



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

### NEWS REPORT

<b>Country:</b>	Cyprus
<b>Title:</b>	Recent Equality Body responses to complaints
<b>Date:</b>	5 January 2018
<b>Expert:</b>	Corina Demetriou
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The new Ombudsman rejects complaints for racial discrimination
<b>Ground of discrimination:</b>	Racial/ethnic origin
<b>Source:</b>	Letters from the Ombudsman to complainants, dated respectively 13, 23 and 24 November 2017
<b>Field:</b>	Access to prison parole; protection from hate speech and harassment
<b>Applicable law:</b>	The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004

### Content

#### **Equality Body responses:**

1. *The complaint against an on-line newspaper for racial hate speech against the Roma*

On 23 November 2017, the new Ombudsman appointed in April 2017, rejected a complaint against an on-line newspaper which had featured a joke that described Roma people as 'dirty gypsies', on the grounds that:

- This was an isolated incident; and
- The constituent elements for hate speech, which are dissemination, incitement or promotion of hatred, are not met in this case.

The Ombudsman added that, where it cannot be established with certainty that the speech contains the above elements and on its own the publication does not have 'huge impact' on third parties, then any intervention would 'infringe the nucleus of the basic fundamental right of freedom of expression'.<sup>1</sup>

2. *The complaint regarding the banner 'Refugees go home' raised by football club fans during a match*

On 13 November 2017, in response to a complaint submitted in 2015, the new Ombudsman described the actions taken by the previous Ombudsman, which included a

---

<sup>1</sup> Commissioner for administration and human rights, Letter dated 23 November 2017, File No. AKR 28/2017.

press release condemning this action and letters to the police and national sports associations, concluding that sufficient action was taken by the competent authorities that there was no need for any further intervention from her office.

The letter referred to the prosecution of one person by the police under the law transposing the Framework Decision on Racism and Xenophobia<sup>2</sup> and national legislation on combating violence in sports, which led to the penalty of 75 hours of social work for the person indicted.<sup>3</sup>

For the record, both the above laws provide for fines and/or prison terms. The national law on combating violence in sports provides for a prison sentence of up to six months and/or a fine of up to €1,000. The law transposing the Framework Decision provides for the heavier sentences of up to five years' imprisonment and/or a fine of up to €10,000.

### *3. The complaint against the prison parole board*

On 24 November the new Ombudsman responded to a complaint submitted in 2014 regarding the non-access of non-Cypriot prisoners to the institution of parole, which is available to Cypriots. The complainant had alleged that the practice of the prison parole board to automatically exclude all non-Cypriots amounted to discrimination on the ground of racial or ethnic origin or nationality. The Ombudsman responded that she cannot intervene, because following research into the legislation governing the operation of the prison parole board, it is not clear whether this parole board is an administrative body or a quasi-judicial one.<sup>4</sup> The Ombudsman did not offer any further explanation as to her decision not to use the wide mandate offered by the law regulating the mandate of the Equality Body, which extends beyond the confines of Article 13 of the Racial Equality Directive to include the right to intervene in order to promote equal treatment in line with the ECHR, the FCNM, the CERD et al.<sup>5</sup>

**Key points of analysis:** All three of the above responses of the new Ombudsman carry some common features: The complaints were all submitted to this institution prior to her taking office and all were assigned (by the previous Ombudsman) a reference number of the Anti-Discrimination Authority (AKR), which is the organ dealing with the Racial Equality Directive. However, the responses of the new Ombudsman essentially look into the actions of the administration, without applying the law transposing the Racial Equality Directive or any other instrument dealing with racial discrimination, such as the CERD. In essence the approach taken is that of investigating maladministration, which is the mandate of the Ombudsman, without implementing the mandate of the Equality Body. In correspondence exchanged with an officer on behalf of the Ombudsman, it was officially confirmed that since the new Ombudsman took office, the two authorities making up the Equality Body did not issue any reports.<sup>6</sup> It is also noted that the annual reports of the Equality Body for the years 2015 and 2016 are yet to be submitted or published with no specific date set yet regarding their publication.

For over a decade, the Equality Body was the only mechanism accessible to victims of discrimination, with several significant contributions and often landmark interventions. The approach taken by the new Ombudsman raises questions about the implementation

---

<sup>2</sup> Cyprus, Law on combating some forms and expressions of 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/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/full.html).

<sup>3</sup> Cyprus, Commissioner for administration and human rights, Letter dated 13 November 2017, File No. AKR 53/2015.

<sup>4</sup> Cyprus, Commissioner for administration and human rights, Letter dated 24 November 2017, File No. AKR 2/2015.

<sup>5</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 3-5. 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>6</sup> Electronic mail sent to the expert on 14 December 2017.

of European and international equality law in Cyprus, given that access to the Courts for many vulnerable groups remains unattainable, due to the cost and time involved. The approach taken to racism in the media requires special attention, given the new Ombudsman's connection to a large media outlet. The Ombudsman's decision endorsing the use of insulting language for the Roma as a form of freedom of expression entails risks of legitimizing hate speech in the public sphere, one of the issues repeatedly flagged by both ECRI<sup>7</sup> and the Advisory Committee for the CERD.<sup>8</sup> The law transposing the Framework Decision on racism and xenophobia does not require the constituent elements of dissemination, incitement and promotion of hatred, as suggested by this decision; the wording of the relevant paragraph (article 3.1) is met when a person willfully disseminates insulting material, which was clearly the case at hand, without the need to prove incitement or promotion of hatred.

---

<sup>7</sup> Council of Europe, ECRI Report on Cyprus, Fifth monitoring cycle, 7 June 2016, available at [www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-CbC-V-2016-018-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-CbC-V-2016-018-ENG.pdf).

<sup>8</sup> UN Committee on Racial Discrimination (2017), *Concluding observations of the UN Committee on Racial Discrimination on the twenty-third and twenty-fourth periodic reports of Cyprus*, 12 May 2017. Available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CYP/INT\\_CERD\\_COC\\_CYP\\_27472\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CYP/INT_CERD_COC_CYP_27472_E.pdf).