

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

CYPRUS, Situation as of 1 December 2004

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: CYPRUS	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes. Article 6 Article 28 § 1.	No statute.	No case-law found on this subject.	Law 57(I)/2004 amending Law no. 127(I)/2000.
Norms concerning racism	Yes. Article 28 § 2.	Law no. 12/1967, as amended by Laws 11/92, 6(III)/95 and 28(III)/99.	Yes. Laws no. 11 (III)/1992, no. 6 (III)/1995 and no. 28(III) /1999 amending Law no. 12/1967. Laws no. 26(III)/ 2004 and no. 22 (II)/ 2004. Equal Treatment (Racial or Ethnic Origin) Law no. 56 / 2004. Law no. 58(I)/2004. The combating of racism and other discrimination (Commissioner) Law no. 59 / 2004. Law no 57(I)/2004 amending Law no. 127(I)/2000. 58(I)/2004.	Equal Treatment (Racial or Ethnic Origin) Law no. 56 / 2004. Law no. 58(I)/2004. The combating of racism and other discrimination (Commissioner) Law no. 59 / 2004. Law no 57(I)/2004 amending Law no. 127(I)/2000.
Relevant jurisprudence	Yes. <i>Yiallourou v. Evgenios Nikolaou,</i>	No case-law found on this subject.	No case-law found on this subject.	No case-law found on this subject.

(2001),
Supreme Court
of Cyprus, not
published.

EXPLANATORY NOTE

CYPRUS / GENERAL OVERVIEW

Cyprus has ratified most European and United Nations Conventions relating to discrimination. These include, for example, the Convention of New York on the Elimination of All Forms of Racial Discrimination in 1967 (Law no. 12/1967), the CoE Convention on Cybercrime and its additional protocol on criminalization of acts of a racist and xenophobic nature committed through computer systems (Laws no. 26(III)/ 2004 and no. 22(II)/ 2004).

Following amendments in 1992, 1995 and 1999 of the Law ratifying the Convention on the Elimination of All Forms of Racial Discrimination, (Amending Laws no. 11 (III)/1992, no. 6 (III)/1995 and no. 28(III) /1999) the following acts related to racial discrimination are criminal offences (section 2A Law no. 11(III)/92 as amended) :

- To incite to acts which are likely to cause discrimination, hatred, or violence against any person or group of persons on account of their racial or ethnic origin, or their religion.
- To establish or participate in an organisation which promotes organized propaganda or activities of any form targeting racial discrimination.
- To express ideas insulting to any person or group of persons by reason of their racial or ethnic origin, or their religion.
- To refuse to supply goods or services to another person by reason of his racial or ethnic origin or religion.

Cyprus enacted important legislation in 2004, for harmonization with the European Union Council Directives 2000/43 and 2000/78, on the implementation of the principle of equal treatment irrespective of racial or ethnic origin in the public and the private sector, in employment and occupation and regarding persons with disabilities. Violation of the provisions of the new laws is a criminal offence.

Cyprus is one of the states to have made the declaration under article 14 of the U.N. Convention which effectively recognises the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider communications from individuals or groups claiming to be victims to a violation of any of the rights set forth in the Convention.

The National Institute for the Protection of Human Rights, established in 1998, has a general mandate, as an independent body with broad representation of government officials as well as representatives from NGOs and the House of Representatives, to monitor respect for human rights. One of the more effective tasks of the Institute is the co-ordination and preparation of periodic reports which are submitted to the various treaty bodies including the Committee of Experts established under the Convention for the Elimination of All Forms of Racial Discrimination.

Constitutional Law: Cyprus

Preliminary Note: this table is accompanied by an explanatory note

Constitutional Provision	Scope	Relevant jurisprudence	Remarks
Article 6.	Subject to the express provisions of this Constitution no law or decision of the House of Representatives or of any of the Communal Chambers, and no act or decision of any organ, authority or person in the Republic exercising executive power or administrative functions shall discriminate against any of the two Communities or any person as a person or by virtue of being a member of a Community.		
Article 28 § 1.	All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.		
Article 28 § 2.	Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of this community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.		
Article 30 § 1	No Law exists which deprives or limits the right of access to Court to any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or any ground whatsoever.		
Article 30 § 2	Every person shall enjoy the right to a fair and public hearing within a reasonable time, by an independent, impartial and competent court established by law, in the		

determination of his civil rights and obligations and of any criminal charge against him/her.

EXPLANATORY NOTE

CYPRUS / CONSTITUTIONAL LAW

1. Constitutional Dispositions

There is no legal or other restriction on the exercise of the rights and, enjoyment of the freedoms, whether individually or as a group, as the case may be, flowing from the international legal instruments ratified by Cyprus.

Article 28§1 of the Constitution affords to all persons the right of equality before the Law, the administration and justice, and of equal protection and treatment thereby.

Part II of the Constitution of Cyprus (Articles 6-35) sets out Fundamental Rights and Liberties, incorporating verbatim and in some instances expanding upon, the rights and liberties safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms and all the Protocols thereof.

The Fundamental Rights and Liberties of Part II of the Constitution are expressly guaranteed to “everyone” or to “all persons” or to “every person”, without making any distinction or differentiation between citizens and non-citizens of the Republic, or between citizens of the Republic who belong to the Greek and Turkish communities and without any distinction or differentiation on grounds of community or religion or nationality, or on other grounds. This stance of the Constitution finds direct expression in Article 28§2 thereof, which specifically affords the right to every person to enjoy the said rights and liberties, without any direct or indirect discrimination on the ground of his “community, race, religion, language, sex, political or other conviction, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless there is express provision to the contrary in the Constitution”. It follows then, that the right of access to Court which is guaranteed by Article 30 of the Constitution, as one of the fundamental rights and liberties, is also afforded to everyone, including all citizens of the Republic regardless of whether such citizens are Greek Cypriots, Turkish Cypriots, Maronites, Armenians or Latins. No law exists which deprives, or limits the right to access to Court on any of the above grounds, and even if such a law had existed, its constitutionality would have been challenged not only as amounting to a breach of the said Articles 30 and 28§2, but also as a breach of Article 6, by virtue of which no Law shall discriminate against any of the two Communities or any person as a person, or by virtue of being a member of a Community.

Under Article 109 of the Constitution, each religious group has the right to be represented in the Communal Chamber, to which it opted to belong under Article 2§3 of the Constitution, by the elected members of such group.

Due to the fact that the function of the Communal Chambers became impossible after the withdrawal of the members of the Turkish Community from their posts, a Law

was enacted (Law no 12/1965), pursuant to which the powers of the Greek Communal Chamber were transferred to a newly constituted Ministry of Education (later renamed the Ministry of Education and Culture). The representatives of the religious groups in the Chamber, despite the dissolution of the Chamber itself, retained, until the expiration of their term of office, the right to state the views of their community on any matter affecting it, and to make the necessary representations before any official body or committee of the House of Representatives or other authority of the Republic. Moreover, the House of Representatives had the obligation to obtain the views of the representatives on any matter affecting their community. The future representation of the groups in the House of Representatives was reserved for regulation in the future.

Religious Groups (Representatives) Law (no. 58/1970) provides for the election of Representatives of religious groups in the House of Representatives. The last elections of Representatives of the religious groups took place on 27.5.2001. Thus, religious groups elect their own representatives in the House of Representatives, who attend as observers and have an advisory role on religious and educational matters which affect their group, but without any legislative power.

By virtue of Article 3 of the Constitution, the official languages of the Republic of Cyprus are Greek and Turkish. Citizens of the Republic speak, in fact, at least one of these languages.

There is no State religion in Cyprus, and there is no Law which enumerates or makes any distinction between religions, which are recognized and not recognized.

Article 18 of the Constitution affords the right of freedom of religion, (with the exception of religions whose doctrines or rites are secret), and of equality of all religions or religious institutions. Article 18, also affords the right to every person, whether individually or collectively, and whether in private or in public, to profess his/her faith and to manifest his/her religion or belief, in worship, teaching practice, or observances, and to change his/her religion or belief.

Article 18 prohibits the use both of physical and moral compulsion for the purpose of making a person change, or preventing him from changing, his/her religion.

The right to education is safeguarded by Article 20 of the Constitution, and by Articles 86-109, which refer to the establishment and functioning of the Communal Chamber, the powers of which were transferred in 1965 to the Ministry of Education and Culture.

Article 21 of the Constitution affords to every person the right to freedom of peaceful assembly and of association with others.

In addition, Article 32 of the Constitution imposes an obligation on the Republic, in regulating by law any matter relating to aliens, to so regulate in accordance with international law.

Furthermore, Article 35 of the Constitution imposes on the legislative, the executive and the judiciary, a duty to secure, within the limits of their respective competence,

the efficient application of the provisions of the Constitution setting out the aforesaid fundamental rights and liberties.

Article 179§2, requires the legislative, and administrative and executive authorities of the Republic, not to enact laws, or issue acts or decisions, which are in any way repugnant to, or inconsistent with, any of the provisions of the Constitution, including the human rights provisions thereof. Any restrictions or limitations of the human rights guaranteed under the Constitution have to be provided by law and have to be absolutely necessary only in the interests of the security of the Republic, or the constitutional order or the public safety, or the public order or the public health, or for the protection of the rights guaranteed by the Constitution to any person. Provisions relating to such limitations or restrictions should be interpreted strictly.

2. Recourse

An individual whose right is violated can obtain remedy either by resorting to the administrative authority under Article 29 Const. or by recourse to the Supreme Constitutional Court under Article 146 Const.

Free exercise and protection of civil, political and other human rights within the ambit guaranteed by the Constitution and international legal instruments is secured through the availability of effective remedies, at the national level, through Court proceedings or other channels, and through the enactment of substantive and procedural laws giving effect to, or facilitating the application of the human rights provisions of the Constitution.

An individual complaining that a decision, act or omission of any organ, authority or person in the State is contrary to the provisions of the Constitution or of any Law (including international legal instruments, ratified by Cyprus), or was made in excess or in abuse of powers, can obtain remedy either by resorting to the administrative authority under Article 29 of the Constitution or by recourse to the Supreme Court of Cyprus which is vested by Article 146 of the Constitution with exclusive jurisdiction to adjudicate finally on such a recourse with power to declare such act or decision null and void and of no effect whatsoever or, in the case of an omission, to declare that the omission ought not to have been made and that whatever had been omitted should have been performed.

Administrative recourse

Article 29 Const. reads as follows:

"1. Every person has the right individually or jointly with others to address a written request or complaint to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this

Article, such person may have recourse to a competent court in the matter of such request or complaint".

Judicial recourse

Article 146 Const. reads as follows:

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint at a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority contrary to any of the provisions of this Constitution or of any law or made in excess or in abuse or powers vested in such organ or authority of person.

2. Such a recourse may be made by a person whose any 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 act or omission".

Persons claiming to be victims of legislative measures of racial discrimination may attack the validity of such measures either through the procedure of a recourse under Article 146 Const. directed against an administrative act or omission based on such measures and affecting their legitimate interests or by raising before any Court (like any other legal question) the question of unconstitutionality of such measures at any stage of any judicial proceedings (civil or criminal) in which they are parties and in the respect of which such measures are material for the determination of any matter at issue (Article 144 Const.). If the Court declares the relevant legislation to be unconstitutional then it becomes inapplicable to the relevant proceedings only¹.

In cases, where the alleged infringement of the right in question does not emanate from an administrative act, decision or omission impeachable as above by recourse for annulment, the complainant may have a cause of action in tort, which he may pursue by means of a civil action. Such a civil action may be instituted against the Republic, which by virtue of Article 172 of the Constitution, is liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic. Violation of human rights is an actionable right which can be pursued in civil courts against those perpetrating the violation, for recovering from them, inter alia, just and reasonable compensation for pecuniary or non-pecuniary damage suffered as a result. This has been established by case-law since 2001 (by judgment of the Supreme Court of Cyprus in the case *Yiallourou v. Evgenios Nikolaou*).

Finally, an individual, having exhausted domestic remedies, may have recourse or submit a communication under the optional procedures of various international human rights instruments, such as the Convention on the Elimination of all Forms of Racial Discrimination (CERD), the European Convention of Human Rights and the (First) Optional Protocol to the International Covenant on Civil and Political Rights.

Criminal Law: Cyprus

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Incitement to acts or activities which cause racial discrimination, violence or hatred.	Law no. 11(III)/1992 (as later amended by Laws 6(III)/95 and 28(III)/99) amended Law no. 12/1967 which ratified the Convention on the Elimination of All Forms of Racial Discrimination. The amendment added a section (Section 2 A) covering a number of offences related to racial discrimination.	Any person who in public, either orally or in the press or in any document or picture or by any other means, intentionally incites acts or activities which are likely to cause discrimination, hatred or violence against any group or group of persons by reason only of their racial or ethnic origin or their religion is guilty of an offence.	Imprisonment not exceeding two years or a fine not exceeding one thousand pounds, or both.		
Participation in any organisation which promotes racial discrimination.	Section 2 A Law no. 11(III)/1992 as amended.	Any person who establishes or participates in any organisation which promotes organised propaganda or activities of any form aiming at racial discrimination.	Imprisonment not exceeding two years or a fine not exceeding one thousand pounds, or both.		
Expressing ideas which cause insult.	Section 2 A Law no. 11(III)/1992 as amended.	Any person who in public either orally or in the press or	Imprisonment not exceeding one year or a fine or both.		

		in any documents or pictures or by any other means expresses ideas which insult any person or group of persons by reason of their racial or ethnic origin or their religion is guilty of an offence.	Imprisonment not exceeding two years or a fine not exceeding five hundred pounds, or both.	
Refusing goods or services.	Section 2A Law no. 11(III)/1992 as amended.	Any person who by profession supplies goods or services and who refuses to any person such supply by reason only of his racial or ethnic origin or his religion or makes such supply subject to a term relating to the racial or ethnic origin or to the religion of any person is guilty of an offence.	Imprisonment not exceeding one year or a fine of four hundred pounds or both.	Criminal Case no. 31330/99 dated 12.12.2001
Interdiction of the discrimination.	Article 3.1 of the Prison (general) regulations, 1981.	These Regulations shall be applied impartially. There shall be no discrimination on grounds of race, colour,		

sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Moreover, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Civil and Administrative Law: Cyprus

Preliminary Note: this table is accompanied by an explanatory note

Civil and Administrative Provision	Scope	Relevant Jurisprudence	Remarks
The equal treatment (racial or ethnic origin) Law no. 56/2004.	Prohibits discrimination on grounds of racial or ethnic origin in the public or private sector, concerning social protection, health treatment, social services, training, and access to goods and services.		Harmonisation with EU Council Directive 2000/43.
The equal treatment in employment and occupation Law no. 58(1)/2004.	Prohibits discrimination on grounds of racial or ethnic origin, and also on grounds of religion, belief, sexual orientation, disability and age, specifically in the spheres of employment and occupation.		Harmonisation with EU Council Directive 2000/78.
The persons with disabilities (Amendment) Law no 57(1)/2004.	Prohibits any kind of discrimination – direct or indirect – against persons with disabilities regarding the terms of access to employment, including the selection criteria and the terms of employment in all levels of professional hierarchy. It also		Harmonisation with EU Council Directive 2000/78.

prohibits any kind of discrimination – direct or indirect – as regards promotion, access to all types and all levels of vocational guidance, vocational training and professional experience, the terms and conditions of employment, redundancies and remuneration.

The combating of racism and other discrimination (Commissioner) Law no. 59/2004.

Any person or group may lodge a complaint to the Commissioner of Administration (Ombudsman) as to having been subjected to discrimination prohibited by any law. In addition, the complaint may be one of discrimination (based on community, race, language, colour, religion, and national or ethnic origin) in the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution, or one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law.

EXPLANATORY NOTE

CYPRUS / CIVIL AND ADMINISTRATIVE LAW

The equal treatment (racial or ethnic origin) Law of 2004 (Law no 56/04) implements the principle of equal treatment irrespective of racial or ethnic origin. Violation of the provisions of the Law is a criminal offence and the person who has been discriminated against is afforded the right to institute civil proceedings for compensation covering both pecuniary and non-pecuniary damage.

The equal treatment in employment and occupation Law of 2004 (Law no. 58(1)/04) prohibits all forms of discrimination (direct, indirect, harassment, instruction to discriminate) in all areas covered by the EU Directive. It also covers issues of positive actions, reversal of burden of proof and protection against victimization. Access to justice is safeguarded through actions for damages to the District Court or the Labour Court as well access to an Independent Body for investigation of complaints. Criminal liability also exists for infringement of certain provisions of the law. The ground of disability is dealt separately by the Persons with disabilities (Amendment) Law of 2004 (Law no. 57(I)/04).

The combating of racism and other discrimination (Commissioner) Law of 2004 (Law no. 59/04), vests the Commissioner for Administration (Ombudsman) – an independent Officer – with special competences, duties and powers for combating and eliminating discrimination in both public and private sectors (Law no. 3/91 as

amended by Law no. 10(I)/95). Under its provisions any person or group may lodge a complaint to the Ombudsman as to having been subjected to discrimination prohibited by any law. In addition, the complaint may be one of discrimination based on community, race, language, colour, religion and national or ethnic origin. The discrimination complained of may have been perpetrated by some treatment of conduct, or the application of a provision, term, criterion or practice which may be specifically prohibited by law as discriminatory, or may constitute direct or indirect discrimination in the enjoyment of any of the rights and freedoms guaranteed by the Cyprus Constitution or one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law. Findings and reports made by the Commissioner, when involving discriminatory provisions/terms/ criteria/practices found in legislation, must be communicated to the Legal Adviser of the Republic (the Attorney-General), whose office will be advising the state on the adoption of the appropriate legislative/administrative measures for abolishing/substituting the relevant discriminatory provisions.

Note

¹ The Supreme Constitutional Court decided in the case of Fina Cyprus Ltd. v. The Republic (RSCC, vol. 4, p. 33) that "Legislation involving interference with the Fundamental Rights and Liberties safeguarded under the Constitution ... and their construction is governed by the settled principle that such provisions should be construed in case of doubt in favour of the said rights and liberties".