



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

NEWS REPORT

Country:	Cyprus
Title:	Ombudsman report on the policy of excluding non-Cypriot dependents of Cypriots from welfare entitlement
Date:	7 September 2017
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<u>Context</u>	
Issue at stake:	The Ombudsman finds that the policy of excluding foreign spouses of Cypriots from welfare entitlement as dependents of the applicant was unlawful
Ground of discrimination:	Racial or ethnic origin, other (nationality)
Source:	Report of the Commissioner for Administration and Human Rights on the actions of the Social Welfare Services regarding the non-inclusion of foreign spouses of Cypriot citizens as dependent persons for the purposes of public benefit entitlement. Ref. A/P 771/2014, A/P 2419/2014, A/P 1954/2016, 4 July 2017
Field:	Social protection, other (Access to public assistance)
Applicable law:	The public benefits and services law of 2006 as amended, available at: http://cylaw.org/nomoi/enop/non-ind/2006_1_95/index.html

Content

Case: Three different complaints were submitted to the Ombudsman in 2014 for the same issue: the Social Welfare Services (SWS) had refused to include the foreign spouses of Cypriot nationals in the family's public benefit entitlement as dependents of the main applicant. In rejecting these claims, the SWS had relied on article 3 of the public benefits and services law ('the Law') which restricts entitlement to public benefit to those Union nationals of insufficient means who had worked as employees or as self-employed or who initially acquired the right to residence due to sufficient means, and to third country nationals of insufficient means who were either granted international protection, or were identified as victims of trafficking, or who had a long term residence visa.

Two out of the three claimants were third country nationals and one was a Bulgarian national. In the latter's case, her claim was rejected because she had not been registered as paid employee for at least a year or as self-employed person, as required in article 3 of the Law. In one of the other cases, the claimant had initially been approved as eligible to receive the dependent's grant but after a number of payments were made by the SWS the family was asked to return to SWS the sum corresponding to the claimant's share.

Ombudsman's decision: The interpretation of the Law made by the SWS was clearly wrong. Article 7 of the law provides that where an applicant cohabits with his or her spouse, then entitlement is based on the needs of both persons, taking into account their

income. Furthermore, article 13 of the Law provides that an applicant must return to the SWS any amount received as a result of *having concealed material facts*, intentionally or not. However, in the present case, no facts had been concealed by the claimant; the reimbursement was demanded because the SWS had meanwhile decided to exclude her from eligibility.

Under article 12 of the Law, spouses are responsible for each other and, in the event that they are both unable to work, the needs of both must be covered. The immigration status of the dependents is irrelevant, as the definition of a 'dependent' in article 2 of the Law is "a person whom the applicant has the duty to support under article 12". The immigration status would be relevant only if the claimant was the main applicant; it was not the legislator's intention to exclude from the scope of the Law the dependents of applicants who had an immigration status other than the one prescribed in the law for applicants. The policy of excluding the dependents of the applicant on the basis of article 3 of the Law is unlawful and must be revised to be brought in line with the Law. The claim of eligibility of the dependents must be accepted and the amounts deducted from the main applicants' grant must be reinstated.

Key points of analysis: Although the rejecting decision of the SWS sought to rely on the applicants' nationality and immigration status, one cannot avoid connecting their interpretation of the law to the wider policy assumption of discouraging migrants from entering Cyprus or from claiming welfare if they do. In line with contemporary scholarly interpretations of the Racial Equality Directive,¹ nationality must be seen as a 'suspect' ground because it is often used as a pretext for indirect discrimination on the ground of racial/ethnic origin. The Ombudsman's report however does not raise the issue of discrimination at all. Instead, it relies on judicial precedent in order to introduce an interpretation of the public assistance law that was different from the policy and practice of the SWS. Although the outcome of the investigation was to uphold the claim of the persons affected by the SWS' wrongful policy, the failure to invoke discrimination essentially restricts the argumentation to the realm of the national law and its judicial interpretations. If this approach is adopted in cases where the national law itself contains discrimination, then the outcome of the investigation will be at variance with the *acquis*.

Internet link source:

[http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/D75227C6B87C3C35C2258167003A48DE/\\$file/771.2014_04072017.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/D75227C6B87C3C35C2258167003A48DE/$file/771.2014_04072017.doc?OpenElement)

Last accessed: 14 August 2017.

¹ De Schutter O. (2016), *Links between migration and discrimination*, Report for the European network of legal experts in the field of gender and non-discrimination, available at: www.equalitylaw.eu/downloads/3917-links-between-migration-and-discrimination.