. 1164/97.

is old, the Court will afford more understanding to his/her inability or refusal to adapt and redundancy compensation is paid.<sup>457</sup> It is presumed that the same rule would be applied by the Courts in the case of employees with disabilities, although no such case has been brought before the Courts so far, bearing in mind that in cases of employees with disabilities the employer is obliged to provide 'reasonable accommodation' to enable the employee to adapt to the new technology.

No cases have yet been presented before the Courts seeking to reverse the above rules on the basis of the anti-discrimination laws transposing the EU acquis and it is not clear whether or not these rules would withstand such a scrutiny.

#### **4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

In Cyprus, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Law 58(I)/2004 transposing roughly the Employment Equality Directive transposed the provision in Article 2(5) of the Directive verbatim.<sup>458</sup> The same provision is also to be found in the disability law.<sup>459</sup> There are no other provisions in Cypriot legislation relying on the exception of Article 2(5) of the Employment Equality Directive.

#### **4.9 Any other exceptions**

In Cyprus, other exceptions to the prohibition of discrimination (on any ground) provided in national law concern the positive action provisions which are discussed below.

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<sup>457</sup> Cyprus, Labour Court, Fotis Mikellides v. Redundancy Fund (Φώτης Μικελλίδης v. Ταμείου Πλεονάζοντος Προσωπικού) Case No 577/90.

<sup>458</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 5(3)(b). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>459</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 3A(2). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

## 5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

### a) Scope for positive action measures

In Cyprus, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

Positive action provisions exist in all three laws transposing the two anti-discrimination directives.<sup>460</sup> The provisions render differential treatment lawful under conditions but fall short from creating a mandatory duty to adopt positive action measures.

Law N.59(I)/2004, which more or less transposes the Racial Equality Directive, renders non-discriminatory and therefore lawful any differential treatment or the introduction or maintaining of special measures which, although indirectly appearing as discriminatory, aim at preventing or compensating for disadvantages linked to ethnic or racial origin.<sup>461</sup>

Along the same lines, Law 58(I)/2004, which more or less transposes the Employment Equality Directive, renders non-discriminatory and therefore lawful any preferential treatment in employment which, although prima facie discriminatory, aims at preventing or compensating for disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation.<sup>462</sup>

The disability law renders non-discriminatory and therefore lawful any preferential treatment in occupation which although appearing prima facie discriminatory, aims at preventing or compensating for disadvantages due to disability. The same law provides that the principle of non-discrimination does not prevent the maintenance or introduction of regulations for the protection of health and safety at work or any measures aimed at promoting the labour market integration of persons with disability.<sup>463</sup>

On 26 September 2002 the Supreme Court of Cyprus declared void and unconstitutional, a set of legal provisions granting priority to employment in the public sector to persons with disabilities<sup>464</sup> on a the basis of a quota system. The Court's reasoning was based on an interpretation of Article 28 of the Constitution that such priority discriminates against other candidates eligible for appointment in the public service. By the end of the following year, the Supreme Court had ruled that Law 87(I)/2004 (granting priority to war-disabled persons) was also unconstitutional, on the ground that it introduced a class of beneficiaries (the war-related disabled, etc.) that is favoured against others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution.<sup>465</sup> A

<sup>460</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>461</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 6. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>462</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 9. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>463</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 3B(1) and 3B(2). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>464</sup> Cyprus, Law amending the Public Education Services Laws of 1969 (*Νόμος τροποποιών τους Περί Δημόσιας Εκπαιδευτικής Υπηρεσίας Νόμους του 1969*) N.245/1987. Available at [http://www.cylaw.org/nomoi/enop/non-ind/1969\\_1\\_10/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1969_1_10/full.html).

<sup>465</sup> Cyprus, Supreme Court, Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service (*Χαράλαμπος Κιττής κ.α. v. Επιτροπής Δημόσιας Υπηρεσίας*) No. 56/06, 8 December 2006. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2006/3-200612-56-06artemides.htm&qstring=56\\_w/1\\_06](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2006/3-200612-56-06artemides.htm&qstring=56_w/1_06).

law granting priority in employment to blind telephonists<sup>466</sup> had strangely survived the wave of declaring all positive measures unconstitutional; however in 2009 the Equality Body found this law to be discriminating against persons with other disabilities and has asked for its revision.<sup>467</sup>

When the Employment Equality Directive was transposed, the government and the parliament were initially reluctant to introduce quotas in employment for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the CJEU decision in the *Kalanke* case.<sup>468</sup> In response to these concerns, in 2006 the Constitution was amended so as to give priority to EU regulations and directives over all domestic legislation (including the Constitution). However, several Court decisions which followed took little notice of this development and continued to apply the Constitution as if it was the supreme law of the country. The culture of positive action in order to offer opportunities to historically disadvantaged groups had hardly begun to develop, when Cyprus sank into an economic crisis and recruitments in the public service were frozen, as a measure to contain public expenditure.

In 2009 an Equality Body decision raised again the issue of the compatibility of positive action measures with the equality principle. The decision found that a law introducing quotas in employment for blind telephonists discriminates against persons with other disabilities and has asked for its revision. In February 2011 a new law came into force providing for an annual grant of € 3.675,48 to every family with a blind child. This measure has not as yet been contested as incompatible with the equality principle partly because different grants apply for different types of disability and partly, and more importantly, because grants especially as small as these are not seen as paramount as quotas in employment, a key issue for the disability movement.

A law which came into force towards the end of 2009 introduced quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent of the aggregate of employees per department.<sup>469</sup> Before it had the chance of being implemented, the austerity measures adopted in response to the economic crisis have led to the freezing of all new recruitments in the public sector.<sup>470</sup> The disability movement has however reported that disabled job applicants who applied for jobs invoking the provisions of this law were met with reluctance from public officials, who openly told them that the law is unconstitutional and will not remain in force for long.<sup>471</sup> In spite of these predictions, the quotas law was not declared unconstitutional and in 2015, the Court rejected an application from two non-disabled claimants who had sought to challenge the decision to appoint as teachers under the quotas law two persons with disability. The Court rejected the claimants' argument that the quotas were unconstitutional or that they violated the equality principle and disagreed with the claimants' submission that previous Supreme Court judgements had established that laws providing for quotas were unconstitutional.

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<sup>466</sup> Cyprus, Law Providing for the Hiring of Trained Blind Telephonists in the Public and the Educational Sector and in Public Bodies (Special Provisions) [*Ο περί Προσλήψεως Εκπαιδευμένων Τυφλών Τηλεφωνητών στη θέση Τηλεφωνητή στη Δημόσια και Εκπαιδευτική Υπηρεσία και στα Νομικά Πρόσωπα Δημοσίου Δικαίου (Ειδικά Διατάξεις) Νόμος*] N. 17/1988. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/1988\\_1\\_17/section-sca3de2252-cd55-40db-ac5c-f65d0c9d60e0.html&qstring=17%20w/1%201988](http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/1988_1_17/section-sca3de2252-cd55-40db-ac5c-f65d0c9d60e0.html&qstring=17%20w/1%201988).

<sup>467</sup> Cyprus, Equality Authority, Report No. 2/2009, dated 19 November 2009.

<sup>468</sup> Case No. C-450/93.

<sup>469</sup> Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] No. 146(I)/2009. Available at [www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009\\_1\\_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009](http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009).

<sup>470</sup> Law providing for the prohibition of fulfilment of vacant posts in the public and in the wider public sector and in public law legal entities [*Ο Περί της Απαγόρευσης Πλήρωσης Κενών Θέσεων στο Δημόσιο και στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*] N. 21(I)/2013, 18 April 2013. Available at [http://www.cylaw.org/nomoi/enop/non-ind/2013\\_1\\_21/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2013_1_21/full.html).

<sup>471</sup> Consultation with the President of KYSOA, the Cypriot Confederation of Disability Organisations.

The Court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. In such cases, the Court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but on the contrary to a practical implementation of, the equality principle; in this case the priority given to persons with disabilities was seen as falling within the boundaries of reasonable differentiation precisely for implementing equality.<sup>472</sup> This decision may be seen as landmark; following this precedent, the quotas in favour of persons with disabilities were not challenged again.

b) Main positive action measures in place on national level

*Broad social policy measures*

Below are a few measures implemented in 2016, which were foreseen under the action plan for the implementation of the CRPD. They are not directly or explicitly related to non-discrimination in the narrow sense foreseen by the Directives but are steps towards the realisation of rights foreseen under the CRPD, implementing equality in the broader sense.

1. Deinstitutionalisation of eight persons with very severe mental and intellectual disabilities

A project for the deinstitutionalisation of eight persons with very severe mental and intellectual disabilities from the state mental hospital was completed in 2016, as the persons concerned were transferred to suitably adapted homes of supported independent living, serviced by professionals of various disciplines.

The decision for the institutionalisation of these persons was made in 2010 and went through several stages until it received the final approval from the Council of Ministers in 2015.<sup>473</sup> The project involved the setting up of a suitably adapted residence for the accommodation of eight persons with very severe intellectual and psychosocial disabilities who were for many years confined at the state psychiatric hospital. The residence consists of two wings with six rooms each. Residents have their own bedroom each and there are two additional rooms for work therapy, physiotherapy, music therapy, three staff rooms, sitting area, kitchen, laundry room and a large fenced yard. An individual daily program was compiled for each resident, aiming at developing skills for self-care, through work therapy, music therapy, physiotherapy, gardening, outings and recreation.

In her capacity as monitoring mechanism for the implementation of the CRPD, the Ombudsman criticised the fact that the deinstitutionalization process took six whole years to complete and also expressed concern over the future of the remaining residents of institutionalized structures, for whom there is no specific policy or framework to guarantee their deinstitutionalization in the near future.<sup>474</sup>

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<sup>472</sup> Cyprus, Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos 1519/2010 και 1520/10, 3 September 2015, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015).

<sup>473</sup> Extract from the Minutes of the Meeting of the Council of Ministers: Revised action plan for the deinstitutionalisation of eight persons with very severe disabilities from Ward 14 of the Athalassa Hospital Απόσπασμα από τα Πρακτικά της Συνεδρίας του Υπουργικού Συμβουλίου Ημερομηνίας 29/7/2015 (Αναθεωρημένο Σχέδιο Δράσης για το Έργο Αποϊδρυματοποίησης 8 Ατόμων με πολύ Σοβαρές Αναπηρίες από το Θάλαμο 14 του Νοσοκομείου Αθαλάσσης) Decision No. 79.221, 29 July 2015. Available at [www.cm.gov.cy/cm/cm\\_2013/cm.nsf/B787DA0F9DC50AC5C2257EDC0021DD6C/\\$file/79.221.pdf](http://www.cm.gov.cy/cm/cm_2013/cm.nsf/B787DA0F9DC50AC5C2257EDC0021DD6C/$file/79.221.pdf).

<sup>474</sup> Note from the Independent Authority for the promotion of the rights of persons with disability regarding the issues to be discussed at the parliamentary committee for Labour, Welfare and Social Insurance in its meeting of 6 September 2016: (a) children and adults with autism and (b) persons with disability aged over 21 including persons with psychosocial disability (Υπόμνημα Ανεξάρτητης Αρχής Προώθησης Δικαιωμάτων Ατόμων με Αναπηρία αναφορικά με τα θέματα που θα απασχολήσουν την Κοινοβουλευτική Επιτροπή



## 2. Memorandum of cooperation

A memorandum of cooperation was concluded between the Department of Social Inclusion of Persons with Disabilities and the Ministry of Education for the coordination of actions to ensure the smooth transfer of students graduating from special education to supported employment, which started running in the school year 2016-2017. The measure was still fresh at the time of writing and no results were reported as yet.

## 3. Accessibility of government websites

The Department of Computer Services has secured the tool 'Total Validator Pro' for checking the accessibility of the content of websites and their compliance with accessibility guidelines and standards. The accessibility check of government websites is an ongoing process for the Department of Computer Services.

### *Government schemes for persons with disability*

Below are the schemes offered by the Department of Social Inclusion of Persons with Disabilities of the Ministry of Labour and Social Insurance for persons with disability. The schemes lay down general conditions of eligibility (e.g. severe kinetic disability) but are subject to approval from a special committee or a medical council, presided over by the Head of the Department for the Social Integration of Persons with Disabilities, that examines each individual application. The main schemes are:

- A scheme of financial assistance in order to acquire technical devices covering 80% of the cost of such equipment, up to a maximum amount which is fixed at different levels from time to time. In exceptional circumstances of persons with very low income, 100% of the cost of the equipment applied for will be covered. The scheme does not cover the cost of prosthetic or orthotic members.<sup>475</sup> This scheme includes a wide range of equipment including closed circuit televisions, special reading screens for persons with visual disability, elevators, assistive equipment for walking and for bathing, ramps, conversion of cars in order to be driven by persons with kinetic disabilities, computers, special alarm clocks, multi-equipment for persons with hearing disability and special communication systems for persons with intellectual disability. Eligibility to this scheme does not depend on the type or degree of the disability; an applicant may apply more than once during the year for different technical or other assistive equipment.<sup>476</sup>
- Equipment that is returned to the Department of Social Integration for Persons with Disabilities under the above scheme may be offered to other persons with disability on loan, subject to approval from a special committee that examines each case on an ad hoc basis. Persons who take up such equipment on loan are also responsible for their maintenance.<sup>477</sup>

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*Εργασίας, Πρόνοιας και Κοινωνικών Ασφαλίσεων στη συνεδρία της στις 6 Σεπτεμβρίου 2016: α) παιδιά και ενήλικες με αυτισμό και β) άτομα με αναπηρία, περιλαμβανομένης της ψυχικής αναπηρίας, που είναι άνω των 21 ετών), File No. S.A.A. 5.22.01, E.D.5.22.03.09, 6 September 2016. Available at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4BE0C1D55ED9A5A0C225802E00325BD1/\\$file/Ypomnima\\_pedia\\_ke\\_enilikes\\_me\\_aftismo\\_atoma\\_me\\_anapiria\\_Vouli\\_06092016.doc](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4BE0C1D55ED9A5A0C225802E00325BD1/$file/Ypomnima_pedia_ke_enilikes_me_aftismo_atoma_me_anapiria_Vouli_06092016.doc).*

<sup>475</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme of financial assistance for the acquisition of technical means, devices and other assistive equipment to persons with disabilities (Σχέδιο οικονομικής βοήθειας για την παροχή τεχνικών μέσων, οργάνων και άλλων βοηθημάτων στα άτομα με αναπηρίες). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd19\\_gr/dsdpd19\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd19_gr/dsdpd19_gr?OpenDocument).

<sup>476</sup> Letter from Andreas Demosthenous, Department for the Social Integration of Persons with Disabilities, Ministry of Labour, Welfare and Social Insurance, 6 May 2015.

<sup>477</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities Scheme for the management/provision of technical means, devices and other assistive equipment to persons with disabilities (Σχέδιο διαχείρισης/παροχής τεχνικών μέσων και άλλων βοηθημάτων στα άτομα με αναπηρίες). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd20\\_gr/dsdpd20\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd20_gr/dsdpd20_gr?OpenDocument).



- A scheme of a monthly cash payment of € 316,59 (to be adjusted periodically according to the cost of living) payable to Cypriots and other EU nationals with a severe kinetic disability aged between 12-65, subject to approval from a medical council.<sup>478</sup> The upper age limit of this scheme was ruled by the court as discriminatory<sup>479</sup> but continues to remain in force.
- A monthly mobility allowance which varies according to the type of disability, mainly for students or persons in employment or occupation, to assist with the cost of transport to and from their place of work or education. For persons with severe kinetic problems at their feet, the sum paid is € 51 monthly; for blind persons € 102; for tetraplegic persons € 102 irrespective of whether they are working or studying.<sup>480</sup>
- Scheme for the payment of a grant in order to acquire a wheelchair for persons with a severe problem in walking. The scheme funds four types of wheelchairs, budgeted between € 700 and € 13,500 depending on the needs of the applicants, as these needs are assessed by their physiotherapist. If a particular wheelchair is necessary the cost of which exceeds the maximum € 13.500, the scheme will pay only 50 % of the cost in excess of the € 13,500.<sup>481</sup> A scheme for providing wheelchairs to persons with disabilities on loan is also available.<sup>482</sup>
- Tetraplegic persons with no movement in their upper and lower limbs are entitled to financial assistance of € 854,30 per month irrespective of income, to assist them with securing services of care and practical help in the home. Persons residing in a governmental institution where the cost of care services is covered by the state budget are excluded from this scheme.<sup>483</sup> A scheme of subsidising disability organisations and measures to assist with the labour integration of persons with disability, such as vocational training, supported employment, the provision of financial incentives for the creation and operation of small units for the self-employment of people with disabilities.<sup>484</sup>
- Since 2011 a scheme for the provision of social escorts for adult persons with visual disability is operated by the Pan Cyprian Organisation of the Blind and funded by the Ministry of Labour, Welfare and Social Insurance. The scheme involves the hiring of persons for the purpose of escorting blind and blind/deaf persons to various public services (governmental and semi-governmental departments) and other venues such as banks, the post office, hospitals, law offices, shopping, conferences, cultural etc. to assist them in the carrying out of personal tasks for which vision is absolutely necessary. Escorts will also read and write the escorted person's personal

<sup>478</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a severe kinetic disability grant (*Σχέδιο Παροχής Βαριάς Κινητικής Αναπηρίας*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd10\\_gr/dsipd10\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd10_gr/dsipd10_gr?OpenDocument).

<sup>479</sup> Cyprus, Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

<sup>480</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a mobility allowance (*Σχέδιο Παροχής Επιδόματος Διακίνησης*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd14\\_gr/dsipd14\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd14_gr/dsipd14_gr?OpenDocument).

<sup>481</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a grant to acquire a wheelchair (*Σχέδιο παροχής οικονομικής βοήθειας για την προμήθεια τροχοκαθισμάτων*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd16\\_gr/dsipd16\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd16_gr/dsipd16_gr?OpenDocument).

<sup>482</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the management of wheelchairs and criteria for providing wheelchairs on loan to persons with kinetic disability (*Σχέδιο διαχείρισης τροχοκαθισμάτων και κριτήρια παροχής τροχοκαθισμάτων με δανεισμό σε άτομα με κινητική αναπηρία*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd17\\_gr/dsipd17\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd17_gr/dsipd17_gr?OpenDocument).

<sup>483</sup> Cyprus, Ministry of Labour, Welfare and Social Insurance, Department for the Social Integration of Persons with Disabilities, Scheme for the provision of a grant for the care of tetraplegic persons irrespective of income (*Σχέδιο παροχής επιδόματος φροντίδας σε τετραπληγικά άτομα ανεξαρτήτως εισοδημάτων*). Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd11\\_gr/dsipd11\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd11_gr/dsipd11_gr?OpenDocument).

<sup>484</sup> For more details, see [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/All/22639CC7EC3343F9C2257A7C002D273F?OpenDocument&highlight=εργοδοτηση%20στηριξη](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/All/22639CC7EC3343F9C2257A7C002D273F?OpenDocument&highlight=εργοδοτηση%20στηριξη).

correspondence, transcribe short texts, letters, articles etc., archive, and copy digital or audio texts or enlarged texts and will buy books, tape, CDs, memory cards and other audio-visual equipment and stationary. The beneficiaries of this service are persons whose vision in their best eye is lower than 6/60 with corrective lenses if such are used, including persons with additional disability (kinetic, psychosocial, psychological). The escort services are managed by the Pan Cyprian Organisation of the Blind whose officers assess each request separately and will act depending on the seriousness of each case.<sup>485</sup>

### *Quotas*

- A new law enacted in 2009 introduces quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent of the aggregate of employees per department. The quota applies to first appointment positions (i.e. excluding promotions) at the introductory scale (i.e. low in hierarchy) and is specifically drafted to exclude areas where special provisions in favour of persons with disability are already in place (more specifically the quota in favour of blind telephonists- see below) and sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent'<sup>486</sup> (the army, the police, the fire department and the prisons).
- The Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (L. 17/1988), Article 3, provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators<sup>487</sup> are given priority in appointment. The same law also provides that for the appointment of a non-blind person to the post of telephone operator, the Pan Cyprian Organisation for the Blind must give its prior written confirmation that there are no blind telephone operators as candidates for the specific post. Article 3 of the same law also provides that in case there are no blind telephone operators as candidates for the said position, other candidates with disability will be preferred. These provisions have worked fairly well and have significantly contributed to the vocational rehabilitation and labour integration of blind persons, as the job of telephone operator continues to be the job of the majority of the blind persons in Cyprus. This law, which has resulted in the employment about 55 blind persons since its enactment in 1988, applies to telephone operators who have completed training at the School for Telephone Operators of the School of the Blind. It is considered by the Pan Cyprian Organisation of the Blind as a significant positive measure, despite the fact that it refers to a relatively low status type of work that may fall short of utilising the affected persons' full potential. Recent technological developments in telephone services may present a risk for this institution and could mean that training may have to be channelled in other directions.<sup>488</sup>

### *Preferential treatment*

The following measures are in place in relation to certain groups of persons with disability:

<sup>485</sup> Source: Interview with Christakis Nikolaides, president of the Pancyprian Organisation of the Blind dated 28 February 2011.

<sup>486</sup> Cyprus, Law on the hiring of persons with disabilities in the wider public sector (special provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] No. 146(I)/2009. Article 2. Available at [www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009\\_1\\_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009](http://www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009).

<sup>487</sup> Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. Also, the Pancyprian Organisation for the Blind, a non-governmental organisation, offers further training free of charge.

<sup>488</sup> Florentzos, M. (2005) The Legal and Social Position of Persons with Disability in the new Legal order of the Republic of Cyprus as a Member State of the European Union, Nicosia, p.151.

- Exemption from fees for medical purposes in public medical institutions;
- Special parking tickets that secure preferential parking for persons with disability;
- Exemption from certain charges concerning telecommunications and telephone services;
- Preferential treatment is offered by semi-governmental organisations to all persons with disability: the Cyprus Telecommunications Authority offers reduced subscriptions for land lines; the Electricity Authority of Cyprus offers reduced electricity rates.

#### *Roma and Minority rights based measures*

- There are no positive action measures in place for the Roma community or for any other community, except the provision of free housing in housing settlements designated for the Roma. In real terms, this measure cannot be described as preferential treatment. The housing settlements are made of prefabricated units in remote areas, with the exception of one settlement in the old Turkish quarter of Limassol, where the houses given to the Roma are in a very bad state of repair. Furthermore, the proximity of the old Turkish quarter to a newly built high profile building project, the Limassol Marina, has been cited as the reason for a series of evictions of Roma families from this area. As a result of a government policy of enrolling children at schools close to their area of residence, the housing segregation of the Roma has led to the school segregation of Roma children.
- A set of measures in education, providing schools with extra human and other resources, previously known as ZEP (the initials stood for 'zones of educational priority') was expanded and upgraded during 2016, using the EU's structural funds. The measure was consequently renamed 'D.R.A.S.E.' (the initials stand for 'Actions for school and social integration') and now includes reinforced teaching and creative occupation for pupils during and after school hours as well as during the summer months, additional psychosocial support by specialists, training of teachers, teaching of Greek for the pupils and their families, support for pupils with low social skills, support for pupils at risk of early school leaving, or at risk of remaining functionally illiterate or graduating without basic skills. During the school year 2015-2016 the program was applied in 42 school units, covering about 10% of the school population; in the school year 2016-2017 it will cover 80 school units, covering about 12% of the school population; in 2017-2018 the measure is set to cover 15% of the school population. The choice of schools to be covered by D.R.A.S.E. is made upon 'specific objective and measurable criteria irrespective of the geographical area'.<sup>489</sup> This affords a certain degree of discretion to the Ministry of Education to choose which schools to support, but those schools with a high concentration of non-native Greek speakers, who could be of either Roma or migrant origin, are covered. There are no measures specifically targeting the Roma children in education who are expected to benefit from 'horizontal' measures intended for the entire population.
- A few measures are in place regarding the three constitutionally recognised 'religious groups': the Armenians, the Maronites and the Latins. The public broadcasting service CyBC (Cyprus Broadcasting Corporation) has for several years been airing radio programmes especially prepared for the Maronites, the Armenians and the Latins, albeit in Greek. There are however some measures in place to promote the use of the languages of the religious groups. As from October 2009, lessons in the Armenian language are being offered to the public by the Ministry of Education in evening classes. The most important measure however was the codification of Cypriot

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<sup>489</sup> Cyprus, Press and information office, *Multi-faceted support of school units from September onwards through the program DRA.S.E.* (Πολύπλευρη στήριξη των σχολικών μονάδων από τον Σεπτέμβριο μέσα από το πρόγραμμα ΔΡΑ.Σ.Ε.) 20 May 2016, available at [www.moi.gov.cy/moi/pio/pio2013.nsf/All/B2DB402E14EF6AADC2257FB90044BC4E?OpenDocument&L=G](http://www.moi.gov.cy/moi/pio/pio2013.nsf/All/B2DB402E14EF6AADC2257FB90044BC4E?OpenDocument&L=G).

Maronite Arabic which started in 2007. Following the codification, some news articles in Cypriot Maronite Arabic now appear in the Maronite periodicals.<sup>490</sup>

Other than a handful of EU funded projects run by NGOs and local government organisations, offering training or counselling to migrants, there are no sustainable and structured positive action measures targeting migrants in any field.

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<sup>490</sup> Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus, 23 September 2009.

## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

#### a) Available procedures for enforcing the principle of equal treatment

In Cyprus, the following three procedures exist for enforcing the principle of equal treatment:

**The Equality Body:** Via the 'extra-judicial' process before the Equality Body whereby individuals and organisations may submit complaints which the Equality Body has a duty to investigate and issue decisions or recommendations.<sup>491</sup> Complaints may be submitted by natural or legal persons alleging discrimination on any of the prohibited grounds (EU directives, Protocol 12 to the ECHR, the Cyprus Constitution) in any of the fields within the scope of the laws. The Equality Body is empowered to issue binding decisions and/or make recommendations and impose small fines. The Equality Body also has a duty to monitor the enforcement of the orders it issues,<sup>492</sup> which are published in the Official Gazette.<sup>493</sup> The Equality Body is further empowered to impose fines for failure to comply with its recommendations,<sup>494</sup> which are however so low that they can hardly be seen as a deterrent. For this reason, it nearly always chooses to mediate or issue recommendations and has never so far imposed a fine, apart from once in a gender discrimination case, concerning a temporary worker who was dismissed from the public service whilst pregnant.<sup>495</sup> After more than a decade of not imposing sanctions, one may presume that the Equality Body has a policy of avoiding sanctions, possibly as a result of the fact that the sanctions foreseen in the law are so weak that cannot serve as a deterrent.

The decisions of the Equality Body may only be challenged in Court by way of judicial review of administrative action at the Administrative Court under article 146 of the Cyprus Constitution; this procedure however is open to those with a 'legitimate interest' and it is doubtful whether organisations representing victims meet the test.<sup>496</sup> If after investigation the Equality Body finds that a certain law or regulation contravenes the anti-discrimination

<sup>491</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Article 9G. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 9. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>492</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 24(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>493</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 15. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>494</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 26(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html). The Equality Body may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendations and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

<sup>495</sup> Cyprus, Report of the Equality Authority regarding a complaint for the dismissal of a pregnant temporary employee in the public sector (*Εκθεση της Αρχής Ισότητας αναφορικά με την καταγγελία για την απόλυση εγγύου έκτατης υπαλλήλου από τη δημόσια υπηρεσία*), 17August 2007, Ref.A.K.I.4/07. Reported in the Annual Report of the Equality Authority for 2007, p.57, available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

<sup>496</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*] No. 42(I)/ 2004, Article 23. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

laws, the Equality Body will refer the discriminatory law or regulation to the Attorney General in order to draft an amendment. This procedure does not always bear fruit. The discriminatory law remains in force and continues to be applied unless and until the Attorney General proceeds with the preparation of a new draft to be eventually tabled in parliament for adoption, a procedure which raises issues of compliance with the Directives (article 16 of the Employment Equality Directive and article 14 of the Racial Equality Directive).

Whilst the Equality Body's powers and mandate are exactly the same for claims against the public and the private sector, it receives very few complaints against the private sector. This is attributed by the officers of the Equality Body to the fact that the public is largely unaware of the existence and the powers of the Equality Body, often confusing it with the institution of the Ombudsman (whose competencies are restricted to the public sector), which has so far overshadowed the Equality Body.

There are no time bars or other restrictions in applying to the Equality Body which is a rather flexible, informal and user-friendly procedure (although a time bar of 12 months applies for submitting complaints to the Ombudsman).<sup>497</sup>

### **The judicial process:**

- Labour law and issues relating to employment matters are dealt with by the Labour Tribunal.<sup>498</sup> The Labour Tribunal consists of three persons: a judge, who chairs the hearing and two wing members, who come from the side of the trade unions and the employers' organisations. The procedure in the tribunal is similar to a district court, but less formal. However, the labour tribunal decision of 2008 in the case of *Hadjivraam*<sup>499</sup> rejected a claim for discrimination in the hiring procedure and found that it has no jurisdiction to try cases where no employment relationship exists. The legal vacuum which resulted from this decision was remedied in 2009 by an amendment of the law on Equal Treatment and Employment and Occupation (N.58(I)/2004) which transposes the Employment Equality Directive minus the disability component of the directive to the effect that all disputes arising under this law must be deemed as labour disputes. The disability law was not amended in the same manner as a result of which the legal gap created by the *Hadjivraam* case remains in the case of disability: persons with disability have no competent Court to apply to for employment related claims where no employment relationship exists. Upon appeal, the Supreme Court reversed the finding of the trial court regarding jurisdiction but did not provide a specific finding as to the labour court's jurisdiction as regards the Law on Persons with Disability.<sup>500</sup>
- Criminal law procedures are available in relation to discrimination related offences under the Penal Code. These procedures must be instigated by the police, although there is also in some cases the possibility of conducting a private criminal law case.
- Law 59(I)/2004 (more or less transposing the Racial Equality Directive) provides in article 8(1) for resort to the District Court, for violation of the law's provisions. This is a civil procedure for the adjudication of compensation claims.

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<sup>497</sup> Cyprus, Law amending and unifying the Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/91 as amended, Article 5(1)(a). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html).

<sup>498</sup> For any of the employment directive grounds: Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 12(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html). For disability discrimination Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9B(1). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).

<sup>499</sup> Cyprus, Labour Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou *Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*, 30 July 2008, Case No. 258/05.

<sup>500</sup> Cyprus, Appeal Court, Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).



- Rights guaranteed by the Constitution, such as the anti-discrimination provision of article 28, are according to legal precedent<sup>501</sup> actionable in Court per se against, inter alia, individuals.
- All administrative acts can be challenged before the Administrative Court, via Article 146 of the Constitution.<sup>502</sup> Persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,<sup>503</sup> apply to the Administrative Court to set aside the act complained of, provided they have a 'legitimate interest'. In practice, this is the procedure most often used by complainants, presumably because it is the one that most lawyers are familiar with. The person in whose favour a decision under 146 has been made may institute legal proceedings in a civil court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court.

There is a number of restrictions in place as regards the judicial process: time bars; high fees and legal aid restrictions; security for costs; language barriers including issues relating to accessibility for persons with disabilities (e.g. blind, deaf and other persons); the issue of *locus standi* or legitimate interest; the immunity enjoyed by certain individuals under the Constitution such as elected and appointed state officers, diplomats, lawyers on issues relating to the conduct of cases they handle, etc.; and various country-specific structural problems that in practice undermine the right of access, such as the doctrine of necessity.

**The inspectorate process:** The Minister of Labour is empowered to appoint Inspectors for the purpose of the better implementation of the law in terms of addressing employment discrimination issues. However, this process is yet to be implemented, as the regulations regarding the powers vested in the Chief inspector and inspectors are yet to be issued. It would seem reasonable to assume that the Labour Relations Department of the Ministry of Labour and Social Insurance would be the department in charge of implementing this provision,<sup>504</sup> given also that this department's mandate includes the setting up of enforcement mechanisms (Inspectors, Research and Evaluation Committee etc.) only in relation to gender equality.<sup>505</sup> Nevertheless, the department responsible for Laws N. 57(I)/2004 and 58(I)/2004 is the Department of Labour of the Ministry of Labour. The Minister has not yet utilised her powers to appoint inspectors.

The Labour Inspection unit of the Ministry of Labour which deals with issues relating to health and safety at work has no mandate to investigate discrimination.<sup>506</sup> A special department within the Ministry of Labour, the Promotion of Equality at the Workplace, has a mandate to address gender discrimination. This body is nevertheless mandated also with the implementation of Law 58(I)/2004 roughly transposing the Employment Equality

<sup>501</sup> Cyprus, Supreme Court, Yiallourou v. Evgenios Nicolaou (*Τάκη Γιάλλουρου ν Ευγένιου Νικολάου*) No. 9331, 8 May 2001. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF%\\*%20and%20%E5%F5%E3%E5%ED%\\*%20and%20%ED%E9%EA%EF%EB%E1%EF%\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF%*%20and%20%E5%F5%E3%E5%ED%*%20and%20%ED%E9%EA%EF%EB%E1%EF%*).

<sup>502</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 12(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html); Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9B. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004. Article 8(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>503</sup> The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts or omissions.

<sup>504</sup> This derived from (a) the fact it is an employment matter, (b) a reading of the text of law 58(I)/2004 provides that the Minister in charge is the Minister of Labour and Social Insurance [see article 2 of the law]; moreover, the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same Minister, who also responsible for submitting a report on the implementation of the said law.

<sup>505</sup> Letter from the Ministry of Labour to the national expert, dated 20 January 2006.

<sup>506</sup> [www.mlsi.gov.cy/mlsi/dli/dliup.nsf/index\\_en/index\\_en?OpenDocument](http://www.mlsi.gov.cy/mlsi/dli/dliup.nsf/index_en/index_en?OpenDocument).

Directive<sup>507</sup> and can receive and investigate discrimination complaints on all six grounds minus disability, although no procedure or rules have been set as regards such investigation. Regulations are currently under preparation in order to set this unit into motion to examine discrimination complaints, which are almost identical to the regulations concerning gender discrimination.<sup>508</sup> The department is however understaffed and under-resourced and in light of the economic crisis the budgetary situation is likely to deteriorate rather than improve. The inspectors currently appointed and working in the field (albeit now only for gender discrimination) are also tasked with other duties and do not have adequate time or resources to properly address the issue of gender discrimination, a problem likely to accentuate when their mandate is extended to cover four additional grounds.

No record is kept by any agency as to how many discrimination cases are brought before the Courts. Only the Equality Body publishes annually data regarding the number of complaints received, the ground complained of, the outcome etc. The ombudsman's office also publishes statistics about complaints received and investigated in its capacity as ombudsman but it is not always clear from the data which of these complaints concern discrimination and which concern maladministration.

The inadequate provision of legal aid,<sup>509</sup> the low awareness of the anti-discrimination laws among legal and judicial circles and the length of time required for litigation to be completed, renders the use of the judicial process very rare and accessible only to a privileged group amongst the vulnerable, usually civil servants alleging age discrimination in promotion or retirement.

The judicial as well as the inspectorate process lead to binding decisions.

The Equality Body has, by law, the power to issue legally binding decisions. However, in practice the decisions issued are usually mere recommendations because, in the opinion of the Equality Body, better results can be achieved through mediation. Such recommendations, although not legally binding, tend to be complied with at least by individuals. In some cases, the Equality Body is vested with the power to impose fines but this power has not been used yet for cases under the anti-discrimination directives.

#### b) Barriers and other deterrents faced by litigants seeking redress

Procedures before the Court are highly technical, complex, costly and lengthy. Although in theory it is possible for litigants to litigate the case themselves and not engage the services of a lawyer, in practice there are very few persons able and willing to represent themselves in Court, given the complexity of the procedure. Migrants and the Roma community have little or no information as regards legal aid and no access to justice, hence the fact that they have never pursued a non-discrimination case in Court. Even for those who can afford a lawyer, one major obstacle is that there is hardly any specialisation in the market on discrimination law, which is a novel field that is not offered by any University and does not attract many clients. In those few cases examined by the Courts, counsel for the claimants

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<sup>507</sup> Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>508</sup> Consultation with officer from the Department for the Promotion of Equality at the Workplace.

<sup>509</sup> The Law on Provision of Legal Aid (2002) N. 165(I)/2002 provides for legal aid only for criminal and civil law cases: subject to a couple of exceptions, administrative recourses are excluded minus in cases concerning deportations or challenging asylum decisions, although a ECtHR decision found that "a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention" and that "there is *a priori* no reason why it should not be made available in spheres other than criminal law" (Marangos v. Cyprus, Application no. 12846/05, 4 December 2008). The legal aid law extends to human rights violations covered by the Constitution and by a number of international conventions including the Convention for the Elimination of All Forms of Discrimination, but not to the laws transposing the two anti-discrimination Directives.

hardly ever invoke the anti-discrimination laws, preferring to use the more familiar procedure of judicial review foreseen in the Constitution. The time bars are set out in paragraph (c) above. The Courts buildings are not accessible to persons with disability (visual, kinetic, hearing impairment etc.) nor are any court documents made available in Braille.

Different time bars apply for different types of actions.<sup>510</sup> For civil offences and contracts, the time bar is six years. The Court has discretion not to apply the statute of limitation for two years where the claim is for bodily injury or death and the claimant was late in filing an action as a result of a delay in securing the necessary data or due to incapacity to handle the case. However, the time frame applicable to complainants who want to file a case in court is not suspended during examination of their complaint by the Equality Body, to enable a complainant to first apply to the Equality Body and then, if necessary, to Court to claim compensation without being time-barred. The time limits for lodging an appeal are strictly adhered to: 42 days from the date of the judgement for an appeal from the final determination; 14 for interlocutory injunctions; 75 days for an application to set aside an administrative decision under Article 146 of the Constitution.

The Laws on the Commissioner for Administration which set out the mandate of the Ombudsman state that the complaint must be submitted to the ombudsman's office within twelve months from the date on which the complainant received notice of the activities or omissions for which he/she is applying to the Ombudsman.<sup>511</sup> There is no express provision on limitations as regards complaints to the Equality Body.

Whether the employment relationship has ended or not at the time of submitting the complaint is immaterial, although the equality body, in the process of investigating a complaint, *will* take into account the surrounding circumstances of each case and whether the complainant has acted reasonably in respect of the timing of lodging his/her complaint.<sup>512</sup> The Court on the other hand is less likely to take the liberal approach adopted by the equality body and more likely to adopt a conservative approach; this was the case in the decision of the labour tribunal in the case of *Hadjiavraam*, where the labour tribunal rejected the claim because the labour tribunal's mandate covers only employment relations and not access to employment, as was the case with *Hadjiavraam*.<sup>513</sup> Upon appeal, the Supreme Court reversed the trial court's findings as regards jurisdiction by stating that the trial court failed to attribute due weight to the fact that the court is mentioned in Law 58(I)/2004 as the competent court to try the case. No mention was made to the fact that Law 58(I)/2004 ranks more highly than national laws because it transposes the *acquis*.<sup>514</sup>

#### c) Number of discrimination cases brought to justice

In Cyprus, there are no statistics are maintained on the number of cases related to discrimination brought to justice. There are no estimates of the number of discrimination cases brought to justice in any journals or textbooks.

#### d) Registration of discrimination cases by national courts

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<sup>510</sup> Law on the Limitation Period for actionable rights (*Ο περί Παραγραφής Αγωγίμων Δικαιωμάτων Νόμος*) N. 66(I)/2012. Available at [www.cylaw.org/nomoi/enop/non-ind/2012\\_1\\_66/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2012_1_66/full.html).

<sup>511</sup> Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 5(1). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html).

<sup>512</sup> Interview with Elisa Savvides, former Head of Equality Commission at the Ombudsman's office, dated 18 January 2006 and now Ombudsman and head of the Equality Body.

<sup>513</sup> Cyprus, Labour Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου)* No. 258/05, 30 July 2008.

<sup>514</sup> Cyprus, Appeal Court, *Avgoustina Hajianraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου)*, Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).

In Cyprus, discrimination cases are not registered as such by national courts.

Courts maintain registers of cases tried, which are partly accessible to the public through a rather bureaucratic and discretionary procedure which involves writing letters to the Courts Registrar. The Court's archive is not organised by subject but only by reference number or names of the parties, which makes a search impossible unless one already has the coordinates of the judgement. In recent years, two electronic data bases have been compiled, containing all court decisions, which can be searched through key words. One of these databases is subscription-based ([www.leginet.com](http://www.leginet.com)) and the other is completely open ([www.cylaw.org](http://www.cylaw.org)).

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

### **a) Engaging on behalf of victims of discrimination (representing them)**

In Cyprus, organisations are entitled to act on behalf of victims of discrimination under conditions.

Organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a claimant in the proceedings.<sup>515</sup> Although no special definition of the claimant is provided, to the extent that a person or company or an organisation can act as a claimant, then such claimant may be represented by the organisation with the legitimate interest. Although it has not so far been put to the test, it is doubtful whether NGOs representing victims will be deemed by the court as meeting the requirement of 'legitimate interest' in order to pursue the judicial review procedure for annulling a discriminatory administrative decision. A new bill is currently undergoing consideration in Parliament purporting to create a new comprehensive framework for the operation of NGOs, in replacement of the existing outdated and inflexible legal environment of NGO activity.<sup>516</sup> The bill is not yet in its final form and no safe predictions can be made as to the draft that will finally be approved, however the issue of the legal representation of victims in the judicial review process was one of the issues raised by the NGOs involved in the consultation.<sup>517</sup>

### **b) Engaging in support of victims of discrimination**

In Cyprus, organisations are entitled to act in support of victims of discrimination.<sup>518</sup>

The anti-discrimination laws do not go into any lengths to describe the type of entities that may act on behalf or in support of victims; they merely provide that organisations with a legitimate interest and with the victim's permission can represent a victim of discrimination in proceedings both before the Equality Body and before the Court. It is presumed that such organisations must at the very least be registered, or else they lack legal personality

<sup>515</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>516</sup> Cyprus, Laws on associations and foundations of 1972 and 1997 (*Οι περί Σωματείων και Ιδρυμάτων Νόμοι του 1972 και 1997*), article 3, available at [http://cylaw.org/nomoi/enop/non-ind/1972\\_1\\_57/full.html](http://cylaw.org/nomoi/enop/non-ind/1972_1_57/full.html).

<sup>517</sup> Cyprus NGO Initiative (2015), *Civil society in Cyprus: Building for the future*, available at [www.ngoinitiativecyprus.org/en/feature/policy-paper-on-the-empowerment-of-civil-society-in-cyprus/](http://www.ngoinitiativecyprus.org/en/feature/policy-paper-on-the-empowerment-of-civil-society-in-cyprus/).

<sup>518</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9D. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 12. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 004 N. 58(I)/2004, Article 14. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

and legal capacity. The presumption is reinforced by the fact that Law 59(I)/2004 (roughly transposing the Racial Equality Directive), article 12, requires that in order for organisations or other legal persons to be able to represent and act on behalf of persons in applying to the courts or the Equality Body, such organisations must (in addition to the victim's permission) have a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. The Equality Body may investigate cases following applications by NGOs, chambers, organisations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.<sup>519</sup>

Article 14 of Law 58(I)/2004 which roughly transposes the Employment Equality Directive provides that workers' organisations or other organisations with a legitimate interest can act on behalf of their members with the members' permission in claiming their right to resort to the Courts or to the Equality Body. Similarly, article 9D of the disability Law N. 127(I)/2007 as amended by Law 57(I)/2004, provides that workers' organisations or other organisations with a legitimate interest can, with their members' permission, exercise on their behalf the right to recourse to the courts or to the Equality Body. No other 'legitimate interest' is required under this law. For actions on the ground of race/ethnic origin, as stated under paragraph (a) above, the law roughly transposing the Racial Equality Directive (59(I)/2004), article 12, requires that organisations must have both the victim's permission and a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. No distinction is made between the two types of standing (on behalf/in support). There are no membership or permanency or other requirements in the law.

Associations have made little use of this opportunity so far, with only a handful of NGOs filing complaints to the Equality Body on behalf of victims which they formally or informally represent. The Equality Body follows a flexible approach and does not demand to see permission from the victim or copies of articles of association in order to ensure that the law's requirements are met before investigation begins. For instance, it has investigated complaints from organisations acting on behalf of a group of persons, which do not have to be named specifically (e.g. 'asylum seekers', 'children with disabilities' etc.). No case involving an organisation acting in support of or on behalf of a victim has ever been presented in Court, so it is hard to say how the Court will interpret the term 'organisation' and whether any required features will be attached to the concept. It is however doubtful that the courts will adopt the liberal approach of the Equality Body.

With regard to legitimate interest, again the Equality Body raises no such issues but the Courts do in a substantive way. In three different cases, the Court rejected the applicants' claim for, inter alia, lack of legitimate interest: in two cases the claim concerned an athletic award for disabled athletes which was lower than that of other athletes, where the claimant had not at the time of filing the application become entitled to it;<sup>520</sup> and in the third case the applicant was deemed to lack a legitimate interest since there was no positive legislative provision entitling her to claim the right of extending a regulation on the age of retirement so as to include her age group.<sup>521</sup>

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<sup>519</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 34(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>520</sup> Cyprus, Supreme Court, Antonis Aresti v. Cyprus Athletics Organisation (Αντώνης Αρέστη ν. Κυπριακού Οργανισμού Αθλητισμού) No. 1406/2008, 10 February 2010. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2010/4-201002-1406-2008.htm&qstring=1406%20w/1%202008](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201002-1406-2008.htm&qstring=1406%20w/1%202008); Cyprus, Supreme Court, Andreas Potamitis et al v. Cyprus Sports Organisation (Ανδρέας Ποταμίτης κ.α. ν. Κυπριακού Οργανισμού Αθλητισμού) No. 1377/2008, 30 January 2012. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201201-1377-08.htm&qstring=1377%20w/1%202008](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201201-1377-08.htm&qstring=1377%20w/1%202008).

<sup>521</sup> Cyprus, Supreme Court, Eleni Kyriakidou v Cyprus Broadcasting Corporation (Ελένη Κυριακίδου ν. Ρ.Ι.Κ.) No. 18/2008, 3 December 2010. Available at [www.cylaw.org/cgi-](http://www.cylaw.org/cgi-)



In general, individuals who have been *personally* aggrieved, have a legitimate interest in Cypriot administrative law to engage in proceedings. Under Article 146(2) of the Constitution: 'such recourse may be made by a person whose existing legitimate interest, which he has either as a person, or by virtue of being a member of a community, is adversely and directly affected by such decision or omission'. Since 1999 the common law provisions have been codified into a single law that summarises the existing practice (Law 158(I)/99).

The interpretation of Article 146(2) of the Constitution by the Court has restricted the right of recourse to physical and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives were not considered to have legitimate interest and the term 'community' is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution. The original test for an association to possess an 'existing legitimate interest' was hard to satisfy, as it required that the specific administrative act '*directly affects*' the whole or part of the membership, whereas if it only affects one member or if there are conflicting interests between members then the association has no legitimate interest.<sup>522</sup>

c) Actio popularis

In Cyprus, national law does not explicitly allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent.

In the absence of an express provision it is unlikely that the Courts will accept such an action, given that in the past they did reject claims because the law did not expressly provide for the right sought by the applicant.<sup>523</sup>

The Equality Body does accept and investigate complaints from associations (e.g. NGOs acting in support of asylum seekers, the representation of UNHCR in Cyprus, the confederation of disability organisations KYSOA, anti-racist NGOs,) acting in the public interest on their own behalf without a specific victim to support (e.g. 'Roma pupils' in general or 'female migrant workers' in general, 'persons with disability', 'migrants', 'drivers aged over 70' respectively, etc.). This should however be attributed to the liberal approach followed by the Equality Body rather than an interpretation of the law allowing *actio popularis*.

d) Class action

In Cyprus, national law does not explicitly allow organisations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event. The Courts of Justice Law, which regulates the mandate of all courts in Cyprus, regulates the powers of the court to adjudicate claims, award compensation or other remedy, issue orders and recognise rights, whether a remedy is being requested or not.<sup>524</sup> There has never been a legal precedent on class actions and it is therefore impossible to conclude whether, in the absence of a special legislative provision, such will be accepted by the courts.

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[bin/open.pl?file=apofaseis/aad/meros\\_3/2010/rep/2010\\_3\\_0547.htm&qstring=%E5%EB%E5%ED\\*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF\\*](http://bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF*).

<sup>522</sup> The Police Association v. The Republic.

<sup>523</sup> In *Eleni Kyriakidou v Cyprus Broadcasting Corporation* (Supreme Court case no. 18/2008, dated 3 December 2010) the Supreme Court found the applicant lacked legitimate interest because there was no express legislative provision giving her the right she was seeking to enforce through the Courts. A summary of the case in English is available at the Legal Network's Cyprus Country Report for 2010.

<sup>524</sup> Cyprus, Courts of Justice Law (*Ο περί Δικαστηρίων Νόμος*) N. 14/1960, Articles 31-41, available at [www.cylaw.org/nomoi/enop/non-ind/1960\\_1\\_14/index.html](http://www.cylaw.org/nomoi/enop/non-ind/1960_1_14/index.html).



The laws transposing the Anti-discrimination directives are silent on the possibility of organisations representing more than one complainants at the same time but do not expressly prohibit this either. Law No. 58(I)/2004 transposing roughly the Employment Equality Directive states, in Article 14, that organisations may, with their members' permission, exercise the right to apply to the Courts or to the Equality Body on behalf of their members. The plural is used when referring to 'members' but it is not clear whether this enables class actions to be taken out by organisations in their members' names. The equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (article 12). The Civil Procedure Rules make provision for joinder of actions but only when these refer to the same subject-matter. In particular, the rules provide that all persons may be joined in a single action as claimants for remedies arising out of the same transaction or series of transactions, whether jointly, severally or in the alternative, unless such joinder would embarrass or delay the trial. Also, where there are numerous persons having the same interest in one cause, one or more of such persons may be authorized by the Court to sue or defend on behalf or for the benefit of all persons so interested; organisations which are unincorporated or operating for profit are excluded.<sup>525</sup> The Equality Body does accept and investigate complaints from associations acting in the interest of more than one victim.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In Cyprus, national law permits a shift of the burden of proof from the complainant to the respondent.<sup>526</sup> However, the courts have never so far been faced with a claim for the reversal of the burden of proof and there is no judicial precedent on how this will be applied.

The Equality Body does not reverse the burden of proof; however, since it has the power to carry out its own investigations to establish the facts of a case, the procedure may be said to fall within the exception of Article 8(5) of the Racial Equality Directive and therefore reversal of the burden of proof is not required.

Provisions for shifting the burden of proof to the employer once a prima facie case of dismissal is established can also be found in Cypriot labour law. The Termination of Employment Law 1967, as amended, is phrased in such a way that imposes the burden of proof on the employer, i.e. the employer has to prove that an employee had been dismissed for one of the reasons that permit summary dismissal. If the alleged unreasonableness, resulting in dismissal, is based on discrimination, the burden of proof is on the employer to prove, on the balance of probabilities that s/he had acted reasonably.

### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Cyprus, there are legal measures for protection against victimisation.

Identical provisions against victimisation are to be found in all three laws enacted to transpose the directives.<sup>527</sup> The victimisation provisions are not restricted to the employment field. The Law on Equal Treatment irrespective of racial or ethnic

<sup>525</sup> Cyprus, Civil Procedure Rules (Θεσμοί Πολιτικής Δικονομίας), Article 9, available at [www.cylaw.org/cpr.html](http://www.cylaw.org/cpr.html).

<sup>526</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) article 9A. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 7. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 11. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>527</sup> Cyprus, Law on persons with disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000) Article 9E. Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf); Cyprus, Law on equal treatment (racial or ethnic origin) [Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος] N. 59(I)/2004, Article 11. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html); Cyprus, Law on equal treatment in employment and occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 10. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

N.58(I)/2004, which includes protection against victimisation,<sup>528</sup> covers the fields of social protection, health care, education, social provision and access to goods and services. The protection against victimisation in the disability law is not restricted to the employment field<sup>529</sup> and by implication extends to the entire scope of this law. The said provisions prohibit any adverse treatment or consequence towards any person who files a complaint or is involved in a procedure aiming at implementing the principle of equal treatment. Therefore, any person involved in the procedure in a capacity other than as a complainant (e.g. as a witness or as a lawyer or as a person helping a victim to present a complaint) is also covered by the protection against victimisation.

The Laws on the Commissioner for Administration (Ombudsman) provide a more detailed description of the scope of the protection against victimisation: 'Anyone who refuses to employ, dismisses or threatens to dismiss from work, influences or threatens to influence, frightens or forces any other person or imposes any monetary or other punishment to any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Ombudsman; (ii) has supplied or presented or intends to supply or submit any information or documents to the Ombudsman; (iii) has testified or intends to testify before the Ombudsman, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP300<sup>530</sup> or to both penalties.'<sup>531</sup>

The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 defines victimization as the unfavourable treatment of a person (who may or may not have a disability) owing to the fact that: s/he gave evidence or testified against an employer in judicial or other procedures for investigation of discrimination complaints by persons with disabilities; s/he alleged that some employer is in breach of the law against a person with a disability; s/he encouraged or supported a person with a disability to submit a complaint or bring a legal action for discrimination. It is not necessary for the victim to have actually assisted in the investigation of a complaint against the employer; it is sufficient to prove that the employer treated him/her unfairly believing or suspecting that s/he did so or was intending to do so.<sup>532</sup> A decision of the Equality Body in 2015 extended the principle of discrimination of a primary carer by association with a person with a disability to situations of victimisation.<sup>533</sup>

The legal framework against victimisation is not being utilised in order to put an end to the practice of the authorities of arresting and deporting migrant female domestic workers who file complaints against their employers.<sup>534</sup>

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<sup>528</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 11, available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>529</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 9E. Available at [www.cylaw.org/nomoi/enop/non-ind/2000\\_1\\_127/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html).

<sup>530</sup> Approximate Euro equivalent: 520 Euros.

<sup>531</sup> Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 11(f). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html).

<sup>532</sup> Cyprus, Equality Authority (2010) 'Code of good practice on discrimination on the ground of disability in employment and occupation' (*Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση*). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Co\\_depracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Co_depracticedisabilityemployment.pdf).

<sup>533</sup> Cyprus, Equality Authority, Report of the Equality Authority regarding the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/A\\_KI\\_38\\_2015\\_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/A_KI_38_2015_16102015.doc?OpenElement).

<sup>534</sup> Cyprus, Ombudsman (2012) 'Arrest and detention of migrant worker for bringing complaint against her employer', Report No. A.P. 588/2012, 5 June 2012.

## 6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

### a) Applicable sanctions in cases of discrimination – in law and in practice

The Equality Body does not have the power to award damages to victims of discrimination.

Strictly speaking, the Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages; however, very few discrimination claims have been tried by the Courts in Cyprus and damages were awarded only to one of these cases,<sup>535</sup> which does not allow for any conclusions to be drawn with regard to judicial practice. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cypriot Courts tend to be rather low compared to the damages awarded in other countries.

In addition to or in lieu of damages, a victim of discrimination may apply to the Labour Disputes Tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, but this is a remedy rarely sought or used.

Law 42(I)/2004 vests the Equality Body with powers beyond those prescribed by the two EU directives: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit not exceeding 90 days from publication in the official Gazette<sup>536</sup> and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions:

- where the act complained of is pursuant to another law or regulation, in which case the Equality Body advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation;<sup>537</sup>
- where discrimination did not occur exclusively as a result of violation of the relevant law;
- where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties;
- where the eradication cannot take place without violating contractual obligations of persons of private or public law;
- where the complainant does not wish for an order to be issued; or
- where the situation complained of no longer subsists.<sup>538</sup>

The Equality Body is further empowered to impose small fines which cannot exceed CYP350 (Euros 598) for discriminatory behaviour, treatment or practice; CYP250 (Euros 427) for racial discrimination in the enjoyment of a right or freedom; CYP350 (Euros 598) for non-compliance with the recommendation within the specified time limit; and CYP50 (Euros

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<sup>535</sup> Cyprus, Appeal Court, Avgoustina Hajjivraam v. The Cooperative Credit Company of Morphou (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).

<sup>536</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 28. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>537</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 39(3) and 39(4). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>538</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 14(2) and 14(3). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

85.44) daily for continuing non-compliance after the deadline set by the Equality Body.<sup>539</sup> Generally speaking, the fines are very low; they offer little deterrence to potential perpetrators and they never imposed by the Equality Body.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged and to supervise compliance with orders issued against persons found guilty of discrimination.<sup>540</sup> It is possible for the Equality Body to recommend school desegregation plans or the instigation of disciplinary proceedings against teachers or other persons guilty of discrimination; in practice, however, the Equality Body's recommendations generally do not propose measures as drastic as that and there is a clear tendency towards 'diplomacy' and mediation, evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed.

All orders, fines and recommendations issued or imposed under this Law are subject to annulment<sup>541</sup> by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest'.<sup>542</sup> There is no requirement for special measures to be adopted in order to ensure that persons with disabilities have access to the Equality Body.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues on its own right where it deems that any particular case that came to its attention may constitute a violation of the law.<sup>543</sup> The Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. In fact, all cases investigated by the Equality Body until now have led to *recommendations*, as opposed to binding *decisions*. The recommendations have often taken the form of suggesting to the authorities or to the private sector to revise their practices over specific issues. Reports issued by the Equality Body have, for instance, recommended to insurance companies to revise their practice of refusing to insure persons of Pontian Greek origin; to employers to remove the maximum age limit fixed for advertised jobs; to the public nursing school to revise its entry requirements so as not to exclude persons with disabilities; to the immigration authorities to remove from the standard contract of employment of migrant workers a clause prohibiting them from joining trade unions; to insurance companies to revise their policy of not insuring persons over 70 to drive cars or of charging a higher premium for it, etc. The recommendations of the Equality Body tend to be complied with by both the private and the public sector, even though in many cases they come with 3-4 years of delay, in which case compliance is impossible because third party rights were meanwhile created or because compliance would no longer make sense. The immigration authorities are a notable exception to the rule: although many of the recommendations of the Equality Body/Ombudsman are directed against this body, compliance is very rare whilst letters, warnings and notices are ignored, as often noted by the Equality Body.

The findings and reports of the Equality Body must be communicated to the Attorney General who will, in turn advise on the adoption or not of appropriate legislative or administrative measures, taking into account the state's international law obligations and

<sup>539</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 18, 26(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>540</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 24(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>541</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 23. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>542</sup> Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for judicial review of an administrative act.

<sup>543</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 33. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision. The findings of the Equality Body are also communicated to the House of the Representatives.

Under Law N.59 (I)/2004 transposing (roughly) the Racial Equality Directive, the competent courts for discrimination cases at first instance are the District Courts.<sup>544</sup> The same law also provides for the complainant's right to lodge a complaint to the Equality Body.<sup>545</sup> Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,<sup>546</sup> appeal to the Supreme Court of Cyprus for an order to set aside the administrative decision complained of. This procedure however has a number of disadvantages compared to the laws transposing the directives: it applies only to the public sector, it does not reverse the burden of proof and can have only an annulling effect on the administrative act complained of. Under Law N.58 (I)/2004 transposing the Employment Equality Directive (minus the disability component), the competent court to try discrimination cases at first instance is the Labour Disputes Tribunal. The legal vacuum which had been created in 2008 by the decision in the case of *Hadjiavraam* was remedied in 2009 for all grounds except disability, by an amendment of the law, which now provides that all disputes arising under this law must be deemed as labour disputes.

Under law 59(I)/2004 (transposing the Race Directive minus the employment component) the penalty to be imposed by the Court against a physical person found to be guilty, is a maximum of CYP4.000 (Euros 6,835.27) and/or imprisonment of up to six months. For legal persons the maximum penalty is CYP7.000 (Euros 1,196.72). An offence committed under the same law out of gross negligence carries a penalty of up to CYP2000 for physical persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2.000 (Euro 3,417.63); for legal persons, there is a fine of up to CYP2.000 (Euro 3,417.63) for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was committed with his/her consent plus an additional fine of up to CYP4.000 (Euro 6,835.27) for the company or organisation.<sup>547</sup>

Under law 58(I)/2004 (transposing the Employment Equality Directive) the penalties are identical to those provided for the law transposing the Racial Equality Directive.<sup>548</sup> Same applies to procedures and penalties under the disability law.<sup>549</sup> No such fines have been imposed by the Courts so far.

There are also penal remedies against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent amendments (Law 11(III)/92 and Law 28(III)/99), Cyprus established, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, such as incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to

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<sup>544</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 8(1). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>545</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 9. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>546</sup> The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts.

<sup>547</sup> Cyprus, Law on equal treatment (racial or ethnic origin) [*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*] N. 59(I)/2004, Article 13. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_59/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html).

<sup>548</sup> Cyprus, Law on equal treatment in employment and occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>549</sup> Cyprus, Law on persons with disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Articles 5(3), 5(4) and 5(5). Available at [www.cylaw.org/nomoi/arith/2000\\_1\\_127.pdf](http://www.cylaw.org/nomoi/arith/2000_1_127.pdf).



provide goods and services. The scope of this latter provision<sup>550</sup> is stated to extend to goods or services supplied by a person in the course of his/her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training.

As a result of these amendments, it is no longer necessary that the incitement to racial hatred is intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence, it is no longer necessary that race be the sole ground of discrimination.<sup>551</sup> The Criminal Code (Cap.154) Article 51A provides that whoever publicly and in any way 'procures the inhabitants to acts of violence against each other or to mutual discord or foment the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine.<sup>552</sup>

The law ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems<sup>553</sup> also creates a number of criminal offences, each of which is punishable with a prison sentence of up to five years and/or a fine of up to CYP20,000 (Euros 34,176.35):

- Article 4 criminalises the dissemination of racist and xenophobic material through a computer system;
- Article 5 criminalises racially and xenophobically motivated threat disseminated through a computer system;
- Article 6 criminalises racist and xenophobically motivated insult;
- Article 7 criminalises the denial, gross minimisation, approval or justification of genocide or crimes against humanity;
- Article 8 criminalises the aiding and abetting of any of the crimes provided for in Articles 4-7 of the law.

There are no distinctions as to sanctions in the private and the public domain, at least in the legislation, nor does the law make any differentiation as to the sanctions within and beyond employment.

Under Law N.134(I)/2011 which transposes the Framework Decision on Combating Hate Crimes through Criminal Law, a person who wilfully and publicly disseminates and publicly incites violence or hatred directed against a group of persons or a member of a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin, in a manner that disturbs public order or which is of a threatening, abusive or insulting character, is guilty of an offence and if convicted is subject to a penalty of imprisonment not exceeding five (5) years or to a fine not exceeding ten thousand euro (€ 10,000) or to both such sentences. Same sanctions apply for other offences created by this law such as the approval or denial or gross downplaying of crimes of genocide, crimes against humanity

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<sup>550</sup> Cyprus, Law ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A(4).

<sup>551</sup> Cyprus, Law ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A (4): 'Any person who supplies goods or services by profession and refuses such supply to another by reason of his racial or ethnic origin or his religion, or who makes such supply subject to a condition relating to the racial or ethnic origin or to the religion of a person is guilty of an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding four hundred pounds or to both such punishments' [about 6700 euro].

<sup>552</sup> Cyprus, The Criminal Code (Ποινικός Κώδικας) Cap. 154, article 51A. Available at [http://www.cylaw.org/nomoi/enop/ind/0\\_154/section-sc53450b99-ae78-4921-a120-4fdd2ae92654.html](http://www.cylaw.org/nomoi/enop/ind/0_154/section-sc53450b99-ae78-4921-a120-4fdd2ae92654.html). The fines are up to 1,000 Cyprus Pounds for individuals and 3,000 pounds for legal persons [1,000 Cyprus Pounds amounts to 1,708 Euros; 3,000 Cyprus Pounds amount to 5,126 Euros].

<sup>553</sup> Cyprus, Law ratifying the Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems N. 26(III)/2004.



and war crimes.<sup>554</sup>

b) Ceiling and amount of compensation

In Cyprus, there is no ceiling on the maximum amount of compensation that can be awarded, but in general, compensations awarded by Cypriot Courts tend to be very low compared to compensations awarded by other national Courts. With just one Court decision awarding damages in over ten years,<sup>555</sup> since the directives were transposed, it is not possible to draw conclusions on judicial trends as regards the amounts of compensation awarded. The most widely used procedure in Cyprus to contest discriminatory acts of the public administration is the judicial review under article 146 of the Constitution, which leads only to the annulment of the act and not to the award of compensation.

c) Assessment of the sanctions

The Equality Body is not entitled to award compensation. Since the anti-discrimination directives were transposed, the Court awarded compensation for discrimination in only one case, that of *Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou*. The claimant, whose job application at the respondent bank was declined due to her age, was not awarded compensation at first instance, as the Labour Disputes Tribunal claimed lack of jurisdiction. The tribunal nevertheless proceeded to give its reasoning on the merits of the case. On the issue of measurement of compensation, the tribunal found that the sum of 1,500 Euros would be appropriate as this represents three salaries which would have been paid to the applicant had she been hired. In order to arrive at this conclusion, the tribunal relied on the CJEU decision in the Case C-180/95 *Draehmpaehl* [1997] ECR I-2195 which established that three salaries are sufficient to satisfy the three preconditions which the amount of compensation awarded must satisfy (essential protection, deterrent and proportional to the damage) in those cases where the job candidate would not have been hired even in the absence of age discrimination. Upon appeal, the Supreme Court endorsed the tribunal's measurement of compensation and awarded the appellant the equivalent of three months' salaries amounting to a total of € 1,500 because, as it had established, the applicant would not have been hired to this post even in the absence of the age discrimination in the advert.<sup>556</sup>

In the absence of a body of case law on discrimination and awards of damages where discrimination was the operative factor, it is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive. The law does not provide for 'punitive damages' to be paid by the perpetrator to the victim to act as (a) disincentive for offenders and (b) incentive for victims to complain (and in particular as incentive for lawyers to specialise). It is safe to state, however, that the sanctions which the Equality Body is allowed to levy are too low to have any dissuasive effect; the main incentive for compliance with Equality Body decisions remains public image.

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<sup>554</sup> Cyprus, Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law (Ο *Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος*) Ν. 134(I)/2011. Available at [www.cylaw.org/nomoi/enop/non-ind/2011\\_1\\_134/index.html](http://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html).

<sup>555</sup> Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).

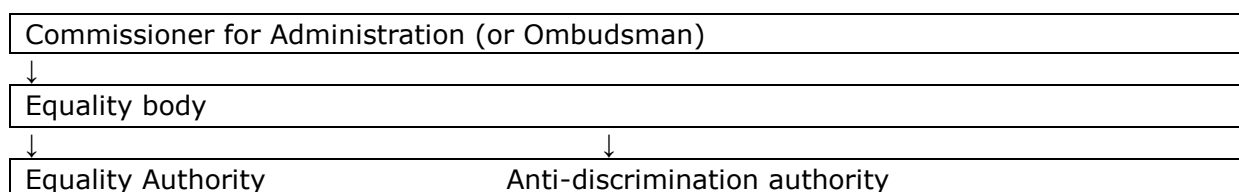
<sup>556</sup> Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ ν. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED\\*](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*).

## 7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

When the equality acquis was transposed in 2004, the legislator appointed the Commissioner for Administration (commonly referred to as 'the Ombudsman') as the national Equality Body, in line with Article 13 of the Racial Equality Directive. Although the mandate of the Equality Body extends beyond the minimum required by the Racial Equality Directive, it lacks the power to represent victims in Court or otherwise provide independent assistance.<sup>557</sup>

Two separate departments are set up within the Equality Body: the 'Equality Authority' and the 'Anti-discrimination authority', dealing respectively with employment issues and with fields beyond employment and in practice constitute the national anti-discrimination body according to the Racial Equality Directive. In this report, for ease of reference, both and each of these bodies are referred to as the 'Equality Body'.



- b) Status of the designated body/bodies – general independence

The body primarily mandated with the investigation of discrimination complaints is the Equality Body, afforded by the legislation a wide mandate to combat discrimination, well beyond the minimum required by article 13 of the Racial Equality Directive, on all grounds and in all fields but afforded few powers of intervention and very limited resources to do so. Currently the same office carries out the following additional functions: Ombudsman, National Human Rights Institute (NHRI), Independent Authority for the Prevention of Torture under the relevant Convention, Independent Mechanism for the monitoring of the implementation of the UN Convention on the rights of persons with disability, Monitoring Body for the implementation of the Return Directive. No additional budget has ever been allocated to this office every time its mandate was extended to include a new function. In its latest report on Cyprus, ECRI expressed concern over the fact that the Equality Body/Ombudsman lacks sufficient human and financial resources, does not enjoy the freedom to appoint its own staff and is not well known to vulnerable groups.<sup>558</sup> Due to its serious understaffing problem, which is highlighted in several national and international reports,<sup>559</sup> discrimination complaints can take three or more years to be examined, essentially leaving the complainant without a remedy, as in the meantime third party rights are often created whilst the complainant will be time-barred from seeking redress through the courts. The Equality Body does not have the capacity or mandate to represent victims

<sup>557</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>558</sup> ECRI, Fourth Country Report on Cyprus, Strasbourg 31 May 2011. Available at [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf).

<sup>559</sup> In 2015, the Advisory Committee for the FCNM expressed its deep concern over the «continued lack of adequate resources of the Equality Body [which] raises serious concerns regarding the ability of the institution to effectively and independently perform its important tasks”: Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

in court or to otherwise provide assistance to victims. Its power to impose fines is so restricted that it exclusively resorts to mediation rather than to issuing binding decisions.

In 2014 the law regulating the Ombudsman's mandate was amended to provide for the powers of the Ombudsman to carry out consultations for the implementation of his or her recommendations and, in the event that the competent authority does not respond or fails to adopt the recommendations within the deadline set for reasons which the Ombudsman finds unjustified, to submit the result of the consultations to the Council of Ministers and the Parliament.<sup>560</sup> The law further enables the Ombudsman to publicise the refusal or failure of the competent authority to comply with the Ombudsman's recommendations and to bring such refusal or failure to the attention of the minister in charge, who must take measures to ensure the cooperation of the competent authority with the work of the Ombudsman. Under the new law, the refusal of any state officer to co-operate with the Ombudsman when required is a disciplinary offence, whilst the fines and term of imprisonment foreseen for persons failing to cooperate with the Ombudsman or victimising a person who has submitted a complaint or supplied information to the Ombudsman are increased from CY£ 300 to € 5,000 and from six months to one year respectively.<sup>561</sup>

Complaining to the Equality Body is by far the cheapest and most effective procedure. All court actions entail costs and other necessities such as the need to instruct a lawyer if one is to have any chance to succeed against a generally speaking more powerful institution or employer, who are likely to be legally represented. There are also other deterrents in seeking redress in Court, such as strict time limits and complex procedures, the fact that legal procedures are generally slow, the difficulty in securing witnesses willing to testify. Even the procedure before the Labour tribunals, originally designed to be informal, easy and accessible to ordinary working people is lengthy, complex and costly, although to a lesser extent than the other courts. The Equality Body will accept complaints submitted to it in English. The Court will require all documents to be in Greek, although during the hearing an interpreter will be provided by the Court. However, in a case before the Supreme Court, the court accepted the pleadings submitted by the Turkish Cypriot applicants in the Turkish language and instructed the Attorney General to serve pleadings to the applicants in Turkish.

The same rules apply in both the private and the public sector. The Ombudsman, in his/her capacity as such, will investigate complaints of maladministration and discrimination from public bodies/state organs towards individuals; in his/her capacity as the national Equality Body, s/he will investigate complaints in both the private as well as the public sector.

The Ombudsman is appointed by the President of the Republic for a fixed term of office which is six years, following a recommendation from the Council of Ministers and with the prior written agreement of the majority of the House of Parliament.<sup>562</sup> The Ombudsman can only be dismissed, during the term of his/her service, in the same way as Supreme Court judges are dismissed.<sup>563</sup> According to the Cypriot Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until he/she reaches the age of sixty-eight<sup>564</sup> and may only 'be retired'<sup>565</sup> due to such mental or physical incapacity

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<sup>560</sup> Although the Ombudsman is also the national Equality Body, this particular law amends the mandate of the Ombudsman only.

<sup>561</sup> Cyprus, Law amending the Law on the Commissioner for Administration 1991-2011 (*Νόμος που τροποποιεί τους Περί Επιτρόπου Διοικήσεως Νόμους του 1991 έως 2011*) N.45(I)/2014, 11 April 2014. Available at [http://www.cylaw.org/nomoi/arith/2014\\_1\\_045.pdf](http://www.cylaw.org/nomoi/arith/2014_1_045.pdf).

<sup>562</sup> Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 3(1). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html) section 3(1).

<sup>563</sup> Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 3(7). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html).

<sup>564</sup> The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 7(1). Available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html).

<sup>565</sup> This is the term used in the official translation of the Cyprus Constitution. Presumably, it means "be obliged to retire".

or infirmity as would render him incapable of discharging his duties, or may be dismissed on the ground of misconduct.<sup>566</sup>

The budget for the Ombudsman's office comes from the state national budget. The Equality Body does not have its own budget; it is operating within the budget of the Ombudsman, with whom the Equality Body shares office premises, personnel and the person at the top of the hierarchy, which is the same for both bodies. The figures in the table below represent the budget for all functions under the Ombudsman's office and not only for the Equality Body.

Occasionally, the Ombudsman (in his/her capacity as Equality Body) applies for and is awarded EU funds for particular projects, such as the two opinion surveys it carried out in 2007, the code of conduct on disability discrimination and the guidelines for the media it published in 2010. The Ombudsman is an independent officer and is not answerable to any other body, although it is required to submit an annual Activity Report to the President of the Republic and to the House of Representatives.

#### *Staffing and budgeting arrangements*

Below are the budgeting and staffing arrangements of the Equality Body annually since its inception. It should be noted that the staff and budget shown are not exclusively devoted to the Equality Body: with the same staff and budget a number of other authorities operate from within the same office (Ombudsman, NHRI, Independent Authority for the Prevention of Torture, Monitoring Body for the implementation of the Return Directive, Monitoring Body for the implementation of the CRPD) in a manner that makes any allocation of staff and budget to any particular authority impossible. The multiple mandates and insufficient resources have led to long delays in examining complaints, often leaving victims without an effective redress because third party rights are meanwhile created and the limitation period to apply to the court has expired. The statistical data does not allow conclusions as to whether one particular mandate receives more attention than the other, but very often victims submit complaints without specifying which of the authorities they are addressing and it is up to the Ombudsman to decide which authority will handle each complaint.

Table 1: Staff and Budget of the Ombudsman and Equality Body, 2004-2016

Source: Table compiled by the expert based on information supplied by the equality body

Year	No. of employees	No. of professional/legal staff	Budget (€)
2004 (operations commenced on 01.05.2004)	6 officers + 2 supporting staff, total 8	6	885,000
2005	6 officers + 2 supporting staff, total 8	6	1,186,000
2006	6 officers + 2 supporting staff, total 8	6	1,395,000
2007	6 officers + 2 supporting staff, total 8	6	1,527,000
2008	6 officers + 2 supporting staff, total 8	6	1,669,885
2009	7 officers + 2 supporting staff, total 9	7	1,877,000
2010	8 officers + 2 supporting staff, total 10	8	2,046,330

<sup>566</sup> The Constitution of the Republic of Cyprus (*To Σύνταγμα της Κυπριακής Δημοκρατίας*), Articles 7(3) and 7(4). Available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html).

2011	7 officers + 2 supporting staff, total 9	7	2.085.182
2012	7 officers + 2 supporting staff, total 9	7	1.922.034
2013	9 Officers + 2 supporting staff, total 11	9	2.003.434
2014	10 Officers + 2 supporting staff, total 12	10	2.090.869
2015	12 Officers +2 supporting staff, total 14	12	2,111,146
2016	12 Officers +2 supporting staff, total 14	12	1,823,357

The staffing and budgeting arrangements shown above concern all the independent authorities operated from within the Ombudsman's office. Although in recent years the competencies of the office have increased with additional mandates, its overall budget keeps decreasing as part of the government's austerity agenda.

The law setting up the Equality Body (N.42(I)/2004) does not expressly provide for the independence of this body; however, this is implied from several provisions which essentially give the power and obligation to the body to apply and implement the obligations undertaken by the Republic under the EU *acquis* as well as under international law. The law governing the duties and powers of the Ombudsman (customarily referred to in Cyprus as 'Commissioner of Administration')<sup>567</sup> provides that the Ombudsman is not allowed to hold any other office or carry out any other work with remuneration.<sup>568</sup> Article 4(2) of the same law provides that the members of staff of the Ombudsman's office are civil servants, to be appointed in accordance with the Law on Civil Service. Although since its inception there was never an issue as regards the independence and impartiality of the members of staff working at the Ombudsman/Equality Body, the fact that the body lacks the power to choose its own members of staff is generating discontent amongst the body itself<sup>569</sup> and has also attracted criticisms from ECRI<sup>570</sup> and from the Advisory Committee for the FCNM.<sup>571</sup> Another issue potentially affecting its independence is the fact that its budget is exclusively provided by the Ministry of Finance; but perhaps the most crucial factor of all as regards the institution's independence is the fact that the Ombudsman (and Head of Equality Body) is appointed by the President of the Republic and must be acceptable to the majority of the political forces. During 2011, when the term of the former ombudsman expired and a new ombudsman had to be appointed, the body remained headless for several months until the political forces would agree on the person to be appointed. At the time of writing, the office of the Ombudsman/Equality became headless again, as a result of the retirement of the person who served as Ombudsman for the period 2012-2017.

#### c) Grounds covered by the designated body

The grounds which the Equality Body has a mandate to deal with are: Race, community,

<sup>567</sup> Although the Ombudsman is also the Equality Body, the reference here is to the Ombudsman only.

<sup>568</sup> Laws on the Commissioner for Administration (Οι περί Επιτρόπου Διοικήσεως Νόμοι) N. 3/1991, Article 3(3). Available at [www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html).

<sup>569</sup> Focus group with the Head of the Anti-discrimination Authority and Head of the Equality Authority respectively 05 May 2010 for the purposes of a study on Equality Bodies coordinated by Human European Consultancy and the Boltzman Institute for Human Rights in 2010 (VT/2009/012).

<sup>570</sup> The Fourth ECRI report on Cyprus published in 2011 states in p.7: "The Office of the Commissioner for Administration (Ombudsman) lacks sufficient human and financial resources and does not enjoy the freedom to appoint its own staff."

<sup>571</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

language, colour, religion, political or other beliefs, ethnic or national origin (which is equated with nationality), special needs, age, sexual orientation, national origin, all rights guaranteed in ECHR and all its protocols (including article 1(1) of Protocol 12 to the ECHR), in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities.

In practice, it also deals with gender, gender identity, community as well as rights and freedoms contained in the Cypriot Constitution and in most international conventions ratified by Cyprus.

Over the years since its inception, the Equality Body emerged as the strongest and most consistent advocate for the rights of migrants and refugees, with its regular interventions to the police and to the immigration authorities regarding the treatment of migrants. It has dealt, either in response to complaints or as a result of self-initiated investigations, with the practice of racial profiling, racial violence from members of the police towards migrants, the failure of the police to adequately protect migrants from racial crime, delays and arbitrary rejections of applications to the immigration authorities, arbitrary deportations and the failure of the authorities to adequately investigate labour disputes and claims of labour exploitation. However, the budgetary limitations facing the Equality Body, its large volume of work and its restricted capacity have often led to long delays in intervening and on many occasions its intervention came far too late.

#### d) Competences of the designated body – and its independent exercise

The Equality Body lacks both competence and resources to provide independent assistance to victims or to represent victims on Court. It is vested with the power to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin,<sup>572</sup> (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law<sup>573</sup> irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin<sup>574</sup> and (iii) promote equality of opportunity irrespective of grounds listed in the preceding section (to which the grounds of special needs<sup>575</sup> and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

At the level of the Equality Body, there appears to be a trend towards a more socio-legal approach that involves less the invocation, interpretation and application of legal provisions than in previous years, perhaps reflecting the non-legal specialisation of the members of staff of the Equality Body in this period. An interesting development may nevertheless be observed in the dynamic intervention of the Equality Body as regards the efforts of certain circles within the Ministry of Education to revoke exemption from the religious instruction class which was previously available to those students who would apply for it. For the first

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<sup>572</sup> The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 3(1)(a).

<sup>573</sup> These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

<sup>574</sup> The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004 (19 March 2004), Section 3(1).(b), Part I.

<sup>575</sup> 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including psycho-social disabilities. In Cyprus, the term 'disability' is not understood to include psycho-social disability which is considered to be a special category requiring more sensitive treatment.



time, the Equality Body appears ready to impose the sanctions foreseen in its mandate, in order to restore the right to exemption from this class, as a means of safeguarding religious freedom in schools.<sup>576</sup> In response to this pressure from the Equality Body and the pressure from international monitoring body reports, in 2016 the Ministry of Education issued a new circular to schools specifying the procedure for exemption from the religious class.<sup>577</sup> Although elements of vagueness and administrative discretion persist in the new exemption procedure, this development marks an important and bold step on the part of the Ministry of Education under the currently prevailing conservative climate in Cyprus.

The Equality Body may carry out independent investigations into various issues<sup>578</sup> on its own right where it deems that any particular case may constitute a violation of the law.<sup>579</sup> The Equality Body may also issue codes of good practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.<sup>580</sup>

The Equality Body has the duty to make recommendations to the competent Minister, the parliament and affected groups of persons on, inter alia, the amendment of any legal provision or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right<sup>581</sup> or following a specific complaint to that effect referred to the Equality Body. It also has the power to conduct independent surveys and compile reports on any matter within its competency concerning any activity or practice in the public or private domain.<sup>582</sup>

In addition, the law casts an obligation on the Equality Body to communicate its findings and reports to the Attorney General who will, in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures and prepare legislation for the abolition or substitution of the legislative provision which is contrary to the anti-discrimination law.<sup>583</sup> However, as it is currently phrased, the law allows the discriminatory law to remain in force until officially amended by the House of Parliament. This is a discrepancy in the law that renders compliance with the directives questionable, because it allows for the law to remain in force even if the Attorney General delays or omits to take steps for its amendment. In December 2014 the Supreme Court ruled that this provision can only be interpreted so as to mean that the Attorney General is under a duty to inform the executive regarding changes in the legislation deemed necessary by the Equality Body and that had the legislator intended to give power to the Attorney General to reject the

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<sup>576</sup> Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11\\_2014%CE%BA%CE%B1\\_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

<sup>577</sup> Cyprus, Ministry of Education, *Procedure for securing exemptions from classes*, 15 September 2016, available at <http://enimerosi.moec.gov.cy/archeia/1/ypp4633a>.

<sup>578</sup> E.g. Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31 May 2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26 May 2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 02 February 2005.

<sup>579</sup> The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004 (19 March 2004), Section 33.

<sup>580</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Articles 40, 41 and 42, Part VI. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>581</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 35(1)(d). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>582</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 44. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>583</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(I)/ 2004, Article 39. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

recommendations of the Equality Body, the wording of the law would have explicitly provided that the Attorney General may adopt, amend or reject the recommendation.<sup>584</sup> This development has not led to the amendment of any laws containing discrimination; the law which was ruled by the Court to contain discrimination continues to remain in force.

The Equality Body can make binding recommendations<sup>585</sup> ordering the guilty party to take steps to rectify the discrimination, for instance in the form of ordering the provision of goods and services which had been denied to the victim, including housing, education, health care<sup>586</sup> and in the form of requesting the discontinuation of a certain practice that causes discrimination.<sup>587</sup>

The Equality Body has the power and the duty to monitor compliance with its decisions and to impose fines for non-compliance within the prescribed period. The Equality Body's orders must be published in the Official Gazette.

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. Also, where there is a disciplinary offence, the Equality Body has the duty to refer this to the competent authority: for instance, if the offender is a public servant, the Equality Body must refer the case to the Minister in charge, so as to take action.

#### e) Legal standing of the designated body/bodies

In Cyprus, the Equality Body does not have legal standing to bring discrimination complaints on behalf victims, whether identified or not, or to intervene in legal cases concerning discrimination, although its officers may appear as expert witnesses. The legal officers of the Equality Body have repeatedly expressed their regret over the fact that they are not mandated to take cases to the Courts. Under the existing legislation, the Equality Body's duty is confined to referring cases to the Attorney General's office so as for the latter to decide whether criminal charges must be instigated, whilst civil lawsuits are clearly the responsibility of the litigants themselves. So far, no charges have been brought against any person by the Attorney General invoking the anti-discrimination legislation. In fact in 2016 the Attorney General ignored the repeated request of the national NGO Accept LGBT CY to prosecute the Archbishop for homophobic speech, essentially placing the church primary above the law.<sup>588</sup>

#### f) Quasi-judicial competences

In Cyprus, the Equality Body is a quasi-judicial institution.<sup>589</sup> It is clearly an administrative organ but does have the power to issue binding decisions as well as sanctions, although these powers have not so far been utilised. The Equality Body prefers to use its mediation function where possible or to issue recommendations where mediation is not possible. A decision of the Equality Body can be appealed against through a recourse to the Supreme Court for judicial review of an administrative act under article 146 of the Constitution.

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<sup>584</sup> Cyprus, *Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General*, Case No. 1695/2009, 17 December 2014, available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

<sup>585</sup> This applies only to the Cyprus Anti-discrimination Body and the Equality Body operating from within the Ombudsman's office and not to the other tasks and powers of the Ombudsman.

<sup>586</sup> Cyprus, *The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος]* No. 42(I)/ 2004, Article 16(2). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>587</sup> Cyprus, *The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος]* No. 42(I)/ 2004, Article 21(1)(c). Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>588</sup> Accept LGBT-Cyprus, Letter to the Attorney General, 7 November 2016. Not available on line.

<sup>589</sup> This view is also shared by the Equality Body itself (Consultation with Equality Body Officers dated 06 June 2014).

Although no evaluation or assessment has been made publicly available nor are compliance rates published, generally speaking the recommendations of the Equality Body are taken seriously into consideration by the private sector and to a certain extent by the public sector. Since the organisation's inception in 2004, the immigration authorities have undoubtedly the lowest rate of compliance amongst all public authorities. In previous years, the police also had a low compliance rate although in recent years a closer collaboration with the police developed over joint initiatives in the fight against racism and homophobia has improved the police's compliance rates.

g) Registration by the body/bodies of complaints and decisions

In Cyprus, the Equality Body records the number of complaints received and the reports issued by ground and field of application as well as by the ethnic origin of the complainant. The statistical record as regards reports issued or other action taken can be fragmented and confusing as the outcome of the investigation and whether discrimination was found to exist may not always be extractable.

The statistical record is available to the public and is set out in the Equality Body's annual reports which are posted on its website albeit with some delay, usually at the end of the year following the year concerned.

h) Roma and Travellers

Although not a number one priority, the Equality Body is concerned with the situation of the Roma and has on two occasions in 2003 conducted self-initiated investigations into their housing conditions. In 2011 it has published a report on discrimination against Roma children in education, in response to a complaint submitted in 2008.

No measures have been taken to raise awareness amongst the Roma community of rights and procedures available to them under the new antidiscrimination legislation, presumably as a result of the restricted budget and limited resources of the Equality Body and the practical difficulties involved in accessing the Roma communities (language problem, illiteracy, Roma settlements in remote locations). Although there are inherent difficulties in commencing a structured dialogue and consultation with the Roma community, which is a measure strongly recommended by the Fourth ECRI Report on Cyprus published in 2011, the Equality Body is in a unique position to launch such an initiative; under the current circumstances of austerity however, the Equality Body can hardly manage with its existing workload.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

There have not been any government activities during 2016 to disseminate information on non-discrimination and no good practices in the field either.

Generally speaking, on issues of policy making, consultation with NGOs is either poor or non-existing. In 2016 there was no policy making or law making in the field of anti-discrimination.

- a) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Dialogue with social partners on issues of discrimination at the workplace is lacking; no code of conduct has been agreed upon nor is there any system for workforce monitoring.

- b) Addressing the situation of Roma and Travellers.

The government has not taken any measures to specifically target the Roma in terms of dissemination of information or dialogue. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded under the European Union Structural Funds for the period 2014–2020 and there will be no allocation of funds for this priority.<sup>590</sup> Cyprus has no specific Roma integration strategy and no policies vis-a-vis the Roma community. The general approach of government policy is to promote Roma integration through horizontal measures targeting vulnerable groups in general in the frame of existing wider policies and structures for social inclusion, such as general integration policies, the National Reform Programme and the National Strategy for Social Policy 2014-2020, targeting the increase in employment and decrease of poverty and social exclusion. It is questionable whether any of these measures have any actual impact on the Roma, who continue to live in extreme poverty and exclusion, with no efforts made by the authorities towards the preservation of their cultural identity or towards raising awareness and respect for their distinct identity and culture amongst society.<sup>591</sup>

Given that there are no policies targeting the Roma, there are no separate mechanisms monitoring the implementation of policies vis-a-vis the Roma. The Welfare Services, who act as the national contact point for the implementation of the national Roma Integration strategies, estimate that there 650-700 Roma who are Cypriot citizens in the area under the control of the Republic of Cyprus, out of a total of 1250 Roma in the whole of Cyprus; there are no estimates as regards the number of migrant Roma or Sinti residing in Cyprus. Overall the Welfare Services consider that the number of Roma residing in Cyprus is rather small to deserve a separate and distinct approach from other vulnerable groups.<sup>592</sup>

Cyprus has been consistently criticised by ECRI and by the Advisory Committee for the Framework Convention for National Minorities (FCNM) for failing to take measures to promote participation and integration of the Roma. The Third Opinion on Cyprus of the Advisory Committee for the FCNM states that the Roma continue to face serious prejudice

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<sup>590</sup> Letter from the General Directorate of European Programmes, Coordination and Development, 1 December 2014.

<sup>591</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

<sup>592</sup> Oral and written exchange of communication with the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance, 27-28 November 2014.

and difficulties in many fields, such as employment, housing, education and access to health services, whilst the establishment of a dialogue between the government and the Roma remains problematic. The Committee urged the government to identify ways to establish a structured dialogue with the Roma and to obtain up-to-date information regarding their ethnic, linguistic and religious affiliation. The government responded by stating that 'issues regarding the Cyprus Roma are part of the overall policy planning of the Government' without indicating any specific policies to address the problems highlighted.<sup>593</sup> The Fourth ECRI report on Cyprus published in 2011 also urged the authorities to engage into consultation with the Roma community in order to address problems of housing, employment and education.<sup>594</sup> During 2016 the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance set up a National Roma Platform on the basis of funding received from the EU which covered 95% of the Platform's operational cost for 12 months. The Platform aims at creating the framework for the strengthening of dialogue on issues affecting the Roma, such as housing, education, social services, health and employment. The Platform brought together governmental bodies, independent authorities, local governance, NGOs, academics and members of the Roma community and planned to hold 4 meetings during 2016-2017. The first meeting of the platform was attended by 33 persons; only three of them were members of the Roma community. At the following platform meeting in October 2016 the number of Roma persons participating rose to 17.<sup>595</sup> The relevant press release noted that the participation of members of the Roma community was low despite efforts made to encourage their attendance. From the discussions at the platform meetings it emerged that the Roma of Cyprus need additional mobilisation and incentives in order to become more actively involved in matters affecting them. However, the press release which followed the first platform meeting took the opportunity to reiterate the official position that the Roma do not constitute a distinct ethnic community in its own right but form part of the Turkish Cypriot community, citing the Cypriot Constitution as a source.<sup>596</sup> However, the Constitution does not state this; in fact it does not refer to the Roma at all. The decision as to the community affiliations of the Roma, which was taken without consulting the Roma themselves, remains an open issue of concern and has been repeatedly criticised by the Committee on the FCNM.<sup>597</sup> Indeed even to date, there has been no formal or informal consultation with the Roma as to their choice of affiliation. For decades the Roma community of Cyprus has been viewed by policy makers as an inseparable part of the Turkish Cypriot community. It is only in recent years and through EU funding that projects involving the Roma in their own right have started developing. Yet the issue of affiliation is still not on the table. The 2015 report of the Advisory Committee for the FCNM was highly critical of the fact that the latest population and housing census contained a question

<sup>593</sup> The Third Opinion of the Advisory Committee is available at [www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_Cyprus\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf). The comments of the government of Cyprus on Third opinion are available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_Com\\_Cyprus\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Cyprus_en.pdf).

<sup>594</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

<sup>595</sup> Social Welfare Services, Press release, Cyprus Roma Platform, 13 July 2016, available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf)

<sup>596</sup> Social Welfare Services, Press release, Cyprus Roma Platform, 8 December 2016, available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE%AE%20%CE%94%CE%B9%CE%AC%CF%83%CE%BA%CE%B5%CF%88%CE%B7%20%CE%A0%CE%B%CE%B1%CF%84%CF%86%CF%8C%CF%81%CE%BC%CE%B1%20%CE%A1%CE%BF%CE%BC%CE%AC%2013.7.16.pdf](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE%AE%20%CE%94%CE%B9%CE%AC%CF%83%CE%BA%CE%B5%CF%88%CE%B7%20%CE%A0%CE%B%CE%B1%CF%84%CF%86%CF%8C%CF%81%CE%BC%CE%B1%20%CE%A1%CE%BF%CE%BC%CE%AC%2013.7.16.pdf)

<sup>597</sup> Council of Europe (2015), Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

to related to 'ethnic/religious group' where the interviewees had to choose from a closed list of five possible responses, which did not include the option of being Roma, nor was it possible to respond 'other' or 'do not wish to respond', or to opt for multiple affiliations, reflecting the realities of contemporary societies.

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Mechanisms**

The existing constitutional practice is such that any law or regulation contrary to the principle of equal treatment, as guaranteed by Article 28 of the Constitution, and the human rights sections of the constitution, is unconstitutional, as the principle underlies all relevant laws. Once declared by the Court as unconstitutional the law is considered null and void. However, in order to trigger this provision, an application must be filed in court by a person who has been wronged as a result of the implementation of a law which runs contrary to the Constitution, seeking to have the law declared unconstitutional. So far, no law has been declared unconstitutional by reason of non-compliance with the equality provision of the Constitution (article 28), except laws providing for positive action measures in favour of persons with disabilities.

The provisions contained in the international treaties, signed and ratified by the Republic, take precedence over any municipal law and therefore override any provisions that are contrary to the principle of equal treatment. Also, by virtue of a 2006 amendment of the Constitution, all EU directives and regulations are deemed to take precedence over all domestic legislation including the Constitution itself.

There is no procedure for a regular monitoring or screening of old or new laws, collective agreements, contracts or rules etc. in order to ensure their compliance with the anti-discrimination laws. Practice shows that the procedure for assessing compliance of a particular law, contract, practice etc. with the anti-discrimination laws is triggered off only when a specific complaint is submitted on this matter. The mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended is contained in the law setting out the mandate of the Equality Body.<sup>598</sup> This procedure requires the Equality Body to refer to the Attorney General all laws, regulations and practices containing discrimination; the Attorney General is then obliged to advise the Minister concerned and prepare the necessary amendment in the discriminatory law or practice. The procedure foreseen by article 39 does not appear to be particularly well known to legal and judicial circles, who tend to go for the constitutionality test, i.e. to request the Court to annul a provision or a law as 'unconstitutional', for non-compliance with article 28 of the Constitution which contains the equality principle. As a result of restrictive interpretations by the Court, this procedure has never borne fruit for the victims of discrimination, nor has it ever resulted in annulling a law containing discrimination.<sup>599</sup>

The Equality Body's referrals to the Attorney General under article 39 were not always taken up and often laws and regulations containing discriminatory provisions remain

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<sup>598</sup> Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law [Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος] No. 42(Ι)/ 2004, Article 39. Available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_42/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html).

<sup>599</sup> Cyprus, Supreme Court, Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic (Μιχαλάκης Ραφτόπουλος v. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας) No. 1223/2007, 22 November 2011, Available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007); Cyprus, Supreme Court, Andreas Kattos v. The Republic of Cyprus through the Minister of Justice and Public Order and the Chief of Police (Ανδρέας Κάττος v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), Case N. 349/2010, 7 April 2011. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2011/4-201104-349-10.htm&qstring=349%20w/1%202010](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201104-349-10.htm&qstring=349%20w/1%202010).



unaffected as a result. This continued to be the case even after the Supreme Court ruled that Attorney General is under a mandatory duty to promote the change of legislation in accordance with the Equality Body's recommendation.<sup>600</sup>

b) Rules contrary to the principle of equality

There was never any exhaustive scan of laws or regulations to assess their consistency with the anti-discrimination directives or their compliance with the equality principle in general. A problem of non-compliance usually surfaces when a complaint is filed with the Equality Body but even in such case there is no system for recording the non-compliant laws or rules in a single database.

No exhaustive list of laws or regulations that are contrary to the equality principle can be drawn up, since the legislative and policy framework has not been thoroughly scanned for compliance with the directives. A series of complaints have triggered recommendations from the Equality Body to the Attorney General to proceed with law reforms, many of which were not pursued. Based on the cases of non-compliance highlighted by the Equality Body, there are job advertisements in the public service which carry an age limit; job descriptions which require 'excellent knowledge of Greek' as a prerequisite or where the criterion to test knowledge of Greek can only be met by graduates of Cypriot schools; rent control laws which exclude third country nationals from their scope; restrictions in the retirement benefits paid to public employees aged under 45 who take early retirement in order to join EU institutions; the Termination of Employment law which deprives persons reaching pensionable age from their right to compensation for unlawful dismissal; and no doubt many others in respect of which no complaint was submitted and thus no decision of the Equality Body was issued to highlight the need for repeal.

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<sup>600</sup> Cyprus, Supreme Court, Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General (*Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα*), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

## **9 COORDINATION AT NATIONAL LEVEL**

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the anti-discrimination laws. Several ministries are involved depending on the issue at stake: the Ministry of Labour and Social Insurance deals with issues such as employment and social insurance benefits; the Ministry of Justice and Public Order deals with issues of legislation drafting and interpretation; the Ministry of Education and the Ministry of the Interior with their respective competencies. The latest annual report of the Ministry of Justice and Public Order, which records activities for the year 2013, sums up the Ministry's activities in this field into providing information that feeds into various European level reports, such as the FRA and the FCNM reports.<sup>601</sup> There has never been any national Action Plan on anti-racism or anti-discrimination.

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<sup>601</sup> Ministry of Justice, Annual report 2013, available at [http://www.mjpo.gov.cy/mjpo/MJPO.nsf/42EB85AE2EFF6C3FC2257F9A00311D97/\\$file/Annual\\_Report\\_2013\\_GR.pdf](http://www.mjpo.gov.cy/mjpo/MJPO.nsf/42EB85AE2EFF6C3FC2257F9A00311D97/$file/Annual_Report_2013_GR.pdf). The relevant references are in para. 2.3, p. 17.

## 10 CURRENT BEST PRACTICES

### **Code of Conduct against Racism and Guide for Handling and Recording Racist Incidents**

This initiative was intended to set up a system of monitoring, recording and intervening to combat racial and other intolerant incidents at schools.

The Code sets out basic principles of respect for multiple identities and of the need to combat intolerant incidents on the grounds of ethnicity, religion, culture, gender, sexuality, belief and disability. It explains in simple terms various forms of racial, xenophobic and other types of intolerance and defines concepts such as identity, diversity, race, prejudice, stereotype, discrimination, racism, xenophobia, nationalism, intolerance, homophobia, transphobia, bullying/threatening, hate speech, under-reporting and racial incidents.<sup>602</sup>

The Guide aims at developing a mechanism for recording and reporting racial and other intolerant incidents, addressing all stakeholders, allocating to each group specific responsibility in recording and responding to the incidents. Moreover, it provides for a step-by-step system of handling racial incidents as well as a nine-step sanction system based on the degree of seriousness and the repetition of the prohibited conduct. The Code and the Guide were launched in June 2014. Implementation was commenced on a pilot basis in seven primary schools during 2015,<sup>603</sup> and was applied to all schools in the school year 2015-2016. The results however were disappointing, as the low number of incidents demonstrated a serious problem of underreporting. At the time of writing, the Ministry of Education had not yet identified whether the underreporting was located at the level of the school or at the level of the victim but had resolved to investigate the issue.<sup>604</sup>

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<sup>602</sup> For more details see the website of the Ministry of Education at [www.moec.gov.cy/agogi\\_ygeias/pdf/odiqoi\\_ekpaideftikou/kodikas\\_symperiforas\\_ratsismou.pdf](http://www.moec.gov.cy/agogi_ygeias/pdf/odiqoi_ekpaideftikou/kodikas_symperiforas_ratsismou.pdf).

<sup>603</sup> [www.moec.gov.cy/agogi\\_ygeias/kodikas\\_kata\\_ratsismou.html](http://www.moec.gov.cy/agogi_ygeias/kodikas_kata_ratsismou.html).

<sup>604</sup> Letter from the Ministry of Education, 7 October 2016.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives**

1. The additional functions/mandate extensions assigned to the Equality Body/Ombudsman without an increase in its budget has led to considerable delays in decision making, to the extent that the effectiveness and impact of the institution is now at question. The freezing in recruitments to the public sector, imposed as a result of the economic crisis, has meant that it cannot hire personnel even if only to replace those who resign from the service. Also, many of the officers of the Equality Body are not legally trained, which is reflected in the reports published: references to laws and case law are usually lacking whilst legal responsibility for clearly unlawful acts is hardly ever pinned on the perpetrators. The shortages in human resources has also meant that the monitoring of compliance with the decisions is adversely affected.
2. The requirement of Article 13 of the Racial Equality Directive that the specialized body should be in a position to offer assistance to victims is still not transposed, more than 12 years after the directive was transposed, as the Equality Body cannot represent victims in Court. To be able to do so, in addition to an expanded mandate, the Equality Body should be afforded the necessary budget and human resources which it is now lacking. In addition, the Equality Body has not issued a single binding decision or imposed any fine for more than 12 years since it was set up, resorting only to mediation or non-binding recommendations. In the case of fines, this may be partly attributed to the fact that the fines foreseen in the legislation are too low to be seen by the perpetrator as a disincentive.
3. Litigation is not sufficiently used, owing to the cost and time length involved, the fact that legal aid is made available only subject to insufficient means, and to the lack of awareness of the anti-discrimination laws amongst the legal profession. The sanctions foreseen in the law for discrimination are neither dissuasive nor effective and, given the fact that the equality body's decisions so far were mere recommendations, victims of discrimination are, in practice, not afforded the mandatory legal protection foreseen in the directives. There is little coordination between NGOs and lawyers for effective handling of cases.
4. In recent years, the government has completely abandoned efforts to raise awareness about the directives, to promote equality initiatives or to consult with civil society. This is the case even with KYSOA, the confederation of disability organisations, which in 2006 was afforded the status of a social partner. In the case of disability and age, the equality agenda is subsumed into a 'welfarism' mentality governed by 'charitable' approaches which seem to be prevalent amongst policy makers and some sectors of civil society.
5. As a concept, positive action continues to be viewed with suspicion by the Courts and by policy makers alike, who appear willing to apply it only to persons wronged by the Turkish invasion (war veterans, persons with a disability resulting from the war) as part of the national project of promoting their sense of 'victimhood' but otherwise find that it violates the equality principle enshrined in the Constitution. Under the current austerity agenda, however, positive action becomes less of a possibility in any field.
6. There is no procedure in place for regular reviewing or revising of discriminatory laws/regulations. In practice, review is only triggered off once a complaint is submitted to the equality body. In such a case, the law requires the equality body to refer discriminatory laws/regulations to the Attorney General who is then under a duty to prepare the amending legislation. In spite of the several referrals to the Attorney General, few of the laws found by the equality body to be discriminatory have been amended. This procedure however is very rarely followed, to the effect that several discriminatory laws remain in place. The failure of the Attorney General to proceed with amending the laws flagged by the Equality Body, when viewed through the lenses of the wide powers granted to him by the Constitution, raise concerns as to whether the Cypriot justice system is capable of responding to the

needs and requirements of the EU acquis. The Attorney General's recent failure to prosecute the archbishop for homophobic speech raises further concerns of arbitrary grant immunity, given the Attorney General's sole discretion in commencing criminal prosecutions

7. Following the labour tribunal decision in 2008 establishing that it has no jurisdiction to hear claims of discrimination in the selection process for a job placement, the law transposing Directive 78/2000 (minus the disability component) was amended. However, the authorities failed to amend the law on disability. In considering an appeal against the first instance decision of the tribunal, the Supreme Court disagreed with the tribunal's findings as regards its jurisdiction, but did not explicitly rule that the labour court has jurisdiction to try all discrimination cases irrespective of whether an employment relationship exists or not.
8. There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination or imposing a general anti-discrimination public duty on authorities. Many complaints directed against various governmental departments are simply not addressed or dealt with, without any consequences for the departments concerned and serious instances of discrimination go unpunished.

### 11.2 Other issues of concern

1. Very rarely do discrimination cases make it to the courts. In those cases, where they do, the anti-discrimination legal framework is not being invoked; instead recourse is made to the 47-year old constitutional provisions (judicial review of administrative acts; and/or the general equality provision of article 28) which do not offer the far-reaching protection of the directives. The decision is often based on problematic legal doctrines arbitrarily developed by the courts which do not comply with the directives and which deny victims the protection offered by the directives.
2. Judicial practice on discrimination claims often deviates from the letter and the spirit of the directives, rejecting discrimination claims by using the 'reasonableness' test. The use of this test has led the courts to reject direct discrimination claims which were thought to be 'reasonable', in breach of the equality directives which allow only a limited range of exceptions.
3. As the economic crisis deepens and unemployment rises, anti-immigrant sentiments are being hyped. The new government's declarations upon assuming office in March 2013, that Cyprus would cease to be 'a migrant's paradise' have not only met with the tacit acceptance of the social partners but have also led to a gentleman's agreement amongst the social partners that employers should employ 'primarily Cypriots'. In 2013-2014 employment-related complaints to the Equality Body dropped by half compared to previous years, whilst there were no discrimination court cases from employees against their employers; both must be attributed to underreporting owing to fear of losing their jobs amidst the deep recession. The austerity package has also affected pensions and welfare benefits for the elderly, the majority of whom live below poverty levels.
4. Regarding discrimination at the workplace, the inequality of power between the employers' lobby and workers' unions, despite the apparent strength of the latter, is accentuated by the fact that Cyprus has a very large SME sector, whose individual members generally lack professionalism and awareness on issues of labour rights and discrimination. This sector is one of the worst hit by the economic crisis and the violation of workers' rights has become commonplace.
5. In the 2016 parliamentary elections the neo-Nazi party ELAM<sup>605</sup> entered into parliament for the first time, having won 3.71% of the votes which secured two parliamentary seats. This result marked an increase of 2.6% from the votes it won at the previous elections. The negative impact from the ELAM's entry into parliament became apparent a few months after the elections, when it proposed that the Cypriot referendum of 1950 which had overwhelmingly decided in favour of union with

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<sup>605</sup> The initials stand for 'National Popular Front', in Greek: Εθνικό Λαϊκό Μέτωπο

Greece, be celebrated at schools. ELAM's proposal was accepted and adopted, with only the communist party voting against it. This development prompted the Turkish Cypriot leader Mustafa Akkinci to withdraw from the negotiations for the resolution of the Cyprus problem, causing the peace process to collapse. This series of events has since topped the political agenda and discourse, with one side blaming another for the collapse of the peace talks and for allowing ELAM to 'score points', amongst concerns for heightened tensions as a result of increased far right activity.

6. On 20 November 2014 the Cypriot police entered a gallery operated by the Nicosia municipality and confiscated an entire exhibition of photographs taken by a transsexual photographer and activist, depicting male nude in an artistic fashion. The exhibition had been organised by the national gay movement Accept LGBT Cyprus. The police pressed charges against the president of Accept LGBT Cyprus under a law dating back to 1963 regarding the publication of obscene material.<sup>606</sup> The Ombudsman, whose representative was a speaker at the opening of the exhibition, condemned the actions of the police and asked for the revision of the law on obscene publications under which the president of Accept had been charged.<sup>607</sup> Following the Ombudsman's intervention, the Attorney General publicly criticised the police for this action and instructed them to drop the charges and return the confiscated exhibition items to the artist. No action was taken against the police officers involved in the operation nor was the law on obscene publications revised, suggesting a lack of political will to deal decisively with homophobia amongst law enforcement officers.
7. The national specificities of Cyprus are the result of what can be termed as country-specific structural problems. These consist mostly of issues deriving from the unresolved 'Cyprus problem', which creates problems of discrimination resulting from the de facto division of the country e.g. failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish-Cypriots (T/Cs) in access to property and in the exercise of various constitutional rights, the violation of Greek-Cypriot (G/C) rights by Turkey and a certain tendency of the authorities and of the courts to 'seek revenge' for the Turkish invasion of Cyprus. The Cyprus problem can also be blamed, at least partly, for a general lack of tradition in equality issues deriving from the 40-year old persistent predominance of the Cyprus problem in the public sphere. The G/C resentment of the constitutional quota system for T/Cs in the public sector, the history of ethnic conflict and the continuous application and expansion of the 'doctrine of necessity' by the authorities and the courts subordinate's equality issues to political expediencies and place a disproportionately strong emphasis on state sovereignty.
8. The comprehensive educational reform that commenced in 2008, soon after the former government took office, came to a halt when the new government came into power in March 2013. The new curriculum developed under the reform, aiming at rendering the school democratic, inclusive and multicultural has been abandoned, alongside with the pioneering methods of teaching, as the system has reverted to the old curriculum and the old methods used before the reform was implemented. Tensions as regards the teaching of the religious class, which had in previous years been toned down, were hyped again in 2015 following an initiative of the Ministry of Education to encourage students to assist with the conducting of the Christian orthodox ceremony which received lengthy criticism from the Equality Body.<sup>608</sup> The

<sup>606</sup> Law on the publication of obscene matters of 1963 (Ο περί δημοσιεύσεως αισχρών θεμάτων Νόμος του 1963) N. 35/1963. Available at [http://www.cylaw.org/nomoi/enop/non-ind/1963\\_1\\_35/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1963_1_35/full.html).

<sup>607</sup> Cyprus, The Office of the Commissioner for Administration and Human Rights (2014), Position of the National Independent Authority for Human Rights regarding the confiscation of photographs in the frame of the photography exhibition "Correction" (Τοποθέτηση Εθνικής Ανεξάρτητης Αρχής Ανθρωπίνων Δικαιωμάτων σχετικά με την αποκαθήλωση φωτογραφιών στα πλαίσια της φωτογραφικής έκθεσης «Διόρθωση») File No. A/D/12/2014, 26 November 2014.

<sup>608</sup> Cyprus, Report of the Anti-discrimination Authority regarding the respect of religious freedom at schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11\\_2014%CE%BA%CE%B1\\_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).



Ministry initiative, however, and the arguments offered by the Ministry in its defence, may suggest that religious intolerance in education is deeply rooted in obsolete mentalities and stereotypes maintained by the teachers themselves.

9. All fundamental rights debates which had previously shaped the public sphere have now subsided and transformed into the single theme of the economic crisis and its impact on the Cypriot population which dominates public discourse.
10. In order to challenge and annul a discriminatory administrative decision, the only process is the judicial review under article 146 of the Constitution which, however this process is restricted to persons with a 'legitimate interest', a term which presumably excludes organisations acting in support of victims. Only in claims for compensation before the district courts can organisations act on behalf of victims.

## 12 LATEST DEVELOPMENTS IN 2016

### 12.1 Legislative amendments

There were no discrimination related legislative developments in 2016. However, an amendment to the asylum legislation<sup>609</sup> as a result of the transposition of the two asylum Directives (the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33) resulted in provisions which may lead to discrimination on the ground of race/ethnic origin, nationality or immigration status, as well as on sexual orientation in some cases:

- The definition of 'family members' does not comply the provisions of the recast Reception Conditions Directive as it excludes the unmarried children of homosexual couples who have concluded a partnership agreement and not a marriage. It is recalled that in 2015 Cyprus recognized registered partnerships of both homosexual and heterosexual couples but without the right to adopt children.<sup>610</sup> The definition of a family member in the revised asylum law clearly refers to children of only heterosexual registered partnerships concluded prior to entering Cyprus. The definition is further restricted to female spouses or partners and does not extend to male spouses or partners,<sup>611</sup> which discriminates against same sex partners and infringes a child's right to family life, as it prevents the right to reunification with a father.
- The right of asylum seeking children to access education was rendered subject to there being no deportation order pending against them or against their parents<sup>612</sup> which may lead to the exclusion of children from the educational system for years pending the execution of deportation orders.

### 12.2 Case law

During 2016 there were no court decisions of legal interest. Below is a selection of relevant decisions of the Ombudsman/Equality Body.

#### *Age Discrimination in vacancy announcements*

**Name of the body:** Equality Authority

**Date of decision:** 6 September 2016

**Name of the parties:** N/A [Report of the Equality Authority regarding unlawful direct discrimination on the ground of age in the announcement of vacancies by the Nicosia Municipality for 11 fixed term employees]

**Reference number:** A.K.I. 18/2015

**Address of the webpage:**

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/\\$file/AKI182015\\_06072016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/$file/AKI182015_06072016.doc?OpenElement)

**Brief summary:** In May 2015 the Equality Body received a complaint that the Nicosia Municipality had advertised for 11 vacancies stating that applicants would be assessed on the basis of their academic qualifications and experience but applicants scoring equally on these criteria would be further assessed on the basis of their date of birth (priority to be given to younger applicants). In response to the Equality Body's investigation, the Mayor of Nicosia argued that the age criterion would be applied only where the applicants had

<sup>609</sup> Cyprus, Law amending the Refugee Law (No.2) N. 106(I)/2016, 14 October 2016, available at [http://cylaw.org/nomoi/arith/2016\\_1\\_105.pdf](http://cylaw.org/nomoi/arith/2016_1_105.pdf); Law amending the Refugee Law N. 105(I)/2016, 4577, 14 October 2016, available at [http://cylaw.org/nomoi/arith/2016\\_1\\_105.pdf](http://cylaw.org/nomoi/arith/2016_1_105.pdf).

<sup>610</sup> Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at [http://cylaw.org/nomoi/arith/2015\\_1\\_184.pdf](http://cylaw.org/nomoi/arith/2015_1_184.pdf).

<sup>611</sup> Cyprus, Law on refugees (*Ο περί προσφύγων νόμος*) article 2, available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).

<sup>612</sup> Cyprus, Law on refugees (*Ο περί προσφύγων νόμος*) article 9(H)(1), available at [http://cylaw.org/nomoi/enop/ind/2000\\_1\\_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html](http://cylaw.org/nomoi/enop/ind/2000_1_6/section-scbbcd3a86-4010-490e-82a2-08aa277b0941.html).

scored equally on the first two criteria. The Mayor argued that in the end the Municipality did not have to resort to the age criterion because the applicants had not scored equally on the first two criteria.

The Equality Body found that differential treatment based on age can only be justified if the conditions set in the law<sup>613</sup> with regard to proportionality and legitimacy of the aim are met. This means that the Municipality must prove that there is no better way for achieving its aim with a lesser impact on the right to equal treatment and that the aim has significant benefits which justify the negative impact on equality. In this case, the criteria set by the Directive and by the transposing legislation must apply in addition to the criteria set by the advertisement. The report referred to the CJEU ruling in the case of Hütter which established that less favourable treatment of persons who acquired professional experience before reaching 18, compared to persons who acquired it after this age, infringed Directive 2000/78.

The report found that the aim behind the age criterion in this case was not legitimate, as it merely sought to address the dilemma of candidates scoring equally on the first two criteria set. The aim was not directly or indirectly connected to employment policy nor could it otherwise be justified within the remit of the Directive. By introducing the age criterion, the Municipality expressed its preference for younger candidates without justifying this preference on any of the exceptions foreseen in the Directive. If the age criterion had been applied, it would lead to less favourable treatment of candidates scoring equally on all other criteria, so essentially the Municipality was on the one hand trying to address the dilemma of candidates scoring equally but at the same time secure that younger rather than older employees would be joining its workforce. The report concluded that the Municipality's age criterion amounted to unlawful direct discrimination and recommended that in the future the dilemma of candidates scoring equally be addressed through other means and not through age. No sanctions were imposed.

This decision may be contrasted with the Court's decision in Charis Christodoulidou,<sup>614</sup> discussed above under section 4.7.1(b) above, where the Supreme Court ruled that age was a legitimate criterion to be taken into account when assessing 'seniority'. In that case, the Court ignored the requirements of the EU equality acquis as regards age and upheld the consideration of age as a legitimate basis for deciding promotions because this is sanctioned by a national law.

#### *Discrimination in conditions for self-employment of third country nationals*

**Name of the body: Equality Authority**

**Date of decision:** 15 April 2016

**Name of the parties:** N/A [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]

**Reference number:** File number A.K.I.22/2016

**Address of the webpage:**

[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)

**Brief summary:** 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

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<sup>613</sup> Equal treatment in employment and occupation N. 58(I)/2004, article 5(2), available at [www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_58/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html).

<sup>614</sup> Cyprus, Charis Christodoulidou v Republic of Cyprus through the Public Service Committee, Case No. 12/10, 3 April 2015, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%202015](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015); Supreme Court, Maria Shambarta v Republic of Cyprus (*Μαρία Σιαμπάρτα v Κυπριακής Δημοκρατίας*) No. 417/2010, 4 October 2010.

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.

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>615</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.

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 law for estate agents as regards their '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>616</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. By the end of 2016 the law had still not been amended.

*Discrimination and harassment of TV presenter by a work colleague's posts on Facebook on the ground of gender and national origin*

**Name of the body:** Equality Authority

**Date of decision:** 12 October 2016

**Name of the parties:** N/A [Report of the Equality Authority regarding a complaint for harassment at work and for discrimination on the ground of gender and national origin of an employee at the Cyprus Broadcasting Corporation]

**Reference number:** File No. A.K.I. 45/2015

**Address of the webpage:**

[http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFS812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945\\_2015\\_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFS812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement)

**Brief summary:** In September 2015 the Equality Body received a complaint from a female TV presenter of Bulgarian origin employed at the state channel CyBC against a work colleague who was posting insulting comments about her on Facebook with references to

<sup>615</sup> Law on estate agents (*Ο περί Κτηματομεσιτών νόμος*) N. 71(I)/ 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>616</sup> Law on equal treatment in employment and occupation (*Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) N.58(I)/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).

her gender and her national origin. The complainant had repeatedly complained to the board of the TV Channel ('the board') about the degrading comments against her posted on social media. Initially, the board commenced a disciplinary procedure against the perpetrator but this was subsequently discontinued before conclusion when the board's director changed. The board offered no justification for the termination of the disciplinary procedure arguing that, according to the channel's disciplinary code, the director has absolute discretion to terminate any disciplinary procedure. The board stated that a warning letter had been sent to the perpetrator, demanding that he removes from Facebook the insulting comments, which the perpetrator did. The board added that its decision to terminate the disciplinary procedure was based on legal advice, pointing out that, in her repeated complaints to the board, the complainant had not raised the issue of her national origin being the reason of harassment.

Citing the relevant Eurofound report<sup>617</sup> and Council Directive 2002/73 the Equality Body defined harassment as conduct which may include psychological violence consisting of either isolated incidents or systematic patterns of behaviour manifested by persons in a hierarchically higher position than the victim at the workplace. The Equality Body underlined the board's refusal to justify its decision to terminate the disciplinary procedure and criticized the invocation of the director's discretion as a justification. It also questioned the board's statement that the complainant had failed to cite her national origin as a ground for her harassment, pointing out that the comments which the perpetrator had posted on Facebook referred to the complainant's national origin. The report found that the board's failure to investigate the complaint amounted to direct discrimination prohibited by law on the ground of gender and national origin, rendering the TV channel equally liable with the perpetrator for the unlawful discrimination. The report found that the TV channel was under a duty to adopt effective measures and policies to combat discrimination and harassment at the workplace irrespective of the hierarchical position of the persons involved and called upon the board to introduce within the next three months a code for the prevention and combating of harassment including sexual harassment at the TV channel as is required for all employers under the law on equal treatment between men and women in employment and occupation, specifying that the code must regulate the procedures to be applied in relation to harassment or sexual harassment at the workplace. No sanctions were imposed.

*Discrimination on the ground of ethnic origin against Turkish Cypriot students by the school's parents association*

**Name of the body:** Anti-discrimination Authority

**Date of decision:** 3 August 2016

**Name of the parties:** N/A [Report of the Anti-discrimination authority regarding the organisation of the school leavers' prom of the English School for 2015]

**Reference number:** Ref. No. AKR 30/2015

**Address of the webpage:**

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/\\$file/%CE%91%CE%9A%CE%A130.2015\\_03082016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement)

**Brief summary:** The Equality Body received a complaint from the parent of a Turkish Cypriot student attending Nicosia's English School regarding the decision of the school's parents' association to hold the finishers' prom on the day of the international Turkish language examination (Turkish GCE A level). The claimant argued that this decision resulted in indirect discrimination against Turkish Cypriot students, who were essentially placed in a less favourable position compared to other students in the school who were not taking this exam. Having an exam on the same day as the prom meant it would be difficult for these students to participate in the prom because of physical exhaustion, exam stress and the distances involved in order for them to get home after the exam to get ready for

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<sup>617</sup> Eurofound (2015), *Violence and Harassment in European Workplaces: Extent, impacts and policies*, available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>.

the prom and return to the venue, as most of them lived in the north of Cyprus and had to cross a border to get home. The issue was raised by the Turkish Cypriot parents with both the parents' association and the school's governing board. However, both bodies decided to keep the date and to offer a number of facilitating measures to the affected students. The parents' association sought to justify its refusal to change the date of the prom on the ground that some (Greek Cypriot) parents had already made arrangements to leave the country immediately after the prom. The claim for the change of the date was put to the vote at the parents' association and was rejected by the majority, causing some of its members to resign. The parents' association tried to offer a number of measures to mitigate the problem, like a bus to transport the Turkish Cypriot students to the venue, a hotel room for them to stay before the exam and after the prom, a hairdresser etc., but these measures were not accepted by the Turkish Cypriot students who finally did not participate in the prom.

The Equality Body report stated that, on the basis of its charter, the English school was a bi-communal school and was bound to offer ethnically and religiously neutral education to embed pluralism and diversity. In order to achieve equality a sense of balance must be adopted which reaches beyond the logic of arithmetic majorities. Decisions affecting equal participation and the exercise of rights cannot be submitted to logics of options, categorisations or voting which lead by definition to the exclusion or to the less favourable treatment of one of the two communities; the majoritarian logic entails the risk of always placing the numerically smaller group in a disadvantageous position.

The parents' association should have proceeded to change the date of the prom, without submitting the matter to voting; after changing the date it should have sought to find facilitating solutions for those negatively affected, such as the parents who had planned to leave the country. This method would have ensured that the impact would be evenly distributed to all persons involved and not only to the Turkish Cypriots. The travelling plans of the parents and other considerations taken into account by the parents' association should not have been given priority over equality. The option finally selected amounted to discrimination which cannot be revoked or mitigated by the facilitation offered to the Turkish Cypriot students. The decision of the parents' association produced tension and confrontation between the students and the parents of the two communities and promoted suspicion, undermining the climate of cooperation and mutuality which is necessary for a multi-cultural school to function.

The report included a concluding remark that the events at the English School carry a symbolic value and the message conveyed to society through this incident regarding the will and the ability of the two communities to coexist peacefully in conditions of respect and equality is negative. Although the responsibility for this incident lies primarily with the parents' association, the school itself is not without liability: it had a duty to remind the parents' association of the constitutional values of the school and of the need to respect the rights of all diverse groups.

*Discrimination on multiple grounds in access of asylum seekers to the labour market*

**Name of the body:** Ombudsman

**Date of decision:** 11 November 2016

**Name of the parties:** N/A [Report of the Commissioner for administration and human rights regarding access by women asylum seekers to labour and social welfare]

**Reference number:** File No. A/P 1799/2016

**Address of the webpage:**

[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)

**Brief summary:** In October 2016 the Equality Body received a complaint from a NGO regarding the situation of 18 young African women seeking asylum in Cyprus whose welfare grants were discontinued 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 mixed accommodation with men and there was no provision for child care when the women were at work. The prospective employers confirmed that the conditions in these farms were unsuitable for pregnant women and babies and 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 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 fake asylum applications and avoiding high inflows of refugees, raise issues of 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 invited the Ministry of Labour to a consultation to discuss the adoption of its recommendations on the policy level.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Cyprus  
**Date:** 1 January 2017

<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Persons with Disabilities N. 127(I)/2000 as amended by: Law N. 57(I)/2004; 72(I)/2007; 102(I)/2007; 63(I)/2014; 22(I)/2015. Abbreviation: Law N. 127(I)/2000 as amended Date of adoption: 2000 Latest amendments: 2015 Entry into force: 2000 Web link: <a href="http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html">www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html</a> Grounds covered: Disability
	Civil law
	Material scope: Public and private employment
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, duty to provide reasonable accommodation in employment and beyond
<b>Title of legislation (including amending legislation)</b>	Title of the law: The Constitution of the Republic of Cyprus Abbreviation: Constitution Date of adoption: 16.06.1960 Latest amendments: 2013 Entry into force: 16.08.1960 Web link: <a href="http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html">www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html</a> Grounds covered: Community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever
	Civil and administrative law
	Material scope: Mostly the public sector, although there is legal authority establishing that constitutional rights can be actionable per se against individuals [Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08 May 2001]
	Principal content: General prohibition of discrimination on several grounds and in unspecified fields; declaration of rights along the lines of the ECHR
<b>Title of legislation (including amending legislation)</b>	Title of the law: The Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004, as amended by Law N. 147(I)/2006 Abbreviation: Law 59(I)/2004 Date of adoption: 31.03.2004 Latest amendments: 2006 Entry into force: 01.05.2004 Weblink: <a href="http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html">www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html</a> Grounds covered: Racial/ethnic Origin
	Civil law
	Material scope: Social protection, medical and medicinal care, social provisions, education, and access to goods and Services including housing
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
<b>Title of legislation (including amending legislation)</b>	Title of the law: The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004, as amended by Laws N. 50(I)/2007 and 86(I)/2009 Abbreviation: Law 58(I)/2004 Date of adoption: 31.03.2004 Latest amendments: 2009 Entry into force: 01.05.2004

	Weblink: <a href="http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html">http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html</a>
	Grounds: Racial and ethnic origin religion or belief, age, sexual orientation
	Civil law
	Material scope: Conditions of access to employment, access to vocational orientation and training, working conditions and terms of employment and membership to trade unions
	Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
<b>Title of legislation (including amending legislation)</b>	Title of the law: The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004
	Abbreviation: Law 42(I)/2004
	Date of adoption: 31.03.2004
	Latest amendments: 2006
	Entry into force: 01.05.2004
	Weblink: <a href="http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html">www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html</a>
	Grounds covered: Race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation
	Civil law
	Material scope: Combating of racist discrimination and of discrimination forbidden by law; promotion of equality of the enjoyment of rights and freedoms safeguarded by the Constitution or by the Conventions ratified by Cyprus; and promote equality of opportunity in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing
	Principal content: Creation of specialized body

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Cyprus  
**Date:** 1 January 2017

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	16.12.1961	06.10.1962	None	Yes	Yes
Protocol 12, ECHR	04.11.2000	30.04.2002	None	Yes	Yes
Revised European Social Charter	03.05.1996	27.09.2000	None	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	19.12.1966	02.04.1969	None	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	04.06.1996	None	N/a	Yes
International Covenant on Economic, Social and Cultural Rights	09.01.1967	02.04.1969	None	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	12.12.1966	21.04.1967	None	Yes	Yes
Convention on the Elimination of Discrimination	23.07.1985 *	23.07.1985 *	None	Yes	Yes

<b>Instrumen t</b>	<b>Date of signature (if not signed please indicate) Dd/mm/ yyyy</b>	<b>Date of ratificatio n (if not ratified please indicate) Dd/mm/ yyyy</b>	<b>Derogations / reservations relevant to equality and non- discriminatio n</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
on Against Women					
ILO Convention No. 111 on Discriminati on	02.02.1968	02.02.1968	None	Yes	Yes
Convention on the Rights of the Child	05.10.1990	07.02.1991	None	Yes	Yes
Convention on the Rights of Persons with Disabilities	03.03.2007	17.02.2011	Yes	Yes	Yes

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