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NEWS REPORT

Country:	Cyprus
Title:	Family Appeal Court decision on the jurisdiction of the Courts to try disputes between members of the Turkish Community
Date:	23 October 2018
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	Court finds that Courts in the Republic of Cyprus have no jurisdiction to try disputes between members of the Turkish Community
Ground of discrimination:	Ethnic origin
Source:	Family Court, Appeal Jurisdiction, <i>G.M. v. H.V. and L.A.</i> (2018), Appeal No. 38/2015, judgment delivered on 10 September 2018
Field:	Access to state services (justice)
Applicable law:	Article 152(2) of the Constitution; Law on the transfer of the exercise of jurisdiction of the Greek Communal Chamber and on the Ministry of Education N. 12/1965; ECHR articles 13 and 14; Law providing for the application of the marriage law of 2003 to the members of the Turkish Community N. 120(I)/2003

Content

Facts: The appellant and the respondent are Cypriot citizens and members of the Turkish Community. In 2003 they got married in the office of the Islamic Community and resided in the area controlled by the Republic of Cyprus (the south). They subsequently split up and the wife (the appellant) applied to the family court in order to resolve property differences with her estranged husband (the respondent). The appellant also sued a third party as a trustee of property to whom the respondent had allegedly transferred property. The trustee argued that no court had jurisdiction to try the case.

At first instance, the family court decided that it had no jurisdiction to try the case. In support of this, the court cited article 152(2) of the Constitution, which provides that civil disputes relating to personal status are matters for the Communal Chambers and under the jurisdiction of the Communal Courts of each Community. Although a law adopted in 1965 abolished the Greek Communal Chamber and the Greek Communal Court, providing that the jurisdiction of the Greek Communal Court should pass to the District Court,¹ no equivalent provision was made for the Turkish Communal Court. When the sealed barbed wire was opened in 2003, making it possible for Turkish Cypriots to move and/or settle in the south, a law was adopted providing for the jurisdiction of the District

¹ Cyprus, Law on the transfer of the exercise of jurisdiction of the Greek Communal Chamber and on the Ministry of Education of 1965 (*Ο περί Μεταβιβάσεως της Ασκήσεως των Αρμοδιοτήτων της Ελληνικής Κοινοτικής Συνελεύσεως και περί Υπουργείου Παιδείας Νόμος του 1965*) N. 12/1965, available at www.cylaw.org/nomoi/enop/non-ind/1965_1_12/index.html.

Court, in replacement of the dissolved Turkish Communal Court, but only in matters relating to the dissolution of marriages.² The trial court found that the scope of the 2003 does not cover property disputes, as it is restricted to 'marital disputes' defined in the law as alimony and custody issues. The application was rejected at first instance and the applicant (the appellant in this case) was ordered to pay half of the costs of the respondents. The appellant filed for an appeal arguing that the failure of the court to try her claim infringes articles 13 and 14 of the ECHR (right to an effective remedy and prohibition of discrimination). No invocation was made of the Racial Equality Directive or the national law purporting to transpose it.

Decision of the Court: The appeal court rejected the appeal, upholding the trial court's findings. It concluded that the Turkish Communal Courts have not been officially dissolved and upheld the trial court finding that the marriage law of 2003 could not be extended to cover property differences between spouses. The appeal court concluded that the legal gap cannot be remedied through a court decision but only through a legislative act and recommended that a procedure be introduced for the resolution of property disputes between Turkish Cypriots.

The appeal court did not consider the question of discrimination and did not take into account the appellant's references to ECHR articles 13 and 14.

Key points of analysis: The right to equality before the law is spelled out in preamble article 3 of the Directive; the failure to safeguard the Turkish Cypriots' access to justice is not an apparently neutral provision but a directly discriminatory practice targeting specifically a group of persons identified through their common ethnicity. The Racial Equality Directive does not foresee any exceptions in cases of direct discrimination. Furthermore, according to article 2(2) of the Racial Equality Directive, discrimination is established where there is less favourable treatment, without the need to prove prejudicial motive.

A number of Equality Body decisions in the past have also established discrimination in the differential treatment of Turkish Cypriots when trying to access state services, such as the exercise of the right to marry and the registration of their new-born children in the official Registry.

It is recalled that in the ECtHR ruling in *Aziz*,³ Cyprus was found guilty of violating article 14 of the ECHR for its failure to regulate the right of Turkish Cypriots to vote; the justification offered by the Cypriot government at the time, which was the irregular situation that emerged following the Turkish invasion, did not satisfy the criterion of reasonable and objective justification. The ECtHR has repeatedly ruled that the sensitive nature of peace processes or post-conflict arrangements do not justify differential treatment on the ground of ethnic origin.⁴

As regards the field of application and the definition of 'services available to the public' in the case of *CHEZ Razpredelenie Bulgaria AD*⁵ the CJEU concluded that all state services available to the public are covered by the scope of the Directive. The approach taken by

² Cyprus, Law providing for the application of the marriage law of 2003 to the members of the Turkish Community (Νόμος που προνοεί για την προσωρινή εφαρμογή του Περί Γάμου Νόμου του 2003 σε μέλη της Τουρκικής Κοινότητας) N. 120(I)/2003, available at www.cylaw.org/nomoi/arith/2003_1_120.pdf.

³ European Court of Human Rights, *Aziz v Cyprus*, Application no. 69949/01, 22 June 2004.

⁴ European Court of Human Rights, *Sedjic and Finci v. Bosnia and Herzegovina*, Applications nos. 27996/06 and 34836/06; European Court of Human Rights, *Dokic v Bosnia and Herzegovina* (Case No. 6518/04), 27 Μαΐου 2010.
https://www.google.com.cy/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwipnO_J-srZAhUEKFAKHVIBDswQFggIMAA&url=http%3A%2F%2Fhudoc.echr.coe.int%2Fwebservices%2Fcontent%2Fpdf%2F001-98692&usq=AOvVaw3BKF815E_40Tm-0Y3Hc5Vn.

⁵ Court of Justice of the European Union, Case C-83/14, 16 July 2015, http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=165912&occ=first&dir=&cid=400263.

the Cypriot courts was that, although they recognised that a gap existed, they were unwilling to take steps to deliver justice by examining the appellant's claim. In essence, the non-discrimination principle foreseen under legislation which ranks higher than national law, such as the EU acquis, the ECHR and the Constitution, was not applied because there was no specific law specifically granting the Greek Cypriot courts the jurisdiction to try disputes between Turkish Cypriots.

Article 14 of the Directive requires member states to take the necessary measures to ensure that discriminatory laws and practices are abolished. The Cypriot government did not take measures to bring national legislation in line with this principle and to safeguard the Turkish Cypriots' access to justice in the same way as it did for the Greek Cypriots. In the case at hand, the courts failed to give effect to the principle established by the CJEU in *Mangold*,⁶ that national courts are responsible for safeguarding the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law.

Internet link source: The decision is available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2018/1-201809-38-15fam-anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202018.

⁶ C-144/04, *Mangold*, 22.11.2005, <http://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:62004CJ0144&from=HR>.