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NEWS REPORT

Country:	Cyprus
Title:	Child Commissioner report regarding the 'prior residence' requirement in welfare legislation
Date:	20 November 2017
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	Compatibility of the eligibility condition of prior residence in the Republic-controlled areas of Cyprus for access to welfare with the principles of non-discrimination and the best interests of the child
Ground of discrimination:	Racial/ethnic origin, age, other (nationality)
Source:	Report of the Commissioner for the rights of the child regarding the welfare eligibility condition of prior residence in the Republic-controlled areas of Cyprus for a specified time, 11 October 2017
Field:	Social protection, access to education
Applicable law:	The Racial Equality Directive (article 2.2.b); ECHR articles 8 and 14; EU Charter article 34(3); UN Convention on the rights of the child (articles 2, 6.2, 3.1, 26); the Law on minimum guaranteed income and generally on social provisions N.109(I)/2014 (article 5.1.b); Law on the provision of child benefit of 1987 N.314/1987; Law on the provision of child benefit (Amendment) N.118(I)/2017

Content

Case: The Commissioner for the rights of the Child (the 'Child Commissioner') received a number of complaints from NGOs and from families with young children regarding the rejection of their welfare applications on the ground that they did not fulfill the prior residence requirement. The complaints were directed against three different welfare schemes: The minimum guaranteed income which requires five years of residence in the Republic-controlled part of Cyprus prior to submission of the application;¹ the single parent benefit which also requires five years of residence and the child benefit law,² which currently requires three years of prior residence,³ to be extended to five years from 2018 onwards.

¹ Cyprus, Law on minimum guaranteed income Available at www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

² Cyprus, Law on the provision of child benefit of 1987 (*Ο περί Παροχής Επιδόματος Τέκνου Νόμος του 1987*) N.314/1987, available at http://cylaw.org/nomoi/enop/ind/1987_1_314/section-sc16df8ab4-8538-450d-9e94-1780633145d7.html.

³ Republic of Cyprus, Ministry of Labour Welfare and Social Insurance, Department of Social Welfare Benefits, 'Information on completing an application for a child benefit', available at [http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/940A296B04F00B8CC22580DE003AC804/\\$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CE%BF%CE%95%CE%BD%CF%84%CF%85%CF%80%CE%BF%CE%B3%CE%B9%CE%B1%CE%95%CF%80%CE%B9%CE%B4%CE%BF%CE%BC%CE%B1%CE%A4%CE%B5%CE%BA%CE%BD%CE%BF%CF%852017.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/940A296B04F00B8CC22580DE003AC804/$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CE%BF%CE%95%CE%BD%CF%84%CF%85%CF%80%CE%BF%CE%B3%CE%B9%CE%B1%CE%95%CF%80%CE%B9%CE%B4%CE%BF%CE%BC%CE%B1%CE%A4%CE%B5%CE%BA%CE%BD%CE%BF%CF%852017.pdf).

The Child Commissioner had previously raised concerns about the compatibility of the prior residence requirement with the Racial Equality Directive and other human rights instruments. In the context of the parliamentary discussion for the bill purporting to amend the child benefit law, the Child Commissioner had recommended the deletion of the prior residence requirement because it amounts to an apparently neutral criterion that effectively excludes from welfare vulnerable children belonging to a number of categories: the Cypriot Roma children, the children of Union citizens and the children of third country nationals.⁴ However, the Child Commissioner's concerns were ignored by Parliament which proceeded with the adoption of the law extending the prior residence requirement to five years commencing in 2018.

The investigation examined six complaints regarding families living under extreme poverty, who were excluded from welfare because of the prior residence requirement. Four of these were families with a subsidiary protection status; one case was a family of Union citizens with a child facing serious health issues; and one case concerned a family of Cypriot Roma who had, in the course of the past few years, been moving back and forth between the (Turkish-controlled) north and (Greek-Cypriot controlled) south of Cyprus in order to access healthcare in the north where they spoke the language. As a result of not being eligible for welfare support, the Roma family finally settled in the north and their two older children who had been regularly attending school in the south, stopped attending school.

In the cases of the applicants with an international status, the authorities argued that the three years of 'habitual residence' required by the child benefit law commenced upon the grant of international protection status and not upon arrival in the country. As regards the Roma family, the authorities relied on 'credible information' from unnamed sources that the family had only lived in the Republic-controlled areas for just a year before applying for welfare. The authorities also disputed the allegation that the applicants were forced to re-settle in the north of Cyprus as a result of being excluded from the welfare system. The Child Commissioner's questions to the authorities as to the reasons forcing them to draw information from unnamed sources, which were these sources, whether the practice of pursuing such information was followed in all cases and why the examination of the applicant's application took two years, were not answered.

The Child Commissioner's decision: The Child Commissioner concluded that the prior residence requirement is an apparently neutral provision leading to discrimination against vulnerable children on the ground of their nationality or racial/ethnic origin, in violation of the Racial Equality Directive. The report cites additional legal instruments prohibiting discrimination including the UN Convention on the Rights of the Child article 2, as well as a number of other provisions of the Convention, pointing in particular to the failures and risks inherent in situations of economic crisis where children from poor and vulnerable groups fall through the safety net.⁵ Relying on the position of the UN, the report concludes that at times of economic crisis social expenditure benefiting children must be protected and their interests must be seen as primary rather than as subordinate to state finances or 'public interest'.⁶

⁴ Memorandum of the Commissioner for the rights of the Child to the Parliamentary Committee on Labour, Welfare and Social Insurance, 20 June 2017, available at [www.childcom.org.cy/ccr/ccr.nsf/All/2776829A1B31B66EC2258145003E2FA3/\\$file/%CE%A5%CF%80%CF%8C%CE%BC%CE%BD%CE%B7%CE%BC%CE%B1%20%CE%95%CE%A0%CE%94%CE%A0%20%CE%95%CF%80%CE%AF%CE%B4%CE%BF%CE%BC%CE%B1%20%CE%A4%CE%AD%CE%BA%CE%BD%CE%BF%CF%85%20%CE%9A%CE%BF%CE%B9%CE%BD.%CE%95%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%20%CE%95%CF%81%CE%B3%CE%B1%CF%83%CE%AF%CE%B1%CF%82%20.6.2017.docx](http://www.childcom.org.cy/ccr/ccr.nsf/All/2776829A1B31B66EC2258145003E2FA3/$file/%CE%A5%CF%80%CF%8C%CE%BC%CE%BD%CE%B7%CE%BC%CE%B1%20%CE%95%CE%A0%CE%94%CE%A0%20%CE%95%CF%80%CE%AF%CE%B4%CE%BF%CE%BC%CE%B1%20%CE%A4%CE%AD%CE%BA%CE%BD%CE%BF%CF%85%20%CE%9A%CE%BF%CE%B9%CE%BD.%CE%95%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%20%CE%95%CF%81%CE%B3%CE%B1%CF%83%CE%AF%CE%B1%CF%82%20.6.2017.docx).

⁵ Hodgkin, R., & Newell, P. (2007). *Implementation Handbook for the Convention on the Rights of the child*. Geneva: UNICEF (p. 387).

⁶ United Nations, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 52.

The report referred to the ECtHR *Niedzwiecki v. Germany* ruling, where the court found that eligibility requirements involving long prior residence for the granting of child benefits to Union citizens amount to discrimination prohibited by ECHR articles 8 and 14. The report further found that the EU Charter must be seen as applicable in this case since it concerns social assistance to Union citizens and third country nationals whose legal status is regulated by the EU *acquis*. In particular, the report cited EU Charter article 34(3) which recognises the right to social assistance in order to ensure a decent existence for all those who lack sufficient resources; article 21 which prohibits discrimination; and article 24(2) which requires that the child's best interests be treated as a primary consideration in all actions relating to children. The report added that public finances and public interest do not justify discrimination; a child's best interest cannot be subsumed under a general public interest.

With regard to the children with an international protection status, the Child Commissioner concluded that residence is a matter of actual fact that does not depend on the legality of the residence status. The report recommended that Union citizens who register themselves in Cyprus in accordance with the free movement legislation, are unwillingly unemployed and without means, be immediately entitled to the minimum guaranteed income and the child benefit.

The report notes that the newly revised welfare schemes increased rather than decreased the required minimum periods of prior residence, thus enlarging the categories of persons excluded from welfare. The Child Commissioner concluded that the prior residence eligibility requirement infringes the principles of non-discrimination, the child's best interests and the right to life, survival and development and recommended that the prior residence eligibility requirement in the law on minimum guaranteed income and the child benefit law be amended, pending which the authorities should terminate the infringement of the rights of the children in the cases examined in the report.

Key points of analysis: This is a ground-breaking approach that highlights the impact of austerity on vulnerable groups, providing a human rights and equality perspective and approach. Steering clear from the rationale that public finances are of primary consideration at times of crisis, as was apparently the parliamentary position in the case of the 2017 amendment to the child benefit law, the report ranks equality and the child's best interests as primary policy considerations over concerns regarding public finances. Beyond the sphere of the rights of the child, the Child Commissioner's position may be utilised to inform and develop existing disability legislation which renders the duty to provide reasonable accommodation conditional upon the state of public finances, a condition essentially negating this duty in situations of prolonged economic crises.

Internet link source:

[www.childcom.org.cy/ccr/ccr.nsf/all/84BE9DF3AB88F93CC22581B60024A165/\\$file/%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%95%CF%80%CE%B9%CE%B4%CF%8C%CE%BC%CE%B1%CF%84%CE%B1%20%CE%9A%CE%BF%CE%B9%CE%BD%CF%89%CE%BD%CE%B9%CE%BA%CE%AE%CF%82%20%CE%A0%CF%81%CF%8C%CE%BD%CE%BF%CE%B9%CE%B1%CF%82-%20%CF%87%CF%81%CE%BF%CE%BD%CE%B9%CE%BA%CF%8C%CF%82%20%CF%80%CE%B5%CF%81%CE%B9%CE%BF%CF%81%CE%B9%CF%83%CE%BC%CF%8C%CF%82%2011.10.2017.docx?openelement](http://www.childcom.org.cy/ccr/ccr.nsf/all/84BE9DF3AB88F93CC22581B60024A165/$file/%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%95%CF%80%CE%B9%CE%B4%CF%8C%CE%BC%CE%B1%CF%84%CE%B1%20%CE%9A%CE%BF%CE%B9%CE%BD%CF%89%CE%BD%CE%B9%CE%BA%CE%AE%CF%82%20%CE%A0%CF%81%CF%8C%CE%BD%CE%BF%CE%B9%CE%B1%CF%82-%20%CF%87%CF%81%CE%BF%CE%BD%CE%B9%CE%BA%CF%8C%CF%82%20%CF%80%CE%B5%CF%81%CE%B9%CE%BF%CF%81%CE%B9%CF%83%CE%BC%CF%8C%CF%82%2011.10.2017.docx?openelement), last accessed 16/11/2017.