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Country report

Non-discrimination

Cyprus

2019

including summary



Justice
and Consumers

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.1 Non-discrimination and Roma coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Cyprus

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Reporting period 1 January 2018 – 31 December 2018

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Luxembourg: Publications Office of the European Union, 2020

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PDF ISBN 978-92-76-00199-7

ISSN 2599-9176

doi:10.2838/620860

DS-BB-19-003-EN-N

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EXECUTIVE SUMMARY

1. Introduction

Cyprus was granted independence in 1960 with a Constitution that set out a power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'. The Constitution recognises two 'communities', the Greeks and the Turks, and three 'religious groups', the Maronites, the Armenians and the Latins. The 'religious groups' were obliged to opt to belong to one of the 'communities' and opted to belong to the Greek community. The Roma community of Cyprus was not invited to opt which community to belong to but was deemed to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim) with the Turkish Cypriots. The Government does not recognise the Roma as a separate ethnic community nor does it adopt or apply policies targeting the Roma, who are expected to benefit from horizontal policies intended for the entire population. The Roma are expected to reside in specifically designated Roma settlements, renowned for their poverty and bad state of repair. Their housing segregation inevitably leads to schooling segregation, as all children must attend schools close to their residence. Despite improvements to the housing situation and measures in education targeting the Roma, they remain the most excluded and vulnerable Cypriots. The Government also does not recognise any migrant community as a 'minority'.

The Constitution functioned until 1963, when the Greek Cypriot President proposed 13 amendments to it, effectively taking away the most basic rights of the Turkish Cypriots. In 1964 the Supreme Court ruled that the functioning of the Government must continue on the basis of the 'doctrine of necessity', which mainly provides for the 'suspension' of those constitutional provisions that guaranteed the rights of Turkish Cypriots to be represented in decision making. Following years of inter-communal violence and foreign military interventions, the doctrine of necessity was subsequently extended to other areas affecting Turkish Cypriots, including their right to welfare and to access their properties.

Few NGOs are active in the non-discrimination field. No NGOs advocate for the rights of Turkish Cypriots and only a handful of NGOs advocate for the rights of migrants and asylum seekers. In 2017 a new NGO was set up to address the rights of the Roma. Most disability NGOs are organised in a national confederation, which in 2006 was afforded the status of social partner. However, in practice, the confederation is afforded little say in processes that are of key significance to it, such as legislation or action plans for the implementation of the Convention on the Rights of Persons with Disabilities (CRPD). In recent years, NGOs advocating for the rights of the LGBTQ community have made an appearance, with some successful public events including a massively attended annual pride parade. After years of campaigning, a law was finally adopted in 2015 recognising civil partnerships.¹ Their focus is not restricted to sexual orientation but includes a variety of fields and activities, including contributions to discussions on gender identity legislation, public interventions in campaigns regarding masculinity and stereotypes, transphobia and homophobia and others. A number of far-right groups appeared in recent years, one of which is a political party with two seats in the national Parliament, capitalising on voters' fear of migrants, refugees, LGBTQ persons and Turkish Cypriots.²

2. Main legislation

The Cypriot Constitution contains a general anti-discrimination provision (Article 28), which corresponds to Article 14 of the European Convention on Human Rights (ECHR), but includes additionally the ground of belonging to either the 'Greek' or the 'Turkish' community. Age, disability and sexual orientation are not explicitly covered by the Constitution, although they are deemed as included in the term 'any other ground

¹ Cyprus, Law on Civil Marriages of 2015 (Ο περί Πολιτικής Συμβίωσης Νόμος του 2015), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf.

² ELAM. The initials stand for 'National Popular Front' in Greek: Εθνικό Λαϊκό Μέτωπο.

whatsoever' of Article 28.³ Judicial interpretation of this provision, however, has been problematic as it validates discrimination, which is deemed to be 'reasonable' because the subjects are different. This approach does not comply with the comparability element foreseen in the jurisprudence of the equality directives but, rather, it attempts to differentiate between the two comparators in an arbitrary and often discriminatory manner, citing even protected grounds as the reason for the differentiation.⁴

Cyprus has ratified the following international conventions on discrimination: the ECHR, including its Protocol No. 12; the Revised European Social Charter, including its Collective Complaints Protocol; the International Covenant on Civil and Political Rights; the Framework Convention for the Protection of National Minorities; the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of Discrimination Against Women; ILO Convention No. 111 on Discrimination; the Convention on the Rights of the Child; and the CRPD. In 2004 the two anti-discrimination directives were transposed into four separate national laws:

- a law amending the existing disability law in order to bring it in line with the disability component of the Employment Equality Directive;⁵
- a law prohibiting discrimination in employment, roughly transposing the Employment Equality Directive on four grounds (i.e. excluding disability which is dealt with in a separate law);⁶
- a law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment);⁷ and
- a law appointing the Ombudsman as the Equality Body empowered to investigate complaints of discrimination, with a mandate that goes much further than the minimum required by Article 13 of Directive 2000/43, covering rights guaranteed by the Constitution and by major international conventions.⁸ The only assistance to victims foreseen in the mandate of the Equality Body is the issuance of reports with recommendations. It does not include the power to advise victims on their rights or to represent victims in court.

In July 2006 the Cypriot Constitution was amended to give supremacy to EU laws. Prior to that, the anti-discrimination provision of Article 28 of the Cypriot Constitution had been interpreted by the courts to mean that positive action violated the principle of equality enshrined in the Constitution. During 2015 the judicial trend began to shift towards recognising that positive action does not infringe the equality principle and that it is in fact a necessary element in order to achieve equality.⁹ The legal route most commonly used to

³ See for instance, the Appeal Court decision in *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Appeal No. 190/2012, 4 October 2018, where the Court examined potential discrimination in an age limit for a disability scheme in light of Article 28 of the Constitution.

⁴ In the cases of *Antonis Aresti v. Cyprus Athletics Organisation* (Ref. 1406/2008, dated 10 February 2010) and *Cyprus Athletics Organisation v. Andreas Potamitis* (Ref. 111/2007, dated 18 June 2010), the court rejected the allegations of discrimination by disabled athletes in the state grants paid to athletes participating in the Paralympics, compared to the grants paid to non-disabled athletes participating in the Olympics, on the basis that the schemes complained of dealt with different things (athletes with and without disability) which could only be treated differently. In essence, the court adopted the view that the disability constituted a 'difference' which could justify discrimination.

⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁶ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) N. 58(I)/2004, 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁷ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁸ 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(1)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁹ Cyprus, Supreme Court, *Eleni Paroutsi v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015.

challenge discrimination remains the Constitution, rather than the laws transposing the equality *acquis*, as lawyers tend to ignore the anti-discrimination directives, which have rarely been invoked in court. This sometimes leads to the emergence of legal norms of doubtful validity, like the use of concepts such as 'reasonable discrimination' which is allowed and necessary 'because of the special nature of things'.¹⁰ Along the same lines, the Supreme Court ruled that age is a legitimate criterion to determine seniority for the purposes of deciding promotions in the public service. An additional problem of the judicial review process is that it requires applicants to have a 'legitimate interest', which essentially precludes applications from organisations acting on behalf of victims. From 2014 onwards, there was a sharp decline in discrimination claims, attributed to the economic crisis, the general lowering of fundamental rights standards and rising unemployment.

Current practice suggests that the duty to ensure that discriminatory laws, provisions or rules of organisations have been explicitly repealed is not fully complied with. The process of formally repealing laws or regulations is triggered only after a complaint is submitted to the Equality Body. Even when a discriminatory legislative provision is reviewed within the framework of a judicial process, this does not trigger the procedure of revision. If the Equality Body finds that a provision is contrary to the directives, the procedure for repealing it does not always bear fruit. A decision issued by the Supreme Court in 2014, which established that the Attorney General is not at liberty to ignore the Equality Body's recommendation to amend a discriminatory law, promised to change the picture.¹¹ However, this did not happen in the years that followed, as courts are adamantly unwilling to disapply discriminatory provisions in the law, perceiving this to be a violation of the doctrine of the separation of powers. In 2017 a new Ombudsman was appointed who has since ceased all Equality Body activity relating to the two directives; the Equality Body is currently defunct.

3. Main principles and definitions

All definitions of 'discrimination' contained in the directives are virtually replicated in the national laws. Discrimination by association is not explicitly covered in the anti-discrimination laws, but is covered by Protocol No. 12 to the ECHR. In addition, Equality Body decisions in 2010 and 2015 applied the principle established in *Coleman*,¹² extending the prohibition of disability discrimination to the primary carers of persons with disability even if they are not parents or spouses of the person with a disability.¹³

Cyprus, Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos. 1519/2010 και 1520/10, 3 September 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

¹⁰ Cyprus, Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis (Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη)* No. 111/2007, 18 June 2010; Cyprus, Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation (Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού)* No. 1406/2008, 10 February 2010; Cyprus, Supreme Court, *Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice (Τάσσος Τρατονικόλα v. Κυπριακής Δημοκρατίας μέσω Διευθυντή Τμήματος Φυλακών και του Υπουργείου Δικαιοσύνης)*, No. 135/07, 13 April 2011; *Costakis Charalambous v. Republic of Cyprus through the Chief of Police (Κωστάκης Χαράλαμπος v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας)*, No. 1334/2008, 19 September 2011.

¹¹ Cyprus, Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General (Νικολέτα Χαράλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα)*, No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

¹² CJEU, Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, C-303/06. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

¹³ Cyprus, Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, Ref. A.K.I. 38/2015, 16 October 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

The laws transposing Directive 2000/78 allow for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the occupational activities or the context within which these are carried out is such that a specific characteristic constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. The provisions on age do not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and duties of the occupation. In practice, age limits apply in recruitment and promotion, particularly within the police force, and are aimed less at serving labour market policy goals and more at addressing deterioration in the physical fitness of employees, which allegedly comes with age. An Appeal Court decision in 2018 found that an age limit in a disability scheme did not infringe the equality principle because it was reasonable in light of the poor state of public finances.¹⁴

In the case of the occupational activities of churches or other public or private organisations, the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief does not constitute discrimination when, due to the nature or the context of these activities, religion or belief is a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

The scope of the Law on Persons with Disabilities excludes activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. The law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.¹⁵

The disability law was amended in 2007 to impose an obligation on employers to provide reasonable accommodation as long as the burden on the employer is not disproportionate. The law was further amended in 2014 to extend the duty to provide reasonable accommodation to fields beyond employment, provided the burden is not disproportionate or unjustified.¹⁶ The fields of application covered by the new duty to provide reasonable accommodation are: the right to independent living; diagnosis and prevention of disability; personal support with assistive equipment, services etc.; accessibility to housing, buildings, streets, the environment, public means of transport, education, information and communication through special means; services for social and economic integration; vocational training; employment in the open market, etc. (Article 4); equality in the provision of goods, services and facilities where this is 'justified' (Article 6); telephone services especially adapted for persons with disability and television programmes accessible to deaf persons (Article 8). During the presidential election of 2018, organisations representing persons with disabilities complained that their members were not allowed to vote with the assistance of a person of their choice.

There is no provision in the Cypriot legal order for multiple discrimination, although the concept was repeatedly raised in Equality Body decisions concerning a number of groups: migrants with disabilities applying for nationality; young asylum-seeking women with babies forced to work in agriculture; and women of foreign national origin subjected to harassment at work. While the law does not explicitly cover assumed discrimination, direct discrimination is widely defined in a manner that can be interpreted as covering discrimination by assumption.

¹⁴ Cyprus, Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

¹⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶ Cyprus, Law Amending the Law on Persons with Disabilities. No. 63(I)/2014, 23 May 2014. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626.

4. Material scope

The anti-discrimination laws cover both the private and the public sector and include all fields provided for in the directives. Thus, discrimination on all five grounds is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations. In addition, discrimination on the ground of racial/ethnic origin is forbidden in the fields of social protection, medical care, social provision, education and access to goods and services available to the public including housing. Subject to conditions, the disability law provides for the right to equal treatment in the provision of goods, facilities and services.

5. Enforcing the law

Victims have the option of submitting a complaint to the Equality Body or to the courts. Discrimination complaints concerning children may also be examined by the Commissioner for the Rights of the Child, who investigates and issues recommendations but lacks the power to impose sanctions. Labour inspectorate committees also examine employment-related complaints but do not have the expertise to handle discrimination-related complaints, except in specific gender-related fields. A consumer association examines complaints. However, its mandate does not explicitly cover discrimination, nor does its work make reference to discrimination; the right to non-discrimination is not among the consumer rights the association promotes the public sphere through its awareness and information campaigns.

Litigation can take the form of an application for judicial review under Article 146 of the Constitution. Alternatively, application may be made to the District Court or Labour Tribunal in accordance with the laws transposing the two directives, or to the District Court for violation of the constitutional anti-discrimination provision. A study of the case law reveals a number of problems in the Cypriot courts' interpretation of the equality laws, which, more often than not, results in the rejection of discrimination claims. Litigation is hardly ever used by vulnerable groups for various reasons: low level of awareness of the anti-discrimination laws among victims and in legal circles; the high cost of litigation and limited access to legal aid; and the length of time involved, which is prohibitive for people such as migrants, who only remain for a short while in Cyprus. In 2013 and 2014, the number of employment-related complaints to the Equality Body dropped almost by half compared to previous years and thereafter remained at low levels. This is attributed to rising unemployment and the fear that victims have that they may lose their jobs if they complain. The Equality Body, which was the only agency collecting and publishing equality data, stopped publishing such data after 2015; currently, there is no equality data in the public sphere to inform the debate and lead to policy development. From the body of decisions emerging in recent years, it appears that the more vulnerable a group is, the less access it has to judicial or Equality Body proceedings. Thus, most anti-discrimination claims brought before the court are filed by civil servants and relate to promotions, pensions and retirement ages. There are a few court decisions concerning the claims of Turkish Cypriots to their properties in the south or to state grants but no cases involving migrants or Roma claiming violation of the equality *acquis*.

The national laws transpose verbatim the directives' provisions regarding the right of organisations to engage in procedures on behalf of victims. However, long-standing judicial precedent holds that applications for judicial review may only be filed by persons with a 'legitimate interest' and organisations acting on behalf of victims are unlikely to be deemed by the court as having such an interest. The new legal framework for the operation of NGOs adopted in 2017 imposed a number of new duties and formalities on NGOs but did not provide for their right to represent victims in judicial review proceedings. Victims may address complaints directly to the Equality Body, where the procedure is cost-free, simple and flexible, or to NGOs or trade unions, which may then submit complaints to the Equality Body on their behalf. Whilst in previous years the Equality Body would accept and handle

complaints from organisations or even members of the public regarding issues that were the subject of public debate, this practice was reversed when the new Ombudsman took office in 2017. Now, the Equality Body will only examine complaints from persons with a 'legitimate interest' which means only the victims themselves can file complaints.¹⁷

In the case of sexual orientation, the tide has begun to turn in recent years. LGBTQI persons are becoming more visible and accepted in the public sphere and have gained allies amongst most political parties. The institutionalisation of same-sex partnerships has contributed significantly to the normalisation of homosexuality in the eyes of the public, but an issue remains with the fact that same-sex couples are still denied the right to adopt children. A new bill is currently being debated on gender identity which will purportedly attempt to address some of the gaps in the legal and policy framework affecting transgender persons.

The use of situation testing and statistical data is not mentioned in the legislation, case law or Equality Body decisions. If an argument in favour of admitting such evidence is used in court, it is likely to be allowed, although the courts often do allow technicalities to place obstacles in the delivery of justice. The general rules of evidence for criminal and civil procedure apply. The admissibility of situation testing as a method of proving discrimination in court will presumably be subjected to the general test of 'relevance' and 'the best evidence rule'. However, although courts are likely to accept the submission of statistical data this is not a guarantee that such data will play any role in the court's decision.

The burden of proof may be reversed in judicial proceedings where the laws transposing the directives are involved; a claimant who invokes the Constitution or uses other laws as the basis of his or her claim cannot benefit from the principle of the reversal of the burden of proof. The burden of proof has never been reversed in any discrimination-related cases before the Cypriot courts. In 2017 the court *considered* such a reversal in a case concerning sexual harassment at the workplace but concluded that the claimant's allegations were too vague to create a *prima facie* case of discrimination. The burden of proof is not reversed in procedures before the Equality Body, since its mandate includes the right to carry out investigations to establish facts.

The sanctions that courts can impose on natural persons found guilty of discrimination cannot exceed EUR 6 835.27 and/or imprisonment of up to six months. For legal persons, the maximum penalty is EUR 1 196.72. If the offence has been committed out of gross negligence, the fine for natural persons is up to EUR 3 417.63. For legal persons, the fine is also a maximum of EUR 3 417.63 for the managing director, chairperson, director, secretary or other officer if it can be proven that the offence was committed with his/her consent, plus an additional fine of up to EUR 6 835.27 for the company or organisation. These fines, however, can only be imposed by the courts; the Equality Body can only impose small fines which cannot exceed EUR 598. The Equality Body does not have the power to award compensation to victims of discrimination, this is the exclusive jurisdiction of the District Court and the Labour Court.

6. Equality bodies

In 2004 the Ombudsman was appointed as the national equality body, with a wide mandate to combat discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin; to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol No. 12 to the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination); and to promote equality of opportunity irrespective of the aforesaid

¹⁷ Cyprus, Ombudsman, *Activity Report 2017*. Available at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/CA7171D95C64D829C225838D00396DF4/\\$file/etisia%20ekthesi%2017.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/CA7171D95C64D829C225838D00396DF4/$file/etisia%20ekthesi%2017.pdf).

grounds plus the grounds of special needs and sexual orientation. The scope of this provision covers not only the fields of Directive 2000/78 but additionally social insurance, medical care, education and access to goods and services including housing. Although a quasi-judicial body with powers to issue binding decisions, the Equality Body resorts to mediation and/or to non-binding recommendations as more effective means of tackling problems rather than the small fines foreseen in the law. Since its inception, the Equality Body has not imposed a single fine or sanction on perpetrators; its reports are permeated by the logic of mediation rather than seeking to pin responsibility on perpetrators. A number of new functions were added to its mandate in 2009 without adding to its budget or resources. These functions include the National Human Rights Institute (NHRI), the independent mechanism for the prevention of torture and the independent mechanism for the implementation of the CRPD.

Insufficient funds allocated to the Equality Body's office resulted in inadequate staffing arrangements, delays in issuing decisions, an inability to conduct surveys, awareness campaigns or research and an inability to issue codes of conduct unless external funding was secured. In previous years, the limited resources allocated to the Equality Body led to delays of three to four years, sometimes more, in investigating complaints; by the time the Equality Body had published its decision, third party rights could have been established, rendering justice for the victim impossible and making their claim time-barred, which in turn meant they could not apply to the courts. In April 2017 a new Ombudsman was appointed. The new Ombudsman has ceased all equality body's activity, even though the institution's mandate was not officially changed. The set-up of the office has changed to the effect that there are no longer a separate authority to examine complaints under the two anti-discrimination directives; instead, all complaints submitted are examined in the institution's capacity as Ombudsman, and the Equality Body is now essentially defunct. The last annual activity report published by the Equality Body covers the year 2014; the annual reports for 2015 and 2016 were pending publication at the time when the new Ombudsman took office in 2017 and were never published. For the year 2017, a handful of equality-related cases were included as a chapter in the annual activity report of the Ombudsman, whose mandate is restricted to maladministration in the public sector, with discrimination being one of the issues dealt with. Since April 2017, although there was no legislative amendment to support this change, there are no longer any decisions based on the two anti-discrimination directives. The new Ombudsman declined the Auditor-General's request to state the number of cases handled.

7. Key issues

- For several years now, no awareness activities, no action plan, no training and no equality data have been available in the public domain.
- The Equality Body is now essentially defunct, which calls into question whether Cyprus complies with Article 13 of the Racial Equality Directive. The procedure for appointing the Ombudsman does not guarantee that the work of the institution will be carried out independently.
- Very rarely do discrimination cases make it to the courts. The most vulnerable amongst the discriminated groups lack both rights awareness and the means to pursue their case in court. When they do, the anti-discrimination legal framework is not invoked; instead, recourse is made to the 40-year-old constitutional provisions which do not offer the far-reaching protection of the directives and which are restricted to persons with a 'legitimate interest'. The decision is often based on problematic legal doctrines developed by the courts which do not comply with the directives.
- Litigation is not sufficiently used, owing to the cost and time involved, the fact that legal aid is made available only subject to insufficient means, and the lack of awareness of the anti-discrimination laws amongst the legal profession. In recent years, the Government has completely abandoned efforts to raise awareness about the directives, to promote anti-discrimination initiatives or to consult with civil

society. The EU's structural funds package for the period 2014-2020 will not be used to fund new projects promoting anti-discrimination but only to fund existing 'horizontal policies'. The beneficiaries have expressed fierce criticism of various aspects, e.g. the disability classification system (ICF).¹⁸

- There is no procedure in place to regularly review or revise discriminatory laws/regulations. In practice, a review is only triggered if a complaint is submitted to the Equality Body and even then the process does not necessarily lead to the amendment of discriminatory laws. The courts will not refrain from applying discriminatory laws, as they are reluctant to interfere with what they see as the domain of the legislature.
- The Equality Body has the right to issue reports with recommendations but has no mandate to offer advice or court representation to victims.
- The Equality Body lacks the power to advise victims or to fund litigation so as to enable them to pursue their claims in court.
- Issues deriving from the unresolved 'Cyprus problem' have been the source of ongoing ethnic discrimination against Turkish Cypriots.¹⁹
- The transposition in 2016 of two asylum-related Council directives (the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33) introduced into the national asylum law provisions dealing with discrimination on the grounds of ethnic origin, disability and sexual orientation in the fields of education, freedom from detention and access to the asylum procedure.

¹⁸ For more details about this system, please visit www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument.

¹⁹ Following years of inter-ethnic violence between the country's two main communities, the Greek Cypriots and the Turkish Cypriots, and following military intervention from Greece and Turkey, the country is divided by barbed wire, separating Turkish Cypriots (in the north) and Greek Cypriots (in the south). In 2003 the barbed wire was partly unsealed, allowing movement between north and south. This regime was governed by a European Council Regulation when Cyprus acceded to the EU in 2004 (the Green Line Regulation). Since then, Turkish Cypriots can visit and even settle in the south, enabling them to (try to access) services, to vote and to claim their properties.

INTRODUCTION

The national legal system

The Cypriot Constitution contains a far-reaching equality provision which prohibits discrimination on, inter alia any ground whatsoever.²⁰ This provision has been interpreted restrictively by the courts as prohibiting differential treatment only where this was deemed 'unreasonable'²¹ or only where two 'equal' things were being compared.²² It led the Court to legitimise differences in retirement ages for employees of different rank or different age and to allow lower awards to disabled athletes compared to non-disabled athletes, introducing a wide spectrum of exceptions which go beyond the exceptions of the two equality directives. In 2015 the court ruled that quotas in employment in favour of persons with disabilities do not violate the equality principle but, on the contrary, are a necessary step towards achieving equality.²³ However, the elements of 'reasonable' and 'unreasonable' differential treatment still persist, giving the courts a much wider margin of discretion than the narrowly defined exceptions of the Employment Equality Directive. In 2015 the Court ruled that where two employees have the same date of appointment, it is lawful for seniority to be determined on the basis of the employees' age.²⁴ In 2018 the Court ruled that the poor state of public finances was sufficient to justify an age limit in a disability grant.²⁵

The most popular legal channel for challenging discrimination is the judicial review foreseen under Article 146 of the Constitution. This process rarely leads to satisfaction for the applicant (the victim of discrimination), because it does not entitle the court to look into the merits of the contested decision but merely to assess the legality of the decision-making process; it also has the disadvantage that it cannot be used to challenge discrimination in the private sector, which remains an unexplored potential more than 10 years after the non-discrimination directives were transposed. An additional disadvantage of this procedure is that it can only be used by persons with a 'legitimate interest', a prerequisite that essentially excludes organisations acting on behalf of victims. The judicial review provision of the Constitution requires applicants to have an 'existing legitimate interest, which he has either as a person or by virtue of being a member of a Community [that] is adversely and directly affected by such decision or act or omission.'²⁶ The term 'Community' is defined in the Constitution to mean either the 'Greek' or the 'Turkish'

²⁰ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 28, 11 February 1959. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

²¹ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=%EC%E9F4%E8%E1%E9*%20and%201497%20w/1%202008.

²² Cyprus, Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη), No. 111/2007, 18 June 2010. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0315.htm&qstring=%F0%EF%F4%E1%EC%E9%F4*%20and%2018%20and%20%E9%EF%F5%ED*%20and%202010. The claimant in this case was a Paralympics athlete who had been awarded a sum of one-fifth of the amount payable to the Olympics athletes. Although his discrimination claim was deemed valid by the trial court, the Appeal Court found that the trial court had erroneously tried to compare two unequal things whilst Article 28 only requires equal treatment of equal situations.

²³ Cyprus, Supreme Court, Review Jurisdiction, *Costas Tsikas et al v. The Republic of Cyprus through the Educational Service Committee*, Case No. 1519/2010 and 1520/10, 3 September 2015.

²⁴ Cyprus, *Charis Christodoulidou v. Republic of Cyprus through the Public Service Committee*, Case No. 12/10, 3 April 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202015.

²⁵ Cyprus, Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

²⁶ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 146.2, 11 February 1959. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

community and does not include membership of an organisation representing victims. According to all three laws transposing the Directives, the competent courts to try disputes arising thereunder are the Labour Court (for labour-related disputes) and the District Court (for non-labour-related disputes), 'without prejudice to the exclusive jurisdiction of the Supreme Court under Article 146 of the Constitution'. Therefore, although the option of applying to the District Court to claim compensation is available in the legislation, the judicial review procedure of Article 146 must be used in order to annul an administrative decision that has adversely affected an individual and this can only be used by the individual affected. In this context, the Directives' requirement that national law must grant organisations the legitimate interest necessary in order to represent victims in proceedings (Article 9.2 of Directive 2000/78 and Article 9.2 of Directive 2000/43) is not correctly transposed.

In 1963 the Greek Cypriot President proposed 13 amendments to the Constitution, which removed the consociational element by limiting the communal rights of the Turkish Cypriots, following which the Turkish Cypriots withdrew from the administration in protest. In *Ibrahim*²⁷ the Supreme Court ruled that the functioning of the Government must continue on the basis of the 'doctrine of necessity', which effectively suspended the constitutional rights of the Turkish Cypriots. A decade later, this doctrine was extended by the courts to legitimise measures, of questionable legality, affecting Turkish Cypriots. In the years that followed, the courts extended this doctrine into new areas, denying Turkish Cypriots access to their properties²⁸ and to welfare. Until 2006 Turkish Cypriots were also denied the right to vote; however, Cyprus was forced to change this law²⁹ following the European Court of Human Rights (ECtHR) ruling in the case of *Aziz v. Cyprus*.³⁰

List of main legislation transposing and implementing the directives

The two anti-discrimination directives were transposed through four different laws:

1. Disability: The Law on Persons with Disabilities was adopted on 31 March 2004 and entered into force on 1 May 2004, amending the existing legislation on disability.³¹ The amending legislation transposed the disability component of the Employment Equality Directive (2000/78/EC) by introducing the Directive's prohibition of discrimination in employment.
2. Racial and ethnic origin, religion or belief, age, sexual orientation: The Equal Treatment in Employment and Occupation Law was adopted on 31 March 2004 and entered into force on 1 May 2004 in order to transpose the Employment Equality Directive (2000/78/EC) minus the disability component. Its scope covers the field of employment.³²

²⁷ Cyprus, Supreme Court, *Attorney General of the Republic v. Mustafa Ibrahim and Others* (1964). Available at www.cylaw.org/cyr/1964/1964_1_195.pdf.

²⁸ Trimikliniotis, N. and Demetriou, C. (2012), *Displacement in Cyprus – Consequences of Civil and Military Strife, Report 3, Legal framework in the Republic of Cyprus*, PRIO Cyprus Centre, <http://www.prio-cyprus-displacement.net/images/users/1/Report%203%20-%20TRIM.DEM%20ENG.WEB.pdf>.

²⁹ Cyprus, Law on the Exercise of the Right to Elect and be Elected by the Members of the Turkish Community who have their Normal Residence in the Government-controlled Area (*Ο περί Άσκησης του Δικαιώματος του Εκλέγειν και Εκλέγεσθαι από Μέλη της Τουρκικής Κοινότητας που Έχουν Συνήθη Διαμονή σε Ελεύθερο Έδαφος της Δημοκρατίας (Προσωρινές Διατάξεις) Νόμος του 2006*) N. 2(I)/2006, 21 January 2006. Available at www.cylaw.org/nomoi/indexes/2006_1_2.html.

³⁰ ECtHR, *Aziz v. Cyprus*, No. 69949/01, 22 June 2004. Available at <http://echr.ketse.com/doc/69949.01-en-20040622/view/>. The decision of the ECtHR in the case of *Aziz*, that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality, was not consistently followed either by the courts in Cyprus or by the Equality Body, as both have issued decisions upholding the 'doctrine of necessity' as legal justification for the suspension of the constitutional rights of the Turkish Cypriots.

³¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

³² Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

3. Racial and ethnic origin: The Equal Treatment (Racial or Ethnic Origin) Law No. N. 59(1)/2004 was adopted on 31 March 2004 and entered into force on 1 May 2004 in order to transpose the Racial Equality Directive (2000/43/EC) in all the fields foreseen by this Directive minus employment, i.e. social protection, medical and medicinal care, social provisions, education, and access to goods and services including housing. The law was last amended in 2006 to rectify a transposition problem as regards the reversal of the burden of proof.³³
4. All grounds: The Combating of Racial and other Forms of Discrimination (Commissioner) Law was adopted on 19 March 2004 and entered into force on 1 May 2004 in order to transpose Article 13 of the Racial Equality Directive (2000/43/EC).³⁴ The Equality Body's mandate covers the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under a list of international conventions ratified by Cyprus. Although the Equality Body's mandate goes far beyond that foreseen in Article 13 in terms of grounds and fields of application, it does not include advice to victims or court representation. In previous years, international monitoring bodies flagged the limited resources afforded by the state to the Equality Body, which severely restricted its institutional capacity.³⁵ In 2017 the appointment of a new Ombudsman with no prior experience or relevant qualifications for the post led to the suspension of virtually all Equality Body activity.

³³ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³⁴ 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(1)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Cyprus adopted on 18 March 2015*, published 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Cyprus includes the following articles dealing with non-discrimination:

Article 28(1) provides that all persons are equal before the law, the administration and justice and are entitled to equal protection from these and to treatment by these. Article 28(2) guarantees the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties foreseen in the Constitution without any direct or indirect discrimination against any person on the grounds of: community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.

Article 6 provides that no law or decision of the House of Representatives or of any of the Communal Chambers (no longer active), and no act or decision of any organ, authority or person exercising executive power or administrative functions, shall discriminate against any of the two 'Communities' or any person by virtue of being a member of a 'Community'.³⁶

Given that the Equality Body's mandate extends to the exercise of rights guaranteed by the Constitution, the above constitutional provisions must be seen as applicable to all areas covered by the directives, at least as far as the Equality Body is concerned. The material scope of these provisions is in fact broader than those of the directives and case law has established that they apply in both the private and the public sector, against private individuals and against the state.³⁷

³⁶ The term 'Community' is used in the Constitution as meaning either the Greek or the Turkish Community in Cyprus.

³⁷ Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (Τάκη Γιαλλουρού ν. Ευγένιου Νικολάου), No. 9331, 8 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

- The Equal Treatment (Racial or Ethnic Origin) Law No. N. 59 (1)/2004 covers racial and ethnic origin.
- The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 covers racial and ethnic origin, religion or belief, age and sexual orientation.
- The Law on Persons with Disabilities N. 127(I)/2000 as amended covers only disability.
- Article 28 of the Constitution prohibits discrimination on the grounds of community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.
- The Combating of Racial and other Forms of Discrimination (Commissioner) Law N. 42 (1)/2004, which sets out the mandate of the Equality Body, defines this mandate as covering the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under the following international conventions ratified by Cyprus: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights; and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

Racial/ethnic origin is only defined in the law ratifying the ICERD,³⁸ which incorporates the Convention's definition. The Convention defines neither race nor ethnic origin but offers a wide definition of racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'³⁹

In 2015 the Equality Body issued a report on discrimination against Greek nationals residing in Cyprus.⁴⁰ In its legal justification section, the report relied on the Racial Equality Directive. Upon an enquiry sent from the national expert to the Equality Body as to whether the latter considers that the Racial Equality Directive applies to EU nationals residing in Cyprus, the Equality Body responded positively, adding that the equality directives are based on Article 13 of the Treaty on European Union and Article 19 of the Treaty on the Functioning of the European Union (TFEU). The Equality Body letter states that the

³⁸ Cyprus, Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N.12/1967, 30 March 1967.

³⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 1. Available at www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

⁴⁰ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority No. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

directives cannot be interpreted as excluding EU citizens from their scope and that EU citizens are primarily granted protection by the two equality directives.⁴¹

There are no officially recognised ethnic minorities in Cyprus. The Constitution recognises three 'religious groups' (the Armenians, the Maronites and the Latins) and two 'communities' (the Greek Cypriots and the Turkish Cypriots). The Roma are deemed to be part of the Turkish Cypriot community. Modern perceptions of evolving identities conceptualise these groups as having multiple identities: the religious groups are also ethnic groups and national minorities, whilst the Turkish Cypriots are at the same time a community and a minority in the southern part of Cyprus. Ethnicity is inherent in the identity of the five groups, who may therefore claim protection under the Racial Equality Directive. The Equality Body has invariably extended protection under the Racial Equality Directive to all of these groups, irrespective of their official denomination.

In November 2015 the Ministry of Education published a code of conduct for handling racial incidents in schools which provides non-legal definitions for the following terms: identity, diversity, race, prejudice, stereotype, discrimination, racism, xenophobia, nationalism, intolerance, homophobia, transphobia, bullying, hate speech, underreporting and racial incident.⁴²

According to the Code of Conduct, race is a social construct used to categorise persons on the basis of assumed physical and cultural similarities originating from their common descent. According to the Code, the term 'race' is a construct with no biological or literal status and, scientifically speaking, has no application to humankind, despite the fact that it is widely used for social action, policy development and as justification for differential treatment of groups in relation to other groups.

The Code defines racism as the process of marginalisation, exclusion and discrimination against those considered to be 'different' or 'diverse'. Racism does not have to be intentional and is not static. It can take many different forms. Some are obvious and direct, such as national denomination, forms of religious or other type of superiority or violent attacks against individuals or groups deemed to be 'other'. Some forms of racism are indirect and less obvious, such as institutional racism, the various forms of discrimination perpetrated by Governments, companies or other large essential organisations against non-privileged population groups like minorities and immigrants.

b) Religion and belief

Although there is no definition of what 'religion' is for the purposes of the anti-discrimination legislation, Equality Body decisions have established that the term includes atheism. In particular, a 2010 decision of the Equality Body criticised a set of school regulations that exempts students from religion class only if they are 'not of Christian Orthodox faith', adding that the regulation forcing students and parents to reveal their religious convictions (in order for the students to be granted exemption from religion class) is incompatible with the principle of freedom of thought, conscience and religion.⁴³ Extending this principle further, a 2011 Equality Body report dealing with religious confessions in schools found that the participation of students in ceremonies forming part of religious convictions creates fertile ground for discrimination, as non-participation inevitably leads to conclusions as to one's religious convictions and thus revelation of personal sensitive data, as well as to the labelling and categorisation of some students as 'good Christians' and others as not being 'good Christians'.⁴⁴ A further intervention by the

⁴¹ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

⁴² For more details, see [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4E90A39191DE8B85C2257E8100424C0E/\\$file/Kodikas_Symperiforas_Nov2015.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4E90A39191DE8B85C2257E8100424C0E/$file/Kodikas_Symperiforas_Nov2015.pdf).

⁴³ Cyprus, Anti-discrimination Authority, Report no. A.K.R. 135/2009, 7 November 2010.

⁴⁴ Cyprus, Anti-discrimination Authority, Report no. 42/2010, 29 July 2011.

Equality Body in 2015 on religious freedom in schools criticised the Ministry of Education's initiative to encourage the setting up of teams of children to assist with the religious ceremony in church as a violation of the children's freedom of religion, challenging the position of the ministry that the activity was not obligatory and that it was intended to promote volunteerism. The Equality Body questioned whether there can be such a thing as 'free consent' in the context of the school environment and accused the ministry of clearly favouring one religion over others and restricting religious freedom, which inevitably leads to discrimination against all those who do not belong to the particular religion.⁴⁵ In 2012 the Ombudsman dealt with complaints from prison inmates regarding their right to access a church within the prison grounds and the rights of visitation by representatives of a religion or dogma other than the one declared by the prisoner upon admission. Although both these were framed as unlawful, the Ombudsman did not consider these complaints through the lens of discrimination.⁴⁶ There has never been a decision attempting to interpret or address the distinction between the *forum internum* and the *forum externum* as in *CJEU Achbita*.⁴⁷

'Belief' is a rather neglected ground; it is not defined in the law transposing the Employment Equality Directive nor has it been the subject of any decision either of the court or of the Equality Body. The law adopted in 2015 on the political participation of employees in the public sector purports to safeguard the right of such employees to 'freely express their political beliefs, political views and convictions'.⁴⁸ This, however, should not be viewed as an exhaustive definition of 'belief' as found in the law transposing the Employment Equality Directive, particularly in light of the fact that legislation transposing the EU *acquis* ranks higher than other national laws.

c) Disability

Disability is defined in the Law on Persons with Disabilities N.127(I)2000 as 'any form of deficiency or disadvantage that may cause bodily, mental or psychological limitation permanently or for an indefinite duration which, considering the background and other personal data of the particular person, substantially reduces or excludes the ability of the person to perform one or more activities or functions that are considered normal or substantial for the quality of life of any person of the same age that does not experience the same deficiency or disadvantage'.

When the above definition is compared with the concept of disability adopted in *Skouboe Werge and Ring*,⁴⁹ it can be seen that the definition in the Cypriot law falls short of incorporating the juxtaposition of the *impairment* with the *barriers* that impede effective participation; instead, the definition in the Cypriot law requires disability to cause permanent or indefinite limitations when juxtaposed with the person's background and other personal data, but not when juxtaposed with external factors such as structural barriers. The definition of disability in the Cypriot law also fails to meet the test set in

⁴⁵ Cyprus, Anti-discrimination Authority, Report on the respect of religious freedom in schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

⁴⁶ Cyprus, Ombudsman's Report Ref. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, 9 April 2012.

⁴⁷ CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, C-157/15.

⁴⁸ Cyprus, Law Providing for the Political Rights of Public Servants, Local Authority Employees and Employees of Public Organisations (Ο περί των Πολιτικών Δικαιωμάτων Δημόσιων Υπαλλήλων, Εκπαιδευτικών Λειτουργών, Δημοτικών Υπαλλήλων, Κοινοτικών Υπαλλήλων και Υπαλλήλων Νομικών Προσώπων Δημόσιου Δικαίου Νόμος του 2015) N.102(I)/2015, Article 3, 10 July 2015. Available at www.cylaw.org/nomoi/enop/non-ind/2015_1_102/full.html.

⁴⁹ CJEU, Judgment of 11 April 2013, *Jette Ring and Lone Skouboe Werge*, joined cases, C-335/11 and C-337/11. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=944535>.

Skouboe Werge and Ring in that, according to Cypriot law, the limitation must be either 'permanent' or of 'indefinite duration', in contrast with the 'long-term' limitation set by the Court of Justice of the European Union (CJEU). This essentially means that the Cypriot definition requires a more stringent test to be satisfied in order for a disadvantage to be deemed a 'disability' and thus be offered protection under the law.

The definition in the Cypriot law first describes the characteristics of this condition in a liberal fashion ('deficiency that *may* cause indefinite or permanent, mental or psychological or bodily limitation') and then goes on to describe the impact in a rather restrictive mode (substantially reducing or excluding the ability to perform an activity that is 'normal' or substantial to quality of life). The definition of disability in the Cypriot anti-discrimination law does not refer to the source of the disability and therefore may arguably include curable or incurable illnesses, as required by *Skouboe Werge and Ring*. Practice may, however, deviate from the principle established in *Skouboe Werge and Ring*, as persons with disabilities caused by a curable illness may be denied access to welfare. The justification for such a denial is that their symptoms of limitation can be alleviated if they have an operation. Such was the case of a 90-year-old man with limited vision resulting from a cataract, whose application for welfare was rejected on the grounds that his vision would improve if he had the operation.⁵⁰

The Law on Social Insurance defines disability as the 'loss of health, strength or the ability to enjoy life'.⁵¹ However, this should not be seen as an exhaustive definition of disability but rather a means to determine eligibility to disability benefit under the particular law.

The Law on Public Service, which provides for employment opportunities in favour of persons with disabilities in the public sector, defines a 'disabled' person as 'a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs.'⁵² This definition follows the restrictive tradition of Article 2 of Law N. 127(I)/2000, and it is arguably more restrictive than the more liberal approach taken by the CJEU in *Chacón Navas* and *Skouboe Werge and Ring*.

A law which came into force in late 2009 introducing quotas in favour of persons with disabilities in the public sector defines 'person with a disability' as a person who, following an assessment by a multidisciplinary committee, is found to be suffering from a permanent or indefinite insufficiency or disadvantage causing physical, intellectual or mental restrictions in finding and keeping suitable employment.⁵³ In 2015, when the Supreme Court was asked to review an administrative decision to reject a disabled applicant from inclusion in the catalogue of persons entitled to a quota position in the public service, the Court ruled that the appointing body was not justified in disregarding medical opinion which had classified the applicant as a person with a disability. The Court therefore annulled the administrative act by which the applicant's request to be included in the quota list had been rejected, thus paving the way for the applicant to submit a fresh application.⁵⁴

⁵⁰ Consultation with KYSOA, the confederation of disability organisations, 8 May 2017.

⁵¹ Cyprus, Law on Social Insurance (Ο περί Κοινωνικών Ασφαλίσεων Νόμος) 2010 N. 59(I)/2010-2014, Article 2(1). Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/full.html.

⁵² Cyprus, Law on Public Service (Περί Δημόσιας Υπηρεσίας Νόμος) N. 1/1990, 1990-2014, Article 44(3). Available at www.cylaw.org/nomoi/enop/non-ind/1990_1_1/full.html.

⁵³ Cyprus, Law Introducing Special Provisions for the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος) N. 146(I)/2009, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

⁵⁴ Cyprus, Supreme Court, *Eleni Paroutsi v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015.

The Ombudsman's *Annual Report 2005*⁵⁵ refers to two cases in which the Social Welfare Services discontinued the payment of a benefit to persons with disabilities on the grounds that the disability could potentially be remedied through an operation and that the disability was not permanent, respectively. In both cases, the Ombudsman found that the complainants' disabilities did fit the definition of the term as found in the law because the inference that could be drawn from the medical certificates was that the disability in question was of indefinite duration.⁵⁶

An Equality Body decision in 2007⁵⁷ criticised a Ministry of Labour scheme for the provision of care to tetraplegic persons, where tetraplegia was defined as paralysis of the lower limbs resulting from injury to or illness of the bone marrow. The decision found the scheme to be discriminatory as it treated differently tetraplegic persons whose condition resulted from different reasons and excluded, for instance, persons whose tetraplegia was due to brain injuries, muscular condition or multiple sclerosis. A 2010 decision of the Equality Body included a speech impediment as falling within the definition of disability as found in the Law on Persons with Disabilities N. 127(I)/2000.⁵⁸

In a judicial review application decided by the court in 2016, the decision of the Social Welfare Services to discontinue the payment of a disability grant to a 15-year-old child following an operation which partly improved his condition, was annulled by the court as unjustified.⁵⁹ According to the authorities, the child's condition no longer met the definition of 'disability' found in the Law on Public Grants, because, following the operation, he was able to walk without support. The Law on Public Grants defines disability as any form of insufficiency or disadvantage which causes permanent or indefinite physical, intellectual or mental restriction, taking into account the history and other personal data of the person, and restricts substantially or excludes the possibility of one or more activities considered natural and essential for the quality of life of any person of the same age with no such insufficiency or disadvantage.⁶⁰ The court found that, even after the operation, the applicant continued to have a disadvantage compared to other children of his age, as other 15-year-olds could run, walk and exercise without difficulties and without having to rest at regular intervals, for an indefinite or permanent period of time. The fact that, after the operation, the applicant could walk without support did not lead to the conclusion that his functionality was not substantially restricted compared to his peers.

During 2014 a law was adopted that replaced the welfare grant, known as 'public benefit', with a 'minimum guaranteed income'. To be eligible, applicants must meet the law's definition which, on the one hand, endorses the concept introduced by the CRPD on impairments which hinder equal participation in society when interacting with barriers, but, on the other hand, makes eligibility conditional upon passing a 'classification of disability'

⁵⁵ Although the Ombudsman is also the Equality Body, reference is made here to the Ombudsman's annual report.

⁵⁶ Cyprus, Ombudsman, *Annual Report 2005*, Case Nos. A/P 2175/04 and A/P 368/05.

⁵⁷ Cyprus, Anti-discrimination Authority, Nos. A.K.I. 58/2007, A.K.I. 59/2007, A.K.I. 60/2007, A.K.I. 61/2007 and A.K.I. 64/2007, 19 June 2007.

⁵⁸ Cyprus, Ombudsman, Report of the Equality Authority regarding the dismissal of a person with a natural disadvantage from the position of hourly governmental worker, File No. A/P 2898/2007/ A.K.I. 10/2010, 23 February 2010.

⁵⁹ Cyprus, Supreme Court, Review Jurisdiction, *Christos Theodosiou through his guardian Theodosia Theodosiou v. The Republic of Cyprus through the Director of Social Welfare Services et al*, Case No. 1517/2013, 30 June 2016. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201606-1517-2013.htm&qstring=%E1%ED%E1%F0%E7%F1%2A.

⁶⁰ Cyprus, Law on Public Benefits and Services of 2006 and 2012 (Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος 2006 και 2012) N. 95(I)/2006, Article 2. Available at http://cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2006_1_95/section-scd1bb10a4-bb5c-68a5-d813-b5bd55b6b547-lnb9c5298e-5300-551d-119b-c161849ec308.html&qstring=%F0%E5%F1%E9%20and%20%E4%E7%EC%EF%F3%2A%20and%20%E2%EF%E7%E8%E7%EC%E1%2A%20and%20%EA%E1%E9%20and%20%F5%F0%E7%F1%E5%F3%2A%20and%20%ED%EF%EC%F9%ED%2A%20and%202006%20and%20%EA%E1%E9%20and%202012.

test of the System of Classification of Disability.⁶¹ This is a test that assesses disability on the basis of functionality using an international standard known as ICF (International Classification of Functioning, Disability and Health). The system is operated by the Ministry of Labour, Welfare and Social Insurance⁶² and has attracted criticism from the disability movement for adopting the medical rather than the social model of addressing disability.

d) Age

Although no definition is provided anywhere, equality body and court decisions appear to endorse the view that the victim need not be either young or old and that any discriminatory treatment based on age is prohibited. Thus, in 2006, a funding scheme to cover the cost of repairing rural houses that excluded single persons under the age of 35 was deemed to be discriminatory by the Equality Body on the ground of age.⁶³ In 2014 a court decision found that the reduced entitlement to pension benefits for civil servants resigning from the civil service before they turned 48 (or 45 for medical staff) amounted to age discrimination.⁶⁴ However, the legislative provision for the reduced benefits⁶⁵ remains in force in spite of this ruling. The only procedure available for changing a discriminatory law in the Cypriot legal order is for the Attorney General to promote a bill to be approved first by the Council of Ministers and then by Parliament. The courts are not required to disapply the discriminatory law pending its official annulment by Parliament.

The question of seniority was found by the court to be a permissible criterion for a job promotion where the two competing candidates had the same or similar qualifications.⁶⁶

e) Sexual orientation

No definition is provided either in the legislation or in any other official or unofficial document. This term does not appear in any piece of legislation other than the law transposing Directive 2000/78/EC. An Equality Body decision in 2005 found that employment advantages granted only to married employees were discriminatory by virtue of Article 28 of the Constitution, as well as by virtue of the law transposing Directive 2000/78/EC on the ground of, inter alia, sexual orientation, thus extending the definition

⁶¹ Cyprus, Law on the Minimum Guaranteed Income and Generally on Social Provisions of 2014 (*Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014*) N. 109(I)/2014. Available at http://www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

⁶² Cyprus, Implementation of new system of assessing disability and functionality (*Εφαρμογή στην Κύπρο ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd06_gr/dsdpd06_gr?OpenDocument.

⁶³ Cyprus, Anti-discrimination Authority, State subsidy provided to single persons in the frame of a housing scheme for the revitalisation of communities with up to 200 residents (*Κρατική χορηγία που παρέχεται σε μονήρη άτομα στα πλαίσια στεγαστικού σχεδίου για αναζωογόνηση κοινοτήτων με κατοίκους μέχρι 200 άτομα*), Ref. 127/2005, in: *Annual Report 2006*. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%B F%CF%85%20%CE%A1%CE%B1%CF%84%CF%83%CE%B9%CF %83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CE%B9%20%CF%84%CF%89%CE%BD%20%CE %94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20-% 20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE %A3%CE%97%202006.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%B F%CF%85%20%CE%A1%CE%B1%CF%84%CF%83%CE%B9%CF %83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CE%B9%20%CF%84%CF%89%CE%BD%20%CE %94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20-% 20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE %A3%CE%97%202006.pdf).

⁶⁴ Cyprus, Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

⁶⁵ Cyprus, Law on Pensions (*Ο περί συντάξεων νόμος*) N. 97(I)/1997, Article 27(1). Available at http://www.cylaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html.

⁶⁶ Cyprus, Supreme Court, *Charis Christodoulidou v. Republic of Cyprus through the Public Service Committee*, Case No. 12/10, 3 April 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%202015; Cyprus, Supreme Court, *Maria Shambarta v. Republic of Cyprus* (Μαρία Σιαμπάρτα v. Κυπριακής Δημοκρατίας) No. 417/2010, 4 October 2010.

of this ground to cover potential situations of LGB persons, whose sexual orientation may be presumed by their decision not to get married.⁶⁷ The law on civil unions does not provide any definitions whatsoever, since it applies equally to all persons who choose to register their relationship in this manner, irrespective of sexual orientation.⁶⁸ No court case on discrimination on the ground of sexual orientation has ever shed light on the definition of the term. The Greek term is literally translated as 'genetic orientation' and as such it may be presumed to cover all cases of persons declaring a certain sexual or gender identity. The Equality Body, whose mandate does not explicitly cover intersex persons, has on occasion addressed the vulnerable situation of intersex persons under its wider mandate to deal with matters pertaining to sexual orientation and gender identity, recognising at the same time that a more specialised framework is needed for their more effective protection. A position paper published by the Equality Body in 2016 pointed out that current Government policy and practice regarding intersex persons violates the right to free self-determination and bodily integrity.⁶⁹ Referring to this Equality Body report, the Commissioner for the Rights of the Child wrote that the principle of non-discrimination, as enshrined in Article 2 of the UN Convention on the Rights of the Child, must be interpreted as including the right to self-determination and gender identity.⁷⁰

An Equality Body report published in December 2014⁷¹ regarding the CJEU ruling on the procedure of assessing the credibility of asylum seekers claiming fear of persecution on the ground of their sexual orientation⁷² endorsed the CJEU ruling. The report excluded procedures which infringe upon a person's privacy and dignity, which are safeguarded by Articles 7 and 1 of the EU Charter, respectively. Although the debate at the CJEU concerned asylum,⁷³ it is reasonable to assume that the same philosophy of respect for one's privacy should govern discrimination-related claims.

⁶⁷ Cyprus, Equality Authority (2005), Report regarding the application forms for appointment in the Central Forum for the Equal Distribution of Burdens, Ref. A.K.I. 26/2005. Not available online.

⁶⁸ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf.

⁶⁹ Cyprus, Position of the Anti-discrimination Authority regarding main issues affecting intersex persons from the perspective of human rights (*Τοποθέτηση Αρχής κατά των Διακρίσεων σχετικά με κύρια ζητήματα που αφορούν τα intersex άτομα, από τη σκοπιά των ανθρωπίνων δικαιωμάτων*), File No. AKR TOP 4/2016, 2 August 2016. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/E387D25DE6311167C22580210020DF99/\\$file/%CE%9C%CE%B5%CF%84%CE%B1%CF%87%CE%B5%CE%AF%CF%81%CE%B9%CF%83%CE%B7%20intersex%20%CE%B1%CF%84%CF%8C%CE%BC%CF%89%CE%BD.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/E387D25DE6311167C22580210020DF99/$file/%CE%9C%CE%B5%CF%84%CE%B1%CF%87%CE%B5%CE%AF%CF%81%CE%B9%CF%83%CE%B7%20intersex%20%CE%B1%CF%84%CF%8C%CE%BC%CF%89%CE%BD.doc?OpenElement).

⁷⁰ Cyprus, Note by the Commissioner for the Rights of the Child Leda Koursoumba for the discussion on the subject 'Briefing for the legal recognition of gender in Cyprus on the basis of the recommendations of the Council of Europe' (*Υπόμνημα της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού, Λήδας Κουρσουμπά, στη συζήτηση του θέματος «Ενημέρωση για τη νομική αναγνώριση φύλου στην Κύπρο με βάση τις συστάσεις του Συμβουλίου της Ευρώπης»*), 14 November 2016. Available at <http://www.childcom.org.cy/ccr/ccr.nsf/All/218031C93003110AC22582D300414B2A?OpenDocument&highliqht=Ενημέρωση%20τη%20νομική%20αναγνώριση%20φύλου>.

⁷¹ Cyprus, Position of the Anti-discrimination Authority regarding the decision of the CJEU on the conditions of assessment of the credibility of asylum seekers as regards their sexual orientation, Ref. AKR TOP 3/2014, 17 December 2014. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/\\$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A5629E9283BCA597C2257E7B002B659B/$file/%CE%A4%CE%9F%CE%A03.2014-17122014.doc?OpenElement).

⁷² CJEU, Judgment of 2 December 2014, *A, B & C v. Staatssecretaris van Veiligheid en Justitie*, joined cases, C-148/13 to C-150/13. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

⁷³ CJEU, Judgment of 2 December 2014, *A, B & C v. Staatssecretaris van Veiligheid en Justitie*, joined cases, C-148/13 to C-150/13. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=180916>.

2.1.2 Multiple discrimination

In Cyprus, multiple discrimination is not prohibited in law. There are no plans to adopt legislation on multiple discrimination.

In Cyprus, there is no case law dealing with multiple discrimination; in some cases, the court deals with claims involving more than one ground but does not address the intersectionality of grounds as a special circumstance that must be treated differently.

An Equality Body decision in 2008 found that the age restrictions contained in a disability benefit scheme were discriminatory,⁷⁴ but did not look into the specificities created by the combination of the two grounds. With reference to the same case, in January 2016 the Supreme Court also ruled that the age restriction in the disability scheme amounts to unlawful age discrimination; however, the court also failed to address the case from the perspective of multiple discrimination.⁷⁵ In 2018 the appeal court considered an age limit in a disability scheme, concluding that this was reasonable and therefore lawful because of the bad state of public finances; the multiplicity of grounds was not considered at all.⁷⁶

A report issued in 2016 by the Ombudsman on the conditions of access to the labour market for women asylum seekers criticised the policy framework, which failed to take into account the multiplicity of grounds of discrimination at play (origin, age, gender, religion, maternity, health, etc.) but did not term this multiplicity as an aggravated instance of discrimination.⁷⁷ A report issued in 2017 by the Ombudsman in her capacity as monitoring body for the implementation of the CRPD established that a legislative provision excluding persons with intellectual disability from acquiring citizenship amounts to multiple discrimination, rendering the illegality even more serious.⁷⁸

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Cyprus, discrimination based on a perception or assumption of a person's characteristics is not explicitly prohibited in national law. However, the concept of discrimination itself, virtually replicating the directive, defines 'direct discrimination' in the following way: 'where one person is treated less favourably than another is, has been or would be treated in a comparable situation'.⁷⁹ Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide.

⁷⁴ Equality Body, Decision Ref. 114/2007, 10 November 2008.

⁷⁵ Cyprus, Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

⁷⁶ Cyprus, Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

⁷⁷ Commissioner for Administration and Human Rights, Report on access by women asylum seekers to labour and social welfare, File No. A/P 1799/2016, 11 November 2016. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).

⁷⁸ Independent Authority for the Promotion of the Rights of Persons with Disabilities, Report on the rejection of an application by a person with an intellectual disability for Cypriot citizenship and infringement of the CRPD (Έκθεση αναφορικά με την απόρριψη αίτησης ατόμου με νοητική αναπηρία για απόκτηση κυπριακής υπηκοότητας και την παραβίαση της Σύμβασης του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρία), File No. S.A.A. 40/2016, 26 January 2017. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/\\$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement).

⁷⁹ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην*

The Law on Persons with Disabilities defines discrimination based on disability as treatment based on characteristics which generally belong to a person with such disability or based on an assumed characteristic which generally belongs to a person with such disability or based on an assumed characteristic generally attributed to a person with such disability.⁸⁰ The other two laws transposing the directives do not contain an equivalent provision, they merely reproduce the wording of the directives.

This matter has never been considered by a Cypriot court or the Equality Body.

b) Discrimination by association

In Cyprus, discrimination based on association with persons with particular characteristics is not explicitly prohibited in national law. There is no judicial interpretation of any related terms or concepts. However:

- All three laws transposing the equality directives (N. 58(I)/2004, N. 59(I)/2004 and N. 127(I)/2000 as amended) contain protection against victimisation in line with the said directives. The spirit of the prohibition of victimisation may be extended to cover discrimination by association.
- Freedom of association is protected by the Cypriot Constitution (Article 21). All constitutional rights are to be enjoyed without discrimination, according to Article 28 of the Constitution.
- Article 1(1) of Protocol No. 12 to the ECHR, which Cyprus has ratified, includes 'association with a national minority' as one of the prohibited grounds of discrimination. Such association may take various forms, including living with a particular community and/or otherwise sharing in its misfortunes or being assumed by the perpetrator to be of a particular ethnic minority origin. Such association is in line with the CJEU ruling in *Chez Razpredelenie*, which established that the Racial Equality Directive covers 'those who, without possessing that [ethnic] origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure'.⁸¹
- The law setting up the Equality Body defines the Equality Body's mandate as including the promotion of equality in the enjoyment of rights and freedoms safeguarded by the conventions ratified by Cyprus and referred to explicitly in law.⁸² These include Protocol No. 12, irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.⁸³ It may be inferred from this provision that association then becomes a prohibited ground of discrimination, at least as far as the Equality Body is concerned. However, the grounds expressly affected by this provision are those related to race/ethnic origin (language, colour, religion, etc.) and do not seem to extend to disability, age or sexual orientation. There is no case to clarify this issue.

Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁸⁰ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 3(2)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁸¹ CJEU, Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v. Komisija za zashtita ot diskriminatsia*, Case C-83/14, Paragraph 129.1. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=516528>.

⁸² These conventions are: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁸³ 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, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

An Equality Body decision in 2010 established that discrimination against the primary carer of a person with a disability, in this case the mother of a child with a disability, is unlawful discrimination under the law transposing the Employment Equality Directive⁸⁴ decision citing the principle established by *Coleman v. Attridge Law and Steve Law*⁸⁵ and referred explicitly to this case.⁸⁶ The difference between the case examined by the Equality Body and *Coleman v. Attridge Law and Steve Law* is that the latter case involves direct discrimination whilst in the former case the complainant was refused preferential treatment as regards her job posting. However, the principle was nevertheless established and was reiterated by the Equality Body in the Code of Conduct on Disability Discrimination in Employment and Occupation it issued in September 2010,⁸⁷ thus making it harder for the courts to ignore if and when such a case is presented before them. In 2015 the Equality Body once again dealt with discrimination by association. On this occasion, it was in relation to a female employee in the public sector who was to be transferred to a post in another city, far from her brother who had a psychosocial disability and for whom she was the primary carer.⁸⁸ The administration's policy was to transfer employees to different districts on rotation. Whilst the system of transfers provided for consideration of the family circumstances of the employee to be transferred, the term 'family' did not extend beyond spouse⁸⁹ and children, as that would, in the opinion of the competent administrative body, infringe upon the principle of proportionality. The administrative body insisted that any exception to this rule would amount to preferential treatment of an employee compared to other employees. The Equality Body pointed out that the complainant's brother was in need of 24-hour supervision and care and had been declared by the court to be an 'incapable person'; the complainant had been appointed by the court as the person in charge of all his affairs. She was also his only close relative in Cyprus and his sole carer, taking care of all his survival needs around the clock. The Equality Body relied on the strengthening of the Employment Equality Directive by the CJEU decision in the *Coleman* case to establish that the restrictive interpretation given to this legal framework by the administration – limiting the application of discrimination by association to only spouses and children – was violating the principle established by the CJEU ruling, which was clearly intended to cover any type of discrimination by association with a person with a disability under the care of the complainant. The Equality Body found that any other interpretation of the Directive would truly weaken the scope of protection, pointing out a number of examples of other Member States that have extended the principle of discrimination by association to relationships beyond the sphere of the family, covering third persons acting as carers of persons with disabilities. The Equality Body invited the administration to look at the facts of each case separately before deciding on any particular transfer and to prioritise respect for fundamental rights over other considerations.

To date, neither the courts nor the Equality Body have examined any cases in which the primary carer of a person with a disability was not a close relative. That would

⁸⁴ Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁸⁵ CJEU, Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, Case C-303/06. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

⁸⁶ Cyprus, Anti-discrimination Authority, Report of the Equality Authority regarding the appointment of a contracted teacher with a disabled child at a school outside her area of residence, Report No. A.K.I. 82/2009, 25 June 2010.

⁸⁷ The Code of Conduct can be downloaded at <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897?OpenDocumentf>.

⁸⁸ Cyprus, Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

⁸⁹ In the period following the adoption of the Law on Civil Partnerships (from 2016 onwards) the term 'spouse' should be deemed to include partners who have registered a civil partnership, irrespective of gender.

indeed be an interesting area to investigate, especially given the fact that the vast majority of professional carers in Cyprus are migrant women, which would open up the possibility of multiple discrimination.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Cyprus, direct discrimination is prohibited in national law. It is defined using the same wording as the Directive.⁹⁰

The Law on Persons with Disabilities defines direct discrimination as 'unfavourable treatment' when compared to 'a person without disability in the same or similar situation', or on the basis of 'characteristics which generally belong to persons with such disability', or 'alleged characteristics', or in contravention of a code of practice.⁹¹

b) Justification of direct discrimination

In Cyprus, the law does not permit justification of direct discrimination, save for specific situations which are explained in Section 4 below.

A number of court decisions interpreting Article 28 of the Constitution attempt to establish a norm that essentially deviates from the approach of the two anti-discrimination directives and their CJEU interpretations. The norm emerging from a list of Supreme Court decisions is that equality must be applied only to equal situations and that 'different things can only be dealt with differently,' with references to 'reasonable discrimination which must be done because of the special nature of things'.⁹² Court decisions have also introduced the test of 'reasonableness', which essentially provides that 'reasonable' discrimination is lawful.⁹³ This theory is applied by the courts across the board without taking into consideration the provisions of the directives and often results in allowing discriminatory treatment that is clearly prohibited by the directives. In 2015, in line with this judicial tradition, the Supreme Court reiterated the doctrine that the equality principle safeguards against arbitrary differentiations but does not exclude reasonable differentiations, which are allowed as a result of the essential nature of the circumstances. Here, however, the Court also cited the CJEU ruling in the case of *Johnston v. Chief Constable of the Royal Ulster Constabulary* to find that any exception to such differential treatment must be narrowly construed as the EU gives emphasis to individual rights recognised by EU law.⁹⁴ The judgment marked a

⁹⁰ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 6(1)(a). Available at http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁹¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000 Article 3(2)(a)-(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁹² Cyprus, Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*), No. 111/2007, 18 June 2010; Cyprus, Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation* (*Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού*), No. 1406/2008, 10 February 2010; Cyprus, Supreme Court, *Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice* (*Τάσος Τρατονικόλα v. Κυπριακής Δημοκρατίας μέσω Διευθυντή Τμήματος Φυλακών και του Υπουργείου Δικαιοσύνης*), No. 135/07, 13 April 2011; *Costakis Charalambous v. Republic of Cyprus through the Chief of Police* (*Κωστάκης Χαραλάμπους v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας*), No. 1334/2008, 19 September 2011.

⁹³ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (*Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης*), No. 1497/2008, 30 April 2012. In this case, the Court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

⁹⁴ CJEU, Judgment of 15 May 1986, *Johnston v Chief Constable of the Royal Ulster Constabulary*, C-222/84. Available at <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-222/84&td=ALL>.

departure from previous court rulings on discrimination, which had essentially ignored the entire corpus of EU anti-discrimination law and jurisprudence.

In 2017, however, another Supreme Court decision rejected a claim for age discrimination in the different lump sums paid to retiring public servants, which are calculated on the basis of a formula that includes the age of retirement. The Court concluded that retirement lump sums fell outside the scope of the Directive. It added, however, that, even if they were covered by the Directive, they would be justified under the exception of Article 6(1). The judgment did not clarify the legitimate aim served by this differential treatment, presumably assuming that if national legislation foresees such a differentiation, then it must somehow be valid and lawful. In order to justify the different treatment of civil servants retiring at different ages, the Court cited a 1998 judicial precedent, which established that differential treatment of dissimilar subjects does not amount to discrimination prohibited by law. Given that the claimant belonged to a different category than the civil servants retiring at 63, the differential treatment afforded to him was permissible.⁹⁵ The prevalent logic of these judgments is that discrimination is permitted where the individuals concerned are dissimilar and therefore not comparable. This judicial tradition marks a departure from the principle established in the directives, which essentially prohibit discrimination where 'dissimilar' subjects are treated differently in similar circumstances, provided the dissimilarity is due to a protected characteristic. The interpretation of equality given by the Cypriot courts defeats the rationale of the directives, which view such 'dissimilarity' as a potentially protected characteristic that could only justify less favourable treatment under specific and narrowly defined circumstances.

2.2.1 Situation testing

a) Legal framework

In Cyprus, situation testing is neither permitted nor prohibited in national law.

The Law on Evidence Cap. 9, which codifies the sources of law, defines the hierarchy of laws for both criminal and civil procedure as follows: the Constitution; the legislation of the Republic of Cyprus since 1960, Common Law and equity and the statutes of UK prior to independence.⁹⁶ In July 2006 the Constitution was amended to give supremacy to EU Regulations, directives or other binding legal measures enacted by the EU or its bodies.

The admissibility of situation testing as a method of proving discrimination in courts will be subjected to the general test of 'relevance' and 'the best evidence rule'. A number of factors need to be considered before concluding how the courts are likely to treat situation testing. If situation testing is to be relied upon as a methodology that merely indicates a tendency as to the 'general' or 'systematic' behaviour of the defendant, which is based on previous and/or similar occasions, the court may treat situation testing as corroborative evidence. The test will be the extent to which this methodology ascertains a probative value as to the behaviour of the defendant. General common law principles are defined in a series of criminal law cases.⁹⁷

In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations⁹⁸ or as an indication of *habitual*

⁹⁵ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20%F1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

⁹⁶ Cασογιάννης, G. (1983) *Η Απόδειξη*, Limassol, Cyprus; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

⁹⁷ United Kingdom, *R. v. Hartley* (1941) 1 KB 5; United Kingdom, *R v. Mitchel* (1952) 36 Cr App. R 79.

⁹⁸ United Kingdom, *Bereford v. St. Albans* (1905) T L R 1.

behaviour.⁹⁹ It is up to the party who asserts to prove whether the particular behaviour is systematic or mere coincidence or circumstantial that will determine the relevance to the particular fact at stake. If, however, the situation test is to be relied upon directly as real evidence of perpetrators engaging in discrimination, this is a matter that would require legal argument on the basis of authorities in Europe, UK and USA. which would have to prove that the particular test is widely used in court as direct evidence of discrimination.

b) Practice

Situation testing is an unknown concept in Cyprus and is not used by anyone yet. Most if not all NGOs active in the field of anti-discrimination do not have the human or financial resources¹⁰⁰ to use such methods. The Equality Body was not aware of this concept, but its officers stated that they were open to the idea of using situation testing where the circumstances demand or allow.¹⁰¹ An incident in 2005, which was not exactly situation testing but had certain elements of it concerned the refusal of insurance companies to insure drivers of Pontian Greek origin because they considered them to be 'high risk'. Two persons of Pontian Greek origin called several insurance companies to see whether they would sell car insurance policies to them. None of the companies contacted were willing to sell such policies to Pontian Greeks or, if they were, they wanted to charge them premiums up to two or three times the amount charged to Greek Cypriots with similar data. They then filed a complaint with the Equality Body, which wrote to the insurance companies involved asking them to state their policies on the matter. It emerged that some of the companies investigated considered persons of Pontian origin to be bad drivers, unreliable and generally 'high risk' and that there was a policy in place to avoid insuring persons of Pontian origin unless 'guaranteed' or 'recommended' by a Greek Cypriot. In its report issued on 23 June 2005, the Equality Body declared this practice to be discriminatory and illegal. It recommended that the insurance companies revise their policies, warning that it would refrain from imposing penalties at that point, but that it would not hesitate to impose penalties if the insurance companies did not comply with this recommendation. The process of rectifying this practice did not progress any further, as the Equality Body did not receive any further complaints about the insurance companies' policy in this field.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Cyprus, indirect discrimination is prohibited in national law.¹⁰² For all five grounds except disability, indirect discrimination is defined by replicating the wording of the directives.¹⁰³

The disability law incorporates the directives' definition but also contains an additional provision, which, although not specified as a definition, offers elements of what would constitute discrimination, without clarifying whether these elements are to form an

⁹⁹ United Kingdom, *Joy v. Phillips* (1916) 1 K.B 849 Mills 2 C.

¹⁰⁰ Legal aid in Cyprus is subject to means and for this and other reasons very few discrimination cases end up in court. Thus, in order for an NGO to test a case, it would have to apply to the courts on behalf of a complainant. This would entail having the know-how, technical skills and funds to cover legal and judicial costs.

¹⁰¹ Interview with Mrs Elisa Savvidou, former Head of the Equality Authority at the Ombudsman's Office and currently Ombudsman and Head of the Equality Body, 19 January 2006.

¹⁰² Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 6(1)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁰³ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

exhaustive description. The wording reads: 'a person discriminates against another if he treats that person: (a) in a more unfavourable way than the way he treats or would treat other persons without disability in the same or in a similar situation; (b) on the basis of characteristics generally belonging to a person with such disability or based on a presumed characteristic which generally belongs to a person with such disability or based on a presumed characteristic which is generally attributed to a person with a disability; or (c) based on the fact that this person does not satisfy or is not in a position to satisfy a condition, the nature of which is such that a high percentage of persons who do not have such a disability satisfy, or are in a position to satisfy, when compared to persons who do have such a disability and the existence of such a condition is not justified by the circumstances of the case.'¹⁰⁴ This provision appears to be narrower than the directives' requirement which extends to any 'apparently neutral provision, criterion or practice [that] would put persons having a particular [disability]' at a disadvantage, but since the directive's definition is also incorporated no issue of compliance with the directive arises.

In 2016 the decision of the parents' association at the English School, a semi-public school attended by both Greek Cypriot and Turkish Cypriot students, to hold the finishers' prom on the day of the Turkish language exam was found by the Equality Body to be discriminatory. Although apparently neutral and affecting all students in the school, the decision to hold the prom on that particular date had placed only Turkish Cypriot students in a less favourable position compared to other students in the school whose mother tongue was not Turkish and were not taking this exam. The Equality Body rejected the majoritarian logic underpinning the decision of the parents' association, as it is inevitably destined to always place the minority in a disadvantageous position.¹⁰⁵ Moreover, a law which required persons wishing to register as assistant estate agents to present a 'certified educational attainment', when there is no procedure in place for third country nationals to obtain this, was held by the Equality Body to lead to indirect discrimination against third country nationals.¹⁰⁶

b) Justification test for indirect discrimination

Although this issue has not been dealt with directly by the courts so far, we may nevertheless assume, on the basis of Cypriot case law on gender discrimination, European court decisions and the persuasive authority of UK court decisions, that the 'but for' test is likely to apply. This test involves asking how the victim would be treated had they not had the special characteristic, such as the particular ethnic origin or disability or religion or age or sexual orientation, that they had.

There is no judicial precedent for the test to be used in order for employers to justify a requirement, criterion or practice that results in discrimination. The case law on the subject is not particularly enlightening. A Supreme Court decision in 2008, where the claimant contested his obligatory retirement at 55 based on his low rank, failed to consider either the aim or the legitimacy of the contested provision or whether the means were appropriate or necessary; instead, the Court's decision was premised upon the rather odd theory that the applicant failed to prove that the differential treatment was not based on reasonable

¹⁰⁴ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 3(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁰⁵ Cyprus, Anti-discrimination Authority (2016), Report on the organisation of the school leavers' prom of the English School for 2015, Ref. No. AKR 30/2015, 3 August 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/\\$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement).

¹⁰⁶ Cyprus, Equality Authority (2016), Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, File number A.K.I.22/2016, 15 April 2016. Available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

discrimination.¹⁰⁷ In other cases, the courts allowed wider exceptions to the non-discrimination principle than those foreseen in the directives, such as 'unequal' situations that must be treated 'unequally', without offering any definitions of the terms found in the laws transposing the two anti-discrimination directives. Judicial practice may evolve, however, following a more recent Supreme Court decision of January 2016. In this decision, the justification of the poor state of public finances, offered by the authorities in support of an age criterion in a disability scheme, was rejected by the Court as failing to meet the test of reasonableness, proportionality and objectivity.¹⁰⁸

By contrast, the Equality Body has issued a number of reports pursuant to complaints on age discrimination, where the tendency is to uphold the general principle of equality and to approach the issue from a fundamental rights perspective. The Equality Body's decisions show a good understanding and articulation of the concepts of legitimate aim and appropriate means as well as of decisions and debates at EU level. Below are some examples of how the Equality Body has assessed the allegations of employers over the years as to what amounts to 'legitimate aim' and how the 'appropriate and necessary measure' is interpreted:

- The Equality Body issued a decision in relation to the procedure followed by a certain school for exempting students from the religious instruction lesson. The report criticised the school regulations, which provided for the exemption of students only if they were 'not of Christian Orthodox faith', pointing out that a person's religion constitutes sensitive personal data that should not be revealed unless there is objective and reasonable justification serving a legitimate aim. In the case at hand, these two requirements were not in place.¹⁰⁹
- A job advertisement which stated that applicants would be assessed on the basis of their academic qualifications and experience, but in the event of applicants scoring equally they would be further assessed on the basis of their date of birth (priority was to be given to younger applicants) was held by the Equality Body to be unlawful. Resorting to age differentiation as a means of resolving the dilemma of candidates scoring equally was not a legitimate aim.¹¹⁰
- The conditions for the promotion of police officers contained an age limit of 40 years as a prerequisite for appointment to a specialised position. The Equality Body found that, although the aim of seeking to secure the operational readiness of the police force was legitimate, the means used to attain it were neither appropriate nor necessary.¹¹¹
- The age limit of 60 for school traffic wardens was found by the Equality Body to be based on a legitimate aim (the safety of the schoolchildren) but the choice of the age limit as a measure for achieving this aim was neither appropriate nor necessary, because age is not necessarily the ideal criterion for assessing one's physical condition.¹¹²
- The age limit of 40, set as a condition of eligibility in a scheme of financial support for artificial insemination, was found by the Equality Body to be discriminatory, based on the reasoning that the exclusive use of the age criterion is not the most

¹⁰⁷ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012.

¹⁰⁸ Cyprus, Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

¹⁰⁹ Equality Body, Report Ref. no. A.K.R. 135/2009, 7 November 2010.

¹¹⁰ Cyprus, Equality Authority (2016), Report on unlawful direct discrimination on the ground of age in the announcement of vacancies by the Nicosia Municipality for 11 fixed-term employees, 6 September 2016, File No. A.K.I. 18/2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/\\$file/AKI182015_06072016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/$file/AKI182015_06072016.doc?OpenElement).

¹¹¹ Cyprus, Equality Authority, Report no. A.K.I. 32/2008, 6 April 2012.

¹¹² Cyprus, Equality Authority, Report No. A.K.I. 76/2009, 11 March 2010.

appropriate means for achieving the legitimate aim of supporting under-fertile couples.¹¹³

- A legislative provision in the Pensions Law, which provides for a less favourable retirement package for public servants under the age of 45 who choose to take early retirement, was found by the Equality Body to be disproportionate, as it covers two-thirds of the public service workforce; the aim served was not legitimate because the shortages in scientific personnel invoked have since been covered.¹¹⁴ The issue was the subject of a court decision in 2014¹¹⁵ and of infringement proceedings initiated by the European Commission against the Cypriot Government, which resulted in a ruling against Cyprus.¹¹⁶
- The Equality Body found the policy of insurance companies refusing to insure persons over 70 to drive cars, or charging them a higher premium if they do insure them, unjustified and unsupported by reliable statistical evidence to prove that persons over 70 have more accidents than younger persons.¹¹⁷
- A legislative provision allowing the dismissal without compensation of employees who have reached retirement age was found by the Equality Body to be discriminatory. The Ministry of Labour's argument that this measure was justified because employees aged 65 or older are secure due to their pension and provident fund benefits was rejected.¹¹⁸ However, the provision continues to remain in force. With high youth unemployment, an argument that perhaps might be considered is that the provision is justified in the context of a labour market policy to combat youth unemployment.

In 2017 the Supreme Court ruled *obiter* that a law providing for different retirement lump sums to be paid to persons retiring at different ages did not infringe the equality principle because it was justified on the basis of a legitimate aim under Article 6(1) of the Employment Equality Directive, without explaining what the legitimate aim was.¹¹⁹ The failure of the Court to specify the legitimate aim may perhaps be explained in light of the fact that it had already decided that the case fell outside the scope of the law and the issue was in any case not of the essence; or it may even suggest that the Court thought of the legislative act itself as sufficient justification. In either case, this type of legitimisation does not meet the high standard of legitimisation set in *Age Concern England* where the CJEU clarified that mere generalisations concerning the capacity of a specific measure to contribute to employment policy will not suffice.¹²⁰

2.3.1 Statistical evidence

a) Legal framework

In Cyprus, there is legislation governing the collection of personal data.

¹¹³ Cyprus, Anti-discrimination Authority, Report No. A.K.R. 126/2009, 27 April 2010.

¹¹⁴ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 4 June 2009.

¹¹⁵ Cyprus, Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

¹¹⁶ CJEU, Judgment of 21 January 2016, *European Commission v. Cyprus*, C-515/14. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

¹¹⁷ Cyprus, Anti-discrimination Authority, Report No. 125/2007, 21 October 2008.

¹¹⁸ Cyprus, Equality Authority, Report No. A.K.I. 13/2005, 11 April 2007.

¹¹⁹ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017. Available at http://cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20%F1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

¹²⁰ CJEU, Judgment of 5 March 2009, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, C-388/07. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=77505&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148887>.

In 2018 the existing data protection legislation was replaced with a new law purporting to provide for the effective implementation of the GDPR.¹²¹ The old law, which had relied on Directive 95/46/EC and which contained a special provision on sensitive data, was annulled.

The new law defines personal data as 'any information relating to an identified or identifiable natural person'. An 'identifiable natural person' is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as name, identity number, location data, online identity card, or one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person. The new law makes no provision for 'sensitive data'.

Under the GDPR, a number of practices that were common and widespread in the past will have to be revised, as the consent of data subjects is now required for all types of data processing. In 2018, amidst an industrial dispute that broke out between teachers and the Ministry of Education, a number of teachers filed a complaint with the data protection authority (DPA) against the ministry for the wrongful use of a special platform. This platform, originally intended for programming and for processing various administrative procedures such as applications for leave of absence or sick leave or applications for transfers or secondment, was instead used to send emails to all teachers in the context of an industrial dispute. The DPA found in favour of the teachers, since they had submitted their email addresses to the platform in order to be used for the purposes of the platform and not for any other reason.¹²²

In Cyprus, statistical evidence is neither prohibited nor permitted by national law in order to establish indirect discrimination.

In 2010 the Ombudsman¹²³ issued a report pursuant to a complaint submitted a month earlier by a lawyer on behalf of a migrant woman, who was HIV positive. She had been detained for the purposes of deportation after her asylum application had been rejected.¹²⁴ The guards at the detention centre informed all the other inmates that she was suffering from HIV/AIDS and should therefore be using a separate washroom. The Ombudsman's report concluded that sensitive data concerning the complainant's health was revealed to third parties unlawfully and without her consent. The fears expressed by the members of staff that the non-revelation of the complainant's condition would have endangered the health of other persons using the same space were not seen as valid, since the medical certificate, which the complainant was issued with by the state hospital and which had been notified to the management of the detention centre, expressly stated that the complainant did not suffer from any contagious disease endangering public health. Similarly, in 2011 an Ombudsman's report¹²⁵ on access to the labour market by HIV positive individuals revealed the low response of HIV positive persons to a special scheme for employment in the public sector 10 years after its introduction. According to the report, the low response was largely attributed to the fact that the procedure foreseen in the scheme involves the registration of prospective applicants with the Labour Office, declaring

¹²¹ Cyprus, Law on the Protection of Natural Persons against Processing of Personal Data and Free Movement of Such Data (Ο περί της Προστασίας των Φυσικών Προσώπων Έναντι της Επεξεργασίας των Δεδομένων Προσωπικού Χαρακτήρα και της Ελεύθερης Κυκλοφορίας των Δεδομένων αυτών Νόμος), 2018 (125(I)/2018). Available at www.cylaw.org/nomoi/enop/non-ind/2018_1_125/index.html.

¹²² Cyprus, Office of the Commissioner for the Protection of Personal Data, File No. 22.20.001, A/P 152/2018, 21 September 2018. Available at [http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/all/9324217C650A15E7C2258313002F15AB/\\$file/%CE%B1%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20Vs%20%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF%CF%85%20%CE%A0%CE%B1%CE%B9%CE%B4%CE%B5%CE%AF%CE%B1%CF%82.pdf?openelement](http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/all/9324217C650A15E7C2258313002F15AB/$file/%CE%B1%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20Vs%20%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF%CF%85%20%CE%A0%CE%B1%CE%B9%CE%B4%CE%B5%CE%AF%CE%B1%CF%82.pdf?openelement).

¹²³ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹²⁴ Cyprus, Ombudsman, Report No. AP 1188/2010, 8 July 2010.

¹²⁵ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

that they are HIV positive, a fact which is in turn communicated to the Minister of Labour for further communication to the ministry involved and to the head of department where the applicant is applying for employment. The Ombudsman noted that the declaration of the applicant's health condition to a number of persons every time he or she applies for a job may deter an applicant from taking advantage of the said scheme but may also be a reason for rejecting a job application. The Ombudsman urged the authorities to remove this obstacle from the procedure.¹²⁶

In the field of disability, where positive measures often take the form of grants, there is little evidence of the use of statistical data in order to design positive measures. A new measure introduced in 2010, involving the covering of costs for escorts for persons with disability, was designed after the Ministry of Labour requested disability organisations to submit details on the numbers of their members that would make use of such a service. The funding granted was commensurate with the numbers of persons with disabilities that would be benefiting from the services of the escorts. Other measures in the disability field that do not involve the granting of monetary benefits, such as the preferential parking provided under the disability law,¹²⁷ appear to be the result of pressure from the disability movement rather than the result of the use of statistical data.

b) Practice

In Cyprus, statistical evidence is sometimes used in practice to establish indirect discrimination. Court practice does not generally involve argumentation on ethical or methodological issues, although litigants may use statistical evidence to support their line of argument.

The Equality Body uses statistical data occasionally to demonstrate the depth or intensity of a problem. One such case concerned discrimination against female migrant domestic workers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.¹²⁸ In the reasoning for this decision, the Equality Body also made reference to the low salaries paid to migrant domestic helpers¹²⁹ compared to Cypriot workers, pointing out that the number of migrant female domestic workers at the time in Cyprus was about 18 000.¹³⁰ The data was used in this report to highlight the acuteness of the problem, based on the large size of this group and on the disparity in the salaries of migrants and locals, rather than to determine whether an act is or is not discriminatory. In 2010 the Equality Body commissioned a survey into the vocational training needs of female migrant domestic workers. This provided a series of interesting results on the profile of this highly vulnerable group. Although the purpose of choosing to focus on vocational training needs is not clear, the interest of the Equality Body in the use of statistical data is obvious. Opinion surveys were also commissioned by the Equality Body in previous years, mainly in order to assess public opinion towards various vulnerable groups (LGBT persons, Pontian Greeks, persons with disability). Practice suggests that surveys are intended more for awareness raising and less for informing the court in the course of a litigation.

In 2008 the Equality Body examined an age discrimination complaint against several insurance companies whose policy was to refuse to insure persons over 70 to drive cars or

¹²⁶ Cyprus, Ombudsman, Report No. A/P 587/2010, A/P 1616/2010, A/P 2309/2010, 17 October 2011.

¹²⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 7A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹²⁸ Cyprus, Ombudsman, Report File No. A.K.I 2/2005, 4 November 2005. The Minister of the Interior has informed us that he has issued the relevant order for the pay increase but is waiting for the relevant Government department to estimate the costs involved for pensioners who employ domestic helpers so that their benefit is increased accordingly. The decision of the Equality Body is still not complied with.

¹²⁹ Calculated at CYP 0.82 per hour, compared to CYP 4–CYP 5 per hour (approximately EUR 8.5) for Cypriots carrying out the same work: Cyprus, Ombudsman, Report File No. A.K.I 2/2005, 4 November 2005, page 4.

¹³⁰ This figure is based on Ministry of the Interior data, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17 955.

to charge them higher premiums. The Equality Body's decision found that the practice or policy complained of, unsupported by reliable statistical evidence, is not reasonably and objectively justified and therefore amounts to discrimination.¹³¹ It follows that, had statistical evidence shown that persons over 70 are indeed more accident-prone, then the difference in treatment would have been justified and therefore not discriminatory. Thus, the Equality Body appears to have been prepared to accept statistical evidence in order to decide whether discrimination had taken place or not.

There is no evidence suggesting that the courts are reluctant to allow the use of statistical data as evidence. There have been cases where statistical evidence was introduced in court and was deemed admissible, although this is not very common as a practice. However, a court may allow statistics to be submitted without necessarily taking them into account in order to decide a particular case before it. There is no case law on the use of statistical evidence in the anti-discrimination field, although there is case law on the use of statistical evidence in other areas of the law: in *Kaskavallis*,¹³² the Supreme Court rejected an appeal against a decision by the Licensing Authority in which the appellant's application for a taxi licence was turned down, based, inter alia, on statistics provided by the Cyprus Tourism Organisation about tourist arrivals for the period in question. The decision impliedly accepted the use of statistics by the Licensing Authority in order to decide on the appellant's application for a taxi licence.

In 2017, in yet another case not related to discrimination, the court accepted the use of statistics in order to determine the relevance of cancer incidents in a specific area to the air pollution caused by a nearby factory. The court found that the statistically significant increase in new cancer cases in a 500-metre radius around the factory could only mean that the factory's emissions were responsible for the cancer cases.¹³³ The court's reasoning relied largely on the testimony of an expert witness who had compiled a scientific study on the health impact of the factory's operations. The court took into account the significant statistical increase in cancer cases in the area during a specific period; the attribution of the risk to an element of exposure that was common to all persons affected; the systematic and long-term exposure to the factory's emissions, in this case an average of 10 years; the incidence of rare types of cancer and/or the link of type of cancer encountered in the region with the substances emitted from the factory. In the case under examination, the expert witness testified that there was a 99 % statistical certainty of an increase in cases of cancer of the brain and the central nervous system. The relevant conclusion that arises from this judgment is that, although the court is happy to accept expert testimony regarding the link between the statistical evidence and the incident at hand, the statistical evidence presented must be quite strong to ensure a successful conclusion. In this case, a great number of persons living near the factory died of cancer within a decade and this could only be attributed to the factory's emissions.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Cyprus, harassment is prohibited in national law, which covers all fields of application foreseen in the two equality directives in both the private and the public sector.¹³⁴ It is defined in a variety of legislative instruments which are set out below.

¹³¹ Cyprus, Equality Body, Report No. 125/2007, 21 October 2008.

¹³² Cyprus, Supreme Court, *Andreas Kaskavalis v. The Republic of Cyprus through the Ministry of Transport and Public Works and the Licensing Authority* (Ανδρέας Κασκαβάλης v. Κυπριακής Δημοκρατίας μέσω του Υπουργείου Συγκοινωνιών και Δημοσίων Εργων και της Αρχής Αδειών), N. 1132/2005, 10 August 2007.

¹³³ District Court of Nicosia, *Theophanis Chrysanthou et al v. Sotiris Liasi et al*, Case No. 4567/2010, 29 December 2017. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseised/pol/2017/1120170768.htm&qstring=%F3%F4%E1%F4%E9%F3%F4%2A.

¹³⁴ Cyprus, Law Amending the Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος (Τροποποιητικός)) No. 57(I)/2004), Article 3(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική

As a concept, harassment was first introduced into Cypriot law in 2002 with Law N. 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training, which came into force on 1 January 2003. This law introduced 'harassment based on sex' as part of the definition of 'sexual harassment'. Later, in amending Law N. 40(I)/2006, the two terms were defined separately. The law refers to 'persons' rather than men or women and does not exclude harassment between individuals of the same sex.

In the legislation transposing the equality directives, harassment is defined as 'unwanted conduct related to any of the [recognised] ... grounds ... with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.¹³⁵ Although the laws refer to 'a person', there is no reason to interpret this as excluding harassment of more than one person or indeed of a group or a community, so long as unwanted conduct violating the dignity of one or more persons can be proven. The issue as to whether this provision may be used to prosecute hate speech against ethnic or sexual minorities or other groups has never been tested in court but cannot be ruled out.

The Criminal Code¹³⁶ provides for a number of offences that relate to harassment and may potentially be used to prosecute discrimination falling under the scope of the directives:

- Article 138 prohibits damage to a place of worship or to an object held sacred by any class of persons with the intention of insulting the religion of any class of persons;
- Article 139 prohibits the disturbing of religious assemblies;
- Article 140 prohibits trespassing on burial places with the intention of insulting the religion of any person;
- Article 141 prohibits the uttering of words, the making of any sound or any gesture with the intent of wounding the religious feelings of any person;
- Article 142 prohibits publications insulting any religion;
- Article 51A prohibits public incitement to violence amongst residents and the cultivation of a spirit of intolerance;
- Article 47(1)(b) prohibits action taken publicly with the intention of promoting feelings of hostility amongst communities or religious groups due to race, religion, colour or gender.

In terms of international and EU law, a number of legislative instruments transposed or ratified by Cyprus contain provisions that may be used to prosecute harassment. In 1992 a law was introduced amending the Law Ratifying the Convention on the Elimination of all Forms of Racial Discrimination of 1967, rendering certain public statements a criminal offence. This bears similarities to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or in any other way, intentionally incites acts that may cause discrimination, hatred or violence against persons or groups of persons for the sole reason of their racial or ethnic origin or their religion, is guilty of a criminal offence.¹³⁷

Καταγωγή) Νόμος) N. 59(I)/2004, Article 5(2)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος), 2004 N. 58(I)/2004, Article 6(1)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹³⁵ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος), 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹³⁶ Cyprus, Criminal Code (Ο Ποινικός Κώδικας), Cap 154. Available at www.cylaw.org/nomoi/enop/non-ind/0_154/index.html.

¹³⁷ Cyprus, Law Ratifying the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) 1967, Article 2A(1).

In addition, the following laws contain provisions that may be used to prosecute acts that may be termed as harassment:

- Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia through Criminal Law N. 134(I)/2011,¹³⁸ which purports to transpose the corresponding Framework Decision;¹³⁹
- Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems N.26(III)/2004; and
- Law Ratifying the Convention on the Prevention and Punishment of the Crime of Genocide N. 59/1980.

No case has been adjudicated in court so far under any of the above provisions. An Equality Body decision in 2016, drawing on the relevant Eurofound report,¹⁴⁰ defined harassment as 'conduct which may include psychological violence consisting of either isolated incidents or systematic patterns of behaviour manifested by persons in a hierarchically higher position than the victim at the workplace'.¹⁴¹

In Cyprus, harassment explicitly constitutes a form of discrimination.¹⁴²

b) Scope of liability for harassment

In Cyprus, where harassment is perpetrated by an employee, the employer is liable.

Under Article 13 of the Law on Civil Offences (Cap. 148),¹⁴³ a 'master' is responsible for the actions or omissions of his 'servant' for acts authorised or approved by the former or for acts carried out by the servant in the course of his work. The terms 'master' and 'servant' used in the text of the law mean employer and employee, respectively. The master is not responsible for the actions of persons to whom the servant has assigned work without the authorisation of the employer. An act is deemed to have been conducted in the course of one's work if it was committed by a servant in their capacity as such and whilst they were carrying out the normal tasks of their work, irrespective of whether the act was the result of negligent performance of a task assigned by the employer. An act is not deemed to have been committed in the course of one's work when it is conducted by a servant who was acting for their own purposes and not on behalf of their master. None of these provisions affect the servant's liability for any acts committed by them. An Equality Body decision in 2016 held that the failure of the public TV channel Cyprus Broadcasting Corporation (CyBC) to take measures against an employee who was harassing another

¹³⁸ Cyprus, Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia by means of 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/index.html.

¹³⁹ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

¹⁴⁰ Eurofound (2015), *Violence and Harassment in European Workplaces: Extent, impacts and policies*. Available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>.

¹⁴¹ Cyprus, Equality Authority (2016), Report regarding a complaint for harassment at work and for discrimination on the grounds of gender and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

¹⁴² Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁴³ Cyprus, Civil Offences Law (*Περί Αστικών Αδικημάτων Νόμος*), Cap 148. Available at http://www.cylaw.org/nomoi/enop/non-ind/0_148/full.html.

employee gave rise to liability for the employer.¹⁴⁴ Employers who fail to take measures to stop harassing behaviour are equally liable in law as the perpetrators themselves.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Cyprus, instructions to discriminate are prohibited in national law.¹⁴⁵ Instructions are not defined.

In Cyprus, instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Cyprus, the instructor is liable. The law does not explicitly require that the instructor be in a hierarchically higher position, which means that all situations where a person instructs another to discriminate are covered. Although the laws transposing the directives are silent on the employers' liability as regards the actions of their employees, the general principles of labour law hold that employers are vicariously liable for the actions of their employees. An employee who has discriminated because they have received an instruction to discriminate is not explicitly covered by the laws transposing the directives. However, it is likely that such an employee will be held liable for direct or indirect discrimination, irrespective of whether the motive was to follow the employer's instructions, depending on the circumstances and on what choices the employee had. The dismissal of an employee because they refuse to carry out an unlawful instruction, such as an instruction to discriminate, is unlawful and gives rise to compensation.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Cyprus, the duty to provide reasonable accommodation is included in the law. It is defined.

Even prior to the transposition of the Employment Framework Directive, the disability law provided for the duty to adopt 'reasonable measures' where and to the extent the local economic and other circumstances allow.¹⁴⁶ These measures, which are still in place now, are not restricted to the workplace, but cover: (a) basic rights (right to independent living; diagnosis and prevention of disability; personal support with assistive equipment, services, etc.; accessibility to housing, buildings, streets, the environment, public means of transport, etc.; education, information and communication through special means; services for social and economic integration; vocational training; employment in the open

¹⁴⁴ Cyprus, Equality Authority (2016), Report regarding a complaint for harassment at work and for discrimination on the grounds of gender and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

¹⁴⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5(2)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 6(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹⁴⁶ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 9(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

market, etc.);¹⁴⁷ (b) employment including access to employment, working conditions, training etc.;¹⁴⁸ (c) supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc.;¹⁴⁹ transport;¹⁵⁰ and telecommunications.¹⁵¹ An amendment to the law adopted in 2014 extended the reasonable accommodation duty by providing that the rights set out in the foregoing provisions (Articles 4, 5, 6 and 8) must be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation' for the purposes of this provision means necessary and suitable amendments and adjustments that do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms.¹⁵²

With regard to reasonable accommodation at the workplace, the law provides that 'equal treatment' means, inter alia, 'the obligation to provide reasonable access and facilities in the working environment, including: (i) the necessary modifications or adjustments of accessibility to existing facilities so as to make them accessible to persons with disabilities; (ii) the reshaping of work by creating schedules for part-time occupation or modified working hours, with the acquisition of new or the modification of existing equipment, machinery, tools, means and any facilities or services'.¹⁵³

The above provisions did not entirely transpose the spirit of the Directive, which provided for a mandatory duty to provide reasonable accommodation. Thus, an amendment to the disability law in 2007 added a new article which provides that, in order for the principle of equal treatment of persons with disabilities to be implemented, the employer must take reasonable measures, depending on the needs arising in any particular case. The measures must ensure that persons with disabilities have access to an employment post, to carry out their profession or to be promoted, or to undergo training, so long as these measures do not lead to a disproportionate burden for the employer.¹⁵⁴

b) Practice and case law

A burden is not disproportionate when it is sufficiently balanced by measures taken in the context of state policy in favour of persons with disability.¹⁵⁵

Over the years, the Equality Body has interpreted the duty to provide reasonable accommodation in employment as follows:

- The Ministry of Education's policy to transfer public education teachers based solely on the needs of the service, without reference to the existence or not of any disability and disregarding the complainant's need to work in a stable and safe environment, amounts to indirect discrimination on the ground of disability.¹⁵⁶

¹⁴⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 4. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 6. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵⁰ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 7. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 8. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵² Cyprus, Law Amending the Law on Persons with Disabilities (*Νόμος που τροποποιεί τον Περί Ατόμων με Αναπηρίες Νόμος*). 63(I)/2014, 23 May 2014.

¹⁵³ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(2)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵⁴ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵⁵ Cyprus, Law Amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626.

¹⁵⁶ Cyprus, Equality Authority, File No. 9/2007, 12 September 2007.

- The revocation by the employer of the right initially granted to an employee with multiple sclerosis to take two afternoons off in order to undergo physiotherapy was found to be discriminatory. Citing a landmark ECtHR ruling,¹⁵⁷ the decision stressed that the treatment of persons without a disability in relation to persons with disabilities cannot be the same, if equality is to be attained.¹⁵⁸
- In 2009 a complaint was submitted to the Equality Body by a job applicant who had achondroplasia, whose job application was rejected as a result of her height. The Equality Body concluded that the employer had an obligation to place files on shelves that would be accessible to the complainant and/or provide a ladder to enable her to reach files on high shelves.¹⁵⁹
- A reduction in teaching hours can constitute reasonable accommodation if the symptoms of the disability render teaching painful or exhausting.¹⁶⁰

Under the Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in September 2010, the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure equality in opportunity and not in the result. The measure must therefore be such that it offers the person with a disability the same opportunity as all other persons, e.g. persons with arthritis applying for the position of a typist must be given a special keyboard in order to be able to compete with the other applicants in terms of typing speed. In addition, persons with disabilities who take an exam for the purposes of a selection procedure for a job must be given such facilities that enable them to compete with the non-disabled candidates on equal terms. The employer's obligation to provide reasonable accommodation affects regulations or criteria set by the employer as well as the way in which the workplace is organised (e.g. offering a wheelchair user the chance to work on the ground floor of a building where this is available). The Code offers a non-exhaustive list of guidelines on reasonable accommodation measures: changes or adaptations to the building infrastructure (ramps and toilets for wheelchair users, Braille language on the buttons in the lifts, etc.); reallocation of duties amongst employees so as to allocate to employees with disabilities duties they can perform; transfer to another job position if available; sick leave for the purposes of therapy; vocational training including training related to a person's disability, e.g. use of new technologies or new equipment or logistics that can upgrade a disabled person's skills; facilitating participation in trade unions; the upgrading of existing equipment; other forms of support or assistance.¹⁶¹ The law setting out the Equality Body's mandate foresees the issuing of codes of conduct by the Equality Body, which can impose specific duties on persons in the public or private sector.¹⁶² However, such codes must be appended to regulations issued with the approval of the Council of Ministers; this procedure was not followed in the case of the Code of Conduct on Disability Discrimination and in essence this Code has the character of a clarification document rather than a binding set of rules. The court may refer to the Code and derive guidance from the examples contained in it, but it is not legally bound to do so and in fact the Code has never been referred to in court or in any official documents.

¹⁵⁷ ECtHR, *Thlimmenos v. Greece*, Application No. 34369/97, 6 April 2000. Available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#%7B%22itemid%22%3A%5B%5B%22001-58561%22%5D%5D%7D>.

¹⁵⁸ Cyprus, Equality Authority, Report No. A.K.I. 65/2007, decision of 04 September 2007.

¹⁵⁹ Cyprus, Equality Authority, Report No. A.K.I. 12/2009, 21 September 2009.

¹⁶⁰ Cyprus, Equality Authority, File A.I.T. 1/2009, 20 September 2009.

¹⁶¹ Cyprus, Equality Authority (2010), *Code of good practice on discrimination on the ground of disability in employment and occupation* (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

¹⁶² Cyprus, Law on Combating Racial and other Forms of Discrimination (Commissioner) of 2004 (Ο Περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004) N. 42(I)/2004, Article 40. Available at www.cylaw.org/nomoi/enop/ind/2004_1_42/section-sce220abc3-c0c8-c38b-6534-cc2265a17e12.html.

In 2015 the Equality Body issued a report against the state TV company, CyBC: the lack of accessibility features in its building, which dates back to the 1950s, had prevented an employee, who was a wheelchair user, from carrying out his work. The employee, who became tetraplegic following an accident, was asked to work in a different department than before and to perform different tasks. In his new position, the rooms were more accessible than in his previous post but even there he was unable to perform the tasks assigned to him. This was because, in order to supervise the flow of TV programmes, he needed access to two other rooms which he didn't have because those rooms were not accessible to wheelchair users. He was forced to resign and filed a discrimination complaint against CyBC. The Equality Body found that CyBC's delay in responding to its obligation as an employer to provide reasonable accommodation amounted to direct discrimination and advised CyBC to perform all the necessary structural modifications to make its building accessible.¹⁶³

c) Definition of disability and non-discrimination protection

The definition of disability does not differ whether one is claiming reasonable accommodation or claiming general protection from discrimination.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Cyprus, failure to meet the duty of reasonable accommodation may be interpreted as amounting to discrimination. The law does not clarify which form of discrimination the denial to reasonable accommodation takes and this may well depend on the circumstances under which reasonable accommodation was denied.

Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, this may be inferred from the wording of the law. It stipulates that, in order to comply with the principle of equal treatment, reasonable accommodation is foreseen and for this purpose the employer must take all necessary measures so as the person with a disability may have access to a job, may exercise their profession or may attend training, provided the burden is not unreasonable.¹⁶⁴ No case has ever been adjudicated in court on this point but this interpretation is invariably followed by the Equality Body.¹⁶⁵

The absence of any legislation specifically recognising the denial of reasonable accommodation as a form of disability discrimination in all areas of life was one of the issues flagged by the UN Committee on the Rights of Persons with Disabilities in its first observations regarding the implementation of the CRPD in Cyprus.¹⁶⁶

If one adopts the interpretation that breach of the duty to provide reasonable accommodation amounts to discrimination, it follows that breach of such duty leads to the sanctions foreseen in the law on discrimination.¹⁶⁷ In the case of both discrimination and

¹⁶³ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

¹⁶⁴ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/(2000), Article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁵ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

¹⁶⁶ UN Committee on the Rights of Persons with Disabilities (2017), *Concluding observations on the initial report of Cyprus*, 12 April 2017. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCYP%2fC0%2f1&Lang=en.

¹⁶⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/(2000), Article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

breach of the duty to provide reasonable accommodation, the sanctions are imposed where the perpetrator has acted without reasonable cause.¹⁶⁸ The Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in 2010 explicitly states that the employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination and, as with all other forms of discrimination, is punishable with a fine of up to EUR 6 834 (CY£ 4 000) or imprisonment for up to six months.¹⁶⁹

There is no explicit provision in the law for the reversal of the burden of proof in cases where there was a breach of the duty to provide reasonable accommodation. However, if one adopts the view that breach of this duty amounts to discrimination, then the reversal of the burden of proof foreseen in the law for discrimination cases¹⁷⁰ applies. It should be noted that the burden of proof is reversed only in employment-related cases and not in fields beyond employment.

No case was ever tried by the courts on reasonable accommodation. However, the Equality Body's decisions on this issue consider the failure to meet this duty as discrimination prohibited by law, even before the 2007 change in the law, which rendered the duty to provide reasonable accommodation as a binding obligation on the employer. Thus, a complaint from a blind telephonist working in a hospital, who was moved to a new hospital and had to cope with a more complicated telephone system with more telephone lines and with a less favourable working schedule, was found by the Equality Body to be well founded. The Equality Body decided that the hospital authorities ought to have transferred one of the other employees without a disability to the new post and to leave the blind employee at the post where he was familiar with the system. The report called on the hospital authorities to explain, in a manner satisfactory to the Equality Body, why the employee had to be moved to the new hospital, failing which a decision would be issued against them by the Equality Body.¹⁷¹

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Cyprus, there is a conditional duty to provide reasonable accommodation for people with disabilities outside the employment field.¹⁷² The 2014 amendment to the disability law, which extended the duty to provide reasonable accommodation to a number of areas beyond employment, falls short of creating a mandatory regime as is the case with the duty in employment. This is because, in light of the economic crisis, the defence of the disproportionate burden is likely to be successfully invoked by service providers or merchants in court in order to avoid any kind of expenditure. The definition of disproportionate burden in fields beyond employment does not differ from that used in the context of employment.

¹⁶⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁹ Cyprus, Equality Authority (2010), Code of good practice on discrimination on the ground of disability in employment and occupation (*Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση*). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

¹⁷⁰ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁷¹ Cyprus, Equality Authority, Report No. A.K.I. 58/2005, 8 December 2005. A summary of the case is available in the Equality Authority's *Annual Report 2005*, pp.12-13. Available at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf).

¹⁷² Cyprus, Law Amending the Law on Persons with Disabilities. N. 63(I)/2014, 23 May 2014. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626.

The Equality Body has repeatedly addressed the reasonable accommodation of pupils with disabilities in education and has offered recommendations to facilitate equal access to education for students with disabilities. A 2006 decision regarding accommodation for dyslexic pupils in school exams found that the Ministry of Education wrongly viewed the credibility and prestige of the exam and the need to avoid giving the dyslexic pupil an unfair advantage as priority considerations, and recommended that dyslexic students be given additional accommodation to the mere extra time of 30 minutes for the exam.¹⁷³ In another decision on a similar complaint, the Equality Body found that the principle of reasonable accommodation is founded upon the premise that the measure must be such that it ensures equality in opportunity and not in the result.¹⁷⁴

An Equality Body report published in 2012 regarding the adequacy of school units for children with autism concluded that the provision of education and training for children with disabilities, under circumstances where the school infrastructure is so lacking that their special needs are not met, amounts to a violation of the principle of equality, since the children do not have an equal opportunity to develop their personality and skills.¹⁷⁵

In 2018, as monitoring body for the CRPD, the Ombudsman investigated a claim from the parents of a pupil with ADHD. They had complained because their son had not been promoted to the next grade as a result of too many absences. The parents argued that the Ministry of Education and the public school had failed to promptly diagnose their son's ADHD, as a result of which he was labelled 'naughty' and 'unruly' at school and was regularly blamed for every problem in the classroom. Even after the student was diagnosed with ADHD, the school did not receive proper guidance from the Ministry of Education regarding the characteristics and needs of ADHD children and, as a result, failed to support him in his classroom performance and overall behaviour. The frequent absences from the classroom were the result of the student being late for class and sometimes leaving the classroom without permission. The school psychologist verified that the student's fragmented class attendance was a symptom of his ADHD and recommended that his disorder be taken into account when assessing his performance. The Ombudsman found against the school and the Ministry of Education for failing to take measures to accommodate the pupil in light of his disorder, pointing out that treating unequal things in the same manner amounts to discrimination. However because over a year had passed since the filing of the complaint, the Ombudsman's intervention offered merely moral gratification to the claimants.¹⁷⁶ A few days later, the Ombudsman issued another report in response to a complaint against a private kindergarten that refused to enrol a child with Down syndrome on the justification that the child would require an escort, which the school was unable to provide. The Ombudsman concluded that the current legal framework governing the operation of kindergartens does not require them to provide escorts and refrained from issuing an order or imposing a sanction.¹⁷⁷

The schooling system appears to find it particularly hard to grasp the concept of accommodation for persons with disability. In 2017 the Commissioner for the Rights of the Child ('the Child Commissioner') dealt with a complaint from the mother of a student with a visual disability ('K') whose grade was reduced by the school to bring it to the same level

¹⁷³ Cyprus, Equality Authority, File No. AKI 24/2006, AKI 27/2006, 31 October 2006.

¹⁷⁴ Cyprus, Equality Authority, Report No. A.K.I. 37/2008, 8 October 2008.

¹⁷⁵ Cyprus, Anti-discrimination Authority, Report No. AKI 50/2011, 27 July 2012.

¹⁷⁶ Report of the independent mechanism for the protection and monitoring of the UN Convention on the Rights of Persons with Disabilities on the decision not to allow a student with ADHD to advance to the next grade due to incomplete attendance as a result of unjustified absences, Ref. SAA 86/2017, 30 October 2018. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/C68178ADB3C514E4C2258345002BA7F3/\\$file/saa126_2017.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/C68178ADB3C514E4C2258345002BA7F3/$file/saa126_2017.pdf?OpenElement).

¹⁷⁷ Report of the independent mechanism for the protection and monitoring of the UN Convention on the Rights of Persons with Disabilities regarding the integration of children with disabilities in childcare centres and kindergartens, File No. SAA 126/2017, 12 November 2018. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/90CEC4825B2AC4DFC225833800244A40/\\$file/86_.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/90CEC4825B2AC4DFC225833800244A40/$file/86_.pdf?OpenElement).

as that of another student ('E') who had no disability and therefore received no accommodation measures. By reducing K's grades, the two students were announced as joint best finalists in the school. The teachers' justification for reducing K's grades was that K had benefited from facilitation measures whilst E had not and it would therefore be 'unfair' on E if K had won this title alone. The teachers argued that the reasonable accommodation measures afforded to students K and E. This position was supported by the Ministry of Education whose response to the Child Commissioner was that the ministry's primary aim is to promote 'the values and virtues of humility, the recognition of the value of others and the willingness to share credits with our fellow human beings'.

The Child Commissioner's report stressed that the right to non-discrimination does not merely mean 'same treatment', adding that discrimination may occur not only as a result of differential treatment of persons in identical circumstances but also as a result of the same treatment of persons in different situations. The Child Commissioner criticised the school for seeking to 'offset' the accommodation afforded to K by reducing his grades. In essence, the school not only penalised him for the accommodation but also suggested he ought to accept his punishment for the sake of humility. The Child Commissioner found that accommodation for children with disabilities does not give a comparable advantage to these children over other children but merely enables children with disabilities to start on an equal footing with other children.¹⁷⁸

The above approach towards accommodation in education dates back many years. In 2008 the Equality Body criticised the authorities for the inadequacy of accommodation measures granted to disabled applicants taking an entry exam. The examination board granted a blind applicant an extra 30 minutes and then took away 30 minutes from the break to which all persons taking the exam were entitled, as the duration of the exam was 6.5 hours; in essence, the examination board in this way cancelled the advantage of the extra 30 minutes granted.¹⁷⁹ In 2006 the Equality Body again criticised the procedure for granting accommodation facilities to dyslexic students during exams.¹⁸⁰ Two criteria foreseen in the relevant legislation were relied upon by the competent body to determine what accommodating measures were to be given: the measures should not give the dyslexic student favourable treatment or advantage over other students and the validity and credibility of the exam should be preserved. Following the Equality Body's intervention, the law was amended to add a new criterion: the measures should aim at safeguarding the rights of persons with 'special needs'; however, the other two criteria were retained.¹⁸¹

Accessibility of Government websites

The Department of Computer Services uses the tool 'Total Validator Pro' to check the accessibility of website content and website compliance with accessibility guidelines and standards. Checking the accessibility of Government websites is an ongoing process for the Department of Computer Services.

f) Duties to provide reasonable accommodation in respect of other grounds

In Cyprus, there is no legal duty to provide reasonable accommodation in respect of other grounds in either the public or the private sector.

¹⁷⁸ Report of the Commissioner for the Rights of the Child Leda Koursoumba on the complaint regarding the reduction of the grades of a pupil who is granted accommodation due to disability, File No. G.E.P. 11.17.07.05.217, January 2017. Available at

http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument.

¹⁷⁹ Cyprus, Anti-discrimination Authority (2008), Report ref. A.K.I. 37/2008, 8 October 2008.

¹⁸⁰ Cyprus, Anti-discrimination Authority (2006), Report ref. A.K.I. 24/2006, A.K.I. 27/2006, 31 October 2006.

¹⁸¹ Cyprus, Law on Carrying out Panyprrian Exams of 2006 (*Ο περί Διεξαγωγής των Παγκύπριων Εξετάσεων Νόμος του 2006*) N. 22(I)/2006, as amended by Law N 51(I)/2007, Article 22A. Available at http://cyllaw.org/nomoi/enop/non-ind/2006_1_22/index.html.

Nevertheless, the Equality Body recognises such a right in respect of religion, or at least recommends that the relevant authorities respect religious freedom for students and for prisoners by providing reasonable accommodation for them to practise their faith. This approach is premised more on the conviction that religion is a sensitive issue rather than an interpretation of the law as granting such a right.

A 2009 decision of the Equality Body related to a complaint from the representative of the Maronite community regarding the inadequate arrangements at the Maronite school. The Equality Body found that special treatment involves deviations from the principle of equality, which take the form of positive measures or special rights targeting a certain group and aiming at the elimination of discrimination. The decision criticised the Ministry of Education's line of argumentation, which offered the Maronite community only equal treatment before the law, adding that the protection of national minorities must go beyond that, to recognise and promote the rights of a collective character.¹⁸²

In December 2005 the Equality Body criticised the practice of restricting pupils exempted from religion class to the library and recommended that a more creative occupation be sought for the exempted pupils.¹⁸³ In 2010 another Equality Body report criticised the procedure used for exempting pupils from religion class and for the fact that the handling of the exemption request by the school led to the stigmatisation of the student who had made the complaint, as she was isolated from her classmates for several months.¹⁸⁴ In its reports, the Equality Body does not cite the anti-discrimination laws, which clearly do not impose a duty to provide reasonable accommodation on the ground of religion. Instead, it cites Article 18 of the Cypriot Constitution, which provides that all religions are equal before the law;¹⁸⁵ Article 14 of the International Convention on the Rights of the Child; and Article 9 of the ECHR.¹⁸⁶ The situation escalated in 2012, when a circular from the Ministry of Education required pupils exempted from religion class to remain in the class during the lesson. This formed a regression from the previous policy, which enabled exempted pupils to engage in alternative creative activities elsewhere in the school building under teachers' supervision. Based on this circular, a school prohibited a pupil who was a Jehovah's Witness from leaving the classroom during this lesson. The pupil decided to leave the classroom anyway and was repeatedly sanctioned with expulsion each time she left, risking accumulating so many expulsions that she would be unable to graduate. The Equality Body threatened the school with fines for every day of non-compliance with its recommendations. Its position was that exempted pupils should be offered alternative supervised creative activities that would not lead to their stigmatisation and their alienation from the school environment, which is what would happen if the solution proposed by the ministry (to remain in the classroom) was implemented.¹⁸⁷ In recent years, the Equality Body has toned down its requirement for schools to provide alternative creative activities for exempted pupils, presumably as a result of the staff shortages that emerge from the Government's measures to address the economic crisis. A more recent report published by the Equality Body – on the religious freedom of pupils at school – focused on the absence of a culture of neutrality in school activities that clearly favour the dominant religion and on the fact that the right to be exempted from religion class is reserved only for those pupils who are not Christian Orthodox.¹⁸⁸

¹⁸² Cyprus, Anti-discrimination Authority, Report No. A.K.R. 93/2005, 12 May 2009.

¹⁸³ Cyprus, Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

¹⁸⁴ Cyprus, Anti-discrimination Authority, Report No. 135/2009, 7 November 2010.

¹⁸⁵ Cyprus, Constitution of the Republic of Cyprus, Article 18. Available at <http://cylaw.org/nomoi/enop/non-ind/syntagma/full.html>.

¹⁸⁶ Cyprus, Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

¹⁸⁷ Cyprus, Anti-discrimination Authority, Report no. A.K.R. 93/2012, 3 December 2012.

¹⁸⁸ Cyprus, Anti-discrimination Authority, Report on the respect of religious freedom in schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

In 2016 the Ministry of Education introduced a new policy regarding the exemption of students from school classes, including religion class. According to this policy, students aged 18+ (or the parents of students under the age of 18) may apply for an exemption from religion class if they are not Christian Orthodox; applications for exemption from religion class for other reasons 'will be examined individually'. Where an application for exemption is approved, the student can choose either to remain in the classroom during the lesson or to leave the classroom. In the case of the latter, the school's headmaster will decide which other class the student must attend during this time.¹⁸⁹ There are no published rules, guidelines or criteria on how applications for exemptions are to be assessed.

The Ministry of Education's policy on the subject had also been flagged as an 'issue of concern' by the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) in its Fourth Opinion on Cyprus. An issue raised by the Committee was the fact that although 'non-Christian' students could be exempted from religious education, students of Armenian, Maronite or Latin background faced difficulties in securing exemptions. The Committee further criticised the failure of schools to provide creative activities for students who are exempted from religion classes, which made parents of minority students reluctant to pursue exemptions for fear that their children would be marginalised.¹⁹⁰

The policy of requiring students to declare their religion persists today. The automatic exemption from religion class applies only to those who are not Christian Orthodox, i.e. a small minority. As for the rest, exemption applications are examined on an individual basis by the Ministry of Education and, if granted, the exempted student will be allocated to another classroom at the time of religion class.

In 2012 the Ombudsman¹⁹¹ investigated a series of complaints from prison inmates who alleged that they were being prevented from practising their religion. The complainants were Greek nationals of Pontic origin who were denied the right to visit the prison church to celebrate a special holiday for them; and a group of Nigerian inmates who were denied the right to be visited by an Evangelical priest. In both of these cases, the Ombudsman rejected the justification put forward by the prison authorities and urged them to respect the religious rights of detainees and facilitate the practice of any religion they choose.¹⁹² A 2015 report on Cyprus by the US Department of State indicated that, although a mosque and a church are available in the central prison, there is no opportunity and no facilities for detainees in any detention centre to practise their religion.¹⁹³

Along the same lines, in a 2015 decision, the Equality Body found that the failure of the authorities to address the request of a Jehovah's Witness for bloodless treatment in accordance with his religious beliefs amounted to a failure to provide equal access to healthcare.¹⁹⁴

¹⁸⁹ Cyprus, Ministry of Education, *Procedure for securing exemptions from classes*, 15 September 2016. Available at <http://enimerosi.moec.gov.cy/archeia/1/ypp4633a>.

¹⁹⁰ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

¹⁹¹ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹⁹² Cyprus, Ombudsman, Report Nos. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, 9 April 2012.

¹⁹³ US Department of State, Bureau of Democracy, Human Rights, and Labour (2016), *2015 Human Rights Reports: Cyprus*, 13 April 2016. Available at <http://www.state.gov/j/drl/rls/hrrpt/2015/eur/252835.htm>.

¹⁹⁴ Cyprus, Anti-discrimination Authority, Report regarding the Ministry of Health's handling of the provision of suitable healthcare to a Jehovah's Witness, File No.22/2015, 22 December 2015. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/\\$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7DA7435AA1C3A4E5C2257F1500453DD7/$file/%CE%91%CE%9A%CE%A187_2011_17112015.doc?OpenElement).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Cyprus, national legislation has incorporated the directives' residence/citizenship/nationality preconditions for protection under the relevant national laws transposing the directives. Each of the three laws transposing the two directives provides that its scope does not cover differential treatment due to nationality; nor does it affect provisions or conditions regarding the entry and stay of third country nationals and stateless persons, or the treatment derived from the legal status of such third country nationals or stateless persons.¹⁹⁵

In spite of the above, Protocol No. 12 to the ECHR, which Cyprus has ratified, guarantees 'the enjoyment of all rights set forth by law' without discrimination, inter alia, against 'national or ethnic origin'. Under Law N.42 (1)/2004, which establishes the Equality Body, there are no residence or citizenship/nationality prerequisites in the Equality Body's mandate in order to extend protection under the national laws transposing the directives. The Equality Body is empowered to promote equality in the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by the conventions ratified by Cyprus and referred to in the law,¹⁹⁶ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.¹⁹⁷ We therefore have a situation where nationality is a protected ground under the Equality Body's mandate, but is an exception in terms of the scope of the laws transposing the two directives. In its decisions, the Equality Body has made considerable use of its extended mandate and considered discrimination on the grounds of nationality and national origin as prohibited by international law as well as by the non-discrimination directives; on several occasions, nationality and ethnic origin has been used interchangeably. The Cypriot Equality Body considers that the phrase 'racial or ethnic origin' in the Racial Equality Directive must be seen as including EU citizens¹⁹⁸ and cites the transposing legislation of this Directive when it handles complaints from EU citizens.¹⁹⁹

Article 32 of the Constitution stipulates that 'nothing in this Part²⁰⁰ contained shall preclude the Republic from governing by law any matter relating to aliens in accordance with international law.' This provision, combined with the far-reaching provisions of Cypriot immigration law, is often implemented with a tendency to considerably enlarge the scope of state discretion and state sovereignty.

¹⁹⁵ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος), 2004 N. 58(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 3A(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 4(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

¹⁹⁶ These conventions are: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁹⁷ Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 3(1)(b), Part I, 19 March 2004.

¹⁹⁸ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

¹⁹⁹ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority Nos. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

²⁰⁰ Part II of the Constitution contains the human rights and fundamental freedoms.

In previous years, complaints by EU citizens alleging nationality discrimination were often filed with the Equality Body, possibly reflecting the fact that EU nationals were better informed about the Equality Body's procedures than most third country nationals. Some examples of Equality Body decisions where the equality directives were applied to EU nationals concern the failure of the authorities to advise EU citizens of their need to register themselves in the electoral rolls in order to be allowed to vote in municipal elections; the request by the road transport department for EU nationals to present immigration documents evidencing six months' stay in Cyprus in order to acquire a driving licence; the refusal of the Ministry of Education to accept the candidacy of a Greek national for an honorary grant;²⁰¹ a university's rejection of a job application because the applicant was a Greek national; attempts by the immigration authorities to expel Greek nationals who had settled legally in Cyprus before Cyprus' EU accession for not having sufficient financial resources to maintain themselves;²⁰² the requirement of good knowledge of Greek as a prerequisite for accessing public sector jobs or for starting a business; and the refusal of the recruitment bodies in the public sector to recognise the prior work experience of applicants who are Greek nationals.²⁰³ Although the law transposing the Racial Equality Directive has transposed verbatim the Directive's Article 3(2), differential treatment that is not related to a victim's legal status must be seen as protected. In 2017 the Child Commissioner issued a report on the conditions of eligibility for child welfare benefit, ruling that the requirement of prior residence amounts to discrimination prohibited by various instruments, including the Racial Equality Directive.²⁰⁴

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Cyprus, the personal scope of anti-discrimination laws offers protection to persons who meet the definition foreseen in the respective laws. In the case of disability, the definition is clearly met only by natural persons,²⁰⁵ but organisations with a legitimate interest have the right to apply to court or the Equality Body in order to bring a discrimination claim on behalf of a victim.²⁰⁶ It should, however, be noted that although an action may be pursued by organisations acting on behalf of victims in the district court to claim compensation, an application to annul a discriminatory act of the administration may only be filed by individuals with a 'legitimate interest',²⁰⁷ as discussed under Section Introduction, the national legal system above. Similarly, only natural persons are protected from religious, age or sexual orientation discrimination at the workplace,²⁰⁸ since only natural persons meet the definition of an employee. However, organisations can represent victims in their

²⁰¹ Reference A.K.P 73/2008, 30 December 2009.

²⁰² Ref. AK 168/2008, AK 199/2008, AK 80/2009, AK 43/2010, AK 48/2010, AK 93/2010, AK 114/2010, ΑΠ 2358/2010, 01 November 2011.

²⁰³ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority No. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

²⁰⁴ Report of the Commissioner for the Rights of the Child regarding the precondition of residence for a specific time in the areas controlled by the Republic of Cyprus for the provision of social welfare grants, September 2017. Available at www.childcom.org.cy/ccr/ccr.nsf/All/12C85642ECC6B291C22582D3003A7EC6?OpenDocument.

²⁰⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 2. Available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

²⁰⁶ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9D. Available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

²⁰⁷ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 146.2, 11 February 1959. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

²⁰⁸ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

claims before the court and the equality body.²⁰⁹ With regard to race/ethnic origin: although no explicit provision is made in the law as to whether victims of racial or ethnic discrimination can be legal or only natural persons, there is no reason why protection may not be extended to organisations of persons who are victims of racial or ethnic discrimination. The law offers explicit protection to individuals who are treated disadvantageously due to their ethnic or racial origin²¹⁰ and, in line with Article 7(2) of the Racial Equality Directive, organisations may apply to court on behalf of such individuals.²¹¹

b) Liability for discrimination

In all fields and on all five grounds, the perpetrators of discrimination can be either legal or natural persons. The disability law defines 'employer' as any legal or natural person in the public or private sector.²¹² An identical definition of the term can also be found in the law prohibiting employment discrimination.²¹³ The scope of the law prohibiting racial and ethnic discrimination in fields beyond employment includes 'all persons in the public and private sector'.²¹⁴ The provisions on criminal sanctions, which are identical in all three laws, explicitly foresee that legal persons as well as natural persons can be liable for discrimination.²¹⁵ The fines which the court may impose vary, depending on whether the perpetrators are natural or legal persons. Natural persons may be fined up to CYP 4 000 (EUR 6 835) and/or sentenced to six months' imprisonment, or both.²¹⁶ If a legal person is found guilty of discrimination, the managing director, chairperson, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined up to CYP 4 000 Cyprus pounds (EUR 6 835) and/or sentenced to six months' imprisonment, or both, if it is established that the offence has been committed with their consent or collaboration or mere tolerance. In addition, a legal person can be fined up to CYP 7 000 (EUR 11 962).²¹⁷ There is also a provision for 'gross

²⁰⁹ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²¹⁰ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Articles 2 and 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²¹¹ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²¹² Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²¹³ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²¹⁴ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²¹⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000 Article 5(5). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 13(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²¹⁶ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000 Article 5(4). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²¹⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Articles 15(1) and 15(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Articles 13(1) and 13(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

negligence' with fines of up to CYP 2 000 (EUR 3 417) for individuals and CYP 4 000 (EUR 6 835) for legal persons.²¹⁸

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Cyprus, the personal scope of national law does not explicitly cover public bodies for the purpose of protection against discrimination. No explicit provision is made in legislation as to who is protected from discrimination but the definition of discrimination in all laws transposing the two equality directives refers to 'persons'.²¹⁹

b) Liability for discrimination

In Cyprus, the personal scope of national law covers both the private and public sector, including public bodies, for the purpose of liability for discrimination. Law 58(I)/2004 (employment field, all grounds except for disability) defines (in Article 2) an employer as meaning 'the Government of the Republic, the local self-governance authorities and any natural or legal person or organisation of public or practice law in any public or private sector or industry which employed or employs workers.' An identical provision is found in Article 2 of the Law on Persons with Disabilities N. 127(I)/2000. Law 59(I)/2004 (race/ethnic origin, fields beyond employment) defines in Article 4(1) the scope of the law as covering all persons in the public and private sector, including public bodies, local self-governance authorities and public and private law organisations in the fields of social protection, healthcare, social provision, education and access to goods and services.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Cyprus, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work and holding statutory office, with the exception of military service.²²⁰ As regards military service, the law provides an exception to the prohibition of age discrimination, where the fixing of an age limit may be justified by the nature and the duties of the position.²²¹

The scope of Law N. 58(I)/2004 (transposing the Employment Equality Directive except for the ground of disability) includes conditions of access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion; access to vocational guidance and training, including practical work experience; employment and working conditions, including dismissals and pay; membership of an

²¹⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) Articles 5(4) and 5(5). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13(3). Available at http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²¹⁹ Cyprus, Law on Equal Treatment in Employment and occupation 58(I)/2004, article 2. Available at http://www.cylaw.org/nomoi/enop/ind/2004_1_58/section-sc264785e0-2764-7a62-9213-35270ec438d8.html; Law on Equal Treatment irrespective of Race or Ethnic origin N. 59(I)2004, article 2. Available at http://www.cylaw.org/nomoi/enop/ind/2004_1_59/section-scdec58777-9546-11ee-19e7-48dbc03ba340.html; Law on Persons with Disabilities N. 127(I)/2000, article 2. Available at http://www.cylaw.org/nomoi/enop/ind/2000_1_127/section-scc1148a6c-678a-be1c-6221-8e5de08dd1ee.html.

²²⁰ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000) article 5(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²¹ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

organisation of workers or employers, or any organisation whose members engage in a particular profession, including the benefits provided for by such organisations.

A law enacted in 2009 introducing quotas in favour of persons with disability in the wider public sector excludes those sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent',²²² i.e. the army, the police, the fire department and the state prisons.

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law,²²³ which sets out the mandate of the Equality Body, provides that the implementation of Protocol No. 12 is within such a mandate and therefore the Equality Body is empowered to apply this to military service issues.

This law also provides that the Equality Body is vested with powers to tackle discrimination in the areas of employment; access to vocational training; working conditions, including pay; membership of trade unions or other associations; social insurance and medical care; education; and access to goods and services including housing, as required by Article 3.1 of the directives.

Both laws transposing the Employment Equality Directive define an 'employee' as 'any person who works or is trained in full-time or part-time occupation, fixed-time or permanent employment, continuous or otherwise, irrespective of the place of employment, including home employees but excluding self-employment.'²²⁴

Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. Comparing Article 3.1(b) of the Employment Equality Directive, Article 5 of the ICERD provides for the right to training, whereas the Directive focuses on access to all types and all levels of vocational guidance, (advanced) vocational training and retraining. The comparison between Article 5 of the ICERD and Article 3.1(c) of the Directive reveals that the former does not include employment and working conditions relating to dismissal. Article 5 of the ICERD limits itself to the right to form and join trade unions, whilst Article 3.1(d) of the Directive is broader in the types of organisation that one can be a member of or involved in and further includes the benefits provided by such organisation or association.

In 2016 the Ombudsman highlighted the harsh situation facing young African women seeking asylum, whose welfare grants were interrupted when they refused to take up jobs in agriculture or on livestock farms, where they would have to reside on the farm, possibly in the same accommodation with men and without childcare facilities.²²⁵ The case involved 10 women aged under 20, of whom 6 were mothers of infants, 1 was a mother of an infant and also pregnant and 2 were pregnant. The report concluded that the current policy framework leads to indirect discrimination on multiple grounds. The policy of forcing

²²² Cyprus, Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*) No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomo/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

²²³ 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. Available at www.cylaw.org/nomo/enop/non-ind/2004_1_42/full.html.

²²⁴ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 2. Available at www.cylaw.org/nomo/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomo/enop/non-ind/2004_1_58/full.html.

²²⁵ Cyprus, Ombudsman, Commissioner for Administration and Human Rights (2016), Report on access by women asylum seekers to labour and social welfare, File No. A/P 1799/2016, 11 November 2016. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).

asylum seekers to accept the worst jobs in the labour market persists in spite of the Ombudsman's recommendations.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Cyprus, national legislation prohibits discrimination in the following areas: access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both the private and public sectors as described in the directives.²²⁶

Despite the formal adoption of the four main laws on anti-discrimination, there are no provisions for the facilitation or improvement of conditions for access as required by Article 3(1)(a) of the Employment Equality Directive. There is little tradition of anti-discrimination and there are very few specialist lawyers in this area. There are no special mechanisms in the various Government departments for the implementation of the above provisions and no measures or mechanisms to monitor implementation or collect data.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Cyprus, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.²²⁷

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Cyprus, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The Law on Persons with Disabilities prohibits discrimination in access to all kinds and levels of vocational guidance, vocational training, educational training, reorientation and professional apprenticeship.²²⁸ The Law on Equal Treatment in Employment and Occupation contains an identical provision as regards the remaining four grounds.²²⁹

Neither of the aforesaid provisions specifies whether or not such training must be part of an employment relationship or not. In the absence of a provision restricting the scope to training within employment, it may safely be assumed that the law extends to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments, including lifelong learning courses. The Equality Body has interpreted this provision as including training outside and independently

²²⁶ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(1)(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²²⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(1)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²²⁹ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

of an employment relationship: in a legal opinion supplied by the Equality Body in 2006 upon the request of a Government department, it was established that the anti-discrimination laws apply to access to training even if this does not take place within an employment relationship. The case concerned a trainee air traffic controller who suffered vision impairment as a result of which he would probably never be able to work as an air traffic controller. The Equality Body ruled that he should nevertheless continue his training, as denying him access to training on the ground of disability would amount to discrimination prohibited by law.²³⁰ Other Equality Body decisions found unlawful discrimination in the fixing of an age limit for applying for state scholarships and in the exclusion of persons with disability from admission to the state nursing school. In a 2010 decision, the Equality Body stated explicitly that access to an Open University adult lifelong learning course amounts to access to vocational training.²³¹

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Cyprus, national legislation prohibits discrimination in the following areas: membership of, and involvement in, workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.²³²

In spite of the above prohibition, an issue of non-compliance persists in the case of the specific contract used for the employment of foreign domestic workers, which the Ministry of Interior requires in order to issue their entry and work permit. The English version of the contract prohibits any 'political activity' by the employee; the prohibition of membership of a trade union was removed following the intervention of the Equality Body.²³³ However, the Greek version of the contract contains a general prohibition on engaging in 'any activity' without specifying its nature.²³⁴

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in the following areas: social protection, social security and healthcare as formulated in the Racial Equality Directive.

National law explicitly prohibits discrimination in the field of social protection, social security and healthcare only on the ground of race/ethnic origin.²³⁵ An exception to the general prohibition is made in two laws transposing the Employment Equality Directive (Law on Persons with Disabilities and Law on Equal Treatment in Employment and Occupation) for payments made by state schemes or similar, as in Article 3(3) of the Employment Equality Directive. The Equality Body's mandate, however, does cover

²³⁰ Cyprus, Equality Authority, Report No. AKI 28/2006, 20 September 2006.

²³¹ Cyprus, Equality Authority, Report No. A.K.I. 74/2009, 22 November 2010.

²³² Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 4(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 5(1)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²³³ Cyprus, Commissioner for Administration in its capacity as National Human Rights Independent Authority (2013), Position regarding the status of domestic workers in Cyprus (*Τοποθέτηση Επιτρόπου Διοικήσεως ως Εθνική Ανεξάρτητη Αρχή Ανθρώπινων Δικαιωμάτων αναφορικά με το καθεστώς των οικιακών νεμεγαζομένων στην Κύπρο*), File No. A/D3/2013, 2 July 2013. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/\\$file/%CE%91%CE%943_2013_02072013.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/$file/%CE%91%CE%943_2013_02072013.doc?OpenElement).

²³⁴ The standard contract for the employment of foreign domestic workers is available at http://www.moi.gov.cy/moi/moi.nsf/index_gr/index_gr?OpenDocument.

²³⁵ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

discriminatory treatment in social protection on the grounds of religion/belief, age, disability and sexual orientation. In the past, the Equality Body has made numerous interventions in this area. Protocol No. 12 to the ECHR, which assumes additional momentum through the powers granted to the Equality Body,²³⁶ prohibits discrimination on all grounds protected under the Protocol on social protection, social security and medical care, without any of the exceptions allowed for above.

Between 2010 and 2016, several decisions were issued by the Equality Body and the courts on access to social protection, highlighting a tendency to impose age limits in schemes as part of an effort to restrict public expenditure. Two Equality Body decisions in 2010 established that setting the age limit at 65 for funding radical prostatectomy procedures and setting the age limit at 40 as a condition of eligibility for financial support for artificial insemination were both discriminatory.²³⁷ In 2012 the Supreme Court also found that there was unlawful discrimination in a scheme that set an age limit as a precondition for entitlement to a grant that helped cover taxes and duties related to the acquisition of a car.²³⁸ In 2015 the Court found that an age criterion in a disability scheme amounted to discrimination and that the justification of 'poor state of public finances' was insufficient to fall within the exceptions foreseen by the directives.²³⁹

The change of government in 2013 brought several policy changes that led to a deterioration in reception conditions for asylum seekers, including access to welfare. A 2016 Ombudsman report found that the refusal of the Social Welfare Services to pay a welfare grant to vulnerable female asylum seekers, based on their refusal to accept work in agriculture under harsh and unsuitable working conditions, led to indirect discrimination on multiple grounds including gender, race, culture, health and religion.²⁴⁰ In 2017 the Commissioner for the Rights of the Child (the 'Child Commissioner issued a groundbreaking decision against welfare provisions that set prior residence requirements as a precondition for welfare eligibility. The decision examined 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;²⁴¹ the single parent benefit, which also requires five years of residence; and the child benefit law,²⁴² which currently requires three years of prior residence²⁴³ and is to be extended to five years from 2018 onwards. The Child Commissioner had previously raised concerns about the compatibility of the prior residence requirement with the Racial Equality Directive and other human rights

²³⁶ 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, Article 6(2)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²³⁷ Equality Body, Decision dated 24 November 2010, Ref. A.K.R. 164/2008, Ref. A.K.R. 63/2010 and Ref. A.K.R. 126/2009, dated 27 April 2010, respectively.

²³⁸ Cyprus, Supreme Court, *Mikis Lakatamitis v. The Republic through the Minister of Finance (Μίκης Λακαταμίτης v. Υπουργείου Οικονομικών)* No. 1477/2010, 4 September 2012. Available at http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-1477-10.htm&qstring=διακρισ*.

²³⁹ Cyprus, Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at http://cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

²⁴⁰ Cyprus, Ombudsman, Commissioner for Administration and Human rights (2016), Report on access by women asylum seekers to labour and social welfare, File No. A/P 1799/2016, 11 November 2016. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).

²⁴¹ Cyprus, Law on Minimum Guaranteed Income. Available at www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

²⁴² 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.

²⁴³ 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/8801EBEFE1D44675C22582A5002E5B6D/\\$file/Information%20Leaflet%20For%20CBAApplication2018.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/$file/Information%20Leaflet%20For%20CBAApplication2018.pdf).

instruments in the context of the parliamentary discussion for the bill purporting to amend the child benefit law, pointing out that the prior residence requirement amounts to an apparently neutral criterion that effectively excludes vulnerable children from welfare.²⁴⁴ However, her concerns were ignored by Parliament, which proceeded with the adoption of the law. The Child Commissioner's report referred to the ECtHR ruling of 2005 in *Niedzwiecki v. Germany*, where the Court found that eligibility requirements involving extended prior residence for the granting of child benefits to EU citizens amounted to discrimination prohibited by ECHR Articles 8 and 14. The report further found that the EU Charter (Articles 21 and 34.3) must be seen as applicable in this case since it concerns social assistance to EU citizens and third country nationals whose legal status is governed by the EU *acquis*.

a) Article 3.3 exception (Directive 2000/78)

National law relies on the exception in Article 3.3 of the Employment Directive for disability, age, sexual orientation and religion or belief.

The scope of the transposing legislation excludes differential treatment based on all types of provisions paid by state schemes or schemes similar to these, including state social insurance or social protection schemes. The exception does not extend to professional social protection schemes or to differential treatment on the ground of racial or ethnic origin, which are protected by the non-discrimination legislation.²⁴⁵

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive.²⁴⁶ The term 'social advantage' was translated by the official translation unit of the European Commission as 'social provisions' and finds its way into the national legislation in this form.

'Social provision' or 'social advantage' is not explicitly included in the scope of the Equality Body's mandate, which explicitly covers all areas (save for 'social advantage') covered by Article 3 of the Racial Equality Directive. Social advantage may, however, be implied in the mandate of the Equality Body as this covers 'any field whatsoever'.²⁴⁷ To the extent that 'social advantage' is state-provided, the Ombudsman (which is also the national Equality Body) is empowered to deal with it, as part of its mandate to investigate allegations for maladministration in the public sector.

Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus*, which established that differential treatment based on place of residence (i.e. in the north or south of Cyprus) is unlawful, the approach followed by the courts²⁴⁸ and the Equality Body is that persons residing in the north of Cyprus, in other words Turkish Cypriots, are not entitled to state benefits, even if they work in the south and pay their social insurance

²⁴⁴ 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 http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument.

²⁴⁵ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(3). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

²⁴⁶ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁴⁷ 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, Article 6(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁴⁸ Cyprus, Supreme Court, *Mehmed and Meral Birinci v. The Republic of Cyprus (Mehmed και Meral Birinci v. Κυπριακής Δημοκρατίας)* No. 911/2004, 14 February 2006.

contributions to the state.²⁴⁹ In *Gonul Ertalu & Imge Ertalu v. Ministry of Finance*, the claimant's application for a student grant was rejected because eligibility depends on residence in the south of the country and the claimant was a Turkish Cypriot residing in the north.²⁵⁰ The court followed the same approach in *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance*. The claimant's argument that the law was unconstitutional for violating the equality principle was rejected because, in the absence of a positive legislative provision entitling the claimant to a student grant, the claimant will derive no benefit if the law is declared unconstitutional.²⁵¹

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

The national laws transposing the directives explicitly prohibit discrimination in education only in the case of race/ethnic origin.²⁵² However, the Equality Body's broad mandate extends to discrimination in, inter alia, education on the grounds of race or ethnic origin, religion, belief, community, language, colour, special needs (which covers disability), age and sexual orientation.²⁵³ In the past, the Equality Body had repeatedly applied this provision by finding in favour of complainants who alleged discrimination in education on the grounds of not only racial or ethnic origin but also sexual orientation, disability and religion. Disability-related decisions related mostly to accommodation measures for disabled students during exams,²⁵⁴ whilst religion-related decisions concerned exemptions from religion class.²⁵⁵ The Equality Body has devoted special attention to homophobia in schools, offering a series of recommendations on systemic approaches for addressing the problem.²⁵⁶ In 2017 the Commissioner for the Rights of the Child issued an important report on the duty of schools to provide accommodation for disabled pupils, criticising the school's decision to reduce the grades of a pupil who had received accommodation measures.²⁵⁷

²⁴⁹ Cyprus, Anti-discrimination Authority, Report No. A.K.R. 27/2005, 19 April 2006, in which the Equality Body found that the Finance Ministry's rejection of the complainant's application for child benefit was justified and that no discrimination existed, because it was not possible for the authorities to carry out the checks necessary to verify whether the information supplied by the applicant was true or not. The report also stated that those Turkish Cypriots residing in the areas under the control of the Government are not subjected to discriminatory treatment in the field of state benefits.

²⁵⁰ Cyprus, Supreme Court, *Gonul Ertalu & Imge Ertalu v. Ministry of Finance* (*Gonul Ertalu & Imge Ertalu v. Υπουργείου Οικονομικών*) Appeal No. 104/2008, 17 November 2011.

²⁵¹ Cyprus, Supreme Court, *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance* (*Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Υπουργείου Οικονομικών*) Case No. 2411/2006, Appeal No. 73/2009, 2 February 2012.

²⁵² Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Article 4(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁵³ 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, Article 6(2)(f). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁵⁴ Cyprus, Equality Authority, File No. AKI 24/2006, AKI 27/2006, 31 October 2006; Anti-discrimination Authority (2008), Report Ref. A.K.I. 37/2008, 8 October 2008.

²⁵⁵ Cyprus, Anti-discrimination Authority, Report on the respect for religious freedom in schools of primary and secondary education (*Έκθεση της Αρχής κατά των Διακρίσεων αναφορικά με τον σεβασμό της θρησκευτικής ελευθερίας στα σχολεία Δημοτικής και Μέσης Εκπαίδευσης*), File No. AKP 1/2014, AKP 6/2014, AKP 19/2014, AKP 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

²⁵⁶ Cyprus, Anti-discrimination Authority, Report No. AKR 63/2011, AKR 131/2011, 20 November 2012.

²⁵⁷ Report of the Commissioner for the Rights of the Child Leda Koursoumba on the complaint regarding the reduction of the grades of a pupil who is granted accommodation due to disability, File No. G.E.P. 11.17.07.05.217, January 2017. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument. The report is discussed extensively in Section 2.6 above.

Other than the law transposing the Racial Equality Directive and the laws ratifying relevant international conventions, there is no national legislation dealing with racial or ethnic discrimination in education. Since the Directive was transposed 15 years ago, no cases have been filed in court invoking the provisions of this Directive or of the law transposing it. This is generally attributed to a combination of factors including lack of awareness amongst the groups at risk; lack of expertise on the part of lawyers; the absence of legal aid and the costs involved; and the length of time involved until a decision is delivered – often several years. Given the short-term duration of the visas issued to migrants (usually up to four years), their limited resources and low level of awareness, litigation is not really an option for them.

a) Pupils with disabilities

In Cyprus, the general approach to education for pupils with disabilities does raise problems. Access to integrated education is stipulated as a basic right for all persons with disability but failure to provide such a right is not termed as discrimination.²⁵⁸

As of September 2001, the Ministry of Education has applied the Training and Education of Children with Special Needs Law of 1999 (N. 113(I)/1999) and Regulations of 2001. Within the framework of the said law as amended, as well as the Regulations on the Mechanism for the Timely Diagnosis of Children with Special Needs of 2001, assistance is provided to children with special needs in all fields, particularly in relation to psychological, social, educational, prevocational and vocational training in schools, where this is possible. The state is under an obligation to provide special training and education to persons with special needs from the age of three until completion of their studies. Such special training and education is provided in the following forms:

- In a public school, in an ordinary class, in circumstances of full inclusion with support. In such a case, the school programme and curriculum is adjusted accordingly and a liaison officer is responsible for the child.
- In a public school, in a special unit, in circumstances of partial inclusion. The special units are comfortable and accessible spaces in normal schools. The number of children in each unit is determined by taking into consideration the special needs, particularities and smooth operation of the unit.
- In a special school. This is a special private or public school staffed by specialised personnel (psychologists, speech therapists, doctors, physiotherapists, etc.) equipped with modern means to accomplish their mission. The educational policy of these schools includes a system of constant contact between these schools and the normal schools in the same area and the organisation of common activities. The special schools are housed in the same premises as normal schools unless the Council of Ministers decides otherwise.
- By providing services in other premises. This is an arrangement made in cooperation with the parents and applies to children who, for health reasons, cannot attend any other school.²⁵⁹

As a matter of general policy, children with physical and intellectual disabilities are placed in integrated schools, where necessary with an escort, unless their condition is such that they must be placed in a special school. The decision as to whether a pupil with a disability will be placed in one of the special schools is made by a district public committee,²⁶⁰ comprising civil servants from a variety of disciplines and departments. The committee begins by appointing a first instance multidisciplinary group of experts from the public or private sector who will evaluate the pupil's need for special education or special support

²⁵⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 4(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁵⁹ http://www.moec.gov.cy/eidiki_ekpaidefsi/eidiki_agogi_ekpaidefsi.html.

²⁶⁰ Set up by Regulations N. 186/2001 issued by the House of Parliament by virtue of the Law on Education of Children with Special Needs N. 113(I)/1999 and 69(I)/2001.

within mainstream education. For the purposes of this evaluation, the group is furnished with medical reports from the Ministry of Health, the history of the pupil and any information that the parents may wish to supply.

Each member of the group will then deliver a report on the pupil, setting out the tools and methodology used for the evaluation as well as their findings as to the nature and extent of support needed, if they consider such support is necessary.²⁶¹ The experts' reports are considered by the district committee, which, following consultation with the parents, will make the decision as to whether or not special schooling is necessary for the pupil in question. The author was unofficially informed by the national organisation for the blind that the committee usually take the following considerations into account when making their decision: the wishes of the parents; the assessment of the teachers in the school attended by the pupil in question; the existence of any learning difficulties or multiple disabilities, or, in the case of visual disability, the pupil's desire to learn Braille, which is not offered in mainstream schools. None of these considerations constitute an absolute criterion and each case is looked upon separately. As a matter of state policy, children with disabilities cannot be denied access to education on the grounds that they are unable to learn.

Integrated education has been the focus of both the Ombudsman and the Child Commissioner²⁶² in recent years. Both have repeatedly criticised the inadequate structures and processes in schools receiving and supporting children with disabilities. They have urged the authorities to improve the training of teachers; increase awareness and enhance coordination amongst professionals; establish a credible recording mechanism;²⁶³ and create a more effective structure for the diagnosis and placement of children in schools, which better addresses their needs. The fragmentation in support services for both children with disabilities and their parents in recent years has led to a trend towards special education, where the provision of support services is free and more adequate. The economic crisis, budget cuts and staff shortages in schools are impeding any efforts to improve inclusive education.²⁶⁴ A new bill on inclusive education was being debated amongst stakeholders at the time of writing this report.

b) Trends and patterns regarding Roma pupils

In Cyprus, there are specific trends and patterns in education regarding Roma pupils, such as segregation.

Roma segregation in schools in Cyprus appears to be a consequence of the state housing policy and in part reflects discriminatory attitudes, the 'cultural capital' and socioeconomic and family conditions of the Roma in Cyprus. Roma children continue to be treated as pupils with special language requirements, in spite of the fact that Cyprus has ratified a number of international conventions on human rights²⁶⁵ as well as conventions on specific

²⁶¹ Section 9 of Regulations N. 186/2001.

²⁶² Cyprus, Commissioner for the Rights of the Child (2011), *Position regarding training and education of children with disabilities: Result of public consultation*, Nicosia, December 2011. Available at www.childcom.org.cy/ccr/ccr.nsf/DMLpapers_gr/DMLpapers_gr?OpenDocument&Start=1&Count=1000&Expand=2.

²⁶³ For a critique on the absence of a single registry of all children with disabilities see Playbell, S. (2010), *Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities, National Report of Cyprus*, December 2010. Available at http://inclusion-europe.org/images/stories/documents/Project_CRC/Results/National_Reports/Cyprus_EN.pdf.

²⁶⁴ Demetriou C. (2015), *Country Report on Cyprus for the Study on Member States Policies for Children with Disabilities*, project led by Milieu, commissioned by the European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs. Available at http://publications.europa.eu/resource/ellar/7c846628-6225-412f-a94f-9e6162650f49.0002.01/DOC_1.

²⁶⁵ Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Cyprus also ratified the European Convention against Torture

rights in the field of education.²⁶⁶ The Cypriot Ministry of Education does not have an official policy against school segregation. The policy of enrolling children on the basis of their residential address is applied rigorously, even if this results in a concentration of large numbers of Roma pupils in the same school. Given the shortage of resources and personnel, such as interpreters and additional teachers, as a result of austerity, the concentration of Roma in specific schools emerges as the only practical solution to the scarcity of resources: had the Roma pupils been dispersed to several schools, the number of interpreters and support teachers would not suffice to service all the different schools.

The only complaint ever submitted to the Equality Body regarding the situation of the Roma was filed on 31 January 2008. The resulting investigation by the Equality Body revealed that although the Cypriot Government recognised the Roma as a minority within the meaning of the Framework Convention for the Protection of National Minorities (FCNM), the Ministry of Education does not consider the Roma as a separate ethnic group but as belonging to the Turkish Cypriot community, which is why no measures were taken to enhance their Roma identity and culture.²⁶⁷ Measures to integrate Roma children are taken in the field of education, albeit targeting all 'Turkish-speaking' pupils and not the Roma specifically; there is nothing in the school curriculum on Roma culture or history. These measures consist mainly of Turkish language support teaching, free school uniforms, school lunches, school transport, etc., in order to encourage school attendance.

Most of the Roma pupils attending public schools today are concentrated in one school, the 18th Primary School in Limassol. According to one study, Greek Cypriot parents try to move their children to other schools when there is a high number of migrant or non-Greek Cypriot pupils in their school;²⁶⁸ if they cannot succeed in moving them away, they instruct them to avoid contact with Roma children.²⁶⁹ Many Greek Cypriot children do in fact demonstrate racial prejudice towards the Roma children, whilst educationalists believe that they are incapable of integrating.²⁷⁰ Research conducted with Greek Cypriot teachers illustrates that many teachers would openly admit to being racist.²⁷¹ Another study,²⁷² which reflects on the experiences gained from a training project, reports that Roma children tend to be marginalised in school, despite supportive measures.

The European Commission against Racism and Intolerance's (ECRI) Third Report on Cyprus noted that 'the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of

and other Cruel, Inhuman or Degrading Treatment or Punishment, together with Protocol Nos. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).

²⁶⁶ Convention against Discrimination in Education (ratified by Law 18/1970).

²⁶⁷ Report Ref. AKR 18/2008 dated 27 September 2011.

²⁶⁸ Their research is based on an empirical study of one primary school in Limassol with a high concentration of non-indigenous pupils. To quote the research: 'the head teacher reported that the observed school used to be a high-profile school and everyone in the area considered it to have high standards where children could acquire the necessary academic skills. More recently, due to the increasing number of registrations from non-indigenous pupils, many Greek Cypriot parents have stopped sending their children to this school.' See Panayiotopoulos, C. and Nicolaidou, M. (2007), 'At a crossroads of civilizations: multicultural educational provision in Cyprus through the lens of a case study', *European Journal of Intercultural Studies*, Volume 18, Issue 1, March 2007, p. 69.

²⁶⁹ Trimikliniotis N. (2004), 'Institutional Discrimination in Cyprus', Work Package 4, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005.

²⁷⁰ Trimikliniotis, N. (2003), 'Discriminated Voices - Cyprus Report', Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005; Spyrou, S. (2004), *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS (February-March 2004); Keskenidou, A. and Tsakiri, M. (2003) *Η ετερότητα του πολιτισμικού κεφαλαίου των Αθιγγάνων ως πλαίσιο συμμετοχής στην εκπαίδευση*, University of Cyprus.

²⁷¹ Zembylas, M. (2010), 'Greek-Cypriot teachers' constructions of Turkish-speaking children's identities: critical race theory and education in a conflict-ridden society', *Ethnic and Racial Studies*.

²⁷² See Symeou, L., Karagiorgi, Y., Roussounidou, E., & Kaloyirou, C. (2009), 'Roma and their education in Cyprus: reflections on INSETRom teacher training for Roma inclusion', *Intercultural Education*, 20(6), 511-521. Available at <http://www.tandfonline.com/doi/abs/10.1080/14675980903448551>.

the Roma by the local communities.²⁷³ In 2014 the ECRI issued an interim report on Cyprus²⁷⁴ in an effort to follow up on the progress made regarding the implementation of its recommendations under its Fourth Report on Cyprus. The interim report focuses on a specific Cypriot public school, the 18th Primary School in Limassol, whose student population is largely made up of Turkish speakers, many of Roma origin. Back in 2011, the ECRI had suggested that the authorities assign Turkish-speaking teachers to each class and Turkish-speaking classroom assistants to work alongside and assist the Greek-speaking teachers; employ specialist Greek language teachers; and open the school in the afternoons as an 'all day school' to permit children who need special support to benefit from extra classes. In response, the authorities informed the ECRI that additional support to pupils had been provided and that the number of pupils per class is small (between 8 and 19) compared to the average school class size of 25, allowing teachers to cater for the individual needs of pupils more effectively. The system of the optional all-day school was established, offering afternoon tutoring, including support language classes, mathematics and computers, as well as a wide range of recreational activities such as physical education, cooking and housekeeping, music, art, theatre, foreign languages and journalism. Teachers receive mandatory in-service training, including teaching Greek as a second language and crisis management. Breakfast, lunch and a snack are provided free of charge to pupils whose families qualify under the new income-related criteria. A physical education teacher was employed by the school to offer classes to Roma pupils four times a week, and books for teaching Turkish were acquired. In addition, the school continues to employ an interpreter to help staff communicate better with the parents of Turkish Cypriot pupils. The ECRI noted that, in spite of the improvements, there continues to be inadequacies in the teaching staff employed in the school, as there is a shortage of Turkish-speaking teachers and assistants and specialist Greek language teachers.

The 2015 report on Cyprus by the Advisory Committee on the FCNM expressed concern over a number of issues regarding the situation of the Roma in education including:²⁷⁵

- the absence of structured dialogue with Roma representatives and the absence of any comprehensive efforts on behalf of the authorities to systematically obtain more information on their specific background and the particular problems facing Roma children in education; the report refers to a deterioration in the general climate of solidarity and respect for diversity in society as a result of the economic crisis, adding that the efforts by the authorities to promote multicultural education remain insufficient.
- reports of incidents of racial prejudice against Roma in schools and of Greek parents removing their children from certain schools perceived as having 'too many' non-Greek Cypriot students;
- the fact that equal access to education and equal opportunities in the education system remain elusive for Roma children, as several of the challenges documented in older studies – such as irregular school attendance, early drop-out, overall low academic achievement and small numbers of students continuing to secondary school – persist;
- the fact that no efforts have been made to include information on the Roma and their distinct cultural heritage and history in Cyprus in the school curriculum and education materials.

²⁷³ ECRI (2011), *Report on Cyprus, Fourth Monitoring Cycle*, 31 May 2011. Available at www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf.

²⁷⁴ ECRI (2014), *Conclusions on the implementation of the recommendations in respect of Cyprus subject to interim follow-up*, adopted on 19 March 2014. Available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-IFU-IV-2014-021-ENG.pdf>.

²⁷⁵ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

A report published by the Commissioner for the Rights of the Child at the end of 2013 also recorded a rather problematic situation in the school.²⁷⁶ The report, issued in response to a complaint by the head of the school on behalf of the staff, criticised the headmaster and school staff for the tone of their letter of complaint, which was described as 'insulting for the Roma children, if not racist'. In particular, the Child Commissioner criticised the headmaster's allegations that Roma children have no inclination towards learning, they constantly create problems due to their antisocial behaviour, their parents have no interest in the education of their children and, as a result, all the other children are deprived of their basic education. The Child Commissioner's investigation identified the following problems in the school:

- the school staff is not adequately trained to manage or teach in multicultural settings;
- the Roma children are not recognised as Roma or as Muslim but merely as Turkish Cypriots; when they are first enrolled in the school, they have no knowledge of Greek;
- due to language barriers, the school staff cannot communicate with the parents of the Roma children; the school authorities blame the parents for constantly moving from place to place, resulting in their children having a fragmented school experience; the parents are seen by the school authorities as failing to support their children in taking school seriously;
- the school does not offer adequate teaching support hours for the pupils;
- the teachers blame the housing and living conditions of the Roma pupils and issues of domestic violence for the Roma children's problems at school;
- the support offered by the Social Welfare Services and by the Educational Psychology Service of the Ministry of Education is inadequate;
- the Roma children's mother tongue is a mixture of Turkish and the local Roma dialect, Kurbertcha, which is not recognised as a language of instruction;
- the continuous reduction in the school's Greek Cypriot population demonstrates that the school has failed to prove its potential as a model multicultural setting.

More recent fieldwork research on the situation of Roma residing in the abandoned Turkish settlement of Limassol, using a sample of 52 % of the Roma population in the particular area, i.e. 31 families (156 persons), found that out of the 87 children in the sample, only 5 were enrolled in kindergarten and only 30 children were attending primary school; the rest of the children had fallen out of the education system.²⁷⁷ The study recorded additional issues indirectly affecting the children's smooth integration into school: poor housing conditions; material deprivation; shortages of raw materials and basic household equipment; high tensions amongst the parents attributed to the large size of the families and overcrowding in the household; excessive responsibilities of the women and financial problems; the absence of social networks in the local community; depressive symptomatology in the parents; and more.

An additional study, based on workshops with Roma children and published in 2016 by an NGO, revealed that the terrible state of the Roma housing settlements pose serious health hazards whilst their remote locations have led to their marginalisation and isolation from their peers. The children interviewed reported frequent accidents in their homes as a result of falling pieces of walls and furniture, no insulation against heat or cold, no privacy or quietness to study, no water to shower and low aspirations in relation to their education and future employment prospects. The researchers also noted a certain undermining of the Roma cultural identity, as children described themselves as 'Turkish-speaking Cypriots'

²⁷⁶ Cyprus, Commissioner for the Rights of the Child (2013), *Report on the conditions of education at the 18th Primary School Ayios Antonios of Limassol* (Έκθεση της Επιτροπής Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο 18^ο Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17. 07.02.79, 28 December 2013. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument.

²⁷⁷ Panagiotopoulos C. & Zachariades A. (2016), 'Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice', *European Journal of Social Work*, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773.

rather than as Roma, essentially internalising official Government discourse, which deprives them of their Roma identity. The report identified the Roma children's lack of proficiency in Greek as the main problem hampering their school integration and was highly critical of the absence of any policies targeting the Roma, noting that the official policy of flagging existing policies of inclusion targeting the entire population of Cyprus appears to be a cover for a lack of commitment towards Roma integration.²⁷⁸

In 2017 the Commissioner for the Rights of the Child dealt with a number of complaints regarding the prior residency requirement for welfare eligibility. One of the cases examined was that of a Roma family who, in the course of the past few years, had 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. The Child Commissioner concluded that the prior residence requirement was an apparently neutral provision that negatively affected Roma, resulting in indirect discrimination, and criticised the authorities for failing to prioritise the children's best interests. A new regulation that will come into effect in 2018 and will extend the prior residence requirement for eligibility to child benefit from three to five years²⁷⁹ is expected to have a particularly adverse impact on Roma, who often have to travel between north and south for various reasons.²⁸⁰ In the cases of applicants with an international status, the authorities argued that the three years of 'habitual residence' required by the child benefit law commenced upon the granting 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 area 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 questions put to the authorities by the Child Commissioner as to the reasons forcing them to obtain information from unnamed sources – who were these sources? was the practice of pursuing such information followed in all cases? why did the examination of the applicant's application take two years? – were not answered.

As a result of housing segregation, Roma children are concentrated in specific schools; however, no figures are available regarding their number in education, because the Roma are seen by the authorities as inseparable from the Turkish Cypriots and no separate data is maintained for them.²⁸¹ In September 2012, the 18th Primary School in Limassol enrolled 73 children, of whom 40 were 'Turkish Cypriots', 23 were Greek Cypriots and the rest were from other countries.²⁸² During the 2016-2017 school year, 21 Turkish Cypriot/Roma pupils attended the 18th Primary School of Limassol and 10 Turkish Cypriot/Roma pupils attended the 18th Secondary School of Limassol. During the 2017-2018 school year, the corresponding figures were 16 pupils in the primary school and 11 in the secondary school.

²⁷⁸ Hope for Children CRC Policy Centre (2016), *Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation*, produced within the framework of the EU-funded project PEER: Participation, Experiences and Empowerment for Roma Youth. Available at www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf.

²⁷⁹ 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/8801EBEFE1D44675C22582A5002E5B6D/\\$file/Information%20Leaflet%20For%20CBAApplication2018.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/$file/Information%20Leaflet%20For%20CBAApplication2018.pdf).

²⁸⁰ Commissioner for the Rights of the Child, Report on the precondition of residence for a specific time in the areas controlled by the Republic of Cyprus for the provision of social welfare grants, September 2017. Available at www.childcom.org.cy/ccr/ccr.nsf/All/12C85642ECC6B291C22582D3003A7EC6?OpenDocument.

²⁸¹ Cyprus, Statistical Service of the Republic, Statistics of Education 2013-2014, p. 83. Available at https://www.mof.gov.cy/mof/cystat/statistics.nsf/index_gr/index_gr?OpenDocument.

²⁸² Cyprus, Commissioner for the Rights of the Child, *Report on the conditions of education at the 18th Primary School Ayios Antonios of Limassol* (Έκθεση της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού αναφορικά με τις συνθήκες εκπαίδευσης στο 1Η' Δημοτικό Σχολείο Αγίου Αντωνίου Λεμεσού), File No. 11.17. 07. 02. 79, 28 December 2013. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument.

In recent years, the segregation in schooling has given rise to a number of school-based projects, based on initiatives undertaken by the school utilising mainly EU funding²⁸³ and aiming to promote literacy and inclusion. The Roma children are taught history and religion by a Turkish Cypriot teacher, the content of which is relevant to the Roma history and religion (Islam). An afternoon programme entitled 'History-Language-Culture' was offered to Turkish Cypriot and Roma children by the Training Centres of the Ministry of Education in 2016-2017, which included a weekly class with an emphasis on Turkish Cypriot/Roma cultural heritage. The programme was not repeated in the years that followed. No figures are available as regards attendance. The mechanism for recording racial incidents in schools introduced in 2014²⁸⁴ did not record any incidents affecting the Roma children.²⁸⁵ During a visit to Cyprus in September 2017 by a Council of Europe delegation interested in minority languages, the Cypriot Government informed the delegation that the only minority languages it recognises are the Maronite and the Armenian languages.²⁸⁶

3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in access to and supply of goods and services as formulated in the Racial Equality Directive.²⁸⁷ Failure to provide access to goods and services available to the public is recognised as a form of discrimination.²⁸⁸ In the case of disability, failure to adapt a product or a service or a facility, rendering its use by persons with disability impossible or unreasonably difficult, amounts to unlawful discrimination. The law also provides a non-exhaustive list of examples of adaptations that are necessary for compliance with the law: the creation of suitable means of access and facilitation for safe and comfortable use of services and facilities; the use of special means, equipment and personal services for communicating with certain categories of persons with disabilities; the use of specialised means, organs and facilities in special spaces where services are provided, such as schools, hospitals, etc.²⁸⁹ There is no obligation on manufacturers to manufacture products that are easily useable by persons with disabilities although there is an obligation on service providers to make adaptations and to offer facilities in order to make premises or services accessible to persons with disabilities.²⁹⁰ The disability law provides that public transport must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs. However, the application of this provision should be governed by regulations issued by the Council of Ministers; no such regulations have as yet been issued and public transport remains largely inaccessible.²⁹¹

²⁸³ See, for example: *SEAs4All: Successful education action for all*, project brochure. Available at <https://seas4all.eu/wp-content/uploads/2017/11/SEAs4All-Brochure.pdf>; 18th Elementary School Ayios Antonios, *Participation in the English Teaching Assistant programme -1st Meeting of Partners at the Ministry of Education and Culture*, 15 September 2017. Available at <http://dim-lemesos18-lem.schools.ac.cy/data/uploads/anakoinoseis/2017-09-15-EnglishTeachingAssistant-ETA-MOEC.pdf>.

²⁸⁴ For more details, see the Ministry of Education website at http://www.moec.gov.cy/dme/programmata/scholiki_paravatikotita/protokolla/kodikas_symperiforas_kata_tou_ratsismou_pi.pdf.

²⁸⁵ Letter to the expert from the Social Welfare Services, 28 September 2017.

²⁸⁶ Cyprus, Ministry of Education and Culture (Υπουργείο Παιδείας και Πολιτισμού) (2017), Visit from Council of Europe Experts to Cyprus for minority languages ('Επίσκεψη εμπειρογνομόνων του Συμβουλίου της Ευρώπης για τις μειονοτικές γλώσσες'), 23 September 2017. Available at <http://enimerosi.moec.gov.cy/archeia/1/ypp6347a>.

²⁸⁷ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ισης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 4(1)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁸⁸ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ισης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

²⁸⁹ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 6(2)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁹⁰ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 6(1), Article 6(2)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁹¹ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 7(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

The disability law also requires that the competent Government departments must, within a short period of time, proceed with the installation of a suitable system of telephone services that assist persons with a hearing disadvantage or with any other disability of the senses or other speech disability to communicate through the telephone system in a manner proportionate to those persons without such disadvantages. Under the same provision, there must be public means of telecommunication accessible to persons with disabilities, including persons using wheelchairs; and television stations must make arrangements so that sign language is available for news broadcasts at certain times.²⁹²

The law that sets out the mandate of the Equality Body prohibits direct and indirect discrimination on all five grounds foreseen by the directives, plus community, language and colour, in all fields covered by the directives, including the supply of goods and services.²⁹³

The Law Ratifying the Convention on the Elimination of All Forms of Discrimination of 1967, Law No. 11 of 1992, provides that any person who supplies goods and services by way of profession and refuses such goods or services to any persons solely due to their racial or ethnic origin or religion is guilty of a criminal offence.²⁹⁴

At the same time, however, there are a number of laws, regulations and policies in place that foresee differential treatment for Turkish Cypriots seeking to access state services, such as the procedure for registering their newborn children²⁹⁵ and the restrictions imposed on their acquisition and disposition of their immovable properties.²⁹⁶

a) Distinction between goods and services available publicly or privately

In Cyprus, national laws do not distinguish between goods and services available to the public and those only available privately and it can safely be assumed that they apply to both. In line with the Racial Equality Directive, the transposing legislation describes the scope of the law to include the public and private sector, including public bodies, local governance and organisations of public and private law.²⁹⁷

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Cyprus, national legislation prohibits discrimination in housing as formulated in the Racial Equality Directive.

Discrimination on the ground of race and ethnic origin in housing is prohibited by Article 4(1)(e) of Law 59(I)/2004 (transposing the Racial Equality Directive). The relevant provision refers to 'access to goods and services available to the public and the supply thereof, including housing' as one of the fields of application. The scope of the prohibition includes providers in both the public and the private sector. Housing discrimination forms

²⁹² Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 8(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁹³ 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, Article 6(2)(g). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁹⁴ Cyprus, Law Ratifying the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, Law No. 11/1992, Article 2A(4).

²⁹⁵ Cyprus, Commissioner for Administration in its capacity as Anti-discrimination Authority, Report on the complaints submitted by Turkish Cypriots in relation to the handling of their application for the registration of their children by the Famagusta District Office (*Έκθεση της Επιτρόπου Διοικήσεως ως Αρχή κατά των Διακρίσεων αναφορικά με καταγγελίες που υποβλήθηκαν από Τουρκοκύπριους σε σχέση με το χειρισμό αιτημάτων τους για εγγραφή των παιδιών τους στην Επαρχιακή Διοίκηση Αμμοχώστου*), File No. AKR 35/2014, A/P 1902/2016, 13 March 2017. Not available online.

²⁹⁶ Cyprus, Law on Turkish Cypriot Properties (Administration and Other Matters) (Temporary Provisions) of 1991 (*Ο περί Τουρκοκυπριακών Περιουσιών (Διαχείριση και Άλλα Θέματα) (Προσωρινές Διατάξεις) Νόμος του 1991*) N.139/1991.

²⁹⁷ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(1)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

part of the mandate of the Equality Body on all five grounds foreseen by the directives plus community, language and colour.²⁹⁸ In addition, the wide ambit of the general prohibition of discrimination found in Article 28 of the Constitution may be used to pursue a housing discrimination claim on 'any ground whatsoever'.

Apart from the case of the Cypriot Roma, who are granted housing in specific Roma settlements, no social housing is available in Cyprus. The Roma housing is allocated by the Ministry of the Interior upon request and provided the applicants meet the eligibility conditions. The housing offered to Roma applicants is either pre-fabricated, container-like units in remote Roma segregated settlements of extraordinary squalor and poverty, or abandoned houses belonging to Turkish Cypriots who fled hostilities in 1964-1974, which are badly in need of major repair. Other than the Roma, no other category of applicants is offered housing. Non-Roma applicants (subject to eligibility) are granted a small housing benefit that is hardly sufficient to rent accommodation, but the responsibility for finding rented accommodation rests on them. This has led to problems of homelessness for Cypriots, EU nationals, refugees and asylum seekers, who find it hard to locate urban accommodation to rent for a number of reasons, including landlords' prejudice. However, other than repeated public statements from UNHCR and NGOs, there is no proper monitoring of the problem nor any measures to alleviate it.

Although it is generally known that the quality of accommodation units rented to migrants is low and the rents charged are disproportionately high, there are no policies or legislation in place to address this or any other housing problem and no data available to document the extent of the housing issues facing migrants. Accessing justice is another major issue for migrants and there is no case law regarding housing discrimination. This may be attributed again to the lack of legal aid, low level of awareness and the length of time needed for a case to be tried compared to the short-term visas granted to migrants.

Access to one's own property is not deemed by the courts to fall within the meaning of the term 'housing'. A 2007 Supreme Court decision on an application for referral to the CJEU of the question whether Article 2 of the Racial Equality Directive could be interpreted in a manner permitting an EU member state to deny the lawful owner of a property the right to sell it was rejected in a decision where the judge stated that the issue at stake (access to property) was deemed to be outside the scope of the Directive.²⁹⁹

Some restrictions apply in the field of acquisition of immovable property by non-Cypriots, under the Acquisition of Immovable Property (Aliens) Law, which requires non-Cypriots to apply for a permit before they can register immovable property in their name.

a) Trends and patterns regarding housing segregation for Roma

In Cyprus, there are patterns of housing segregation and discrimination against Roma. In 1999-2000, a large number of Roma migrated from the Turkish Cypriot-controlled north of Cyprus to the south. Once they crossed over, most of them settled in abandoned and derelict properties within the old Turkish quarter of Limassol, which the Turkish Cypriots were forced to vacate several decades ago. Many of these houses were without doors or

²⁹⁸ 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(1)/ 2004, Article 6(2)(g). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²⁹⁹ Cyprus, Supreme Court, *Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos (Perihan Mustafa Korkut ή Eyiam Perihan v. Απόστολου Γεωργίου δια του πληρεξουσίου αντιπροσώπου του Χαράλαμπου Ζόππου)* No. 303/2006, 17 December 2007. The applicant was a Turkish Cypriot property owner who was denied the right to dispose of his property in the Republic of Cyprus. He unsuccessfully tried to convince the court to seek interpretation from the CJEU as to whether the scope of Article 2 of the Racial Equality Directive applies to access to property. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2007/1-200712-303-06.htm&qstring=Perihan%20and%20Mustafa%20and%20Korkut.

windows, sanitary system, electricity or water supply. By 2003, approximately 360 Roma people had settled in these properties, without any preceding repair work.

The arrival of the Roma families in the south between 1990 and 2000 was greeted with fear and suspicion by the local communities as well as by the authorities.³⁰⁰ The then Minister of Justice alleged in a public statement that the Roma families may well be 'Turkish spies'³⁰¹ whilst the then Minister of the Interior assured Greek Cypriots that the authorities would 'ensure that they will be moved to an area that is far away from any place where there are people living.'³⁰² The ECRI's Third Report on Cyprus notes that 'the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of Roma by the local communities.'³⁰³ At the beginning of this influx, some Roma families were detained in the Central Prison; this practice was discontinued when the Attorney General ruled it as illegal.³⁰⁴

In addition, two more settlements were created in two remote villages within the Paphos district (Makounda and Polis Chrysochoos), where the housing conditions are also appalling.³⁰⁵ In her *Annual Report 2003*, the Ombudsman³⁰⁶ referred to an investigation carried out by her office into these settlements. Most families were residing there in temporary structures set up by themselves made of corrugated iron, wood, carton and plastic and without electricity. She pointed out that for the purpose of harmonisation with the EU *acquis* the authorities must compile an action plan using a holistic approach for eliminating ethnic segregation and for respecting the diversity of the Roma.³⁰⁷ A subsequent report released by the Ombudsman on 30 June 2003 expressed concerns about the failure of the authorities to implement policies decided in March 2000 and designed to tackle homelessness and unemployment amongst the Roma.³⁰⁸

Over the past few years, there has been an effort to regenerate the old Turkish Cypriot quarter of Limassol and some of the old houses were repaired. Some of the houses inhabited by the Roma have been maintained and repaired by the Government, but the pace of repairs is slow, and the condition of the houses remains substandard and often unfit for human habitation. A multi-purpose community centre was also set up in the Turkish quarter. Its aim was to help integrate the Roma and promote their participation within the local community. However, the building remains closed most of the time as no arrangements or budget were allocated for a full-time person to be present. In recent years, reports of evictions of Roma families from the old Turkish quarter of Limassol, on the justification that intelligence reports have shown them to own properties in the Turkish-occupied north of the country, have coincided with a general increase in property values in the region, as a result of the creation of an ambitious commercial project nearby.

³⁰⁰ Hadjicosta, M. (2001), 'Fears over gypsy influx', *The Cyprus Weekly*, 13-19 April 2001. Available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

³⁰¹ Remarks by former Justice Minister Koshis in Matthews, J. (2001), 'More gypsies crossing from north as Koshis warns about spies', *The Cyprus Mail*, 3 April 2001. Available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

³⁰² Editorial (2001), 'Our reaction to Gypsies raises some awkward questions', in *The Cyprus Mail*, 10 April 2001. Available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

³⁰³ ECRI (2005), *Third Report on Cyprus*, adopted on 16 December 2005, Strasbourg 16 May 2006, Council of Europe, p. 25.

³⁰⁴ Hadjicosta, M. (2001), 'Gypsies released from remand cells', *The Cyprus Weekly*, 20-26 April 2001.

³⁰⁵ Although the Ministry of the Interior claims that it has successfully carried out a housing plan to set up pre-fabricated units in various communities in Limassol and Paphos with all the necessary facilities, hepatitis incidents in 2005 and incidents of visceral leishmaniasis in 2006 in the Roma settlement of Makounda are attributed to poor hygiene conditions in the settlement: Nanos, C. (2005), 'Se eksetaseis oloi oi athigganoi', *Politis* (24 September 2005); Theodoulou, J. (2006), 'Authorities play down rare disease in Gypsy camp', *The Cyprus Mail* (26 May 2006).

³⁰⁶ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman, referring to the Ombudsman's activity for the particular year.

³⁰⁷ Cyprus, Ombudsman, *Annual Report 2003*, p.37.

³⁰⁸ The Cyprus Ombudsman's report was quoted in Amnesty International's report on Cyprus, covering events from January to December 2004.

Two studies published in 2016 relying on fieldwork data revealed severe problems in the quality of housing in the Roma settlements, both as regards their remote locations as well as their appalling state of repair, posing serious health hazards for the members of the overcrowded households.³⁰⁹

³⁰⁹ Hope for Children CRC Policy Centre (2016) *Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation*, produced within the framework of the EU-funded project PEER: Participation, Experiences and Empowerment for Roma Youth. Available at www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf; Panagiotopoulos C. & Zachariades A. (2016), 'Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice', *European Journal of Social Work*, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Cyprus, national legislation provides for an exception for genuine and determining occupational requirements.³¹⁰ In addition, the disability law excludes from its scope activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability lacks, constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures'.³¹¹

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Cyprus, national law provides for an exception for employers with an ethos based on religion or belief,³¹² which complies with Article 4(2) of Directive 2000/78. However, the constitutional provisions described below may potentially lead to situations that are not compliant with Article 4(2) of Directive 2000/78.

Article 7 of Law N. 58(I)/2004 has transposed the Directive's exception, providing that in the case of occupational activities within churches and other public or private organisations, the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This exception does not cover sexual orientation and the scope of this law does not cover gender. Therefore, any difference in treatment at the workplace on the ground of gender or sexual orientation is unlawful. In the case of religion, difference in treatment is lawful if the test laid down in Article 7 of Law 58(I)/2004 is satisfied. The clash between religion and sexual orientation has not been the subject of any court cases. Nor has it been examined by the equality body, however, the Orthodox Church repeatedly expressed its opposition to the civil cohabitation law. This opposition was not taken on board by the legislators.

Article 110 of the Cypriot Constitution provides for complete autonomy of the established religious organisations/churches of the two Cypriot communities: the Christian Orthodox Church for the Greeks and the Vakf for the Muslim Turks. Under Article 110.1, the 'Autocephalous Greek-Orthodox Church of Cyprus' has 'the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right'. Similarly, under Article 110.2 'the institution of Vakf and the Principles and Laws of, and relating to, Vakfs are recognised by this Constitution'. It is apparent from the above article that the extent of the autonomy and right to self-regulation granted to the Church under the Constitution is wider than that allowed by Article 7 of Law 58(I)/2004. Pursuant to a law which came into force in July 2006 amending the Constitution to the effect that EU directives and regulations prevail over national legislation (including the Constitution), it can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as the former transposes an EU directive. However, and in spite of the constitutional amendment, the courts in Cyprus are not always willing to prioritise laws transposing the *acquis* over national legislation; there are several examples

³¹⁰ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³¹¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 3A(1)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³¹² Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 7. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

where, in the case of conflict, the courts chose to apply the national law rather than the law transposing the *acquis*.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Cyprus, there are no specific provisions or case law on conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

However, the autonomy of Greek Orthodox religious bodies to manage their affairs may raise issues of compatibility with the directives. Although there is no relevant court decision or Equality Body statement, one may safely assume that church organisations: are unlikely to employ non-Orthodox Christians in key positions since they cannot become priests in the Orthodox Church of Cyprus; will not hire women since they are not allowed to become priests; and will not hire homosexuals since homosexuality continues to be considered by the church as a sin. In practice, organisations with an ethos based on religion, such as the Bishopricks, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the fields owned by the Bishopricks.³¹³ In 2016 an NGO supporting the rights of LGBTI persons officially requested the Attorney General to prosecute the Archbishop of the Greek Orthodox Church for homophobic hate speech. The Attorney General not only failed to prosecute the Archbishop but also ignored the NGO's request and offered no response or explanation, suggesting that church leaders are afforded an informal type of immunity from prosecution by the justice system.³¹⁴ The next step for the NGO was to apply to the Equality Body, following which they may have considered recourse to the ECtHR. However, this plan did not materialise in the end.

- Religious institutions affecting employment in state-funded entities

In Cyprus, religious institutions are not officially permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the state.

However, there is public discourse on church intervention, particularly in schools. The church has been criticised for trying to interfere with the selection of candidates for a job placement and with the hiring process, either by using its influence or by financing positions at the University of Cyprus to be filled by a person of the church's choice. The selection of the person to serve as Minister of Education is historically subject to the approval of the Orthodox Church of Cyprus.

Given that the most powerful religious institution by far in Cyprus is the Greek Orthodox Church, and the dominant community in Cyprus is the Greek Cypriot, whose members are mostly of Greek Orthodox religion, the issue of conflict or contestation does not often arise; the intervention of the Greek Orthodox Church, where such intervention takes place, is rather intended to promote a particular person for a specific job for reasons which are not exclusively of a religious nature, given that the Cypriot Church operates businesses involving significant capital, such as banks, hotels and land development.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Cyprus, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

³¹³ Interview with Petros Lazarou, secretary of the Morphou Bishopric, 16 January 2005.

³¹⁴ Accept LGBT-Cyprus, letter to the Attorney General, 7 November 2016. Not available online.

The disability law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.³¹⁵ The same exception appears as a reservation by the Republic of Cyprus in the ratification of the UN Convention on the Rights of Persons with Disabilities.

Law 58(I)/2004, transposing the Employment Equality Directive (minus the disability component), provides that the prohibition of discrimination on the ground of age shall not apply to the armed forces, to the extent that the setting of an age limit is justified by the nature and duties of the occupation.³¹⁶

A law that came into force in late 2009 introducing a quota system in favour of persons with disability in the wider public sector excludes from its scope those sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent', i.e. the army, the police, the fire department and the prisons.³¹⁷

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Cyprus, national law includes exceptions relating to difference of treatment based on nationality.³¹⁸

In Cyprus, nationality may be seen as covered by the scope of the Law Ratifying Protocol No. 12 to the ECHR, Article 1 of which provides for freedom from discrimination on the grounds of, inter alia, national or social origin, association with a national minority, birth or other status.³¹⁹ A relevant provision is also to be found in the law setting up the Equality Body. This tasks the Equality Body with the promotion of equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin, and the protection of individuals from discrimination by public and private bodies on the grounds provided in the law, which include nationality.³²⁰

The law governing the granting of nationality includes a provision to the effect that there is no automatic granting of citizenship if an applicant has one parent who entered Cyprus unlawfully or who resides in Cyprus unlawfully, even if the applicant resides in Cyprus and the other parent is a Cypriot; in such a case, the granting of citizenship is left to the discretion of the Council of Ministers.³²¹ Although the provision appears neutral, it clearly

³¹⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 3A(1)(a). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³¹⁶ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³¹⁷ Cyprus, Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*) No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

³¹⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 3A(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³¹⁹ Cyprus, Law Ratifying Protocol No. 12 to the European Convention on Human Rights N. 13(III)/2002, 19 April 2002.

³²⁰ 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, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³²¹ Cyprus, Population Archives Law N. 141(I)/2002, Article 109(1). Available at www.cylaw.org/nomoi/ind/2002_1_141/section-sc852d7c40-bca1-5785-16b3-2a04cd997a2c.html. This clause was first introduced by Law 65(I)/1999, which came into force on 11 June 1999.

aims at excluding from citizenship those persons born to a parent from Turkey who migrated to and settled in Cyprus in the post-war era.

On 16 January 2007, a complaint was submitted to the Equality Body alleging that the law on the acquisition of citizenship by descent is discriminatory. The complaint alleged that the said provision was discriminatory, infringing the Constitution and the Republic's international law obligations, including the UN Convention on the Rights of the Child. The Equality Body's decision recognised that the examination of applications under the said provision is often unnecessarily delayed but, given that the Council of Minister's decision is Government policy, it cannot intervene any further. The allegation of discrimination was not examined, as the report accepted that children may legitimately be discriminated against when one of the two parents entered Cyprus under the status of 'Turkish settler'.³²²

The ECRI's Third Report on Cyprus³²³ notes that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate', noting that the relevant provisions of the nationality law are contrary to Art. 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign, and contrary to the general prohibition of discrimination in Article 1 of Protocol No. 12 to the ECHR.

In 2011 the Equality Body dealt with additional complaints from Turkish Cypriots regarding the granting of Cypriot nationality to their children. Although that report made extensive reference to the ECRI's position on the matter, it fell short of endorsing the ECRI's position that discrimination exists. Instead, the Equality Body adopted the Government's position that the current policy is necessary in order to address Turkey's policy of demographic change, but urged the authorities to speed up the processing of applications and to promptly notify failed applicants in order to avoid claims for maladministration and discrimination.³²⁴

The new failure to reach a settlement to the Cyprus problem³²⁵ at the 2017 UN-brokered negotiations gave fresh impetus to the claims of Turkish Cypriots for nationality. In 2017 a large group of Turkish Cypriots convened and decided to hire lawyers to sue the Republic of Cyprus for discriminatory treatment. By the end of 2018, the case had not yet been filed in court.

Over the years, the Equality Body has issued a number of decisions applying the two non-discrimination directives to EU citizens.³²⁶ Indeed, until recently,³²⁷ the interpretation given by the Equality Body to the directives was that their scope does not exclude EU citizens.³²⁸ In 2016 the Equality Body found that the law governing the exercise of the profession of estate agents contained indirect discrimination against third country nationals in violation of the Racial Equality Directive, because it requires applicants to submit evidence of 'certified educational attainment', when there is no procedure for such certification of diplomas issued by schools in third countries.³²⁹ The Equality Body interpreted the term

³²² Cyprus, Anti-discrimination Authority, Report No. 10/2007, 24 March 2008.

³²³ ECRI (2006), *Third Report on Cyprus*, adopted on 16 December 2005, Strasbourg 16 May 2006.

³²⁴ Cyprus, Anti-discrimination Authority, Report on the handling of applications for citizenship by Turkish Cypriots, 30 November 2011.

³²⁵ Cyprus is divided along ethnic lines. The south is administered by the Greek Cypriots and the north by the Turkish Cypriots and the Turkish army. This follows years of inter-ethnic violence culminating in a coup by the Greek junta in 1974, which was followed a few days later by an invasion by the Turkish army. All efforts to resolve this problem have so far failed.

³²⁶ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority No. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

³²⁷ In 2017 a new Ombudsman was appointed who ceased all Equality Body activity. All complaints are handled under the Ombudsman's mandate.

³²⁸ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

³²⁹ Cyprus, Equality Authority (2016) Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, File

'racial or ethnic origin' as complemented by the terms 'language', 'race', 'colour' and 'national origin', and found there was indirect discrimination on the ground of national origin, in breach of the law transposing the equality *acquis*.³³⁰

The economic crisis has led to a significant drop in the number of EU nationals and third country nationals coming to Cyprus to work. The Equality Body, which had been the only agency collecting and publishing statistics about discrimination complaints, has not published statistics for any period after 2015, so there is no indication of what the current state of affairs is. However, even in 2013, the Ombudsman at the time had identified a drop in employment-related complaints as a result of the economic crisis, rising unemployment and the deregulation of the labour market.³³¹ In 2017 a number of complaints from EU nationals and third country nationals were handled by the courts, the Commissioner for the Rights of the Child and the Ombudsman regarding access to welfare, but only the Commissioner for the Rights of the Child invoked the equality *acquis* in order to evaluate the merits of the complaint at hand.³³² No complaint was ever examined in relation to undocumented migrants. The law transposing the Racial Equality Directive copies verbatim the Directive's exception in Article 3(2) about nationality and immigration status. The status of being an undocumented migrant is not a protected ground, although the racial or ethnic origin of the undocumented migrant is.

b) Relationship between nationality and 'racial or ethnic origin'

The interaction between nationality and racial or ethnic origin is nowhere more apparent than in the case of the Turkish Cypriots who, although Cypriot citizens under the Constitution, appear to have an 'inferior' form of citizenship due to their ethnicity, as illustrated by the restrictions they face in exercising their voting rights, in the granting of nationality for their children, in accessing their properties in Republic-controlled areas, etc. This is already illustrated extensively in other parts of this report.

In its earlier decisions, the Equality Body made use of its extended mandate, treating nationality discrimination as prohibited by international laws as well as by the Racial Equality Directive; on some occasions, nationality and ethnic origin were used interchangeably in the sense that whilst the case at hand was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives. The general treatment afforded to the issue by the Equality Body suggests that it endorsed the position that the distinction between, race/ethnicity and nationality is an artificial one. Such was the case decided in 2016, where the Equality Body found that a law restricting access to the profession of assistant estate agent for persons who attended school in a third country amounted to indirect discrimination in violation of the Racial Equality Directive.³³³ An Equality Body decision established that the

number A.K.I.22/2016, 15 April 2016. Available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

³³⁰ Law on Equal Treatment in Employment and Occupation (*Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) N. 58(I)/2004, Article 3. Available at http://cyllaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³³¹ Cyprus, Equality Authority, *Annual Report 2013*, p. 5. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202013.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202013.pdf).

³³² European network of legal experts in gender equality and non-discrimination (2017), Flash report on *Child Commissioner report regarding the 'prior residence' requirement in welfare legislation*. Available at www.equalitylaw.eu/downloads/4487-cyprus-child-commissioner-report-regarding-the-prior-residence-requirement-in-welfare-legislation-pdf-179-kb.

³³³ Cyprus, Equality Authority (2016), Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, File number A.K.I.22/2016, 15 April 2016. Available at

exclusion of non-Cypriot EU citizens from a scheme granting a heating allowance amounted to discrimination on the basis of race or ethnic origin as well as of national origin under Protocol No. 12 to the ECHR.³³⁴ Similarly, the exclusion of a Greek national from the list of persons eligible to be awarded honorary artistic pensions was found by the Equality Body to be discriminatory.³³⁵ The denial of access to EU citizens to the electoral register for the purpose of voting at local elections was also held to be discriminatory on the basis of race or ethnic origin.³³⁶ More recently, the Equality Body found that an employment scheme with a stringent Greek language requirement amounted to a breach of the Law on Combating Racial and Other Forms of Discrimination³³⁷ in combination with the Law on Equal Treatment in Employment and Occupation,³³⁸ as it resulted in discrimination against EU citizens and third country nationals.

The trend began to change in 2017 with the appointment of the new Ombudsman. One of her first reports as Ombudsman was in response to three complaints regarding the exclusion of the foreign spouses of Cypriot nationals from the family's public benefit entitlement.³³⁹ The authorities had sought to justify the exclusion of the foreign spouses of Cypriots on the basis of Article 3 of the Public Benefits and Services law, which restricts entitlement to public benefits to those EU nationals of insufficient means who had worked as employees or were 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.³⁴⁰ In the report, the Ombudsman concluded that the exclusion of foreign spouses of Cypriots from welfare entitlements was unlawful, citing Article 7 of the welfare law which provides that, where an applicant cohabits with a spouse, entitlement is based on the needs of both persons, taking into account their income. The immigration status or nationality of the spouse becomes relevant only if the spouse is the main applicant; it was not the legislator's intention to exclude from the scope of the welfare law the dependents of applicants who had an immigration status other than the one prescribed in the law for the applicants. The decision made no reference to the Racial Equality Directive or to contemporary scholarly interpretations of the Racial Equality Directive,³⁴¹ which view nationality as a 'suspect' ground used as a pretext for indirect discrimination on the ground of racial/ethnic origin. Although the outcome of the investigation was to uphold the claim of foreign spouses affected by this policy, the failure to invoke discrimination essentially restricts the argumentation to the realm of the national law and its judicial interpretations. The shift towards addressing maladministration rather than discrimination was also present in another Ombudsman report issued in November 2017. It was issued in response to a complaint that non-Cypriot prisoners were excluded from receiving parole. In this report, the Ombudsman stated that she was unable to intervene because it is not clear whether

[www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

³³⁴ Cyprus, Anti-discrimination Authority, Report Nos. AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

³³⁵ Cyprus, Anti-discrimination Authority, Report No. A.K.P 73/2008, 30 December 2009.

³³⁶ Cyprus, Anti-discrimination Authority, Report Nos. AKP 75/2005 and AKP 78/2005.

³³⁷ 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. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³³⁸ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³³⁹ Commissioner for Administration and Human Rights, Report 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.

³⁴⁰ Cyprus, Law on Public Benefits and Services of 2006, as amended. Available at http://cylaw.org/nomoi/enop/non-ind/2006_1_95/index.html.

³⁴¹ De Schutter O. (2016), *Links between migration and discrimination*, report for the European network of legal experts in gender equality and non-discrimination. Available at: www.equalitylaw.eu/downloads/3917-links-between-migration-and-discrimination.

the parole board is an administrative body or a quasi-judicial one.³⁴² The response did not utilise the wide mandate offered by the law governing 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 and the ICERD.³⁴³

In 2012 the Supreme Court also ruled on nationality discrimination but not from the perspective of the discriminated victim: the case concerned a Cypriot landlord who applied to the Rent Control Court in order to evict his Romanian tenant. The Rent Control Court denied having jurisdiction, because the scope of the Rent Control Act does not include non-Cypriots. The Supreme Court reversed this decision, stating that the reference in the law to Cypriots should be read as including all EU nationals.³⁴⁴ The exclusion of third country nationals from the scope of the Rent Control Act was the subject of an investigation by the Equality Body, which concluded that it amounted to direct race discrimination and recommended its revision.³⁴⁵ The rent control legislation was also criticised by the UN Committee on the Elimination of Racial Discrimination for the same reason.³⁴⁶

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Cyprus, it does not constitute unlawful discrimination in national law if an employer provides benefits only to those employees who are married. A single person who was subjected to differential treatment on account of his or her marital status could invoke the general anti-discrimination provision of the Cypriot Constitution, whose scope covers 'any ground whatsoever' or the ground of 'family status', also protected by Article 28 of the Constitution. It is recalled that, in line with the *Yiallourou* case,³⁴⁷ all constitutional rights inherently apply both in the public and private sector.

Apart from those sectors in which collective agreements are in force, all other benefits provided by employers must be considered as part of the employment contract, the conditions of which may legitimately vary from employee to employee. An employer who grants work-related benefits only to married employees could be liable for indirect discrimination on the ground of sexual orientation under the law transposing Directive 2000/78, given the fact that LGB persons cannot marry. Since December 2015, same-sex couples have been able to enter into a 'civil union', a form of registered partnership, and thus claim all rights available to married persons (except for the right to adopt children).³⁴⁸ The law on civil unions does not specifically cover work-related benefits, presumably

³⁴² Cyprus, Commissioner for Administration and Human Rights, letter dated 24 November 2017, File No. AKR 2/2015.

³⁴³ 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.

³⁴⁴ Cyprus, Supreme Court, *Diogenis Christophorou Ltd v. Giosa Victoria Mikaela* (*Διογένης Χριστοφόρου v. Giosa Victoria Mikaela*), No. 161/2009, 5 June 2012.

³⁴⁵ Anti-discrimination Authority, Report on discrimination on the ground of ethnic origin in the Rent Control Law, 30 January 2012, Ref. AKR 226/2008. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/\\$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement).

³⁴⁶ UN Committee on the Elimination of Racial Discrimination (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus*, adopted by the Committee at its eighty-third session (12-30 August 2013), published on 23 September 2013 (CERD/C/CYP/CO/17-22). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCYP%2fCO%2f17-22&Lang=en.

³⁴⁷ Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (*Τάκη Γιάλλουρου v. Ευγένιου Νικολάου*) No. 9331, 8 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

³⁴⁸ Cyprus, Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cylaw.org/nomoi/arith/2015_1_184.pdf.

because there is no legislation governing such benefits for opposite-sex couples either. However, the new law, in combination with the principle established by the CJEU in *Maruko*,³⁴⁹ which precludes legislation depriving the surviving partner of a survivor's benefit equivalent to that granted to a surviving spouse, may potentially be used to afford same-sex partners who have registered their relationship in accordance with the new law on civil unions, the same work-related benefits as those accruing to married couples. To date, few couples have availed themselves of the opportunity to register their relationship in accordance with this law and, as yet, there have been no related court decisions.

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) Regulations of 1987 to 1994 sets the employee's family status (i.e. whether he or she is married and has dependent children) as one of the criteria in determining whether such an employee will be transferred to a teaching post away from his or her base. A decision of the Equality Body in 2004 regarding this provision found that the differential treatment of unmarried employees vis-à-vis married employees without children amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation. In other words, it amounts to discrimination on the grounds of belief and/or sexual orientation.³⁵⁰ The regulation remains in place and the transfer of teachers may still be determined on the basis of, inter alia, their marital status, although since 2015 teachers who registered a civil union must be seen as a married couple for the purpose of these transfers.

b) Benefits for employees with opposite-sex partners

In Cyprus, there is no explicit provision rendering it unlawful discrimination if an employer provides benefits only to those employees with opposite-sex partners. Although work benefits are seen as forming part of an employment relationship that may legitimately differ from employee to employee, such differential treatment may be unlawful under the law transposing Directive 2000/78.

Under Article 28 of the Constitution, a person subjected to differential treatment on any ground whatsoever may bring an action for discrimination and collect damages, subject to producing evidence that the differential treatment was the result of discrimination between two equals, as it is customary and legitimate for employees at different ranks of the hierarchy to receive different benefits. The recently adopted law on civil unions, which enables couples of same or opposite sex to register their relationship, does not explicitly cover work-related benefits, but it does provide legal impetus for employers to treat these employees equally, compared to the previous regime of unregistered relationships.

Against the backdrop of rising unemployment, the issue of employee benefits is becoming increasingly academic as the Cypriot economy sinks further into crisis, and austerity becomes a harsh reality for those still in employment, who see benefits and labour rights gradually disappearing.

4.6 Health and safety (Article 7(2) Directive 2000/78)

In Cyprus, there are exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

³⁴⁹ CJEU, Judgment of 1 April 2008, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, C-267/06. Available at

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=70854&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=146055>.

³⁵⁰ Cyprus, Equality Authority, Report No. A.K.I 11/2004.

The disability law excludes from its scope measures for the protection of 'health and the rights and freedoms of others'.³⁵¹ The same law further provides that the principle of equal treatment does not preclude the maintaining or introduction of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.³⁵²

Law 58(I)/2004 transposing the Employment Equality Directive also excludes from its scope measures provided by national legislation which are necessary for, inter alia, the 'protection of health and the rights and freedoms of others', unless the differential treatment is due to a person's racial or ethnic origin, in which case it presumably constitutes unlawful discrimination.³⁵³

No exceptions are allowed relating to religion or other grounds where issues of dress or personal appearance are concerned. It should be noted, however, that there are no such issues or debates in Cyprus for the moment, as there are hardly any ethnic communities using symbols of religion or culture. The vast majority of Muslims in Cyprus, who are basically Turkish Cypriots, Roma and migrant workers from the Middle East, are either secular or simply do not use symbols in their appearance. In recent years, as the number of asylum seekers and refugees from countries in the Middle East is growing, it is more common to see persons using religious symbols in the public sphere, but there is no up-to-date data to connect the use of such symbols with their employment prospects. In any case, the employment prospects of asylum seekers are restricted to specific low-status and low-paid jobs, whilst rising unemployment and the lack of Greek language skills are hampering the employment prospects of all non-Cypriots.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Cyprus, national law provides for a specific exception for direct discrimination on the ground of age.

a) Justification of direct discrimination on the ground of age

In Cyprus, it is possible, in specific circumstances, to justify direct discrimination on the ground of age; national law contains exactly the same exception for age as found in Article 6 of the Employment Equality Directive.³⁵⁴ To date, no case has been presented before the Cypriot courts or the Equality Body raising the issues examined in *Mangold* or *Kucukdeveci*; nor do any national laws provide for the conclusion of fixed-term contracts once an employee reaches a certain age or for ignoring the period of employment completed by an employee before reaching the age of 25 when calculating the notice period for dismissal.

A study of the relevant cases decided by the court and by the Equality Body reveals significant differences between the treatments afforded to this issue by the two bodies. Court decisions in recent years have sought to justify differences in retirement ages for employees of different rank or different age, introducing a rather wide spectrum of

³⁵¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 3A(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁵² Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 3B(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁵³ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(3)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁵⁴ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 8. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

exceptions premised upon a doctrine that 'unequal' situations must be treated differently and/or that discrimination must be unreasonable in order to be prohibited.³⁵⁵ By contrast, the Equality Body appears better informed about the relevant provision in the law transposing Directive 2000/78 and about legal developments in the CJEU and will use the test provided in the law (objectively and reasonably justified by a legitimate aim and means must be appropriate and necessary); the Equality Body is more likely than the courts to find that prohibited age discrimination has occurred, arising from differential treatment on the ground of age.³⁵⁶ A Supreme Court decision in late 2014 regarding a claim against reduced benefits for a public sector employee who chose to retire before reaching the age of 45 could have marked a new departure for court decisions in this area, as the court found that the legal provision for reduced pension benefits for younger retiring employees was discriminatory and thus unlawful.³⁵⁷ However, in 2017, the Supreme Court chose to follow its old tradition of removing retirement benefits from scrutiny under the equality *acquis*. In this ruling, the court applied a national law, resulting in less favourable treatment on the ground of age. The case concerned a public sector employee retiring at 61, who was paid a reduced retirement lump sum compared to those retiring at 62 or 63. The Court ruling, elaborated under Section 3.2.3.1 above, concluded that, on the basis of Article 6(2) of Directive 78/2000, the retirement lump sum was outside the scope of the Directive, adding that had the claimant's case been found to fall within the scope of the Directive, it would fall under the exception of Article 6(1).³⁵⁸

The above Pensions Law provision for the payment of reduced retirement benefits to public sector employees who choose to retire early³⁵⁹ was also the subject of a CJEU ruling against Cyprus, which found that it led to discrimination between different categories of employees.³⁶⁰ At the time of writing, however, the law sanctioning the discriminatory treatment had not been amended and there are no known plans for its revision.

a) Permitted differences of treatment based on age

In Cyprus, national law may permit differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Although the exception in Article 6(2) of the Employment Equality Directive is not specifically invoked in national legislation, there are provisions in the law governing the payment of benefits under pension schemes in the public service, which depend at least partly on age. In particular, the Law Amending the Pensions Laws of 1997-2001 N. 69(I)2005 provides that the lump sum payable to public servants upon retirement is paid upon the attainment of certain ages in combination with the completion of a certain term of service. This provision was the subject of an application to the Supreme Court, which claimed that it ought to be annulled for non-compliance with the equality principle. This claim was rejected by the Court on the grounds that retirement ages fall outside the scope of the Employment Equality Directive and that the lump sum that the claimant was

³⁵⁵ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης) No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=1497%20w/1%202008.

³⁵⁶ Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May 2012; Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 6 April 2012.

³⁵⁷ Cyprus, Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

³⁵⁸ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

³⁵⁹ Cyprus, Law on Pensions (Ο περί συντάξεων νόμος) N. 97(I)/1997, Article 27(1). Available at http://cylaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html.

³⁶⁰ CJEU, Judgment of 21 January 2016, *European Commission v. Cyprus*, C-515/14. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=173688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1024140>.

contesting was related to the duration of his service and not to his contributions.³⁶¹ Entitlement to other benefits is linked to the term of service but also, in some cases, to the mandatory pensionable age, which is determined by this law. Article 49(2) of the Public Service Laws 1990-1996 provides that the element of age seniority may be taken into consideration as a criterion for selecting the candidate to be promoted, as a last resort where the candidates are otherwise deemed equal. In 2015 the Supreme Court ruled that, all other things being equal, seniority is a legitimate criterion in deciding promotions in the public service.³⁶² In particular, the Court ruled that taking seniority into account is not just lawful but is in fact required by the public service law,³⁶³ which provides that where two employees are equally 'senior' because they have the same date of appointment, seniority is to be determined by taking into account the employees' ages.

In addition to this law, there is a long list of laws governing the payment of benefits under pension schemes to employees in various Government and semi-Government bodies, most of which follow the pattern of the aforesaid law, i.e. benefits become payable upon completion of a certain term of service and/or upon attainment of a certain age and/or upon attainment of pensionable age. A decision of the Equality Body in 2009 found that the provision of the Pensions Law providing for fewer benefits for employees under 45 wishing to take early retirement, compared with employees over 45, was in violation of the equality principle, which was later confirmed by the Supreme Court. The Equality Body, however, appears willing to accept the criterion of the number of years in service as a determining factor differentiating groups of employees, by recommending the adoption of a condition that pension benefits are payable upon completion of certain years of service, irrespective of age, which is also indirectly related to age.³⁶⁴

- c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Cyprus, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).³⁶⁵

In the public sector, benefits under pension schemes depend at least partly on age. In the private sector, pension schemes are governed either by collective agreements (where such exist in the particular sector) or by individual employment contracts, where the conditions of eligibility for benefits are impossible to monitor. It is possible that any collective or individual agreement that discriminates on other grounds will be deemed unlawful on the basis of Article 4(c) of Law 58(I)/2004, transposing Article 3.1(c) of the Employment Equality Directive on conditions of employment, subject of course to the exception in Article 6(2) of the Directive (transposed by Article 8(3) of Law 58(I)/2004).

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Cyprus, there are special conditions set by law for older and/or younger workers, in order to promote their vocational integration, and/or for working persons with dependents,

³⁶¹ Cyprus, Supreme Court, *Michalakīs Raftópoulos v. The Republic of Cyprus via the Accountant General of the Republic* (Μιχαλάκης Ραφτόπουλος v. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας), No. 1223/2007, 22 November 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007.

³⁶² Cyprus, Supreme Court, *Charis Christodoulidou v. Republic of Cyprus through the Public Service Committee*, No. 12/10, 3 April 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%202015.

³⁶³ Law on Public Service No. 1/1990, Article 49.

³⁶⁴ Cyprus, Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 4 June 2009.

³⁶⁵ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(3). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

in order to ensure their protection. Law 58(I)/2004 transposing the Employment Equality Directive provides that differential treatment – in the form of special conditions for access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young and old persons and for working persons with dependents, so as to promote their vocational integration or ensure their protection – shall not constitute discrimination.³⁶⁶

However, no such measures or special conditions are actually provided by this law or by any other law or regulation. A 2010 decision of the Equality Body adopted the principle expounded by the CJEU in *Coleman*³⁶⁷ that discrimination against a person with caring responsibilities for a person with a disability is discrimination prohibited by law.³⁶⁸ This principle has also been recorded in the Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in September 2010, which has a binding effect.³⁶⁹ A more recent Equality Body decision found that in order for the principle of discrimination by association to apply, there is no need for the carer to be the parent or the spouse of the person with a disability; instead, one needs to look into the facts of each individual case and determine whether the person discriminated against is in fact the primary carer of the person with a disability.³⁷⁰

4.7.3 Minimum and maximum age requirements

In Cyprus, a number of exceptions permit minimum and/or maximum age requirements in relation to access to employment and training. The law allows the fixing of minimum age limits, professional experience or seniority. It also allows the fixing of maximum limits for access to employment based on the training required for the particular position or the need for a reasonable period of employment prior to retirement, provided the measure is objectively justified by a legitimate aim and the means are necessary and legitimate.³⁷¹ In addition, the law provides an exception relating to the armed forces, where the principle of non-discrimination on the ground of age is stated to be inapplicable to the extent that the fixing of an age limit is justified by the nature and duties of the work.³⁷² The law does not specify the age limit applicable in this case, which is determined by the armed forces' service schemes.

In 2008 a Labour Tribunal found that the fixing of an upper age limit by a credit institution in a job advertisement was unlawful, but awarded the claimant only a small fraction of the compensation sought (EUR 1 500 as opposed to her claim of EUR 555 754).³⁷³ Upon

³⁶⁶ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(2)(a). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁶⁷ CJEU, Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, C-303/06. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

³⁶⁸ Cyprus, Equality Authority, Report No. A.K.I. 82/2009, 25 June 2010.

³⁶⁹ Cyprus, Equality Authority (2010), Code of Conduct on Discrimination on the Ground of Disability in Employment and Occupation (Κώδικας Καλής Πρακτικής για τις Διακρίσεις λόγω Αναπηρίας στην Εργασία και την Απασχόληση). Available at: [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

³⁷⁰ Cyprus, Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

³⁷¹ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(2)(b) and (c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁷² Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 8(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁷³ Cyprus, Labour Court, *Avgoustina Hajianraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβράμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου)*, No. 258/05.

appeal,³⁷⁴ the Supreme Court confirmed the trial court's finding on this point, because the claimant would not have been hired anyway, since the other candidates were better qualified, based on the principle expounded by the European Court of Justice (ECJ) in the case of *Draehmpaehl*.³⁷⁵ In 2012 the Equality Body found that the age limit of 55 for recruitment to the position of cultural attaché at the House of Cyprus in Athens was unlawful.³⁷⁶

In 2016 the court ruled that the maximum age of 65 for claiming benefit under a disability scheme was unlawful.³⁷⁷ At the time of writing, the age restriction in this scheme was still in place.³⁷⁸ In 2018 the Appeal Court ruled that age criteria in state grant schemes are lawful when they are justified by the bad state of public finances.³⁷⁹ By contrast, in 2015 the Ministry of Health adopted the Equality Body's recommendation to remove the age limit of 65 for eligibility for state funding for robotic prostatectomy.³⁸⁰

4.7.4 Retirement

a) State pension age

In Cyprus, there is a state pension age, at which individuals must begin to collect their state pensions.

If an individual wishes to work longer, the pension cannot be deferred. Employees who retire from work may, however, choose to defer payment of their pension until they reach the age of 68, in which case the amount of the pension is increased by 0.5 % for every month of deferral.³⁸¹

In the private sector, an individual can collect a pension and still work, but other conditions apply in the public sector. However, upon reaching pensionable age, private sector employees lose their right to compensation for unlawful dismissal.³⁸²

Pensionable age for the purposes of the state pension is currently 65,³⁸³ although persons who meet a list of criteria as regards their social insurance contributions may receive their state pension at 63.³⁸⁴ These age limits are adjusted every five years on the basis of life

³⁷⁴ Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

³⁷⁵ ECJ, Judgment of 22 April 1997, *Nils Draehmpaehl v. Urania Immobilienservice OHG*, C-180/95, ECR I-2195.

³⁷⁶ Cyprus, Equality Authority, Report No. AKI 30/2011, 23 May 2012.

³⁷⁷ Cyprus, Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

³⁷⁸ Cyprus, Department for the Social Integration of Persons with Disability, information on the severe kinetic disability grant. Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd10_qr/dsipd10_qr?OpenDocument.

³⁷⁹ Cyprus, Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

³⁸⁰ Anti-discrimination Authority, Report on the application of age criteria in sponsoring medical expenditure, File No. A.K.R. 93/2012, 5 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/EA83B43532605E83C2257E7B001B6229/\\$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/EA83B43532605E83C2257E7B001B6229/$file/%CE%91%CE%9A%CE%A193.2012-05.06.2015.doc?OpenElement).

³⁸¹ Cyprus, Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος) N. 59(I)/2010, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁸² Cyprus, Law on Termination of Employment N. 24/1967, Article 4. Available at www.cylaw.org/nomoi/enop/ind/1967_1_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html.

³⁸³ Cyprus, Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, Article 2. Available at http://cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁸⁴ Cyprus, Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, Article 35. Available at http://cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

expectancy at retirement age. The first adjustment took place in 2018. The adjustment consists of an upward increase of six months every five years until 2023.

Contributions to the state social insurance scheme can only be paid until the person reaches 'pensionable age'.³⁸⁵ Contrary to what applies in the public sector, an individual can collect a pension and still work in the private sector; this is a matter governed by the individual employment contract.

Public sector employees may not work past their retirement limit, so their pensionable age coincides with their retirement age.³⁸⁶ However, it is possible for public servants past their pensionable age to be appointed to another paid public post without losing their state pension. Although a law introduced in 2011 sought to reduce the state pension of public sector employees who take up another paid public position after retirement,³⁸⁷ a Supreme Court decision in 2014 found this law unconstitutional and restored state pensions for this category of pensioners.³⁸⁸ Legislators are reported to be in search of a solution to this issue since then, amidst public discontent over a legal vacuum that allows a small group of privileged individuals to receive double pay from the public payroll at a time of economic crisis and austerity.

b) Occupational pension schemes

In Cyprus, there is no standard age when private sector employees can begin to receive payments from occupational pension schemes or from other employer-funded pension arrangements. Up until now, the private sector has generally considered the age of 65 as pensionable age, although this is not mandatory and deviations are not prohibited.

The content of private pension schemes is governed by private agreements and no generalisations can be made as to the terms customarily used.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred, if this is foreseen in the terms of the employee's pension scheme.

Different private pension schemes provide different terms as regards the deferral of payments where a person wishes to work beyond pensionable age. There is no law governing these schemes and no generalisations can be made as regards common practice.

c) State imposed mandatory retirement ages

In Cyprus, there is a mandatory retirement age set by law only for public sector employees. Different mandatory retirement ages apply for different employees in the public sector, depending on their profession, rank and year of joining the service.³⁸⁹

³⁸⁵ Cyprus, Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, Articles 2 and 35. Available at http://cyllaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁸⁶ Cyprus, Law on Pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, Article 9. Available at www.cyllaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

³⁸⁷ Cyprus, Law on Pensions of State Officials (General Principles) (Ο περί συντάξεων κρατικών αξιωματούχων (Γενικές Αρχές) Νόμος) N. 88(I)/2011. Available at http://www.cyllaw.org/nomoi/indexes/2011_1_88.html.

³⁸⁸ Cyprus, Supreme Court, *Maria Koutselini-Ioannidou et al v. The Republic of Cyprus*, Ref. 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12, 587/12, 7 October 2014. Available at www.cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2014/3-201410-740-11etc_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED*.

³⁸⁹ Cyprus, Law on Pensions (Ο περί Συντάξεως Νόμος) N. 97(I)/1997 as amended, Article 12. Available at www.cyllaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

A number of Supreme Court decisions since 2007³⁹⁰ have found that the different retirement age for employees of different ages does not amount to age discrimination.

In the public sector, retirement ages are mandatory, and employees may not work past their retirement limit.³⁹¹ Late retirement is prohibited by law for public sector employees, semi-Government organisation employees and employees of public education institutions.

d) Retirement ages imposed by employers

In Cyprus, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining.

There is no statutory retirement age in Cyprus for employees in the private sector; employer and employee are free to agree on a retirement age of their choice. Up until now, the majority of private sector workers retired during their 65th year, which is the pensionable age prescribed by the Law on Social Insurance.³⁹²

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do not apply to all workers irrespective of age, if they remain in employment after attaining pensionable age. The Law on Termination of Employment provides that the right to protection from unfair dismissal is lost upon reaching pensionable age.³⁹³ This effectively means that the employer is free to dismiss an employee or force him or her to retire at any time after he or she has reached pensionable age without having to pay any compensation. In 2007 the Equality Body found the said provision discriminatory and referred it to the Attorney General for revision. However, no measures were taken, and the said provision continues to remain in force. Under the current conditions of deep recession and rising youth unemployment, it is unlikely that this provision will be revised now.

f) Compliance of national law with CJEU case law

In Cyprus, national legislation is not in line with the CJEU case law on age regarding mandatory retirement.

Regarding the ruling in *Wolf*.³⁹⁴

National legislation does not preclude legislative or other instruments that set a maximum limit for recruitment. Article 8(1) of Law 58(I)/2004 (transposing Directive 2000/78) sets out the general exception covered by Article 6(1) of the Directive: that differential treatment is permissible where the aim is legitimate, and the means appropriate and necessary. Article 8(2) of Law 58(I)/2004 sets out the examples in the Directive as to what may constitute permissible differential treatment. Although the list is not intended to be exhaustive, the focus is clearly on labour market policy and not on the need to have full physical capacity to perform the work. Besides, the Cypriot legislator chose to specify in

³⁹⁰ Cyprus, Supreme Court, *Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus* (Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας) (joined cases) Case Nos. 1795/2006 and 1705/2006, 1 June 2007. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=1795%20w/1%202006.

³⁹¹ Cyprus, Law on Pensions (Ο περί συντάξεως νόμος) N. 97(I)/1997, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

³⁹² Cyprus, Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος) N. 59(I)/2010, Article 2(1). Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁹³ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Article 4. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

³⁹⁴ CJEU, Judgment of 12 January 2010, *Colin Wolf v. Stadt Frankfurt am Main*, C-229/08. Available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-229/08>.

the law only the armed forces as the profession where the exception applies. Thus, although it is possible to justify an age limit for recruitment when the goals relate to physical capacity and readiness rather than labour market policies, the appropriateness and necessity of the measure do not follow automatically, as in the case of labour market policies.

In Cyprus, both the police force and the fire department have a maximum entry age of 28, unless the applicant is a university degree holder in which case the age limit is raised to 40. These particular provisions have not been tested by the Equality Body or the courts. However, the Equality Body has rejected the age limit of 40 as a criterion for promotion in the police force, on the grounds that the means to achieve the legitimate aim of physical capacity and readiness of the police force were neither appropriate nor necessary.³⁹⁵ In the past, the Equality Body has also repeatedly rejected the stereotype that younger persons are by definition healthier, fit and capable. Therefore, if these age limits are subjected to the Equality Body's scrutiny, it is possible that they may be deemed incapable of withstanding the test of appropriateness and necessity.

Regarding the ruling in *Andersen*:³⁹⁶

There are no provisions in Cypriot law for severance pay for employees who have worked for the same employer for many years. Employees who are unfairly dismissed are entitled to compensation; in the private sector, this right is lost when the employee reaches retirement age (65 years). Employees who are lawfully dismissed are not entitled to any pay; this is up to the discretion of the employer and in practice is used only for highly placed managerial staff (known as 'the golden handshake'). In the public sector, employees may be dismissed either for misconduct (in which case they receive no severance pay) or because of redundancy (in which case the employee is entitled to redundancy pay from the Government, calculated by the number of years in service).

So although it is hard to envisage a situation like that of *Andersen* arising in Cyprus, it may be presumed that, at least in the private sector, the right to severance pay may be lost upon reaching retirement age, in the same way that the right to compensation for unfair dismissal is lost. The Equality Body has already found this provision to be contrary to the directive and has asked for its revision, but the provision remains in force more than a decade after this recommendation.

Regarding the ruling in *Mangold*:³⁹⁷

There are no national laws or practices for the conclusion of fixed-term contracts once an employee reaches a certain age.

Regarding the ruling in *Kücüdevici*:

There are no national laws or practices for ignoring the period of employment completed by an employee before reaching the age of 25 when calculating the notice period for dismissal.

Regarding the ruling in *Palacios de la Villa*:³⁹⁸

³⁹⁵ Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 6 April 2012.

³⁹⁶ CJEU, Judgment of 12 October 2010, *Ingeniørforeningen i Danmark, acting on behalf of Ole Andersen v. Region Syddanmark*, C-499/08. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78727&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=147363>.

³⁹⁷ CJEU, Judgment of 22 November 2005, *Werner Mangold v. Rüdiger Helm*, C-144/04. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=56134&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=147683>.

³⁹⁸ CJEU, Judgment of 16 October 2007, *Félix Palacios de la Villa v. Cortefiel Servicios SA*, C-411/05. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70359&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=148165>.

A compulsory retirement age is common in Cyprus, both in collective agreements as well as in legislation governing the retirement age in the public service and the wider public service. These measures do not explicitly state what the legitimate aim is that is being served by the retirement age. In those cases where the court was called upon to adjudicate on a compulsory retirement age, the ruling was always that retirement age in general fell under the exceptions foreseen in the directive and was not subject to the court's scrutiny.

There is no law in Cyprus governing collective agreements; these are based on the principle of free bargaining.

Regarding the ruling in *The Incorporated Trustees of the National Council on Ageing*:³⁹⁹

As stated above, it is common for measures to provide for compulsory retirement without specifying the aim that is served. Clearly, in many of these cases, one may read that the (admittedly legitimate) aim of meeting social policy objectives is present, which can justify derogation from the non-discrimination principle. In other cases, in addition to the social policy objectives, the aim may be the physical fitness of the service, which is not mentioned in the non-exhaustive list provided in the directive. However, the ruling in this case juxtaposed the social policy objective, which is deemed legitimate, with the personal aims of employers, which is not legitimate. In this context, the physical fitness of a service (such as the police force or the fire service) will fall in the former category, i.e. that of legitimate aim.

Regarding the ruling in *Rosenbladt*:⁴⁰⁰

Collective agreements and legislative instruments can provide for a compulsory retirement age that may not be expressly, directly or necessarily attributed to labour market policies; instead they may relate more to the physical capacity of the employee to carry out the tasks assigned to him or her. This ruling seems inclined to accept only the former as a legitimate aim, which would render the practice in Cyprus incompatible with this decision.

On 16 February 2013, the Ministerial Cabinet approved a bill granting the right to the Minister of Labour to extend sectoral collective agreements and render them obligatory for the whole sector. The right to extend a collective agreement may be requested by the workers' unions or the employers' unions or from the Ministry of Labour, and the request will be examined by the Tripartite Committee. The bill endorses the claim of the workers' unions, who believe that this regulation will help eliminate competition between workers and enterprises and combat the phenomenon of replacing workers covered by collective agreements with vulnerable workers (mainly from other EU countries), who are forced by their employers to accept inferior working conditions. There is, however, no provision in the bill as regards protection from discrimination. The Ministerial Cabinet approved the bill just days before the presidential election, which replaced the previous left-wing Government with a new right-wing Government. The new cabinet members originate mainly from employers' unions. A few weeks after the adoption of this bill, the collapse of the banking system and the haircut on bank deposits brought about the downfall of the economy; therefore, although this bill became law it was never implemented in practice.

³⁹⁹ CJEU, Judgment of 5 March 2009, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, C-388/07. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=77505&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148887>.

⁴⁰⁰ CJEU, Judgment of 12 October 2010, *Gisela Rosenbladt v. Oellerking Gebäudereinigungsges. mbH*, C-45/09. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78726&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149095>.

Regarding the ruling in *Georgiev*:⁴⁰¹

There are no measures in Cyprus that allow or provide for fixed-term contracts to be concluded after a certain age. Such a measure has perhaps not been considered as necessary because employers in the private sector are free to dismiss employees who reach retirement age without having to compensate them. Despite the Equality Body's finding that this measure did not comply with the directive, the relevant law has not been modified.

Regarding the ruling in *Fuchs*:⁴⁰²

In Cyprus, the retirement of public prosecutors is governed by the Pensions Law applicable to all civil servants, the provisions of which are in fact similar to the Law on the Civil Service that applies in the *Land* of Hessen in the *Fuchs* case. The new law, which came into force on 1 January 2013⁴⁰³ as part of the austerity package, provides for an extended compulsory retirement age for all civil servants. In Article 3(1), the law states that it aims at the containment of public expenditure. Although under other circumstances this would be assessed as beneficial only for the employer and not in the public interest, at times of deep recession as currently experienced in Cyprus, this is seen as a legitimate aim. No other aims or considerations are mentioned in the law and in fact the extension of the retirement age can hardly be seen as conducive to encouraging the entry of young people into the labour market.

Regarding the ruling in *Prigge*:⁴⁰⁴

Labour traditions in Cyprus regard an earlier retirement age as an advantage, hence the negative reaction from the trade unions when the Government proposed extending the retirement age in order to contain public spending. Having said that, it is possible in Cyprus to opt out of a collective agreement and enter into a private agreement with the employer. However, it is up to the employer to accept this or not. In the event that there is a conflict between a national law and a collective agreement, the former prevails. The law fixing the retirement ages of public servants is stated to apply, notwithstanding any provision to the contrary anywhere else.⁴⁰⁵

Regarding the ruling in C-262/14 (*SCMD*):⁴⁰⁶

⁴⁰¹ CJEU, Judgment of 18 November 2010, *Vasil Ivanov Georgiev v. Tehnicheski universitet - Sofia, filial Plovdiv*, (joined cases) C-250/09 and C-268/09. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=83844&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149384>.

⁴⁰² CJEU, Judgment of 21 July 2011, *Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10) v. Land Hessen*. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=107924&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149632>.

⁴⁰³ Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) (*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*) Ν. 216(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html.

⁴⁰⁴ CJEU, Judgment of 13 September 2011, *Reinhard Prigge and Others v. Deutsche Lufthansa AG*, C-447/09. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=109381&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=149820>.

⁴⁰⁵ Cyprus, Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) (*Ο Περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμος*) Ν. 216(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_216/full.html.

⁴⁰⁶ CJEU, Judgment of 21 May 2015, *Sindicatul Cadrelor Militare Disponibilizate în rezervă și în retragere (SCMD) v. Ministerul Finanțelor Publice*, C-262/14, SCMD (2016). Available at [http://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-262%252F14&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2077531#](http://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-262%252F14&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2077531#).

Although public servants are not permitted to continue working in the public service once they reach pensionable age, it is lawful for them to be appointed to another paid public post without losing their state pension. In 2011 a law was adopted reducing the state pension of public sector employees who take up another paid public position after retirement.⁴⁰⁷ In 2014 the court declared this law unconstitutional and restored the state pensions for retired public servants who take up paid public posts.⁴⁰⁸

*Regarding the ruling in Abercrombie & Fitch Italia:*⁴⁰⁹

There is no special legislation governing collective agreements. However, general labour law principles, including equality, apply. There is no legislative provision entitling employers to treat employees under the age of 25 differently. Furthermore, there is no officially declared policy of a specific labour market goal that is served by treating younger workers in a less preferential manner. In the absence of a declared and specific policy, employers may find it hard to prove that treating a category of employees in a less preferential manner serves a legitimate labour market goal. In Cyprus, there is a tripartite system of consensus amongst social partners that is supervised and mediated by the Ministry of Labour, whereby all labour policies are discussed and agreed upon. No such issue has been tabled for discussion, nor has any incident been examined at judicial or extrajudicial level. A provision in labour legislation entitling employers to dismiss without compensation employees who reach pensionable age⁴¹⁰ was challenged at the level of the Equality Body in 2007 as a potential violation of Directive 2000/78. At the time, the Equality Body found this provision discriminatory and therefore unlawful, pointing to the increased risk of poverty facing persons aged 65+. The Equality Body asked the Attorney General to remedy the situation by preparing amending legislation⁴¹¹ but the recommendation was never taken up and the relevant legislative provision remains intact. The determination of such a case in Cyprus is impossible to predict. As a general rule, there is ample evidence that courts are increasingly willing to accept the economic crisis as a legitimate and reasonable justification to trigger the exception in Article 6(1) of Directive 2000/78, but with youth unemployment rising, there is no guarantee that a measure adversely affecting youth unemployment will be endorsed as reasonable and legitimate.

*Regarding the ruling in Hubertus John:*⁴¹²

In the public sector, a person who has reached retirement age cannot continue to work (even though they can be appointed to a paid public post). In the private sector, there is no restriction in continuing to work after reaching pensionable age, the only problem being that the employee loses the right to compensation in the event of dismissal. Therefore, a fixed-term contract may be converted to a contract of indefinite duration, the duration of which lasts beyond the date of the employee reaching pensionable age, albeit the right to compensation for dismissal is lost.

⁴⁰⁷ Cyprus, Law on Pensions of State Officials (General Principles) (Ο περί συντάξεων κρατικών αξιωματούχων (Γενικές Αρχές) Νόμος) N. 88(I)/2011. Available at http://www.cylaw.org/nomoi/indexes/2011_1_88.html.

⁴⁰⁸ Cyprus, Supreme Court, Maria Koutselini-Ioannidou et al v. The Republic of Cyprus, Ref. 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12, 587/12, 7 October 2014. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2014/3-201410-740-11etc_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED%.

⁴⁰⁹ CJEU, Judgment of 19 July 2017, *Abercrombie & Fitch Italia Srl v. Antonino Bordonaro*, C-143/16.

⁴¹⁰ Cyprus, Law on Termination of Employment N. 24/1967, Article 4. Available at www.cylaw.org/nomoi/enop/ind/1967_1_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html.

⁴¹¹ Equality Authority, Report on a complaint regarding age discrimination in the provisions of Article 4 of the Law on Termination of Employment, Ref. AKI/13/2005, dated 11 April 2007.

⁴¹² CJEU, Judgment of 28 February 2018, *Hubertus John v. Freie Hansestadt Bremen*, C-46/17.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Cyprus, national law does not permit or prohibit seniority or age to be taken into account in selecting workers for redundancy. The Law on Termination of Employment, which governs redundancies, does not provide for seniority or age to be taken into account in selecting workers for redundancy. However, there is extensive case law evidencing that the principle of 'first in, last out' is accepted by the courts and is used as a criterion for determining whether the right worker or workers have been selected for redundancy. In a significant number of cases, there is a collective agreement in force explicitly providing for this principle, which, however, must be used in conjunction with the ability and efficiency of a particular worker. In other words, the provision in the collective agreement states that the person to be made redundant must be the last one appointed, having taken into account significant differences in the ability and efficiency of the work of the employees who are about to be dismissed.⁴¹³ All other things being equal, however, the court will apply the principle of 'first in, last out',⁴¹⁴ although in other instances the court has ruled that seniority alone cannot prevent the selection of a worker for redundancy.⁴¹⁵

b) Age taken into account for redundancy compensation

In Cyprus, national law provides for compensation for redundancy. This is not directly affected by the age of the worker.

The general rule of law is that the following criteria are used to determine the amount of compensation payable in the case of redundancy: the number of years of service with the same employer;⁴¹⁶ whether the period of employment started before 1 January 1964, as no compensation is payable for work before that date;⁴¹⁷ whether employment was continuous;⁴¹⁸ and the amount of weekly salary earned.⁴¹⁹ It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Law on Termination of Employment provides that redundancy does not generate the right to compensation if the worker so dismissed was of retirement age on the date of termination of their employment. Moreover, in accordance with Article 19(2) of the same law, when a worker's employment is terminated within 12 months prior to their retirement age, the amount of compensation payable is reduced by one-twelfth for every completed month during this 12-month period.⁴²⁰

A number of cases have been decided by the courts where age was used as a criterion in order to assess the worker's application for compensation from the redundancy fund when there was an offer by the employer of an alternative position.

⁴¹³ Cyprus, Labour Court, *Andreas Hadjidemetriou v. 1. Publishing company 'To Vima' Ltd, 2. Redundancy Fund* (Ανδρέας Χατζηδημητρίου v. 1. Εκδοτικής Εταιρείας 'Το Βήμα', 2. Ταμείο Πλεονάζοντος Προσωπικού), Case No. 107/85.

⁴¹⁴ Cyprus, Labour Court, *Chrysostomos Stavrou v. Redundancy Fund* (Χρυσόστομος Σταύρου v. Ταμείο Πλεονάζοντος Προσωπικού), Case No. 328/92.

⁴¹⁵ *Charalambous v. Famagusta General Agency Ltd* (Χαραλάμπους v. Famagusta General Agency Ltd) Case No. 490/95, 31 July 1998.

⁴¹⁶ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Table IV, Section 1. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴¹⁷ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Table IV, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴¹⁸ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Table IV, Article 3. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴¹⁹ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Table IV, Article 4. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

⁴²⁰ Cyprus, Law on Termination of Employment (Ο περί τερματισμού της απασχόλησης νόμος) N. 24/1967, Article 19. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

In the case of a 58-year-old stockkeeper who was made redundant but was offered an alternative position as a door-to-door salesman by the same employer, the courts held that, due to his advanced age, he was right to reject that offer and was therefore entitled to compensation.⁴²¹ Similarly, a middle-aged woman who was offered an alternative position by her employer at another location 30 minutes' walk from her place of residence, was held by the courts to be reasonable in rejecting it and was therefore entitled to compensation.⁴²² By contrast, a young woman who rejected her employer's offer of an alternative position that involved a 30-minute walk from her place of residence to the workplace was held to have acted unreasonably because of her young age and good health, and her application for redundancy compensation was rejected.⁴²³

The same principle is applied when the employer introduces new or more advanced technology and requires the employee to accept training and/or adapt to the new methods: if the employee is young, their refusal to adapt to the new technology is held to be unreasonable and therefore redundancy compensation is not paid; if, however, the employee is old, the court will afford more understanding to their inability or refusal to adapt, and redundancy compensation is paid.⁴²⁴ It is presumed that the same rule would be applied by the courts in the case of employees with disabilities, although no such case has been brought before the courts so far, bearing in mind that, in the case of employees with disabilities, the employer is obliged to provide 'reasonable accommodation' to enable the employee to adapt to the new technology.

No cases have yet been presented before the courts seeking to reverse the above rules on the basis of the anti-discrimination laws transposing the EU *acquis* and it is not clear whether or not these rules would withstand such scrutiny.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Cyprus, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Law 58(I)/2004, which roughly transposes the Employment Equality Directive, transposed the provision in Article 2(5) of the Directive verbatim.⁴²⁵ The same provision is also to be found in the disability law.⁴²⁶ There are no other provisions in Cypriot legislation relying on the exception in Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Cyprus, other exceptions to the prohibition of discrimination (on any ground) provided in national law concern the positive action provisions, which are discussed below. In addition, a number of laws and regulations provide for the differential treatment of Turkish Cypriots in various fields.

⁴²¹ Cyprus, Labour Court, *Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund* (Ανδρέας Χαραλάμπους v. 1. ΖΑΚΟ Λτδ και 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 295/96.

⁴²² Cyprus, Labour Court, *Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund* (Κυριακούλα Δημητρίου v. 1. Σώτου Λοιζίδη και 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No 634/96.

⁴²³ Cyprus, Labour Court, *Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund* (Φρόσια Χατζηγεωργίου v. 1. Lizonic Fashion Center, 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 1164/97.

⁴²⁴ Cyprus, Labour Court, *Fotis Mikellides v. Redundancy Fund* (Φώτης Μικελλίδης v. Ταμείου Πλεονάζοντος Προσωπικού), Case No 577/90.

⁴²⁵ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 5(3)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴²⁶ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 3A(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

Positive action provisions exist in all three laws transposing the two anti-discrimination directives.⁴²⁷ The provisions render differential treatment lawful under conditions but fall short of creating a mandatory duty to adopt positive action measures.

Law N.59(I)/2004, which more or less transposes the Racial Equality Directive, renders non-discriminatory and therefore lawful any differential treatment or the introduction or maintaining of special measures, which, although indirectly appearing to be discriminatory, aim at preventing or compensating for disadvantages linked to ethnic or racial origin.⁴²⁸

Along the same lines, Law 58(I)/2004, which more or less transposes the Employment Equality Directive, renders non-discriminatory and therefore lawful any preferential treatment in employment, which, although prima facie discriminatory, aims at preventing or compensating for disadvantages linked to racial or ethnic origin, religion or belief, age or sexual orientation.⁴²⁹

The disability law renders non-discriminatory and therefore lawful any preferential treatment for an occupation, which, although prima facie discriminatory, aims at preventing or compensating for disadvantages linked to disability. The same law provides that the principle of non-discrimination does not prevent the maintaining or introduction of regulations for the protection of health and safety at work or any measures aimed at promoting the labour market integration of persons with disability.⁴³⁰

On 26 September 2002, the Supreme Court of Cyprus decided that all legal provisions granting priority to employment in the public sector to persons for any reason (including a quota) are unconstitutional for violating the equality principle in Article 28 of the Constitution.⁴³¹ The Court's reasoning was based on an interpretation of Article 28 of the Constitution that any type of priority discriminates against other candidates eligible for appointment in the public service. Subsequently, the Supreme Court again ruled that Law 87(I)/2004 (granting priority to war-disabled persons) was also unconstitutional, on the grounds that it introduced a class of beneficiaries (e.g. war-related disabled persons) that is favoured over others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution.⁴³²

⁴²⁷ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴²⁸ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 6. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴²⁹ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴³⁰ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Articles 3B(1) and 3B(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁴³¹ Cyprus, Supreme Court, *Republic of Cyprus v. Eleni Constantinou*, (2002) 3 A.A.Δ. 534, 26 September 2002. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2002/rep/2002_3_0534.htm&qstring=26%20and%20%F3%E5%F0%F4%E5%EC%E2%F1%2A%20and%202002.

⁴³² Cyprus, Supreme Court, *Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service (Χαράλαμπος Κιττής κ.α. v. Επιτροπής Δημόσιας Υπηρεσίας)*, No. 56/06, 8 December 2006. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2006/3-200612-56-06artemides.htm&qstring=56 w/1 06.

When the Employment Equality Directive was transposed, the Government and the Parliament were initially reluctant to introduce quotas in employment for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the CJEU decision in the *Kalanke* case.⁴³³ In response to these concerns, the Constitution was amended in 2006 to give priority to EU regulations and directives over all domestic legislation (including the Constitution). However, several subsequent court decisions took little notice of this development and continued to apply the Constitution as if it were the supreme law of the country. The culture of positive action to offer opportunities to historically disadvantaged groups had hardly begun to develop, when Cyprus sank into an economic crisis and a freeze on recruitment in the public service was imposed as a measure to contain public expenditure.

In 2009 an Equality Body decision once again raised the issue of the compatibility of positive action measures with the equality principle. The decision found that a law introducing quotas in employment for blind telephonists discriminates against persons with other disabilities and asked for its revision. In February 2011 a new law came into force providing for an annual grant of EUR 3 675.48 to every family with a blind child.⁴³⁴ This measure has not as yet been contested as incompatible with the equality principle, partly because different grants apply to different types of disability, and partly, and more importantly, because grants, especially grants as small as these, are not seen as paramount as quotas in employment, a key issue for the disability movement.

b) Quotas in employment for people with disabilities

- In Cyprus, national law provides for a quota for people with disabilities in employment. A law that came into force in 2009 introduced quotas in the employment of persons with disabilities in the wider public sector: 10 % of the number of vacancies to be filled at any given time must be filled by persons with disabilities, provided that this does not exceed 7 % of the aggregate of employees per department. The quota applies to first appointment positions (i.e. excluding promotions) at the introductory scale (i.e. low in hierarchy) and is specifically drafted to exclude areas where special provisions in favour of persons with disabilities are already in place (more specifically, the quota in favour of blind telephonists – see below) and sections of the public service where ‘all physical, mental or intellectual restrictions must necessarily be absent’ (the army, the police, the fire department and the prisons). Non-compliance with this quota is a criminal offence, punishable by a fine of up to EUR 5 000 and/or imprisonment of up to two years.⁴³⁵

Before it had a chance of being implemented, the austerity measures adopted in response to the economic crisis led to a freeze on all new recruitment in the public sector.⁴³⁶ The disability movement, however, has reported that disabled job applicants who applied for jobs invoking the provisions of this law were met with reluctance by public officials, who openly told them that the law is unconstitutional and will not remain in force for long.⁴³⁷ In spite of these predictions, the quotas law was not declared unconstitutional, and in 2015 the court rejected an application from two non-disabled claimants who had sought to challenge the decision to appoint two persons with disability as teachers under the quotas

⁴³³ CJEU, Judgment of 17 October 1995, *Kalanke v. Freie Hansestadt Bremen*, C-450/93.

⁴³⁴ Cyprus, Law on Special Grant to Blind Persons of 2011 (Ο περί παροχής ειδικής χορηγίας σε τυφλούς νόμος του 2011), 25 February 2011. Available at http://www.cylaw.org/nomoi/arith/2011_1_011.pdf.

⁴³⁵ Cyprus, Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος) No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

⁴³⁶ Law Providing for the Prohibition of Fulfilment of Vacant Posts in the Public and in the Wider Public Sector and in Public Law Legal Entities (Ο Περί της Απαγόρευσης Πλήρωσης Κενών Θέσεων στο Δημόσιο και στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος) N. 21(I)/2013, 18 April 2013. Available at http://www.cylaw.org/nomoi/enop/non-ind/2013_1_21/full.html.

⁴³⁷ Consultation with the President of KYSOA, the Cypriot confederation of disability organisations.

law. The court rejected the claimants' argument that the quotas were unconstitutional or that they violated the equality principle and disagreed with the claimants' submission that previous Supreme Court judgments had established that laws providing for quotas were unconstitutional. The court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable differentiations, which are allowed as a result of the essential nature of the circumstances. In such cases, the court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but rather to a practical implementation of, the equality principle; in this case, the priority given to persons with disabilities was seen as falling within the boundaries of reasonable differentiation precisely for implementing equality.⁴³⁸ This decision may be seen as landmark; following this precedent, the quotas in favour of persons with disabilities were not challenged again.

- Article 3 of the Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (L. 17/1988) provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators⁴³⁹ are given priority in appointments. The same law also provides that, in order to appoint a non-blind person to the post of telephone operator, the Pan Cyprian Organisation for the Blind must give its prior written confirmation that none of the candidates for the specific post are blind telephone operators. Article 3 of the same law also provides that other candidates with disability will be preferred if none of the candidates for the said position are blind telephone operators. No sanction is foreseen in the law for non-compliance with its provisions. This quota system has worked fairly well and has contributed significantly to the vocational rehabilitation and labour integration of blind persons, as the job of telephone operator continues to be the job of the majority of blind persons in Cyprus. This law, which has resulted in the employment of more than 55 blind persons since its enactment in 1988, applies to telephone operators who have completed training at the School for Telephone Operators of the School of the Blind. The Pan Cyprian Organisation of the Blind considers it to be a significant positive measure, despite the fact that it refers to a relatively low status type of work that may fall short of utilising the affected persons' full potential. Recent technological developments in telephone services may present a risk to this institution and could mean that training may have to be channelled in other directions.⁴⁴⁰

No figures are available to indicate levels of compliance with the quotas; only absolute figures for the number of persons with disability currently in employment as a result of the quota are available: 155 persons in total since the quota was first implemented. The figure includes 30 persons added in 2018.⁴⁴¹

In 2015 the court rejected an application from a group of non-disabled teachers who were awaiting appointment in public schools. They claimed that the priority given to the disabled candidates violated the principle of equality. The Court rejected this claim, clarifying that the equality principle safeguards against arbitrary differentiations but in this case the

⁴³⁸ Cyprus, Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos. 1519/2010 and 1520/10, 3 September 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

⁴³⁹ Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. The Pancyprrian Organisation for the Blind, an NGO, also offers further training, free of charge.

⁴⁴⁰ Florentzos, M. (2005), *The Legal and Social Position of Persons with Disability in the new Legal order of the Republic of Cyprus as a Member State of the European Union*, Nicosia, p.151.

⁴⁴¹ Cyprus, Ministry of Labour, Welfare and Social Insurance, Department of Social Integration of Persons with Disabilities, *Annual Activity Report 2018*. Available at [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/32BF365375E1D346C2257A7C002D2F7D/\\$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%A4%CE%9A%CE%95%CE%91%CE%91%202018.doc](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/32BF365375E1D346C2257A7C002D2F7D/$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%A4%CE%9A%CE%95%CE%91%CE%91%202018.doc).

priority given to persons with disabilities falls within the boundaries of reasonable differentiation precisely for implementing equality.⁴⁴²

⁴⁴² Cyprus, Supreme Court, Review Jurisdiction, *Costas Tsikas et al v. The Republic of Cyprus through the Educational Service Committee*, Case Nos. 1519/2010 and 1520/10, 3 September 2015.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Cyprus, the following three procedures exist for enforcing the principle of equal treatment:

The Equality Body: Individuals and organisations may submit complaints via the 'extrajudicial' process before the Equality Body. The Equality Body has a duty to investigate these complaints and issue decisions or recommendations.⁴⁴³ Complaints may be submitted by natural or legal persons alleging discrimination on any of the prohibited grounds (EU directives, Protocol No. 12 to the ECHR, the Cypriot Constitution) in any of the fields within the scope of the laws. The Equality Body is empowered to issue binding decisions and/or make recommendations and impose small fines. The Equality Body also has a duty to monitor the enforcement of the orders it issues,⁴⁴⁴ which are published in the Official Gazette.⁴⁴⁵ The Equality Body is further empowered to impose fines for failure to comply with its recommendations,⁴⁴⁶ which are, however, so low that they can hardly be seen as a deterrent. For this reason, it nearly always chooses to mediate or issue recommendations and to date has never imposed a fine, apart from once in a gender discrimination case concerning a temporary worker who was dismissed from the public service whilst pregnant.⁴⁴⁷ After more than a decade of not imposing sanctions, one may presume that the Equality Body has a policy of avoiding sanctions, possibly as a result of the fact that the sanctions foreseen in the law are so weak that they cannot serve as a deterrent.

The decisions of the Equality Body may only be challenged in court by way of judicial review of administrative action at the Administrative Court under Article 146 of the Cypriot Constitution; however, this procedure is open to those with a 'legitimate interest' and it is doubtful whether organisations representing victims meet this criterion.⁴⁴⁸ If, after

⁴⁴³ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9G. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁴⁴ 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, Article 24(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁴⁵ 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, Article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁴⁶ 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, Article 26(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html. The Equality Body may impose a fine up to EUR 600 (CYP 350) for failure to comply with recommendations and/or up to about EUR 85 (CYP 50) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

⁴⁴⁷ Cyprus, Equality Authority, Report regrading a complaint for the dismissal of a pregnant temporary employee in the public sector (*Εκθεση της Αρχής Ισότητας αναφορικά με την καταγγελία για την απόλυση εγγύου έκτατης υπαλλήλου από τη δημόσια υπηρεσία*), Ref.A.K.I.4/07, 17 August 2007. Reported in Equality Authority, *Annual Report 2007*, p. 57. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

⁴⁴⁸ 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, Article 23. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

investigation, the Equality Body finds that a certain law or regulation contravenes the anti-discrimination laws, the Equality Body will refer the discriminatory law or regulation to the Attorney General to draft an amendment. This procedure does not always bear fruit. The discriminatory law remains in force and continues to be applied unless and until the Attorney General proceeds with the preparation of a new draft to be eventually tabled in Parliament for adoption, a procedure that raises issues of compliance with the Directives (Article 16 of the Employment Equality Directive and Article 14 of the Racial Equality Directive). Courts examining discrimination complaints resulting from the application of a legal provision will not take the initiative to disapply the discriminatory law as that would, in their view, amount to an infringement of the doctrine of separation of powers.⁴⁴⁹

Whilst the Equality Body's powers and mandate are exactly the same for claims against the public and the private sector, it receives very few complaints against the private sector. This is attributed by the officers of the Equality Body to the fact that the public is largely unaware of the existence and the powers of the Equality Body, often confusing it with the institution of the Ombudsman (whose competences are restricted to the public sector), which has so far overshadowed the Equality Body.

There are no time bars or other restrictions in applying to the Equality Body, which is a rather flexible, informal and user-friendly procedure (although a time bar of 12 months applies for submitting complaints to the Ombudsman).⁴⁵⁰

The judicial process:

- Labour law and issues relating to employment matters are dealt with by the Labour Tribunal.⁴⁵¹ The Labour Tribunal consists of three persons: a judge, who chairs the hearing; and two wing members, who come from the side of the trade unions and the employers' organisations. The procedure in the tribunal is similar to a District Court, but less formal. However, the Labour Tribunal decision of 2008 in the case of *Hadjiavraam*⁴⁵² rejected a claim for discrimination in the hiring procedure and found that it has no jurisdiction to try cases where no employment relationship exists. The legal vacuum which resulted from this decision was remedied in 2009 by an amendment of the Law on Equal Treatment and Employment and Occupation (N.58(I)/2004), which transposes the Employment Equality Directive, minus the disability component of the Directive, to the effect that all disputes arising under this law must be deemed labour disputes. The disability law was not amended in the same manner. As a result, the legal gap created by the *Hadjiavraam* case remains in the case of disability: persons with disability have no competent court to apply to for employment-related claims where no employment relationship exists. Upon appeal, the Supreme Court reversed the finding of the trial court regarding jurisdiction but did not provide a specific finding as to the Labour Court's jurisdiction regarding the Law on Persons with Disabilities.⁴⁵³

⁴⁴⁹ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

⁴⁵⁰ Cyprus, Law Amending and Unifying the Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/91 as amended, Article 5(1)(a). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁵¹ For any of the employment directive grounds: Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 12(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html. For disability discrimination: Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 9B(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁴⁵² Cyprus, Labour Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Case No. 258/05, 30 July 2008.

⁴⁵³ Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

- Criminal law procedures are available in relation to discrimination-related offences under the Penal Code. These procedures must be instigated by the police, although there is also the possibility of conducting a private criminal law case in some cases.
- Article 8(1) of Law 59(I)/2004 (which more or less transposes the Racial Equality Directive) provides for resort to the District Court for violation of the law's provisions. This is a civil procedure for the adjudication of compensation claims.
- According to legal precedent,⁴⁵⁴ rights guaranteed by the Constitution, such as the anti-discrimination provision in Article 28, are actionable in court per se against, inter alia, individuals.
- All administrative acts can be challenged before the Administrative Court via Article 146 of the Constitution.⁴⁵⁵ Persons alleging discriminatory behaviour by public authorities may, under Article 146 of the Cypriot Constitution,⁴⁵⁶ apply to the Administrative Court to set aside the act complained of, provided they have a 'legitimate interest'. In practice, this is the procedure most often used by complainants, presumably because it is the one that most lawyers are familiar with. The person in whose favour a decision has been made under Article 146 may institute legal proceedings in a civil court for the recovery of damages or for the granting of another remedy and to recover just and equitable damages to be assessed by the court.

There are a number of restrictions in place as regards the judicial process: time bars; high fees and legal aid restrictions; security for costs; language barriers, including issues relating to accessibility for persons with disabilities (e.g. blind, deaf and other persons); the issue of *locus standi* or legitimate interest; the immunity enjoyed by certain individuals under the Constitution, such as elected and appointed state officers, diplomats and lawyers on issues relating to the conduct of cases they handle.; and various country-specific structural problems that in practice undermine the right of access, such as the doctrine of necessity.

The inspectorate process: The Minister of Labour is empowered to appoint inspectors for the purpose of the better implementation of the law in terms of addressing employment discrimination issues. However, this process is yet to be implemented, as the regulations regarding the powers vested in the chief inspector and inspectors are yet to be issued. It would seem reasonable to assume that the Department of Labour Relations in the Ministry of Labour, Welfare and Social Insurance (hereinafter Ministry of Labour) would be the department in charge of implementing this provision,⁴⁵⁷ given also that this department's mandate includes the setting up of enforcement mechanisms (inspectors, research and Evaluation Committee, etc.) only in relation to gender equality.⁴⁵⁸ Nevertheless, the department responsible for Law N. 57(I)/2004 and Law N. 58(I)/2004 is the Department of Labour in the Ministry of Labour. The minister has not yet utilised her powers to appoint inspectors.

⁴⁵⁴ Cyprus, Supreme Court, *Yiallourou v. Evgenios Nicolaou* (Τάκη Γιάλλουρου v. Ευγένιου Νικολάου) No. 9331, 8 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF%*%20and%20%E5%F5%E3%E5%ED%*%20and%20%ED%E9%EA%EF%EB%E1%EF%*.

⁴⁵⁵ Cyprus, Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004, Article 12(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 9B. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 8(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁵⁶ The right to recourse to Article 146 of the Cypriot Constitution is restricted to governmental administrative acts or omissions.

⁴⁵⁷ This derived from (a) the fact it is an employment matter, (b) a reading of the text of Law 58(I)/2004 provides that the minister in charge is the Minister of Labour and Social Insurance (see Article 2 of the law); moreover, the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same minister, who is also responsible for submitting a report on the implementation of the said law.

⁴⁵⁸ Letter from the Ministry of Labour to the national expert, dated 20 January 2006.

The Labour Inspection Unit in the Ministry of Labour, which deals with issues relating to health and safety at work, has no mandate to investigate discrimination.⁴⁵⁹ A special department within the Ministry of Labour, the Promotion of Equality at the Workplace, has a mandate to address gender discrimination. This body is nevertheless mandated also with the implementation of Law 58(I)/2004, which roughly transposes the Employment Equality Directive,⁴⁶⁰ and can receive and investigate discrimination complaints on all six grounds minus disability. However, no procedure or rules have been set as regards such investigation. Regulations that are almost identical to the regulations concerning gender discrimination are currently under preparation to get this unit up and running to examine discrimination complaints.⁴⁶¹ The department is, however, understaffed and under-resourced and, in light of the economic crisis, the budgetary situation is likely to deteriorate rather than improve. The inspectors currently appointed and working in the field (albeit now only for gender discrimination) are also tasked with other duties and do not have adequate time or resources to properly address the issue of gender discrimination, a problem likely to accentuate when their mandate is extended to cover four additional grounds.

No record is kept by any agency as to how many discrimination cases are brought before the courts. Up to 2015, the Equality Body used to publish data each year regarding the number of complaints received, the ground complained of, the outcome, etc. No data was published by the Equality Body for any year after that. The Ombudsman's office also publishes statistics about complaints received and investigated in its capacity as Ombudsman but it is not always clear from the data which of these complaints concern discrimination and which concern maladministration.

The judicial as well as the inspectorate process lead to binding decisions.

By law, the Equality Body has the power to issue legally binding decisions. However, in practice, the decisions issued are usually mere recommendations because, in the opinion of the Equality Body, better results can be achieved through mediation. Such recommendations, although not legally binding, tend to be complied with at least by individuals. In some cases, the Equality Body is vested with the power to impose fines but this power has not been used yet for cases under the anti-discrimination directives.

b) Barriers and other deterrents faced by litigants seeking redress

Procedures before the court are highly technical, complex, costly and lengthy. The inadequate provision of legal aid,⁴⁶² the low level of awareness of the anti-discrimination laws among legal and judicial circles and the length of time required for litigation to be completed render the use of the judicial process very rare and accessible only to a privileged group amongst the vulnerable, usually civil servants alleging age discrimination in promotion or retirement. Although, in theory, it is possible for litigants to litigate the case themselves and not engage the services of a lawyer, in practice there are very few persons able and willing to represent themselves in court, given the complexity of the procedure. Even for those who can afford a lawyer, one major obstacle is that there is

⁴⁵⁹ www.mlsi.gov.cy/mlsi/dli/dliup.nsf/index_en/index_en?OpenDocument.

⁴⁶⁰ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁶¹ Consultation with officer from the Department for the Promotion of Equality at the Workplace.

⁴⁶² The Law on Provision of Legal Aid (2002) N. 165(I)/2002 provides for legal aid only for criminal and civil law cases: subject to a couple of exceptions, administrative recourse is excluded, except in cases concerning deportations or challenges to asylum decisions. However, an ECtHR decision found that 'a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention' and that 'there is *a priori* no reason why it should not be made available in spheres other than criminal law' (*Marangos v. Cyprus*, Application No. 12846/05, 4 December 2008). The legal aid law extends to human rights violations covered by the Constitution and by a number of international conventions including the Convention for the Elimination of All Forms of Discrimination, but not to the laws transposing the two anti-discrimination directives.

hardly any specialisation in discrimination law in the market; it is a new field that is not offered by any university and does not attract many clients. In those few cases examined by the courts, counsel for the claimants hardly ever invoke the anti-discrimination laws, preferring to use the more familiar procedure of judicial review foreseen in the Constitution.

Migrants and the Roma community have little or no information regarding legal aid and no access to justice, hence they have never pursued a non-discrimination case in court.

Court buildings are not accessible to persons with disability (visual, kinetic, hearing impairment, etc.), nor are any court documents made available in Braille.

Different time bars apply for different types of actions.⁴⁶³ For civil offences and contracts, the time bar is six years. The court has discretion not to apply the statute of limitations of two years where the claim is for bodily injury or death and the claimant was late in filing an action as a result of a delay in securing the necessary data or due to their incapacity to handle the case. However, the time frame applicable to complainants who want to file a case in court is not suspended while their complaint is being examined by the Equality Body. This is to enable a complainant to first apply to the Equality Body and then, if necessary, to court to claim compensation without being time-barred. The time limits for lodging an appeal are strictly adhered to 42 days from the date of the judgment for an appeal from the final determination; 14 days for interlocutory injunctions; 75 days for an application to set aside an administrative decision under Article 146 of the Constitution.

The Laws on the Commissioner for Administration, which set out the Ombudsman's mandate, state that the complaint must be submitted to the Ombudsman's office within 12 months of the date on which the complainant received notice of the activities or omissions for which he or she is applying to the Ombudsman.⁴⁶⁴ There is no express provision on limitations as regards complaints to the Equality Body.

Whether the employment relationship has ended or not at the time of submitting the complaint is immaterial, although the Equality Body, in the process of investigating a complaint, will take into account the surrounding circumstances of each case and whether the complainant has acted reasonably in respect of the timing of lodging his or her complaint.⁴⁶⁵ The court, on the other hand, is less likely to take the liberal approach adopted by the Equality Body and more likely to adopt a conservative approach; this was the case in the decision of the Labour Tribunal in the case of *Hadjiavraam*, where the Labour Tribunal rejected the claim because the Labour Tribunal's mandate covers only employment relations and not access to employment, as was the case with *Hadjiavraam*.⁴⁶⁶ Upon appeal, the Supreme Court reversed the trial court's findings as regards jurisdiction by stating that the trial court failed to attribute due weight to the fact that the court is mentioned in Law 58(I)/2004 as the competent court to try the case. No mention was made of the fact that Law 58(I)/2004 ranks more highly than national laws because it transposes the *acquis*.⁴⁶⁷

⁴⁶³ Law on the Limitation Period for Actionable Rights (*Ο περί Παραγραφής Αγωγίμων Δικαιωμάτων Νόμος*) N. 66(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_66/full.html.

⁴⁶⁴ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁶⁵ Interview with Elisa Savvides, former Head of Equality Commission at the Ombudsman's office, dated 18 January 2006 and now Ombudsman and Head of the Equality Body.

⁴⁶⁶ Cyprus, Labour Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου), No. 258/05, 30 July 2008.

⁴⁶⁷ Cyprus, Appeal Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

c) Number of discrimination cases brought to justice

In Cyprus, no statistics are maintained on the number of discrimination-related cases brought to justice. There are no estimates of the number of discrimination cases brought to justice in any journals or textbooks.

d) Registration of discrimination cases by national courts

In Cyprus, discrimination cases are not registered as such by national courts.

Courts maintain registers of cases tried, which are partly accessible to the public through a rather bureaucratic and discretionary procedure that involves writing letters to the Courts Registrar. The court's archive is not organised by subject but only by reference number or names of the parties, which makes a search impossible unless one already has the coordinates of the judgment. In recent years, two electronic databases have been compiled, containing all court decisions, which can be searched using keywords. One of these databases is subscription-based (www.leginet.com) and the other is completely open (www.cylaw.org).

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging on behalf of victims of discrimination (representing them)

In Cyprus, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination under certain conditions. The law does not distinguish between standing to act on behalf of and standing to act in support of victims.

Organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a claimant in the proceedings.⁴⁶⁸ Article 9D of the disability Law N. 127(I)/2007 as amended by Law 57(I)/2004, provides that workers' organisations or other organisations with a legitimate interest can, with their members' permission, exercise on their behalf the right to recourse to the courts or to the Equality Body. No other 'legitimate interest' is required under this law. For actions on the ground of race/ethnic origin, the law roughly transposing the Racial Equality Directive (59(I)/2004), Article 12, requires that organisations must have both the victim's permission and a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. There are no membership, permanency or other requirements in the law.

The above provisions contrast with the constitutional principle that only individuals who have been *personally* aggrieved have a legitimate interest in engaging in proceedings. This is of crucial significance, since the anti-discrimination laws themselves provide for the use of the judicial review procedure in order to pursue discrimination claims where the respondent is the state. Under Article 146(2) of the Constitution, judicial review applications 'may be made by a person whose existing legitimate interest, which he has either as a person, or by virtue of being a member of a community, is adversely and directly affected by such decision or omission'. Since 1999 the common law provisions have been codified into a single law that summarises the existing practice (Law 158(I)/99).

⁴⁶⁸ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9D. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 12. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

The interpretation of Article 146(2) of the Constitution by the court has restricted the right of recourse to natural and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives were not considered to have a legitimate interest and the term 'community' is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the Constitution. The original test used to determine whether an association had an 'existing legitimate interest' was hard to satisfy, as it required that the specific administrative act 'directly affects' the whole or part of the membership, whereas if it only affects one member or if there are conflicting interests between members then the association has no legitimate interest.⁴⁶⁹ In three different cases, the court rejected the applicants' claim for, inter alia, lack of legitimate interest: in two cases, the claim concerned an athletic award for disabled athletes, which was lower than that of other athletes, where the claimant had not become entitled to it at the time of filing the application;⁴⁷⁰ in the third case, the applicant was deemed to lack a legitimate interest since there was no positive legislative provision entitling her to claim the right of extending a regulation on the age of retirement so as to include her age group.⁴⁷¹ The term 'legitimate interest' is potentially wider and more far-reaching than direct/individual interest or 'victim status' as it can include persons who are not the victims themselves and have no direct or individual interest but have nevertheless been adversely affected by the act or omission complained of.

NGOs representing victims are not seen by the court as having sufficient 'legitimate interest' in order to pursue the judicial review procedure for annulling a discriminatory administrative decision. The paradox of this is that often NGO lawyers are the only ones with expertise in a specific field and yet they are excluded for the benefit of legal practitioners without their expertise. In 2017 a new law governing the operation of NGOs was adopted. However, it did not address the question as to whether NGOs can pursue cases in court on behalf of victims.⁴⁷²

In practice, associations have made little use of this opportunity so far, with only a handful of NGOs filing complaints with the Equality Body on behalf of victims whom they formally or informally represent. Up until April 2017, the Equality Body followed a flexible approach and did not demand to see permission from the victim or copies of articles of association in order to ensure that the law's requirements were being met before launching an investigation. This changed when the new Ombudsman took office in 2017. Now, only the victims themselves may apply to the Equality Body/Ombudsman.

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Cyprus, organisations are entitled to act in support of victims of discrimination.⁴⁷³

⁴⁶⁹ *The Police Association v. The Republic*. (1991) 3 A.A.D. 146, 14 February 1991. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/1991/rep/1991_3_0146.htm&qstring=%F3%F5%ED%E4%E5%F3%EC%2A%20and%20%E1%F3%F4%F5%ED%EF%EC%E9%2A.

⁴⁷⁰ Cyprus, Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation* (Αντώνης Αρέστη ν. Κυπριακού Οργανισμού Αθλητισμού), No. 1406/2008, 10 February 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201002-1406-2008.htm&qstring=1406%20w/1%202008; Cyprus, Supreme Court, *Andreas Potamitis et al v. Cyprus Sports Organisation* (Ανδρέας Ποταμίτης κ.α. ν. Κυπριακού Οργανισμού Αθλητισμού), No. 1377/2008, 30 January 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201201-1377-08.htm&qstring=1377%20w/1%202008.

⁴⁷¹ Cyprus, Supreme Court, *Eleni Kyriakidou v. Cyprus Broadcasting Corporation* (Ελένη Κυριακίδου ν. Ρ.Ι.Κ.), No. 18/2008, 3 December 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED%*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%EF%.

⁴⁷² Cyprus, Law Revising the Laws on Associations and Foundations and Annulling the Law on Registration of Clubs N. 104(I)/2017 (Νόμος που αναθεωρεί τους περί Σωματείων και Ιδρυμάτων Νόμους του 1972 και 1997 και καταργεί τον Περί εγγραφής λεσχών νόμο). Available at http://www.cylaw.org/nomoi/arith/2017_1_104.pdf.

⁴⁷³ Cyprus, Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 9D. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ισης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 12. Available

The anti-discrimination laws do not go into any lengths to describe the type of entities that may act in support of victims; they merely provide that organisations with a legitimate interest and with the victim's permission can represent a victim of discrimination in proceedings both before the Equality Body and before the court. It is presumed that such organisations must at the very least be registered, or else they lack legal personality and legal capacity. It is reasonable to assume that the same prerequisites apply as in the case of acting on behalf of victims, as the law makes no distinction between the two types of standing (on behalf of/in support of). Trade unions are not treated differently than other organisations in this context.

c) *Actio popularis*

In Cyprus, national law does not explicitly allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent.

In the absence of an express provision, it is unlikely that the courts will accept such an action, given that, in the past, they rejected claims because the law did not expressly provide for the right sought by the applicant.⁴⁷⁴

The Equality Body accepts and investigates complaints from associations (e.g. NGOs acting in support of asylum seekers, the representation of UNHCR in Cyprus, the confederation of disability organisations (KYSOA), anti-racist NGOs,) acting in the public interest on their own behalf without a specific victim to support (e.g. 'Roma pupils' in general or 'female migrant workers' in general, 'persons with disability', 'migrants', 'drivers aged over 70', respectively, etc.). This should, however, be attributed to the liberal approach followed by the Equality Body rather than an interpretation of the law allowing *actio popularis*.

d) *Class action*

In Cyprus, national law does not explicitly allow organisations to act in the interest of more than one individual victim (class action) for claims arising from the same event. The Courts of Justice Law, which governs the mandate of all courts in Cyprus, governs the powers of the court to adjudicate claims, award compensation or other remedy, issue orders and recognise rights, whether a remedy is being requested or not.⁴⁷⁵ There is no legal precedent for class actions and it is therefore impossible to conclude whether, in the absence of a special legislative provision, such would be accepted by the courts.

The laws transposing the anti-discrimination directives are silent on the possibility of organisations representing more than one complainant at the same time but do not expressly prohibit this either. Law No. 58(I)/2004, which roughly transposes the Employment Equality Directive, states in Article 14 that organisations may, with their members' permission, exercise the right to apply to the courts or to the Equality Body on behalf of their members. The plural is used when referring to 'members', but it is not clear whether this enables class actions to be taken by organisations in their members' names. The equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (Article 12). The Civil Procedure Rules make provision for joinder of actions but only when these refer to the same subject matter. In particular, the rules provide that all persons may be joined in a single action as claimants for remedies arising

at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 004 N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁷⁴ In *Eleni Kyriakidou v. Cyprus Broadcasting Corporation* (Supreme Court Case No. 18/2008, dated 3 December 2010), the Supreme Court found the applicant lacked legitimate interest because there was no express legislative provision giving her the right she was seeking to enforce through the courts. A summary of the case in English is available in the Legal Network's Cyprus Country Report for 2010.

⁴⁷⁵ Cyprus, Courts of Justice Law (*Ο περί Δικαστηρίων Νόμος*) N. 14/1960, Articles 31-41. Available at www.cylaw.org/nomoi/enop/non-ind/1960_1_14/index.html.

out of the same transaction or series of transactions, whether jointly, severally or in the alternative, unless such joinder would embarrass or delay the trial. In addition, where there are numerous persons having the same interest in one cause, one or more of such persons may be authorised by the court to sue or defend on behalf of or for the benefit of all persons so interested; organisations that are unincorporated or operating for profit are excluded.⁴⁷⁶ The Equality Body accepts and investigates complaints from associations acting in the interest of more than one victim.

Cyprus did not take any measures to transpose the European Commission's Recommendation on common principles for collective redress mechanisms and has no plans to do so. In 2016 a MP invited the Cypriot Government to inform the Parliament as to whether it intends to proceed with the enactment of legislation that would allow class actions, in line with the Commission Recommendation. In response, the Justice Minister stated that the Recommendation is not binding and that, in any case, he did not see how infringement of EU law could be addressed through class actions.⁴⁷⁷ The Minister of Finance responded that there is no prohibition in the law against group action and there is no need for special legislation governing class actions.⁴⁷⁸

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Cyprus, national law permits a shift of the burden of proof from the complainant to the respondent.⁴⁷⁹ However, the courts have never been faced with a claim for the reversal of the burden of proof as regards the five grounds of discrimination and there is no judicial precedent for how this would be applied.

In 2017 the Labour Disputes Court examined a case of sexual harassment of a woman employee at her workplace. In its reasoning, the Court referred to Article 19 of Directive 2006/54/EC and to the CJEU ruling in *Firma Feryn*, concluding that the applicant had failed to establish the primary facts that would raise the presumption of discrimination and reverse the burden of proof. It found that a tribunal should not conduct the trial in two stages and that instead it should consider all the facts and thereafter decide which conclusions could be drawn as regards the reversal of the burden of proof. It added that, irrespective of the provision on the reversal of the burden of proof, it is for the claimant to prove, in the 'established' manner, the economic or physical damage suffered and the causal link of such damage to the act of discrimination complained of. In the end, the Court awarded the applicant EUR 1 000 in compensation for moral damage for sexual harassment. It concluded that the discrimination suffered was 'less serious', as the act she was able to prove (exposure to pornographic material) was an isolated incident that only happened once. The Court found that the applicant had not proved she sustained any material damage and was therefore not entitled to special damages.⁴⁸⁰

The Equality Body does not reverse the burden of proof; however, since it has the power to carry out its own investigations to establish the facts of a case, the procedure may be

⁴⁷⁶ Cyprus, Civil Procedure Rules (*Θεσμοί Πολιτικής Δικονομίας*), Article 9. Available at www.cylaw.org/cpr.html.

⁴⁷⁷ Cyprus Parliament, Response dated 4 May 2016 of the Minister of Justice and Public Order Mr Ionas Nicolaou to question no. 23.06.010.05.408 of 23 March 2016 of Nicosia MP Mr Giorgos Perdakis. Available at www2.parliament.cy/parliamentgr/008_3q/23_06_010_05_408.htm.

⁴⁷⁸ Cyprus Parliament, Response dated 19 May 2016 of the Minister of Finance Mr Haris Georgiades to question no. 23.06.010.05.408 of 23 March 2016 of Nicosia MP Mr Giorgos Perdakis. Available at www2.parliament.cy/parliamentgr/008_3q/23_06_010_05_408.htm.

⁴⁷⁹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 7. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 11. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁸⁰ Cyprus, Limassol Labour Disputes Court, *Nektaria Michael v. Michali Michael et al*, Case No. 556/11, 20 December 2017. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseised/erg/2017/2420170852.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

said to fall within the exception of Article 8(5) of the Racial Equality Directive and therefore reversal of the burden of proof is not required.

Provisions for shifting the burden of proof to the employer once a prima facie case of dismissal is established can also be found in Cypriot labour law. The Law on Termination of Employment 1967, as amended, is phrased in such a way that it imposes the burden of proof on the employer, i.e. the employer has to prove that an employee had been dismissed for one of the reasons that permit summary dismissal. If the alleged unreasonableness, resulting in dismissal, is based on discrimination, the burden of proof is on the employer to prove, on the balance of probabilities, that he or she acted reasonably.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Cyprus, there are legal measures for protection against victimisation.

Identical provisions against victimisation are to be found in all three laws enacted to transpose the directives.⁴⁸¹ The victimisation provisions are not restricted to the employment field. The Law on Equal Treatment Irrespective of Racial or Ethnic Origin N.58(I)/2004, which includes protection against victimisation,⁴⁸² covers the fields of social protection, healthcare, education, social provision and access to goods and services. The protection against victimisation in the disability law is not restricted to the employment field,⁴⁸³ and by implication extends to the entire scope of this law. The said provisions prohibit any adverse treatment or consequence as a reaction to any person who files a complaint or is involved in a procedure aimed at implementing the principle of equal treatment. Therefore, any person involved in the procedure in a capacity other than as a complainant (e.g. as a witness or as a lawyer or as a person helping a victim to present a complaint) is also covered by the protection against victimisation.

The Laws on the Commissioner for Administration (Ombudsman) provide a more detailed description of the scope of the protection against victimisation: 'Anyone who refuses to employ, dismisses or threatens to dismiss from work, influences or threatens to influence, frightens or forces any other person or imposes any monetary or other punishment on any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Ombudsman; (ii) has supplied or presented or intends to supply or submit any information or documents to the Ombudsman; (iii) has testified or intends to testify before the Ombudsman, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP 300⁴⁸⁴ or to both penalties.'⁴⁸⁵

The Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in September 2010 defines victimisation as the unfavourable treatment of a person (who may or may not have a disability) owing to the fact that: he or she gave evidence or testified against an employer in judicial or other procedures for investigation of discrimination complaints by persons with disabilities; he or she alleged that an employer is in breach of the law against a person with a disability; he or she encouraged or supported a person with a disability to submit a complaint or bring a legal action for discrimination.

⁴⁸¹ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9E. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 11. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 10. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴⁸² Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 11. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁴⁸³ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9E. Available at www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html.

⁴⁸⁴ Approximate euro equivalent: EUR 520.

⁴⁸⁵ Law on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 11(f). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

It is not necessary for the victim to have actually assisted in the investigation of a complaint against the employer; it is sufficient to prove that the employer treated him or her unfairly believing or suspecting that he or she did so or was intending to do so.⁴⁸⁶ A decision of the Equality Body in 2015 extended the principle of discrimination against a primary carer by association with a person with a disability to include situations of victimisation.⁴⁸⁷

The legal framework against victimisation is not being utilised to put an end to the authorities' practice of arresting and deporting migrant female domestic workers who file complaints against their employers.⁴⁸⁸

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Strictly speaking, the court may award all types of damages available in civil procedures, e.g. pecuniary, nominal or punitive damages; however, very few discrimination claims have been tried by the courts in Cyprus and damages were awarded in only one of these cases,⁴⁸⁹ which does not allow for any conclusions to be drawn with regard to judicial practice. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cypriot courts tend to be rather low compared to the damages awarded in other countries.

In addition to or in lieu of damages, victims of discrimination may, subject to certain conditions, apply to the court for reinstatement, but this is a remedy rarely sought or granted. Employers who employ more than 19 employees may be required by the court to reinstate an employee whose dismissal was either (i) manifestly unlawful or (ii) unlawful and made in bad faith, if so required by the dismissed employee. In 2012 the Appeal Court ruled that a dismissal, which had been held by the Labour Tribunal to be unlawful because the employers did not act promptly upon the incidence of inappropriate conduct by the employee, did not give rise to the right of reinstatement because it was not manifestly unlawful nor was there bad faith from the employers.⁴⁹⁰ Similarly, in 2018 the Court rejected a dismissed employee's request for reinstatement to his previous position as a prison guard, on the grounds that the employer evidently no longer trusted him, despite the fact that the dismissal was held to be unlawful.⁴⁹¹ The issue as to whether the prison board was justified in not trusting him did not arise and this reasoning essentially paves the way for virtually all requests for reinstatement to be turned down on the same grounds.

⁴⁸⁶ Cyprus, Equality Authority (2010), *Code of good practice on discrimination on the ground of disability in employment and occupation* (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

⁴⁸⁷ Cyprus, Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, Ref. A.K.I. 38/2015, 16 October 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

⁴⁸⁸ Cyprus, Ombudsman (2012), *Arrest and detention of migrant worker for bringing complaint against her employer*, Report No. A.P. 588/2012, 5 June 2012.

⁴⁸⁹ Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβράαμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

⁴⁹⁰ Cyprus Supreme Court, *Patsalides v. Cyprus Airways* (2012), N. 406/2008, 21 February 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2012/rep/2012_1_0194.htm&qstring=%F0%E1%F4%F3%E1%EB%E9%E4%2A%20and%20%EA%F5%F0%F1%E9%E1%EA%2A%20and%20%E1%E5%F1%EF%E3%F1%E1%EC%EC%2A.

⁴⁹¹ Cyprus Supreme Court, *Republic of Cyprus through the Prison Director et al v. Costas Psara*, Civil Appeal No. 197/2011, 13 February 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2018/1-201802-197-11PolEf.htm.

Law 42(I)/2004 vests the Equality Body with powers beyond those prescribed by the two EU directives: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit not exceeding 90 days from the date of publication in the Official Gazette⁴⁹² and in a specified way, of the situation that directly produced discrimination, although such right is somewhat limited by a number of exceptions:

- where the act complained of is pursuant to another law or regulation, in which case the Equality Body advises the Attorney General, who will advise the competent ministry and/or the Council of Ministers about measures to be taken to remedy the situation;⁴⁹³
- where discrimination did not occur exclusively as a result of violation of the relevant law;
- where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties;
- where the eradication cannot take place without violating contractual obligations of persons of private or public law;
- where the complainant does not wish for an order to be issued; or
- where the situation complained of no longer exists.⁴⁹⁴

The Equality Body is further empowered to impose small fines. These cannot exceed EUR 598 (CYP 350) for discriminatory behaviour, treatment or practice; EUR 427 (CYP 250) for racial discrimination in the enjoyment of a right or freedom; EUR 598 (CYP 350) for non-compliance with the recommendation within the specified time limit; and EUR 85.44 (CYP 50) per day for continuing non-compliance after the deadline set by the Equality Body.⁴⁹⁵ Generally speaking, the fines are very low; they offer little deterrence to potential perpetrators and they are never imposed by the Equality Body.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged and supervise compliance in the case of orders issued against persons found guilty of discrimination.⁴⁹⁶ It is possible for the Equality Body to recommend school desegregation plans or the instigation of disciplinary proceedings against teachers or other persons guilty of discrimination; in practice, however, the Equality Body's recommendations generally do not propose measures as drastic as that and there is a clear tendency towards 'diplomacy' and mediation, evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed.

All orders, fines and recommendations issued or imposed under this law are subject to annulment⁴⁹⁷ by the Supreme Court of Cyprus upon an appeal lodged by a person with a

⁴⁹² 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, Article 28. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁹³ 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 39(3) and 39(4). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁹⁴ 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 14(2) and 14(3). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁹⁵ 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 18 and 26(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁹⁶ 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, Article 24(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁹⁷ 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, Article 23. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

'vested interest'.⁴⁹⁸ There is no requirement for special measures to be adopted in order to ensure that persons with disabilities have access to the Equality Body.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues in its own right, where it deems that any particular case that came to its attention may constitute a violation of the law.⁴⁹⁹ The Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. In fact, all cases investigated by the Equality Body until now have led to *recommendations* as opposed to binding *decisions*. The recommendations have often taken the form of suggestions to the authorities or the private sector that they revise their practices regarding specific issues. Reports issued by the Equality Body have, for instance, recommended to insurance companies to revise their practice of refusing to insure persons of Pontian Greek origin; to employers to remove the maximum age limit fixed for advertised jobs; to the public nursing school to revise its entry requirements so as not to exclude persons with disabilities; to the immigration authorities to remove from the standard contract of employment of migrant workers a clause prohibiting them from joining a trade union; to insurance companies to revise their policy of not insuring persons over 70 to drive cars or of charging a higher premium for it, etc. The recommendations of the Equality Body tend to be complied with by both the private and the public sector, even though in many cases they are made three or four years later, by which time compliance is impossible because third party rights have been established or because compliance would no longer make sense. The immigration authorities are a notable exception to the rule: although many of the recommendations of the Equality Body/Ombudsman are directed against this body, compliance is very rare whilst letters, warnings and notices are ignored, as often noted by the Equality Body.

The findings and reports of the Equality Body must be communicated to the Attorney General, who will in turn advise on the adoption or not of appropriate legislative or administrative measures, taking into account the state's international law obligations. The Attorney General will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision. The findings of the Equality Body are also communicated to the House of Representatives.

Under Law N.59 (I)/2004, which (roughly) transposes the Racial Equality Directive, the competent courts for discrimination cases at first instance are the District Courts.⁵⁰⁰ The same law also provides for the complainant's right to lodge a complaint with the Equality Body.⁵⁰¹ Furthermore, persons alleging discriminatory behaviour by public authorities may appeal, under Article 146 of the Cypriot Constitution,⁵⁰² to the Supreme Court of Cyprus for an order to set aside the administrative decision complained of. This procedure, however, has a number of disadvantages compared to the laws transposing the directives: it applies only to the public sector, it does not reverse the burden of proof and it can have only an annulling effect on the administrative act complained of. Under Law N.58 (I)/2004 transposing the Employment Equality Directive (minus the disability component), the competent court to try discrimination cases at first instance is the Labour Disputes Tribunal. The legal vacuum created in 2008 by the decision in the case of *Hadjiavraam* was remedied

⁴⁹⁸ Term used in Section 146 of the Cypriot Constitution, which sets out the procedure for judicial review of an administrative act.

⁴⁹⁹ 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, Article 33. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁰⁰ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 8(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁵⁰¹ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁵⁰² The right to recourse to Article 146 of the Cypriot Constitution is restricted to governmental administrative acts.

in 2009 by an amendment of the law for all grounds except disability. The amended law now provides that all disputes arising under this law must be deemed to be labour disputes.

Under Law 59(I)/2004 (transposing the Racial Equality Directive minus the employment component), the penalty to be imposed by the court against a natural person found to be guilty is a maximum of EUR 6 835.27 (CYP 4 000) and/or imprisonment of up to six months. For legal persons, the maximum penalty is EUR 1 196.72 (CYP 7 000). If the offence has been committed by gross negligence, the fine for natural persons can be up to EUR 3 417.63 (CYP 2 000); for legal persons, there is a fine of up to EUR 3 417.63 (CYP 2 000) for the managing director, chairperson, director, secretary or other officer if it can be proven that the offence was committed with his or her consent, plus an additional fine of up to EUR 6 835.27 (CYP 4 000) for the company or organisation.⁵⁰³

Under Law 58(I)/2004 (transposing the Employment Equality Directive), the penalties are identical to those provided for by the law transposing the Racial Equality Directive.⁵⁰⁴ The same applies to procedures and penalties under the disability law.⁵⁰⁵ No such fines have been imposed by the courts so far.

There are also penal remedies against discrimination. With the adoption of the ICERD, as well as with the subsequent amendments (Law 11(III)/92 and Law 28(III)/99), Cyprus established, in conformity with a recommendation of the Committee on the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, e.g. incitement to racial hatred; participation in organisations promoting racial discrimination; public expression of racially insulting ideas; and discriminatory refusal to provide goods and services. The scope of this latter provision⁵⁰⁶ is stated to extend to goods or services supplied by a person in the course of his or her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training.

As a result of these amendments, it is no longer necessary for the incitement to racial hatred to be intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence, it is no longer necessary that race be the sole ground of discrimination.⁵⁰⁷ Article 51A of the Criminal Code (Cap. 154) provides that whoever publicly and in any way 'procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine.'⁵⁰⁸

The Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer

⁵⁰³ Cyprus, Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

⁵⁰⁴ Cyprus, Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 15. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁵⁰⁵ Cyprus, Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Articles 5(3), 5(4) and 5(5). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁵⁰⁶ Cyprus, Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A(4).

⁵⁰⁷ Cyprus, Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A (4): 'Any person who supplies goods or services by profession and refuses such supply to another by reason of his racial or ethnic origin or his religion, or who makes such supply subject to a condition relating to the racial or ethnic origin or to the religion of a person is guilty of an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding four hundred pounds or to both such punishments' (about EUR 6 700).

⁵⁰⁸ Cyprus, Criminal Code (Ποινικός Κώδικας) Cap. 154, Article 51A. Available at http://www.cylaw.org/nomoi/enop/ind/0_154/section-sc53450b99-ae78-4921-a120-4fdd2ae92654.html. The fines are up to EUR 1 708 (CYP 1 000) for individuals and EUR 5 126 (CYP 3 000) for legal persons.

Systems⁵⁰⁹ also creates a number of criminal offences, each of which is punishable with a prison sentence of up to five years and/or a fine of up to EUR 34 176.35 (CYP 20 000):

- Article 4 criminalises the dissemination of racist and xenophobic material through a computer system;
- Article 5 criminalises racially and xenophobically motivated threats disseminated through a computer system;
- Article 6 criminalises racist and xenophobically motivated insults;
- Article 7 criminalises the denial, gross minimisation, approval or justification of genocide or crimes against humanity;
- Article 8 criminalises the aiding and abetting of any of the crimes provided for in Articles 4-7 of the law.

There are no distinctions as to sanctions in the private and the public domain, at least in the legislation; nor does the law make any differentiation as to the sanctions within and beyond employment.

Under Law N.134(I)/2011, which transposes the Framework Decision on Combating Hate Crimes through Criminal Law, a person who wilfully and publicly disseminates and publicly incites violence or hatred directed against a group of persons or a member of a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin, in a manner that disturbs public order or which is of a threatening, abusive or insulting character, is guilty of an offence and, if convicted, is subject to a penalty of imprisonment not exceeding five (5) years or to a fine not exceeding ten thousand euro (EUR 10 000) or to both such sentences. The same sanctions apply to other offences created by this law, such as the approval or denial or gross minimisation of crimes of genocide, crimes against humanity and war crimes.⁵¹⁰

In April 2017 a new law was adopted introducing the motivation of prejudice as an aggravating factor in measuring the sentence to be imposed.⁵¹¹ The new provision vests the court with the power (but falls short of imposing a duty) to take into account as an aggravating factor when measuring a sentence, the motivation of prejudice against persons discriminated against on the basis of race, colour, national or ethnic origin, religious or other beliefs, genetic origin, sexual orientation or gender identity. The Attorney General's officer who attended the parliamentary sessions preceding the adoption of the bill insisted that the imposition of a legal duty on the judge to take any factor into account was an unlawful interference by the legislature in the work of the judiciary and amounted to an infringement of the principle of separation of powers. The doctrine of separation of powers is strictly adhered to by the judicial system, with judges often invoking it in order to implement laws that contain discrimination.⁵¹² Following the Equality Body's intervention during the deliberations,⁵¹³ the grounds of religion or other belief, genetic origin, sexual

⁵⁰⁹ Cyprus, Law Ratifying the Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems N. 26(III)/2004.

⁵¹⁰ Cyprus, Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia through Criminal Law (Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος) N. 134(I)/2011. Available at www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

⁵¹¹ Cyprus, Criminal Code Cap. 154, Article 35A. Available at http://cylaw.org/nomoi/enop/ind/0_154/section-scde3d14ed-0504-9514-76e1-fe915820bc72.html.

⁵¹² Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

⁵¹³ Cyprus, Commissioner for Administration and Human Rights, Note submitted to the meeting of the Parliamentary Legal Committee on 15 February 2017 on 'Hate Crimes' (Υπόμνημα που υποβλήθηκε σε συνεδρίαση της Κοινοβουλευτικής Επιτροπής Νομικών, στις 15/2/2017, με θέμα «Αδίκημα Μίσους»). Available at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/00C52AB1AD771083C22580DB00322DE6?OpenDocument.

orientation and gender identity were added to race, colour, national and ethnic origin.⁵¹⁴ The ground of disability was not added and is conspicuously missing from the list. The national confederation of disability organisations was not invited to the consultation nor was it asked to present its views.

Oddly enough, since the above amendment was adopted, the only case examined by a court in which an offence was committed against vulnerable persons concerned the ground of disability. The case was initiated by the police, who prosecuted three women working at a special education unit as teacher, speech therapist and escort, for physically abusing children with learning difficulties. Two out of the three accused persons were convicted only of common assault and the third was acquitted. The judgment made no mention of the perpetrators' motive.⁵¹⁵

b) Ceiling and amount of compensation

In Cyprus, there is no ceiling on the maximum amount of compensation that can be awarded. In general, however, compensation awarded by Cypriot courts tends to be very low compared to compensation awarded by other national courts. With just one court decision awarding damages in over 10 years⁵¹⁶ since the directives were transposed, it is not possible to draw conclusions on judicial trends as regards the compensation amounts awarded. The most widely used procedure in Cyprus to contest discriminatory acts of the public administration is the judicial review under Article 146 of the Constitution, which leads only to the annulment of the act and not to the awarding of compensation.

c) Assessment of the sanctions

The Equality Body is not entitled to award compensation. Since the anti-discrimination directives were transposed, the court has awarded compensation for discrimination in only one case, that of *Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou*. The claimant, whose job application at the respondent bank was declined due to her age, was not awarded compensation at first instance, as the Labour Disputes Tribunal claimed lack of jurisdiction. The tribunal nevertheless proceeded to give its reasoning on the merits of the case. On the issue of measurement of compensation, the tribunal found that the sum of EUR 1 500 would be appropriate as this represents three months' salary that would have been paid to the applicant had she been hired. In order to arrive at this conclusion, the tribunal relied on the CJEU decision in *Draehmpaehl* [1997], C-180/95, ECR I-2195. This decision established that three months' salary is sufficient to satisfy the three preconditions that the amount of compensation awarded must satisfy (essential protection, deterrent and proportional to the damage) in those cases where the candidate would not have been hired even in the absence of age discrimination. Upon appeal, the Supreme Court endorsed the tribunal's measurement of compensation and awarded the appellant the equivalent of three months' salary, amounting to a total of EUR 1 500, because, as it had established, the applicant would not have been hired for this post even in the absence of the age discrimination in the advertisement.⁵¹⁷

⁵¹⁴ Cyprus, Parliamentary Legal Committee (2017), *Complementary report of the Parliamentary Legal Committee on the bills Law Amending the Criminal Code (No.4) of 2016 and Law on combating certain forms and expressions of racism and xenophobia through Criminal Law (Amendment)(No.2) of 2016*, 20 March 2017. Available at www2.parliament.cy/parliamentqr/008_5h/008_05_4951.htm.

⁵¹⁵ Cyprus, District Court of Paphos, *Paphos Police Director v. Chrystalla Heracleous, Sophia Savvidou and Ioanna Nicolaou*, Case No. 9214/13, 31 October 2017. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/poin/2017/4220170380.htm&qstring=%EA%E9%ED%E7%F4%F1%2A%20and%20%F0%F1%EF%EA%E1%F4%E1%EB%E7%F8%2A.

⁵¹⁶ Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED%.

⁵¹⁷ Cyprus, Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at

In the absence of a body of case law on discrimination and awards of damages where discrimination was the operative factor, it is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive. The law does not provide for 'punitive damages' to be paid by the perpetrator to the victim to act as (a) a disincentive for offenders and (b) an incentive for victims to complain (and in particular as an incentive for lawyers to specialise). It is safe to state, however, that the sanctions that the Equality Body is allowed to levy are too low to have any dissuasive effect; the main incentive for compliance with Equality Body decisions remains public image.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

When the equality *acquis* was transposed in 2004, the legislator appointed the office of the Commissioner for Administration (commonly referred to as 'the Ombudsman') as the national Equality Body, purportedly in compliance with Article 13 of the Racial Equality Directive.⁵¹⁸ According to the Ombudsman law, the only requirements needed for a person to be appointed as Ombudsman are to be aged 35+, to be of 'recognised education and experience' and of 'highest moral standard'.⁵¹⁹ The law setting up the Equality Body did not set any additional eligibility conditions as regards the expertise or independence of the person who would serve as head of the Equality Body. According to the legal framework, there is no need for the head of the Equality Body to have any equality-related expertise or experience.

- b) Political, economic and social context for the designated body

Since its inception in 2004, the Equality Body has invariably been understaffed and underfunded. Its multiple mandates (NHRI, Independent Authority for the Prevention of Torture, monitoring body for the implementation of the Return Directive, monitoring body for the implementation of the CRPD) and insufficient resources have led to long delays in examining complaints, often leaving victims without an effective redress because third party rights are established in the meantime and the statute of limitations has expired. The allocated budget concerns all the authorities operating from within the Ombudsman's office and not only the Equality Body and not only non-discrimination issues; there are no members of staff allocated exclusively to the two authorities comprising the Equality Body or exclusively to non-discrimination. During the period 2004-2017, other than the limited resources allocated to this body, there was never any issue of political hostility or interference in the work of this body.

In March 2017 the President of Cyprus proposed the appointment of a junior state prosecutor to be appointed as the new Ombudsman. She had no prior experience or involvement in human rights or anti-discrimination. She is also the wife of an important media person, who controls a group of large media outlets. The selection raised objections from NGOs, journalists and political parties. They described the appointment as highly political and the result of nepotism on the part of the President of the Republic, who, through this appointment, was obviously seeking to secure the support of the appointee's husband in the upcoming presidential election in 2018.⁵²⁰ The President's nominee for the post was approved by Parliament by a narrow majority. Since she took office, all Equality Body activity has ceased.

⁵¹⁸ 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. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵¹⁹ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) Ν. 3/1991, Article 3(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html. Section 3(1).

⁵²⁰ 'Our View: Irony of ombudsperson's appointment for no other reason than close family ties to president', in *Cyprus Mail*, 22 March 2017. Available at <http://cyprus-mail.com/2017/03/22/view-irony-ombudspersons-appointment-no-reason-close-family-ties-president/>; 'Opposition parties remain tight lipped over approval for new Ombudsman', in *Cyprus Mail*, 21 March 2017. Available at <http://cyprus-mail.com/2017/03/21/opposition-parties-remain-tight-lipped-approval-new-ombudsman/>.

c) Institutional architecture

In Cyprus, the designated body forms part of a body with multiple mandates.

The designated body shares an office, budget and staff with the Ombudsman, the NHRI, the independent authority against torture, the independent mechanism for compliance with the CRPD, the Gender Equality Directives and the Return Directive. None of these tasks involves reporting to an independent organisation; its only reporting duties are to the President of the Republic and to Parliament.

There is no specific structure in the Ombudsman's office as regards the organisation and execution of its various functions. Most of the staff members perform functions for many different mandates. Between the 2004 and 2016, the equality mandate was shared between two departments: the Anti-discrimination Authority and the Equality Authority. The former would deal with all grounds in the non-employment field and the latter would deal with all grounds in the employment field plus gender. Since much of the activity involved handling complaints, the setting of priorities was essentially driven by the grounds on which the complaints were submitted. Most of the officers staffing these two departments would also perform work related to other mandates. Under the new Ombudsman who took office in April 2017, the distinction between the two departments is less clear,⁵²¹ and no equality work is undertaken. The senior officer, who had been in charge of the Anti-discrimination Authority since its inception in 2004, was transferred to the Ministry of Justice in May 2017 and was not replaced.

There is no fixed amount allocated to the equality mandate of the Ombudsman's office and no fixed personnel assigned exclusively to the equality mandate.

The organisation of the various authorities operating from the Ombudsman's office and the priorities of the office varied from period to period. From the number of decisions issued and the activities and interventions undertaken over the years, it is possible to assume that the equality mandate was a dominant feature on the agenda of the Ombudsman's office between 2004 and 2016. From 2013 onwards, disability-related complaints were handled in its capacity as monitoring body for the CRPD. Since April 2017, the equality mandate has not been functioning: no equality-related decisions have been issued nor have any other equality-related interventions or activity taken place.⁵²²

Although the Ombudsman as an institution was visible and well known, its mandate as Equality Body was lesser known and often subsumed under the institution of the Ombudsman. Very few awareness campaigns have been carried out since its inception. In its capacity as monitoring body for the CRPD, it carried out an awareness campaign in November 2016 about accessibility for persons with disability to voting in elections;⁵²³ in January 2017 it joined a public event about the functions and mandate of independent public bodies; up until 2016 the opening statement in various press releases might state that the Ombudsman was intervening in her capacity as national anti-discrimination body, without explaining the mandate of this body.⁵²⁴ The fact that the Equality Body is not

⁵²¹ The expert was informed through a written exchange of emails with a representative of the new Ombudsman that the Equality Authority and the Anti-discrimination Authority have the same meaning: Email from Kyriakos Kyriakou, 26 January 2018.

⁵²² For details, see the list of reports published on the Ombudsman's website at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/index_new/index_new?OpenForm.

⁵²³ More details about this campaign can be found on the Ombudsman's website at www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2389075348778297C225807B004A7443?OpenDocument.

⁵²⁴ See, for instance, media article from 2015 at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7AB70C2CF9C1C96842257EA60028554D/\\$FILE/alitheia_5_8_15.jpg](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7AB70C2CF9C1C96842257EA60028554D/$FILE/alitheia_5_8_15.jpg).

sufficiently known to vulnerable groups was flagged as an issue of concern by both the ECRI⁵²⁵ and the Advisory Committee on the FCNM.⁵²⁶

d) Status of the designated body/bodies – general independence

i) Status of the body

- The Equality Body is one of the mandates of the Ombudsman but does not have a distinct legal personality. In order to comply with Article 13 of the Racial Equality Directive, the Ombudsman was afforded a mandate to combat discrimination. This mandate goes well beyond the minimum required by Article 13 and includes all grounds in all fields.
- The Equality Body does not have a governing body. It is headed by whoever acts as Ombudsman, who is appointed by the President of the Republic and approved by a parliamentary majority for a term of six years.⁵²⁷ During the term of their service, the Ombudsman can only be dismissed in the same way as Supreme Court judges are dismissed.⁵²⁸ According to the Cypriot Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until they reach the age of 68⁵²⁹ and may only 'be retired'⁵³⁰ as a result of a mental or physical incapacity or infirmity that would render them incapable of discharging their duties. They may also be dismissed on the ground of misconduct.⁵³¹
- The Equality Body does not have its own budget; its expenses form part of the Ombudsman's budget. The budget for the Ombudsman's office comes from the state national budget. The Equality Body shares office premises, personnel and the person at the top of the hierarchy, which is the same for both bodies. Occasionally, the Ombudsman (in its capacity as Equality Body) applies for and is awarded EU funds for particular projects, such as the two opinion surveys it carried out in 2007, the Code of Conduct on Disability Discrimination and the media guidelines it published in 2010.
- The Equality Body lacks the power to appoint its own staff; its staff members are civil servants recruited through the procedure followed for all civil servants. The ECRI has repeatedly expressed concern over the fact that the Equality Body/Ombudsman lacks sufficient human and financial resources, does not enjoy the freedom to appoint its own staff and is not well known to vulnerable groups.⁵³² Due to its serious understaffing problem, which is highlighted in several national and

⁵²⁵ ECRI, Council of Europe (2016), *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.

⁵²⁶ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵²⁷ Laws on the Commissioner for Administration (Οι περί Επιτρόπου Διοικήσεως Νόμοι) N. 3/1991, Article 3(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html. Section 3(1).

⁵²⁸ Laws on the Commissioner for Administration (Οι περί Επιτρόπου Διοικήσεως Νόμοι) N. 3/1991, Article 3(7). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁵²⁹ The Constitution of the Republic of Cyprus (Το Σύνταγμα της Κυπριακής Δημοκρατίας), Article 7(1). Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

⁵³⁰ This is the term used in the official translation of the Cypriot Constitution. Presumably, it means 'be obliged to retire'.

⁵³¹ The Constitution of the Republic of Cyprus (Το Σύνταγμα της Κυπριακής Δημοκρατίας), Articles 7(3) and 7(4). Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

⁵³² ECRI (2011), *Report on Cyprus, Fourth Monitoring Cycle*, Strasbourg, 31 May 2011. Available at www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf; ECRI (2016), *Report on Cyprus, Fifth Monitoring Cycle*, Strasbourg, 17 March 2016 (published on 7 June 2016). Available at <https://rm.coe.int/fifth-report-on-cyprus/16808b563b>.

international reports,⁵³³ discrimination complaints can take three or more years to be examined, essentially leaving the complainant without a remedy, as third party rights are often established in the meantime, whilst the complainant will be time-barred from seeking redress through the courts.

- The Ombudsman is an independent officer and is not answerable to any other body, although it is required to submit an annual activity report to the President of the Republic and the House of Representatives.

ii) Independence of the body

The law setting up the Equality Body (N.42(I)/2004) does not expressly provide for the independence of this body; however, this is implied from several provisions that essentially give the power and obligation to the body to apply and implement the obligations undertaken by the Republic under the EU *acquis* as well as under international law. The law governing the duties and powers of the Ombudsman⁵³⁴ provides that the Ombudsman is not allowed to hold any other office or carry out any other work for remuneration.⁵³⁵ Article 4(2) of the same law provides that the members of staff of the Ombudsman's office are civil servants, to be appointed in accordance with the Law on Civil Service. The fact that the body lacks the power to choose its own members of staff has attracted criticism from the ECRI⁵³⁶ and the Advisory Committee on the FCNM.⁵³⁷ Another issue potentially affecting its independence is the fact that its entire budget is provided by and dependent upon the Government. But perhaps the most crucial weakness as regards the institution's independence is the fact that the Ombudsman (and head of the Equality Body) is appointed by the President of the Republic and only approved by a parliamentary majority. The current Ombudsman no longer implements the mandate granted by the equality *acquis*, makes no public interventions on important issues in the public sphere and does not issue reports, decisions or statistics.

e) Grounds covered by the designated body/bodies

The grounds which the Equality Body has a mandate to deal with are: race, community, language, colour, religion, political or other beliefs, ethnic or national origin (which is equated with nationality), special needs, age, sexual orientation, all rights guaranteed in the ECHR and all its protocols (including Article 1(1) of Protocol No. 12 to the ECHR), in the ICERD, in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in the International Covenant on Civil and Political Rights and in the Framework Convention for the Protection of National Minorities. The priorities as regards grounds are largely driven by the complaints submitted. In most years, almost half of the complaints received were about gender discrimination, followed by

⁵³³ In 2015, the Advisory Committee on the FCNM expressed its deep concern over the 'continued lack of adequate resources of the Equality Body [which] raises serious concerns regarding the ability of the institution to effectively and independently perform its important tasks': Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵³⁴ Although the Ombudsman is also the Equality Body, the reference here is to the Ombudsman only.

⁵³⁵ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) N. 3/1991, Article 3(3). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁵³⁶ The fourth ECRI report on Cyprus, published in 2011, states on p.7: 'The Office of the Commissioner for Administration (Ombudsman) lacks sufficient human and financial resources and does not enjoy the freedom to appoint its own staff.'

⁵³⁷ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

race/ethnicity/national origin. No up-to-date statistical records are available, since statistics are published in the annual reports, which have not been published for the years 2015-2018.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

In Cyprus, the designated body does not have the competence to provide court representation or offer any advice to victims in relation to litigation, to their rights, guidance about support structures or about any other matter. The only assistance it is empowered to provide is the issuance of a report with recommendations.

ii) Independent surveys and reports

In Cyprus, the designated body does have the competence to conduct independent surveys and publish independent reports.

Surveys are hardly ever commissioned by the Equality Body, the last one being several years ago. However, in previous years, up until the new Ombudsman took office in 2017, the body used to carry out a number of self-initiated investigations and publish reports on specific themes. This was not always performed in its capacity as Equality Body but the subject was always relevant to equality or had an equality angle, e.g. the rights of intersex persons; the transfer of a deceased Turkish Cypriot from police checkpoints; the programme of teaching Greek as a second language to migrant pupils; the broadcasting of a TV interview with racist content; detention for the purpose of deportation; the handling of racist name-calling by the police; the police response to trafficking; asylum reception conditions; and the situation of migrant domestic workers. Although there has been no legislative change in the Equality Body's mandate, the new Ombudsman has changed the manner of operation of the institution since she took office in April 2017. The Equality Body no longer examines complaints, issues reports or publishes data as in previous years, and all complaints received are examined within the mandate of the Ombudsman, which includes discrimination but without the specificities of the anti-discrimination directives.

iii) Recommendations

In Cyprus, the designated body does have the competence to issue independent recommendations on discrimination issues.

The Equality Body also has a duty to make recommendations to the competent minister, the Parliament and affected groups of persons regarding, inter alia, the amendment of any legal provision or regulation that constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right⁵³⁸ or following a specific complaint that has been referred to the Equality Body. It also has the power to conduct independent surveys and compile reports on any matter within its competence concerning any activity or practice in the public or private domain.⁵³⁹

⁵³⁸ 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, Article 35(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵³⁹ 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, Article 44. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

The issuing of recommendations is a standard part of the procedure of investigating complaints. As a matter of policy, successive Ombudspersons have chosen to issue recommendations rather than take more drastic measures, such as issue an order or impose a fine. Whenever a complaint is deemed to be well-founded and within the body's jurisdiction, recommendations are invariably included at the end of the report. As a result, it is not possible to assess the independence of the recommendations separately from the independence of the investigation and the entire report process. Prior to issuing recommendations, the body usually holds a consultation meeting with the persons involved in order to get their positions.

Issues pertaining to the Cyprus problem, such as discrimination against Turkish Cypriots in various areas, have generally been treated with caution by successive Ombudspersons. They have avoided addressing highly politicised issues, such as the access of Turkish Cypriots to their properties, the issuing of passports or their access to welfare. In some cases, the Ombudsman has failed to publish a report following the investigation of a complaint from a Turkish Cypriot that would have had political repercussions. However, this should not be seen as a lack of independence but rather an effort to steer clear of controversy in the political arena.

The procedure foreseen in the law for revising discriminatory laws is for the Ombudsman (in his or her capacity as Equality Body) to refer the issue to the Attorney General with a request to draft and promote amending legislation. This procedure has not been followed consistently and, when it has, the Attorney General has not necessarily complied with the Ombudsman's request. The Ombudsman participates in parliamentary hearings and in consultations preceding the adoption of laws with a human rights angle, even though its proposals are not always adopted by the legislature.

iv) Other competences

The Equality Body is vested with the power to (i) combat direct and indirect racist discrimination as well as unlawful discrimination and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin;⁵⁴⁰ (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by one or more of the conventions ratified by Cyprus and referred to explicitly in the law,⁵⁴¹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin;⁵⁴² and (iii) promote equality of opportunity, irrespective of grounds listed in the preceding section (to which the grounds of special needs⁵⁴³ and sexual orientation are added) in the areas of employment; access to vocational training; working conditions, including pay; membership of trade unions or other associations; social insurance and medical care; education; and access to goods and services, including housing.

⁵⁴⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 3(1)(a).

⁵⁴¹ These Conventions are: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁴² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19 March 2004), Section 3(1)(b), Part I.

⁵⁴³ 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including psycho-social disabilities. In Cyprus, the term 'disability' is not understood to include psycho-social disability, which is considered to be a special category requiring more sensitive treatment.

The Equality Body may carry out independent investigations into various issues⁵⁴⁴ in its own right where it deems that any particular case may constitute a violation of the law.⁵⁴⁵ The Equality Body may also issue codes of good practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity, irrespective of community, racial, national or ethnic origin, religion, language and colour.⁵⁴⁶

The law imposes an obligation on the Equality Body to communicate its findings and reports to the Attorney General. The Attorney General will in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures and prepare legislation for the abolition or substitution of the legislative provision that is contrary to the anti-discrimination law.⁵⁴⁷ However, as it is currently phrased, the law allows the discriminatory law to remain in force until officially amended by the House of Parliament. This is a discrepancy in the law that renders compliance with the directives questionable, because it allows for the law to remain in force even if the Attorney General delays or omits to take steps for its amendment. In December 2014 the Supreme Court ruled that this provision can only be interpreted to mean that the Attorney General is under a duty to inform the executive regarding changes in the legislation deemed necessary by the Equality Body and that, had the legislator intended to give power to the Attorney General to reject the Equality Body's recommendations, the wording of the law would have explicitly provided that the Attorney General may adopt, amend or reject the recommendation.⁵⁴⁸ This development has not led to the amendment of any laws containing discrimination; the law ruled by the court to contain discrimination continues to remain in force.

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. In addition, where there is a disciplinary offence, the Equality Body has the duty to refer this to the competent authority. For instance, if the offender is a public servant, the Equality Body must refer the case to the minister in charge to take action.

g) Legal standing of the designated body/bodies

In Cyprus, the designated body does not have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints ex officio to court;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.

⁵⁴⁴ For example, Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31 May 2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26 May 2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 2 February 2005.

⁵⁴⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19 March 2004), Section 33.

⁵⁴⁶ 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 40, 41 and 42, Part VI. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁴⁷ 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, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁴⁸ Cyprus, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General*, Case No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E9%E3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E9%E3*%20and%2058(%E9)#).

h) Quasi-judicial competences

In Cyprus, the body is a quasi-judicial institution.

- The body has the power to issue binding orders to stop a service/goods provider from denying services/goods to a person or a group of persons. It has never issued such an order. This power presupposes that the Equality Body has both the ability and the will to act swiftly upon receiving a complaint, which is not always the case.
- The body has the power to impose small fines, although it has never exercised this power. The fines foreseen in the law are far too small to constitute a deterrent: EUR 598 (CYP 350) for discriminatory behaviour, treatment or practice; EUR 427 (CYP 250) for racial discrimination in the enjoyment of a right or freedom; EUR 598 (CYP 350) for non-compliance with the recommendation within the specified time limit; and EUR 85.44 (CYP 50) per day for continuing non-compliance after the deadline set by the Equality Body.⁵⁴⁹ All successive Ombudspersons have chosen to resort to mediation for the resolution of a complaint rather than to impose sanctions or to issue orders. This policy must be seen and assessed in light of the fact that the fines are so low that many perpetrators might choose to pay them and continue discriminating, which would lead to a climate of impunity and eventually undermine the institution of the Ombudsman itself.
- Persons against whom the Equality Body has issued an order, imposed a fine or published recommendations may apply to the Supreme Court under Article 146 of the Constitution for a judicial review of that decision.⁵⁵⁰ There is no special procedure foreseen for a complainant to appeal a decision of the Equality Body that they are not happy with. The judicial review process has a rather restricted scope and is applied in order to check the decision-making process rather than the merits of an administrative act; a decision that was properly investigated and fully justified is very likely to pass the judicial review test, irrespective of its content.
- Equality Body officers follow up compliance with their decisions by contacting the affected body or person. Compliance with Equality Body decisions is not published, and it is not clear whether or not it is systematically monitored. In any case, no information about compliance is available in the public domain.
- Generally speaking, the institution of the Ombudsman is well respected and so are its decisions. This does not necessarily translate into a high level of compliance. Based on various public statements made by successive Ombudspersons over the years, a number of Government departments consistently fail to comply with its recommendations or cooperate with the body in the course of its investigations. No information is available about compliance from the private sector. However, very few decisions have been issued against the private sector since the body's inception in 2004.

i) Registration by the body/bodies of complaints and decisions

In Cyprus, the body does register the number of inquiries received, complaints of discrimination made, and decisions by ground, by the ethnic origin of the complainant and by field of application. In previous years, such data would appear in the annual reports published every year. In 2017, when the new Ombudsman took office, the process of publishing statistics changed, as did the way in which the office operated. The two authorities comprising the Equality Body ceased to function and ceased to publish statistics. The statistical data collected by her predecessor for the years 2015 and 2016 was not published. In 2019 the Ombudsman published an annual report for 2017. It covered all the

⁵⁴⁹ 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 18 and 26(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁵⁰ 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, Article 23. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

mandates handled by her office, including the equality mandate. The complaints figures published are as follows:

National origin	Disability	Gender	Harassment	Ethnic origin	Sexual orientation	Age	Religion
10	8	8	7	6	5	4	3

No explanation is offered as to whether the above represent complaints received, handled or the outcome of the investigation. The figures show a sharp drop in the number of complaints received and handled compared to previously published statistics (2014). At the time of writing, there is still a gap in the statistics for the years 2015 and 2016.

No statistics are maintained on the number of discrimination-related cases brought to justice.

j) Stakeholder engagement

In Cyprus, the designated body no longer engages with stakeholders as part of implementing its mandate. The new Ombudsman, appointed in 2017, does not interact. Nor does she investigate complaints submitted by persons without 'a legitimate interest', which, according to administrative law, includes only the claimants themselves.

k) Roma and Travellers

Since it was established in 2004, the Equality Body has received hardly any complaints regarding discrimination against the Roma.⁵⁵¹ Although there is a historical Cypriot Roma community, there is very little debate about the situation of the Roma, who lead an impoverished and marginalised existence, or measures to specifically target them. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded by the EU Structural Funds for the period 2014 to 2020. Cyprus has no specific Roma integration strategy and no policies vis-à-vis the Roma community, the general approach of Government policy being to 'promote' Roma integration through horizontal measures targeting vulnerable groups in general. Successive Governments have failed to recognise the Roma as a separate and distinct community and consider them instead to form part of the constitutionally recognised Turkish Cypriot community.

In this politically charged climate, and against the backdrop of its very limited resources, the Equality Body made two attempts over the years to address the situation of the Roma. In 2003 it conducted self-initiated investigations into their housing conditions; and in 2011, in response to a complaint submitted in 2008, it published a report on discrimination against Roma children in education.

No efforts have been made to launch a structured dialogue and consultation with the Roma community, which is a measure strongly recommended both by the ECRI and by the Advisory Committee on the FCNM.

⁵⁵¹ Cyprus does not have a community of Travellers.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

In line with previous years, there have not been any Government activities during 2018 to disseminate information on non-discrimination.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Consultation with NGOs in Cyprus is a rather new practice that is not significantly developed. It is only in recent years that public consultation processes are launched with regard to bills proposed by the Government. The views of NGOs are very rarely taken into account. In 2018 there was no policy making or law making in the field of anti-discrimination. The new Ombudsman, who took office in 2017, halted all interaction with NGOs and refuses to admit complaints that are not filed by the victims themselves.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Dialogue with social partners on issues of discrimination at the workplace is lacking; no code of conduct has been agreed upon nor is there any system for workforce monitoring. The tripartite collaboration between social partners and the Government over working conditions is not utilised to address discrimination against migrants in the labour market, as competence for this area falls under the Ministry of the Interior, whilst the tripartite process involves the Ministry of Labour.

- d) Addressing the situation of Roma and Travellers

The governmental body with competence for Roma issues is the Social Welfare Office of the Ministry of Labour. However, its Roma-related activities over the years have been restricted to the EU-funded project Roma Platform, which is described in detail below.

The Government has not taken any measures to specifically target the Roma in terms of dissemination of information or dialogue. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded by the EU Structural Funds for the period 2014 to 2020 and there will be no allocation of funds for this priority.⁵⁵² Cyprus has no specific Roma integration strategy and no policies vis-à-vis the Roma community. The general approach of Government policy is to promote Roma integration through horizontal measures targeting vulnerable groups in general within the framework of existing wider policies and structures for social inclusion. These include general integration policies, the National Reform Programme and the National Strategy for Social Policy 2014-2020, which are aimed at increasing employment and reducing poverty and social exclusion. It is questionable whether any of these measures have any actual impact on the Roma, who continue to live in extreme poverty and exclusion, with no efforts made by the authorities towards the preservation of their cultural identity or towards raising awareness of and respect for their distinct identity and culture amongst society.⁵⁵³

⁵⁵² Letter from the General Directorate of European Programmes, Coordination and Development, 1 December 2014.

⁵⁵³ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at

Given that there are no policies targeting the Roma, there are no separate mechanisms monitoring the implementation of policies vis-à-vis the Roma. The Social Welfare Services act as the national contact point for the implementation of the national Roma integration strategies. They estimate that, out of a total of 1 250 Roma in the whole of Cyprus, there are between 650 and 700 Roma who are Cypriot citizens in the area controlled by the Republic of Cyprus; there are no estimates as regards the number of migrant Roma or Sinti residing in Cyprus. Overall, the Social Welfare Services consider that the number of Roma residing in Cyprus is rather small to deserve a separate and distinct approach from other vulnerable groups.⁵⁵⁴

Cyprus has been consistently criticised by the ECRI and the Advisory Committee on the FCNM for failing to take measures to promote the participation and integration of the Roma. The Third Opinion on Cyprus of the Advisory Committee on the FCNM states that the Roma continue to face serious prejudice and difficulties in many fields, such as employment, housing, education and access to health services, whilst the establishment of a dialogue between the Government and the Roma remains problematic. The Committee urged the Government to identify ways to establish a structured dialogue with the Roma and to obtain up-to-date information regarding their ethnic, linguistic and religious affiliation. The Government responded by stating that 'issues regarding the Cyprus Roma are part of the overall policy planning of the Government' without indicating any specific policies to address the problems highlighted.⁵⁵⁵ The ECRI's fourth report on Cyprus, published in 2011, also urged the authorities to engage in consultation with the Roma community in order to address problems of housing, employment and education.⁵⁵⁶ In 2016 the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance set up a National Roma Platform on the basis of funding received from the EU which covered 95 % of the Platform's operational costs for 12 months. The Platform aims at creating the framework for the strengthening of dialogue on issues affecting the Roma, such as housing, education, social services, health and employment. The Platform brought together governmental bodies, independent authorities, local government, NGOs, academics and members of the Roma community and planned to hold four meetings during 2016-2017. The first meeting of the Platform was attended by 33 persons; only three of them were members of the Roma community. At the following Platform meeting in October 2016, the number of Roma persons participating rose to 17.⁵⁵⁷ The relevant press release noted that the participation of members of the Roma community was low despite efforts made to encourage their attendance. It emerged from the discussions at the Platform meetings that the Roma in Cyprus need additional mobilisation and incentives in order to become more actively involved in matters affecting them. However, the press release which followed the first Platform meeting took the opportunity to reiterate the official position that the Roma do not constitute a distinct ethnic community in its own right but form part of the Turkish Cypriot community, citing the Cypriot Constitution as a source.⁵⁵⁸ However, the

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵⁵⁴ Oral and written exchange of communication with the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance, 27-28 November 2014.

⁵⁵⁵ The Third Opinion of the Advisory Committee on the FCNM is available at www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf. The comments of the Government of Cyprus on the Third Opinion are available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Cyprus_en.pdf.

⁵⁵⁶ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵⁵⁷ Social Welfare Services, press release, Cyprus Roma Platform, 13 July 2016. Available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf).

⁵⁵⁸ Social Welfare Services, press release, Cyprus Roma Platform, 8 December 2016. Available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE)

Constitution does not state this; in fact, it does not refer to the Roma at all. The decision regarding the community affiliations of the Roma, which was taken without consulting the Roma themselves, remains an open issue of concern and has been repeatedly criticised by the Advisory Committee on the FCNM.⁵⁵⁹ Indeed, to date, there has been no formal or informal consultation with the Roma as to their choice of affiliation. For decades, the Roma community in Cyprus has been viewed by policy makers as an inseparable part of the Turkish Cypriot community. It is only in recent years and through EU funding that projects involving the Roma in their own right have started developing. Yet the issue of affiliation is still not on the table. The 2015 report of the Advisory Committee on the FCNM was highly critical of the fact that the latest population and housing census contained a question related to 'ethnic/religious group' where interviewees had to choose from a closed list of five possible responses. These did not include the option of being Roma, nor was it possible to respond 'other' or 'do not wish to respond', or to opt for multiple affiliations, reflecting the realities of contemporary society.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

The existing constitutional practice is such that any law or regulation contrary to the principle of equal treatment, as guaranteed by Article 28 and the human rights sections of the Constitution, is unconstitutional, as the principle underlies all relevant laws. Once declared unconstitutional by the court, the law is considered null and void. However, in order to trigger this provision, an application must be filed in court by a person who has been wronged as a result of the implementation of a law that runs contrary to the Constitution, seeking to have the law declared unconstitutional. So far, no law has been declared unconstitutional by reason of non-compliance with the equality provision of the Constitution (Article 28), except laws providing for positive action measures in favour of persons with disabilities.

The provisions contained in the international treaties, signed and ratified by the Republic, take precedence over any municipal law and therefore override any provisions that are contrary to the principle of equal treatment. Moreover, by virtue of a 2006 amendment of the Constitution, all EU directives and regulations are deemed to take precedence over all domestic legislation, including the Constitution itself.

There is no procedure for regular monitoring or screening of old or new laws, collective agreements, contracts or rules, etc., in order to ensure their compliance with the anti-discrimination laws. Practice shows that the procedure for assessing compliance of a particular law, contract, practice, etc. with the anti-discrimination laws is triggered only when a specific complaint is submitted on this matter. The mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended is contained in the law setting out the mandate of the Equality Body.⁵⁶⁰ This procedure requires the Equality Body to refer to the Attorney General all laws, regulations and practices containing discrimination; the Attorney General is then obliged to advise the minister concerned and prepare the necessary amendment in the discriminatory law or practice. The procedure foreseen by Article 39 does not appear to be

[%AE%20%CE%94%CE%B9%CE%AC%CF%83%CE%BA%CE%B5%CF%88%CE%B7%20%CE%A0%CE%B%CE%B1%CF%84%CF%86%CF%8C%CF%81%CE%BC%CE%B1%20%CE%A1%CE%BF%CE%BC%CE%AC%2013.7.16.pdf.](#)

⁵⁵⁹ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵⁶⁰ 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, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

particularly well known in legal and judicial circles, where there is a tendency to go for the constitutionality test, i.e. to request the court to annul a provision or a law as 'unconstitutional' due to non-compliance with Article 28 of the Constitution, which contains the equality principle. As a result of restrictive interpretations by the court, this procedure has never borne fruit for the victims of discrimination, nor has it ever resulted in annulling a law containing discrimination.⁵⁶¹

The Equality Body's referrals to the Attorney General under Article 39 have not always been addressed, and laws and regulations containing discriminatory provisions often remain unaffected as a result. This continued to be the case even after the Supreme Court ruled that the Attorney General is obliged to promote the change in legislation in accordance with the Equality Body's recommendation.⁵⁶²

b) Rules contrary to the principle of equality

Laws and regulations have never been exhaustively scanned to assess their consistency with the anti-discrimination directives or their compliance with the equality principle in general. A problem of non-compliance usually surfaces when a complaint is filed with the Equality Body, but even in such cases there is no system for recording the non-compliant laws or rules in a single database.

No exhaustive list of laws or regulations that are contrary to the equality principle can be drawn up, since the legislative and policy framework has not been thoroughly scanned for compliance with the directives. A series of complaints have triggered recommendations from the Equality Body to the Attorney General to proceed with law reforms, many of which were not pursued. The cases of non-compliance highlighted by the Equality Body include public service job advertisements that contain an age limit; job descriptions that require an 'excellent knowledge of Greek' as a prerequisite or where the criterion to test knowledge of Greek can only be met by graduates of Cypriot schools; rent control laws that exclude third country nationals from their scope; restrictions in the retirement benefits paid to public sector employees aged under 45 who take early retirement in order to join EU institutions; and the Law on Termination of Employment, which deprives persons reaching pensionable age of their right to compensation for unlawful dismissal. No doubt there are many other cases in respect of which no complaint was submitted and thus no decision was issued by the Equality Body to highlight the need for repeal.

⁵⁶¹ Cyprus, Supreme Court, *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic* (Μιχαλάκης Ραφτόπουλος ν. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας) No. 1223/2007, 22 November 2011, Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201111-1223-07.htm&qstring=1223%20w/1%202007; Cyprus, Supreme Court, *Andreas Kattos v. The Republic of Cyprus through the Minister of Justice and Public Order and the Chief of Police* (Ανδρέας Κάττος ν. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), Case N. 349/2010, 7 April 2011. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2011/4-201104-349-10.htm&qstring=349%20w/1%202010.

⁵⁶² Cyprus, Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

9 COORDINATION AT NATIONAL LEVEL

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the anti-discrimination laws. Several ministries are involved, depending on the issue at stake: the Ministry of Labour and Social Insurance deals with issues such as employment and social insurance benefits; the Ministry of Justice and Public Order deals with issues relating to the drafting and interpretation of legislation; the Ministry of Education and the Ministry of the Interior deal with their respective competences. The latest annual report published by the Ministry of Justice and Public Order, which records activities for 2013, sums up the ministry's activities in this field. It provides information that feeds into various European-level reports, such as those issued by the European Union Agency for Fundamental Rights (FRA) and FCNM.⁵⁶³ The ministry has not published an annual report since. There has never been any national action plan on anti-racism or anti-discrimination.

⁵⁶³ Ministry of Justice, *Annual Report 2013*. Available at <http://www.mjpo.gov.cy/mjpo/MJPO.nsf/All/42EB85AE2EFF6C3FC2257F9A00311D97?OpenDocument>.

10 CURRENT BEST PRACTICES

There were no measures in 2018 in the field of combating discrimination, no awareness raising or other relevant practices implemented by the Equality Body or any other public authority. A number of EU-funded projects, established in previous years, were still in place in 2018. These were mainly in the field of integration, but had no visible anti-discrimination angle.

The Code of Conduct against Racism and Guide for Handling and Recording Racist Incidents,⁵⁶⁴ which was first implemented in 2015, continued through 2018 but did not publish any results. Even though this initiative was intended to set up a system of monitoring, recording and intervention, the incidents recorded (if any), the measures taken in response and its overall impact remain unknown, as in previous years.

On 27 August 2018, the Ministry of Justice and Public Order published a bill on self-identification of gender identity and invited the public to engage in an open consultation, which closed on 17 September 2018. The bill entitles Cypriot citizens and asylum seekers aged 18+ to self-identify their gender, up to two times, in accordance with the way in which they personally experience their gender, irrespective of their gender at birth or their biological characteristics or changes to their characteristics caused by medical intervention or medication. It is not necessary for any person to present evidence of gender reassignment in order to make use of the right to self-identification. The law foresees a procedure for children to self-identify their gender. This requires an application through their guardians and a court order that will decide according to the child's best interests, taking into consideration the opinion of an interdisciplinary team and the guardians. The official state records must record the gender identity chosen by the applicant who has followed the procedure foreseen in the law, but the change in gender identity must not be reflected in the official record and a breach of confidentiality is punishable with a prison sentence of up to two years or a fine of up to EUR 10,000. Courts in Cyprus are under a duty to accept foreign court decisions recognising a person's chosen gender identity.⁵⁶⁵ The Orthodox Church published its disagreement with the bill, criticising the bill as recognising the right of persons to go against nature, calling on MPs not to uproot whatever healthy has remained in this country and stressing that the degeneration of society will not help people who are fighting for their national survival.⁵⁶⁶ The bill was still pending at the time of writing.

With regard to the implementation of the CRPD, measures launched in previous years under the relevant national action plan continued through to 2018. These included the de-institutionalisation of persons with disability and their relocation to homes in the community, an ongoing project that started in 2016; the improvement of accessibility features in public buildings and public transport; disability grants; vocational training; incentives to employers; a quota for the employment of persons with disability in the public service, etc. Since 2018 the project of de-institutionalisation of persons with disability and the operation of supported living has been co-funded by the European Social Fund to enable the establishment of new homes in the community for persons with severe disabilities. The national action plan for disability for the period 2017 to 2020 was adopted in 2017. It mainly sets out actions that continue existing policies and measures, many of which are

⁵⁶⁴ For more details, see the website of the Ministry of Education at http://www.moec.gov.cy/dme/programmata/scholiki_paravatikotita/protokolla/kodikas_symperiforas_kata_tou_ratsismou_pi.pdf.

⁵⁶⁵ Cyprus, Bill entitled 'Law on Legal Recognition of Gender Identity of 2018' (Νομοσχέδιο με τίτλο 'Ο περί νομικής αναγνώρισης της ταυτότητας φύλου Νόμος του 2018'). Available at [www.mjpo.gov.cy/mjpo/MJPO.nsf/All/770B707519F125DCC22582F600446B7E/\\$file/%CE%9D%CE%BF%CE%BC%CE%BF%CF%83%CF%87%CE%B5%CE%B4%CE%B9%CE%BF%20%CE%B3%CE%B9%CE%B1%20%CE%B4%CE%B7%CE%BC%CF%8C%CF%83%CE%B9%CE%B1%20%CE%B4%CE%B9%CE%B1%CE%B2%CE%BF%CF%8D%CE%BB%CE%B5%CF%85%CF%83%CE%B7.docx](http://www.mjpo.gov.cy/mjpo/MJPO.nsf/All/770B707519F125DCC22582F600446B7E/$file/%CE%9D%CE%BF%CE%BC%CE%BF%CF%83%CF%87%CE%B5%CE%B4%CE%B9%CE%BF%20%CE%B3%CE%B9%CE%B1%20%CE%B4%CE%B7%CE%BC%CF%8C%CF%83%CE%B9%CE%B1%20%CE%B4%CE%B9%CE%B1%CE%B2%CE%BF%CF%8D%CE%BB%CE%B5%CF%85%CF%83%CE%B7.docx).

⁵⁶⁶ 'Κατά του νομοσχεδίου για αναγνώριση ταυτότητας φύλου η Ιερά Σύνοδος', in *Cyprus Times*, 11 September 2018. Available at <https://cyprustimes.com/2018/09/11/kata-toy-nomoschediow-gia-anagnorisi-taytotitas-fyloy-i-iera-synodos/>.

not acceptable to KYSOA as compatible with the CRPD. According to KYSOA, no new or innovative actions are foreseen, whilst EUR 2.8 million out of the total budget of EUR 2 885 800 earmarked for the implementation of the Action Plan concerns public transport upgrades. There were no new initiatives adopted in 2018.

In September 2018 the Streets and Buildings Regulation was amended, introducing a requirement for designers to ensure that the design they are submitting for approval is accessible and safe for all, including persons with disability. The new accessibility requirement applies to all buildings except protected areas of historical buildings and monuments, residences and blocks of flats with up to four housing units, in respect of which compliance with the new regulation is optional. The amendment also purports to transpose EU Regulation 305/2011 on the marketing of construction products.⁵⁶⁷

⁵⁶⁷ Cyprus, Law Regulating Streets and Buildings, Annex III, Regulation 61HA (Ο Περί ρυθμίσεως οδών και οικοδομών Νόμος, Παράρτημα III, Κανονισμός 61HA) N. 5111, 15 September 2018. Available at www.etek.org.cy/uploads/fck/%CE%9A%CE%94%CE%A02622018.pdf.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

1. The appointment of a junior prosecutor with no equality-related experience as Ombudsman in 2017 revealed a number of systemic problems as regards the correct transposition of Article 13 of the Racial Equality Directive. The qualifications required for a person to be appointed Ombudsman, and automatically head of the Equality Body, provide no guarantee that the specialised body will perform its functions effectively or independently. There is no requirement for the Ombudsman to possess any qualifications or experience, no obstacles to politically exposed persons being appointed and no duty to exclude conflict of interest, thus paving the way for the executive to appoint a person that serves the political agenda of the President at the time.
2. The Equality Body's mandate is no longer exercised, and no reports or other activities are carried out in this capacity. The complaints received are handled as Ombudsman or as monitoring body for the CRPD, which means that the complaints are no longer examined through the lens of the anti-discrimination directives.
3. Very rarely do discrimination cases make it to the courts. In cases where they do, the anti-discrimination legal framework is not invoked; instead, recourse is made to the 59-year-old constitutional provisions (judicial review of administrative acts; and/or the general equality provision in Article 28), which do not offer the far-reaching protection of the directives. The decision is often based on problematic legal doctrines arbitrarily developed by the courts, which do not comply with the directives and which deny victims the protection offered by the directives.
4. Courts tend to invoke the doctrine of separation of powers in order to continue applying discriminatory laws.
5. The Equality Body cannot offer any assistance to victims beyond the issuing of reports with recommendations. The issuing of reports does not necessarily lead to compliance and offers only moral gratification to victims as it cannot lead to an award of compensation. Since the directives were transposed, only a handful of discrimination cases have reached the courts, most of them from retired senior public servants claiming pension-related rights, without any assistance from the Equality Body.
6. In recent years, the Government has completely abandoned efforts to raise awareness about the directives, to promote equality initiatives or to consult with civil society. This is the case even with KYSOA, which in 2006 was afforded the status of a social partner. In the case of disability and age, the equality agenda is subsumed into a 'welfarism' mentality governed by 'charitable' approaches, which seem to be prevalent amongst policy makers and some sectors of civil society.
7. There is a lack of accountability of perpetrators of racist and homophobic stereotypes and hate speech in the public sphere. The most common culprit is the Archbishop of the Greek Orthodox Church of Cyprus, who enjoys a certain immunity from law enforcement agencies and from the Government in general. The immunity afforded to the Archbishop, both by the political leadership and the justice system, perpetuates and reinforces a negative climate against Muslims, migrants and refugees in society and paves the way for and legitimises far-right hostility against these groups.
8. There is no procedure in place for a regular review or revision of discriminatory laws/regulations. In practice, a review is only triggered once a complaint is submitted to the Equality Body. In such a case, the law requires the Equality Body to refer discriminatory laws/regulations to the Attorney General, who is then under a duty to prepare the amending legislation. Despite several referrals to the Attorney General, few of the laws found by the Equality Body to be discriminatory have been amended. This procedure, however, is very rarely followed, with the result that several discriminatory laws remain in place. The failure of the Attorney General to proceed with amending the laws flagged by the Equality Body, when viewed through the lens of the wide powers granted to the Attorney General by the Constitution, raise

concerns as to whether the Cypriot justice system is capable of responding to the needs and requirements of the EU *acquis*. The Attorney General's failure to prosecute the Archbishop for homophobic and racist speech raises further concerns of an arbitrary grant of immunity, given the Attorney General's sole discretion in initiating criminal prosecutions.

11.2 Other issues of concern

1. There is no legal requirement for the specialised body to publish its reports or to publish data about complaints received, and the new Ombudsman has made use of this gap in order to keep the activities of this body away from the public eye. There is currently no information about the number of complaints received or handled in 2015 and 2016; the statistical data for 2017 is unclear.
2. It is not clear whether the Equality Body continues to face budgetary issues as it did in previous years. The new Ombudsman no longer supplies information about its budget or personnel, annual activity reports are no longer published and there are no equality-related activities. In light of this new situation, it is no longer possible to evaluate the extent of this problem.
3. The new Ombudsman does not accept complaints from organisations representing victims.
4. In the absence of statistics from the Equality Body, which are no longer published, there is no equality data whatsoever at national level. The courts do not maintain statistical records of decisions issued.
5. Since its inception in 2004, the Equality Body has not issued a single binding decision or imposed any fine, resorting only to mediation or non-binding recommendations. In the case of fines, this may be partly attributed to the fact that the fines foreseen in the legislation are too low to be seen by the perpetrator as a deterrent.
6. A new law came into force in December 2017 governing the operation of NGOs, imposing a number of new prerequisites, formalities and demands on NGOs.⁵⁶⁸ The operation of NGOs has now become more demanding, bureaucratically onerous and expensive. Moreover, the law did not grant NGOs the necessary 'legitimate interest' in order to bring to court applications for judicial review on behalf of victims. Organisations can only act on behalf of victims in claims for compensation before a District Court.
7. Litigation is not sufficiently used, owing to the cost and length of time involved; the fact that legal aid is made available only subject to insufficient means; and to the lack of awareness of the anti-discrimination laws amongst the legal profession. The sanctions foreseen in the law for discrimination are neither dissuasive nor effective. Moreover, given the fact that the Equality Body's decisions in the past were mere recommendations, victims of discrimination were, in practice, not afforded the mandatory legal protection foreseen in the directives. There is little coordination between NGOs and lawyers for effective handling of cases.
8. As a concept, positive action continues to be viewed with suspicion by the courts and policy makers alike. They appear willing to apply it only to persons wronged by the Turkish invasion (war veterans, persons with disabilities resulting from the war) as part of the national project of promoting their sense of 'victimhood', but otherwise find that it violates the equality principle enshrined in the Constitution. Under the current austerity agenda, however, positive action becomes less of a possibility in any field. Following the Labour Tribunal decision in 2008 establishing that it has no jurisdiction to hear claims of discrimination in the selection process for a job placement, the law transposing Directive 78/2000 (minus the disability component) was amended. However, the authorities failed to amend the disability law. In considering an appeal against the first instance decision of the tribunal, the Supreme

⁵⁶⁸ Cyprus, Law Revising the Laws on Associations and Foundations and Annuling the Law on Registration of Clubs (Νόμος που αναθεωρεί τους περί Σωματείων και Ιδρυμάτων Νόμους του 1972 και 1997 και καταργεί τον Περί εγγραφής Λεσχών νόμο) N. 104(I)/2017. Available at http://www.cylaw.org/nomoi/arith/2017_1_104.pdf.

- Court disagreed with the tribunal's findings as regards its jurisdiction, but did not explicitly rule that the Labour Court has jurisdiction to try all discrimination cases, irrespective of whether an employment relationship exists or not.
9. There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination. Nor is there any law that imposes a general public duty of anti-discrimination on authorities. Many complaints directed against various Government departments are simply not addressed or dealt with, without any consequences for the departments concerned, and serious instances of discrimination go unpunished.
 10. In 2018, with regard to the implementation of the mechanism foreseen in Article 33 of the CRPD, the Department of Social Integration of Persons with Disability reported that the eight thematic technical committees, which were set up in 2012 and operated until 2016, were no longer in operation because the representatives of KYSOA had withdrawn. This casts doubts as to whether Article 33 of the CRPD is being implemented in Cyprus. Different working groups operated in each ministry for the purpose of coordinating and monitoring the implementation of the national action plan. An open consultation procedure was held, as the drafts of the action plan and the strategy were posted on the department's website. However, KYSOA reports that its comments on the texts were not taken into consideration.⁵⁶⁹ The department plans to promote an amendment to the legislative framework to enable the direct participation of more representatives of disability organisations in the coordination and monitoring structure. KYSOA has protested against this intended measure, which they interpret as an attempt to sidestep them and to reduce their representation, pointing to the legal provisions that render consultation with KYSOA mandatory. KYSOA also alludes to the fact that five out of their eight member organisations have over 1 000 members, rendering KYSOA the largest representative body of persons with disability in Cyprus.⁵⁷⁰
 11. In 2017, the latest collapse of the peace talks aimed at resolving the Cyprus problem gave fresh impetus to demands by Turkish Cypriots to restore their constitutional rights, which they were deprived of as a result of the 'doctrine of necessity'. Faced with a problem that increasingly looks 'unresolvable', Turkish Cypriots are now more inclined to resort to litigation at national and European level to claim their rights. The tension generated by the protracted conflict between the Greek Cypriot and Turkish Cypriot communities and the underlining human rights issues which ensue as a result were also flagged by the UN Committee on the Elimination of Racial Discrimination in its 2017 country report on Cyprus.⁵⁷¹
 12. In the 2016 parliamentary elections, the neo-Nazi party ELAM⁵⁷² entered Parliament for the first time, having won 3.71 % of the votes and securing two parliamentary seats. This result marked an increase of 2.6 % in the number of votes it won in the previous elections. The negative impact of ELAM's entry into Parliament became apparent a few months after the elections, when it proposed that the Cypriot referendum of 1950, which had decided overwhelmingly in favour of union with Greece, be celebrated in schools. ELAM's proposal was accepted and adopted, with only the communist party voting against it. This development prompted the Turkish Cypriot leader Mustafa Akkinci to withdraw from the negotiations for the resolution of the Cyprus problem, causing the peace process to collapse. This series of events has since topped the political agenda and discourse, with one side blaming the other for the collapse of the peace talks and for allowing ELAM to 'score points'. There are also concerns about the heightened tensions resulting from increased far-right activity. Since it gained seats in Parliament in 2016, ELAM is afforded ample time by

⁵⁶⁹ Letter from KYSOA to the Minister of Labour, Welfare and Social Insurance, President of the Pancyprian Council of Persons with Disabilities, 31 August 2017.

⁵⁷⁰ Letters to the FRANET contractor from the Department of Social Integration of Persons with Disabilities and KYSOA.

⁵⁷¹ UN Committee on the Elimination of Racial Discrimination (2017), *Concluding observations 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.

⁵⁷² The initials stand for 'National Popular Front', in Greek: Εθνικό Λαϊκό Μέτωπο

- the mainstream media to disseminate xenophobic and Islamophobic views. During the 2017 electoral campaign for the presidential election, which took place in January 2018, ELAM's views against migrants, Muslims and homosexuals were paraded in all the major media outlets as part of the race for the presidential election, which ELAM contested with its own candidate. Complaints submitted to media monitoring bodies about TV channels disseminating ELAM's racist views were all rejected on the grounds that the TV channels are obliged by law to equally present the views of all candidates. ELAM's candidate got 5 % of the votes in the presidential election in January 2018.
13. There has never been any Roma inclusion strategy, nor has there been an action plan to combat discrimination on any ground.
 14. No training is offered to state bodies, local governance actors, law enforcement officers, judges or lawyers. There is no judicial academy in Cyprus.
 15. Judicial practice on discrimination claims often deviates from the letter and the spirit of the directives, rejecting discrimination claims by using the 'reasonableness' test. The use of this test has led the courts to reject direct discrimination claims that were thought to be 'reasonable', in breach of the equality directives, which allow only a limited range of exceptions.
 16. As the economic crisis deepens and unemployment rises, anti-immigrant sentiment is being hyped. The new Government's declaration upon assuming office in March 2013 – that Cyprus would cease to be 'a migrant's paradise' – has not only met with the tacit acceptance of the social partners but has also led to a gentleman's agreement amongst the social partners that employers should employ 'primarily Cypriots'. In 2013 and 2014 employment-related complaints to the Equality Body dropped by half compared to previous years, whilst no discrimination court cases were taken by employees against their employers; both must be attributed to underreporting owing to fear of losing their jobs amidst the deep recession. The austerity package has also affected pensions and welfare benefits for the elderly, the majority of whom live below the poverty level. No data is available from the Equality Body for the past four years and the courts still do not publish statistics disaggregated by field; nevertheless, the socioeconomic conditions, unemployment, poverty and precarity remain high as in previous years.
 17. Regarding discrimination at the workplace, the inequality of power between the employers' lobby and workers' unions, despite the apparent strength of the latter, is accentuated by the fact that Cyprus has a very large SME sector, whose individual members generally lack professionalism and awareness on issues of labour rights and discrimination. This sector is one of the worst hit by the economic crisis and the violation of workers' rights has become commonplace.
 18. The national specificities of Cyprus are the result of what can be termed country-specific structural problems. These consist mostly of issues deriving from the unresolved Cyprus problem, which creates problems of discrimination resulting from the de facto division of the country e.g. the failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish Cypriots in access to property and in the exercise of various constitutional rights; the violation of Greek Cypriot rights by Turkey; and a certain tendency of the authorities and the courts to 'seek revenge' for the Turkish invasion of Cyprus. The Cyprus problem can also be blamed, at least partly, for a general lack of tradition in equality issues deriving from the 40-year-old persistent predominance of the Cyprus problem in the public sphere. Greek Cypriot resentment of the constitutional quota system for Turkish Cypriots in the public sector, the history of ethnic conflict and the continuous application and expansion of the 'doctrine of necessity' by the authorities and the courts subordinate equality issues to political expediencies and place a disproportionately strong emphasis on state sovereignty.
 19. The comprehensive educational reform that commenced in 2008, soon after the former Government took office, came to a halt when the new Government came into power in March 2013. The new curriculum developed under the reform, aiming at rendering the school system democratic, inclusive and multicultural, has been abandoned, together with the pioneering methods of teaching, as the system has

reverted to the old curriculum and the old methods used before the reform was implemented. Tensions regarding the teaching of religion, which had subsided in previous years, were exacerbated again in 2015 following an initiative of the Ministry of Education to encourage students to assist with the conducting of the Christian Orthodox ceremony, an initiative that was heavily criticised by the Equality Body.⁵⁷³ However, the ministry initiative and the arguments offered by the ministry in its defence may suggest that religious intolerance in education is deeply rooted in obsolete mentalities and stereotypes maintained by the teachers themselves, which remain unaddressed to the present day. In 2018 the newly appointed Minister of Education paid an official visit to the far-right party ELAM, following which he told the press that he shares the same values as the party. The statement and the public discussions that followed may have provided fertile ground for intolerant attitudes to further surface amongst teachers in public education.

20. The Law on Presidential Elections does not safeguard the right of persons with disabilities to vote with the assistance of a person of their choice. Instead, it provides that persons who cannot vote by themselves may ask for the assistance of the person presiding over the particular voting centre but does not provide for the right of persons in need of assistance to vote with the help of persons of their choice. This provision, which has been in place since 1959 without any amendments,⁵⁷⁴ is not in line with the right to a secret ballot protected by Article 29(a)(ii) of the CRPD. During the presidential election of January 2018, KYSOA received complaints that blind persons were not allowed to enter the booth with the person of their choice. On one occasion, a person with visual impairment reported to KYSOA that the chairperson of the voting centre, who was assisting her with voting, in fact voted on her behalf for a candidate who was not the candidate of her choice. As regards the second round of elections on 4 February 2018, KYSOA received reports that some blind people did not show up because of the problems they had encountered when exercising their voting rights during the first round. Other blind persons who tried to vote with an escort of their choice were turned away. KYSOA points out that there are hundreds, if not thousands, of persons with disability who never voted in any elections and did not vote this time either due to problems of accessibility, including accessibility to information, this being particularly the case of persons residing in institutions and persons with intellectual disabilities.
21. There is no labour inspectorate to monitor the working conditions of employees in order to identify discrimination on grounds other than gender.
22. All debates on fundamental rights, which had previously shaped the public sphere, have now subsided and transformed into a single theme – the economic crisis and its impact on the Cypriot population – that dominates public discourse.

⁵⁷³ Cyprus, Anti-discrimination Authority, Report on the respect of religious freedom in schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

⁵⁷⁴ Cyprus, Law on Elections (President and Vice President of the Republic) of 1959 (Ο περί Εκλογής (Πρόεδρος και Αντιπρόεδρος της Δημοκρατίας) Νόμος του 1959) N. 37/1959, Article 29(6). Available at www.cylaw.org/nomoi/enop/non-ind/1959_1_37/index.html.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

There were no relevant legislative amendments in 2018.

12.2 Case law

There were no court decisions dealing directly with the laws transposing the anti-discrimination directives. The Ombudsman's office did not publish any relevant decisions either. Below are three cases decided by courts which have an anti-discrimination angle.

Name of the court: Cyprus Supreme Court, Appeal Jurisdiction

Date of decision: 4 October 2018

Name of the parties: *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*

Reference number: Review Appeal No. 190/2012

Address of the webpage: www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A

Brief summary: In 2010 a person with a disability who was deemed ineligible for a state grant to buy a car applied to court in order to reverse the decision of the granting authority, which was the Ministry of Finance. The ministry's rejection had relied on the fact that the applicant had already turned 70, which was the age limit foreseen in the particular scheme. At first instance, the trial court upheld his claim, ruling that his exclusion from the scheme on the grounds of his age amounted to unlawful discrimination in contravention of Article 28 of the Constitution and of the principle of equal treatment. The Republic appealed the trial court ruling on the grounds that the right to financial assistance is not protected by the Constitution, and in the case at hand the applicant was not treated less favourably than other persons of his age. The Appeal Court allowed the appeal and found in favour of the Republic and against the applicant, on the grounds that the constitutional equality provision does not prohibit reasonable discrimination premised upon an objective assessment of essentially different real situations based on the public interest. The Appeal Court concluded that equality is infringed only if the differential treatment does not rely on an objective and reasonable discrimination; that differential treatment must be examined in connection with the aim it serves and the realities on the ground at any given time. The age limit of 70 was found not to infringe the equality provision of the Constitution, as the essential nature of things in the given case justified the imposition of reasonable discrimination premised upon objective criteria applied to all affected persons. Removing the age restriction in the scheme was likely to lead to an uncontrollable and sharp increase in the number of eligible persons, which would render the scheme unsustainable given the state of public finances. The Appeal Court further concluded that the case at hand fell outside the scope of the equality legislation that transposed the *acquis* since there was no act of discrimination prohibited by law or any violation of the equal treatment principle that would trigger the provisions of these laws.⁵⁷⁵

Name of the court: Administrative Court

Date of decision: 25 July 2018

Name of the parties: *Senner Hassan et al v. The Republic of Cyprus*

Reference number: Cases 989/2014, 1103/2014, 1104/2014, 1105/2014

Address of the webpage: N/A

Brief summary: In 2013 the Law on Election of Members of the European Parliament was amended in order to provide for the right to vote of those Turkish Cypriots who reside in

⁵⁷⁵ Cyprus, Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

the areas that are not under the control of the Republic of Cyprus, i.e. the northern part of Cyprus (hereinafter 'the north'). The amendment provides complex procedures for the eligibility of Turkish Cypriots to vote, causing several Turkish Cypriots to arrive at the ballot and be turned away because of non-registration in the electoral register. The public announcements issued by the Ministry of the Interior ahead of the 2014 elections did not clarify that Turkish Cypriots residing in the north were required to make any prior registration in order to be allowed to vote. A group of applicants who were denied the right to vote applied to the Court, arguing that the interpretation of the law made by the authorities on the day of the elections amounted to an infringement of the non-discrimination principle due to the applicants' ethnic origin, in violation of Articles 6 and 28 of the Constitution, Article 21 of the EU Charter for Fundamental Rights, Council Directive 2000/43 as incorporated into Law 59(I)/2004 and Article 14 of the ECHR. The court rejected the claim on the grounds that the act complained of, i.e. preventing the applicants from voting in the elections, could not be challenged through judicial review because it was merely an 'executory' act for the purposes of information, and did not address the discrimination component of the claim.⁵⁷⁶

Name of the court: Family Court, Appeal Jurisdiction

Date of decision: 10 September 2018

Name of the parties: Appeal Jurisdiction, *G.M. v. H.V. and L.A.* (2018)

Reference number: Appeal No. 38/2015

Address of the webpage: 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

Brief summary: 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,⁵⁷⁷ 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 Court, in replacement of the dissolved Turkish Communal Court, but only in matters relating to the dissolution of marriages.⁵⁷⁸ The trial court found that the scope of the 2003 law 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. The

⁵⁷⁶ Cyprus, Administrative Court, *Senner Hassan et al v. The Republic of Cyprus*, Cases 989/2014, 1103/2014, 1104/2014, 1105/2014, judgement delivered on 25 July 2018.

⁵⁷⁷ 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.

⁵⁷⁸ 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.

Appeal Court rejected the appeal, upholding the trial court's findings, without addressing the discrimination component of the claim.

As in previous years, there were no cases brought by Roma or Travellers in 2018.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Cyprus

Date: 31 December 2018

Title of the law: Law on Persons with Disabilities N. 127(I)/2000 as amended by: Law N. 57(I)/2004; 72(I)/2007; 102(I)/2007; 63(I)/2014; 22(I)/2015

Abbreviation: Law N. 127(I)/2000 as amended

Date of adoption: 2000

Latest amendments: 2015

Entry into force: 2000

Web link: www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html

Grounds covered: Disability

Civil law

Material scope: Public and private employment

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, duty to provide reasonable accommodation in employment and beyond

Title of the law: The Constitution of the Republic of Cyprus

Abbreviation: Constitution

Date of adoption: 16 June 1960

Latest amendments: 2013

Entry into force: 16 August 1960

Web link: www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html

Grounds covered: Community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever

Civil and administrative law

Material scope: Mostly the public sector, although there is legal authority establishing that constitutional rights can be actionable per se against individuals [*Yiallourou v. Evgenios Nicolaou* (2001), Supreme Court case, Appeal No. 9331, 8 May 2001]

Principal content: General prohibition of discrimination on several grounds and in unspecified fields; declaration of rights along the lines of the ECHR

Title of the law: The Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004, as amended by Law N. 147(I)/2006

Abbreviation: Law 59(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2006

Entry into force: 1 May 2004

Web link: www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html

Grounds covered: Racial/ethnic origin

Civil law

Material scope: Social protection; medical and medicinal care; social provisions; education; access to goods and services, including housing

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Title of the law: The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004, as amended by Law Nos. 50(I)/2007 and 86(I)/2009

Abbreviation: Law 58(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2009

Entry into force: 1 May 2004

Weblink: http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html

Grounds: Racial and ethnic origin, religion or belief, age, sexual orientation

Civil law

Material scope: Conditions of access to employment; access to vocational orientation and training; working conditions and terms of employment; membership of trade unions

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Title of the law: The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004

Abbreviation: Law 42(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2006

Entry into force: 1 May 2004

Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html

Grounds covered: Race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation

Civil law

Material scope: Combating of racist discrimination and discrimination forbidden by law; promotion of equality of the enjoyment of rights and freedoms safeguarded by the Constitution or by the conventions ratified by Cyprus; promotion of equality of opportunity in the areas of employment; access to vocational training; working conditions, including pay; membership of trade unions or other associations; social insurance and medical care; education; access to goods and services, including housing

Principal content: Creation of specialised body

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Cyprus

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	16.12.1961	06.10.1962	None	Yes	Yes
Protocol No. 12, ECHR	04.11.2000	30.04.2002	None	Yes	Yes
Revised European Social Charter	03.05.1996	27.09.2000	None	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	19.12.1966	02.04.1969	None	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	04.06.1996	None	N/a	Yes
International Covenant on Economic, Social and Cultural Rights	09.01.1967	02.04.1969	None	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	12.12.1966	21.04.1967	None	Yes	Yes
Convention on the Elimination of Discrimination Against Women	23.07.1985 *	23.07.1985 *	None	Yes	Yes

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Convention No. 111 on Discrimination	02.02.1968	02.02.1968	None	Yes	Yes
Convention on the Rights of the Child	05.10.1990	07.02.1991	None	Yes	Yes
Convention on the Rights of Persons with Disabilities	03.03.2007	17.02.2011	Yes	Yes	Yes

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