



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

NEWS REPORT

Country:	Cyprus
Title:	Reactions to the new Ombudsman's refusal to implement the equality mandate and accept the Auditor General's audit
Date:	17 May 2018
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<u>Context</u>	
Issue at stake:	MPs and NGOs criticise the new Ombudsman for failing to implement the institution's equality mandate; and public row with Auditor General
Ground of discrimination:	Race/ethnic origin
Source:	Media articles and NGO press release
Field:	All fields
Applicable law:	The combating of racial and other forms of discrimination (Commissioner) N. 42 (1)/2004

Content

Political development: On 26 April 2018 MP Skevi Koukouma informed the press¹ that on two occasions during 2017 she had filed complaints to the new Ombudsman Maria Stylianou Lottides: one complaint concerned racist statements against migrants and Muslims contained in the Archbishop's Christmas message; and the other complaint concerned the police's violent arrest of a Brazilian woman, wife of a footballer working in Cyprus, for no apparent reason other than her skin colour. On 24 April 2018, the Ombudsman responded to the MP that she had no intention of investigating either of these complaints. In her letter to the MP, the Ombudsman stated that she only examines complaints submitted by a complainant who is directly and personally affected. Alternatively, she examines on her own initiative issues which are of public interest. Given that the MP's complaints did not fall into either category, the Ombudsman decided they did not warrant an investigation. In a statement in response to the Ombudsmans' letter, the MP pointed out that, in addition to her mandate as Commissioner for Administration, she is also head of the Equality Body and the NHRI and that the complaints were filed to the Ombudsman's office in those two capacities and not in her capacity to monitor maladministration.²

Shortly after the aforementioned incident, the former Ombudsman/Head of the Equality Body Mrs Eliana Nicolaou criticised the new Ombudsman for refusing to exercise her mandate to combat discrimination, as required by the law. During a radio interview, the former Ombudsman told journalists that the institution of the Ombudsman is the Anti-

¹ [Charalambous, P. \(2018\), 'Καβγάς για τις αρμοδιότητες της Επιτρόπου Διοικήσεως', 26 April 2018.](#)

² The law contains detailed (but rather vague) provisions about who can complain, representatives of various types of organisations are however explicitly included. Also under the law the Ombudsman has a duty to take action when he/she can see that the law is infringed or is about to be infringed.

discrimination Authority and in the past its work was focused on that mandate, describing the extension of the Ombudsman's mandate in 2004 as an anti-discrimination Authority to be a 'historical' moment. The former Ombudsman criticised the current Ombudsman for her refusal to examine the complaints of MP Skevi Koukouma against the Archbishop's anti-migrant hate speech and against the police for the racial profiling of the Brazilian woman. In the past, previous ombudspersons did examine complaints against the media from members of the public even if the complainants were not directly affected or targeted. In fact, in 2010 the office had published a code of conduct for the media with specific guidelines on avoiding racism and discrimination. This code is now missing from the ombudsman's website.

In a statement to the press, MP Aristos Damianou criticised the current Ombudsman for her failure to apply the legislation, adding that no institution has the right to do away with the mandate bestowed upon it. With reference to the Ombudsman's refusal to investigate the complaint against the Archbishop for hate speech, the MP pointed out that the Ombudsman must be aware that the right to freedom of expression does not cover hate speech.

MP George Perdakis was reported having compiled a bill (not yet public) seeking to amend the required qualifications for appointment to the position of the Ombudsman, in order to add requirements regarding the protection of human rights. MP Perdakis told the press that he had filed a complaint with the current Ombudsman requesting her to investigate racist conduct by media outlets but was turned down on the justification that the incident complained of did not concern him.³

Migrant support NGO KISA issued a public statement to say that its initial concerns regarding the appointment of Mrs. Lottidou to the position of Ombudsman were confirmed, that KISA does not have the same cooperation it enjoyed with the previous ombudspersons and that many cases submitted to the Ombudsman's office have been frozen. The NGO stated that the new Ombudsman chooses not to investigate and not to take a position on racist incidents in the public sphere, on the justification that they are not sufficiently linked to public interest. According to the NGO, her failure to act raises serious questions as to her suitability and her willingness to carry out the mandate assigned to her: In all the complaints of racial discrimination which she has handled, her decision was not to investigate, not to take position and not to submit any recommendations; also her responses merely repeated the positions and wording of the authorities without any intervention on her part.⁴

In another development, the Auditor General reported to Parliament that the current Ombudsman has systematically refused his office's audit, which is regularly performed on all state-funded institutions, including the Courts. For this reason, the Auditor General has referred the matter to the Attorney General, to investigate possible criminal liability.⁵ The Attorney General opined that the Ombudsman can and should be subjected to scrutiny by the Auditor General. In response, the Ombudsman resolved that the Attorney General's opinion is not binding on the institution of the Ombudsman. During a radio show, the Ombudsman claimed that she refused the Auditor General's audit in order to protect personal data contained in her files, whilst the Auditor General responded that he had not asked for access to files but only for the number of complaints received and handled during the period 2016-2017.⁶ The Ombudsman sent a letter to the International

³ Dialogos (2018), 'Αδειάζει Λοττίδου η πρώην Επιτροπος Διοικήσεως', 28 April 2018, available at <http://dialogos.com.cy/blog/adiazi-lottidou-i-proin-epitropos-diikiseos/>.

⁴ KISA (2018) 'Επιτροπος Διοικήσης και Ανθρωπίνων Δικαιωμάτων χωρίς φωνή και όραμα!', press release 17 April 2018, available at <https://kisa.org.cy/epitropos-diikisis-ke-anthropinon-dikeomaton/>.

⁵ Politis (2018), 'Πόλεμος Οδυσσέα κατά Επιτρόπου Διοικήσεως', 10 May 2018, available at <http://politis.com.cy/article/genikos-elegktis-arnite-ton-elegcho-i-epitropos-diikisis>.

⁶ Politis (2018), 'Λοττίδου-Μιχαηλίδης στον 107.6 για την κόντρα περί διαχειριστ. Ελέγχου', 11 May 2018, available at <http://politis.com.cy/article/lottidoumichailidis-ston-1076-gia-tin-kontra-peri-diachirist-elegchou>.

Ombudsman Institute (IOI) claiming that the Auditor General is attempting to interfere with and compromise the independence of her institution, in response to which the IOI issued a statement of support.⁷ According to the Auditor General, IOI's support relied on misleading information supplied by the Ombudsman.

Key points of analysis: The Ombudsman's treatment of the complaints submitted by the MPs suggests a significant change in the policy followed by this institution since its mandate was extended in 2004 to include the combating of discrimination. First, there emerges to be a policy of examining all complaints received in the context of her mandate as ombudsman, even where the discrimination element is prominent. Secondly, and contrary to the practice followed by her predecessors, complaints submitted by persons other than the victims themselves are no longer accepted. This new policy essentially denies protection to those victims of discrimination who choose to remain unnamed, victims who are too vulnerable and socially excluded to file complaints themselves, such as the Roma, and unidentified victims amongst society at large. The latter category encompasses persons negatively affected by harassment and hate speech. The media's right to freedom of expression has been repeatedly prioritised by the Ombudsman above combating discrimination. In a 2017 response to a complaint about anti-Roma hate speech in a newspaper article, the Ombudsman stated that, where it cannot be established with certainty that the publication had a 'huge impact' on third parties, then any intervention would 'infringe the nucleus of the basic fundamental right of freedom of expression'.⁸ A further element of the new policy is the fact that the Ombudsman now reserves the right to decide what is and what is not in the public interest, without reference to public debates, NGO positions or political reactions to any particular incident.

It remains to be seen whether the bill to be presented to Parliament addresses the highlighted gaps of the legal and political framework. The absence of any criteria or required qualifications for the appointment of an ombudsman is only part of the problem. To be effective, the bill must propose a formula that rules out nominees of political exposure, connections with the executive or with media outlets that have leverage on the executive and the legislature.⁹

Internet link source: KISA's press release is available at <https://kisa.org.cy/epitropos-diikisis-ke-anthropinon-dikeomaton/>.

Media articles: <http://dialogos.com.cy/blog/adiazi-lottidou-i-proin-epitropos-diikiseos/>;
<http://www.cytoday.eu/index.php?id=17&nid=10474066>;
<http://politis.com.cy/article/genikos-elegktis-arnite-ton-elegcho-i-epitropos-diikisis>;
<http://politis.com.cy/article/lottidoumichailidis-ston-1076-gia-tin-kontra-peri-diachirist-elegchou>.

⁷ Commissioner for Administration (2018), 'Δελτία Τύπου/Ανακοινώσεις - Δήλωση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων σχετικά με σημερινές (10/05/2018) δηλώσεις του Γενικού Ελεγκτή στη Βουλή των Αντιπροσώπων, 10 May 2018, available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/28B79DD01E88534CC225828900525ED2/\\$file/%CE%94%CE%AE%CE%BB%CF%89%CF%83%CE%B7%20%CE%95%CF%80%CE%B9%CF%84%CF%81%CF%8C%CF%80%CE%BF%CF%85%20%CE%94%CE%B9%CE%BF%CE%B9%CE%BA%CE%AE%CF%83%CE%B5%CF%89%CF%82%20%CE%BA%CE%B1%CE%B9%20%CE%A0%CF%81%CE%BF%CF%83%CF%84%CE%B1%CF%83%CE%AF%CE%B1%CF%82%20%CE%91%CE%BD%CE%B8%CF%81%CF%89%CF%80%CE%AF%CE%BD%CF%89%CE%BD%20%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CF%89%CE%BC%CE%AC%CF%84%CF%89%CE%BD.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/28B79DD01E88534CC225828900525ED2/$file/%CE%94%CE%AE%CE%BB%CF%89%CF%83%CE%B7%20%CE%95%CF%80%CE%B9%CF%84%CF%81%CF%8C%CF%80%CE%BF%CF%85%20%CE%94%CE%B9%CE%BF%CE%B9%CE%BA%CE%AE%CF%83%CE%B5%CF%89%CF%82%20%CE%BA%CE%B1%CE%B9%20%CE%A0%CF%81%CE%BF%CF%83%CF%84%CE%B1%CF%83%CE%AF%CE%B1%CF%82%20%CE%91%CE%BD%CE%B8%CF%81%CF%89%CF%80%CE%AF%CE%BD%CF%89%CE%BD%20%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CF%89%CE%BC%CE%AC%CF%84%CF%89%CE%BD.pdf).

⁸ Commissioner for administration and human rights, Letter to the expert dated 23 November 2017, File No. AKR 28/2017.

⁹ In April 2017 the President of the Republic appointed a junior prosecutor to the position of Ombudsman, to replace the previous ombudsman who had retired. The appointment raised objections from opposition parties, journalists and NGOs who described the appointment as nepotism on the part of the President. The appointee is the wife of the owner of a large media group who supported the President in the race to the presidential elections of January 2018 and assisted with his re-election. The Ombudsman is, by law, the head of the Equality Body and of a number of other independent authorities. Since the new Ombudsman took office, the equality mandate has ceased to be exercised.