REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2013

CYPRUS

CORINA DEMETRIOU

State of affairs up to 1st January 2014

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of the European network of legal experts in the non-discrimination field:
http://www.non-discrimination.net/law/national-legislation/country-reports-measures-combat-discrimination

This report has been drafted as part of a study into measures to combat discrimination in the EU Member States, funded by the European Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013). The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.

TABLE OF CONTENTS

INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Constitution

In July 2006, the Cypriot Constitution (until then the supreme law of the country) was amended to give supremacy to EU laws. The amendment added a new article to the Constitution providing that nothing therein stated shall nullify laws, acts or measures rendered necessary as a result of Cyprus' obligations as an EU member state, or to prevent Regulations or Directives or other binding legal measures enacted by the EU or its bodies from having force in Cyprus. This development is significant vis-à-vis the national anti-discrimination legislative framework because, prior to its enactment, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the Constitution's equality principle.[1] However, low awareness amongst legal and judicial circles has repeatedly led to Court decisions that still consider the Constitution as the supreme law of the country, failing to give priority to the laws transposing the anti-discrimination acquis. In practice, only Article 28 of the Constitution is invoked in Court when discrimination cases are presented and the wide spectrum of the laws transposing the two anti-discrimination Directives remains largely unutilised. Some indicative Court decisions are set out later in this report.

The aforesaid constitutional amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28. In spite of this development, in practice quotas in employment in the public service in favour of persons with disabilities remained at very low levels, against the hopes of the disability movement which had been eagerly awaiting this constitutional reform on the belief that it would lead to substantial institutionalisation of quotas. Meanwhile, a decision of the Equality Body in 2009 has found a law granting priority in employment for blind persons as discriminatory against persons with other forms of disability and asked for its revision. This development has caused concern amongst the disability movement, who foresee that the results of their struggles over years of activism may well disappear following a rather restrictive interpretation by the equality principle. A new law introduced in 2013 freezing all new recruitments in

[1] See for instance *Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service (*8.12.2006, Appeal No. 56/06).The case is discussed in detail in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 08.01.2007) available in Greek 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.

the civil service,[2] as a measure to address the economic crisis, has practically nullified the significance of all quota measures.

National Laws ratifying international conventions and transposing EU instruments

Prior to the transposition of the anti-discrimination Directives, the national framework embodying the principle of equal treatment and the combating of discrimination on the basis of the five grounds protected by the two Anti-discrimination Directives was based on Constitutional, European and International law. These include treaties ratified by the Republic on human rights which cover civil, political, economic, social and cultural rights, as well as rights in the field of protection and respect of minorities and migrant workers, such as Protocol 12 to the ECHR which was ratified by Law 13(III) 2002.[3] Domestic legislation also prohibits discrimination in various fields such as education, acquisition of property and employment. Aside from the far reaching provision of Article 28 of the Constitution, the only ground expressly covered by national legislation prior to the transposition of the anti-discrimination acquis was disability, which was addressed by a framework law in 2000, amended in 2004 in order to transpose the relevant provisions of the Employment Equality Directive and again in 2007 in order to bring this law in line with the Directive's provision on positive action and reasonable accommodation.

The Additional Protocol on Cybercrime

The entry into force on 01.03.2006 of the law ratifying the Additional Protocol to the Convention on Cyber crime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems[4] has created new offences in the field of combating discrimination and has for the first time in Cyprus legislated on issues such as the holocaust denial and dissemination of racist material through the internet. So far, this law has not been used to prosecute cybercrime and there are no convictions in this area.

The Council Framework Decision 2008/913/JHA

On 21.10.2011 a law came into effect (Law N. 134(I)/2011) transposing the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. The transposing legislation does

[2] 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 N. 21(I)/2013, enacted on 18 April 2013, just days after the collapse of the Cypriot banking system.
[3] This Law entered into force on 1 December 2002.
[4] The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.

not entirely transpose the Framework decision, but deviations are marginal.[5] It is expected that at some point the Cypriot government will be asked by the Commission to correct them.

Prior to transposition of the Framework Decision, the Cypriot legal framework on combating racist crime consisted of a number of criminal law provisions intended to address racially and religiously motivated crime which, in some limited respects, went beyond the Framework Decision, as well as a number of international and European Conventions which nevertheless did not entirely cover the scope of the Framework Decision. The Framework Decision introduced offences which did not previously exist in national legislation, such as the prohibition of condoning, denying or trivialising genocide or the rendering of racist motive as an aggravating factor. At the same time, there are elements in the Cypriot Criminal Code which go beyond the FD: the provision regarding damage to a place of worship or an object held sacred (Article 138 of the Criminal Code), the trespassing on burial places (Article 140 of the Criminal Code) and the prohibition of gestures intended to wound one's religious feelings (Article 141) are particular to the Cypriot context. The aforesaid provisions in the Criminal Code are absolute prohibitions and not subject to the freedom of expression, freedom of the press or freedom of association, although constitutional provisions, which do guarantee these rights, take priority over other legislation when in conflict.

In spite of this extensive legislative framework, no cases were brought before the Court under the law transposing the Framework Decision, in spite of the abundance of racial incidents and racist statements in the public sphere. When it came to prosecuting racially motivated crime, there are a number of operative restrictions, such as the dilemma in safeguarding freedom of speech, the wide discretion of the Attorney General to prosecute or not which is by general admission exercised in favour of not prosecuting;[6] and the negative precedent of the Court acquitting a blatant far right offender in 2005,[7] which has made the prosecution authorities reluctant to prosecute offenders for racial crime; instead a tendency has developed amongst the police to prosecute for lesser offences (breach of the peace, assault etc) in order to secure conviction and thus 'score a victory'. There is at present no case law on hate speech or hate crimes. The police record on racial incidents has recorded 18 convictions in the period between 2005-2010, 16 out of which relate to

[5] For instance, article 2(2) of the Framework Decision, purportedly transposed by Article 4(2), Law 134(I)/2011, creates an offence of conspiracy rather than one of aiding and abetting, required by the Framework Decision.

[6] The Equality Body has repeatedly criticised the Attorney General on this point, with references to a "stubborn refusal to prosecute" racist crime: See Equality Body report on racial attack against immigrants in Ypsonas, Ref. AKP/AYT 2/2008, dated 26.01.2009.

[7] The offender who had admitted belonging to a neo-Nazi group (Chrysi Avgi- in English: "Golden Dawn") had been witnessed by several by-standers to make a violent and unprovoked attack against a Turkish Cypriot in a high street cafe. He was nevertheless acquitted as the judge found the witnesses 'non-credible'.

the same incident.[8] For the year 2011, the police recorded 15 incidents, prosecuted six and obtained convictions in two, whilst for 2012 it recorded 12, prosecuted two and obtained no convictions.[9] As repeatedly pointed out by the Equality Body,[10] the police record does not reflect the true extent of racial crime in Cyprus. The problem of underreporting of racial discrimination was also raised in 2013 by the UN Committee on the Elimination of All forms of Racial Discrimination[11] which expressed concern over the use of racist discourse by politicians and media outlets and over the rise in racist crime, both physical and verbal, attributed to far right and neo-Nazi groups and the impunity created by the lack of prosecutions.

Ratification of the UN Convention on the Rights of Persons with Disabilities

On 27.06.2011 Cyprus ratified both the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, more than three years after having signed it.[12] The ratifying law contains a reservation as to article 27(1) of the Convention excluding the application of the Convention to the armed forces to the extent that the nature of the work requires special skills that persons with disability do not have, and professional activities the nature and framework of which are such, that a characteristic or a skill that a person with a disability lacks constitute a substantial and determining professional requirement, provided the aim is legitimate and the means of achieving that aim are proportionate, taking into consideration the possibility of adopting positive measures.[13] The Minister of Labour and Social

[8] This is the last available record of racial incidents. It can be viewed at http://www.police.gov.cy/police/police.nsf/All/1C040C0AA6B56868C225790400371833?OpenDocument.

[9] Police office of analysis and statistics, *Incidents and / or cases of a racist nature and/or with a racist motive 2005-2012*, available in Greek at http://www.police.gov.cy/police/police.nsf/All/951F52E21604E9DFC2257BD00017AF04/$file/Ratsismos%20Ellinika%202005-2012.pdf.

[10] See for instance 'Self initiated intervention of the Anti-discrimination authority regarding recent racial violence incidents and their handling by the police', Ref. AKP/AYT. 2/2011 dated 2 November 2011, available in Greek at the Equality Body's website at http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr.

[11] U.N. 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.

[12] Law ratifying the Convention for the Rights of Persons with Disabilities and the Optional Protocol to the Convention N. 8(III)/2011.The Convention had been signed by Cyprus on 30.03.2007.

[13] The reservation follows that of the European Union to Article 27(1) of UN Convention on the Rights of Persons with Disabilities which provides: The European Community states that pursuant to Community law (notably Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation), the Member States may, if appropriate, enter their own reservations to Article 27(1) of the Disabilities Convention to the extent that Article 3(4) of the said Council Directive provides them with the right to exclude non-discrimination on the grounds of disability on the employment in the armed forces from the scope of the Directive. Therefore, the European Union states that

Insurance was appointed as competent authority for the implementation of the Convention, pursuant to article 33(1) of the Convention.

The Ombudsman's office has been appointed as the independent mechanism foreseen under article 33(2) of the Convention but without any budget increase. In fact, the Ombudsman is now more understaffed than what it was in previous years and its capacity to cope with the new duties bestowed upon it, is now more than ever under question, as it is now performing functions of altogether six independent authorities[14] without additional staff or budgetary increase.

The National Confederation of Disability Organizations KYSOA had its own objections as to the appointment of the Ombudsman as independent mechanism, which relate to the manner of organisation and level of expertise within the Ombudsman's office. In a letter to the Minister of Labour dated 5th March 2012, KYSOA compiled a detailed list of duties, activities and roles for the independent mechanism, which includes the preparation of a detailed analysis of the Convention, training for persons with disabilities to encourage their participation in policy development, the inclusion of disability in the educational system, the use of sign language, Braille, vocal digital speech and enlarged characters to make education accessible to children with disabilities, training to lawyers and judges, carrying out awareness raising campaigns, provision of legal aid to victims of discrimination including financing strategic litigation, starting litigation upon the instructions of victims, maintaining a statistical record of relevant Court decisions, and others. In the end, KYSOA's position was not adopted. The Ombudsman was appointed as the independent mechanism under the Convention but without any changes to its institutional structure. An advisory body was set up, however, consisting of 5 persons with disability and the Ombudsman herself, in order to monitor the implementation of the Convention; this body meets regularly and discusses the issues, even though the national action plan for the implementation of the Convention is still at the stage of drafting. Also, eight technical sub-committees were set up under the auspices of the Department for Social Integration of Persons with Disability, which forms part of the Ministry of Labour and which acts as the focal point under the Convention, tasked with the implementation of the Convention into its various fields .

In the months that followed the appointment of the ombudsman as independent mechanism, collaboration between KYSOA and the independent mechanism has become smooth and constructive and has led to concrete results; during 2013 the mechanism has received 33 complaints, a considerably higher number than the disability complaints received annualy by the Equality Body, evidencing increased levels of trust from the disability activists towards this institution.

---

it concludes the Convention without prejudice to the above right, conferred on its Member States by virtue of Community law.

[14] Equality Body, Ombudsman, NHRI, Independent Authority for the Prevention of Torture, Independent Authority for the Implementation of the Return Directive, Independent Authority for the implementation of the UN Convention on the Rights of Persons with Disability.

The "doctrine of necessity"

In 1963 the Cypriot President Archbishop Makarios proposed 13 amendments to the Constitution, which by and large removed the consociational element from the Constitution by limiting the communal rights of the Turkish Cypriots. The Turkish Cypriots withdrew from the administration of the State in protest. Since then, the administration of the Republic has been carried out by the Greek Cypriots. In July 1964 a law was enacted to provide that the Supreme Court should continue the jurisdiction both of the Supreme Constitutional Court and of the High Court.[15] In the leading case of *Ibrahim* 1964, the Supreme Court ruled that the functioning of the government must continue on the basis of the "doctrine of necessity" which effectively suspends the communal rights which the Constitution had granted to the Turkish Cypriot community.[16]

A decade later, this doctrine was extended to cover the measures adopted in order to address the situation created by the Turkish invasion. In the years that followed and even until presently, this doctrine keeps extending into different areas, primarily in order to deny Turkish Cypriots access to their properties located in the areas controlled by the Republic[17] but also in order to deny Turkish Cypriots state provisions available to other Cypriot citizens, as indicated by a plethora of Court decisions. An Equality Body decision pursuant to a complaint regarding the non-use of the Turkish language in the official Gazette, recognised that discrimination against Turkish-Cypriots[18] does seem to exist at the level of access to public services but concluded that it cannot interfere on the issue of the Turkish publication of the Gazette, invoking the "doctrine of necessity".[19]

Until 2006 Turkish Cypriots were also denied the right to vote, based on the doctrine of necessity; however the Republic was forced to change this law[20] following the ECHR ruling in the case of Aziz v.

[15] Administration of Justice (Miscellaneous Provisions) Law 33 of 1964.
[16] For an analysis of the Constitution's consociation power-sharing system, please see the Country Reports of 2007 and 2008.
[17] For a legal analysis of the property question in Cyprus, see 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.
[18] Although the decision of the Equality Body does not explicitly specify which ground(s) of discrimination is/are involved in this case, one would assume that ethnic origin as well as language would be the applicable grounds. Language as a prohibited ground for discrimination is covered by the Cypriot constitution.
[19] File No. A.K.R. 29/2004. This case is discussed in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 08.01.2007).
[20] 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 (21.01.2006).

The Republic of Cyprus,[21] granting the individual right to Turkish-Cypriots residing in the south to vote and to stand for election as part of the same electoral roll as the Greek Cypriots; as a result, in the Parliamentary Elections of 21.05.2006, Turkish Cypriots voted for the first time since 1964. In March 2014 a new law enacted by Parliament entitles Turkish Cypriots to vote in the elections for members of the European Parliament with minimum formalities and without the residence requirement; this right however does not extent to national elections, for which Turkish Cypriots can only vote or stand for election if they are resident for at least six months in the area controlled by the Republic.

The legality of suspending Constitutional provisions on the basis of a Supreme Court judgement is, however, questionable. The applicability of article 14 of the ECHR on the issue of Turkish Cypriot properties located in the Republic- controlled south of Cyprus will inevitably be considered by the European Court of Human Rights (ECtHR), as more and more Turkish Cypriot property owners are applying to the ECtHR for having been denied access to their properties by the Cypriot government. In 2010 the ECtHR considered the application of *Sofi* who was denied recovery of possession of her house, which led to an amicable settlement endorsed by the Court.[22] This development did not prompt the Cypriot government to revise its policy as regards Turkish Cypriot properties. Thus, in the group application to the ECtHR of *Kazali et al v. Cyprus*, a total of 27 Turkish Cypriot property owners claimed violation of article 14 of the ECHR by the Cypriot government for denial of access to their properties. The applications were rejected by the ECHR for non-exhaustion of the domestic measures.[23] Once these 27 applicants seek compensation for their properties from the Cypriot government, the economic burden may well become difficult for the Cypriot government to bear in the midst of the economic crisis.

The doctrine is nevertheless not invoked or applied evenly and objectively in all cases beyond the rights of Turkish Cypriots. In 2013, the new government fired the Deputy-Governor of the Central Bank, who had been appointed by the previous government and who then brought a lawsuit against the government for unfair dismissal. The government argued that his dismissal was necessary because,

[21] ECHR/ no. 69949/01 (22.06.2004), reported at http://echr.ketse.com/doc/69949.01-en-20040622/view/. The case is discussed in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 08.01.2007). 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.
[22] Application no. 18163/04 by Nezire Ahmet Adnan SOFI against Cyprus, available at: http://echr.ketse.com/doc/18163.04-en-20100114/view/. The offer involved satisfaction of the applicant's claim for vacant possession of her property from January 2009, compensation for loss of use at €427,150.36, compensation for non-pecuniary loss at €59,801.06 and legal costs at €50,000.
[23] Kazali and others v. Cyprus, case No. 49247/08 , judgment delivered on 06.03.2012, available at http://www.cyprusbarassociation.org/v1/files/cases/Kazali_and_others_v_Cyprus_Decision_06_03_12.pdf.

according to the Constitution, the position of the Deputy-Governor must be held by a member of the Turkish Cypriot community and in 2013 there were no extraordinary circumstances justifying the invocation of the doctrine of necessity to allow a deviation from the said constitutional provision.[24]

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives or whether there are gaps in the transposition/implementation process, including issues where uncertainty remains and/or judicial interpretation is required. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview of the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

Cyprus has enacted four laws which entered into force on the date of its accession to the EU (01.05.2005): the law amending the existing disability law,[25] the law transposing (roughly) the employment directive,[26] the law transposing (roughly) the

[24] Deputy-Governor of the Central Bank Spyros Stavrinakis v. The President of the Republic (2013), delivered on 29 November 2013. Available in Greek at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2013/3-201311-998-13.htm&qstring=%CF%83%CF%84%CE%B1%CF%85%CF%81%CE%B9%CE%BD%CE%B1%CE%BA*.

[25] Law on Persons with Disabilities No. 57(I)2004 (31.03.2004). This law was subsequently amended in 2007 to introduce more favourable provisions for persons with disability and in order to rectify the wrong transposition of the reversal of the burden of proof.

[26] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004). This law was subsequently amended in 2006 in order to rectify the wrong transposition of the reversal of the burden of proof.

race directive[27] and the law appointing the Ombudsman as the specialised body (hereinafter "the Equality Body") empowered to investigate complaints of discrimination under all three of the aforesaid laws and beyond.[28] The national laws enacted for the purpose of transposing the two Directives are more or less in compliance with the said Directives. However the following issues emerge as problematic:

Revising discriminatory laws

The duty to ensure that discriminatory laws and provision have been explicitly repealed[29] by way of a general provision in the two main anti-discrimination laws[30] has not been fully complied with. No review of the existing laws was made to ensure compliance with the Directives. Practice suggests that the process of formal repeal of older laws which do not comply with the Directives is somehow 'triggered off' only after a complaint is submitted to the Equality Body. There is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives.

The Equality Body has the right to refer laws, regulations and practices containing discriminatory provisions to the Attorney General, who has an obligation to advise the competent Minister or the Council of Ministers of measures to be taken and prepare the corresponding law.[31] However, not all the recommendations of the Equality Body were taken up by the Attorney General, as a result of which the discriminatory law/ regulation/ practice remains in force (until expressly repealed by law) in contravention of article 16 of the Employment Equality Directive and of article 14 of the Racial Equality Directive.

As a manifestation of this problem, article 4 of the Termination of Employment Law which entitles employers to dismiss employees over 65 years of age without compensation, was found by the Equality Body to amount to discrimination on the ground of age, in violation of article 8(1) of the Equal Treatment in Employment and Occupation Law N.58(I)/2004, transposing the Employment Equality Directive (reported under section 3.0 of this report). Although the law was referred to the Attorney General for revision, no new law has emerged repealing the discriminatory provision, which continues to remain in force. Also, several regulations requiring job

[27] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004). This law was subsequently amended in 2006 in order to rectify the wrong transposition of the reversal of the burden of proof.
[28] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N. 42(1)/ 2004 (19.03.2004).
[29] As required by the Employment Equality Directive, Article 16 and the Racial Equality Directive, Article 14.
[30] Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004).
[31] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N. 42(1)/ 2004, articles 39(1) and 39(3) respectively.

applicants to have “excellent knowledge of Greek” continue to remain in force, in spite of Equality Body recommendations that they should be revised.

The deepening of the economic crisis and the rising unemployment are increasingly used by policy makers and legislators for deviations from the anti-discrimination acquis. Thus in 2003 a number of MPs have submitted a proposal to the House of Parliament in order to introduce the requirement of knowledge of Greek, as a measure to address the employment of foreign workers at the expense of Cypriots; and the government has struck a gentlemen’s agreement with the social partners to employ Cypriots as a priority over foreigners, whether Union citizens or third country nationals, ignoring warnings from the Equality Body that such measures will not withstand the test of legality.

In its annual report for the years 2007-2008, the Equality Authority (one of the two bodies comprising the Equality Body, which deals with matters in the employment field) expressed concern over the ineffective operation of article 39 of the Combating of Racial and Other Forms of Discrimination (Commissioner) Law, which sets the procedure for revising discriminatory provisions in laws and regulations. The report notes that very often its proposals are viewed with suspicion by the executive and do not lead to any correction of the law. It nevertheless notes with satisfaction a number of instances where its proposals for amendments in the law were adopted, such as the extension of the law so that the profession of the estate agent may be carried out by EU nationals, the extension of the sectors of the economy where asylum seekers may be employed; the removal of the Greek language requirement from the job specifications of nursing and medical practitioners; the revision of the conditions for granting state benefit to persons with severe disability so that the entitlement to the benefit no longer depends on the origin or cause of the disability.

Although no exhaustive list can be drawn up as regards the laws that contain discrimination, some indicative examples emerge from investigations carried out by the Equality Body following specific complaints. Thus, a provision introducing age discrimination was located by the Equality Body in article 2 of the Public Benefit Law N. 95(I)/2006 which defines a person with disability as a person who acquired a disability either by birth or as a result of an event that took place before he or she reached the age of 65. In a 2009 report,[32] the Equality Body recommended its revision which, however, never materialised.

Also, in January 2012 the Equality Body found that the scope of the Rent Control Law, which provides protection for tenants, includes only Cypriot citizens and, by inference, Union citizens as well, but not third country nationals, who are not afforded protection from evictions or arbitrary rental increases by this or by a any other law. The Equality Body asked the Attorney General to prepare a revision of this law in

[32] Decision Reference number A.K.R 34/2008, dated 10.04.2009, a summary of which is available in the Legal Network’s Cyprus Country Report for the year 2010.

order to comply with the anti-discrimination acquis but no action was taken in the direction of a law reform.[33] In its 2013 report on Cyprus, the UN Committee on the Elimination of Racial Discrimination rightly referred to a number of laws, regulations and policies in place which lead to discrimination. By way of example of discriminatory laws, the Committee rightly identified the aforesaid Rent Control Law and the policy of excluding migrant domestic workers, who form the largest percentage of Cyprus' migrant labour force, from obtaining long term residence visas.[34]

In September 2013, the European Commission announced its decision to refer Cyprus to the CJEU for applying age discriminatory conditions to pension rights of public sector employees who exercise the option of resigning from the public service to join an EU institution before reaching the age of 45. The problematic legislative provision in question deprives public employees under 45 from a lump sum that public sector employees aged 45+ are entitled to when they resign from the public service to join an EU institution.[35] This provision does not apply to public sector employees who resign from the public service in order to take up employment with a public organisation within Cyprus (including local governments)[36] or who resign in order to take up public office[37]or due to reasons of service unsuitability.[38] It is not clear yet whether the infringement proceedings will concern the breach of the free movement acquis or of the equality acquis or both but the latest publication of DG Employment on this matter dated 26 September 2013 referred to both issues.

An overview of the case law in this area suggests that very few members of the legal and judicial profession are aware of the requirement contained in the anti-discrimination Directives to revise laws containing discriminatory provisions. The vast majority of cases considered by national Courts as containing discriminatory

[33] Report of the Anti-discrimination Authority regarding discrimination on the ground of ethnic origin in the Rent Control Law, dated 30 January 2012, Ref. AKR 226/2008, available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/243F024A4AA25064C22579B9003934E0/$file/AKI32.2008-06022012.doc?OpenElement.

[34] U.N. 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.

[35] http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1976&furtherNews=yes.

[36] Article 25 of the Pensions Law 97(I)/97), available at http://www.cylaw.org/nomoi/enop/ind/1997_1_97/section-scf4d2e1da-4171-421d-bbc3-e30a305e091b.html.

[37] Article 24 of the Pensions Law 97(I)/97), available at http://www.cylaw.org/nomoi/enop/ind/1997_1_97/section-scdbad8877-2343-4153-9651-92986a6fb705.html.

[38] Article 23 of the Pensions Law 97(I)/97), available at http://www.cylaw.org/nomoi/enop/ind/1997_1_97/section-scc9dce4a8-ecf7-49ee-ae32-39238effe05b.html.

provisions were seen and assessed through the 'lenses' of their compatibility with the Constitution's equality principle (article 28). However, this procedure has not produced satisfactory results, as the Courts are reluctant to annul any law as unconstitutional where this will not benefit the applicant directly.

In 2011 a body of case law emerged, where applicants sought to challenge the legality and validity of laws containing discriminatory provisions. The cases concern almost exclusively age and retirement-related benefits. The trend emerging from the Courts' approach however is a reluctance to annul discriminatory provisions, on the basis that they have no power to change the law, only to interpret it. However, in the vast majority of cases, the issue as to whether a certain legislative provision is discriminatory or not is indeed one of interpretation, which the Court is most aptly suited to perform.

Dialogue with civil society / awareness raising

Certain provisions of the two Directives which require the Member States to take measures other than the enactment of legislation such as the promotion of dialogue with social partners and NGOs[39] and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned[40] have not been fully implemented. In recent years, there have been no awareness raising initiatives from the government with regard to non-discrimination nor are there any funds from the state budget allocated to such activities. The only awareness raising activities taking place are conducted by the Equality Body or by NGOs and are funded (at least to their greatest part) by the European Commission.

Jurisdiction of the labour tribunal

In 2008 a labour tribunal ruled that it has no jurisdiction to adjudicate on the complaint of a job candidate whose application had been turned down because of her age.[41] However, Law on Equal Treatment in Employment and Occupation N.58(I)/2004 which transposes the Employment Equality Directive (minus the

[39] The Employment Equality Directive, Paragraph 33 of the Preamble; Articles 13 and 14. Also, the Racial Equality Directive Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were not informed as to which of their proposals were accepted or not, nor were any reasons given; they saw the final National Action Plans published. The only NGO dealing with racism and racial exclusions at the time (KISA) was not consulted in the formation of National Action Plans (for Employment, Social Inclusion, Education).

[40] Employment Equality Directive, Article 12 and Racial Equality Directive Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. No alternative means are used to inform disabled people of non-discriminatory measures such as Braille.

[41] Avgoustina v. The Cooperative Credit Company of Morphou, 30.07.2008, Case No. 258/05, reported under section 3 below.

disability component, which is transposed by another law) as well as the employment component of the Racial Equality Directive, expressly provides that the competent court to adjudicate on matters arising under the law is the labour tribunal. The scope of the law includes conditions of access to employment including selection criteria, in compliance with article 3 of the Employment Equality Directive. It was a rather odd decision, which ignored the fact that the provisions of Law 58(I)/2004 are, by virtue of a constitutional amendment in 2006, deemed superior to any national law setting out the mandate of the labour court.

Following the legal gap created as a result of this decision, the Law on Equal Treatment in Employment and Occupation N.58(I)/2004 was amended by Law 86(I)/2009 to the effect that all disputes arising under the said law, whether concerning access to employment or self-employment or training or membership in trade unions shall, for the purposes of this law, be deemed to be labour disputes. The legal gap still remains with regard to the ground of disability however, which is covered by another law (N.127(I)/2000 as amended) that has not been updated. As a result, disputes arising under the disability law in cases where no employment relationship exists do not have a competent court to try them. In 2011, the complainant appealed against this decision and succeeded on the point of jurisdiction: the Appeal Court found that the ruling of the Labour Court as regards its lack of jurisdiction was wrong as it failed to attribute “due weight” to the provisions of Law 58(I)/2004. The Appeal Court did not refer to the fact that Law 58(I) 2004 ought to have been treated as superior to the law setting out the Labour Court’s mandate.

Positive measures and quotas v. the equality principle

Judicial tradition tends to view positive measures as violating the equality principle enshrined in the Constitution, contrary to the Directive provision that views positive action as compatible with equality. Additionally, a series of more recent judicial decisions treat preferential treatment as lawful where it is seen as ‘reasonable’, ignoring the relevant provisions of the Directives as regards the scope of exceptions and derogations allowed from the non-discrimination principle.

In March 2014 a new law came into force allowing Turkish Cypriot who do not reside in the area under the control of the Republic of Cyprus to vote in the European Parliament elections with minimum formalities. The law was enacted primarily with the votes of the ruling party DESY, which is the recipient of lobbying pressure from EU circles. Most of the remaining political parties either abstained or objected to this bill, invoking discrimination against Greek Cypriots and claiming that the measure violates the Constitution; none of the parliamentarians seemed to be aware or invoked Law 59(I)/2004 transposing the Racial Equality Directive which legitimises positive measures in favour of traditionally disadvantaged groups. With the new law,

the restriction as regards residence is essentially lifted but only as regards elections for members of the European Parliament and not for national elections. [42]

Devoting resources to the Equality Body

Since its inception in 2004, the Equality Body has been greatly understaffed and under- funded by the government,[43] which partly accounts for the fact that it has not made full use of the powers granted to it by the law. The three codes of conduct issued by the Equality Body were financed with EU funds. During 2008 the mandate of the equality authority (one of the two bodies comprising the Equality Body) was extended by a new gender discrimination law,[44] which resulted in a shift in emphasis in favour of gender discrimination, manifested by the fact that every year since 2008 about half of the complaints submitted to this body concern gender discrimination. In 2009, the Ombudsman was appointed as the national mechanism for the prevention of torture, under the relevant UN Convention. In 2011 the Ombudsman was also appointed as the National Human Rights Institute (NHRI) and the Independent Mechanism for the Implementation of the UN Convention on the Rights of Persons with Disability. In 2013, the Ombudsman was appointed as the monitoring body for returns of irregular migrants under the Return Directive. These extensions of mandate were not accompanied by any increase in the members of staff or in the budget of this office. The under-staffing of the Equality Body is the main reason for the major delays of a number of years observed in the examination of complaints which often deny the complainants an effective remedy. In the field of employment, unless hiring/promotion procedures are not frozen (and they cannot be frozen indefinitely) then usually rights are created in favour of third parties that cannot be set aside once a decision from the Equality Body is issued. Additionally, a complainant who awaits a decision of the Equality Body before applying to Court may eventually be time-barred from filing a claim in Court, since the legislative limitation period is not suspended for the period during which the decision of the Equality Body is pending.

[42] Until 2006, Turkish Cypriots were also denied the right to vote in national elections, until a ECtHR decision forced the government to change the law and allow Turkish Cypriots to vote, albeit with restrictions as regards their place of residence. The law restricted the right to vote to Turkish Cypriots having their ordinary residence in the south for at least six months: 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 N. 2(I)/2006, available at http://www.cylaw.org/nomoi/enop/non-ind/2006_1_2/full.html.

[43] In his 2006 report (dated 29.03.2006), the Commissioner for Human Rights of the Council of Europe Mr. Alvaro Gil-Robles expresses his regret for the fact that the necessary increase in funding to deal with the extra work-load has not been provided to the Ombudsman and recommends that greater resources be devoted to this office to enable it to deal effectively with its new competencies. Similarly, in its third report on Cyprus dated 16.05.2006, ECRI also stresses the need for resources to be made available to the Ombudsman to enable her to respond to her tasks.

[44] Law on equal treatment between men and women in access to and provision of goods and services N.18(I)/2008.

Addressing racial violence and racist speech

The partial lifting of the ban on the freedom of movement between north and south in 2003 has led to several instances of violence against Turkish-Cypriots[45] none of which have led not to convictions. The treatment of these and other racist incidents by the authorities demonstrates an attempt to downplay the racist motive as well as the significance of the incidents. The same pattern is followed as regards racist violence against third country nationals where again the police appears reluctant to prosecute; where they do the Courts fail to deliver guilty verdicts.[46] In addition to the police, school authorities and the Ministry of Education also demonstrate a reluctance in acknowledging the problem of racial violence at schools, as revealed by an Equality Body investigation in 2013 (see section 0.3 below). The failure to address racial crime and the resulting climate of impunity for perpetrators have been highlighted and criticised repeatedly by international reports. [47]

Since 2010 there has been an upsurge of racist violence against migrants who are consistently scapegoated by populist politicians and right wing media outlets as responsible for unemployment, as receiving higher state benefits than Cypriots and so on. A neo-Nazi party called 'Ethniko Laiko Metopo' (ELAM) founded in 2008 contested the parliamentary elections of 2011 and won 4,354 votes, representing 1,081% of the total votes.

[45] Kalatzis, M. (2005) "Xespasan anev logou se Tourkokyprio" in *Politis* (30.09.2005), p.22; Nearchou J. (2005) "Katathese o Tourkokyprios: Anagnorise ton Chrysavgiti" in *Politis* (21.09.2005), p.21; Nearchou J. (2005) "Katigoreitai oti ktypise Tourkokyprious- Se apologia o Chrysavgitis" in *Politis* (05.10.2005), p.22; Psyllides, G. (2005) "Ultra-nationalist group in the dock after Turkish Cypriot beaten" in *The Cyprus Mail,* (02.08.2005).

[46] In 2005 a member of Chryssi Avgi was tried for having attacked Turkish Cypriots on two different incidents. He was acquitted by the court on the ground that the prosecution failed to prove its case beyond reasonable doubt and that any actions of the accused were self-defence [Kalatzis, M. (2005) "Athoothike o Chyrsavgitis" in *Politis,* (05.11.2005), p.47]. Since then, attacks against Turkish Cypriot by members of ultra nationalist groups have multiplied, but there are hardly any prosecutions and even fewer convictions. The most well known of these incidents was the violent attack against Turkish Cypriot pupils at Nicosia's 'English School' in 2006 by a group of hooded youth. The Attorney General brought charges against the perpetrators of this attack but none of these related to offences involving a racist motive. The sentences imposed by the court were a mere imposition of a few hours of community work.

[47] U.N. 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. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 19 May 2008, Report to the Government of Cyprus, available at http://www.cpt.coe.int/documents/cyp/2012-34-inf-eng.htm#_Toc216522049.

It did not elect an MP but its results mark a significant increase from the 2009 elections for the members of the European Parliament, where it won only 663 votes (0.22%).[48] In the presidential elections of February 2013, ELAM's candidate received 0.88%[49] of the votes. Almost all racial attacks carried out in Cyprus in recent years are attributed to ELAM although this is not always correct as there are are additional far right groups targeting migrants. The increasing frequency of racial attacks against migrants in 2011 prompted the Equality Body to inadequate handling by the police. Like most reports on racist crime, the Equality Body report does not explicitly name ELAM as the perpetrator of the attacks although the information on the most likely perpetrator point to the direction of ELAM.

During the campaign for the municipal elections of 2011, one particular candidate used a certain slogan for his campaign, which became the subject of two complaints to the Equality Body. The slogan, a play of words in Greek, was along the following lines: "*Primary*[50] *or Secondary? Lefkosia or Lefk-ASIA?"* which in effect equated 'decadence' with the presence of migrants from Asia. The Equality Body found that the slogan depreciated the culture of an entire group, leading to their stigmatization and risking their being targeted. The report focuses on the debate regarding 'free speech v. prohibition of racist speech', clarifying that it respects the right of expression of opinions even if they are offensive because it is necessary, for the sake of pluralism, that opposing views mingle and contradict each other.[51] The report did not recommend the prosecution of the electoral candidate in question under the wide legal framework invoked at the beginning. This sets a backdrop of impunity and defeats all efforts to introduce an ethical standard in the public sphere that delegitimizes racist speech. Also the argument put forward by the Equality Body, that counter-speech being the best tool to confront racist speech must be juxtaposed with the fact that migrants no little or no access to the media and have no political or civic participation. This renders it impossible for them to participate in the 'democratic game' which the report is endorsing.

[48] The main discussion lines of ELAM produced the usual racist slogans contained in the Greek neo-Nazi and extreme Right papers and magazines, claiming that it is the only party that speaks for the "liberation of our enslaved lands, the ending of the privileges of the 'greedy' Turkish-Cypriots and for a Europe of Nations and traditions which belongs to the real Europeans and not to the 'third-worldly' [backward] illegal immigrants. ELAM members march in the streets in black clothing and in military formation, often holding bats, covering their heads with hoods and raising their hand in the Nazi salutation.

[49] The slight drop from the 2011 elections is attributed to the fact that there were two more candidates promulgating similar far right discourse, so the votes were shared between them.

[50] The equivalent Greek word (πρωτεύουσα) applies both to an entity that holds the first position and to the Capital city.

[51] Report ref. AKR 118/2011 & AKR 129/2011, dated 25 April 2012, available at http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr.

Making use of the judicial system

Over the past few years, Court decisions in the field of discrimination have demonstrated a tendency on the part of judges to interpret the law restrictively. In most discrimination cases the anti-discrimination acquis and its interpretation by the CJEU is not invoked or even referred to. Lawyers rely on article 28 of the Constitution, with few if any references to the laws transposing the two anti-discrimination Directives. It is common for the Courts, when faced with interpreting or applying laws containing discriminatory provisions, to declare that they have no power to change them and can thus only apply them in their current form, without reference to and in spite of article 16(a) of Directive 78/2000 and article 14(a) of Directive 43/2000 which require the revision of such laws. However, in spite of the Court's reluctance to interfere with what they understand to be the legislator's domain, Courts appear to be comfortable with developing 'doctrines' such as the 'doctrine of necessity', the position that the constitutionality test can only be applied where the applicant's appeal will succeed and the position that discrimination must be 'unreasonable' in order to be unlawful, a clear departure from the letter and the spirit of the anti-discrimination Directives.

In 2012 the Courts tried a number of age discrimination cases filed by employees in the public sector, all of which directly or indirectly related to retirement age (which was extended as a result of a law reform in 2010); all these claims were unsuccesful. The fact that most of the cases brought before the Courts emanate from public servants and concern age discrimination may perhaps point towards the existence of a subgroup within the broader category of vulnerable persons, which is more aware of the equality rules and procedures and has more access to the judicial process than the migrants, the minorities, the persons with disabilities or the elderly who are not public servants. Since the Directives were transposed in 2004 only a handful of cases were taken to Court invoking the laws transposing the Directives. Most of these cases concerned age discrimination and all but one originated from employees in the public sector. There are no Court decisions on race/ethnic origin, religion or belief, or sexual orientation. A passing reference to the anti-discrimination directives was made in Court in two more instances.[52] In 2013 there were even fewer Court

[52] One decision concerned the applicant's request 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; the request was rejected on technical grounds. However the judge in this case ruled that access to property was outside the scope of the Racial Equality Directive (Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos, 2007, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2007/1-200712-303-06.htm&qstring=Perihan%20and%20Mustafa%20and%20Korkut). The other decision concerned a claim for unlawful discrimination on the ground of age contained in a law setting out pensionable ages. The applicants did not seek to have the law declared unconstitutional but merely to sever from it the discriminatory provisos. The Court decided that it did not have the power to do so, as changes in the legislation could only be carried out by the legislative branch of the state (Vasos Constantinou v. The Republic of Cyprus through the Public Service Commission 2007, available at

decisions on discrimination than in previous years: a total of three decisions directly or indirectly related to discrimination, where the laws transposing the anti-discrimination acquis were not invoked or utilised. These cases are presented in section 0.3 below.

Victimisation

In recent years, the Equality Body and NGOs have criticised what appears to be a policy of arresting and deporting migrant workers as soon as they exit the building after having filed complaints against their employers at the authority designated by the Ministry of Labour to handle labour disputes.

The economic crisis

The collapse of the Cypriot banking system in 2013 coincided with the coming into power of a new right wing government who immediately adopted a number of measures theoretically intended to address the crisis, the rising unemployment and the shortages in state funds. A fierce austerity programme agreed with the troika introduced pension cuts, salary cuts, freezing in new recruitments in the civil service, restriction in welfare benefits and in access to healthcare. Although in 2011 the now ruling party DESY positioned itself[53] in favour of 'lawful' migration and against 'unlawful' migration, when it came to power in 2013 and was faced with the collapse of the economy, it 'encouraged' employers to hire only Cypriots[54] and allowed the immigration authorities to step up their crack down against migrants who are now facing a much tougher regime than before the crisis.

The measures are having a disproportionately negative impact on Union citizens, particularly women, who are often victims of both labour and sexual exploitation by their employers. In August 2013, the Equality Body issued a report criticizing the handling by the police of the case of a Bulgarian woman who had been charged with the manslaughter of her new born child, in the absence of any evidence suggesting that the child was born alive.[55] The woman had been employed by a Cypriot as an

---

http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2007/3-200706-1705-06-1795-06.htm&qstring=%E2%E1%F3%EF%F3*%20and%20%EA%F9%ED%F3%F4%E1%ED%F4%E9%ED%EF*); and Androula Stavrou v. The Republic of Cyprus through the Public Service Commission).

[53] Press Conference of the President of DESY on immigration policy dated 11 March 2011, available at http://www.disy.org.cy/default.asp?id=1296.

[54] A few days after his election as President of the ROC, on 6 March 2013 the leader of DESY presented a policy proposal to employers and workers' unions for the employment of 'primarily Cypriots', based on a gentlemen's agreement. The trade unions were positively inclined towards this proposal. The Equality Body's warnings that such a policy would violate the free movement acquis was ignored.

[55] Equality Body Report regarding the handling and investigation by the police of a case of hiding a pregnancy, File No. A/P 327/2013, dated 27 August 2013, available at http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument. The case had received considerable publicity at the time, with most media outlets portraying the woman as a cruel figure who put her newborn in the garbage.

agricultural worker and gave birth to a dead baby that was later found in a plastic bag in the garbage bin 200 metres away from where she worked and lived. It emerged that the father of the child was the employer who had also put the dead baby in the garbage, fearing repercussions as regards his role in the case. The unfounded prosecution against her by the police, the failure to investigate the role played by the employer and whether the sexual relationship was consensual or not or whether the woman had been a victim of trafficking, the failure to involve any other governmental department such as the Labour Office or to investigate the working conditions of a pregnant woman who worked in the fields until three days before her delivery, the absence of any psychological support for the woman during her detention, all paint a backdrop of impunity for the cruel exploitation, humiliating working conditions and arbitrary employer practices affecting migrant women and particularly women from eastern Europe who are commonly regarded as providers of sexual services.[56]

0.3 Case-law

*Provide a list of any important case-law in **2013** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. Please ensure a follow-up of previous cases if these are going to higher courts. This should take the following format:*

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of law and of the actual facts (no more than several sentences).
➔*Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)*

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

[56] Discrimination against Eastern European Union citizens is widespread in Cyprus, and often at levels far more significant and heightened than against third country nationals, in a manner suggesting that the safeguards and protection measures provided by the free movement *acquis* do not come into play as far as this group is concerned. This suggests that the ground of discrimination is more likely to be ethnicity rather than nationality, because under the nationality regime there are safeguards against the extreme forms of exploitation of EU workers, which do not seem to be set in motion here. Also, the extreme exploitation practices appear to affect only Romanians and Bulgarians, whilst Western Europeans generally do not fall victims to such practices.

Very few cases invoking the laws transposing the anti-discrimination acquis in general have been taken to Court.[57] This is partly a reflection of the lack of awareness of both victims and lawyers regarding the new procedures and rights created with the transposition of the anti-discrimination acquis[58] as well as the high cost[59] and length of time required for litigation[60] render the Courts a less attractive channel for pursuing a complaint. Additionally, lack of awareness of the competencies of the Equality Body is also hampering its effectiveness. According to the 2010 EU-MIDIS report of the European Union Agency for Fundamental Rights, only six per cent of the selected vulnerable group (Asians in Cyprus) have heard of the Equality Body.[61]

In spite of the above findings, since the enactment of the anti-discrimination laws in May 2004, there have been several complaints of discrimination filed with the Equality Body. The confusion between the competencies of this body as ombudsman and as Equality Body has meant that a large section of the public is not aware of the difference. As a result, there is an abundance of complaints and decisions against the public sector, there are few complaints against the private sector, reflecting the fact that the public is largely unaware of the competencies of the Equality Body as against the private sector.

The Roma

As stated above, litigation is in practice not available to the large majority of the vulnerable groups in Cyprus due to the cost and length of time involved,[62] least of all to the Roma community who are perhaps more marginalised than any other vulnerable group. Information about the rights and procedures created by the set of laws which came into effect in 2004 transposing the two anti-discrimination Directives

[57] The Fourth ECRI report on Cyprus published on 31.05.2011 expresses concern over the fact that the anti-racist and anti-discrimination legislative provisions are rarely applied: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf.

[58] The Third ECRI report on Cyprus states that awareness of the legal framework against discrimination among the legal community and the general public is still very limited and calls on the Cypriot authorities to take steps to improve awareness of the provisions against racial discrimination among the legal community and the public: ECRI (2006), Third Report on Cyprus, Strasbourg 16.05.2006, pp. 7-8.

[59] The Law on Provision of Legal Aid (2002) N. 165(I)/2002 provides for legal aid only for in cases where the offences involved are punishable with a term of imprisonment exceeding one year. This excludes offences under the new anti-discrimination laws, for which the maximum penalty is six months. A Supreme Court decision found the legal provision restricting legal aid to offences punishable with imprisonment of over one year, to be unconstitutional (Andreas Constantinou v. The Police, Case No. 243/2006, 25.01.2008) but the law has not yet been amended to remove this restriction.

[60] The inability of the Cypriot Courts to deliver judgements 'within a reasonable time' has been the subject of several successful applications to the ECtHR, where Cyprus was found to be in violation of article 6(1) of the ECHR.

[61] http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_RIGHTS_AWARENESS_EN.PDF.

[62] Hence the small volume of court decisions in the field of discrimination, based on the laws transposing the two directives.

has not been disseminated sufficiently in order to encourage at least some recourse to the specialised body by the Roma. Nothing was printed in Turkish, the language spoken by the Roma, with the exception of a short leaflet issued by the Equality Body, which however was not disseminated to the Roma settlements. In 2012 some parts of the Equality Body's website became available in Turkish, which is one of the two official languages of the Republic and the language spoken by the Cypriot Roma; however the living conditions of the Cypriot Roma are so poor that it is doubtful that any of them has access to the internet or to any information that the website is now available in Turkish.

Similarly, there have been no cases ever brought by a member of the Roma to the Equality Body or the Ombudsman alleging discrimination or indeed raising any other issue concerning the Roma. A complaint submitted in 2008 by the RAXEN National Focal Point at the time alleging discrimination in education against the Roma was investigated by the Equality Body and a report was issued in 2011 criticising the non-inclusive approach of the eductional system. This is the only single complaint ever submitted to the Equality Body as regards discrimination against the Roma.

By contrast, the Ombudsman's office has in the past received a complaint from residents of an area close to the Roma settlement in Limassol against the authorities for allegedly ignoring the residents' request to relocate the Roma settlement, complaining about the Roma lifestyle with overtly racist language. In response, the Ombudsman's report found the complainant's allegations, of higher crime rates in the area owing to the presence of the Roma, as unfounded, indicating that the police records did not support this allegation. The Ombudsman went a step further and stressed the rights of the Roma community; condemned the authorities for lacking the political will to solve their problems and for yielding to the unreasonable reactions of the local communities; and recommended a set of measures for their social integration.[63]

Sexual orientation

Developments are finally picking up in the field of sexual orientation, which had in previous years been the ground with the fewer complaints and the fewer legal developments. Up until 2010, the LGBT community of Cyprus tended to be mostly closeted and reluctant to use the justice system in order to pursue their rights. In spite of the recognition of sexual orientation as a prohibited ground for discrimination, and despite decriminalisation of homosexuality in the 1990s, the subject continues to be a taboo, as gay people themselves find it hard to come forward and claim their rights, for fear of social contempt. In April 2010 anti-gay activists raised the tone of the debate when the Equality Body issued a report in response to two complaints on the lack of any legal framework for same sex couples to formalise their

[63] Cyprus Ombudsman's Report on the Gypsies of the Turkish-Cypriot quarter of Limassol, File No. A/P 839/2003, 10.12.2003.

relationships.[64] The report, which recommended the institutionalisation of a framework so as to legally recognise the cohabitation of homosexual couples, caused a lively debate in the media, with several persons positioning themselves against the recognition of same sex relationships. The most notable of reactions came from the right wing MP Themistocleous who spoke live on national radio on 13.04.2010 expressing his disagreement over the recognition of same sex couples, equating homosexuality with murder, bestiality and paedophilia. This statement led to a swift and strong reaction from the European Parliament which wrote to the MP asking him to retract and apologise. It also became the subject of further complaints which the Equality Body examined during 2012.[65]

In 2010, a new NGO emerged named 'Accept' calling for the equal treatment of LBGT persons. This was the first instance of LGBT persons coming out of the closet, after the well known gay rights activist Alecos Modinos who won the ECHR case against Cyprus[66] and brought about the decriminalisation of male homosexuality. In 2011 and 2012, the Equality Body repeatedly raised the issue of sexual orientation discrimination and the introduction of registered partnerships between same sex couples, attracting fierce criticism from the church and other conservative circles. It nevertheless continued to raise the issue in its various manifestations (e.g. homophobic incidents at school, homophobic speech by politicians etc) and finally succeeded in putting the issue of registered partnerships on the agenda. Just before the change of government in February 2013, a bill was prepared in order to introduce registered partnerships, in evidence of the fact that significant victories can be scored once the Equality Body sets its mind and applies resources on a subject.

In 2013, the NGO 'Accept' initiated a series of consultations with all political parties in order to lobby in favour of institutionalizing same sex partnership. It has secured the support of the vast majority of political parties to the registered partnership but without the right to adopt children. On February 2013, following a recommendation from the Interior Minister at the time, the Council of Ministers approved the institutionalization of same sex partnerships and instructed the Attorney General to advise on the relevant bill. The Attorney General returned the bill to the Ministry of Interior, requesting that it be subjected to consultation with other competent

[64] The report in Greek Position paper of the Anti-discrimination Authority regarding the need to institutionalize relationships between heterosexual and homosexual couples, dated 22.12.2011, Ref. AKR TOP 1/2011, summarised in Annex 3 at the end of this report. The Equality Body report (in Greek) may be downloaded at http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/CD1ED8CBA46ED048C225771100253576/$file/AKP142.2009%20και%2016.2010-31032010.doc?OpenElement.

[65] The relevant report is summarised later in Annex III at the end of this report ("Homophobic statements by a politician".

[66] Judgement 22.04.1993, 16 EHRR 485 available at http://ius.info/EUII/EUCHR/dokumenti/1993/04/CASE_OF_MODINOS_v._CYPRUS_22_04_1993.html In this case, the ECHR ruled that the criminalisation of homosexuality, under the antiquated Cyprus Criminal code dating back to 1885, was a violation of Article 8 of the European Convention of Human Rights.

governmental departments as well as to an *open* consultation. *Accept* is critical of this decision. Although it agrees that a consultation with other competent departments should be carried out, an open consultation is not a commonly followed procedure for other bills and is obviously intended to involve the orthodox church into the process, which vehemently opposes homosexuality and the institutionalization of same sex partnerships. The church had also tried to stop the official registration of Accept as a NGO, until the NGO's lawyer threatened to sue and the Equality Body got involved, warning about the legal consequences of a refusal to register the organization. Whilst the issue continues to remain pending, *Accept* is organizing the first ever gay pride parade in Cyprus on 31 May 2014, which the Mayor of Nicosia has agreed to place under his auspices.[67]

Although discrimination on the ground of sexual orientation is explictly prohibited only in the employment field,[68] the Equality Body's wide mandate has enabled interventions into fields beyond employment; in fact the Equality Body has never received any employment-related complaints for sexual orientation discrimination. In 2013, the Equality Body issued a report on the conditions of detention of transsexual persons; this investigation has led to a set of guidelines issued in cooperation with the police on the arrest, search and detention of transsexual persons, which were disseminated by the police to all departments and units. In November 2012, it published a report regarding homophobia at schools, offering a series of recommendations on systemic approaches of addressing the problem.[69] During 2013, it received a complaint as regards the recording of the data of persons who have undergone gender reassignment, an area not adequately regulated by law, the results of which are still pending. There are no court decisions on sexual orientation, which must be attributed to the fact that the vast majority of gays and lesbians in Cyprus are 'closeted' and choose anonymity over claiming their rights.[70]

The history of complaints may suggest that the tide is turning in terms of underreporting; however it is interesting to note that hardly any complaints were filed by Cypriot LGBT persons concerning a situation that affects them personally, such as their employment situation; LGBT persons dismissed from work because of their sexual orientation or identity will not file a complaint or a lawsuit because even if they win this battle, they will not find work elsewhere in Cyprus. During 2013, the focus of the Equality Body has shifted onto a less explored area, that of the problems faced by transexual persons, investigation issues like detention conditions, gender reassignment and the recording of their data by the authorities. In Cyprus transexual persons lead a rather excluded existence, usually work in prostitution (being unable

[67] Information in this paragraph is the result of consultation with LGBT activist.
[68] Law on equal treatment in employment and occupation N. 58(I)/2004, available at http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.
[69] Report of the Anti-discrimination Authority regarding homophobia in education and the handling of homophobic incidents at schools, Ref. AKR 63/2011, AKR 131/2011, dated 20 November 2012.
[70] Consultation with gay rights activist.

to find work elsewhere) and are not organized in NGOs, seeking help only from other transsexual persons through informal networks of self-help.[71]

Important Court decisions during 2013

Name of the court: Supreme Court
Date of decision: 5 November 2013
Name of the parties: Ulfet Emin v The Republic of Cyprus
Reference number: Case No. 364/2012
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201311-364-12.htm&qstring=ulfet%20and%20emin
Brief summary: A former Turkish Cypriot judge, who in 1966 was forced to abandon his position in the judiciary following the outbreak of violence between the Greek and Turkish Cypriot community in 1963-64, applied to the Ministry of Finance for lost salaries and retirement benefits. When his claim was rejected by the Ministry, he applied to the Supreme Court for judicial review of the rejecting decision of the Ministry of Finance. This was not the first time that he was applying for judicial review of the same decision. In 2007 the same applicant had won another case against the Finance Ministry[72] for the same issue, albeit the Finance Ministry continued to refuse his claim for pension and lost salaries, citing new grounds now: that in 1967 the judge did not respond to a letter sent to him asking him whether he will return to his duties or not; and that he never sent a letter of resignation to the President of the Supreme Court, in order to secure his pension rights. The applicant sought and succeeded in annulling the said decision of the Finance Ministry on the ground that, inter alia, it violated the principle of equality. The Ministry's argument that the case forms an aspect of the Cyprus problem and therefore the doctrine of necessity should be applied was rejected by the Court which went ahead and annulled the Ministry's decision.

As is often the case with most discrimination-related issues, the law transposing directive 43/2000[73] was not invoked. Whilst the transposing legislation would have availed the applicant of the reversal of the burden of proof and would entitle him to

[71] See Equality Body decision Ref. A.K.R. 103/2008, dated 18.07.2008 reported in the Legal Network's Country Report for Cyprus for that year (2008); also Equality Body decision dated 19/07/2011, Ref. AKR 68/2011 entitled "Report of the Anti-discrimination Authority regarding the grant of refugee status to a homosexual female asylum seeker from Iran", available in Greek at the Ombudsman's website at: http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument. Information in this paragraph is the result of consultation with LGBT activist.
[72] Ulfet Emin v The Republic of Cyprus, Case No. 1473/2005, judgment delivered on 21st March 2007, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2007/4-200703-1473-05.htm&qstring=ulfet%20and%20emin.
[73] Law on equal treatment in employment and occupation N. 58(I)/2004, http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

compensation, the judicial review provision[74] can only lead to the annulment of the administrative decision challenged. The weakness of the administrative procedure is that the administrative organ concerned can always issue another administrative decision to replace the one annulled by the court, as was the case in 2007.
Name of the body: Supreme Court
Date of decision: 4 November 2013
Names of parties: Gregoris Gregoriou v The Republic of Cyprus
Reference number: 83/2012
Address of the webpage:
http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201311-83-12.htm&qstring=83 w/1 2012
Brief summary: In 2012**,** the application of a person with a visual disability for a fixed term post at the Foreign Ministry for the purposes of the Cyprus Presidency of the European Council was rejected on the ground that he was not suitably qualified. His job application was declined in spite of the fact that he had been deemed suitably qualified by the multi-thematic committee of the law on quotas in favour of persons with disability.[75] The applicant applied to the Supreme Court seeking to set aside the decision of the Foreign Ministry, under article 146 of the Constitution which provides for the judicial review of administrative acts. He claimed that the decision not to hire him and to hire other persons (without disabilities) instead was unjustified, was not in compliance with the law on quotas for hiring persons with disabilities in the wider public sector, was the result of insufficient investigation and was contrary to good faith and natural justice. The Foreign Ministry argued that during the interview the recruiting office found that the applicant did not demonstrate sufficient knowledge or judgement over the issues at stake. It also claimed that, given the temporary and extraordinary nature of the duties of the job, there would not be sufficient time for training and the applicant would have to respond to heavy workload under circumstances of pressure, with limited supervision and guidance. The Supreme Court rejected the application for the annulment of the rejecting decision, on the ground that this had been sufficiently investigated and adequately justified and that the recruiting body found the applicant unsuitable for good reasons which are duly explained in the minutes kept.

The applicant did not make use of the anti-discrimination legislation transposing Directive 2000/78 even though he could at least have established a prima facie case of unfavourable treatment in the refusal to hire him, that could have reversed the burden of proof. The judicial review process foreseen by article 146 of the Constitution 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.

[74] The Constitution of the Republic of Cyprus, article 146, http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.
[75] Law on Quotas in Favour of Persons with Disabilities in the Wider Public Sector, N. 146(I)/2009, available at http://www.cylaw.org/nomoi/arith/2009_1_146.pdf.

The enactment of the law on quotas was the result of years of lobbying by the disability movement. However, contrary to hopes and expectations, it has not had a significant impact on the employment of persons with disability, especially in the post 2012 era and the economic crisis that has led to a freezing of all new recruitments in the public service.

Name of the court: European Court of Human Rights
Date of decision: 23 July 2013
Name of the parties: M.A. v. Cyprus
Reference number: Application no. 41872/10
Address of the webpage: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx# {"fulltext":["M.A. v Cyprus"],"itemid":["001-122889"]}
Brief summary: The applicant was a Syrian national of Kurdish origin who had entered Cyprus in 2005 and subsequently filed an asylum application. In 2010, whilst his application for asylum was pending, he was arrested and detained for the purposes of his intended deportation to Syria. The applicant applied to the ECtHR claiming a violation of several articles of the European Convention for Human Rights (ECHR) including article 2 (right to life), article 3 (inhuman and degrading treatment), article 13 (right to an effective remedy), article 5.1 (unlawful detention) and article 5.4 (effective remedy to challenge lawfulness of detention). The applicant asked the ECtHR to apply interim measures under Rule 39 to prevent his imminent deportation to Syria. The ECtHR deemed this request admissible and on 14 June 2010 indicated to the Cypriot government that he should not be deported until the ECtHR had had the opportunity to examine the case. Although he was meanwhile granted asylum, on 23 July 2013 the ECHR found unanimously that Cyprus had violated:

- Article 13 (right to an effective remedy) of the Convention taken together with Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) due to the lack of an effective remedy with automatic suspensive effect to challenge the applicant's deportation;
- Articles 5 (1) and 5(4) (right to liberty and security) of the Convention due to the unlawfulness of the applicant's entire period of detention with a view to his deportation without an effective remedy at his disposal to challenge the lawfulness of his detention

The significance of this case lies not in its discrimination dimension but in the conclusion of the ECtHR that the rulings of the Supreme Court on judical review applications under Artcile 146 of the Constitution do not offer an adequate remedy under the ECHR as they do not have an automatic suspensive effect. This assumes heightened significance when one considers that the vast majority of discrimination cases brought to court in Cyprus invoke the judicial review procedure foreseen under Artcile 146 of the Constitution rather than the specialised anti-discrimination legilsation. The ECtHR in this case rejected the Government's argument advocating the sufficiency of the suspensive effect of an application for a provisional order "in practice". The requirements of Article 13 and of other provisions of the Convention take the form of guarantees and not mere statements of intent or arrangements in

practice. The Court ordered the government of Cyprus to pay the applicant €10,000 for non-pecuniary damage.

Important decisions/reports of the Equality Body/Ombudsman/NHRI during 2013

Name of the body: Anti-discrimination Unit of the Equality Body
Date of decision: 22 February 2013
Name of the report: Complaints with regard to the non-provision of public benefit to families of women who are single parents and third country nationals, the children of whom are Cypriot citizens
Reference number: Complaints Ref. A.K.R 125/2011, A.K.R 126/2011, A.K.R 127/2011, A.K.R 128/2011, A.K.R 42/2012, A/P 2044/2011, A/P 589/2012, A/P 858/2012, A/P 894/2012, A/P 972/2012, A/P 1317/2012, A/P 1523/2012, A/P 1577/2012.
Address of the webpage:
http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/B1B5189FA5761C95C2257B2E003B9ED1?OpenDocument
Brief summary: Following a number of complaints submitted to it in 2011 and 2012, the Equality Body decided to investigate the policy concerning the payment of benefits to families where one parent is a third country national. The investigation revealed that, on the basis of a circular issued by the Social Welfare Services on 21 October 2011, no welfare benefit is paid to applicants who are minors, Cypriot nationals, resident in Cyprus and members of a single family where one of the parents is a Cypriot and the other is a third country national. For the circular in question, the Social Welfare Services had relied on their own interpretation of the ruling of the CJEU in the *Zambrano* case.[76] This ruling, which essentially prohibits national measures resulting in preventing Union citizens from enjoying rights arising from their identity as Union citizens, was specified by the CJEU to apply to residence visas and work permits for third country nationals whose under aged children reside in the member state. The Welfare Services however interpreted this ruling as entitling third country nationals who are parents of a Union citizen to a residence and a work permit, provided they maintain the minor concerned, and as exclusive of any other social right. The Equality Body concluded that such interpretation of the CJEU ruling by the Social Welfare Services is incorrect and that the said ruling did not exclude access to other social rights; this issue had not even been considered by the CJEU. The Equality Body further pointed out that ensuring access to social welfare by under-aged Cypriots irrespective of their parents' racial or ethnic origin would be more in line with the spirit of the decision of the Court. The Equality Body found that the said policy of the Social Welfare Services amounted to direct discrimination against Cypriot citizens whose one parent is of foreign origin, when compared to those Cypriot citizens whose both parents are Cypriots. The Equality Body also found that the said policy amounts to direct discrimination against the parents themselves

[76] Case No. C-34/09.

due to their racial/ethnic origin, who are allowed to continue residing in Cyprus, given the special link which their child has with the country, but without support and protection.
A decision of the national Supreme Court at the end of 2012[77] had also confirmed that the *Zambrano* ruling does not exclude access to public provision by third country nationals who are parents of Union citizens.

Name of the body: Anti-discrimination Unit of the Equality Body
Date of decision: 11 March 2013.
Name of the report: Self-initiated investigation of the Anti-discrimination Authority regarding the response of schools to racist incidents
Reference number: Akr/Ayt. 3/2011 &Akr/Ayt. 1/2012
Address of the webpage (http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/B1B5189FA5761C95C2257B2E003B9ED1?OpenDocument
Brief summary: In light of two outbreaks of racial violence at schools, the Anti-discrimination Authority carried out a self-initiated investigation into how these were handled by the schools and the Ministry of Education. The two incidents concerned:

- An attack against Arab students by a group of Greek Cypriots at the Vergina Lyceum in November 2011, as a result of which three Arab students were rushed to the hospital's emergency unit. Although the incident had been condemned inter alia by the EU Commissioner on Education, the parents' association, the teachers' association and the students themselves, all of whom described the incident as racial, the Ministry of Education failed to recognize the racial element involved in the incident, offering interpretations that attempted to describe the incident as the result of teenage strong feelings, outbursts of anger, sexual relations etc. The police also reported that no racial motive was proven.
- An attack in a secondary school in Paphos against a Greek Pontiac student by two Greek Cypriot students causing him a serious eye injury that led to surgery. Again, the Ministry of Education claimed that the conclusion from its own investigation is that the motive of the attack was not racial.

The Equality Body attributed the Ministry's reluctance to recognize racial motive partly to an effort not to label and amplify the problem and partly to ignorance as to what amounts to racial violence and how this is to be distinguished from other types of violence. The report also criticised the fact that the perceptions and practices that

[77] Liuba Frecatel v. The Ministry of Labour and Social Insurance dated 27 December 2012, Case No. 1622/2011. The case concerned the application of a Ukrainian national residing in Cyprus, who was the single mother of a Cypriot national and whose grant paid by the Social Welfare Services was discontinued on the basis of the aforesaid circular of the Social Welfare Services dated 21 October 2011. The Court granted the applicant's request and cancelled the decision to discontinue her grant, mainly on technical grounds, but it did conclude that the *Zambrano* case did not exclude access to social provision.

victimize the foreign students are not condemned and dealt with decisively, especially when responsibility for these incidents is indirectly attached to their own perceived weaknesses (e.g. poor language skills) and recommendations are mainly targeting them (e.g. they are called upon to study harder) rather than their assailants. The Equality Body stated that the school had a legal duty to ensure that students do not face any form of discrimination and called upon the Ministry of Education to adopt a wide and functional definition of racial violence and establish a reliable system of recording racial incidents to map the nature and extent of the problem, in the absence of which efforts will remain incoherent and without impact. Finally, the report invited the Ministry of Education to develop a Code of Conduct to address racism at schools, to serve as training for teachers, as guidelines for the internal coordination within the schools for the handling of racial incidents and promote the reinforcement of a culture of social responsibility and respect for diversity, for the protection of victims.

Name of the body: Ombudsman (Commissioner for Adminsitration)
Date of decision: 30 June 2013
Name of the report: Report of the Commissioner for Administration and Human Rights as regards the handling by the Ministry of Health of a request by an HIV/AIDS carrier to be transferred to another post in the public hospital
Reference number: A/P 2309/2010
Address of the webpage:
http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument
Brief Summary: The applicant, an HIV/AIDS carrier, filed a complaint to the Ombudsman for the first time in 2010 complaining about the handling of his application for transfer from the position of cleaner in the Limassol public hospital due to his health condition. At the time, the Ombudsman had responded with a report containing recommendations and positions on the general issue of HIV/AIDS carriers' access to the labour market. The response of the Ministry of Health was that as soon as there were vacancies in other positions, the applicant would be called as a candidate. However in 2012 the Ministry hired another person in a new position without informing the applicant about the vacancy before this was filled. This led the applicant to file a fresh complaint to the Ombudsman against the Ministry. The investigation of the Ombudsman led to a response by the Ministry initially that the applicant showed no interest to be considered for the new vacancy; when the Ombudsman further enquired whether the applicant was informed of the vacancy and how his alleged lack of interest was established, the Ministry replied that it was under no obligation to inform interested parties working in other hospitals of new vacancies. During the same period that the Ministry advertised a new vacancy and subsequently hired another person for it, the applicant had repeatedly expressed to the Ministry his interest to be transferred to another position and was repeatedly reassured by the Ministry that in the event that there is a vacancy he will be invited as a candidate. The new position was that of a day guard which would have suited the applicant well since he would not have to risk contact with infectious waste.

The Ombudsman concluded that the handling of the complainant's claim to the Ministry had been superficial and that the Ministry had deliberately misled him by giving him the impression that for the purpose of being transferred to another position no further actions are required on his part, creating reasonable expectations to him of an automatic participation on his part in a future hiring process. This approach did not tally with the principles of good administration and good faith; the Ministry had a duty to show increased diligence in the handling of the complainant's claim since he was a member of a vulnerable group. Nevertheless, the hiring process conducted by the Ministry has created rights in favour of a third party that cannot be revoked; thus the Ombudsman's recommendation to the Ministry was to avoid repeating such phenomena in the future.

The case exemplifies that in order for the Ombudsman/Equality Body to be able to make a meaningful intervention, it must be vested with a rapid response mechanism to act dynamically immediately upon receipt of such a complaint and before third party rights are created. A delay of one or more years in responding to such applications will also mean that the applicant will be time-barred from filing a claim at the Labour Disputes Court.

Name of the body: NHRI
Name of the report: Self-initiated investigation into the conditions of employment of female migrant domestic workers.
Date: 21 May 2013
Reference number: AKR 3/2013
Address of the webpage:
http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument
Brief Summary: The NHRI carried out a self-initiated investigation into the status of the migrant female domestic workers (MFDW), in light of the seriousness of the subject, the great number of workers affected and of its fragmental treatment by the regulatory framework. Over the years, the Equality Body has received a large number of racial/ethnic discrimination complaints by or on behalf of MFDW and has repeatedly issued damning reports on the discriminatory working conditions and problems in accessing health and other services faced by migrant domestic workers, rendering them a highly vulnerable group within a general category of vulnerable persons, the migrant workers in Cyprus. The nature of the work they perform, the fact that they are working behind closed doors without the possibility for inspections or for industrial collective action, the low salaries and low social value attached to domestic work, the employment of undocumented migrants for this work, have all contributed to a regime of unmonitored violation of rights and impunity for the employer as well as institutional discrimination and pro-employer bias of the authorities against the MFDW. It is noted that the MFDW form about 50% of the total third country labour force of Cyprus; they originate almost exclusively from south east Asia and are employed under a different and particularly tougher regime than other migrants.

The NHRI codified the complaints examined by the Ombudsman/Equality Body in recent years as follows: ignoring the gender dimension of domestic work; sexual harassment at the workplace, discriminatory and oppressive provisions in the employment contract, the restriction of the freedom to organise themselves in trade unions, the inadequate access to health care, the problematic nature of the procedure for examining industrial disputes, the arrest and detention of MFDW when they file a complaint against their employers, the gaps in identifying exploitation practices that may amount to labour trafficking, the role of the 'agents' and the absence of any integration policy.

The standard contract supplied by the Immigration Authorities contains several problematic clauses, including: a prohibition to join a trade union, the obligation to work exclusively for one employer without the right to change employer or place of employment; the duty to work during day or night as needed by the employer and the duty to comply with all demands of the employer. MFDW absent from work on account of sickness for over one month can be repatriated, whilst in the event of dismissal the employer must pay all salaries due and the MFDW *must* accept them resigning from all her claims. The report is highly critical of the MFDW's standard employment contract, adding that the prohibition of joining a trade union is a direct violation of the law transposing the Racial Equality Directive.

Extensive reference is also made to the inequalities faced by the MFDW in accessing health care. State policy as regards access to health care essentially transfers to the private sector the responsibility of the state, by requiring employers to carry out a basic health insurance policy for their MFDW and share the cost of that policy with the MFDW. The report states that the insurance policy arrangement was aimed at pleasing the insurance companies and not at protecting the MFDW, adding that the policy excludes several health problems relating to women's reproductive health, ignoring the gender dimension of their status. Reference was also made to the case of a domestic worker who was deported from Cyprus as soon as she was diagnosed with HIV and was refused the right to view the results of the medical test. The report further criticised the procedure for examining labour disputes and the pro-employer bias that emerges from it, which had been criticized by the Ombudsman in previous reports, noting that the Ombudsman's intervention at the time and the subsequent inter-departmental consultation that followed with a view to revise the procedure was halted by the director of the Immigration Department who alleged lack of jurisdiction on the part of the Ombudsman to intervene.

Name of the body: Equality Authority of the Equality Body
Date of decision: 29 August 2013
Name of the report: Report of the Equality Authority regarding age discrimination in access to employment.
Reference number: A.K.I. 94/2011
Address of the webpage: www.no-discrimination.ombudsman.gov.cy/ektheseis-aki
Brief summary: An investigation launched by the Equality Authority following a complaint submitted in 2011 by a 56 year old woman, alleging age discrimination in

access to employment, revealed that the prospective employer, a spa centre, rejected her application because they wanted to hire a 'younger' receptionist. The justification offered was that the job required at least ten hours a day of standing and because, based on the results of a survey, the spa's customers expected to see a young woman at reception. The Equality Authority concluded that although the aim of the policy of the spa centre, (i.e. that the receptionist must be in a position to respond to the demands of the job) was legitimate, the age criterion as a means of achieving the legitimate aim was neither necessary nor proportionate, as age is not necessarily indicative of one's health or physical condition. It concluded that the arguments of the spa centre were based on generalized hypothetical perceptions and stereotypes which are inaccurate and damaging for the affected age groups. It urged employers to be particularly careful to avoid discrimination and to set only those hiring criteria that correspond to the needs of a particular position, being qualifications, experience, capabilities and skills of every candidate. It refrained from taking any measure to eliminate the unequal treatment, though, because the spa centre had meanwhile hired another person who has acquired rights that the Equality Authority could not reverse.

The handling of this complaint two years after it was lodged highlights the problems generated by the understaffing of the Equality Body, a problem accentuated by the recent freezing in new recruitments, the budget cuts and other features of the 'austerity package'. Also, the Equality Body's inability to impose a fine of a sizeable amount or award compensation to the victim renders its delayed intervention meaningless. The victim has meanwhile become time-barred from applying to the Labour Disputes Court to claim compensation.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

Article 28(1) of the Constitution states: "All persons are equal before the law, the administration and justice, and are entitled to equal protection thereof and treatment thereby."

Article 28(2) of the Constitution 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 provided for 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.

Prior to the anti-discrimination laws of 2004 that transposed the acquis, the grounds of age, disability or sexual orientation were not expressly prohibited under this provision. The notion of 'ethnic origin' was integrated into the notion of 'race'; the term 'ethnicity' was very recently introduced in Cyprus law. Article 28 of the Cyprus Constitution corresponds to Article 14 of the European Convention on Human Rights (ECHR) and hence the whole corpus of the case law of the ECHR is relevant (see Nedjati 1972: 166-167). However, Article 28 is not dependent on any other right granted (Loizou 2001: 173). The ECHR was integrated into national law in 1962 (by Law N. 38/1962).[78] All the human rights Articles contained in the Cyprus Constitution under Part II (Articles 6-35) as well as rights conferred by the ECHR must be exercised in a non-discriminatory manner.

Part II of the Constitution sets out the "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. The Fundamental Rights and Liberties of Part II of the Constitution are expressly guaranteed to "everyone" or to "all persons" or to "every person", with no distinction or differentiation between citizens and non-citizens of the Republic, or between citizens of the Republic who belong to the Greek or Turkish community and without any distinction or differentiation on the grounds of community or religion or nationality, or on other grounds. Article 6 provides that no law or

[78] In fact there are legal scholars who argue that the ECHR applied in Cyprus before it was actually ratified in 1962 as a 'saved' provision from the colonial times (Tornaritis 1983: 1-2).

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 in the Republic 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".[79]

Article 30 of Part II of the Constitution guarantees the right of access to the Courts as one of the fundamental rights and liberties. This is afforded to everyone, non-citizens and citizens alike and irrespective of which community or religious group they belong to, i.e. irrespective of whether s/he is Greek-Cypriot, Turkish-Cypriot, Maronite, Armenian or Latin.

Article 109 of the Constitution provides that each religious group has the right to be represented in the Communal Chamber by the elected members of the group, to which it opted to belong under Article 2.3 of the Constitution.[80]

All the rights provided for by the Constitution, which must be enforced without discrimination, including the principles of equality of treatment and non-discrimination (Article 28), are enforceable in the public and the private domain.[81] Administrative acts may also be challenged via judicial review under Article 146 of the Constitution.[82] The procedure of application to the Supreme Court is simple albeit expensive: the legal aid law does not cover administrative proceedings, except where the act complained of is the rejecting decision of an asylum application or a deportation order issued against an irregular third country migrant; a stringent 'means and merits' test is applied in these instances, however, rendering the granting of legal aid highly unlkely, if not impossible.[83]

A ECtHR decision dated 04 December 2008 on the issue of availability of legal aid in administrative proceedings to an applicant who alleged sexual orientation discrimination, stated in the concurring opinion that "a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention"

[79] The term "Community" is used in the Constitution is meaning either the Greek or the Turkish Community of Cyprus.
[80] The obligatory affiliation of the three religious minorities (Maronites, Armenians, Latins) to one of the two main communities on the island (in this case the Greek Cypriot community) has been criticized by the Advisory Committee on the FCNM in its Third Opinion on the situation of minorities in Cyprus, adopted on 19.03.2010: www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf.
[81] In the case of Yiallourou v. Evgenios Nicolaou, the court ruled that all rights guaranteed under the constitution are directly applicable in the public and private sphere: Supreme court, Appeal No. 9331, dated 08.05.2001.
[82] Nedjati (1970: 96) cites the definition of 'an administrative act' provided by the first President of the Supreme Constitutional Court, Pro. E. Forsthoff Textbook on Administrative Law (8th Edition, 1961) as "all unilateral, authoritative acts of an authority of public, which have direct effect, with the exception of legislative and judicial acts".
[83] Law on Provision of Legal Aid (2002) N. 165(I)/2002, as amended in 2009 and 2012, available at http://www.cylaw.org/nomoi/enop/non-ind/2002_1_165/full.html.

and that "there is *a priori* no reason why it should not be made available in spheres other than criminal law."[84]

b) Are constitutional anti-discrimination provisions directly applicable?

Although the Constitution itself is silent as to whether it is directly applicable or not, a Supreme Court decision of 2001 ruled that all constitutional and other rights that are constitutionally guaranteed are directly and indirectly applicable in the private and public sectors.[85] The particular case did not involve any of the non-discrimination provisions of the Constitution; however the reasoning of the decision is phrased widely enough to cover all human rights enshrined in the Constitution. In particular, the Court found that constitutional rights are actionable per se and their violation gives rise to remedies based on the principle of full restitution in the form of damages. By their very nature, human rights violations and the provision of remedies fall within the competency of the Courts and therefore no guarantee of rights is effective without the means for judicial protection with legal remedies. This is true especially for fundamental rights which, without such protection, would abort not only their fundamental character but their very nature as rights, amounting to mere proclamations of good conduct. Based on this reasoning, the Court rejected the respondent's argument that the absence of a provision for judicial protection of fundamental rights renders these rights as "lex imperfecta", as any violation of rights gives rise to judicial protection with remedies provided by the law of the country.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

The aforementioned Supreme Court decision in the case of *Yiallourou v. Evgenios Nicolaou* established that where there is a wrong there is a remedy and that any person whose rights are violated can sue the state or private persons for damages, irrespective of whether an enforcement mechanism is specifically provided in the law or not.

The decision paves the way for legal action against the state or private persons for discrimination, on the basis of Article 28 of the Constitution, which covers grounds

[84] Marangos v. Cyprus, Application no. 12846/05. In this particular case, the applicant's claim that his right to a fair trial was violated as a result of the non-availability of legal aid was rejected by the ECtHR, which found that the applicant had reasonable opportunity to present his case given that he had been represented by a lawyer at the first instance proceedings, he had the skeleton argument for the appeal drafted by his lawyer and he was entitled to appear in person before the Supreme Court and could address the court on the basis of the skeleton argument.

[85] Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001. In this case, the Director of the Nicosia Sewerage Board sued the civil engineer of the Board for damages for having tapped his telephone for a whole year, which violated his right to privacy and confidentiality of communication under articles 15 and 17 of the Constitution. No material damage was proved and the District Court awarded general damages. Upon appeal to the Supreme Court, the first instance decision was upheld.

not included in the laws transposing Directives 2000/78/EC and 2000/43/EC, such as community, language, national or social descent, birth, colour, wealth or "any ground whatsoever" (Art. 28.2 of the Constitution). The resulting remedy from such action, which is just and reasonable compensation for pecuniary and non-pecuniary damage, is additional and of wider ambit than that of the laws transposing Directives 2000/78/EC and 2000/43/EC. However, article 28 of the Constitution has been interpreted by the Courts in a very restrictive manner, allowing for wide exceptions where the two situations compared are dissimilar.[86]

[86] In the cases of *Antonis Aresti v. Cyprus Athletics Organisation* (Ref. 1406/2008, dated 10.02.2010) and *Cyprus Athletics Organisation v. Andreas Potamitis* (Ref. 111/2007, dated 18.06.2010), summaries of which can be found in the Legal Network's Cyprus Country Report for 2010, the Court rejected the claims of athletes with a disability for discrimination in the state grants paid to athletes participating in the Paraolympics, as opposed to athletes without disability 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.

2 THE DEFINITION OF DISCRIMINATION

2.1. Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

In 2004, the original equality framework existing prior to accession was widened to cover, beyond the grounds of racial or ethnic origin, religion or belief and disability, the grounds of age and sexual orientation to comply with Article 1 of the Directives. The ground of religion was covered in the relevant anti-discrimination clause of the Cypriot Constitution.

Prior to the transposition of the anti-discrimination Directives, the absence of a comprehensive anti-discrimination legal framework and effective mechanisms for enforcement[87] beyond the public sector had rendered the constitutional references to religion rather weak. This was the case despite the decision in the case of *Yiallourou* which set a precedent in 2001 that constitutional rights are actionable per se not only against the state but also against individuals.[88] However, the Criminal Code covers a wide range of offences involving religious hatred and religiously motivated crimes, reflecting the tensions between the two larger communities (the Greek and the Turkish) in the 50s and 60s, when religion was still the marker of identity.[89]

[87] See Second ECRI of the Council of Europe Report on Cyprus (2001): The Report considers that "the establishment of comprehensive civil and administrative anti-discrimination provisions can be a useful tool to help counter discrimination in such vital fields as employment, housing, education etc. Consideration of these issues would also be in line with current developments taking place in the European Union (to which Cyprus is an acceding country) concerning the application of Article 13 of the Amsterdam Treaty" (under the heading "D. Civil and administrative law provisions", point 5, page 6).

[88] Yiallourou v. Evgenios Nicolaou (2001), Supreme Court case, Appeal No. 9331, 08.05.2001. In this case, the Director of the Nicosia Sewerage Board sued the civil engineer of the Board for damages for having tapped his telephone for a whole year, which violated his right to privacy and confidentiality of communication under articles 15 and 17 of the Constitution. No material damage was proved and the District Court awarded general damages. Upon appeal to the Supreme Court, the first instance decision was upheld. This decision opens the way for legal action against the state or private persons for discrimination, on the basis of Article 28 of the Constitution, which covers grounds not included in the laws transposing the Employment Equality Directive and the Racial Equality Directive, such as community, language, national or social descent, birth, colour, wealth or "on any ground whatsoever (Art. 28.2) The resulting remedy from such action, which is just and reasonable compensation for pecuniary and non-pecuniary damage, is additional and of wider ambit than that of the laws transposing the Employment Equality Directive and the Racial Equality Directive. Although the case deals with enforcement of human rights in general and not discrimination in particular, it is important for establishing that constitutional rights such as Article 28 are actionable per se against persons or the state.

[89] In the years that followed independence from British rule, and as the Turkish Cypriots turned more towards secularism, the main marker of identity became ethnicity rather than religion.

All grounds referred to in the Directives[90] as well as those contained in Protocol 12 to the ECHR[91] are explicitly prohibited grounds for discrimination in national law. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law[92] appoints the Commissioner for Administration (or *the Ombudsman*), an independent officer, as the national Equality Body empowered to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin,[93] (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law[94] irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin[95] and (iii) promote equality of opportunity irrespective of the grounds listed in the preceding Article (to which the grounds of 'special needs'[96] and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. In other words the mandate of the Equality Body goes beyond the requirements of Article 13 of the Racial Equality Directive, covering discrimination on all grounds in all fields.

Prior to the enactment of the Equal Treatment in Employment and Occupation of 2004 N. 58 (1)/2004 (31.3.2004), there were no express provisions on age and sexual orientation discrimination. Although these grounds could be said to have been covered under the general provision in Article 28 of the Constitution, which prohibits discrimination on "any ground whatsoever", there was no tradition in challenging discrimination on the basis of these two grounds. In the past few years, a body of law is beginning to emerge in the form of Supreme Court decisions in the field of age

[90] Transposed by Laws N. 42(1)/ 2004 (19.03.2004), N.58 (1)/2004, N.59 (1)/2004, N.57 (1)/2004, N.127 (1)/2000.
[91] The Ratification Law of Protocol 12 of the European Convention of Human Rights and Fundamental Freedoms N.13(III)/2002 (19.04.2002).
[92] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004).
[93] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3.(1).(a), Part I.
[94] These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for 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 Inhuman and Degrading Treatment or Punishment.
[95] Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1).(b), Part I.
[96] This is the term for disability used in the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, which includes intellectual disability. In a debate over the correct terminology, the organisations of persons with disabilities considered that in Greek the term 'special needs' («ειδικές ανάγκες»), particularly in the case of 'intellectual disability', was more appropriate than the Greek translation of 'intellectual disability' («πνευματικές αναπηρίες»).

discrimination, mainly but not exclusively derived from the aftermath of extending retirement age to 63 in 2010. Equality Body reports on age discrimination offer a different perspective to addressing age discrimination, one which is more informed of laws, policies and debates at the EU level than what Court decisions are.[97] Nevertheless, there is clearly an increasing trend of age discrimination complaints seeing the light of day, either in the form of cases taken to Court or complaints submitted to the Equality Body, as opposed to all other grounds, largely because age is generally regarded by Cypriot society as a less controversial ground than, for instance, sexual orientation, which is still considered to be a taboo in Cypriot society. At the same time, most age discrimination claims investigated by the Equality Body or adjudicated by the Courts come from public servants and relate mostly to their promotion or retirement, under situations which suggest that these claimants may not be the most vulnerable amongst the vulnerable groups.

The absence of any court decisions on sexual orientation discrimination[98] shows the reluctance of homosexuals to make their sexual orientation known in a rather negative landscape.[99] Since its inception in 2004 the Equality Body only started to receive complaints of sexual orientation discrimination in 2008; out of five complaints submitted, three were from non-Cypriots. However, the 2010 ground breaking report of the Equality Body recommending the legalisation of same sex partnerships and the subsequent position paper on the same subject in December 2011 has signalled the beginning of a new era in combating sexual orientation discrimination in Cyprus,

[97] See for instance the Equality Body report dated 24.11.2010 (Ref. AKR 164/2008, AKR 63/2010) a summary of which is provided in the Legal Network's Cyprus Country Report for 2010, where the Equality Body found there was age discrimination in the refusal of the state to fund radical prostatectomy conducted abroad for men aged 65+.

[98] However, in the case of *Stavros Marangou v. The Republic of Cyprus through the Public Service Commission* (17.07.2002, Case no. 311/2001) the Applicant applied to the Court seeking the annulment of the decision of the Public Service Commission to reject his job application for a post at the Ministry of Interior because of his failure to serve in the army, pursuant to article 31(b) of the Public Service Law. The applicant argued that article 31(b) of the Public Service Law violated the non-discrimination principle of Article 28 of the Constitution on the grounds of belief, given his particularities and personal convictions deriving from the fact that he is a homosexual. The Republic argued, by way of a preliminary objection, that the Applicant lacked legitimate interest that would enable him to file the present recourse, as his failure to discharge his military obligations meant that he did not possess the required qualifications for the post. The Court sustained the Republic's preliminary objection and rejected the applicant's recourse.

[99] On 17.07.2007 an Indian national filed a complaint to the Equality Body in Cyprus against the immigration authorities for rejecting his application for a visa as a member of the family of an EU citizen permanently residing in Cyprus, with whom he had entered into a civil registered partnership in accordance with U.K. law. The Equality Body found in favour of the complainant. Although the complaint was for sexual orientation discrimination, an element of racial discrimination may arguably exist in the policy followed by the immigration authorities, since it targets third country nationals. Despite the fact that the policy in question does not distinguish between third country nationals according to their racial/ethnic background, it is nevertheless a practice likely to affect third country nationals of a different ethnic origin more than other third country nationals. This point however was not raised in the particular complaint or in the Equality Body report that followed.

especially as a new law is expected to come into force in 2014 providing for the registration of same sex partnerships.

Since the transposition of the anti-discrimination *acquis* in 2004, a small number of complaints against the private sector are beginning to emerge, although the number can by no means be compared to the number of complaints against the public sector. This is attributed by the Equality Body officials to the fact that most complainants are aware only of the institution of the Ombudsman whose mandate is restricted to the public sector; few are aware of the existence of the Equality Body and its far reaching powers.

Freedom of religion or belief is guaranteed by article 18 of the Constitution and other international instruments ratified by the Republic.[100] Discrimination on the ground of religion or belief is covered by the law transposing Directive 2000/78 (Law N. 59(I)/2004). Discrimination on the ground of belonging to one of the two communities (the 'Greek' or the 'Turkish' community) is prohibited by article 6 of the Constitution.

With regard to the legal regime governing discrimination on the ground of disability, a law existed in this area prior to the transposition of the employment directive (Law N.127(I)/2000) which was amended in 2004 by Law N.57 (1)/2004 purporting to transpose the disability component of Directive 78/2000 and in 2007 by Laws N. 72(I)/2007 and 102(I)/2007 in order to bring it in line with the said Directive.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

None of the five recognised grounds is defined in any of the four anti-discrimination laws of 2004 or in any other law, with the exception of 'disability' which is defined in a number of laws enacted prior to the transposition of the Employment Equality Directive. The practice followed by the legislator at the time of transposition of the Directives was that of replicating the wording of the directives, a practice which is perhaps indicative of the drafters' intention to adopt only the minimum standard needed in order to satisfy the directives. Prior to the introduction of the laws transposing the EU anti-discrimination *acquis*, the approach taken by the Cypriot legislator was not to define the grounds of discrimination, presumably considering that these are self-explanatory in the ordinary use of the language.

i) racial or ethnic origin,

[100] Moreover, religious affairs of the Orthodox Christians and Muslims are vested with the Orthodox church and the Evkav respectively and are under the regulation of the two 'Communal Chambers' (art. 86-111 of the Constitution).

No definition is provided in any law, except for the law ratifying the International Convention for the Elimination of All forms of Racial Discrimination[101] which incorporates the Convention's definition.

ii) religion or belief,

No definition is provided.

iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring, Paragraph 38, according to which the concept of 'disability' must be understood as: "a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers" (based on Article 1 UN Convention on the Rights of Persons with Disabilities)?

The term 'disability' is defined in the Law concerning Persons with Disabilities N.127(I)2000 enacted in 2000: "Disability"[102] is defined in article 2 of Law 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". No express reference is made in the law protecting persons who have had a disability in the past or who will acquire one in the future.

When comparing the above definition with the concept of disability adopted in *Skouboe Werge and Ring,* 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 of 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. This essentially means that the Cypriot definition imposes a more stringent test to be satisfied in order for a disadvantage to be deemed as 'disability' and thus be offered protection under the law.

[101] Ratification law N.12/1967, dated 30 March 1967.
[102] This law uses the term 'disability' and not 'special needs', as used in the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law of 2004.

Also, when comparing the above definition of disability in the Cyprito law to the definition adopted in the *Chacón Navas* case[103], it emerges that the CJEU focused equally on the source of the limitation ("physical, mental or psychological impairments") and on the impact ("which hinders the participation of the person concerned in professional life"). 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 for the quality of life).

There is no reported case law to shed light on the question of definitions. The Ombudsman's Annual Report for 2005 refers to two cases in which the welfare services discontinued the payment of a benefit to persons with a disability on the ground 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 can be drawn from the medical certificates was that the disability in question was of an indefinite duration. The Ombudsman criticised the practice followed by the welfare office in discontinuing benefits on the basis of the impressions of the social worker who visited the person and stated that decisions touching upon medical knowledge cannot be justified exclusively on the basis of subjective judgement.[104]

An Equality Body decision in 2007[105] criticised a scheme of the Ministry of Labour for the provision of care to tetraplegic persons, where tetraplegia is defined as paralysis of the lower limbs resulting from injury to or illness of the bone marrow. The decision found the scheme discriminatory as it treated differently tetraplegic persons whose condition resulted from different reasons and excluded for instance persons whose tetraplegia is due to brain injuries, muscular condition or multiple sclerosis. The Ministry accepted that the definition of tetraplegia they used was restrictive but argued that they chose to adopt this description because their budget for this scheme was very limited.

Following the Equality Body's report, the Ministry decided to extend the definition of the term 'tetraplegia' and accept applications from a wider group of people with tetraplegia, in compliance with the relevant recommendation. 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 as

[103]. Case C-13/05, available at http://curia.europa.eu/juris/document/document.jsf?docid=56459&doclang=EN.
[104] File Nos. A/P 2175/04, A/P 368/05, described in the Ombudsman's Annual Report for 2005, published in Nicosia in December 2006.
[105] 19.06.2007, File No. 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.

amended.[106] The national confederation of disability organisations (KYSOA) objected to the extension of the definition of "persons with a disability" to include the chronically ill as regards the scope of a law that came into force in December 2009 providing for quotas in employment for persons with disabilities.

iv) age,

No definition is provided

v) sexual orientation?

No definition is provided.

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?

Recital 17 of Directive 2000/78/EC is not reflected in the national laws transposing this Directive. Definitions of the grounds (other than disability) are not mentioned in any legislation, although some decisions of the Court and of the Equality Body provide some elements of the meaning of these terms which, however, cannot on their own be construed as complete definitions.

i) racial or ethnic origin

No definition is provided anywhere in the national laws. However, the Equality Body is increasingly interpreting this term to include national origin and nationality, often using these terms interchangeably.

ii) religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?

Although there is no definition of what 'religion' is for the purposes of the anti-discrimination provision, 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 which provides for exempting students from the religious 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 the religious class) is incompatible with the principle of freedom of thought, conscience and religion.[107] Extending this principle further, in 2011 an Equality Body report dealing with religious confessions at schools found that

[106] File Numbers Α/Π 2898/2007, Α.Κ.Ι. 10/2010, dated 23.02.2010. The case is reported above.
[107] Report Ref. no. Α.Κ.Ρ. 135/2009, dated 07.11.2010.

the participation of students in ceremonies forming part of religious convictions creates fertile ground for discrimination, as the 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 categorization of some students as 'good Christians' and others not.[108] The Third ECRI Report on Cyprus published in 2006 urged the Cypriot authorities to "take measures to address and prevent the stigmatisation of children who do not attend Greek-Orthodox religion in the school environment and provide these children with adequate possibilities for alternative education."

In its Fourth Report on Cyprus published in 2011, ECRI stated that the situation has not evolved on this matter since ECRI's Third Report and that although attendance of the Greek-Orthodox Religious instruction class is not obligatory, it is rare for pupils to opt out of this class for fear of being different. It is up to each school to decide how these children who do opt out of the religious class are occupied during the two periods per week in question; it is not rare that the exempted pupil himself or herself may opt to remain in the classroom and be occupied with another activity, for fear of stigmatisation if he or she attracted negative attention by transferring to another activity outside the classroom. ECRI encouraged the authorities to establish state regulated alternatives for pupils who do not attend Greek Orthodox religion classes in order for these pupils not to suffer feelings of shame or exclusion.

The concept of what constitutes 'religion' has also arisen in relation to complaints raised by religious groups,[109] as described further below in this paragraph, although no conclusions were drawn that would amount to or resemble a definition. The Maronite community complained about the fact that the Constitution classifies them merely as a 'religious group', whilst they consider themselves also as "a specific ethnic group".[110]
Furthermore, the Latin community[111] of Cyprus is not satisfied with the term "Latin" ascribed to them, as it does not properly reflect their Roman Catholic religious identity (see Opinion on Cyprus by the Advisory Committee on the Framework

[108] Report of the Anti-discrimination Authority regarding complaint 42/2010 concerning the conducting of religious confessions at schools, Ref. AKR 42/2010, dated 29.07.2011.
[109] Information supplied to the author by the leaders of the respective communities.
[110] The Equality Body, and one may even say society at large, accept the denomination of the Maronites as an ethnic group: see Report of the Equality Authority regarding a complaint of discrimination on the ground of ethnic origin in promotions in Cyprus Airways, Ref. A.K.I 8/2010, dated 09.11.2011.
[111] The Latins are one of the three constitutionally recognised "religious groups". They form a small community of persons of Latin ethnic origin and of Catholic faith, recently enlarged to include migrant workers who are Catholics. The other two constitutionally recognised religious groups are the Maronites and the Armenians. Recognition of a group means that they are entitled to protection under the Framework Convention for the Protection of National Minorities.

Convention for the Protection of National Minorities 2001).[112] The Roma community is not recognised either as Roma or as a religious group; because of their language and religion, the Roma are historically deemed to be an integral part of the Turkish-Cypriot community which is regarded as an ethnic community (i.e. not a minority).[113] Although in 2009 the Cypriot Government recognised the Roma as a national minority within the meaning of the Framework Convention for the Protection of National Minorities,[114] it continues to view the Roma as part of the Turkish Cypriot community and refuses to afford them a special treatment. In line with this policy, a small section of the Roma community who were Christians was deemed to belong to the Greek community. The 'affiliations' of the minorities to one or the other large communities in Cyprus (the Greek or the Turkish) have been repeatedly criticised by the Advisory Committee on the Framework Convention for the Protection of National Minorities[115] so it is expected that the 'affiliations' may be revised in the near future. Currently, as part of the Turkish-Cypriot community, most of the Roma population of Cyprus are Cypriot passport holders and are entitled to all rights which all other Cypriot citizens have. Therefore differential treatment against Roma (or against Turkish Cypriots) amounts, in accordance with Cypriot law, to discrimination on the ground of racial/ethnic origin. Another issue highlighted by international reports which primarily relates to religious freedom, is that of reservist conscientious objectors, many of whom are Jehovah's Witnesses[116] and who refuse to serve in the army due to their religious belief.

iii) Disability

In addition to the definition of disability found in the law transposing the directive (N.127(I)/2000 as amended), in the Law on Social Insurance 1980 as amended from 1982 - 2008 (Law N. 41/80) disability is defined, for the purposes of that law, as "loss of health, strength or the ability to enjoy life" (article 2(1) of the Law). Article 46 of the

[112] According to the Framework Convention for the Protection of National Minorities, Art. 4: 1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. 2. The parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. 3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

[113] In the process of the Equality Body's investigation of a complaint for discrimination against the Roma in education, the Permanent Secretary of the Ministry of Education told the Equality Body that the Roma do not constitute a separate ethnic group but belong to the Turkish Cypriot community (Equality Body report Ref. AKR 18/2008, dated 27.09.2011, summarised above under section 0.3).

[114] Third Periodic Report submitted by Cyprus pursuant to Article 05, paragraph 1 of the Framework Convention for the Protection of National Minorities, received on 30.04.2009, page 23.

[115] Third Opinion on Cyprus of the Advisory Committee on the Framework Convention for the Protection of National Minorities released on 09.10.2010 available at www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf.

[116] See Amnesty International Press Release 2002, Human Rights Without Frontiers 2003.

same law provides for entitlement to a disability benefit for those who suffered physical injury as a result of an industrial accident causing loss of physical or mental ability the extent of which exceeds 10 per cent. The provision is not intended to amount to an exhaustive definition but rather to determine entitlement to disability pay under the particular provision.

Article 2 of the Public Benefit Law N. 95(I)/2006 defines a person with disability as a person who, either by birth or as a result of an event that took place before he or she reached the age of 65, demonstrates any form of insufficiency or disadvantage which causes to him or her physical mental or psychological restriction of permanent or indefinite duration and which, taking into account the history and other personal circumstances of the person, substantially reduces or excludes the possibility of carrying out any activity or function considered normal or essential for the quality of life of a person of the same age without such disadvantage. In a 2009 report,[117] the Equality Body criticised this provision as introducing differential treatment of two categories of persons with disabilities on the ground of age (those who acquired a disability before they attained 65 and those who acquired it after 65) and described it as a paradox that causes discrimination which cannot be objectively justified. Although the Ministry of Labour vouched to consider the Equality Body's recommendation, the law has still not been revised.[118]

The Law on Public Service (N. 1/1990), 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." This definition follows the restrictive tradition of the 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 in *Skouboe Werge and Ring.*

A law which came into force in late 2009 introducing quotas in favour of persons with disability in the public sector defines 'person with 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.[119] This

[117] Decision Reference number A.K.R 34/2008, dated 10.04.2009, a summary of which is available in the Legal Network's Cyprus Country Report for the year 2010.
[118] The Public Benefit Law was revised in 2013 in order to remove the entitlement of asylum seekers and persons with humanitarian protection to a welfare benefit where they have insufficient income. The Equality Body's recommendation to remove the age discrimination from the law was not considered.
[119] Law introducing special provisions for the hiring of persons with a disabilities in the wider public sector 146(I)/2009, article 2.

wide definition has raised objections amongst the disability movement in Cyprus who find it to be wide enough to cover persons with chronic diseases, who should not be granted benefits at the expense of persons with disabilities.[120]

iv) Age

Although no definition is provided anywhere, Equality Body decisions as well as Court decisions appear to endorse the view that the victim need not be either young or old and that *any* discrimination on the ground of age is prohibited. Thus a funding scheme for the repair of countryside houses excluding single persons under the age of 35 was deemed by the Equality Body to be discriminatory on the ground of age;[121] whilst the question of 'seniority' was found by the Court to be a permissible criterion for a job promotion only as a last resort where the two competing candidates had the same or similar qualifications.[122]

v) sexual orientation

No definition is provided anywhere. 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 of this ground to cover potential situations of LGBT persons, whose sexual orientation may be presumed by their decision not to get married.

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

Law (N.42 (1)/2004) that empowers the Ombudsman to act as the national Equality Body does not provide for any such restrictions. The law transposing the employment Directive[123] does not contain any specific restrictions related to the scope of 'age' as a protected ground, nor does it specify a minimum age below which the anti-discrimination law does not apply; it follows almost verbatim the wording of the Employment Equality Directive.

The minimum age for entering employment is fifteen (except for children who are fourteen and who are placed in a programme combining work and vocational training). Law 48(I)/2001 on the ´´Protection of Young Persons at Work´´ also allows

[120] Statement by KYSOA, the confederation of the organisations of persons with disabilities, issued on 15.10.2009.
[121] Flash report dated 12 June 2006, entitled "Equality Body Decision on age discrimination in state subsidies".
[122] Maria Shambarta v Republic of Cyprus, Supreme Court decision Ref. 417/2010 dated 04.10.2010.
[123] Law on Equality of Treatment in Occupation and Employment N..58 (1)/2004.

the employment of children (defined as young persons under fifteen years of age) in cultural, artistic, sports or advertising activities subject to securing a permit from the Labour Minister.

Article 8 of the law transposing the Employment Equality Directive transposes almost verbatim the exceptions provided in Article 6 of the Directive and there are several Equality Body decisions interpreting this provision. One such decision refers to a legislative provision which allows employers to dismiss employees over 65 years old without compensation. In this case the Equality Body found that this legislative provision cannot be justified under the exception of Directive article 6 (or article 8 of the Cypriot law) because the Labour Ministry failed to prove that this exception was objectively and reasonably justified by a legitimate aim, such as policy in the field of employment or targets regarding the labour market. The decision rejected the Ministry's argument that after the age of 65 the overwhelming majority of employees are secured through their pension rights, because there still remains a class of persons over 65, however small, who have no pension rights or have reduced pension rights, referring to a European Commission report which places Cyprus first among all EU member states in the poverty risk for persons over 65. Although the Equality Body referred this law to the Attorney General for revision, no steps in that direction were taken and this law continues to remain in force.

A rather controversial decision of the Equality Body in 2010 criticised the preferential treatment afforded by the Open University to older candidates, stating that it introduces unlawful age discrimination against younger candidates, without specifying the ages of the younger candidates.[124] In essence this decision seeks to apply the anti-discrimination principle to all ages, young, middle and old.

Another Equality Body decision regarding the fixing of an age limit in state scholarships, found that the existence of a legitimate aim alone is not sufficient to trigger off the exception of Directive article 6 and that in order for the age criterion to be objectively justified, it must be established that:

- There was no alternative criterion, less discriminatory, for the attainment of the legitimate aim;
- The specific criterion used was effective (i.e. the legitimate aim was attained);
- The benefits derived from the attainment of this aim are significantly more than the disadvantages created as a result of the application of the criterion in question.

The decision found that no evidence was presented to show that the above conditions were met. The commitment required of the persons to whom scholarship is granted (to work in Cyprus after completion of their studies) as a rule does not

[124] Report dated 22.11.2010, Ref. A.K.I. 74/2009. For a summary, see the Legal Network's Cyprus Country Report for 2010.

exceed two years and is not uniformly applied; this means that the "investment" made in the younger persons does not always pay off and when it does it is short-term (two years) and can easily be written off by a person of 45 years of age or more.[125]

In 2008[126] the Equality Body extended the non-discrimination principle to insurance companies who refuse to insure persons over 70 to drive cars, even though age discrimination in the field of services is not yet expressly covered by legislation.[127] Similarly, in 2008[128] the Equality Body decided that a state scheme granting a benefit to persons with severe disability in movement who are over 12 and less than 65 years of age contains age discrimination, even though the law prohibiting age discrimination (Law N.58(I)/2004) does not extend to state benefits. These developments are not unrelated to the prospect of legislating against discrimination in fields beyond employment, in accordance with the Proposal for a Council Directive dated 2.7.2008 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM(2008) 426.

In 2009 the Equality Body found that article 27 of the Pensions Law, which provides that persons aged less than 45 years and with 3 years of service receive reduced benefits upon early retirement compared with older workers, does not fall within the exception of the Directive, as the measure is neither proportionate nor objective nor reasonably justified by a legitimate aim: the measure is not proportionate because it affects about 2/3 of the public service workforce; the measure does not serve a legitimate aim because the shortages in scientific personnel invoked by the Public Service Commission have since been covered; and the age limit poses an excessive restriction on the freedom of movement of labour, as the aim of encouraging scientific personnel to stay at work could have been achieved by introducing a condition that pension benefits are payable upon completion of certain years of service irrespective of age.[129] This law was also referred to the Attorney General for revision; in 2010 this particular provision was revised but the Equality Body's recommendation for bringing the benefits of younger persons in line with those received by the older ones was not taken on board.[130] At the time of writing, the revision requested by the Equality Body had still not been pursued.

[125] Ref. A.K.I. 50/2006, dated 15.07.2007. For a summary, see the Legal Network's Cyprus Country Report for 2010.
[126] Ref. 125/2007, dated 21.10.2008. For a summary, see the Legal Network's Cyprus Country Report for 2010.
[127] Arguably, discrimination in all fields and on all grounds is impliedly covered by the anti-discrimination provision found in article 28 of the Cypriot Constitution.
[128] Ref. 114/2007, dated 10.11.2008. For a summary, see the Legal Network's Cyprus Country Report for 2010.
[129] Decision Reference number A.K.I. 63/2008 και A.K.I. 1/2009, dated 04.06.2009.
[130] Law 37(I)/2010 and Law 94(I)/2010.

In 2009 the Supreme Court considered the appeal of *Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou*.[131] Hadjiavraam (the appellant) had initially applied to the trial Court alleging age discrimination in a job advert which fixed a maximum age limit. The trial court upheld the appellant's claim of discrimination but submitted it had no jurisdiction to try the case.[132] The trial court also said that, had it had the jurisdiction to try this case, it would have awarded the appellant only the equivalent of three months' salary, amounting to €1,500, as opposed to the sum of €555,754 that she was claiming as damages. On appeal, the Supreme Court upheld the trial court's award of three salaries as adequate and just compensation, on the justification that the ECJ in the case of *Draehmpaehl* distinguished the cases of applicants who would have been hired had it not been for the discrimination, from the cases where the applicant would not have been hired anyway because the other candidates were better qualified. According to the Supreme Court, the appellant in this case belongs to the second category, as the persons actually hired by the respondent were indeed better qualified than the applicant. The amount awarded is neither adequate nor dissuasive in the Cypriot context and as such this case has set a dangerous precedent.

2.1.2 Multiple discrimination

a) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the Equality Body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*

Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There are no legal rules or decisions on the matter. The Ministry of Justice has advised that there are no plans at the moment for the adoption of laws or regulations to deal with multiple discrimination. An Equality Body decision in 2008 found that the age restrictions contained in a disability benefit scheme were discriminatory but did not look into the specificities created by the combination of the two grounds.

There is no law, practice or precedent in Cyprus which takes into consideration the unique situation arising under the intersectionality of grounds. Given the generally low levels of awareness in Cyprus of anti-discrimination provisions, it is not certain at all that additional laws alone would remedy the problem. Extensive awareness raising and training would have to be carried out for policy makers and members of the legal profession to promote understanding of anti-discrimination in general and the specific situation arising when there is more than one ground at play.

[131] The case is reported under section 0.3 hereinabove.
[132] For details about the trial court case, please see the Legal Network's Cyprus Country Report for 2010.

b) How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?

No case has appeared before the Cypriot courts combining gender and another ground of discrimination. The burden of proof provision in the legislation has never been tested in the Courts so far.

In view of the fact that the Equality Body deals a lot more with gender rather than with any other ground, it is inevitable that when gender is combined with another ground, emphasis will be placed on gender. In the case of a migrant female domestic worker who reported having been sexually harassed by her employer[133] the Equality Body chose to examine the complaint through the 'lenses' of gender discrimination rather than as race/ethnic origin. This, despite the fact that the problematic handling of this case by the authorities was clearly premised upon the complainant's race/ethnic origin.

2.1.3 Assumed and associated discrimination

a) Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

The law does not expressly make provision for assumed and associated discrimination. 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". Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide. There has been no case in which this matter was considered by a Cypriot court or by the national Equality Body.

b) Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?

There is no express provision to that effect in laws N.58(1)/2004 and N.59(1)/2004 (transposing the Employment Equality Directive and the Racial Equality Directive), nor any case-law, although both the aforesaid laws contain protection against

[133] Report ref. No. AKI 67/2010 dated 19.04.2011.

victimisation in line with the said Directives. The spirit of this provision may be extended to cover the above. The Combating of Racial and other forms of Discrimination (Commissioner) Law N. 42 (1)/2004 (appointing the Ombudsman as Equality Body) is much wider in scope, as it covers areas beyond the five grounds prescribed by the two directives.

It is possible to infer that association with persons with particular characteristics is primarily a fundamental human right issue as it relates to freedom of association and as such one cannot be discriminated against in the exercising of this right. Moreover, discrimination on the basis of association with persons with particular characteristics is a direct violation of the principle of equal treatment and unlawful discrimination within the mandate of the Equality Body as this type of discrimination is based on precisely the same grounds by way of association. Article 1 (1) of Protocol 12 to the ECHR includes "association with a national minority, property, birth or other issues" as one of the prohibited grounds of discrimination.

Given that the Equality Body's mandate expressly covers the promotion of equality in the enjoyment of rights and freedoms safeguarded by the Conventions ratified by Cyprus and referred to explicitly in the Law[134] which include Protocol 12, irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin,[135] then association becomes a prohibited ground of discrimination at least vis-à-vis the Equality Body; 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. At the end of the day, whether association with persons carrying certain characteristics is accepted as a prohibited ground for discrimination or not is a matter of interpretation.

An Equality Body decision in 2010 established that discrimination against the main 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 Directive (Law N.58(I)/2004), along the lines of the principle established by *Coleman v Attridge Law and Steve Law* to which this report refers explicitly.[136] 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 established nevertheless and was reiterated by the Equality Body in

[134] These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for 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 Inhuman and Degrading Treatment or Punishment.

[135] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 3(1).(b), Part I.

[136] Equality Body report Ref. No. A.K.I. 82/2009, dated 25 June 2010, http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/A85BC1134AC8CAA2C225775800374FBD/$file/AKI82.2009-25062010.doc?OpenElement.

the Code of Conduct on disability it issued in September 2010,[137] thus making it harder for the Courts to ignore if and when such a case is presented before them.

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

a) How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.

The definition of 'discrimination' contained in Articles 2 of both Law N. 59(I) /2004 and Law N. 58(I) /2004 virtually replicates the wording of the Directive.[138] The same wording is followed in the Law on Persons with Disability N. 127(I)/2000 as amended by Law 57(I)/2004. Direct discrimination is defined as "unfavourable treatment" when compared to "a person without disability in the same or similar situation" [s.3 (2)(a)], or on the basis of "characteristics which generally belong to persons with such disability" [s.3 (2)(b)], or "alleged characteristics" [s.3 (2)(c)], or in contravention of a code of practice [s.3(2)(d)]. No definition is provided for instructions to discriminate.

Employment Law defines both direct and indirect discrimination, further discussed below under gender discrimination

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).

The issue as to whether a public statement amounts to unlawful direct discrimination in the absence of an identifiable complainant contending that he has been the victim of that discrimination, as was the case in C-54/07 Firma Feryn, has not yet been adjudicated by Cypriot Courts and it is very likely that the principle of locus standi (having a legitimate interest) will apply.

A court decision in 2010 found that a claimant with a disability lacked legitimate interest to claim discrimination for an award intended for disabled athletes winning at the Paralympics Games, because the Games had not taken place yet and because it was not certain that he would win and thus be entitled to the award.[139] The award for disabled athletes, which was significantly lower than the awards designated for athletes without disability, had been the subject of a number of Court cases brought by disabled athletes, however none of these claims succeeded in Court (even for

[137] The Code can be downloaded at : http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_diakriseis_logo_anapirias_ergasia.pdf.

[138] "[L]ess favourable treatment afforded to a person due to [any recognised ground] than the treatment afforded to a person due to [any recognized ground] than another person is, has been or would be afforded in a comparable situation".

[139] Antonis Aresti v. Cyprus Athletics Organisation (Supreme Court Case No. 1406/2008 dated 10.02.2010). For a summary, see the Legal Network's Cyprus Country Report for 2010.

those athletes who did win at the games and thus did have a legitimate interest), as the Court found that the difference in treatment was justified on the basis that the Olympics and Paralympics were essentially different.[140] The same principle was reiterated by the Courts in 2012, when a group of disabled athletes applied to the Court.[141]

The Equality Body takes a different stand. There are a number of Equality Body decisions which established discrimination even in the absence of an identifiable claimant affected by the act in question. For instance, in 2005 the Equality Body examined a complaint submitted by the Cyprus RAXEN National Focal Point against an application form for employment in a public service position, advertised in the Official Gazette as well as the national press, requiring the applicants to supply personal information including: family status (married/unmarried); patrimonial name of spouse; nationality of spouse at birth; religion and place of birth of applicant and spouse; profession; number of children; sex and age of children; full name, place of birth, religion and profession of applicant's parents. In its decision dated 27.05.2005 the Equality Body found that the information required in the form was not necessary for the purposes of appointment and recommended that the said specimen be urgently revised for containing unlawful indirect discrimination on the ground of religion, national or ethnic origin and even family status. No sanction was imposed; however this is not due to the absence of an identifiable complainant but in line with the standard policy of the Equality Body which is more mediation oriented. The said form was subsequently revised in compliance with the Equality Body's recommendation, although there are still other forms used by the public sector where information such as religion is required. Also in 2010 the Equality Body carried out a self-initiated investigation into a points system followed by the Open University in order to assess candidates, after a complainant who had claimed age discrimination withdrew his complaint.[142]

Similarly, on two instances (12.5.2004 and 20.05.2005), the Equality Body received complaints that a number of insurance companies had either refused to insure individuals of non-Cypriot origin or had charged them premiums up to two or three times the amount charged to Greek-Cypriots with similar data. The complaints had been submitted by an association of Pontian Greeks as well as by the Cyprus RAXEN National Focal Point, none of whom represented any particular complainant.

The investigation carried out by the Equality Body revealed that some of the companies investigated considered persons of Pontian origin in particular 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

[140] Cyprus Athletics Organisation v. Andreas Potamitis (Supreme Court Case No. 111/2007, dated 18.06.2010). For a summary, see the Legal Network's Cyprus Country Report for 2010.
[141] Andreas Potamitis, Carolina Pelendritou, Evripides Georgiou v. Cyprus Sports Organisation.
[142] Equality Body Decision dated 22/11/2010, Ref. A.K.I. 74/2009. For a summary, see the Legal Network's Cyprus Country Report for 2010.

Greek-Cypriot. In her report issued on 23.06.2005, the Equality Body declared this practice as discriminatory and illegal and recommended that the insurance companies revise their policies. She pointed out that, although the use of criteria such as age, history of claims and condition of the car was acceptable, there is an absolute prohibition against policies based on ethnic or racial criteria. She warned that she would not impose penalties at this stage but that she would not hesitate to impose penalties in the event that the insurance companies do not comply with this recommendation.

Another Equality Body decision following a complaint from the chair of the Social Welfare Committee of the Parliament of the Elderly that insurance companies refuse to insure or charge a higher premium for persons over 70, led to a decision that the said policy was discriminatory, despite the absence of an identifiable complainant. However, because the complaint was not directed against any particular insurance company, the Equality Body did not take any action other than to advise insurance companies to revise their policies. During 2009 also the Equality Body investigated complaints against the teachers' union for publically inviting its members to abstain from organising meetings of Turkish Cypriot children and teachers to their schools in the absence of an identifiable complainant.

The wide and liberal approach employed by the Equality Body will not necessarily be adopted by the Courts if such a case was presented before them, as their mandate is more limited and technicalities often get in the way of decisions in favour of complainants.

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The law generally does not permit justification of direct discrimination, save for specific situations in relation to the grounds of: (a) Religion in the cases of "occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief", where "due to the nature of these activities or framework within which they are exercised, the religion or belief constitutes a genuine, legitimate and justified occupational requirement", as provided in the Employment Equality Directive.[143] (b) Age: this follows the exact wording provided for by Article 6 of the Employment Equality Directive.[144] However, a number of Court decisions interpreting article 28 of the Constitution attempt to establish a norm which 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 that 'different things ... can only be dealt with differently,' referring to "reasonable

[143] Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 7.
[144] Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 8.

discrimination which must be done because of the special nature of things".[145] In some of these cases, the Court failed to consider that disability was a prohibited ground of discrimination and that the differential treatment afforded to the disabled athletes was thus unlawful.

A series of Court decisions have additionally introduced the test of 'reasonableness' which essentially provides that discrimination which is 'reasonable' is lawful; this theory is applied across the board and does not take into consideration the provisions of the Directives and, in particular, the situations under which differential treatment is allowed.[146]

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

There is no specific reference as to how the comparison will be made. The basic test used is the same for all grounds of discrimination, which is contained in the definition of direct discrimination (less favourable treatment than the one which another person in an equivalent situation has been subjected to or would have been subjected to.[147]

An Equality Body decision, pursuant to a complaint for age discrimination in a job advertisement, found that the employers' allegation that the particular post requires "high standard of health condition" was a legitimate aim but that the selection of the criterion of age as a means for achieving this aim is neither appropriate nor necessary, nor can it be justified objectively, because a person's age is not necessarily indicative of his/her health condition.[148] Similarly the argument of the postal services that the age limit for the post of mail distributor is justified on the ground that the post requires good health condition was rejected by the Equality Body, which stated that perceptions about older people not having good health are based on assumptions and stereotypes which are inaccurate and damaging for the persons affected.[149] The Equality Body repeated the same position in 2013 when it examined a complaint for age discrimination by a woman whose job application at a

[145] Cyprus Athletics Organisation v. Andreas Potamitis (Supreme Court Case No. 111/2007, dated 18.06.2010) and Antonis Aresti v. Cyprus Athletics Organisation (Supreme Court Case No. 1406/2008 dated 10.02.2010). For a summary in English, please see the Legal Network's Cyprus Country Report for 2010. The same principle was also followed in: Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice, Ref. 135/07, dated 13.04.2011; and in Costakis Charalambous v. Republic of Cyprus through the Chief of Police, Ref. no. 1334/2008, dated 19.09.2011.

[146] See for instance the Supreme Court decision in George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order (Ref. *1497/2008, dated* 30.04.2012) summarised in Annex III below above, where the Court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

[147] Law on Equal Treatment in Employment and Occupation N.58 (1)/2004, Article 2.

[148] Decision dated 28.06.2007, Ref. A.K.I. 21/2007.

[149] Decision dated 05.12.2007, Ref. A.K.I. 68/2007, A.K.I. 78/2007, A.K.I. 108/2007.

spa centre was turned down because the job required standing for several hours and thus a good physical condition.[150]

The court in the case of *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou*,[151] found that there was no real person in the employment selection procedure that could be compared with the applicant and therefore the only comparator is a hypothetical candidate in possession of the same qualifications as the applicant but aged under 26 years old (which was the maximum age set in the job advertisement). In other words, the court adopted the reasoning of the House of Lords in the case *Shamoon v. Chief Constable of the Royal Ulster Constabulary*[152] which established that, in the comparison between the treatment of the victim and of the comparator, the latter may be an actual person ("treats") or a hypothetical one ("or would treat").

2.2.1 Situation Testing

a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

The law is silent on situation testing and there is no case law. Below is an analysis derived from the general rules of evidence as developed by case law.

Law on Evidence Cap. 9, which codifies the sources of law, defines the hierarchy of law for both criminal and civil procedure as follows: the Constitution, legislation of the Republic since 1960, Common Law and equity and the statutes of the U.K prior to independence.[153] In July 2006, however, 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 coming to any conclusion as to the way in which 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

[150] Report of the Equality Authority regarding age discrimination in access to employment, A.K.I. 94/2011, dated 29 August 2013, reported above under 0.3.
[151] Labour Court case dated 30.07.2008, Ref. No. 258/05. For a summary in English, please see the Legal Network's Cyprus Country Report for 2010.
[152] House of Lords case dated 27.02.2003, available at http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030227/sham-1.htm.
[153] See Cacoyannis, G. (1983) *Η Απόδειξη*, Limassol, Cyprus and Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

'systematic' behaviour of the defendant which is based on *previous* and/ or *similar* occasions, then 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.[154]

In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations[155] or as an indication of *habitual* behaviour.[156] 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 directly as real evidence of discrimination in action against perpetrators, this is a matter that would require legal argument on the basis of authorities in Europe, the UK and the US which would have to prove that the particular test is widely used in Court as direct evidence of discrimination.

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, Equality Body, etc.).

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 resources, human or financial capital,[157] in order 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.[158] In 2005, the Equality Body received complaints that a number of insurance companies had either refused to insure individuals of non-Cypriot origin or had charged them premiums up to two or three times the amount charged to Greek-Cypriots with similar data. One of the two complainants had called up several insurance companies in order to investigate whether they would sell car insurance policies to Pontian Greeks. The result was that none of the companies contacted was willing to sell such polices to Pontian Greeks. The Equality Body wrote to the insurance companies involved asking them to declare their policies on the matter. It emerged that some of the companies investigated considered persons of Pontian origin in particular 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 23.06.2005, the Equality Body declared this practice as discriminatory and illegal and recommended that the insurance

[154] See *R: V. Hartley* (1941) I KBS and R V Mitchel (1952) 36 Cr App. R 79.
[155] Berefond V St. Albans (1905) T L R 1.
[156] *Joy V Phillips* (1916) 1 K.B 849 Mills 2 C.
[157] 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 involve both the know-how, the technical skills and the funds to cover legal and judicial costs.
[158] Interview with Elisa Savvidou dated 19.01.2006, former Head of the Equality Body at the Ombudsman's Office and currently Ombudsman and Head of the Equality Body.

companies revise their policies warning that it would refrain from imposing penalties at that stage, but that it would not hesitate to impose penalties in the event that the insurance companies do not comply with this recommendation. The wording of the report was such that suggested that the Equality Body did not consider the telephone refusals to the complainants alone as sufficient cause to take concrete measures against the insurance companies, revealing that it did not endorse situation testing as an acceptable method of investigating discrimination. The process of rectifying this practice did not move further, as the Equality Body did not receive any further complaints about the insurance companies' policy in this field. A sex discrimination complaint submitted to the Equality Body against insurance companies more recently was rejected by the Equality Body as unfounded, relying solely on the written confirmation of the insurance companies that the practice complained of was not taking place, without carrying out situation testing.

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

There is no information about any reluctance to use situational testing as evidence in Court although Cypriot Courts can often allow technicalities to get in the way of admitting crucial evidence.[159] It is possible that the question may arise as to whether the person or organisation who used the situation testing method had legitimate standing in the judicial proceedings or whether such person or organisation may appear solely as witness, in which case the hearsay rule may stand in the way of giving evidence in Court which was collected verbally by the witness. Court decisions from other member states are not often invoked in judicial proceedings in Cyprus nor are they necessarily taken into account by the Courts, with the exception of U.K. Court decisions, which are considered as persuasive but not binding on the Cypriot courts.

d) Outline <u>important</u> case law within the national legal system on this issue.

There is no case decided on this issue.

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

a) How is indirect discrimination defined in national law on discrimination? Please indicate whether the definition complies with those given in the directives.

[159] An assize court decision in March 2009 acquitted ten police officers charged with assaulting and causing actual bodily harm to two civilians. The Court had deemed as inadmissible evidence a video of the incident taken by another civilian who refused to be identified and thus did not appear in Court. Although the video was submitted as an exhibit by the Attorney General in lieu, the court nevertheless considered it as inadmissible evidence and acquitted the defendants who had appeared in the video torturing the two handcuffed civilians.

The definition of indirect discrimination contained in Articles 2 of both Law N. 59(I) /2004 and Law N. 58(I) /2004 essentially copies the wording of the Directives.[160]

In the field of employment, article 2 of Law 58(I)/2004 defines indirect discrimination as "an apparently neutral provision criterion or practice which may cause unfavourable treatment of a person for one of the reasons referred to in article 3 in relation to other persons unless that provision criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary". The grounds mentioned in article 3 of the law are the grounds of the Employment Directive minus disability: race or ethnic origin, religion or belief, age or sexual orientation.

Beyond employment, Law 59(I)/2004 article 2 of Law defines indirect discrimination as "an apparently neutral provision criterion or practice which may put a person of a particular racial or ethnic origin in an unfavourable position in relation to another person, unless that provision criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary".

Disability is dealt with separately in Law N. 127(I)2000 as amended by Law 57(I)2004 which incorporates a definition identical to the other two laws (N.58(I)/2004 and N.59(I)/2004). However, the disability law contains an additional provision which, although not termed as a definition, offers elements of what would constitute discrimination, without clarifying whether these are to form an exhaustive description. The wording reads: "a person discriminates against another if he treats that person: (a) in a more unfavourable way than what 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 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 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 disability satisfy or are in a position to satisfy, when compared to persons who do have such disability and the existence of such a condition is not justified by the circumstances of the case".[161]

This provision appears to be narrower than the Directive's 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.

[160] " Law 58(I)/2004 defines differential treatment as "an apparently neutral provision criterion or practice which may cause unfavourable treatment of a person for one of the reasons referred to in article 3 in realtion to other persons unless that provision criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary".
[161] Article 3(2) of Law on Persons with Disabilities N. 127(I)/2000 as amended by Law N.57(I)2004.

Prior to the introduction of the 2004 laws, indirect discrimination was not defined in the Constitution or in any other the legislation, save for the gender provisions in the recent law on equal treatment between men and women.

The relevant case law confirms the constitutional provisions that prohibit 'direct' and 'indirect discrimination' but no definition is provided in the court decisions.[162]

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

Although this issue was not directly dealt with by the Courts so far, we may nevertheless assume, on the basis of Cypriot case law on gender discrimination, European court decisions, as well as persuasive authority of UK court decisions, that the 'but for test' is likely to apply. The test involves asking the question as to how the victim would be treated had s/he not had the special characteristic, such as the particular ethnic origin or disability or religion or age that s/he had.

There is no judicial precedent on what test must be used in order for employers to justify a requirement, criterion or practice which results in discrimination. In one case decided by the Courts on age discrimination, the Court did not seize the opportunity to interpret the term "objective aim" and restricted itself to rejecting the appeal on technical grounds (the practice complained of was based on legislation which the Court did not have the power to amend).[163] In another case, where the applicant complained about the fact that he was forced to retire at 55 due to his low rank, the Court rejected his claim based on a reasoning that did not consider either the aim and whether this was legitimate or the means and whether these were appropriate or necessary; instead, the Court's decision was premised upon a strange theory that the applicant failed to prove that the differential treatment was not based on reasonable discrimination.[164]In all cases tried by the Courts where allegations of age discrimination were made, the Courts rejected the claims on various procedural or other technical grounds, except in the case of the employee who was not promoted despite her superior qualifications, because of her competitor's age seniority.[165] In other cases, the Courts allowed exceptions to the non-discrimination principle which

[162] Elia and another V. the Republic, 3 RSCC 1, at p. 6, per Forstshoff.
[163] *Vasos Constantinou v. The Republic of Cyprus through the Public Service Commission; Androula Stavrou v. The Republic of Cyprus through the Public Service Commission*, Supreme Court of Cyprus, dated 01.06.2007, Case Nos 1795/2006 and 1705/. For summaries in English, please see the Legal Network's Cyprus Country Report for 2010.
[164] George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order, Ref. *1497/2008,* 30.04.2012, summarized above under 0.3.
[165] Maria Shambarta v Republic of Cyprus, Ref. 417/2010, 04.10.2012, summarized under 0.3 above.

are wider than those foreseen in Directive, such as 'unequal' situations which must be treated 'unequally', without offering any definitions of the terms found in the laws transposing the two Anti-discrimination Directives and often giving the impression that they are not at all aware of the existence of such laws.

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 human 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 the EU level. Following below are examples of how the Equality Body assessed the allegations of employers as to what amounts to 'legitimate aim' and how the "appropriate and necessary measure" is interpreted:

- The conditions for the promotion of police officers contained an age limit of 40 years as a prerequisite for appointment in the specialized 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.[166]
- In the case of a local authority imposing an age limit of 60 to traffic wardens helping school children cross the street, the Equality Body found in 2010 that the safety of the school children is a legitimate aim within the meaning of the exception in the law, however the choice of the maximum age limit as a measure for the achievement of this aim was neither appropriate nor necessary, because age is not necessarily the ideal criterion for assessing one's physical condition and more objective criteria should apply. [167]
- Regarding the age limit of 40 set as a condition of eligibility in a scheme of financial support for artificial insemination, the Equality Body found in 2010 that the exclusive use of the age criterion is not the most appropriate means for achieving the legitimate aim of supporting under-fertile couples. Instead, the Equality Body recommended the introduction of a comprehensive system of assessing each application which will take into consideration a number of factors including age, the applicant's physical health, the family status, the nature and quality of family relations that will develop from having a child, the applicant's income level etc.[168]
- An Equality Body decision in 2009[169] regarding a legislative provision that restricts eligibility to public benefits to those persons who acquired a disability before the age of 65, stated that differential treatment on the ground of age is allowed, where this is justified by a legitimate aim and the means of achieving it are appropriate, but any deviations from the equality principle must be defined

[166] Decision dated 06.04.2012, summarized in Annex III below.
[167] Decision dated 11.03.2010, ref. A.K.I. 76/2009.
[168] Ref. A.K.R. 126/2009, dated 27.04.2010.
[169] Ref. 114/2007, dated 10.11.2008.

narrowly, as required by paragraph 6(2) of the draft 'horizontal' Directive.[170] Drawing on this conclusion, the report found that the differential treatment of two categories of persons with disabilities on the ground of age (those who acquired a disability before they attained 65 and those who acquired it after 65) is a paradox that causes discrimination which cannot be objectively justified. The economic consequences for state funds which would result from eliminating this differentiation do not justify the deviation from the equality principle and these consequences may be addressed by the institutionalisation of procedures through which individual cases may be evaluated scientifically.

- A 2009 Equality Body decision regarding a legislative provision in the Pensions Law which provides for less favourable terms for public servants under 45 who want to take early retirement, found the measure in question to be disproportionate, as it covers 2/3 of the public service workforce; the aim served was not legitimate because the shortages in scientific personnel invoked have since been covered; and the age limit was an excessive restriction on the freedom of movement of labour, as the aim could have been achieved by introducing a condition that pension benefits are payable upon completion of certain years of service irrespective of age.[171]
- In the case of a complaint that insurance policies refuse to insure persons over 70 to drive cars or if they do they charge a higher premium, the Equality Body found in 2008 that the practice or policy complained of, unsupported by reliable statistical evidence suggesting that persons over 70 have more accidents than younger persons, is not reasonably and objectively justified.[172]
- In another Equality Body case of 2008 regarding the admission requirements into the state nursing school which effectively excluded persons with disabilities, the nursing school alleged that good visual ability is necessary to enable the nurse to assess whether the patient's colour is a cause for concern; a stuttering nurse has communication problems; height and weight of the person is important for moving or lifting patients or for responding fast to emergencies. The decision accepted the above as 'legitimate aim' but pointed out that the employment positions available to graduates of the nursing school are increasingly expanding and may include positions not requiring excellent vision or hearing or other characteristics, adding that the admission requirements should be solely based on how the applicants' characteristics affect their performance as students and not their future employment performance.
- In a 2007 report the Equality Body found that the requirement of a "high standard of health condition" was a legitimate aim but the criterion of age as a means for determining this was not found to be either appropriate or necessary.[173]

[170] Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, 2 July 2008.
[171] Ref. A.K.I. 63/2008 και A.K.I. 1/2009, dated 04.06.2009.
[172] Ref. 125/2007, dated 21.10.2008.
[173] Ref. A.K.I. 21/2007, dated 28.06.2007.

- In the 2007 case of a legislative provision causing persons reaching retirement age to lose their right to compensation for unfair dismissal, the Ministry of Labour argued that the protection of the majority of persons of 65 plus is secured through their pension and provident fund benefits. The Equality Body found that the legitimate aim had not been clearly explained and that the Ministry failed to prove that the means of achieving it were appropriate and lawful, pointing out that there is a class of pensioners at risk of poverty who absolutely need to work and who are particularly vulnerable to labour law violations.[174]
- In the case of the age limit of 60 advertised for a post in the public service, the Equality Body rejected the allegation that it was intended to assist young people to join the labour market. Instead it used the test whether the nature of the job justified the age limit and whether a similar position in another context would carry an age limit.[175]

c) Is this compatible with the Directives?

Yes, Cypriot law complies with Article 2.2(b) of the Directives, although it is doubtful whether the various Court decisions, allowing wide exceptions to the equality principle of the Constitution, meet the Directives' requirements.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

No it does not. Apart from the labour tribunal decision in the case of *Hadjiavraam*,[176] there is no other source of interpretation of how the comparison is to be made. In this case the court found that there was no real person in the selection procedure that could be compared with the applicant; thus the only comparator is a hypothetical candidate with the same qualifications as the applicant but aged under 26 years (which was the maximum age set in the job advertisement forming the subject matter of the lawsuit).

One of the very first Equality Body decisions from 2004 may also be relevant in interpreting this provision. In a decision relating to the fixing of a maximum age in a public service post, the test used by the Equality Body in order to determine whether age discrimination existed or not was whether the nature of the job justified the fixing of a maximum age limit and whether similar positions in other contexts (i.e. of equivalent seniority, in similar fields etc) carry an age limit. The case concerned the age limit of 60 fixed in respect of the appointment of members of the Commission on Educational Service and the test applied was whether the functions performed by the

[174] Decision dated 11.04.2007, A.K.I. 13/2005.
[175] Decision dated 19.10.2004.
[176] *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou*, Case No. 258/05, 30 July 2008. For a summary in English, please see the Legal Network's Cyprus Country Report for 2010.

public service committee (where no age limit applies) are substantially different to those of the education committee. As the answer to this question was negative, the report concludes that there was no reasonable justification in permitting an age limit for the latter.[177] Similarly, a decision pursuant to a complaint for age discrimination in the fixing of age limit for the position of temporary postal distributor at the public post office, found the age limit unjustified, inter alia, because the post of permanent postal distributor does not carry any age limit.[178]

e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?

The Courts in Cyprus have not as yet dealt with this issue as no cases on racial or ethnic discrimination have been brought before them. However, there are a number of Equality Body decisions pursuant to complaints regarding language, where it was established that language discrimination is also potentially indirect discrimination on the ground of race or ethnic origin.

On 01.08.2006 the Equality Body decided on a complaint submitted by an EU national regarding a requirement by the semi-governmental Cyprus Tourism Organisation, that in order for permits to operate a tourist office to be granted, a Greek-speaking manager must be hired. The Equality Body criticised the practice of requiring knowledge of the national language, which constitutes discrimination on the ground of language amounting, at the same time, to indirect discrimination on the ground of race/ethnic origin. The decision referred also to Regulation 1612/68/EEC which sets as a target for the EU the elimination of all forms of discrimination as a result of nationality in the field of employment, as well as to the law transposing the Employment Equality Directive, which prohibits direct or indirect discrimination on the ground of race or ethnic origin in employment, occupation and self-employment. The decision further instructs that this regulation be abolished, in accordance with the law transposing the Employment Equality Directive which provides that all laws and regulations contravening the said law must be abolished.[179]

In two other cases, the Equality Body examined complaints from two EU citizens against article 11 of the Estate Agents Law which requires good knowledge of Greek or Turkish as a prerequisite for the acquisition of a practising licence. The decision found that the said provision amounts to discrimination on the ground of language and, by extension, to indirect discrimination on the ground of ethnic origin in the field of access to the profession of the estate agent.[180] This particular legislative provision has now been revised and the language requirement has been removed. However stringent language requirements persist in other laws and regulations. For instance, a scheme of the Ministry of Education regulating the drawing up of a list of trainers in

[177] Decision dated 08.11.2004.
[178] Decision dated 05.12.2007, Ref. A.K.I. 68/2007, A.K.I. 78/2007, A.K.I. 108/2007.
[179] Law on Equal Treatment in Employment and Occupation (2004), article 16(1).
[180] Decision dated 23.02.2007, ref. AK70/2005 and AKI 73/2005.

electrical engineering requires candidates to have graduated from a Greek Lyceum or to have suceeded in the Greek Language exam organised by the Ministry of Education in Cyprus. The rejection of the application of a Serbian national to join the list was justified by the competent body on the ground that he did not meet the scheme's criteria, even though he had graduated from a Greek speaking University in Greece and had succeeded in other Greek language exams. The Equality Body found that the restrictive means of verifying an applicant's language skills contained in this scheme introduced indirect discrimination since they are likely to adversely affect EU citizens and third country nationals more adversely than Cypriots and recommended its revision.[181]

In 2007, the Equality Body found that the decision of Council of Building Contractors not to process an application for registration by a foreigner national because the applicant's supporitng documents were in English to be unjustified. During the investigation of the complaint, it emerged that the Council would readily consider applications by Cypriot citizens whose supporting documents were in English but requested non-Cypriots to have their certificates translated into Greek. The Ombudsman found that the practice of differential treatment of Cypriot and non-Cypriot applicants amounts to unlawful discrimination on the ground of racial/ethnic origin and also that insistence for translation into Greek of documents composed in a language known to the competent body amounts to violation of the principle of bona fides.[182] In spite of repeated complaints and revisions of relevant job specifications requiring "knowledge" or "good knowledge" of Greek, the requirement keeps reappearing in different employment schemes, mainly in the public sector.

In spite of the fact that the requirement of Greek language is treated by the Equality Body as potentially discriminating, the same treatment is not afforded to the non-use of the Turkish language, which is not deemed to be discriminatory or potentially discriminating on any ground whatsoever. Although Turkish remains an "official language" according to the Constitution, as noted by the *Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus*,[183] "Turkish has basically ceased to function as an official language." In the Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus of 23.09.2009 it was noted that "the Turkish language in the government controlled area was de facto in a similar position to a regional or minority language but that it did not benefit from the protection under the Charter because of its official status under the Constitution of the Republic." The Cypriot government's reaction to this comment was that, on the one hand, Turkish is an official language of the state and as such does not fall within the scope of the Charter and, on the other hand, that its legal status is guaranteed by

[181] Report of the Equality Authority in response to a complaint for discrimination on the ground of national origin in relation to a Public Education Service scheme, Ref. A.K.I 8/2011, dated 23 January 2014.
[182] Decision dated 23.02.2007, case AK70/2005 and AKI 73/2005.
[183] Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006, at para. 39.

the Constitution. The government also alleged that Turkish is used in practice in the Administration, by public authorities and in the content of official documents which is not accurate. On 31.05.2006 the Equality Body examined a complaint that the non-use of the Turkish language in the Official Gazette,[184] in public signs and posts and in public announcements and publications of the government amounted to discrimination in violation of the Constitution and of the anti-discrimination laws. The Equality Body found that the obligation to use Turkish in public documents, based on Article 3(1) of the Constitution, was one of the provisions suspended by the 'doctrine of necessity'.[185]

The non-availability of information in the Turkish language was one of the 'areas of concern' to which the Third ECRI Report on Cyprus draws the attention of the Cypriot government.[186]

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

There is nothing in the law that prohibits the use of statistical evidence to establish indirect discrimination; in fact it can be inferred that from the wording of the anti-discrimination laws transposing the acquis, which replicates the wording of the EU directives the use of statistics must be permitted. So far no case has been considered at court to examine such an issue.

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

Once 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.[187] In the reasoning of this decision, the Equality Body also

[184] The Gazette publishes information of vital nature for Turkish-Cypriots, such as the expropriation of their properties in the south, public tenders, vacancies in the public service and others, raising issues of further indirect discrimination.
[185] The case is mentioned in more detail in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 08.01.2007).
[186] ECRI (2005) Third Report on Cyprus, European Commission against Racism and Intolerance, Council of Europe, Strasbourg, 16 May 2006, paragraph 82.
[187] Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005. The Minister of 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.

made reference to the low salaries paid to migrant domestic helpers[188] compared to Cypriot workers, pointing out that the number of migrant female domestic workers now in Cyprus is about 18,000.[189] The data was used in this report in order 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. During 2010 the Equality Body commissioned a survey into the vocational training needs of the female migrant domestic workers which rendered 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) although the results were used more for awareness raising rather than for reaching a legal decision.

In 2008 the Equality Body examined an age discrimination complaint against several insurance companies whose policy is to refuse to insure persons over 70 to drive cars or 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.[190] 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 information about any reluctance of the Courts to use statistical data as evidence. There have been cases where statistical evidence was introduced and deemed admissible, although this is not so common as a practice. There was no such case in 2010.

c) Please illustrate <u>the most important</u> case law in this area.

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 the case of *Andreas Kaskavalis v. The Republic of Cyprus through the Ministry of Transport and Public Works and the Licensing Authority*[191] the Supreme Court rejected an appeal against a decision of the Licensing Authority by which the appellant's application for a taxi license was turned down based, inter alia, on

[188] Calculated at CYP0.82 per hour, contrasted with CyP4 –CyP 5 per hour for Cypriots carrying out the same work: Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005, page 4.
[189] This figure is based on the data of the Ministry of Interior, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17.955.
[190] Equality Body decision ref. 125/2007 dated 21.10.2008, reported under section 3.14 above.
[191] Supreme Court Case N. 1132/2005, dated 10.08.2007.

statistics of 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 license.

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

There is a general rule prohibiting the collection of such data that derives from article 8 of the ECHR and is also contained in article 15 of Constitution, unless specifically provided under certain circumstances. The Law on Processing of Personal Data N.138(I)/2001, as amended by Law N.37(I)/2003, prohibits the collection and processing of sensitive personal data and lists the circumstances under which this is exceptionally allowed. Three of these are relevant to this context: (a) Processing is necessary for the satisfaction of lawful interest which is superior to the rights and fundamental freedoms of the subject of the data;[192] (b) Processing concerns exclusively data that the subject of it has published or is necessary for the recognition or the exercise of a right before a court;[193] (c) Processing concerns exclusively statistical, research, scientific or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.

In 2005 the European Commission notified the Data Protection Commissioner that there were sections of its Processing of Personal Data Law of 2001 that did not comply with the European data protection directive. These included the provisions on the right of information, transfer of data to third countries and procedural mechanisms.[194] Following this, the Data Protection Commissioner drafted amending legislation which purports to bring the law in line with Directive 95/46/EC. At the time of writing, the said draft legislation was being examined by the Attorney General's office following which it will be sent to the House of Representatives for voting. The said draft has been before the Attorney General's office for some years now without much progress but then delays in processing legislation are common in Cyprus. According to information supplied by the office of the Data Protection Commissioner, at the time of writing this report the bill for amending the data protection legislation in order to bring it in line with the said Directive was before the House of Representatives. The Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters has not been transposed yet.

Although most of the grounds covered by the anti-discrimination Directives are classified in the existing law as constituting sensitive data and at points this law

[192] Article 5(1)(e) of Law 138(I)/2001.
[193] Article 6(2)(e) of Law 138(I)/2001.
[194] See http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2006/9th_annual_report_en.pdf.

covers grounds beyond those of the anti-discrimination directives, age is missing from the protected characteristics. 'Sensitive data' is defined in the law as data concerning racial or national[195] origin, political belief, religious or philosophical conviction, participation in an organisation, association or trade union, health (which is much wider in scope than 'disability'), sex-life and sexual orientation, criminal prosecution or criminal conviction.[196]

"Personal data" is defined in the law as any information referring to the subject of data, i.e. a physical person, who is still in life. Aggregate data of a statistical nature, from which the subjects of the data can no longer be detected, are not considered as 'personal data'.

Under article 6(3) of Law 138(I)/2001, the Council of Ministers may issue regulations following a proposal by the Personal Data Protection Commissioner, on the processing of data in cases other than the ones provided for under the law when there are serious reasons of public interest involved.

In response to an enquiry which the author made to the Cyprus Commissioner for the Protection of Personal Data, the Commissioner informed that: "The collection and keeping by employers of data of their employees in respect of their ethnic or racial origin, disability, religion or belief or sexual orientation (sensitive data) as a rule is prohibited. It is permitted if this is necessary so that the employer fulfils his/her obligations in the field of employment law and s/he obtains a license for this purpose from the Personal Data Commissioner (Article 6(1) (2) (a) of the Law on processing of Personal Data)".[197] One may conclude that the employee's written authorisation is not necessary in the aforesaid cases. Presumably the same principle would apply outside the employment field. Based on the Commissioner's statement as aforesaid, one may safely assume that the law will be interpreted and applied by the courts in a way compatible with the Data Commissioner's interpretation.

In order to apply the regulation concerning access to the labour market by various categories of workers, the Labour Office of the Ministry of Labour maintains records concerning country of origin, ethnic origin and whether they are asylum seekers or not.

In the non-employment field, data on ethnic origin is kept at the national level for various purposes. For instance, the population censuses carried out by the Statistical

[195] The reference to 'national' origin, as opposed to 'ethnic' origin, may well be a reflection of the fact that in Greek the two terms have a similar sound and many people tend to use them interchangeably, as the distinction between the two may not be widely known in Cyprus. From the context, one may perhaps conclude that 'ethnic' would have been a better word, since personal data on national origin are widely used and processed.
[196] The definition for both terms is found in Article 2 of the Processing of Personal Data Law 138(I)/2001.
[197] Law No. 138(I)2001. In reply to a question she replied in writing dated 13.12.2005.

Service of the Republic keeps figures on each of the ethnic and religious communities of Cyprus (Greek-Cypriots, Turkish Cypriots, Maronites, Armenians and Latins) as well as on the names and countries of origin of third country nationals. The research conducted by the Statistical Service of the Republic for the purposes of the 2011 population census did collect information from the interviewees as regards their religion but this was neither processed nor published due to recent trends in regarding religion as personal sensitive data.[198] The Roma are not classified separately nor identified as such by the educational system, as they are considered to be part of the Turkish Cypriot community. Constitutionally, the Roma do in fact form part of the Turkish-Cypriot community, since by virtue of the Constitution they could only belong to one or the other community; however, the same applies to the Maronites, the Latins and the Armenians, who are constitutionally part of the Greek-Cypriot community, and they are nevertheless afforded a separate classification from the Greek-Cypriot Statistical Service.[199] The Ministry of Education also keeps data on school children according to their ethnic (as well as their national) origin; again the Roma are not classified separately but are integrated into the figure for Turkish-Cypriots. In some tables supplied by the Ministry, a group of pupils are classified as 'Turkish-speaking"; this term would include primarily Turkish-Cypriots but to some extent also Roma and Kurdish pupils. The records which are publicly accessible do not show names of individuals, only numbers per ethnic origin. Schools do keep data on the pupils' religion, which is also noted on the school leaving certificate they receive upon graduation.

In some cases, particularly relating to positive measures in education there is evidence suggesting that statistical data is used in order to design positive action measures. For instance, in order for the Education Ministry to place a school within the "Educational Priority Zone", an investigation is carried out into poverty levels in the area, concentration of non-native Greek speakers, dropout rates etc.[200] Similarly, data is kept on the native language (i.e. ethnic origin) of the members of the school population in order to determine where and to what extent Greek language classes must be introduced in an effort to foster integration. Also, in order to decide whether

[198] Information supplied through consultation with officers at the Statistical Service of the Republic and at the Ministry of Interior. Although the processing of personal data without permission was prohibited as of 2001, the notion that in a multicultural society religion is a personal matter was not widely embedded in social culture. Contrary to the policy adopted as regards the 2011 population census, the population census of 2001 did publish data on religion.

[199] Upon the establishment of the Republic, all religious groups were asked to choose as to whether they wanted to "belong" to the Greek Cypriot community or the Turkish Cypriot community. They opted to belong to the former. The Roma were not asked to choose; they were simply assumed to belong to the Turkish Cypriot community because of their common religion (Muslim) and language.

[200] This measure, which has been in place for some years now, aims at placing in a special category certain schools where special attention and particular measures are needed to address certain educational needs, such as pupils coming from particularly poverty-stricken areas, high concentration of non-native Greek speakers, high drop out rate etc. Schools classified as falling within ZEP receive extra teaching hours and other measures where needed. The institution of ZEP aims at reducing inequalities for pupils attending schools in disadvantaged areas with an increased proportion of immigrants, combating school failure and illiteracy.

to open a Turkish speaking school, in compliance with the request of the UN Peace Keeping Force in Cyprus (UNFICYP), the government carried out a survey amongst the Turkish speaking families of the area concerned in order to establish whether they wanted to send their children to such a school. The survey showed that the parents preferred to send their children to the mainstream Greek school, and thus the government decided not to set up a Turkish school.[201] In the confrontation that has been ongoing between the Ministry of Education and Maronite community for the past few years regarding the Ministry's failure to raise the subsidies for school fees of Maronite students attending private schools, statistical evidence was used by the representative of the Maronite community in order to prove that only a small percentage of the Maronite students enrolled at the minority schools for which subsidies were offered. In 2010, this confrontation led to an Equality Body recommendation to the authorities that the claim of the minorities for increasing the school fees subsidy for the private secular schools should be favourably considered.[202]

In 2010 an Equality Body report criticised the procedure for exemption of pupils from the religious class at schools, and particularly the fact that the pupils' parents are asked to declare their religion, 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. The report recommended that students be exempted from the religious class without having to reveal their religious beliefs and for reasons of conscience and that a special form should be introduced for parents to complete when requesting exemption from the religious class expressly stating that there is no obligation to reveal one's religion.[203]

On 08.07.2010 the Ombudsman issued a report pursuant to a complaint submitted a month earlier by a lawyer on behalf of a migrant woman who is an HIV carrier and was being detained for the purposes of deportation, after her asylum application had been rejected.[204] The guards at the detention centre informed all other inmates that she was suffering from HIV/AIDS and should therefore be using a separate washroom. Because of this, all other inmates and guards behaved towards her with repulsion; no one would approach her or touch her and members of staff would not even place her pills in her palm but instead would throw them on the floor from a distance and she would have to collect them from the floor. Even when an officer from the Ombudsman's office visited the detention centre to investigate the case, the police officer in charge prompted her to keep her distance from the complainant so

[201] A survey carried out by UNFICYP into the same matter produced the opposite result, i.e. that the parents did want their children to attend a Turkish school. Also the results of the governmental survey were disputed by the Union of Turkish Cypriot teachers K.T.O.S. who subsequently proceeded to sue the government in Court for violating the right of Turkish Cypriot children to education.
[202] Ref. No. A.K.R. 114/2005, dated 08.11.2010.
[203] Decision dated 07.11.2010, Ref. no. A.K.R. 135/2009. For a summary in English, please see the Legal Network's Cyprus Country Report for 2010.
[204] File No. AP 1188/2010.

as not to risk transmission of the virus. The Ombudsman's report concluded that sensitive data concerning the complainant's health were 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 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 report on access to the labour market by HIV carriers[205] revealed that the low response of HIV persons to a special scheme for employment in the public sector ten years after its introduction was largely attributed to the fact that the procedure foreseen in the scheme involved the registration of prospective applicants with the Labour Office declaring 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 notes that the declaration of the applicant's health condition to a number of persons every time s/he applies for a job position may deter an applicant from taking advantage of the said scheme but may also be a reason for rejection of a job application, urging the authorities to remove this obstacle from the procedure.

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 during 2010, involving the covering of the costs for escorts for persons with disability was designed after the disability organisations submitted, upon the request of the Ministry of Labour, details on the numbers amongst their members that would make use of such service. The amount of 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 which do not involve the granting of monetary benefits, such as the preferential parking provided in a 2007 amendment to the disability law,[206] appear to be the result of pressure from the disability movement rather than the result of the use of statistical data.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

[205] Ref. A/P 587/2010, A/P 1616/2010, A/P 2309/2010, dated 17.10.2011.
[206] Law amending the Law on Persons with Disability N. 102(I)/2007 article 2.

As a concept, harassment was first introduced into Cyprus law in 2002 with Law N. 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training that came into force on 1st 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 are defined separately.

In Laws 58(I) and 59(I), as well as the Law (amendment) Concerning Persons with Disabilities Law 57(I)/2004, 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".

The Criminal Code, Cap. 154[207] also 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.

At the level 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, which bear similarity 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 which 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.[208]

[207] http://www.cylaw.org/nomoi/enop/non-ind/0_154/index.html.
[208] Article 2A(1) of the Law amending the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) Law of 1967, No. 11(III) of 1992.

In addition,

- the Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law N. 134(I)/2011,[209] which purports to transpose the corresponding Framework Decision,[210]
- the 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
- the Law ratifying the Convention on the Prevention and Punishment of the Crime of Genocide N. 59/1980

contain provisions that may be used to prosecute acts that may be termed as harassment.

No case has been adjudicated in Court so far under any of the above provisions.[211]

b) Is harassment prohibited as a form of discrimination?

Harassment is a prohibited form of discrimination:

- on the ground of disability, under Article 3(1)(e) of Law N.127(I)2000 as amended by Law 57(I)2004;
- in the field of employment on the ground of age, sexual orientation, race/ethnic origin and religion under Article 6(1)(c) of Law 58(I)2004 (which transposes the Employment Directive plus the employment component of the Racial Equality Directive);
- in fields beyond employment on the ground of race/ethnic origin, under Article 5(2)(c) of Law 59(I)2004 (which transposes the Race Directive minus the employment component).

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

Prior to the enactment of the 2004 laws transposing the two anti-discrimination directives, there were no explicit provisions in national law for harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, although a number of international law instruments contained provisions that could have been used to combat harassment on the ground of racial or ethnic origin and religion (see above). There were however provisions for sexual harassment: The Law for Equal Treatment of Men and Women in Employment and

[209] http://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.
[210] Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.
[211] But there are a number of decisions on sexual harassment.

Occupational Training defines sexual harassment as “any behaviour that is unwanted by the recipient of the behaviour of sexual nature or any other behaviour based on sex, which offends the dignity of women and men during employment or occupational education or during access to employment or occupational education or training which is manifested via words or deeds”. In amending Law N. 40(I)/2006 on the Equal Treatment of Men and Women in Employment and Vocational Training, the terms “harassment” and “sexual harassment” are defined separately.

A code of conduct was issued by the union of Employers (Employers and Industrialists and Federation – OEV) in 2007 on discrimination at the workplace in general, but does not offer any additional insight into the meaning of harassment other than what the law provides. A code of conduct issued by the Equality Body in February 2007 on sexual harassment provides the following definition: “Sexual Harassment is behaviour which is unwanted and unpleasant to its receiver which creates a frightening, hostile, insulting and/or humiliating working environment. Sexual harassment can take many forms including physical contact, comments, “jokes” or propositions, exposure to insulting material or other behaviour which contributes to the creation of a hostile working environment”. A list of examples of what constitutes sexual harassment at the workplace is also offered.

The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 defines harassment as unwanted behaviour connected with a person’s disability intending to or resulting in insulting a person’s dignity or creating a frightening, hostile, humiliating, degrading or aggressive environment and includes a wide range of unwanted behaviour.

The Code went on to establish that a behaviour intending to insult a person with disability or creating a hostile environment amounts to harassment irrespective of whether it actually had any impact on the affected person: for instance when a person with learning difficulties is often described by his/her colleagues as ‘stupid’ this amounts to harassment even if the affected person is not present when these comments are made. However, if a behaviour has no intention of insulting a person or creating a hostile environment, then it amounts to harassment only if it can reasonably be considered that it had the result the creating of a hostile environment or of insulting a person’s dignity. The code offers two examples to exemplify this distinction: (a) a person who stutters feels offended when his manager is jokingly making fun of his speech impediment. Although he has repeatedly asked his manager to stop this, the latter continues claiming that it is only a joke. This behaviour amounts to harassment as it can reasonably by considered to have insulted a person’s dignity. (b) A person who forwards by e-mail to his colleagues a joke about autistic persons commits harassment when an autistic person working in the same firm receives this e-mail and feels insulted, even though there was no intention to insult the particular co-worker.

The code merely explains and exemplifies the law; it has no power to provide for sanctions or other measures not foreseen in the law. In the general section, however,

the code recommends to employers to put in place a complaints mechanism at work to enable the employee to make the employer aware of his/her problem. The code explains that such mechanism should facilitate the reaching of a mutually acceptable solution before the problem becomes a big issue that can only be resolved through the Equality Body procedures or through judicial procedures.

There are several court decisions on the issue of harassment *in general* (i.e. not in the anti-discrimination field), but none offering any definition of the term.

d) *What is the scope of liability for discrimination)? Specifically, can employers or service providers (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) e.g. landlords, schools, hospitals, be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

Under article 13 of the Law on Civil Offences (Cap 148)[212] 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 his capacity as such and whilst he was carrying out the normal tasks of his 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 his own purposes and not on behalf of his master. None of these provisions affect the servant's liability for any acts committed by him.

Trade unions cannot be held liable for the actions of their members, only for the actions of their employees.

The laws transposing the two directives provide for criminal offences committed by legal persons or organisations. Law N.58(I) (all grounds except disability, in the employment field) provides in article 15(2) that for violations of the law committed by legal persons or organisations, the CEO, president, manager, secretary or other similar officer of the entity or organization can also be held liable if, proved that the offense was committed with their consent or agreement or tolerance. This however does not relieve the legal person from liability: if an offence is committed by a legal person or an organisation, then this can also be held liable (article 15(3) of Law 58(I)/2004).

[212] The Civil Offences Law is available at http://www.cylaw.org/nomoi/enop/non-ind/0_148/full.html.

Identical provisions can also be found in Law N.59(I)/2004 (race/ethnic origin in fields beyond employment). Article 13(2) provides that offences committed by a legal person or organization create liability for the entity's CEO, president, manager, secretary or other similar officer if it is proved that the offence has been committed with his/her consent. The legal person itself is also liable and punishable with a fine.

An identical provision exists in the Law on persons with disability, article 5(5).

2.5 Instructions to discriminate (Article 2(4))

a) *Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

National law prohibits instructions to discriminate on the grounds of race/ethnic origin, age, religion or belief, sexual orientation and disability.[213]Prior to the introduction of the laws transposing the anti-discrimination *acquis*, there were no provisions in Cyprus law prohibiting instructions to discriminate as provided by Article 2.4 on any grounds, nor was there any comparable definition of such provisions in relation to gender discrimination in the national gender equality legislation.

The liability of legal persons for *all* offences created by the laws transposing the two Directives is established by article 4 of Law 58(I)/2004 (transposing the Employment Equality Directive minus disability and the employment component of the Racial Equality Directive), as well as by article 4(1) of Law 59(I)/2004 (transposing the Racial Equality Directive minus the employment component) which provide that the laws apply to "all persons in the public and private domain including public bodies, local authorities of self-governance and organisations of public and private law." Also, different sanctions apply for natural and for legal persons (detailed in section 3.1.2 below).

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

The laws transposing the Directives do not go beyond the Directives' requirements, They copy verbatim the text of the Directives.

c) What is the scope of liability for discrimination? Specifically, can employers or service providers (in the case of racial or ethnic origin)(e.g. landlords, schools, hospitals) be held liable for the actions of employees giving instruction to discriminate? Can the individual who discriminated because s/he received such an instruction be held liable?

[213] Article 6(1)(d) of Law 58(I)2004 (transposing the Employment Directive); Article 5(2)(d) of Law 59(I)2004 (transposing the Race Directive); Article 3(a) of Law 57(I)/2004 for the ground of disability.

Although the laws transposing the Directives are silent on the employers' liability as regards the actions of their employees, under the general principles of labour law employers are vicariously liable for the actions of their employees. An employee who has discriminated because s/he has received an instruction to discriminate is not explicitely covered by the laws transposing the Directives, however it is likely that such employee will be held liable for direct or indirect discrimination, irrespective of whether the motive was to follow the employer's instructions. The dismissal of an employee because s/he refuses 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) How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers? Is the availability of financial assistance from the State to be taken into account in assessing whether there is a disproportionate burden?

When the Employment framework Directive was transposed in 2004, the only provision for reasonable accommodation was to be found in the disability law, which provides for the duty to adopt "reasonable measures" to the extent and where the local economic and other circumstances allow.[214] These measures are not restricted to the working place 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 market, etc);[215] (b). employment including access to, working conditions, training etc;[216] (c). supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc;[217] transport;[218] and telecommunications.[219]

Specifically with regard to reasonable accommodation at the working place, 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

[214] Article 9(1) of the Law on Persons with Disabilities N.127(I)2000.
[215] Article 4 of the Law on Persons with Disabilities N.127(I)2000.
[216] Article 5 of the Law on Persons with Disabilities N.127(I)2000.
[217] Article 6 of the Law on Persons with Disabilities N.127(I)2000.
[218] Article 7 of the Law on Persons with Disabilities N.127(I)2000.
[219] Article 8 of the Law on Persons with Disabilities N.127(I)2000.

make them accessible to persons with disabilities; (ii) the reshaping of work by creating working schedules of 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".[220]

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, so that a person with a disability has access to an employment post, to carry out his/her profession or to be promoted, or to undergo training, so long as these measures do not lead to disproportionate burden for the employer; the burden is not disproportionate when it is sufficiently balanced by measures adopted by the state in favour of persons with a disability (article 5(1A) of the law).[221]

Prior to the 2007 amendments, the law required that the principles established in articles from 4 to 8 of the law, being: the basic rights of persons with disabilities, i.e. independent living, prompt diagnosis, accessibility etc (article 4); the right to equal treatment as derived from the Employment Equality Directive (article 5); the right to equal treatment in the provision of goods and services (article 6); accessibility in public transport (article 7); and access to telecommunications and information (article 8), be exercised with the adoption of reasonable measures, which are defined in article 9(1). According to this, the factors which must be taken into account in order to determine whether a measure is reasonable or not, as follows (article 9(2)): (1) The nature and required cost for the adoption of the measures; (2) the financial resources of the person who has the obligation to adopt the measures; (3) the financial situation and other obligations of the state in those cases where the obligation for the adoption of measures refers to the state; (4) the provision of donations by the state or other sources as a contribution towards the total cost of the said measures; (5) the socio-economic situation of the person with the disability concerned. In theory, individuals do have a right of action in respect of all these rights, although in some cases the right is so vague and abstract that its practical application is hard to conceive. No particular body is mandated with oversight for the implementation of these provisions. The law provides that the socio-economic situation of the disabled claimant must not be taken into account as regards the principle of non-discrimination in employment.

The justifications set out in article 9(1) for failing to provide reasonable accommodation are wider than in the Employment Directive, which provides only for the test of "disproportionate burden on the employer". This means that in respect of the rights affected by article 9(1) of the law, being the right to independent living,

[220] Article 5(2)(d) of the Law on Persons with Disabilities N.127(I)2000, as amended by Law No. 57(I) of 2004, which purports to transpose the disability component of Directive 2000/78/EC.
[221] Law on Persons with Disabilities N.127(I)2000, as amended by Law No. 72(I) of 2007.

prompt diagnosis, accessibility etc (article 4); the right to equal treatment in the provision of goods and services (article 6); and access to telecommunications and information (article 8),) the duty to provide reasonable accommodation is conditional upon the wide pre-requisites of articles 9(1) and 9(2) and is far from mandatory.

This however does not amount to a deviation from the Employment Equality Directive because, since the 2007 amendments, there is a mandatory obligation on the employer to take reasonable measures, subject only to the condition that the measure does not lead to disproportionate burden for the employer, which is in line with the duty set out in the Employment Equality Directive (article 5(1A)).

This provision is no longer subject to the restrictive provisions of article 9(1) which require the rights falling under its ambit to be exercised with the adoption of "reasonable measures" so wide in scope that they fall short of creating a mandatory regime. In addition, the rest of the provisions of article 5 (right to equal treatment in employment and occupation including the right to reasonable accommodation), as well as article 7 (accessibility to public transport) are also removed from the ambit of article 9(1), to the effect that all rights created by articles 5 and 7 are now absolute and are not subject to the adoption of "reasonable measures" (article 5(1A)) (although article 7 is subject to the issue of regulations, which has not as yet materialised).

b) *Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

The definition of a disability for the purposes of the reasonable accommodation provision is no different to that applicable for other elements of the law. No case has actually been examined in court so far to assess how courts would determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'; there are however a number of Equality Body decisions addressing complaints for the non-provision of reasonable accommodation.

A 2006 decision of the Equality Body regarding accommodation for dyslectic pupils in exams dealt with the issue from a perspective other than the economic burden resulting for the party providing the accommodation. In the case of the dyslectic student, the considerations posed by the Education ministry were connected to the credibility and prestige of the exam and to avoid giving the dyslectic pupil an unfair advantage over other pupils. The Equality Body's decision, based on the practices followed abroad and on international reports on dyslexia, was that in order to give the dyslectic pupil an equal opportunity to compete in the exam, it was necessary to

allow him the use of means additional to the mere extra time of 30 minutes at the exam.[222]

In 2007, the Equality Body found that the policy of the Ministry of Education 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.[223]

A decision of the Equality Body in 2008 pursuant to a complaint for lack of reasonable accommodation to facilitate exams for candidates with a disability for appointment in the public service found that the facilitation offered (extra 30 minutes which were deducted from the candidate's break) was not sufficient to create conditions of true equality for the complainant to compete with the other candidates, because the principle of reasonable accommodation is founded upon the premise that the measure must ensure equality in opportunity and not in the result.[224]

Another complaint investigated by the Equality Body was submitted by a private sector employee with multiple sclerosis who had initially been granted by her employer two afternoons off in order to undergo physiotherapy, which arrangement was subsequently revoked by the employer on the justification that the workload had increased and her services were needed full time. When the complainant expressed her inability to follow the full time schedule required, the employer fired her, claiming that the previous arrangement which allowed her to take two afternoons off was temporary, privileged and discretionary and could thus be revoked at any time. The Equality Body found that the employer has an obligation in law to adopt all necessary measures which will allow or facilitate the person to continue exercising the duties of his/her position provided there is no disproportionate burden for the employer and that the company's allegation that the arrangement of taking two afternoons off was 'discretionary' could not be accepted. Invoking the ECtHR decision in *Thlimmenos v. Greece*,[225] the decision stressed that there can be no issue of 'privileged' treatment of a person with the disability, since the treatment of persons without a disability in relation to persons with a disability cannot be the same, if equality is to be attained.[226] The decision did not address the issue of the actual cost to the employer arising out of the two afternoons off claimed by the complainant and whether this was

[222] File No. AKI 24/2006, AKI 27/2006, dated 31.10.2006.
[223] Decision dated 12.09.2007, Ref. A.K.I. 9/2007. A brief description of this and other cases referred to in this section is available at the Equality Authority's Annual Report for the years 2007-2008 (pp. 28-34) which is available in English at: http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/5A41A462822B8AAC88257686006B1A42/$file/Εκθεση%20Αρχής%20Ισότητας%20για%20τα%20έτη%202007%20και%202008-αγγλικά-.pdf?OpenElement.
[224] Decision dated 08.10.2008, Ref. A.K.I. 37/2008.
[225] Application no. 34369/97 f 06 April 200, available at http://wri-irg.org/node/9170.
[226] Decision dated 04.09.2007, Ref. A.K.I. 65/2007.

disproportionate or not, presumably because it did not find that the cost would be disproportionate.

In 2009, a complaint was submitted to the Equality Body by a job applicant who suffered from chondroplasia, as a result of which she was short, and whose job application was rejected as a result of her appearance. The Equality Body concluded that the employer had an obligation to place files in shelves which would be accessible by the complainant and/or provide a ladder to enable her to reach files in high shelves, so as to enable her to carry out her work duties.[227]

In June 2009 the Ministry of Education asked the Equality Body to provide an opinion as to whether a reduction of teaching hours, requested by teachers with disabilities, should be viewed as reasonable accommodation or whether it may be deemed as casting a disproportionate burden on the employer. The Equality Body responded that the reduction in teaching hours can constitute a reasonable accommodation measure, provided that the symptoms of the disability render teaching painful or exhausting.

On the issue of the proportionality of the burden on the employer, the Equality Body pointed to the possibility of the state securing funding from the European Social Fund in order to finance such a measure.[228]

The liberal appraoch taken by the Equality Body may not necessarily be shared by the Courts, although there has been no opportunity to test this so far. In the only case examined by the Courts on this issue, the applicant's lawyer chose to file an application for judicial review of the administrative decision by which a job applicant of restricted vision was turned down on the pretext that there would not be sufficient time for training and the applicant would have to respond to heavy workload under circumstances of pressure, with limited supervision and guidance. The applicant's lawyer did not invoke the Law on Persons with Disabilities and did not pursue a claim either for a reversal of the burden of proof or for reasonable accommodation; as a result the Court found that there was insufficient cause to annul the administrative question challenged and did not look into the merits of the case.[229]

The Code of Conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 provides that the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure

[227] Ref. No. A.K.I. 12/2009, report dated 21.09.2009. A summary of this case in English is available at the Equality Authority's Annual Report for the year 2009, p. 47, at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/etesia_ekth_aim_2009_0.pdf.
[228] Decision dated 20.09.2009, File A.I.T. 1/2009. A summary of this case in English is available at the Equality Authority's Annual Report for the year 2009, pp. 50-52, at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/etesia_ekth_aim_2009_0.pdf.
[229] Gregoris Gregoriou v. The Republic of Cyprus, Supreme Court Decision dated 4 November 2013, Ref. 83/2012,

equality in opportunity and not in the result, therefore the measure must be such so as to offer the person with 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 on the typing speed. Also persons with a disability who take exam for the purposes of a selection procedure for a job must be given such facilities so as to 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 organized (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 elevators etc); re-allocation 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 the participation in trade unions; the upgrading of existing equipment; other forms of support or assistance.

c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The law provides for a rather vague and toothless obligation to provide reasonable accommodation for persons with disability beyond the workplace: in the right to independent living, the right to diagnosis and prevention of disability, personal support with assistive equipment, accessibility to housing, buildings, streets, the environment and public transport, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market;[230] in the supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services;[231] in transport;[232] and telecommunications.[233] The reasonableness of the measures which the law requires to be taken for the aforesaid areas is to be determined by the cost, the financial resources of the person who is obliged to take these measures, and if these measures are to be taken by the state then the financial situation of the state considering its other obligations, the contribution of the state or of other sources (if

[230] Article 4 of the Law on Persons with Disabilities N.127(I)2000.
[231] Article 6 of the Law on Persons with Disabilities N.127(I)2000.
[232] Article 7 of the Law on Persons with Disabilities N.127(I)2000.
[233] Article 8 of the Law on Persons with Disabilities N.127(I)2000.

any) towards the cost of the measures and the socio-economic situation of the person with the disability affected.[234]

'Disproportionate burden' does not appear in this provision, although it is inferred from the references to "the financial resources of the person obliged to take the measures", "the public economic situation and other obligations of the state" and the contribution of public or private donations to the cost of the measures, all of which are to be taken into consideration in determining whether the cost is "reasonable" (and therefore imperative) or not.

By contrast, in the field of employment, following an amendment introduced in 2007, an obligation is imposed on the employer to take reasonable measures subject only to the condition that the measure does not lead to disproportionate burden for the employer.[235] According to this provision, a measure is not 'disproportionate' (and is therefore obligatory) when it is sufficiently balanced with measures taken in the framework of state policy in favour of persons with disability. As evidence of the fact that the lawmaker considered employment far more seriously than the other fields, even prior to the enactment of the aforesaid 2007 amendment, the consideration of the socio-economic situation of the person with the disability affected, in order to determine whether a measure was reasonable or not, did not apply to the field of employment.

The law provides a rather vague obligation to take reasonable measures to ensure access for persons with disability to integrated education in accordance with their needs.[236] Furthermore, an amendment to the Law for the Carrying out of Pancyprian School Exams N. 22(I)/2006 introduced in 2007 provides that extra 30 minutes "and/ or other possible facilities" are granted to pupils with special needs at examinations following a request submitted to and processed individually by a multi-disciplinary committee.

There are a number of Equality Body decisions confirming the right of persons with disability to reasonable accommodation in education. In 2006, for instance, the Equality Body produced a rather comprehensive report, pursuant to a number of complaints, for the lack of suitable accommodation for dyslexic children in exams, which places them in a less favourable position to non-dyslexic children. The decision found that the Education Ministry's practice of providing only additional examination time, was discriminatory towards dyslexic children; and also that the two national laws regulating the issue of exams[237] introduced indirect discrimination on the ground of special needs in the field of education. The decision asks that the two laws in question be revised. Interestingly enough, the decision of the Equality Body

[234] Law on Persons with Disabilities N.127(I)2000, article 9(2).
[235] Law on Persons with Disabilities N.127(I)2000 as amended by Law No. 72(I) of 2007, article 5(1A).
[236] Law on Persons with Disability N. 127(I)/2000, article 4(2)(d).
[237] The Laws and Regulations on the Training and Education of Children with Special Needs 1999-2001; Law for the Carrying out of Pancyprian School Exams No. 22(I)/2006.

does not cite the relevant provision in the disability law (mentioned at the beginning of this paragraph) but instead invokes a number of other laws ratifying international Conventions: the Law ratifying UN Convention on the Rights of the Child (art. 3, 23 and 28 of the Convention), the European Social Charter; and Regulations on the Training and Education of Children with Special Needs 1999-2001; Law on Combating Racial and Other Forms of Discrimination (Commissioner) 2004 (Art. 6(1) and 39(1)), perhaps in knowledge that the relevant provision in the disability law does not create the mandatory regime needed to support this decision. Indeed, in 2007 the Law for the Carrying out of Pancyprian School Exams N. 22(I)/2006 was revised to provide that extra 30 minutes "and/ or other possible facilities" are granted to persons with special needs who have obtained the relevant confirmation from the Examinations Authority, which confirmation they must then produce to the invigilators at the time of the exam.[238] These facilities to be granted are subject to the approval of a committee set up by this law and comprising of the following public servants: a representative of the Examinations Authority who presides, the person in charge of Special Education, a representative of the Educational Psychology Department, a representative of the Counselling and Vocational Guidance Department. The provision of facilities must: aim at securing the established rights of persons with special needs during the examinations, in order to balance off their disability or special problem they are facing; must be within the "incontestable" nature of the exam; not give advantage to any candidate. Each request for facilities will be looked at separately by the Committee which has the right (note: but not the obligation) to invite two educationalists -experts in the field of the disability concerned, to assist in the evaluation of each individual request.

A 2011 Equality Body report suggests that the duty to provide reasonable accommodation measures could be expanded to cover other fields beyond employment and education: The Equality Body's report states that for persons with intellectual disability, who form a particularly vulnerable group, there is a need to remove obstacles and to introduce supportive measures in order to complement and develop their autonomy, pointing out that support and assistance must also be extended to their carers. The report recommends that the Scheme of Transport Assistance be extended to include persons with intellectual disability and that a general grant be paid to facilitate the transportation and transfer of these persons to their schools, day care centres and other places.[239]

d) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination? What is the potential sanction? (i.e.: fine)

[238] Law for the Carrying out of Pancyprian School Exams No. 22(I)/2006, amended by Law 51(I)/2007, article 22(5).
[239] Ref. AKR 95/2009, dated 24.06.2011, referred to under section 0.3 above.

Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, it is possible that this may be inferred from the wording used. In particular, article 5(1) of the law as amended in 2007[240] states that the principle of equal treatment applies in the field of employment and for this purpose discrimination is prohibited. This provision is followed by the 2007 addition to the law of article 5(1)A which provides for the duty to provide reasonable accommodation so long as the burden on the employer is not disproportionate. The purpose of this duty is stated in article 5(1)A to ensure implementation of the principle of equal treatment.

Given that the sanctions foreseen by the law cover only actions or omissions amounting to direct or indirect discrimination,[241] it follows that obligations which do not amount to discrimination are not punishable under this law. It is reasonable to infer that, since the duty to provide reasonable accommodation is now clearly worded as a mandatory obligation, then in order for the sanctions to apply, the failure to meet this duty should amount to discrimination.

In an effort to clarify the rather vague and evasive language of the law, the Code of Conduct on disability discrimination at the workplace issued by the Equality Body in 2010 explicitly provides that the employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination and is punishable with a fine of up to CY£4,000 (=€6,834) or imprisonment of up to six months, as in all other forms of discrimination.

No case was ever tried by the Courts on reasonable accommodation. However, the decisions of the Equality Body on this issue consider the failure to meet this duty as discrimination prohibited by law, even before the 2007 change of the law. The complaint concerned a blind person working as a telephonist in the hospital, who was moved to a new hospital and had to cope with a more complicated and sophisticated telephone system, with more telephone lines and with a less favourable working schedule. The Equality Body decided that the hospital authorities ought to have transferred to the new post one of the other employees without a disability and to leave the blind employee at the post where he could cope. The report calls 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.[242]

An Equality Body report published in 2012 regarding the adequacy of school units for autistic children concluded that the provision of education and training to children

[240] Law on Persons with Disabilities N.127(I)2000, as amended by Law No. 72(I) of 2007.
[241] Article 5(4) of the Law on Persons with Disability N.127(I)2000, as amended by Law No. 72(I) of 2007.
[242] Decision dated 08.12.2005, Ref. A.K.I. 58/2005. A summary of the case is available at the Equality Authority's Annual Report for the year 2005 (pp.12-13) available at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/greek2005.pdf.

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 are prevented from equal opportunity to develop their personality and skills.[243]

Also, the Equality Body's decision in a case of reasonable accommodation for dyslectic pupils at school exams[244] stated that the accommodation measures do not give the dyslectic student an advantage over other students, as the Education Ministry claimed, but merely serve to place the dyslectic student in an equal position with other students. In support of this, the Equality Body cited the ECtHR decision in the case of which ruled that equal treatment can also mean the different treatment of unequal persons, from which it follows that in some cases failure to provide such measures, may indeed amount to discrimination. Along similar lines, a 2009 decision of the Equality Body on a complaint from the representative of the Maronite community regarding the inadequate arrangements at the Maronite school, 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 aiming at the elimination of discrimination. The decision criticised the line of argumentation of the Ministry of Education 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 rights of a collective character.[245]

e) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)

i) race or ethnic origin

No the law does not impose any such duty.

ii) religion or belief

No the law does not impose any such duty. Nevertheless, the Equality Body recognises such a right in the field of religion or at least recommends to the relevant authorities to respect religious freedom for students and for prisoners by providing reasonable accommodation to them to practice their faith. This approach of the Equality Body is premised more on the conviction that religion is a sensitive issue rather than an interpretation of the law as granting such a right.

[243] Anti-discrimination authority report Ref AKI 50/2011, dated 27.07.2012, summarised in Annex III below.
[244] File No. AKI 24/2006, AKI 27/2006, dated 31.10.2006. A summary of the case is available at the Equality Authority's Annual Report for the year 2006 (pp.19-20) available at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/greek_st2006.pdf.
[245] Decision Reference number A.K.R. 93/2005, dated 12.05.2009.

In December 2005 following a complaint on behalf of a Jehovah's Witness pupil against the behaviour of the religious instruction teacher towards her, criticized the practice of restricting pupils exempted from the religious lesson into the library and recommended that more creative occupation be sought for the exempted pupils. In 2010 another Equality Body report criticised the procedure for exemption of pupils from the religious class and for the fact that the handling of the exemption request by the school led to the stigmatisation of the student-complainant, as she was for several months isolated from her classmates.[246] 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, but articles from the Cypriot Constitution; Article 14 of the International Convention for the rights of Child and Article 9 of the ECHR.[247] The situation escalated in 2012, when a circular from the Ministry of Education required pupils exempted from the religious 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 to leave the classroom during this lesson. The pupil decided to leave the classroom anyway and was repeatedly sanctioned with expulsion for every time that she left the classroom, risking to accumulate so many expulsions that she would be unable to graduate. The Equality Body was quick to take dynamic measures against the school and against the Ministry of Education, threatening them 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, as was the solution proposed by the Ministry (to remain in the classroom).[248] The crisis between the Equality Body and the Ministry of Education eventually diffused itself when the Ministry official who vehemently opposed exemptions from the religious class retired in 2013. The dispute as to whether the students exempted from the class will sit in classroom or perform another activity has still not be resolved, but often teachers find an ad hoc solution by asking the student concerned what he or she prefers to do; in fact some exempted students choose to remain in the class and do something else rather than leave the classroom and be stigmatised. The odd cases where teachers or headmasters adopt the extreme position and exert pressure on the student, as was the case investigated by the Equality Body cannot be excluded, but remain the exception rather than the rule.[249]

During 2009 the ombudsman reported receiving complaints from two Muslim inmates in the Central Prison that they were unable to practice their religion in prison, however by the time the complaints came to be investigated the complainants had been released and therefore no investigation was possible. In 2012 the Ombudsman

[246] Decision dated 07.11.2010, Ref. no. A.K.R. 135/2009, reported above.
[247] Report no. 31/2005, dated 02.11.2005.
[248] Report no. A.K.R. 93/2012, dated 03.12.2012, summarised below in Annex III.
[249] Consultation with Giorgoula Zenonos, teacher in public education.

was once again called upon to investigate the same issue involving other prisoners. This time the complaints involved a group of 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.[250] Until the time of writing, the prison authorities neither revised their policy nor did they amend their regulations. It is expected that compliance with the Ombudsman's recommendations will be more likely in the near future in light of the resignation of the prison governor in January 2014 over an upsurge of suicides within the prison.[251]

iii) Age

No the law does not impose any such duty.

iv) sexual orientation

No the law does not impose any such duty.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

For race/ethnic origin, no such right is foreseen by law in any field.

ii) religion or belief

For religion or belief, no such right is foreseen by law in any field. However, the Equality Body has called for respect to the right to be exempted from the (Christian orthodox) religious class at schools and for the facilitation to prison inmates to practice their religion of choice.

iii) Age

For age, no such right is foreseen by law in any field.

iv) sexual orientation

For sexual orientation, no such right is foreseen by law in any field.

[250] Report no. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, dated 09.04.2012, summarised below in Annex III.
[251] Consultation with Ombudsman's office.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No it is not common practice, although it can happen exceptionally. As indicated above, religion appears to be the ground where sensitivities appear to be concentrated, but these are restricted in the field of education. In the field of employment, the government does not recognise such a right[252] and will treat unemployed Muslims who decline a job offer to work in pigstyles as 'willingly unemployed', thus suspending the payment of welfare benefits to them.[253]

The public school appears at the moment to be a battleground between the circles in favour of a Christian-orthodox educational system to boost the national sentiment and those in favour of multicultural education that is tolerant and respecting of all religions. Thus in the field of public education there are on the one hand measures in favour of multiculturalism and inclusiveness and on the other hand steps to reinforce the Christian orthodox religion as the 'national' faith system. In this context, the English School of Nicosia (a semi-public school whose population includes many non-orthodox pupils such as Turkish Cypriots) has in recent years introduced the Muslim Bayram as a school holiday, in order to accommodate both pupils and teachers who are Turkish Cypriots. This initiative attracted considerable criticism from conservative circles and for a while the parliament refused to allocate to the school the budget earmarked for it. In 2013 the new governing board of the English School cancelled the Muslim holiday and refused to close the school on those days, but allowed Turkish Cypriot pupils to be absent from school on those days. Following a compaint submitted by two Turkish Cypriot pupils to the Equality Body, the latter asked the governing board to revise this decision but without invoking reasonable accomodation; instead, the report focused on the need to preserve religious freedom and promote multiculturalism.[254]

h) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

Yes, even though no express reference is made in the burden of proof provision to that effect. The said provision states that the burden of proof is reversed in civil proceedings in relation to discriminatory treatment in employment.[255] Given that the amendment in the law introduced in 2007 in order to create a mandatory obligation for employers to provide reasonable accommodation begins with the phrase "In order to secure the principle of equal treatment for persons with disability", it may be assumed that failure to provide such accommodation (when the burden is not

[252] Consultation with Ministry of Labour.
[253] Consultation with NGO Future Worlds Centre.
[254] Report of the Anti-discrimination Authority regarding the Bayram holiday at the English School, File No. AKR 60/2013, dated 4 February 2014.
[255] Law on persons with disability 57(I)/2004 article 7.

"disproportionate") amounts to "discriminatory treatment" which causes the burden of proof to shift from the claimant to the respondent.

i) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Article 6(2)(d)(ii) of the Law on Persons with Disabilities provides that the failure to carry out alterations to services or facilities which renders their use by a person with a disability unjustifiably difficult does not amount to equal treatment and is therefore prohibited by law. In addition, article 4(2) of the same law establishes a list of rights for persons with disabilities which are, however, implemented with the adoption of 'reasonable measures 'to the extent that local economic and other conditions allow'.[256]

The definition of reasonable measure[257] is so wide that it falls short of creating a mandatory regime and once the accused party proves that one of the considerations listed in 9 is in place, then no binding obligation arises to respect the rights listed in article 4(2). Article 4(2)(c) of the law provides for the right to accessibility to housing, buildings, streets and generally the natural environment and to public transport. This provision also falls under the ambit of article 9(1) in the sense that the obligations created hereby are easily discharged through the adoption of 'reasonable measures', the scope of which is so wide that it does not create a mandatory regime.

The accessibility of persons with disabilities to public buildings is regulated by the Regulations on Streets and Buildings of 1999, which were issued by virtue of Article 19 of the Streets and Buildings law. Regulation 61G defines a person with disability as a person facing temporary or permanent difficulty in accessing a building or a street due to physical weakness or deficiency; obviously the definition is intended to be wide enough to secure accessibility to built infrastructure not only for persons with a disability in the narrow sense of the term but persons generally encountering obstacles in access, such as the elderly.

The regulations apply to public buildings as well as to those buildings where entry to the public is allowed, to commercial centres, to buildings which include shops and/or offices, to educational institutions, clinics, doctors' offices and generally to any building which the competent authority decides that these Regulations should apply. The Regulations set the minimum necessary specifications for the erection of all the aforesaid buildings and aim at securing the comfortable access of all persons with disability to the main entrance of such buildings and to the spaces within such buildings. The Regulations provide analytically the construction specifications for

[256] Law on Persons with Disability 127(I)/2000, article 9(1).
[257] Law on Persons with Disability 127(I)/2000, article 9(2).

ramps to the main entrance, for the pavements, the staircases, the common use corridors, the elevators, the lavatories and other spaces where the public may go in, including the parking areas. However, failure to comply with these regulations does not amount to discrimination.

In January 2010 a disability organization (the Cyprus Organisation of Paraplegics) was informed by the Nicosia municipality that some entertainment establishments operating in Nicosia had been exempted from the obligation to have accessible building infrastructure. By a letter dated 22.01.2010 the NGO asked the municipality to provide a list with the establishments that were exempted, the reasons for the exemption and the details of the body within the municipality that decided for these exemptions. However until the time of writing, the municipality did not respond to the NGO's letter. On 23.02.2011 the NGO applied to the municipality again expressing its disappointment over the municipality's lack of response and reminded that a law that came into force in 2006 established the confederation of disability organizations as a social partner that must be consulted on all issues affecting persons with disabilities. The said law remains to a large extent an empty letter, as the disability movement is not consulted on many policy decisions affecting them.

An Equality Body decision in 2009 regarding access to a disabled toilet in the common areas of the building where the complainant resided stressed that the law does not set any preconditions which must be met in order for persons facing mobility obstacles to have access to communal toilets, nor does it require such persons to produce any documents to prove their disability. The management company of the building had asked the complainant to produce a number of documents to prove his disability before they grant him with permission to use the disabled communal toilet.[258] An Equality Body decision in 2012 dealt with accessibility to sports grounds and carried out an on-site investigation of these premises, most of which were found to be inaccessible. The lack of accessibility features presented problems not only for the spectators but also for the people whose work duties involved accessing the sports grounds, such as sports journalists. The latter issue was not examined by the Equality Body though.[259] It needs to be said, however, that at times of economic recession and fierce austerity it is hardly likely or expected that the state will allocate funds in order to enhance the accessibility features of any premises.

j) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

[258] Decision Reference number A.K.I. 91/2008, dated 14.05.2009.
[259] Decision Reference number A.K.I. 30/2010 & A.I.T 1/2012, dated 29.05.2012, summarised above under section 0.3.

The obligation to provide accessibility by anticipation exists only for public buildings (i.e. buildings open to the public) and only for certain features of a building, as detailed in the previous section. Not all needs of all persons with disabilities are covered; for instance there is no provision in the regulations regarding pavements and regarding the location of buildings by persons with visual impairment. Also there are no clear provisions for accessibility to the internal spaces of a building.

There are also problems with the implementation of these regulations, because supervision of compliance is lacking and although architectural plans may be submitted in compliance with the regulations, the building may at the end not be constructed in accordance with the specifications approved, as there is no compliance mechanism to ensure that the approved specifications are met. Another serious discrepancy is that buildings housing governmental services are exempted from these regulations and do not have to be (and usually are not) accessible to all persons with disabilities. Also, the regulations do not cover buildings constructed prior to the date of coming into force of the regulations (1999). In 2003, the Technical Committee for the Facilitation of Persons with Reduced Mobility (a NGO consisting of persons with disability as well as persons with technical expertise-architects, civil engineers etc) has drafted and submitted a proposal to the Ministry of Interior for the comprehensive revision of the regulations in order to cover all aspects of accessibility and fill the gaps but, due to bureaucratic obstacles, no significant progress has been made so far.[260]

The Law on Persons with Disabilities N.127(I)/2000 contains a number of rather vague provisions regarding accessibility, although it does not provide for any enforcement mechanism:

- Article 4(2)(e) of this law provides for the right to access information and communication with special means where this is necessary for special groups of persons.
- Article 4(2)(f) provides for the right to services of social and economic integration, vocational assessment and guidance, vocational training and occupation in the open labour market.
- With regard to goods and services, article 6(1) establishes the right to equal treatment in the field of provision of goods, services and facilities and describes the type of treatment which amounts to discrimination. This includes a reason referring to a person's disability which is not applicable to another person[261] and treatment which is not justified.[262]
- Article 6(2) lists examples of what does *not* amount to equal treatment, which include the denial to supply services, the provision of services of a lower

[260] Information in this paragraph has been supplied by Christakis Nikolaides, chairman of the Pancyprian Organisation of the Blind on 06.04.2009.
[261] Law on Persons with Disability 127(I)/2000, article 6(1)(a).
[262] Law on Persons with Disability 127(I)/2000, article 6(1)(b).

standard and the provision of goods and services with substandard preconditions.

- The right to accessibility to public transport is provided for in article 7(1) of the law, whilst accessibility to telecommunications and information is covered by article 8(1).

The obligations arising under articles 4, 6 and 8 above can be discharged with the adoption of "reasonable measures" to the extent that local economic and other conditions allow (article 9(1)). By their very nature, most obligations are cast upon the state although some of them are cast also on the private sector. The failure to discharge these obligations becomes actionable only when the accused person cannot invoke one of the factors listed in section 9(1) of the law (see paragraph 2.6(a) hereinabove), which factors must be taken into consideration in order to determine whether or not a measure is reasonable (and therefore obligatory).

Article 7 of Law N. 127(I)/2000, as amended by Law N.72(I)/2007, regulating the standard of accessibility of public transport, provides for the compliance of public transport with regulations issued by the Council of Ministers following the recommendation of the Ministry of Labour and the Ministry of Transport and Public Works. No such regulations have been issued so far and the public means of transport remain inaccessible to persons with disability. The Pancyprian Organisation of the Blind has repeatedly lobbied the Ministry of Transport on this issue and has managed to secure satisfaction for some but not all its claims.[263] The measure of special seats for persons with disability near the door was introduced, however due to a new transport scheme which introduced a large number of new buses into the transport network, this measure has not as yet been implemented for all buses. There were plans to introduce voice warnings in buses by 2013 but this has not as yet materialised.

k) Does national law require public services to also translate some or all of their documents in Braille? (i.e. Tax declarations, general information) Is translation in sign languages provided in some of the public services where needed? What is the practice?

There is no legal obligation and no practice for public authorities to provide translation of any documents either in Braille or in sign language. The practice is for the NGOs of blind persons and of deaf persons respectively to provide such services as and when requested by their members.

l) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

[263] Information supplied by Christakis Nikolaides, chairman of Pancyprian Organisation of the Blind on 06.04.2009 and on 02.03.2010.

The Law on Persons with Disability 127(I)/2000 provides for a long list of rights beyond the minimum standards set by the Employment Equality Directive some of which, however, are subject to the special regime created by article 9(1), which is explained in the previous section. In particular, the law provides for the right to: independent living, for full integration to the community and for equality of participation in economic and social life;[264] prompt diagnosis of the disability, intervention and prevention of its consequences, provision of medical and pharmaceutical care, rehabilitation of functions including the provision and training in the use of added and corrective limbs, as well as psychological and other support of the person and his/her family;[265] personal support with auxiliary equipment and other means and services which assist a person in everyday living and work, with an interpreter or an escort as well as with any other required support where this is deemed necessary;[266] accessibility to housing, buildings, streets and generally to the natural environment and in public transport and other means of transportation;[267] access to special education according to their needs;[268]access to information and communication with special means where this is deemed necessary;[269] services for social and economic integration, vocational assessment and orientation, vocational training and occupation in the open labour market;[270]a dignified standard of living and where this is necessary through economic benefits and social services;[271] the creation of personal and family life;[272] participation in cultural, athletic, social, religious and other recreational activities.[273]

As stated above, the rights set out in this article are, according to article 9(1) of the law, to be implemented through the taking of "reasonable measures". The term "reasonable measures" is defined in article 9(2) to mean "measures provided in any other law or regulation" and which are to be adopted taking into consideration the nature and cost involved, the financial situation of the party required to take this measure, and if that is the state then the situation of public finances, any public or other contributions towards the cost of the measure, and the financial situation of the person with disability concerned. Article 6(1) establishes the right to equal treatment in the provision of goods, facilities and services, unless the unequal treatment is "justified". Article 6(2) defines what does *not* constitute 'equal treatment' for the purpose of this provision, and is therefore prohibited, as follows: refusal to provide services; services of a lower standard; provision of goods and services with substandard conditions; the failure to carry out changes in services or facilities which render their use by a person with disability difficult or impossible.

[264] Law on Persons with Disability 127(I)/2000, article 4(1).
[265] Law on Persons with Disability 127(I)/2000, article 4(2)(a).
[266] Law on Persons with Disability 127(I)/2000, article 4(2)(b).
[267] Law on Persons with Disability 127(I)/2000, article 4(2)(c).
[268] Law on Persons with Disability 127(I)/2000, article 4(2)(d).
[269] Law on Persons with Disability 127(I)/2000, article 4(2)(e).
[270] Law on Persons with Disability 127(I)/2000, article 4(2)(f).
[271] Law on Persons with Disability 127(I)/2000, article 4(2)(g).
[272] Law on Persons with Disability 127(I)/2000, article 4(2)(h).
[273] Law on Persons with Disability 127(I)/2000, article 4(2)(i).

Such changes may include the creation of suitable accessibility features for comfortable and safe use of the services or facilities; the use of special means, equipment or persons for the facilitation of communication and information to persons with disability; the use of specialized means, equipment and facilities in places where services are offered, such as schools, hospitals, clinics etc.

All the rights created by article 6 are, once more, subject to the 'reasonable measure' restriction of article 9(1). Also, the article itself limits its applicability to cases where there are no reasons rendering the implementation of equal treatment 'unjustified'.

Article 7 provides that all means of public transport must comply with regulations in force regarding the entry into and transport of persons with disability. This provision is not subject to the 'reasonable measure' restrictions of article 9(1); however, as stated in the previous section, this obligation becomes operative only with the introduction of regulations which have not been introduced yet. It should also be added, however, that the public transport network in Cyprus is rather poor and limited and not many persons use it.

Article 7A provides for the issue of a special parking ticket that secures preferential parking for persons with disability.

Article 8(1) provides that the competent governmental services must proceed "within a short period of time" to the installation of a special telephone service for persons with a hearing disability so as to enable these persons to communicate in the same manner as persons without such disability. Article 8(2) provides that there must be public telecommunication means accessible to persons with disability including wheelchair users. Article 8(3) provides that television stations must offer sign language interpretation to the news programme once a day. The obligations created under article 8 are again subject to the restrictions of Article 9(1); this means that if the cost of the measures is disproportionate given the financial situation of the party required to adopt them and there is no contribution towards the cost from the state or from other sources, or if the financial situation of the person with disability is good, then no duty arises to adopt this measure.

By virtue of a law that came into force in 2006, the national confederation of organizations of persons with disability KYSOA became a social partner of the state in all matters pertaining to disability. Under the same law, consultation with KYSOA became imperative for all governmental departments dealing with disability and KYSOA became a receiver of an annual state grant for its running expenses.[274]

The Equality Body has also recognized the significant role which KYSOA can play and has therefore recommended in a recent decision that the Law on the

[274] Law on Consultation Process of State and Other Services on Issues concerning Persons with Disability N. 143(I)/2006, dated 3.11.2006.

Assessment of Candidates for Appointment in the Public Service be amended so as to provide for reasonable accommodation for candidates with a disability, after consultation with KYSOA.[275] However, in a consultation which took place between KYSOA and the government regarding the introduction of quotas in favour of persons with disabilities in the wider public sector in 2009, the vast majority of the views and objections of KYSOA were ignored. Also, the deliberations which took place between the government and KYSOA as to the appointment of the independent mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities and for the monitoring of this implementation have again revealed a lack of commitment on the part of the government to treat KYSOA as an important partner whose views must be taken on board.[276]

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

The closest practice to what is known as sheltered employment is the institution of the 'sheltered workshops' known as KEAA (Centres for Vocational Rehabilitations for the Disabled) operated by the Ministry of Labour, whose role is to provide 'training' and 'quasi-employment' to persons with a disability. The goods produced at the workshops are bought by governmental agencies[277] and NGOs.

The institution of 'Supported Employment' which since 1996 provided *supported* employment for persons with intellectual disability was modernised in 2011 and was converted into a project now run by the Department of Social Integration of Persons with Disabilities of the Ministry of Labour, for persons with all kinds of disabilities who have a substantially reduced chance of finding work in the open labour market and who can, through the support offered by a job coach, find and maintain such work. The officer in charge of this project explained to the author that this scheme, by its very nature, mainly benefits persons with intellectual disability, as they are the only persons with disability that require human support in employment, although persons with other kind of disability such as kinetic cannot be excluded. The scheme provides an annual grant of €13.500 (increased from €11,960 paid under the previous scheme) to disability organizations which implement a programme of supported employment and hire a job coach. Each disability organization can implement more than one programme which can benefit persons with disability both from within and from outside their organisation. Each job coach must support at least five persons with disability. The Department of Social Integration of Persons with Disabilities has the overall responsibility for the management and supervision of the scheme,

[275] 08.10.2008, Ref. A.K.I. 37/2008, reported under section 3.13 above.
[276] Please see above, section 0.1, paragraph entitled 'Ratification of the UN Convention on the Rights of Persons with Disabilities'.
[277] Such as the agency of the Department of Public Purchases and Storerooms of the Ministry of Trade and Industry as well as the Cyprus Handicraft Service of the Ministry of Commerce.

provides technical guidance and monitors the results. The grants are payable if and when there is sufficient credit in the budget of the scheme.[278] During 2011, a total of 22 programmes were implemented and a total of €297.000 was spent, which benefited 246 people, mostly with intellectual disability.[279] The total expenditure for this scheme remain unchanged for the years 2012 and 2013 (i.e. €297,000 p.a.). In 2013, a total of 221 persons benefited from this scheme, mostly persons with intellectual disability.

In recent years, the Department of Social Integration of Persons with Disabilities of the Ministry of Labour was operating a scheme for providing financial incentives for self-employment to persons with disability. The scheme sponsored each applicant who lacked the financial means to self-employment with €3.417,20 and in some cases paid an additional grant and loan interest at a maximum of €512,58 per year for a period of five years for the purchase of machinery and other equipment, raw materials and working capital. During 2011 there were no approvals for this project and eventually the scheme became inoperative.

In its place, the Department of Social Integration of Persons with Disabilities operates a scheme of providing financial incentives for the creation and operation of small units for the self-employment of people with disabilities, where employment in the open labour market is difficult. The scheme provides for sponsorship and / or loans for specific projects proposed by the parties themselves as well as opportunities for vocational training / work experience in matters relating to the proposed plan. To be eligible for this grant, applicants must be aged between 18-63 years;[280] must be Cypriots or other EU nationals provided they have their permanent residence in the area controlled by the Republic for at least 12 consecutive months; must have a physical, sensory, mental or other kind of disability which substantially reduces the possibility of employment in the open labour market and allows the exercise of only a limited circle of activity. Priority is given to persons with severe physical disabilities, or visual or hearing disabilities or intellectual disability. The scheme provides sponsorship of € 8.543 to persons meeting the above conditions who do not have the financial means for self-employment. The grant covers primarily the purchase of machinery and other equipment, raw materials and working capital which shall not exceed 30% of the sponsorship (except for interest subsidy). The scheme covers all economic sectors, although priority will be given in the fields of telecommunications, information technology, trade, repair of motor vehicles, personal and household goods, and hotels and restaurants. During 2011 the Department examined three applications, which were approved, and disbursed a total amount of €20.536.

278 http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/All/22639CC7EC3343F9C2257A7C002D273F?OpenDocument&highlight=εργοδοτηση στηριξη.

279 Information supplied by Natasa Michael, officer at the Department of Social Integration of Persons with Disabilities.

280 The exclusion of persons aged 63+ is likely to be unlawful discrimination on the ground of age.

A scheme for the provision of financial support to persons with disability over 39% for the acquisition of a car was recently introduced.[281] In theory, apart from assisting with social integration, this scheme would greatly enhance the labour integration of the beneficiaries as it would facilitate their access to the workplace. With the poor and inaccessible public transport network in Cyprus, transport is a major issue for persons with disability. However, as revealed by an Ombudsman investigation,[282] in practice the vast majority of applications were rejected on the ground that the applicants' disability did not exceed 39%; a standard letter was apparently sent to most applicants informing them that their disability for the purposes of this scheme was assessed at 25%, without providing any additional information. In 2013, the grant for purchasing a disability car shrunk from €15.378 - €18.795 to €3,500-€4,500, as a result of the austerity measures introduced by the memorandum of understanding agreed with the troika.

Other benefits affected in 2013 by the memorandum of undersatnding agreed with the troika were the following:

- The scheme for the grants for holidays is abolished.
- The cost of living increase of the grant for blind persons and the grant for severe disability has been suspended until 2016 (but the basic grant continues to be paid).

However, as explained to the author from the President of KYSOA (the disability organisations confederation), even for those grants which have survived the memorandum, it is becoming increasingly difficult to access the schemes through one or the other bureaucratic obstacle.

In 2013 the government entered into an agreement with a large private charity (the Christos Steliou Ioannou Foundation) for the taking over by the government of the administration of this Foundation and convert it into an Organisation for the Vocational Training of persons with Disability. The agreement aims at making the resources of this large foundation available to the Ministry of Labour and the Department for the Social Integration of Persons with Disability to enable the latter to upgrade the services offered to persons with disability with additional training schemes.[283]

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

There is no employment relationship between each KEAA (Centre for Vocational Rehabilitations for the Disabled) and the individual person with disabilities working

[281] http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd15_gr/dsipd15_gr?OpenDocument.
[282] The Ombudsman report issued following this investigation is summarized above, under section 0.3 (see paragraph entitled "Request for disability grant is denied").
[283] http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd25_gr/dsipd25_gr?OpenDocument.

there. The persons who work at the Centres are primarily treated as 'trainees' and as such they are paid a small amount termed as 'training allowance' for participating in the workshops. The amount of the 'training allowance' varies according to the marital status of the person (married persons get more). The income derived from these workshops is termed as 'production allowance' and depends on the profits of each of the craft workshop.[284] The vast majority of persons occupied at KEEA are already receivers of welfare (disability) benefit.[285]

The supported employment for persons with disability as well as the self-employment schemes set out above, do not fall within the scope of the law transposing the disability component of the Employment Equality Directive. It is nevertheless the author's view that the special circumstances of the employment offered to persons with disability will be taken into consideration in adjudicating a potential claim under this law. Many of the terms of the employment, such as the salary, the working hours, the availability of supportive equipment are part of the scheme and can only be challenged if the scheme itself is challenged. However there are policy considerations involved in challenging a scheme that is in itself a good practice. Participation in the scheme on the part of the enterprises is optional and few companies have enrolled, so one can anticipate the consequences of challenging the scheme as discriminatory. Having said that, the terms of the scheme are undoubtedly discriminatory; the salary which is well below the poverty line, was presumably fixed at such low levels having in mind the consideration (or the assumption) that persons with disability would be unable to find employment outside this scheme. Also, if one is to apply the anti-discrimination law to the letter, there is no justification in restricting the application of this scheme only to the companies that willingly participate in it: a person with disability that can perform work that is equal to that performed by other workers should not only receive the same pay but should also be entitled to access job positions in companies outside the scheme, where failure to hire them would amount to discrimination.

Judging from how the different bodies approach the subject of non-discrimination, one could perhaps conclude that the Courts would be quick to reject claims for discrimination, on the basis that this is not a normal employment situation as foreseen by the legislator, whilst the Equality Body would attempt to mediate in order to improve the scheme with recommendations for more equal and just provisions.

[284] According to Mr. Aggelides, an official at the Ministry of Labour, about 90% of the profits are shared amongst the producers of each craft workshop, 23.1.2005.
[285] Information from Mr. Aggelides, Official, Ministry of Labour, 23.1.2005.

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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Protocol 12 to the ECHR guarantees "the enjoyment of all rights set forth by law" without discrimination, inter alia, of 'national or ethnic origin'. Under Law N.42 (1)/2004 which appoints the Ombudsman as the Equality Body, there are no residence or citizenship/nationality prerequisites in the body's mandate in order to extend protection under the relevant national laws transposing the Directives. The Equality Body is empowered to promote equality of 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[286] irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.[287] The Directives' exception on difference of treatment based on nationality (article 3(2)) has been incorporated verbatim into the national legislation transposing the Directives. We therefore have a situation where as regards the Equality Body's mandate nationality is a protected ground, but as regards the scope of the laws transposing the two Directives, the exception as regards nationality applies. In its decisions, the Equality Body has made use of its extended mandate and considered nationality discrimination as prohibited by international laws; on several occasions nationality and ethnic origin has been used interchangeably, in the sense that whilst the case at stake was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives.

Article 32 of the Constitution stipulates that "nothing in this Part[288] contained shall preclude the Republic from regulating by law any matter relating to Aliens in accordance with International law." This provision, combined with the wide provisions of Cypriot immigration law, is often implemented with a tendency to considerably enlarge the scope of state discretion. This wide margin of discretion allows for discrimination to occur and immigration officers in Cyprus have been widely criticised by the Second Report of the European Commission on Racism and Intolerance

[286] These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for 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 Inhuman and Degrading Treatment or Punishment.
[287] Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1)(b), Part I.
[288] Part II of the constitution contains the human rights and fundamental freedoms.

(ECRI) on this score,[289] by the Equality Body,[290] by NGOs and by members of parliament.[291] In its Fourth Report on Cyprus published in 2011, ECRI notes a "marked effort to train the police and raise awareness about racism through training courses and seminars at the Cyprus Police Academy"; this may not have rendered immediate results but it is certainly a development in the right direction. In any case, there is a strong body of opinion by authoritative legal scholars that the correct interpretation of Article 32 does not allow for differential treatment of non-Cypriots when it comes to human rights as this provision (a) merely incorporates international law within the corpus of Cyprus law[292] and (b) that such differential treatment would most likely amount to a violation of Article 28[293] and other international treaties ratified by the Republic which, under Article 169, prevail over domestic legislation.[294] The provisions regarding the transposition of the anti-discrimination *acquis* do not refer only to citizens or legally resident persons, but to all persons. In support of this argument there is also Protocol 12 to the ECHR which forms part of national law and may be directly invoked in Court, although this has never been done so far.

Complaints by EU citizens are often filed with the Equality Body alleging nationality discrimination, possibly reflecting the fact that these persons are more familiar with the Equality Body procedure than most third country nationals. On several instances, the Equality Body found that discrimination did indeed exist and recommended to the competent authorities to take measures to rectify the situation.[295] Some examples of such decisions 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 of the road transport department for EU nationals to present immigration documents evidencing 6 months' stay in Cyprus in order to acquire a Cypriot driving license; the University's rejection of a job application because the applicant was a Greek national; the requirement of good knowledge of the Greek language in order for EU nationals to attain certain positions in the public

[289] The ECRI report reads as follows: "Concern is also expressed at reports of discriminatory checks on the part of immigration officers of non-whites coming to Cyprus. Again, ECRI feels that further training aimed at preventing the occurrence of discrimination and discriminatory attitudes should be provided to immigration officers."
[290] Also, in her report for the year 2006, presented on 15.11.2007, the Ombudsman states that the majority of the complaints received annually are directed against the Interior Ministry and most of those are specifically directed against the immigration authority.
[291] An MP recently proposed an amendment to the immigration law aiming at restricting the powers of the Chief Immigration Officer by setting up a three-member committee with the mandate of checking all the Chief Immigration Officer's decisions deriving from the powers granted to him/her by the law. In his supporting statement, the MP stated that the lack of check on the Chief Immigration Officer's decisions has on many occasions led to great human misery, referring to the large number of unjustified deportations and generally to the cruel treatment to which many foreigners, particularly Arabs, were being subjected to by the immigration authorities.
[292] Tornaritis (1982: 212).
[293] Nedgati 1972: 166-167, Tornaritis 1982: 201-205.
[294] Loizou 2001, Nedgati 1972: 166-167; Georgiadis Van der Pol 2002: 22.
[295] The Equality Body considers discrimination against EU citizens as falling within the scope of its mandate and often uses the grounds of race/ethnic origin and nationality interchangeably.

sector or to start their own business. In 2012, the Supreme Court accepted an appeal reversing a trial Court decision which had found that it lacked jurisdiction to try a claim from a Cypriot landlord against a Romanian tenant because the relevant law stated that it applied only to Cypriots. The Supreme Court found that the law must, in accordance with the Treaty for the Functioning of the European Union, be read as including all EU nationals.[296]

During 2009 the Equality Body issued its report on a complaint from a Greek actor permanently residing and working in Cyprus since 1973, against the Cypriot Ministry of Education for refusing to accept his candidacy for an honorary annual grant paid to persons of the letters and the arts for their lifetime contribution. From the Equality Body's investigation it emerged that the Ministry's refusal was based upon a Council of Ministers' decision of 2000 which restricted these honorary pensions to Cypriot citizens. The Equality Body wrote to the Ministry of Education expressing the view that the said policy reasonably causes feelings of unfairness and discriminatory treatment and that it is doubtful whether it complies with the anti-discrimination legislation. In compliance with the Equality Body's position, the Ministry of Education promptly submitted a proposal to the Council of Ministers to amend the said policy by removing the requirement of Cypriot nationality for the candidates of the honorary artists' pension. The Council of Ministers accepted the proposal and amended the said policy in May 2009 by removing the restriction of Cypriot nationality.[297]

The debt crisis in Greece has led several thousands of Greek nationals to seek employment in Cyprus. Greek nationals form the largest group of EU nationals residing in Cyprus and the numbers are rising steadily as Greece sinks further into crisis. In December 2011 there were 29,846 Greeks registered in Cyprus and by March 2012 the number rose to 33,949, i.e. an increase of 4,103, many of whom are applying for positions in the public service and particularly in public education. Almost 50% of teachers registered during 2010 in the teachers' catalogues (i.e. awaiting their turn to be appointed in one of Cyprus' public schools) are Greek nationals, who also form 20% of the total of teachers registered in the Cypriot catalogues at the time of writing. Being in a unique position as compared to other EU nationals due to their knowledge of Greek as their mother tongue, and given the proximity to and the ties with Cyprus, Greek migration to Cyprus appears like a natural choice. An Equality Body report in 2011[298] revealed the intolerance of the Cypriot immigration authorities towards Greek nationals who had settled legally in Cyprus before Cyprus' EU accession and who were now refused new residence documents on the basis of legislation governing the stay of EU citizens in Cyprus, as they were deemed not to have sufficient financial resources for maintaining themselves in Cyprus and were thus a burden on the Cypriot state. Tensions over the Greek migration to Cyprus are

[296] Diogenis Christophorou Ltd v. Giosa Victoria Mikaela, Ref. 161/2009, dated 05.06.2012.
[297] Reference A.K.P 73/2008, dated 30.12.2009.
[298] Ref. AK 168/2008, AK 199/2008, AK 80/2009, AK 43/2010, AK 48/2010, AK 93/2010, AK 114/2010, AΠ 2358/2010, dated 01.11.2011, available in Greek at http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr.

subsiding as Cyprus is rapidly sinking into recession, which has frozen new recruitments in the public sector and has made jobs in the private sector very scarce and low-paid.

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

a) Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

Both legal and natural persons may apply to the Courts or to the Equality Body claiming discrimination. Article 7(1) of Law N.59(I)2004, article 9A of Law N.127(I)/2000 as amended by N.57(I)/2004 and article 11 of Law N. 58(I) provide that any persons who consider that they have been discriminated against on any of the prohibited grounds may apply to the competent courts (i.e. Labour Tribunal, District Court or Supreme Court) depending on the subject matter and the procedure foreseen for each case, or to the Equality Body. The law does not specify if both legal and natural persons are protected from discrimination but it is reasonable to assume that this is the case in all fields except employment, where only natural persons can be employees and therefore be entitled to protection under the law. In the field of occupation and self-employment, legal persons may however be afforded protection from discrimination under the law as self employed persons where they act as services providers. Under all three laws which transpose the two Directives,[299] physical persons may be represented by legal persons in proceedings before the Court or before the Equality Body.

The fines which the Court may impose on physical or legal persons also vary. Natural person may be fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both.[300] If a legal person is found guilty of discrimination, the managing director, chairman, 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 with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both, if it is established that the offence is committed with their consent or collaboration or mere tolerance. In addition, a legal person can be fined with up to 7,000 Cyprus pounds (11,962 Euros).[301] There is also a provision for 'gross negligence' with fines of up to 2,000 Cyprus pounds (3,417 Euros) for individuals and 4,000 Cyprus pounds (6,835 Euros) for legal persons.[302]

[299] Article 14 of Law N.58(I)/2004, article 9D of Law N.127(I)/2000 as amended and article 12 of Law N.59(I)/2004.
[300] For disability Article 5(4) of the Law N. 127(I)/2000 as amended by Law N.72(I)/2007; for employment N.58(I)/2004, Article15; for racial discrimination Law N.59(I)/2004, Article13.
[301] For disability Article 5(5) of the Law N. 127(I)/2000 as amended by Law N.72(I)/2007; for employment N.58(I)/2004, Article15(1) and 15(2); for racial discrimination Law N.59(I)/2004, Article13(1) and 13(2).
[302] For disability, Articles 5(4) and 5(5) of the Law N. 127(I)/2000 as amended by Law N.72(I)/2007; for employment N.58(I)/2004, Article15(3); for racial discrimination Law N.59(I)/2004, Article13(3).

b) Is national law applicable to both private and public sector including public bodies?

Yes the national laws transposing the Directives include both the public and the private sector as well as public bodies.

Law 58(I)/2004 (employment field, all grounds minus 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 employees workers." An identical provision is found in article 2 of Law 127(I)/2000 (disability, all fields). 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 organisations, local self-governance authorities and public and private law organisations in the fields of social protection, health care, social provision, education and access to goods and services.

3.1.3 Scope of liability

Are there any liability provisions other than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

The scope of liability for discrimination is only defined in the context of the responsibilities of organisations or legal personalities (see 3.1.2 above) and not in the context of employer's liability or service providers' liability etc. Harassment and instruction to discriminate are recognised as forms of prohibited discrimination, following the exact wording of the Directives, for all five grounds covered by the Directives.

Regarding the liability of employers and of service-providers (e.g. landlords, schools, hospitals) the law does not specifically provide a detailed description for the consequences of the actions of employees. There are sanctions for individuals as well as responsible officers working within organisations and legal personalities, who are found guilty taking into account all relevant factors such as the nature, severity, intensity, repetition, knowledge of the discrimination, the injury and vulnerability of the victim etc.

The individual harasser or discriminator (e.g. co-worker or client) can be held liable as there are provisions for sanctions against individuals acting on their own. Individuals who have a position of authority within organisations can be sanctioned (fined and /or imprisoned). Legal personalities or organisations can also be fined.

Trade unions or other trade/professional associations can be held liable for actions of their members to the extent they are considered to have acted as an organisation or legal person, as referred to above.[303]

There are no other liability provisions for particular agents, such as employers, service providers, clients or trade unions.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national anti-discrimination legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office? In case national anti-discrimination law does not do so, is discrimination in employment, self-employment and occupation dealt with in any other legislation?

The two laws transposing the Employment Equality Directive[304] apply to all sectors of public and private employment and occupation,[305] including contract work, self-employment, holding statutory office, with the exception of military service. The scope of Law N. 58(I)/2004 (transposing the Employment Equality Directive minus the ground of disability which is covered by other laws) 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 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.

In the case of military service, article 8(4) of the same law provides an exception to the prohibition of age discrimination, where the fixing of an age limit is justified by the nature and the duties of the position.

---

[303] Law N.58(I)/2004, Article 4(d) and Law N.127(I)/2000 as amended by Law N.57(I)/2004, Article 5(a)(1)(d).

[304] Law N.58(I)/2004, article 4(a); Law N.57(I)/2004, article 5(a).

[305] Following English common law, there is a sharp distinction in terms of employment rights between 'employees' and 'self-employed'/ independent contractors. Employees are subject to direction and control and there is an 'employment relationship' between the employee and the employer, which is one of a contract of employment, with all the rights provided for by the law. The test of 'control, dependence and direction of work' is the one used to distinguish between 'employees' and self-employed'/ independent contractors. Employees are generally supervised and directed by others; they have a place and time of work, receive wages and have a *contract of employment*. A '*contract of employment'* is sharply distinguished from a '*contract for services'* as the latter does not provide for any employment rights guaranteed by labour law. Part-timers are employees and enjoy the same rights as other full-time employees based on the principle of 'proportionality' [Law N. 76(I)/2002 (14/06/2002) which transposed Directive 1997/81).

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"[306] which are the army, the police, the fire brigade and the prisons.

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law[307] which sets out the mandate of the Equality Body, provides that the implementation of Protocol 12 is within such 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. Such discrimination is unlawful.

Both laws N.58(I)/2004 (Article 2) and N.57(I)/2004 (Article 2) define '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.

Prior to the enactment of the 2004 laws, the fields of application provided in Cypriot law (Article 28 of Constitution and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination - ICERD) which refer to equal treatment irrespective of racial or ethnic origin extended only to some of the areas covered. Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. With regard to 3.1 (b) of the Directive, Article 5 of ICERD provides for the right to training, whereas the Directive focuses on access to all types and to all levels of vocational guidance, (advanced) vocational training and retraining. A 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 Directives 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.

The scope of the anti-discrimination laws in Cyprus covers all the areas listed in the Directives.

[306] Law introducing special provisions for the hiring of persons with a disabilities in the wider public sector 146(I)/2009, article 2.
[307] Law N.42(1)/ 2004 (19.03.2004).

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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))

Does national law on discrimination include access to employment, self-employment or occupation as described in the Directives? In case national anti-discrimination law does not do so, is discrimination regarding access to employment, self-employment and occupation dealt with in any other legislation?
Is the public sector dealt with differently to the private sector?

The scope of the laws which transpose the Directives includes access to employment, self-employment and occupation.[308]

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 no tradition of anti-discrimination and there are no specialist lawyers on the subject, nor are there any special mechanisms in the various Government departments created for the implementation of the above provisions. There are currently no measures or mechanisms in order to monitor and collect data on such matters.

The laws on discrimination apply equally to the public and private sector. A limited number of quotas in favour of persons with disability are in place in the public sector which are not found in the private sector. There are, at the same time, projects applying only to employment in the private sector. The Ministry of Labour is currently compiling two schemes, under co-funding from the European Social Fund and from the Cyprus government, for the promotion of integration of persons with disabilities in the labour market in the private sector: a scheme for payment of social insurance for employers in the private sector and for persons with disabilities employed by them; and a scheme for providing incentives to employers to employ persons with serious disability in the private sector. Under the same funding line, the Ministry of Labour is also promoting a scheme for the vocational training of certain persons with disability by NGOs.

[308] Law 127(I)/2000, (disability) article 5(1)(a). Law 58(I)2004 (race or ethnic origin, sexual orientation, religion or belief and age), article 4(a).

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

Does national law on discrimination include working conditions including pay and dismissals? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

In respect of occupational pensions, how does national law on discrimination ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Article 4(c) of Law N.58(I)/2004 (transposing the Employment Equality Directive minus disability) and Article s.5 (1) of Law N.127(I)/2000 as amended by Law 57(I)/2004 (transposing the disability component of the Employment Equality Directive) prohibit discrimination in all fields including "working conditions, terms of employment, pay and dismissals", but nothing more is specified.

Given the participation of the social partners in collective bargaining and the shaping of collective agreements, the Cypriot tripartite system is expected to deal with such matters in the long term future,[309] although in practice it has yet to happen. The economic crisis has already shaken the foundations of the Cypriot tripartite structure, as anti-labour measures are increasingly being adopted without consulting the trade unions, as was the case in previous years. The process of institutionalising the anti-discrimination principle will be a long one as evident from the reaction of the trade unions recorded in the report of the equality authority (one of the two bodies comprising the Equality Body) for the years 2007-2008 published in 2009: the report states that trade unions view the body's review of the terms of collective agreements as an attempt to limit trade union freedom. Trade unions do not have a tradition of using the procedure of the Equality Body or the judicial procedure in order to rectify injustices to their members, even though the Equality Body has on more than one occasions intervened in order to defend workers' rights.

Pensions

The Law on Pensions of 1997-2001, as amended, which regulates the payment of pensions to public employees contains no protection against discrimination. In fact, a decision of the Equality Body in 2009 has established that the Pensions Law itself

[309] See Sparsis, M. (1998) Tripartism and Industrial Relations (The Cyprus Experience), Nicosia, Cyprus.

contains discriminatory provisions, as it provides for less favourable terms for employees aged under 45 who want to take early retirement, compared to older employees.[310]

A Supreme Court decision of 2007[311] found that the Pensions Law of 1967 (N.9/67) as amended by Law N.69(1)/2005, introducing differential treatment between persons attaining the age of 60 at different periods, was deemed to be outside the scope of the law transposing the Employment Equality Directive and thus could not be revised as discriminatory. Since then, a number of Court decisions followed suit, where the Courts ruled that pension schemes fixing different retirements ages for different employees, depending on the date of their birth[312] or their rank in their service[313] were outside the scope of the Directive and thus no discrimination claim could be allowed. A technical problem that arose in many of these Court cases was that, rather than bring a claim for discrimination under the law transposing the Employment Equality Directive, the applicants would either use the procedure provided in Article 146 of the Constitution (seeking to set aside the administrative decision affecting them) or they would ask the Court to annual a legal provision affecting them on the basis of being incompatible with the Constitution. In all these cases, the Court ruled that it had no power to amend the allegedly discriminatory law and/or that annulling a law or a regulation that contains discrimination would not benefit the applicant because it would mean cancelling the legal basis from which the desired retirement age derived from. From the Court's reasoning in cases where applicants complain of discrimination in the amount of pension received, it appears that the Courts are unaware of or unwilling to take into account the ECJ's ruling in *Maruko* that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In the case of *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic*, the Court rejected the applicant's claim of age discrimination in respect of his retirement pay, which was lower for persons forced to retire at 61 rather than 62 or 63, on the ground that the Directive expressly excludes retirement age from its scope, even though the applicant had not sought to change his retirement age but rather to raise the lump sum payable upon retirement.[314] A Court decision in 2012 found that the retirement age of 55 applicable for lower rank police officers was lawful as the applicant failed to prove that this differential treatment is not reasonable;[315] it is almost certain that the Equality Body would have arrived at a different conclusion, using the criteria established by article

[310] Decision Reference number A.K.I. 63/2008 and A.K.I. 1/2009, dated 04.06.2009.
[311] Case Nos 1795/2006 and 1705/2006 dated 01.06.2007.
[312] Eleni Kyriakidou v Cyprus Broadcasting Corporation (Supreme Court Case No. 18/2008, dated 03.12.2010) reported above.
[313] Nicos Elia v. The Republic of Cyprus through the Chief of Police, Supreme Court Case No. 1718/2008, dated 08.10.2010.
[314] Case no. 1223/2007, dated 19.09.2011, referred to under section 0.3 above.
[315] George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order, Ref. 1497/2008, dated 30.04.2012, summarized above under section 0.3.

4(1) of Directive 2000/78/EC, which the Court in this instance did not seem to be aware of.[316]

In the private sector, pension schemes are regulated by collective agreements or private employment contracts, whose conditions are difficult to monitor. Employees in the private sector may also receive payment upon retirement from the company's Provident Funds. Such payment is regulated by the conditions of the Fund itself and by the law on Provident Funds, which provides that the charters of such funds may not contain provisions which amount to gender discrimination.[317] Although the provident fund law was amended in 2005,[318] no provision was added rendering provisions which discriminate on other grounds unlawful. However, in the event that the charter of a provident fund contains provisions leading to discrimination on any of the five grounds of the Employment Equality Directive, it may be possible to declare them discriminatory and therefore 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).

Maruko case

The applicability of the EJC opinion in the Maruko case in the context of Cyprus is debateable, given that Cyprus recognises neither same-sex marriages nor registered partnerships. The rational of the CJEU that the surviving partners of deceased employees who had lived with the deceased "in a union of mutual support and assistance which is formally constituted for life" should be entitled to the same benefits as surviving spouses, would probably not be extended by the Cypriot courts to cover same sex partners in relationships which are not registered. Since the reasoning is based on equating the benefits accruing to spouses with those afforded to life partners, it is not at all certain that the Courts will extend the principle to relationships which may well be precarious.

The failure of Cypriot law to recognise same sex partnerships, however, creates a legal vacuum in which same sex partners are facing discrimination on the ground of sexual orientation, since they are not afforded the opportunity to register and formalise their relationship and enjoy the benefits accruing from that. In 2010 the Equality Body issued a report pursuant to two complaints regarding the lack of a legislative framework that may enable gay couples to formalise their relationships.

[316] For example, the Equality Body found that the age limit on promotions in the police force was unlawful because, although the aim was legitimate, the means were neither reasonable nor proportionate: See Equality Body report ref. A.K.I. 32/2008, dated 06.04.2012, summarized above under section 0.3 (see paragraph entitled "Police officer contests the maximum age limit for promotions within the police force).
[317] Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81, article 8A.
[318] Law N.75(I)/2005.

The report recommends that measures be taken by the state to recognise the relationship of homosexuals living under the same roof, which has caused considerable reaction amongst conservative political circles. The same position was repeated by the Equality Body in a position paper issued in December 2011.[319]

In examining another complaint for sexual orientation discrimination in 2008 against the refusal of the immigration authorities to allow the same sex partner of an EU national to join him in Cyprus, the Equality Body found that, although Cyprus chose not to recognise same sex marriages or partners, it is nevertheless bound by the anti-discrimination acquis, the international conventions and the fundamental human rights that demand that any discretion be exercised in line with the anti-discrimination principle.[320]

In its decision, the Equality Body cited ECtHR case law which established that the term 'family life' is not restricted to relationships within a marriage but includes also de facto family relations where the parties live together outside marriage (and not necessarily in a registered partnership). The Equality Body arrived at the same conclusion in another case concerning the complaint of a Cypriot national against the decision of the immigration authorities to deny his Canadian homosexual spouse the right to stay in Cyprus, on the ground that national legislation does not recognise same sex marriages.

It should be noted however that there is a great disparity between Court decisions and Equality Body decisions, in that the Equality Body is prepared to move beyond the strictly legalistic approach and take into consideration sources such as the report of the Fundamental Rights Agency on Homophobia, reports of Amnesty International and ILGA and the Proposal for a new Council Directive on discrimination beyond employment, indicating a willingness to take into consideration the concerns and policy priorities of the European Union, whilst Courts would stick to the legalistic and technical approach that would almost certainly result in the rejection of a claim by same sex partners to receive benefits accruing to spouses.

War-related pensions

Another law[321] provides for the payment of special war-related pensions to Greek-Cypriots only (the term in this case including Maronites, Armenians and Latins but not Turkish Cypriots), thus introducing discrimination on the ground of ethnic origin against Turkish-Cypriots, who have also been adversely affected by inter-communal violence and by the 1974 war.

[319] Position paper of the Anti-discrimination Authority regarding the need to institutionalize relationships between heterosexual and homosexual couples, Ref. AKR TOP 1/2011, dated 22.12.2011, reported under Annex 3 below. A description of the developments in this area is set out under the title 'Sexual orientation' in Section 0.3 above.
[320] Case Ref. No. A.K.R. 68/2008, dated 23.04.08.
[321] Law on Relief of Sufferers N. 114/1988.

In addition, it is generally known that in practice, many undertakings exclude from their pension schemes or their provident funds the migrant workers employed there on a temporary work permit, but there is no mechanism to monitor this phenomenon, whilst the migrants themselves are reluctant to take up such a case for fear of victimisation.

Sector pension schemes

Some professions like doctors and lawyers have their own pension schemes which are based on members' contributions and are managed by a council, which also decides on the terms of the pension scheme. In the case of lawyers, the Law on Advocates provides for a pension scheme created for the benefit of persons registered in the Registry of advocates, which is based on contributions.

The law, however, excludes from registration in the Registry lawyers from third countries (i.e. outside the EU but including member states of the European Economic Area and Switzerland),[322] which consequently deprives them from the right to participate in the pension scheme.

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))

Does national law on discrimination include access to guidance and training as defined and formulated in the directives? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does national law on discrimination apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses? If not does any other legislation do so?

The Law on persons with Disability prohibits discrimination in access to all kinds and levels of vocational guidance, vocational training, educational training, reorientation and professional apprenticeship.[323] Law on Equal Treatment in Employment and Occupation contains an identical provision as regards the remaining four grounds of discrimination (race/ethnic origin, religion or belief, age, sexual orietnation).[324]

[322] The Advocates Law, Cap. 2, article 4.
[323] Law on Persons with Disability N. 127(I)/2000 article 5(1)(b).
[324] Law 58(I)/2004, article 4(b).

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 does apply to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments, including life-long learning courses. In fact the Equality Body has interpreted this provision as meaning training outside and independently of an employment relationship: in a legal opinion supplied by the Equality Body in 2006 upon the request of a governmental 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 continue his training nevertheless, because denying him access to training on the ground of his disability would amount to discrimination prohibited by law.[325] Other Equality Body decisions found unlawful discrimination to exist 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.[326] In a 2010 decision the Equality Body stated explicitly that, based on an CJEU ruling,[327] access to university education which prepares the student for obtaining a qualification or a special skill for a certain profession or occupation amounts to access to vocational training; the case concerned the criteria for admission to an Open University adult life-long learning course.[328]

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))

Does national law on discrimination include membership of, and involvement in workers or employers' organisations as defined and formulated in the directives? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

National law includes membership of and involvement in workers' or employers' orgnaisations; the wording of Article 3(1) (d) is repeated verbatim in the national law.[329]

[325] File no. AKI28/2006, dated 20.09.2006.
[326] The case is referred to in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 08.01.2007).
[327] Gravier, Case no. 293/83 dated 13.02.1985.
[328] Equality Body Decision dated 22/11/2010, Ref. A.K.I. 74/2009.
[329] Law N.58 (I)/2004, s.4 (d) and Law N.57 (I)/2004, s.5 (a) (1) (d).

On 4.11.2005 the Equality Body issued a decision with regard to a clause in the standard employment contract, for the employment of migrant domestic workers, the specimen for which is issued by the Ministry of Labour, which prohibits their involvement in trade unions. The decision found the said clause discriminatory and asked for its deletion from the contract. A report of the Equality Body, in its capacity as NHRI, published in 2013 regarding the conditions of work of female foreign domestic workers, summarised under 0.3 above, criticises the fact that the standard employment contract of this category of workers continues to include a prohibition of joining a trade union, in direct violation of Law N.58()I)/2004 transposing the Racial Equality Directive and eight years after the Equality Body requested its revision.

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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

Does national law on discrimination cover social protection, including social security and healthcare? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

National law explicitly prohibts discrimination in the field of social protection, social security and healthcare only on the ground of race/ethnic origin.[330] Article 3(a) of Law 58(I)/2004 (transposing to a large extent the Employment Equality Directive), as well as the Law on Persons with Disability (N.127(I)/2000 as amended by N.57(I)/2004) seek to rely on the exception in Article 3(3) of the Employment Equality Directive. The Equality Body's mandate, however, does cover discriminatory treatment in social protection on the grounds of religion/belief, age, disability and sexual orientation and there have been numerous interventions from the Equality Body in these area.

There are other legal instruments, besides the laws transposing the Directives, offering protection against social security and healthcare discrimination beyond the ground of race and ethnic origin. Firstly, the Public Assistance Law N.8/1991 provides for minimum standard for all living persons in Cyprus irrespective of ethnic, racial or national origin. Moreover, Protocol 12 extends the fields of application to all the grounds listed (in the enjoyment of any right granted under national law, against public authorities in the exercise of any power granted by national law, where the public authority has exercised discretionary powers, including both acts or omissions of public authorities). Protocol 12 becomes operative through the expanded powers

[330] Law N.59(I)/2004, Article 4(1).

granted to the Equality Body[331] which prohibit discrimination for all grounds under the Protocol and cover "social protection, social security and medical care," without any of the exceptions allowed for above.

In a 2005 decision, the Equality Body found that the refusal of public assistance to an asylum-seeker because of his nationality amounted to indirect discrimination on the ground of race or ethnic origin in the area of social protection and social welfare.[332] The refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVF) was also held to be discriminatory.[333] As far as health is concerned, the Equality Body has ruled that the refusal to issue a health card (which entitles free treatment at hospital) to asylum-seekers due to the fact that they did not have their 'pink slip' (residence permit) was discriminatory on the basis of ethnic origin;[334] as a result, and in compliance with the said decision, the Ministry of Health issued a circular to hospitals to issue health cards to asylum seekers even in the absence of pink slips, where there is an emergency.[335] Two Equality Body decisions in 2010 established that the fixing of the age limit of 65 for funding radical prostatectomy and the fixing of the age limit of 40 as a condition of eligibility for financial support for artificial insemination were both discriminatory.[336] In 2012, the Supreme Court also found that there was unlawful discrimination in a scheme which set an age limit as a precondition for entitlement to grant towards taxes and duties related to the acquisition of a car.[337] Using the general prohibition of discrimination found in article 28 of the Constitution (which does not explicitly cover age) the Court found that the applicant's exclusion from the scheme because he was over 70 amounted to unlawful discrimination.

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

Does national law on discrimination cover social advantages? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

[331] Law N.42(I)/2004, Article 6(2)(e).
[332] Files AKI 131/2005 and AKI 8/2005.
[333] File AKP 54/2004.
[334] The three cases were the following: A Palestinian granted subsidiary protection, whose wife was refused medical care even though she was at the very last stage of her pregnancy because she did not have in her possession the temporary residence permit (File No A/P 1339/05). The second complaint came from an Indian asylum seeker whose wife was also in the last month of her pregnancy (File No A/P 1363/05). The third case involved a Kurdish couple from Syria with two underage children who applied for asylum. The wife was also in her last stage of pregnancy but was refused access to medical care because she did not have a health card (File No A/P 1487/05).
[335] N. File YY11.23.03, 12 December 2005.
[336] Equality Body Decision dated 24/11/2010, Ref. AKR 164/2008, AKR 63/2010 and Ref. A.K.R. 126/2009, dated 27.04.2010 respectively.
[337] Mikis Lakatamitis v. The Republic through the Minister of Finance, Case No. 1477/2010, dated 04.09.2012, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-1477-10.htm&qstring=διακρισ*.

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

Discrimination in access to social advantages is explicitely prohibited as regards disability[338] and race/ethnic origin.[339] It ought to be noted, however, that there is an issue regarding the very term 'social advantage'. The term is translated by the official translation unit of the European Commission in Luxembourg as 'social provisions' and finds its way in the national legislation in this form.

'Social provision' or 'social advantage' is not inlcuded in the scope of the Equality Body's mandate, which explicitly covers all areas covered by Article 3 of the Racial Equality Directive save for 'social advantage'. Social advantage may however be implied into the mandate of the Equality Body as this covers, by virtue of article 6(2) of Law 42(I)/2004, "any field whatsoever". Additionally, 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. However the Ombudsman's powers are narrower than those of the Equality Body as its decisions are not binding and it has no power to impose fines. It should be stated, however, that in the case of the Equality Body the fines foreseen by law are so low that the Equality Body invariably chooses to use its mediation function rather than impose fines which would act as no deterrent.

National legislation explicitly refers to the category of 'social advantages' but does not provide any definition or list, which makes it even more difficult to monitor. Some groups do have such benefits (pensioners, other vulnerable groups), but given the relative underdevelopment of public utilities and poor public transport system, this is not a major issue in Cyprus.

There are cases where persons become entitled to a type of benefit as a result of his/her employment statues. One example is the case of sheltered workshops described in Article 2.7 of this Report, where persons with disabilities working in these workshops receive higher payment if they are married than if they are single.

[338] Law concerning Persons with Disabilities N. Law 127(I)/ 2000, article 6.
[339] Equal Treatment (Racial or Ethnic Origin) Law N. 59(I)/2004, article 4(c).

A number of benefits are available to certain categories of disabled persons,[340] such as the exemption from fees for medical services in public medical institutions. Persons who are unemployed or of low income are also entitled to free medical and pharmaceutical care in state hospitals. Also, persons with disability are exempted from certain charges concerning telecommunications and telephone services.[341] Following a comprehensive tax reform, there are no longer tax discounts applying to persons on the basis of their marital status or otherwise.

In the case of the Roma population of Cyprus, since most of its members[342] are deemed to be part of the Turkish community of Cyprus and thus Cypriot citizens, they are entitled to all benefits that Cypriot citizens have and any differential treatment afforded to them would amount to discrimination on the ground of race/ethnic origin, as is the case with discrimination against Turkish-Cypriots. Having said that, it should be noted that many members of the Roma community and particularly the older ones are uneducated, do not speak the language and live in destitution, so their ability to access public benefits may be limited. Although there has been no case to test this, it is certain that Roma people residing in the Turkish controlled north of Cyprus will not be entitled to any state benefit from the government of the Republic of Cyprus, given that Turkish Cypriots residing in the north are, as a matter of state policy, not granted any state benefits.

Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus* which established that differential treatment based on the place of residence (i.e. north or south of Cyprus) is unlawful, the approach followed both by the Courts[343] and the Equality Body is that persons residing in the north of Cyprus are not entitled to state benefits, even if they work in the south and pay their social insurance contributions to the state.[344] In the 2011 case of *Gonul Ertalu & Imge Ertalu v. Ministry of Finance,* the applicant's application for a student grant was thus rejected because in order to be eligible for the grant, one would have to be resident in the south of the country and the applicant was a Turkish Cypriot residing in the north.[345] The Court followed

[340] These are the war disabled, the pupils of the School for the Blind, the pupils of the School for the Deaf, the students of the Centre of Training and Vocational Rehabilitation of Persons which disability and persons who receive public assistance under the provisions of the Public Assistance Law.
[341] Regulations 311/2001, 382/2002, 473/2002, 525/2002 and a number of decisions of the Cyprus Telecommunications Authority.
[342] Generally speaking, the Roma of Cyprus are seen as indistinguishable from the Turkish Cypriots because of their religion (Muslim) and their language (Turkish), although one cannot exclude the possibility that today amongst the Roma population of Cyprus there may be persons who came from other countries, in which case they are not entitled to Cypriot citizenship.
[343] Mehmed and Meral Birinci v. The Republic of Cyprus (2006), No. 911/2004, 14.02.2006.
[344] Decision dated19.04.2006, File No. A.K.R. 27/2005, where the Equality Body found that the Finance Ministry's rejection of the complainant's application for a 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 is true or not, adding 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.
[345] Review Appeal no. 104/2008, dated 17.11.2011, covered in Annex III at the end of this report.

the same approach in 2012 in the case of *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance*[346]where the Courts rejected the argument of the applicants that the law was unconstitutional for violating the equality principle, pointing out that, in the absence of a positive legislative provision entitling them to a student grant, the applicants will derive no benefit if the law is declared unconstitutional.

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

Does national law on discrimination cover education? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.
Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

The national laws transposing the Directives explicitly prohibit discrimination in education only in the case of race/ethnic origin.[347] In the case of disability, 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.[348] The mandate of the Equality Body covers 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.[349] Indeed the Equality Body has repeatedly applied this provision by finding in favour of complainants who alleged discrimination in education on the grounds of age, disability and religion. In recent years, the Equality Body has devoted special attention to homophobia in schools: In November 2012, it published a report regarding homophobia at schools, offering a series of recommendations on systemic approaches of addressing the problem[350] and is currently planning a series of initiatives in order to raise awareness against homophobia at schools.

[346] Case No. 2411/2006, Appeal No. 73/2009, dated 02.02.2012, summarized above under section 0.3 (see paragraph entitled "Rejection of student grant application from Turkish Cypriot).
[347] Equal Treatment (Race or ethnic origin) Law N. 59(I)/2004, Article 4(1)(d).
[348] Law on persons with disability N. 127(I)/2000, article 4(d).
[349] The combating of racial and other forms of discrimination law (Commissioner) N. 42(I)/2004, article 6(2)(f).
[350] Report of the Anti-discrimination Authority regarding homophobia in education and the handling of homophobic incidents at schools, Ref. AKR 63/2011, AKR 131/2011, dated 20 November 2012.

School segregation

In spite of the fact that Cyprus has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) since 1966,[351] which obliges states to "prevent, prohibit and eradicate all practices of racial segregation", as expressed in General Comment 19 of ICERD, there is still segregation of the Roma. In part this appears to be an unintended consequence of policy and in part reflecting discriminatory attitudes, the 'cultural capital' and socio-economic and family conditions of the Roma in Cyprus. The 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 rights[352] as well as on specific rights in the field of education.[353]

Officially declared policy is to take action to avoid segregation and on occasion the Ministry of Education has been particularly drastic in taking measures to avoid segregation and the creation of ghetto-based schools. However, there is a high concentration of Turkish-speaking pupils (mainly Roma and Turkish Cypriots) in particular schools, attributed mainly to the concentration or even gettoisation of migrants, Turkish-Cypriots and Roma in certain (impoverished) residential areas. More than half of the Roma pupils attending public schools today are concentrated in one school, the 18th Primary School in Limassol (the second largest city in Cyprus), which has more than 50 Roma pupils out of a total of 166 pupils. There is generally little connection in policy-making with the fact that the Roma, being members of the Turkish-Cypriot community, are Cypriot citizens with equal rights as the Greek Cypriots. At local level, some elements of multicultural education and teacher training for primary and secondary education have been introduced to cope with an increasingly multi-ethnic and multicultural setting, but this is still at an early stage.

In a statement to the press dated 10.02.2008, the elementary school teachers' union presented the following statistical data in terms of school attendance by foreign pupils: A total of over 8,000 foreign students attend kindergartens, primary and secondary education schools which is analysed as follows: kindergartens 995, elementary schools 4,422, secondary schools 2,626. At one particular Nicosia school (Phaneromeni elementary school) 71 out of a total of 87 pupils (81.6%) are non-Greek native speakers. In the school of Ayios Antonios in Limassol 55 out of 146 pupils (37.6%) are non-Greek native speakers. In another school in Limassol (Potamos Yermasoyias), 97 out of 245 (39.6%) are non-Greek native speakers. In

[351] The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of March 7 1966, was ratified and incorporated as Law 12/67, as amended by Laws 11/92, 6(III)/95 and 28(III)/99.
[352] Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Also Cyprus ratified the European Convention against Torture and Inhuman or Degrading Treatment or Punishment, together with Protocols No. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).
[353] The Convention against Discrimination in Education (ratified by Law 18/1970).

the 6th Elementary School of Paphos 203 out of 241 (84.2%) are non-Greek native speakers. At the 4th School of Paphos 136 out of 230 (59%) are non-Greek native speakers. At the Makarios Lyceum of Paphos, there are 189 foreign pupils, out of whom 137 are from Georgia. At the gymnasiums of Ayios Theodoros and Nikolaidio of Paphos, there are over 100 non-Greek native speakers.

In 2008, at the Linopetra gymnasium in Limassol there are 103 foreign pupils originating from 20 different countries. The figures were given in an effort to support the teachers' demand for the introduction of the scheme of special reception classes at schools for foreign pupils, in the absence of which, according to the teachers' union, foreign pupils are led to gettoisation and exclusion.[354]

According to one study, the headmaster of the 18th Primary School in Limassol which has a high Roma concentration reported that Greek-Cypriot parents try move their children to other schools when they see that in one particular school there is a high number of migrant or non-Greek-Cypriot pupils;[355] if they cannot succeed to move them away, they instruct them to avoid contact with Roma children. The principal further reported that Greek-Cypriot parents react very negatively to the fact that Turkish-Cypriot and Roma students are studying there, claiming that 'gypsy children have something violent attached to their character'. As many as 25 Greek-Cypriot pupils were moved from the school by their parents because of the presence of Turkish-Cypriot and Roma children.[356] Many Greek-Cypriot children do in fact demonstrate racial prejudice towards the Roma children.[357] The same research conducted at the 18th Primary School states: "Based on the responses we received from the teachers, we discovered that the student population was not evenly divided. Non-indigenous pupils were concentrated in certain classrooms (i.e. 21 out of 30 pupils or 14 out of 30). This casts doubt on the effectiveness of the Ministry of Education's efforts to distribute ethnic minority pupils evenly." The majority of school teachers (80per cent) believe that, although the language is a major factor in

[354] C. Kyriakidou (2008) "Foreign students over 8,000" in *Phileleftheros* (10.02.2008).
[355] 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 C. Panayiotopoulos and M. Nicolaidou (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, pages p. 69.
[356] N. Trimikliniotis (2004) 'Institutional Discrimination in Cyprus', Work Package 4, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophob, EU Fifth Framework Programme 2002-2005.
[357] N. Trimikliniotis (2003) 'Discriminated Voices - Cyprus Report', Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophob, EU Fifth Framework Programme 2002-2005; S. Spyrou. (2004) *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS (February-March 2004); A. Keskenidou. and M. Tsakiri (2003) *Η ετερότητα του πολιτισμικού κεφαλαίου των Αθιγγάνων ως πλαίσιο συμμετοχής στην εκπαίδευση*, University of Cyprus.

underperformance, it is not the only contributing factor." It is apparent that 'family and socio-economic problems' penetrate school life with a vengeance. Studies show there is segregation between schools, in part reflecting the wealth or poverty of the surrounding neighbourhood with certain schools becoming the schools of the poor, migrants, the Turkish-Cypriots and the Roma. A large number of children attending this school come from families under the supervision of the Social Welfare Office (e.g. families with divorced or parents serving prison sentences), with problems that had been in existence before the arrival of large numbers of Turkish-speaking children.[358]During the same interview, the head teacher rejected claims of any discrimination taking place, but was critical of systemic failure; moreover, the principal seemed worried that there were children not able to integrate into the school system: 'A lot of gypsies learned to read and write but up to a point. What puzzles us is that they don't integrate. They don't feel that this school has rules, which they have to obey.'

A number of studies conducted between 2008-2011 illustrate that serious problems of racial segregation and multiple forms of racial exclusion and prejudice persist. Efforts to develop inclusive education as regard the Roma and promote reconciliation with Turkish-Cypriots, including the Cypriot Roma who are considered to be part of the Turkish-Cypriot community, find resistance from a segment of teachers. In fact, research with Greek-Cypriot teachers illustrates that many teachers would openly admit being racist:

> *"Greek-Cypriot teachers perceive Turkish-speaking children in racialized, ethnicized and classed ways, and the socio-political structures in Cyprus influence teachers' negative discourses and practices towards these children. [...]in this study is that several teachers say they are racist, claiming that they are justified to act in these ways in light of the political situation in Cyprus; in other words, there is not a 'mismatch' between spoken account and actual practice. Teachers' perceptions, then, entail a sense of 'right' to be racist, because this 'right' is perceived as a defence mechanism against Turkish efforts to dominate all over Cyprus and change its demographic character".*[359]

[358] S. Spyrou (2004) *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS, February-March 2004.
[359] 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*.

The issue is not confined to the treatment of the Roma, but extends to the way Turkish-speaking children and Turkish-Cypriots in general are dealt with in education institutions from nurseries to universities.[360] On the basis of research in three primary schools considers children's construction and experience of racism and nationalism among a sample of Greek-Cypriot and Turkish-speaking children in three public Greek-Cypriot schools. The study finds that these children's identities are racialized and ethnicized from a young age, connected to specific social processes relating to the development of understandings about racist and nationalist practices:

> "Greek-Cypriot children are particularly sensitive to skin colour, race and ethnicity and have a strong emotional investment in themselves as white Greeks and of Turkish-speaking children as invariably 'Turks'. The only exception is evident in relation to children who speak Greek very well and dress/behave according to the majority group's accepted norms; all other Turkish-speaking children are viewed stereotypically and are marginalized."[361]

Another study[362] which reflects on the experiences gained from the implementation of a training project (INSETRom) in the Greek Cypriot educational system, report that Roma children tend to be marginalized in school, despite official policies of non-segregation and the introduction of supportive measures. Teacher accounts reflect anxiety and prejudice when teaching Roma children, as they feel ill-equipped and trained to deal with practical, everyday classroom challenges. As it takes place at the moment, and despite progress made as a result of education reform, exclusion mechanisms operate against Roma children. They conclude that "for education to become inclusive for all pupils, teacher training must face, deconstruct and bring to the fore teacher prejudices and processes of discrimination, thus considering teachers as reflective individuals and professionals who can make a difference."

In its Fourth Report on Cyprus published in 2011, ECRI was very critical of the situation in the 18th Primary School. Although in 2006 this school was a prize winner in the Commonwealth Education Good Practice Award for actions that enhanced access to quality education for the good of all and had been hailed as a 'beacon' of successful bi-communal education, the ECRI delegation which visited this school

[360] Indicative of this is the decision by the majority of the secondary teachers union, OELMEK, responded to issued a Ministry circular declaring year 2009-2010 year of reconciliation between Greek-Cypriots and Turkish-Cypriots: they issued a statement condemning the policy calling upon their members to refuse to implement the relevant Ministry circular. Se also Zembylas, M., Charalambous, C., Charalambous, P., Kendeou, P. (2010) "Promoting peaceful coexistence in conflict-ridden Cyprus: Teachers' difficulties and emotions towards a new policy initiative", *Teaching and Teacher Education* 27 (2011) 332-341.

[361] Zembylas, M. (2010) "Children's construction and experience of racism and nationalism in Greek-Cypriot primary schools", *Childhood*, 17(3) 312–328.

[362] see Loizos Symeou, Yiasemina Karagiorgi, Eleni Roussounidou andChrystalla Kaloyirou 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.

witnessed a very different reality. At the time of the visit there were 75 pupils aged six to 12: thirty one pupils were Greek Cypriots, 40 were Turkish Cypriots, and the remaining four were from Romania, Bulgaria, Syria and Iran. The pupils were distributed into five classes. In the first four classes, the majority were Turkish Cypriots. For the current school year 2010-2011, only Turkish Cypriots enrolled. The school had one interpreter. None of the teachers were specially trained to teach non-Greek speaking pupils and no extra teachers had been provided to teach Greek. The curriculum was taught in Greek, and there was no formal teaching of the Turkish language. Two teachers were Turkish Cypriots, but they were employed for other subjects, not language. The staff interviewed deplored the fact that they could not communicate with their pupils. In addition, despite the small classes, maintaining discipline was a major challenge. ECRI was deeply concerned by the school's failure to meet the educational needs of the children concerned and found that the pupils are effectively being denied the right to education, as enshrined in Article 2 of the Protocol to the ECHR, with serious consequences for them in terms of future social marginalisation and exclusion and called on the authorities to take remedial action, by employing Turkish speaking teachers and classroom assistants to work alongside and assist the Greek-speaking teachers, as well as specialist Greek language teachers.

In itself, the 'concentration' of a certain ethnic group in a particular area is not necessarily negative, if this 'concentration' (a) was the result of the free movement of populations utilising their local affinities, family networks, ties and support, (b) the local area which they reside is not deprived but vibrant, multicultural and open to persons of different ethnic mix for cultural exchange; and (c) the multi-cultural mix of the school itself would act as a solid basis for developing expertise and innovative teaching geared towards a multicultural environment and not as the basis for a marginalised, deprived and second rate school. In short, if the policy aims at the avoidance of deprived, ghetto-like schools in deprived areas and neighbourhoods, then the policy is in compliance with anti-discrimination and international law and human rights standards. By contrast, if the policy is one of blanket 'dispersal' with motives such as the dispersal of ethnic minorities as a concession to local xenophobic sentiments and attitudes that minority populations should 'not affect native culture and tradition', or to ensure that minorities and migrants are 'not 'visible in public', then it is clearly racially-motivated and is in breach of anti-discrimination laws and standards. In practice, the current policy has resulted in the gettoisation of the residential area and of the school located in it, with the typical manifestations of exclusion and poverty, and has reinforced and cemented the prejudice demonstrated by the inhabitants of the neighbouring areas, who had from the beginning objected to the settlement of these communities in the vicinity.

The available statistical data suggests there are discrepancies in the implementation of educational policies. Whilst the official policy is in favour of desegregating the schools by allocating the minority children in several schools to prevent 'gettoisation', there is a failure in dispersing minorities, and in particular Roma across the country. Not only the numbers of minority children have slightly risen at specific schools, there

is an inverse relationship between the increased concentrations of students with a specific ethnic minority background correlated to a decreased enrolment of Greek Cypriot pupils in the specific schools. The Third ECRI 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 the Roma by the local communities."[363]

In the case of the Roma, school segregation is inevitably linked to the housing policies implemented in respect of this community. The specially designated Roma settlements of pre-fabricated houses are all located in segregated settings, with the exception of a number of Roma families living in the old Turkish quarter of Limassol where, although impoverished, are residing in the same neighbourhood as Greek Cypriots, Turkish Cypriots and migrants. This is not to say that Roma families residing in the old Turkish quarter of Limassol are necessarily well-integrated into the local communities, as relations are often strained and the Roma are sometimes shunned by the other inhabitants.

The only complaint ever submitted to the Equality Body regarding the situation of the Roma was filed on 31.1.2008 by the RAXEN NFP at the time and alleged insufficient support and integration measures for Roma pupils in education, failure on the part of the authorities to recognise the Roma as a special ethnic group and as a group speaking a minority language (Kurbetcha), failure to promote Romani language and culture in violation of international conventions ratified by the Republic[364] and in disregard of the recommendations by ECRI,[365] the Council of Europe[366] and the OSCE.[367] The report revealed that although the Cypriot government recognised the Roma as a minority within the meaning of the 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.[368] Measures for the integration of Romani 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, pursuant to the government's constitutional obligation to provide education for the Turkish Cypriot community in their mother tongue. A few other measures are also in place, such as

[363] Third ECRI Report on Cyprus, adopted on 16.12.2005, Strasbourg 16.05.2006, Council of Europe, p. 25.
[364] Article 12, Framework Convention for the Protection of National Minorities Strasbourg, 1.II.1995; article 8 of the European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992.
[365] CRI (98)29 rev.
[366] The Recommendation of the Committee of Ministers to members states on the education of Roma/Gypsy children in Europe, adopted by the Committee of Ministers on 3 February 2000 at the 696th meeting of the Ministers' Deputies.
[367] The OSCE Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Decision No. 566, PC.DEC/566, 27.11.2003.
[368] Report ref. AKR 18/2008 dated 27.09.2011.

free school uniforms, lunch offered at school, transport to school etc, in order to encourage school attendance.

Racism at schools

In 2008 a complaint was submitted to the Equality Body against school authorities and the Education Ministry for their failure to take measures to combat repeated racist incidents at schools. In its report the Equality Body found that the incidents complained of contained the element of racism and that any efforts to cover up or downgrade the significance of such events or failure to record them as such amounts to a short-sighted handling of the phenomenon. The report recorded further incidents of manifestly racist behaviour at schools, criticising the school's approach of refusing to acknowledge the racist nature of the incidents recommending the adoption of decisive measures including dissuasive sanctions against perpetrators, the setting up of a specialised mechanism to examine complaints and record incidents, as well as intercultural educational policy, with a programme of interactive anti-racist education and training.[369] In spite of the Minister's pledge to address racism at schools, no particular measures were taken until late in 2010, when the Ministry of Education set up an observatory to monitor school violence, using the methodology developed by and in close cooperation with the International Observatory of Violence in Schools and the European Observatory on School Violence.[370] The observatory which commenced studying violence at schools in 2011 is mandated to cover all types of violence, including (but not limited to) racist, religiously motivated and homophobic violence.[371]

In 2009 the Equality Body issued another decision following an incident of racial violence at school, where 40 or so pupils attacked a black pupil after a volleyball match. The report criticised the refusal of the school authorities as well as the police to acknwledge the racist motive behind the attack and take measures against racism.[372] In that vain, the report accepts the setting up of the monitoring mechanism promised by the Minister of Education as exhaustive of the measures that may be taken.

Although the report hints on the fact that teachers essentially disregard state policies over the handling of racist incidents and apply their own decisions, it does not recommend any measures to be taken against the teachers. No measures were taken against the teachers' union, presumably in an effort to appease rather than

[369] Report Ref. No. AKP 88/2008, dated 22.10.2008. For a summary in English, please see the Legal Network's Cyprus Country Report for 2010.
[370] http://www.ijvs.org/.
[371] For a summary of the latest report of the Committee on School Violence (in Greek) please see http://www.paideia.org.cy/upload/1_12_2009_sholiki_via.pdf.
[372] Decision Reference number AKR 241/2008, dated 10.03.2009. For a summary in English, please see the Legal Network's Cyprus Country Report for 2010.

intensify a confrontational climate which has developed over the educational reform measures.

A self initiated investigation of the Equality Body published in 2013 into the handling of racist incidents at schools confirmed that the reluctance of the authorities to recognise and address the racist nature of the incidents has seen little progress in recent years.[373]

In 2013 the major and comprehensive project of the educational reform, which was commenced in 2008 under the previous government came into a halt when the new right wing government was voted into power (February 2013). The educational reform had aimed, inter alia, at changing school curricula, teaching methods and the whole philosophy of schooling, in order to render the school more democratic and humane fostering of a general school climate of pluralism, democratic values and respect for diversity.[374] Even under the previous government, which strongly supported the reform, implementation had not been smooth, with several actors complaining about the 'dehellenisation of education'. In spite of the abandoning of the reform, its impact at the local level continues to yield results where there is a will on the part of the teachers. For instance, in primary education, the curriculum which was revised under the educational reform continues to be taught. The philosophy of the new curriculum developed by the educational reform team had placed equality, non-discrimination and respect for diversity as one of its three pillars. Also during the implementation of the reform a significant number of teachers were trained in the new methods and continue to apply them where the circumstances allow.[375] In secondary education, due to a number of factors including the connections of the orthodox church with education stakeholders, the revised curriculum is not used; instead the teachers have reverted to using the old curriculum and methods, as a result of objections raised by the church and by the teachers union, mostly with reference to the content of the religious class.

[373] Self-initiated investigation of the Anti-discrimination Authority regarding the response of schools to racist incidents dated 11 March 2013, summarised under section 0.3 above.
[374] For general information on the educational reform project, see Ministry of Education leaflet here. For an analysis, see Trimikliniotis, N., Demetriou, C. and Papamichael E. (2012). *The embodiment of tolerance in discourses and practices addressing cultural diversity in schools*, Research Project *Accept Pluralism*, Seventh Framework Programme.
[375] Consultation with Giorgoula Zenonos, teacher in public education. In particular, the educational reform sought to develop critical thinking and democratic participation of the students. In this framework, students were encouraged to bring the material they considered interesting and the class had to vote (and the teacher had one vote only, like all students). Most teachers were relieved when the new government instructed the teachers not to follow the methods of the educational reform, as the new method essentially turned upside down the manner in which the lesson was being taught. This pioneering method is gradually abandoned with new government, but the teachers of first and second class of primary/secondary school who have received training on this method continue informally to apply this method.

Homophobic incidents at schools

In 2011 a number of complaints about homophobic incidents at schools were submitted to the Equality Body, suggesting that the framework for the handling of these incidents was insufficient. In April 2012 the campaign "Shield against Homophobia in Education"[376] included a research component on homophobia in education, which found a rather high frequency and intensity of homophobic bullying at schools. The Equality Body report referred to a number of EU level research papers[377] and the first field research conducted in Cyprus on sexual orientation and the experiences of the LGBT community, carried out in 2010-2011 by the Family Planning Association in cooperation with the NGO Accept LGBT Cyprus.[378] The findings of the research recorded high levels of psychological violence in the form of malicious comments in the street by strangers and friends alike, and harassment and threats through the internet. No such incident was ever reported to the police due to lack of trust or unwillingness to reveal their sexual orientation. At the level of the school, the interviewees stated that homophobic incidents were not addressed or investigated by the school authorities; the reporting of such incidents was not encouraged. In light of these findings, the Equality Body recommended: the development of educational tools and curricula to promote respect for diversity and a culture of acceptance of sexual orientation and gender identity; addressing the reluctance or embarrassment of teachers to discuss issues relating to LGBT people with systematic and continuous training to render them comfortable with issues of sexuality and enable them to approach young people suffering from homophobic bullying; the adoption of policies against bullying expressly including issues of sexual orientation and gender identity as a particular form of bullying requiring special treatment; the recording of homophobic incidents; and the setting up of support structures and advisory services for both victims and perpetrators.[379]

[376] The campaign was organised by the NGO Cyprus Family Planning Association, in cooperation with the Trainers' Team of the Cyprus Youth Council, under the auspices of the Ministry of Education and Culture, the Child Commissioner and the Ombudsman.
[377] Recommendation CM/Rec (2010) 5, of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation and gender identity, 31 March 2010; "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity", A/HRC/19/41, 17 November 2011; "The social situation concerning homophobia and discrimination on the ground of sexual orientation in Cyprus", March 2009, Fundamental Rights Agency.
[378] "A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs", for the Cyprus Family Planning Association & Accept-LGBT Cyprus, June 2011
[379] Report Ref. AKR 63/2011, AKR 131/2011, dated 20 November 2012, available at http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr.

Disability in education

National legislation prohibits discrimination in education on the ground of, inter alia, disability[380] but only as far as the mandate of the Equality Body is concerned. The Law on Persons with Disability which transposes the disability component of the Employment Equality Directive does not grant the right to apply to Court in order to contest discrimination in education, although the general prohibition contained in the far reaching article 28 of the Constitution, may be invoked for this purpose.

Protection from disability discrimination in access to education may arguably also fall under the general prohibition against discrimination in the provision of services, found in Article 6 of the Law on Persons with Disabilities N.127(I)2000. It is evident from a number of Equality Body decisions that the Equality Body considers its mandate to include discrimination on the ground of disability in the field of education.

As from September 2001 the Ministry of Education applies the Training and Education of Children with Special Needs Law of 1999 (N.113(I)/1999)[381] and Regulations of 2001. In 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 the psychological, social, educational, prevocational and vocational training at 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, at 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, at 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 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 of these schools with the normal schools of the same area and the holding of

[380] The Combating of Racial and other forms of Discrimination (Commissioner) Law 42(I)/2004, article 6 (f). This provision states that every treatment or behaviour, regulation, condition or practice in the public or the private sector which is prohibited by any law constitutes unlawful discrimination for the purposes of this law on the ground of racial/ethnic origin, religion, belief, community, language, colour, special needs, age and sexual orientation in the field of, inter alia, education.
[381] The law is available in Greek at http://www.cylaw.org/nomoi/enop/non-ind/1999_1_113/full.html.

common activities. The special schools are housed in the same premises as normal schools unless the Council of Minsters decides otherwise.

- By providing services in other premises. This is an arrangement done in cooperation with the parents and is applicable to children who for health reasons cannot attend any other school.[382]

Children with disabilities, physical and intellectual, are as a matter of general policy placed in integrated schools, where necessary with an escort, unless their condition is such that requires that they 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,[383] comprising of civil servants from a variety of disciplines and departments. The procedure followed by the aforesaid committee is, first, the appointment of a first instance multi-discipline group of experts from the public or the private sector who will evaluate the pupil's need for special education or special support 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 which 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 extend of needed support, in case they consider that such is necessary.[384] The experts' reports are considered by the district committee who will, following consultation with the parents, make the decision as to whether special schooling is necessary for the pupil in question or not. The author was unofficially informed by the national organisation for the blind that the committee will usually take the following considerations into account when making their decision: the wish of the parents, the assessment of the teachers at the school which the pupil in question is attending, the existence of any learning difficulties or multiple disabilities, or in the case of visual disability the desire of the pupil to learn Braille, which is not offered at mainstream schools.

None of these considerations constitute an absolute criterion and each case is looked upon separately. In many cases, children with a disability are placed in mainstream schools but are offered support by a special education teacher who will regularly visit the school for this purpose. In the case of children with visual disabilities, for instance, for the school year 2006-2007 there were 11 pupils attending the special School for the Blind, either because they wanted to learn Braille or because they had multiple disabilities or learning difficulties, and 109 pupils attending mainstream schools (including 8 pupils under the age of 3) who received support from teachers from the School for the Blind visiting the school which these

[382] http://www.moec.gov.cy/eidiki_ekpaidefsi/eidiki_agogi_ekpaidefsi.html.
[383] 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.
[384] Section 9 of Regulations N. 186/2001.

pupils attended. As a matter of state policy, children with disabilities cannot be denied access to education on the ground that they are unable to learn.

A book published in 2007, based on extensive research into special and integrated education for children with disabilities in mainstream schools, criticises special education, compiling information and arguments as regards the costs and benefits of special education as opposed to integrated education.[385] The book suggests that there are interests to be safeguarded in the space of special education which can significantly influence policy-making in the field. According to the author of the book, the motives of policy makers and of those influencing policy-making are a compilation of social, economic and political factors which serve primarily the 'needs' of wider society, the educational system and those working in it, rather than the needs of the children (p. 91).[386] Whilst experts have invested in the extension and development of special education, they have created an image of their competency and specialisation which may not correspond to reality. This image is permeated by ideologies of charity and altruism which offer the special education experts the moral frame within which they are working (p.92). The author of the book suggests that an equally critical stand should also be taken towards the practical implementation of the policy, which is of equal significance as the policy itself; both are governed by factors and are developed through processes which are not always based on values of educational science and human rights (p.98). Secondly, as governments try to limit the cost of all and any changes that are to be introduced to the educational system, this often leads to the cancellation of any benefit that these changes could have brought or even to the cancellation of the changes themselves, in spite of the institutionalisation of the legal and policy framework. Thirdly, the case of the deaf students, and the dilemma between the teaching of sign language and vocal language, shows that policy and practice should always be based on theory and that the application of the same method in all cases may not always bring the desired results at the individual level (pp.157-176). Fourthly, in order for the integration of children with disability in the general school to succeed, there needs to be a dynamic in favour of the integrated school, primarily manifested in the acceptance of these children by their classmates without disability. The attitudes of the children without

[385] Ftiaka, E. (2007) *Ειδική και Ενιαία Εκπαίδευση στην Κύπρο* [Special and Integrated Education in Cyprus], Taxideftis, Athens.

[386] This point is aptly illustrated by the reaction of the competent body to the request of a dyslectic student for reasonable accommodation in order to take the school exam, where the committee examining the student's request for reasonable accommodation in order to take the exam, chose to give priority to the validity and credibility of the exam rather than to the needs (and rights) of the dyslectic student. The case was examined by the Equality Body which issued its report on 31/10/2006 (File No. A.K.I. 24/2006, A.K.I. 27/2006) the in response to complaints regarding the adequacy of reasonable accommodation measures for dyslexic pupils taking exams. The policy was to allow the use of supportive measures only in so far as the dyslexic student is not given favourable treatment or advantage over other students and provided the validity and credibility of the exam is not affected. The Equality Body found that reasonable accommodation measures do not give the dyslexic student an advantage over other students, but merely serve to place the dyslexic student in an equal position to that of other students, to enable the dyslectic student to compete with the other students on equal terms.

disability towards their school mates with disability were affected by: the type and nature of the disability (the more obvious the disability, the more tolerant the children without disability); the frame of the contact (the more structured the activity, the more tolerant the children without disability); the attitudes of the teachers towards children with disability and towards the institution of integrated education (pp.181-188). Fifthly, the developments in the legal framework governing special education are governed by financial criteria, i.e. by an effort to restrict the state's contribution, and the persons with disability and their parents are absent from the decision making process (pp.237-250).

In September 2007 an association representing the parents of children with Down's syndrome complained that the government did not respond to their repeated calls for the creation of a specialized centre for the treatment of their children, particularly those in need of temporary hospitalization. Some were housed at Athalassa psychiatric hospital, where they allegedly received inadequate care. The parents claimed that the children were naked, locked in their wards for too many hours each day, and were under the influence of sedative medication; the hospital rejected their allegations. In September 2006, the Cyprus Mental Health Commission President had criticized Athalassa psychiatric hospital, calling it "unacceptable."[387] In February 2008 the president of the Cyprus Mental Health Commission, Christodoulos Mesis, stated that, in order to reduce numbers, patients in the Athalassa psychiatric unit were being released into nursing homes for the elderly regardless of their age, with no plan for their rehabilitation within the community. He criticized the mental health services for not creating appropriate halfway houses and boarding schools to host psychiatric patients wishing to reintegrate into society and return to active employment.[388]

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

Does national law on discrimination cover access to and supply of goods and services? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

[387] U.S. State Department (Bureau of Democracy, Human Rights, and Labor) Report, *Cyprus: Country Report on Human Rights Practices 2007*, released on 11.03.2008 (http://www.state.gov/g/drl/rls/hrrpt/2007/100554.htm).
[388] U.S. State Department (Bureau of Democracy, Human Rights, and Labor) Report, *Cyprus: Country Report on Human Rights Practices 2009*, released on 11.03.2010 (http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm).

Discrimination in access to and supply of goods and services available to the public is prohibited on the ground of race and ethnic origin.[389] In addition, the law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, 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 person solely due to his/her racial or ethnic origin or religion is guilty of a criminal offence.[390] Neither of the two said provisions distinguishes between goods and services available to the public and those only available privately and it can safely be assumed that they apply to both.

For the ground of disability, the relevant law provides for equality of treatment of persons with disabilities with the rest of the citizens of the Republic in the provision of goods, facilities or services; differential treatment amounts to discrimination when the reason for such treatment is related to the person's disability and it is not "justified".[391] Also, this provision falls under the ambit of article 9(1) which provides that the principle at stake will be implemented through the taking of "reasonable measures". For more details on the operation of article 9(1), please refer to section 2.6(e) of this report.

Also under Article 7 (1) of the Disability law N.127(I)/2000 public transport must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs. However, the law provides that the application of this provision shall be regulated with regulations issued by the Council of Ministers upon the recommendation of the Ministry of Labour and Social Insurance and of the Ministry of Transport and Works. No such regulations have as yet been issued and public transport remains to a large extent inaccessible, although there are plans to adapt buses to some of the needs of persons with disabilities.

Furthermore, Article 8(1) of the Law on Persons with Disability N.127(I)/2000 requires that the competent governmental departments must, within a short period of time, proceed to the installation of a suitable system of telephone services which assists 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 at certain hours sign language is available for news broadcasts.

Law N.42(I)/2004 which sets out the mandate of the Equality Body prohibits direct and indirect discrimination on all five grounds foreseen by the Directives plus

[389] Article 4(e) of Law 59(I)/2004, transposing the Racial Equality Directive.
[390] Article 2A(4) of Law No. 11/1992.
[391] Law 127(I)/2000, Article 6(1).

community, language and colour, in all fields covered by the Directives including the supply of goods and services (article 6(2)(g)).

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

No special provision is made in the law for provision of financial services in particular; the general provisions regarding supply of services apply.

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

Does national law on discrimination cover housing? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

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 "the access to goods and services available to the public and the supply thereof, including housing" as one of the fields of application. As regards the remaining grounds protected by the Directives, housing discrimination forms part of the mandate of the Equality Body.[392] Also, 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'.

Law N.42(I)/2004 which sets out the mandate of the Equality Body prohibits direct and inderect discrimination on all five grounds foreseen by the Directives plus community, language and colour, in all fields covered by the Directives including access to housing (article 6(2)(g)).

However, 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

[392] The Combating of Racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004, article 6(1)(g).

stated that the issue at stake (access to property) was deemed to be outside the scope of the Directive.[393]

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

Patterns of segregation: migrants

In April 2010 the Nicosia Municipality started to secure eviction orders for old and unmaintained commercial premises basically unfit for human habitation being used as homes for poor immigrants.[394] Although the measure was in theory intended to improve living conditions of migrant workers, it inevitably led some migrants to share more cramped space in residential apartments with other migrants. No plan has been made by the Municipality regarding the relocation of the persons evicted.[395] Newspaper reports regularly highlight the plight of immigrants' squalid living conditions[396] whilst police raids sometimes lead to the discovery of squalid shacks inhabited by migrant workers who are victims of labour trafficking and who are forced to work long hours and have their travel documents and pay withheld.[397]

A qualitative survey conducted in May 2010 by Insights Market Research in cooperation with the European University of Nicosia on behalf of the Socialist Women's Movement,[398] which investigated the views and experiences of women from Britain, Bulgaria, Romania, Greece and Pontos living in Cyprus, revealed that Pontian, Bulgarian and Romanian women faced difficulties in securing living accommodation as most landlords did not want to rent to them.

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

[393] Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos (17.12.2007) Case No. 303/2006.
[394] P. Dewhurst (2010) 'Evicted for their own safety, but where can they go? Over crowing looms in old city clear-out" in *The Cyprus Mail* (16.05.2010). The article has been awarded a prize by the Minister of Interior under an ERF project entitled 'Awareness and sensitisation of public opinion and particularly local societies for issues relating to persons entitled to international protection in Cyprus' (www.asylumaware.eu).
[395] Editorial (2010) " Our view: Municipal eviction orders a non-starter" in *The Cyprus Mail* (14.04.2010).
[396] B. Browne (2009) 'Shelter plea for Paphos homeless' in the Cyprus Mail (08.12.2009).
[397] E.Hazou (2010) "Police raid slave labour farm" in the Cyprus Mail 01.09.2010; G. Psyllides (2010) "Five day remand after farm arrest" in The Cyprus Mail (02.09.2010).
[398] The method used was eight focus groups lasting from 90 minutes to two hours. The results of the survey were presented in a press conference on 04.10.2010.

abandoned and derelict properties within old Turkish quarter of Limassol which the Turkish Cypriots were forced to vacate several decades ago. Many of these houses were without doors or windows, sanitary system, electricity or water supply. By 2003, approximately 360 Roma persons had settled in these properties, without any preceding repair works.

The arrival of the Roma families in the south 1990-2000 was greeted with fear and suspicion by the local communities as well as by the authorities.[399] The then Minister of Justice alleged in a public statement that the Roma families may well be 'Turkish spies'[400] 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."[401] The Third ECRI 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."[402] At the beginning of this influx, some Roma families were detained in Central Prison; this practice was discontinued when the Attorney General ruled it as illegal.[403]

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.[404] In her Annual Report for 2003 the Ombudsman referred to an investigation carried out by her office into these settlements where most families were residing in temporary structures set up by themselves made of corrugated iron, wood, carton and plastic and without electricity and 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.[405] A subsequent report released by the Ombudsman on 30.06.2003 expressed concerns about the failure of the authorities to implement

[399] Hadjicosta, M. (2001) "Fears over gypsy influx", *The Cyprus Weekly*, 13-19/04/2001 available at *Dom Research Center* http://www.domresearchcenter.com/news/cyprus/index.html.
[400] Remarks by Justice Minister Koshis in Matthews, J. (2001) "More gypsies crossing from north as Koshis warns about spies", *The Cyprus Mail*, 03/04/2001, available at http://www.domresearchcenter.com/news/cyprus/index.html.
[401] Editorial (2001) "Our reaction to Gypsies raises some awkward questions", in *The Cyprus Mail*, 10/04/ 2001, available at http://www.domresearchcenter.com/news/cyprus/index.html .
[402] Third ECRI Report on Cyprus, adopted on 16.12.2005, Strasbourg 16.05.2006, Council of Europe, p. 25.
[403] Hadjicosta, M. (2001) "Gypsies released from remand cells", *The Cyprus Weekly*, 20-26/04/2001.
[404] Although the Interior Ministry claims that it has successfully carried out a housing plan for setting up pre-fabricated units in various communities in Limassol and Paphos with all necessary facilities, hepatitis incidents in 2005 and incidents of visceral leishmaniasis in 2006 in the Roma settlement of Makounda are attributed to poor hygienic conditions in the settlement: Nanos, C. (2005): "Se eksetaseis oloi oi athigganoi" in *Politis* (24.09.2005); Theodoulou, J. (2006): "Authorities play down rare disease in Gypsy camp" in *the Cyprus Mail* (26.05.2006).
[405] Cyprus Ombudsman Annual Report 2003, p.37.

policies decided in March 2000 that were designed to tackle homelessness and unemployment amongst the Roma.[406]

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. Also a multi-purpose community centre was set up in the Turkish quarter, which aimed at taking action towards integrating the Roma and promoting 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 timer to be present.

Turkish Cypriots

The particular situation facing Turkish Cypriot property owners as a result of the unresolved Cyprus problem is the subject of a number of court cases,[407] as their access to their properties is blocked through the institution of the Guardian of Turkish Cypriot Properties. In order to achieve this, the Courts resort to the rigorous application of the doctrine of necessity, the legality of which is indirectly but persistenly challenged by the ECtHR,as a number of Turkish Cypriots are taking their property cases there in an effort to secure judgements that will allow them access to their properties in the south despite the fact that they reside in the north. In 2010 the Equality Body issued the first decision ever from a Cypriot institution that locates discrimination in the manner in which Turkish Cypriot properties are managed by the Greek Cypriot controlled state. The complaint examined the practice of requiring the approval of the Interior Minister every time a property transfer from or to a Turkish Cypriot was to take place and found this to be discriminatory. [408]

An amendment to the Guardian Law in 2010[409] introduced two significant changes. One of these amendments, found in Article 3, entitles the Guardian to lift the

[406] The Cyprus Ombudsman's report was quoted in: Amnesty International, Report on Cyprus covering events from January-December 2004.
[407] In these court decisions, the Supreme Court denied the Turkish Cypriot applicants access to their properties since these were placed under the control of the "Custodian", who is the Interior Minister, pending resolution of the Cyprus problem.
[408] Reference No. AKP 6/2009, AKP 23/2010, dated 25.08.2010. For a summary in Greek please the Legal Network's Cyprus Country Report for 2010.
[409] In 1975, following the war in Cyprus, the Council of Ministers issued a general requisition order for all Turkish-Cypriot properties located in the area under its control, for the purpose of their administration and their utilization, mainly for the benefit of the Greek Cypriot displaced persons. In 1991 a new law set up the institution of the 'Guardian of Turkish-Cypriot Properties' mandated to serve the needs of the displaced persons as well as the interests of the Turkish-Cypriot owners: Law containing Temporary Provisions for the Administration of Turkish-Cypriot Properties in the Republic and other related matters N.139/1991. The institution of the Guardian has been repeatedly challenged by Turkish Cypriot owners both in the national Courts and before the ECtHR.

'protection'[410] afforded to Turkish-Cypriot properties and hand over the property to its rightful Turkish Cypriot owner, after taking into consideration the circumstances of each case and balancing all factors, including whether the Turkish-Cypriot owner or his/her heirs or successors in title occupy property belonging to a Greek-Cypriot in the north. The wording of the law is such that these criteria are not exhaustive and that the Guardian has a wide discretion to allow or not the return of a property to its Turkish-Cypriot owner. In *Ijlal Ahmet Zeki Mustafa v The Republic of Cyprus*[411] the applicant was a Turkish-Cypriot permanent resident of Australia who had inherited the property from her father. The property had been left behind by her father when he fled his village in 1974. The Court found that the case does not meet the criteria set by the 2010 amendment of the Guardian Law, ignoring the fact that the criteria were not intended to be exclusive but merely indicative. The Court focused on the fact that the property in question was passed on to the applicant in 1992, i.e., after the Turkish invasion, and that the applicant's deceased father had settled in a village under the control of the Turkish army. Although not expressed in so many words, the Court found that the applicant did not demonstrate elements suggesting 'allegiance' to the Republic (by choosing to settle in the Republic-controlled area, for instance).

In effect, the treatment of these cases by the authorities and by the Courts points to the direction that although the right to reside in one's home will be respected, all other rights derived from the ownership of a property, such as the right of access, the right to sell or rent, the right to receive compensation when expropriated, are suspended until "resolution of the Cyprus problem".

The other new provision introduced by the 2010 amendment to the Guardian Law was that if the implementation of any provision of this law results in the violation of any rights arising under the ECHR or its Protocols, then the person aggrieved can sue the Republic at the District Court.

Persons with disability or aged persons

Accessibility in housing is described in the law as one of the rights of persons with disability.[412] However it is one of the provisions of the law which become operative through the adoption of reasonable measures (listed in article 9(1) of the law) and the reasonableness of the measures is judged by taking into consideration a number of factors which clearly does not create a mandatory regime. In terms of policy, an officer from the Department for the Administration of Turkish Cypriot Properties of the Ministry of Interior, which is in charge of the properties which the Turkish Cypriots were forced to abandon between 1963-1974, informed the author that in determining the leasing of properties under their custody, the needs of disadvantaged groups such as the elderly, children, people with a physical disability, the terminally ill, HIV-

[410] The phrase used in the law is 'to lift the administration': Article 2 of Law N.39(I)/2010.
[411] Case No. 688/2009, judgment delivered on 09.06.2011.
[412] Law on Persons with disability N.127(I)/2000, article 4(2)(c).

positive individuals, persons with persistent medical problems or intellectual or psycho-social disability and other vulnerable groups are prioritised.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Copying verbatim the wording of both Article 4 of the Racial Equality Directive as well as Article 4(1) of the Employment Equality Directive, Article 5(2) of Law No. 58(1)[413] (transposing the Employment Equality Directive) allows for differential treatment based on racial or ethnic origin, religion, belief, age or sexual orientation when the nature of the particular 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. Along similar lines, the Law on Persons with Disabilities (Amendment) of 2004[414] excludes from its scope activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability lacks, constitute a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures'.

The Law on Public Service[415] which used to provide that "only Cypriot citizens shall be appointed as civil servants" has been amended by replacing the term "Cypriot" with the term "European". However, a stringent Greek language requirement has been introduced, rendering it very difficult, if not impossible, for non-native Greek speakers to become members of the civil service, a measure severely criticised in several Equality Body decisions. The requirement provides that all non-university graduates and all graduates from non-Greek speaking universities must undergo a Greek proficiency test the standard of which is very high.[416] Furthermore, although Turkish is an official language of the Republic, there is no provision for native Turkish-speakers accessing the civil service on the basis of their own language: they also have to undergo the Greek proficiency test.[417]

[413] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).
[414] Law on Persons with Disabilities No. 57(I)2004 (31.03.2004), Section 4(1), amending Section 3A(b) of the basic law.
[415] Public Service Law 1/90.
[416] Ironically, although this test was introduced in order to lawfully exclude as many non-Cypriots as possible, Greek nationals, now applying en mass for civil service positions in Cyprus as a result of the debt crisis in Greece, can usually pass this test with higher grades than Cypriots, who have to struggle with two spoken languages at the same time (Greek *and* Cypriot).
[417] Article 123 of the Cyprus Constitution, which provides that 30% of the public service positions must be allocated to members of the Turkish-Cypriot community, has been defunct since the constitutional crisis of 1963.

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

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

Copying verbatim part of Article 4(2) of the Employment Equality Directive, Article 7 of Law No. 58(1)[418] provides that in the case of 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 shall not constitute discrimination when, due to the nature or context of these activities, religion or belief are a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

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". From the above Article it is apparent 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 (transposing Article 4(2) of the Employment Equality Directive). 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 where in the case of conflict the Courts chose to apply the national law rather than the law transposing the acquis.

b) Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).

There is no case law in Cyprus based on this provision. The autonomy of religious organisations may be subject to compatibility with the new anti-discrimination laws, however, this is part of the wider constitutional questions that go to the heart of the

[418] Equal Treatment in Employment and Occupation of 2004 N.58(1)/2004 (31.3.2004).

'Cyprus problem'. 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; women are excluded since they are not allowed to become priests and homosexuals are excluded as homosexuality continues to be considered by the church as a sin. In practice, organisations with an ethos based on religion, such as the Bishoprics, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the fields owned by the Bishoprics.[419]

Under article 7 of Law N. 58(I)/2004, "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 constitute 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.

Also, following the amendment of the constitution giving supremacy to EU law, the leeway provided by the Directive which provides that "this difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law" can be argued to have been further curtailed. Moreover, given that the Directive explicitly stipulates that such treatment "should not justify discrimination on another ground," it could be argued that any different treatment that relates to any ground other than religion, whether direct or indirect, is discriminatory and thus unlawful. So far there has been no case law on the subject.

c) *Are religious institutions 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 (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both? Is there any case law on this?*

There are no provisions under which religious institutions can openly and officially select persons for any position, although there is public discourse on church intervention particularly at schools and criticisms against the church for trying to interfere with 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 in order to be filled by a person of their choice.

[419] Interview with Petros Lazarou, secretary of the Morphou Bishopric, 16.01.2005.

Given that by far the most powerful of religious institutions 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 of significant capital such as banks and hotels. There is no publicly known incident where the church refused to hire a person on account of his/her religion, but given the all-powerful position of the church in Cyprus it is not very likely that many persons of non Christian orthodox faith would have applied for such positions.

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

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

The Law regarding persons with Disabilities 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.[420] The same exception appears as a reservation by the Republic of Cyprus in the ratification of the U.N. Convention on the Rights of Persons with Disabilities, ratified in 2011.

Also, Law 58(I)/2004[421] transposing the Employment Equality Directive provides that the prohibition of discrimination on the ground of age shall not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and the duties of the occupation.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

A law which 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”, which are the army, the police, the fire department and the prisons.[422] This is of a lesser significance since 2013, as all recruitments to the public sector have frozen as a result of the memorandum of understanding agreed with the troika.

[420] Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(1)(a) of the basic law.
[421] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).
[422] Law introducing special provisions for the hiring of persons with a disabilities in the wider public sector 146(I)/2009, article 2.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

Copying verbatim the wording of article 3(2) in both Directives, the laws transposing the two Directives exclude from their scope differential treatment due to nationality and do not affect the provisions and preconditions concerning entry, stay and treatment of third country nationals and stateless persons.

However, nationality is a protected ground by virtue of article 1 of Protocol No. 12 to the ECHR 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. This Protocol was embodied into national legislation on 19.04.2002 as Law 13(III)/2002. No reference is made in this law to stateless persons. Cyprus is not a party to the Convention relating to the Status of Stateless Persons.

A similar provision is also to be found in the law appointing the Ombudsman as the Equality Body[423] which bestows the Ombudsman with the task of promoting equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin and of protecting individuals from discrimination by public as well as by private bodies on the grounds provided in the law, which include nationality. No reference is made in this law to stateless persons either.

In its decisions, the Equality Body has made use of its extended mandate and considered nationality discrimination as prohibited by international laws; in some occasions nationality and ethnic origin has been used interchangeably, in the sense that whilst the case at stake was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives. An Equality Body decision has established that the exclusion of non-Cypriot EU citizens from a scheme of granting heating allowance amounted to discrimination on the basis of race or ethnic origin as well as of national origin under

[423] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004, Article 3(1)(b).

Protocol 12 to the ECHR.[424] 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.[425] Also, the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin.[426] 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 Discrimination[427] in combination with the Law on Equal Treatment in Employment and Occupation,[428] as it resulted in discrimination against EU citizens and third country nationals.

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.[429] The exclusion of third country nationals from the scope of the Rent Control Act has been the subject of an investigation from the Equality Body which recommended its revision[430] and has also been criticised by the UN Committee on Eliminating Racial Discrimination. [431]

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

Law 57(I)/2004 on persons with disabilities does not apply to differential treatment due to nationality and does not affect provisions and requirements relating to the entry and stay of third country nationals and stateless persons in Cyprus or the treatment arising from the legal status of such persons.[432] Identical provisions are

[424] Files AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.
[425] Reference A.K.P 73/2008, dated 30.12.2009.
[426] Files AKP 75/2005 and AKP 78/2005.
[427] Law 42(I)/2004 which sets out the mandate of the Equality Body.
[428] Law 58(I)/2004 which transposes Directive 2000/78 plus race/ethnic origin and minus disability.
[429] Diogenis Christophorou Ltd v. Giosa Victoria Mikaela, Ref. 161/2009, dated 05.06.2012, summarised in Annex III below.
[430] Report of the Anti-discrimination Authority regarding discrimination on the ground of ethnic origin in the Rent Control Law, dated 30 January 2012, Ref. AKR 226/2008, available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/243F024A4AA25064C22579B9003934E0/$file/AKI32.2008-06022012.doc?OpenElement.
[431] U.N. 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.
[432] Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Article 4(1), amending Section 3A(3) of the basic law.

also to be found in Law No.59(I)/2004[433] transposing (roughly) the Employment Equality Directive and in Law 59(I)/2004[434] transposing (roughly) the Racial Equality Directive. When viewed independently, the reference to differential treatment due to nationality may appear to contradict the main prohibition of race discrimination. However, the fact that this reference is part of the same sentence with the reference to the conditions of entry and stay of third country nationals and stateless persons, may lead to the interpretation that differential treatment due to nationality is permitted *only* in relation to the conditions of entry and stay of third country nationals.

Several decisions by the Ombudsman have criticised a number of practices of the immigration authorities in the process of granting citizenship. In particular, criticism is directed against the restrictive approach of the Director of immigration authorities as regards the acquisition of citizenship via registration and naturalisation; particularly critical are the decisions regarding the rejections of applications for citizenship based on marriage with Cypriots.[435] The decisions also highlight considerable delay in processing the applications, prejudice due to religion of the applicant and the exercise of administrative discretion regarding the interpretation of the regulation that excludes those who have entered the country illegally from acquiring citizenship.[436]

The Equality Body's decisions however may take a different stand where the ever present 'Cyprus problem' is involved. On 16.01.2007 a complaint was submitted to the Equality Body alleging that the law on the acquisition of citizenship by descent is discriminatory. The said law provides that children born to parents, one of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus even if the other parent holds or would have been entitled to Cypriot citizenship; that these children can become citizens only following a decision of the Council of Ministers.[437] This provision is intended to vest the Council of Ministers with the power to decide whether or not to grant nationality to children born to a Turkish Cypriot parent and a Turkish parent, where the latter is deemed to fall within the category of "Turkish settlers". The complaint alleged that the said provision was discriminatory contrary to the Constitution and international obligations of the Republic, as the rendering of a child's nationality conditional on the status of 'legality' or 'illegality' of the parents, or even worse of one of the two parents, not only violates the rights of the child, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect. Due to the lack of transparency in these procedures, it is not possible to assess the impact or to

[433] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Article 5(1).
[434] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 4(2).
[435] See relevant Ombudsman Reports, Files No. 2599/2005, 1958/2005, 2059/2005, 2368/2005, 2599/2005, 2780/2005.
[436] See Ombudsman Report, File No. 727/2006.
[437] Art. 109 Population-data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.

monitor implementation of this law. The Equality Body's decision[438] recognised that the examination of applications under the said provision are often unnecessarily delayed and reported that the Council of Ministers had adopted the Equality Body' recommendations in establishing that the right to nationality is guaranteed to children

- born on or before 20.07.1974 (date of the Turkish military invasion in Cyprus);
- One parent is a Cypriot and the other is a EU or third country national excluding Turkish nationals;
- whose parents married outside Cyprus or in Cyprus before 20/07/1974, whose Turkish-Cypriot parent had a relationship with the Turkish national irrespective of the events of 1974 (because of studying or working abroad);
- whose parents reside in the mixed village of Pyla.[439]

The decision adds that given that the Council of Minister's decision is governmental policy, it cannot intervene any further, although it does not explain why. It is apparent that the allegation for discrimination was not examined and that the Equality Body readily accepts that children may legitimately be discriminated against when one of the two parents entered Cyprus under the status of the "Turkish settler".

The Third ECRI Report on Cyprus[440] notes that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate'. 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 12 to the ECHR, which was ratified by Cyprus and which falls within the Equality Body's mandate.

In 2011 the Equality Body dealt with this highly politicised issue again, in response to several complaints from Turkish Cypriots regarding to the granting of Cypriot nationality to their children. Although this report makes extensive reference to ECRI's position on the matter, the Equality Body does not entirely adopt ECRI's position that discrimination exists. Instead, the Equality Body in essence endorsed the position of the government, 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 promptly notify failed applicants in order to avoid claims for maladministration and discrimination.[441]

[438] Dated 24.03.2008, ref. A.K.R. 10/2007.
[439] Pyla is a village where Greek Cypriots and Turkish Cypriots reside in a single village under a special regime.
[440] ECRI (2006), Third Report on Cyprus, Adopted on 16 December 2005, Strasbourg 16.05.2006.
[441] Report of the Anti-discrimination Authority on the handling of applications for citizenship by Turkish Cypriots dated 30.11.2011.

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) *Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married?*

The payment of work-related family benefits by employers is not expressly regulated by law in either the public or the private sector. In order to determine the legality of any provision or non-provision of work-related benefits, recourse must be made to the general anti-discrimination principles contained in the framework legislation. 'Family condition' is included in the prohibited grounds of discrimination in Article 28 of the Constitution which, under the Yiallourou case[442] is applicable per se both in the public and the 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. In practice, both in the private as well as in the public sector, free or subsidised medical care schemes are commonly made available to employees' spouses. This may result in unfavourable treatment of the unmarried employees; furthermore the granting of benefits to married couples only, amounts to indirect discrimination on the grounds of sexual orientation, given that same sex couples are unable to marry in Cyprus. The principle established by the ECJ in the Maruko case, which precludes legislation depriving the surviving partner from a survivor's benefit equivalent to that granted to a surviving spouse, may presumably be used in order to afford same sex partners in a long term albeit unregistered relationship, the same benefits as regards pensions with those accruing to married couples.

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) regulations of 1987 to 1994 sets the family condition of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base.

A decision of the Equality Body regarding this provision found that the differential treatment of unmarried employees vis-à-vis married employees without children

[442] Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001.

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 ground of belief and/or sexual orientation. Thus the Equality Body asked for this regulation to be revised[443] but until the date of writing no steps had been taken in that direction. In the years that followed, the need to institutionalise registered partnerships for common law couples same sex or opposite sex couples was repeatedly raised by the Equality Body[444] where the authorities are urged to institutionalise registered partnerships between; in its position paper published in December 2011 where once again it recommends the legalisation of partnerships amongst unmarried couples. In 2011 where the Equality Body criticised the Social Insurance Services for denying a widow's pension to the surviving partner of a deceased man after a cohabitation of 67 consecutive years out of which eight children were born. [445]

b) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners?

Common law marriage is not recognised in Cyprus so where benefits are available to married employees, these would necessarily apply to couples married in accordance with the law. From this perspective, same-sex and opposite sex unmarried couples are not treated differently by employers, although it should be added that homosexuality, decriminalised in Cyprus only after the relevant decision of the ECtHR against the Cypriot government,[446] continues to be a taboo subject, with only a handful of homosexuals being 'out of the closet'. If the registered partnership becomes law, as was the commitment of the majority of political parties, there may be more opportunities for further legal developments on this issue in the near future.

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

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Law 57(I)/2004 on persons with disabilities is stated not to affect any measures for, inter alia, the protection of "health and the rights and freedoms of others".[447] The same law further provides that the principle of equal treatment does not prevent the maintaining or introduction of regulations for the protection of health and safety at the

[443] Report of the Equality Body No. A.K.I 11/2004.
[444] File no. AKR 142/2009, AKR 16/2010.
[445] File No. AKR 48/2011, dated 02.05.2011.
[446] *Alexandros Modinos v. The Republic of Cyprus,* No. 15070/89(1993) ECtHR 19, 22.4.1993.
[447] Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(2) of the basic law.

workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.[448]

Law 58(I)/2004 transposing the Employment Equality Directive is also stated not to affect measures provided by national legislation 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.[449]

b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?

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 for the moment there are no such issues or debates in Cyprus, as there are hardly any ethnic communities using symbols of religion or culture.[450] Up until recently, the vast majority of Muslims of Cyprus, which are basically the Turkish-Cypriots, the Roma, migrant workers and asylum seekers from the Middle East were either secular or simply not using symbols in their appearance, however there have been increasing NGO reports recently about members of Nicosia's growing Muslim population being unable to find work as a result of wearing their religious symbols (headscarf, dress etc).[451]

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

4.7.1 Direct discrimination

Please, indicate whether national law provides an exception for age? (Does the law allow for direct discrimination on the ground of age?)
Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

[448] Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(2) of the basic law.
[449] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(3)(b).
[450] The sharp rise in asylum seekers has recently brought Cyprus face to face with the phenomenon of women hearing headscarves being unable to find employment: UNHCR report on the Situation of Refugees in Cyprus from a Refugee Perspective, 2004.
[451] U.S. State Department (Bureau of Democracy, Human Rights, and Labor) Report, *Cyprus: Country Report on Human Rights Practices 2009*, released on 11.03.2010 (http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm).

National law contains exactly the same exception for age as found in Article 6 of the Employment Equality Directive.[452] No case has so far been presented before the Cypriot Courts or the Cypriot Equality Body raising the issues examined in *Mangold* or in *Kucukdeveci, n*or are there any national laws providing 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 25 when calculating the notice period for dismissal. In any case, CJEU cases are binding authorities on Cypriot courts and can be relied upon in the future.

A study of the relevant cases decided by the Court and by the Equality Body reveals a significant difference between the treatment 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 exceptions premised upon a doctrine that 'unequal' situations must be treated differently and/or that discrimination must be unreasonable in order to be prohibited.[453] 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 to find that there is prohibited age discrimination in differential treatment on the ground of age rather than the Courts.[454]

a) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Although the exception of Article 6(2) is not specifically invoked, there are provisions in the law regulating 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.[455] 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 Civil Service Laws 1990-1996 provides that the element of age seniority may be taken into consideration as a criterion for selection of the candidate to be promoted, as a last resort where the candidates are otherwise deemed as equal.

[452] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Article 8.
[453] George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order, Ref. 1497/2008, dated 30.04.2012, summarised in Annex III below.
[454] See for instance the Equality Body decisions in 2012: Report ref. AKI 30/2011, dated 23.05.2012; and Report ref. A.K.I. 32/2008 dated 06.04.2012, summarised in Annex III below.
[455] This provision was the subject of an application to the Supreme Court claiming that it ought to be annulled for non-compliance with the equality principle. The Court rejected this argument: *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic*, Case no. 1223/2007, dated 22.11.2011, summarized under section 0.3 above.

Besides this law, there is a long list of laws regulating the payment of benefits under pension schemes to employees in the various governmental and semi-governmental 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. 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, which is also indirectly related to age.[456] The government of Cyprus is currently faced with infringement proceedings from the European Commission as regards this provision, although it is not clear yet whether the infringement proceedings will be based on the free movement acquis or on the equality acquis or both.[457]

In the private sector, pension schemes are regulated either by collective agreements (where such exist in the particular sector) or by private employment contracts or by the Law on Provident Funds[458] where benefits are paid under a provident fund. In the first two cases, it is impossible to monitor the conditions of eligibility for benefits under these schemes. In the case of provident funds, the relevant law prohibits discrimination only on the ground of sex but it is possible that any private provident fund which discriminates on other grounds will be held 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).

b) Does national legislation allow 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)?

As indicated in the preceding paragraph, in the public sector benefits under pension schemes depend at least partly on age. In the private sector, pension schemes are regulated either by collective agreements (where such exist in the particular sector) or by private employment contracts or by the Law on Provident Funds[459] where benefits are paid under a provident fund. In the first two cases, it is impossible to monitor the conditions of eligibility for benefits under these schemes. In the case of provident funds, the relevant law prohibits discrimination only on the ground of sex

[456] Decision Reference number A.K.I. 63/2008 και A.K.I. 1/2009, dated 04.06.2009. The report states that the aim of this provision could have been served by introducing a condition that pension benefits are payable upon completion of certain years of service irrespective of age. The case is summarised in the Legal Network's Cyprus Country Report for 2010.
[457] http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1976&furtherNews=yes.
[458] Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81.
[459] Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81.

but it is possible that any private provident fund which discriminates on other grounds will be held to be acting unlawfully 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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

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. 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 has established the principle expounded by the CJEU in the *Coleman* case that discrimination against a person with caring responsibilities towards a person with disability is discrimination prohibited by law.[460] This principle has also been recorded in the Code of Conduct for disability discrimination at the workplace issued by the Equality Body in September 2010 which has a binding effect.[461]

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

There is evidence that in practice older workers face discrimination when it comes to new appointments, with many employers specifying in job advertisement upper age limit of new recruits,[462] in spite of the law prohibiting such age limits. Furthermore, there is evidence that employers are very often reluctant even to interview applicants who are older unemployed workers and it would not be surprising to find that age discrimination is practiced across the board, as until recently it was not considered to

[460] Equality Body report dated 25.06.2010, Ref. A.K.I. 82/2009, summarised in the Legal Network's Cyprus Country Report for 2010.
[461] The Code is available in Greek at: http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_diakriseis_logo_anapirias_ergasia.pdf.
[462] The only research undertaken is a paper by House 1992 which discusses the problems of older workers in the labour force generally.

be discriminatory; there is still no monitoring mechanism in place nine years after the enactment of the law prohibiting age discrimination.

Since the enactment of the new laws, a number of age discrimination complaints were submitted to the Equality Body, some of which concerned age limits fixed with regard to access to employment in the public sector. When the Equality Body found in favour of the complainant in one case,[463] the age limit condition in another case was revoked from the job description before this second complaint was processed by the Equality Body. However, by the time that the age limit was revoked, the deadline for submitting applications for employment was already closed. The Equality Body pointed out that the revocation of the age limit provision would be given more substance if the same employment position was re-advertised without the age limit condition, to enable persons aged over the previously imposed age limit to apply. This recommendation was complied with and the position was re-advertised.

A number of cases were decided by the Equality Body which prohibit the setting of an upper age limit for the recruitment of persons in the Civil Service and the Cooperative Credit Institutions. In 2008 a Labour tribunal found that the fixing of an upper age limit in a job advertisement by a credit institution was unlawful but awarded the applicant only a small fraction of the compensation sought (€1,500 as opposed to 555,754).[464] Upon appeal,[465] the Supreme Court confirmed the trial court's finding on this point, because the applicant would not have been hired anyway since the other candidates were better qualified, based on the principle expounded by the ECJ in the case of *Draehmpaehl.*[466] During 2012, the Equality Body found that the age limit of 55 for recruitment in the position of a cultural attaché at the House of Cyprus in Athens was unlawful.[467]

In 2009 the Equality Body carried out an information campaign addressing discrimination contained in job advertisements by sending out letters to stakeholders informing of the provisions of the law. Although orally the officers of the Equality Body informed the author that the campaign addressed discrimination on all grounds, the Annual Report of the Equality Authority records that the campaign was aimed at eliminating gender discrimination.[468]

Following the enactment of the new law in late 2009 introducing quotas in favour of persons with disability, a blind person wrote to the Labour Minister to complain that

[463] The case involved a post for the Public Education Commission, which had a statutory upper age limit, whilst an equivalent post in the Public Service Commission did not contain such a restriction (File AKI 25/2004).
[464] Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (2008), Case No. 258/05, reported above.
[465] Appeal No. 287/2008, dated 11.07.2011, summarized under section 0.3 above.
[466] Case C-180/95 [1997] ECR 1-2195.
[467] Decision Ref. AKI 30/2011, dated 23.05.2012, summarised under 0.3 above.
[468] The report is available in Greek at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/etesia_ekth_aim_2009_0.pdf.

another governmental department refused to offer him a job in violation of the quota imposed by the new law. In response, the Labour Minister explained that her ministry lacks competency to interfere with decisions of other departments. The incident is indicative of the impact of the lack of enforcement mechanism, which applies to all grounds and all fields.

The only exceptions permitting minimum or maximum age requirements in Cyprus law are the ones listed in Article 8 of Law 58(I)/2004 which, as stated above, are a direct copy of the provisions in Article 6 of the Employment Equality Directive. In addition, the Cypriot law provides an exception relating to the armed forces, whereby the principle of non-discrimination on the ground of age is stated to be inapplicable in the armed forces to the extent that the fixing of an age limit is justified by the nature and the duties of the work.[469] The law does not specify the age limit applicable in this case, which is determined by the service schemes of the armed forces.

Also, the 2009 law setting quotas in favour of persons with disability excludes army, the police, the fire department and the prisons from the ambit of the law.[470]

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

Civil/public servants and public employees receive two types of pensions, one from the Social Insurance Scheme, which is based on the social insurance contributions they have paid during their working lives and an additional one called State Pension, which is state funded and does not depend on contributions. The Social Insurance

[469] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).
[470] Law introducing special provisions for the hiring of persons with a disabilities in the wider public sector 146(I)/2009.

pension begins at 63, which is dependent on contributions,[471] whilst the State pension becomes payable upon retirement at the age of retirement or under the early retirement scheme. As soon as the Social Insurance pension is activated, the State pension is reduced by an equivalent amount.

In order to be entitled to a full pension, public servants[472] have to complete 32 and 1/3 years of service, but there is provision for early retirement at 55 years at a reduced pension. Public servants and employees have the option to receive a retirement lump sum and a reduced pension, or receive a higher pension.[473]

As part of the austerity package introduced in order to meet the state budget deficit, new retirement ages for public servants were introduced on 28.12.2012.[474] The law has reduced retirement benefits and has increased the retirement age.

Pension schemes of semi-governmental bodies and teachers in public education schools used the civil service model, but they are contributory pension schemes.

b) Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?

There is no fixed 'normal age' for such arrangements; it depends on each scheme. It is possible to collect a pension and continue to work.

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?

Retirement age in Cyprus is statutory *only* for the civil servants. Until the end of 2012, this was fixed at sixty-three for both the governmental as well as the semi-governmental sector (except teachers in public education). Up to 2005, for public servants the retirement age was 60, but it was extended to 63 following an agreement between the Government and the public service trade union, PASYDY, which was followed by an amendment in the laws on Pensions[475] and on Public

[471] The Social Insurance pension consist of the 'basic pension', which is available to all (€341.76) plus the amount that derives from the 'proportional scheme', which depends on national insurance contributions.
[472] The actual amount for the full pension depends on scales etc.
[473] This applies to all those who are part of the Pension scheme.
[474] Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application). N.216(I)/2012, available at http://www.cylaw.org/nomoi/arith/2012_1_216.pdf.
[475] Law on Pensions (Amendment) N. 69(I)/2005.

Service.[476] The 2005 law provided for the gradual extension of the mandatory retirement age to 63 for all those already in service, but for the new recruits the 63 age will be compulsory.[477]
A number of Supreme Court decisions since 2007[478] found that the different retirement age for employees of different ages does not amount to age discrimination.

Late retirement is prohibited by law for civil servants, public employees, semi-governmental organisations employees and employees of public education institutions.

A government proposal to extend retirement age for secondary public education teachers from the age of 60 to 63, although rejected by the teachers themselves in a referendum in 2005, was subsequently adopted by the House of Representatives in 2010. Thus, by an amendment to the Pensions Law introduced in 2010[479] persons turning 60 on or after 01.09.2013 retire at 63; persons turning 60 between 01.09.2012-31.08-2013 retire at 62; and persons turning 60 between 01.09.2011-31.08.2012 retire at 61.

A new law enacted on 28.12.2012 sets new retirement ages and retirement benefits for the public servants including public education teachers.[480] These are as follows:

Public servants
- Public servants who turn 63 on or after 01.01.2016 will retire at 65 (except for medical practitioners);
- Public servants who turn 63 between 01.01.2013-31.12.2013 will retire at the age of 63 and 6 months;
- Public servants who turn 63 between 01.01.2014-31.12.2014 will retire at 64;
- Public servants who turn 63 between 01.01.2015-31.12.2015 will retire at 64 and six months.

[476] Law on Public Service (Amendment) N. 68(I)/2005.
[477] In particular, the retirement age fixed by article 4A of the Pensions Law of 1967 N.9/67, as amended by Law N.69(I)/2005, is as follows: The age of 63 for those who attain the age of 60 on or after 01.07.2008; the age of 62 for those who attain the age of 60 between 01.01.2007-30.06.2008; the age of 61 for those who attain the age of 60 between 01.07.2005-31.12.2006.
[478] Vasos Constantinou v. The Republic of Cyprus through the Public Service Commission; Androula Stavrou v. The Republic of Cyprus through the Public Service Commission, Case Case Nos 1795/2006 and 1705/2006 (01.06.2007), referred to above in section 0.3 of this report.
[479] Article 4(b) of Law 94(I) of 2010.
[480] Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application). N.216(I)/2012, available at http://www.cylaw.org/nomoi/arith/2012_1_216.pdf.

Police officers

- Police officers with the rank of lieutenant or higher and who turn 61 on or after 2016, will retire at 63;
- Police officers with the rank of lieutenant or higher and who turn 61 between 01.01.2013-31.12.2013, will retire at 61 and 6 months;
- Police officers with the rank of lieutenant or higher and who turn 61 between 01.01.2014-31.12.2014, will retire at 62;
- Police officers with the rank of lieutenant or higher and who turn 61 between 01.01.2015-31.12.2015, will retire at 62 and 6 months;
- Police officers with a rank not higher than a sergeant who turn 60 on or after 11th march 2016 shall retire at 62;
- Police officers with a rank not higher than a sergeant who turn 59 between 11th September 2014 and 10th March 2016 shall retire at 61;
- Police officers with a rank not higher than a sergeant who turn 58 between 11th March 2013 and 10th September 2014 shall retire at 59 and six months.

Secondary education teachers (in public education)

- Secondary education teachers who turn 60 on or after 1st September 2016 shall retire at 65;
- Secondary education teachers who turn 60 between 1st September 2012 and 31st August 2013, shall retire at 62;
- Secondary education teachers who turn 60 between 1st September 2013 and 31st August 2014, shall retire at 63 and six months;
- Secondary education teachers who turn 60 between 1st September 2014 and 31st August 2015, shall retire at 64;
- Secondary education teachers who turn 60 between 1st September 2015 and 31st August 2016, shall retire at 64 and six months.

Primary education teachers (in public education)

- Primary education teachers as from 1st September 2016 shall retire at 62;
- Primary education teachers who turn 60 between 1st September 2013 and 31st August 2014, shall retire at 60 and six months;
- Primary education teachers who turn 60 between 1st September 2014 and 31st August 2015, shall retire at 61;
- Primary education teachers who turn 60 between 1st September 2015 and 31st August 2016, shall retire at 61 and six months.

On the same date (28.12.2012) another law extended the retirement age for army personnel.[481] This law also entered into force on 01.01.2013. The new retirement age varies from 52 and six months to 65 depending on rank and on the date when the employee reached a certain age foreseen in the law, following the phasing out

[481] Law on members of the army of the Republic (Retirement and other related matters) (Regulations of General Application) N.215(I)/2012.

system foreseen in the case of public servants, above.

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

There is no statutory retirement age in Cyprus for employees in the private sector. Up until now, the majority of private sector workers retired on their 65th year, which is the pensionable age prescribed by the Social Insurance Law.

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?

Mandatory retirement age is fixed only in the public service and is the same for men and women. Employees in the private sector *usually* retire at sixty-five although they are not legally compelled to do so. In the nationalised industries it is permissible to extend one's retirement age with the consent of the employer, in which case the retirement age is regulated by the employment contract or the collective agreement, if such exists in the particular field. However, under s.4 of the Law on Termination of Employment, the right to protection from unfair dismissal is lost upon reaching pensionable age. This effectively means that the employer is free to dismiss an employee or force him/her to retire at any time after he/she has reached pensionable age without having to pay any compensation. A complaint was submitted to the Equality Body in 2005 alleging that loss of protection from unfair dismissal for persons who have reached either their pensionable or their retirement age amounts to unlawful discrimination on the ground of age. The Ministry of Labour defended the said legal provision on the following grounds:

- Differences of treatment on the grounds of age are permitted under article 6 of the Directive (which is copied verbatim as section 8(1) of Law 58(I)/2004) as a measure that is 'objectively and reasonably justified'. The employment policy goal of creating jobs for young persons by replacing the ones who have completed their cycle of work is, according to the Ministry, 'objectively and reasonably justified' and thus legitimate.
- The age of 65 is not an arbitrary one; it was chosen because it is the retirement age for the purposes of both the Social Insurance law and the Social Pension law, which provide the employee with pension benefits.
- The said legal provision creates an incentive for employers to employ senior /older persons, thus serving the policy goal of extending the duration of the professional life of senior citizens who are willing to continue working.

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 unemployment, it is unlikely that this provision will be revised now.

f) Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding compulsory retirement.

Regarding the ruling in *Wolf:*

National legislation does not preclude legislative or other instruments which set a maximum limit for recruitment. Article 8(1) of Law 58(I)/2004 (transposing Directive 2000/78) sets out the general exception of 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 of the Directive as to what may constitute permissible differential treatment. Although the list is not intended to be exhaustive, the focus is clearly labour market policy and not the need to have full physical capacity to perform the work. Besides, the Cypriot legislator chose to specify in 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 for goals which relate to physical capacity and readiness rather than labour market polices, the appropriateness and necessity of the measure does not follow automatically, as it does in the case of labour market policies.

In Cyprus, both the police force and the fire service 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 a promotion position in the police force, on the ground that the means to achieve the admittedly legitimate aim of physical capacity and readiness of the police force were not appropriate or necessary.[482] The Equality Body has also in the past repeatedly rejected the stereotype that younger persons are by definition more healthy fit and capable. Therefore, if these age limits are subjected to the Equality Body's scrutiny, it is possible that they may be deemed not to withstand the test of appropriateness and necessity.

[482] See Equality Body report dated 06.04.2012, Ref. A.K.I. 32/2008, summarised in Annex III below.

Regarding the ruling in *Andersen:*

There are no provisions in Cypriot law for a severance pay for employees who have worked for the same employer for many years. Employees who are unfairly dismissed are entitled to a 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 a redundancy pay from the government calculated upon 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 a 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 that this provision is contrary to the Directive and has asked for its revision.

Regarding the ruling in *Mangold:*

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 25 when calculating the notice period for dismissal.

Regarding the ruling in *Palacios de la Villa:*

Compulsory retirement age is common in Cyprus both in collective agreements as well as in legislation regulating 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 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 to regulate collective agreements; these are based on the principle of free bargaining.

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

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 nondiscrimination principle. In other cases, the aim can, in addition to the social policy objectives, 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 aims.

Regarding the ruling in *Rosenbladt:*

Collective agreements and legislative instruments can provide for compulsory retirement age which 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/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 16.02.2013 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 from the workers or the employers' unions or from the Ministry of Labour itself and the request will be examined by a 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 work with inferior working conditions.

As regard the declaring a collective agreement to be of general application, on 16.02.2013 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 from the workers or the employers' unions or from the Ministry of Labour itself and the request will be examined by a 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 work with 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 elections which replaced the previous left-wing government with a new right wing government,

whose cabinet members mainly originate from the employers' unions. Thus, the future of this bill is rather uncertain under the circumstances.

Regarding the ruling in *Georgiev:*

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 in any case free to dismiss employees who reach retirement age without having to compensate them. In spite of this measure having been found by the Equality Body as not complying with the Directive, the relevant law has not been modified.

Regarding the ruling in *Fuchs:*

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 of the *Land* Hessen in the *Fuchs* case. The new law which came into force on 01.01.2013[483] as part of the austerity package provides for 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 must be 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 entry of young persons in the labour market.

Regarding the ruling in *Prigge:*

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 a private agreement with the employer, but that is up to the employer to accept 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.[484]

[483] Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) N.216(I)/2012.
[484] Law Abolishing and Replacing Retirement Benefits of Public Servants and Employees of the Wider Public Service including Local Government Authorities (Provisions of General Application) N.216(I)/2012.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

The Termination of Employment Laws 1967-1994 which govern issues relating to redundancy do 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 workers who are about to be dismissed.[485] All other things being equal, however, the Court will apply the principle of "first in-last out"[486] although in other instances the Court has ruled that seniority *alone* cannot prevent the selection of a worker for redundancy.[487]

b) If national law provides compensation for redundancy, is this 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 in the same employer;[488] whether the period of employment was before 01.01.1964, as no compensation is payable for work before that date;[489] whether employment was continuous; [490] and the amount of weekly salary earned. [491] It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Termination of Employment Law 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 his/her employment. Also, in accordance with Article 19(2) of the same law, when a worker's employment is terminated within twelve months prior to his/her retirement age, the amount of compensation payable is reduced by one twelfth for every completed month of age during this 12-month period.

[485] Andreas Hadjidemetriou v. 1. Publishing company "To Vima" Ltd, 2. Redundancy Fund, 107/85.
[486] Chrysostomos Stavrou v. Redundancy Fund, 328/92.
[487] Charalambous v. Famagusta General Agency Ltd, 490/95.
[488] Termination of Employment Law, Table IV, Section 1.
[489] Termination of Employment Law, Table IV, Section 2.
[490] Termination of Employment Law, Table IV, Section 3.
[491] Termination of Employment Law, Table IV, Section 4.

There are a number of cases 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 where there was an offer by the employer for an alternative job position.

In the case of a 58-year old stock-keeper who was made redundant but was offered by the same employer an alternative position as a door-to-door salesman, the Courts held that due to his advanced age he was right to reject that offer and was therefore entitled to compensation.[492] Similarly, a middle aged woman who was offered by her employer an alternative position at another location, which involved thirty minutes' walk from her residence, was held by the Courts as reasonable in rejecting it and was therefore entitled to compensation.[493] By contrast, a young woman who rejected her employer's offer for an alternative position which involved thirty minutes' walk from her 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.[494]

The same principle is applied where 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, his/her refusal to adapt to the new technology is held unreasonable and therefore redundancy compensation is not paid, whilst if the employee is old, the Court will afford more understanding to his/her inability or refusal to adapt and redundancy compensation is paid.[495] 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 cases 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 yet clear whether or not these rules would withstand such a 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)

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

[492] Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund, 295/96.
[493] Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund, 634/96.
[494] Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund, 1164/97.
[495] Fotis Mikellides v. Redundancy Fund, 577/90.

Article 5(3) (b) of Law 58(I)/2004 transposing roughly the Employment Equality Directive[496] uses verbatim the provision in Article 2(5) of the Directive verbatim. The same provision is also to be found in Article 4(2) of Law on Persons with Disabilities (Amendment) of 2004.[497] There are no other provisions to be found in Cyprus laws relying on the exception set out in Article 2(5) of the Employment Directive.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The only exceptions to the prohibition of discrimination which are not mentioned above concern the positive action provisions which are discussed below.

[496] Equal Treatment in Employment and Occupation Law N. 58(1)/2004.
[497] Law amending the Law on Persons with Disability N. 57(I)/2004.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

Positive action provisions exist in all three laws enacted recently for the purpose of transposing Directives 2000/78 and 2000/43. The provisions are geared towards rendering differential treatment lawful under certain circumstances but fall short from creating an obligation for the adoption of positive action measures or from creating a mandatory regime.

Law N.59(I)/2004, which more or less transposes the Employment Equality Directive, renders non-discriminatory any differential treatment or the introduction or maintaining of special measures which, although indirectly appearing as discriminatory, aim at preventing or compensating for disadvantages linked to ethnic or racial origin.[498]

Along the same lines, Law 58(I)/2004, which more or less transposes the Racial Equality Directive, renders non-discriminatory any preferential treatment in employment which, although prima facie discriminatory, aims at preventing or compensating for disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation.[499]

Law 127(I) 2000 on persons with disabilities, as amended by Law N. 57(I)2004, renders non-discriminatory any preferential treatment in occupation which although appearing prima facie discriminatory, aims at preventing or compensating for disadvantages due to disability. The same law provides that the principle of non-discrimination does not prevent the maintenance 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.[500]

On 26.09.2002 the Supreme Court of Cyprus had declared void and unconstitutional, a set of legal provisions granting priority to employment in the public sector to persons with disabilities[501] and to persons related to the dead and the missing from the 1974 war or with war-related disabilities Law,[502] on a the basis of a quota system. The Court's reasoning was based on an interpretation of Article 28 of the Constitution that such priority discriminates against other candidates eligible for appointment in

[498] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 6.
[499] Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 9.
[500] Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(1) and 3(B)(2) of the basic law.
[501] Law No.245/1987.
[502] No. 55(I)) 1997.

the public service. As a result, Law No.245/1987, which had up until then provided priority to qualified candidates with disabilities for appointment in the public education sector, was abolished. On 16.04.2005 a new law came into force[503] which restored the old law of 1997[504] (previously declared unconstitutional by the above decision of the Supreme Court) which gives priority in employment in the public sector to relatives of the dead and the missing from the 1974 war in Cyprus and to persons disabled by the 1974 war. The result was that the quota system was restored only for the relatives of the missing and dead and for persons with war-related disabilities, but not for persons with disability in general. By the end of the following year, the Supreme Court had ruled that Law 87(I)/2004 (granting priority to war-disabled persons) was also unconstitutional, on the ground that it introduced a class of beneficiaries (the war-related disabled, etc) that is favoured against others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution.[505] Another law[506] granting pensions to Greek-Cypriots with a disability as a result of their army service or as a result of their involvement in the anti-colonial struggle of 1955-1959 or as a result of the war in 1974, still stands, presumably because it was not challenged in court by anybody. A law granting priority in employment to blind telephonists[507] had strangely survived the wave of declaring all positive measures unconstitutional; however in 2009 the Equality Body found this law to be discriminating against persons with other disabilities and has asked for its revision.[508] At the time of writing, no measures for its revision had been taken.

The above court decisions beg the question whether any law introducing positive action measures will also be deemed as unconstitutional. The government and the parliament were 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.[509] In response to these concerns, in 2006 the Constitution was amended so as to giving priority to EU regulations and Directives over all domestic legislation (including the Constitution). However, several Court decisions which followed took little notice of this development and continued to apply the Constitution as if it was the supreme law of the country. In 2009 a new law was enacted setting quotas in employment in the public sector for persons with disability. This law was again met with reluctance from governmental departments, seen as it was that it was violating article 28 of the Constitution. The culture of positive action in order to offer opportunities to historically disadvantaged groups had hardly begun to develop, when Cyprus sank into an

[503] Law No. 87(I)) 2004.
[504] Law No. 55(I) of 1997.
[505] Charalambos Kittis et al v. The Republic of Cyprus (2006), Appeal case No. 56/06 (08.12.2006).
[506] Law on Relief of Sufferers N. 114/1988.
[507] Law Providing for the Hiring of Trained Blind Telephonists in the Public and the Educational Sector and in Public Bodies (Special Provisions) N. 17/1988.
[508] Reference 2/2009, dated 19.11.2009, summarised in the Legal Network's Cyprus Country Report for 2010.
[509] Case No. C-450/93.

economic crisis and recruitments in the public service were frozen, as a measure to contain public expenditure. No case has been presented to Court invoking the provisions of this law and we therefore have no indication of what the judicial interpretation will be.

A law came into force towards the end of 2009 introducing quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent of the aggregate of employees per department. The law contains a number of provisions which the disability movement (via its confederation 'KYSOA') had strongly opposed during the consultation process.[510]

The implementation of the law is now basically defunct, as the austerity measures adopted in response to the economic crisis have led to the freezing of all new recruitments in the civil service.

In 2009 an Equality Body decision has raised again 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 has asked for its revision. In February 2011 a new law came into force providing for an annual grant of €3.675,48 to every family with a blind child. This is unlikely to be contested as incompatible with the equality principle, however, partly because different grants apply for different types of disability and partly, and more importantly, because grants especially as small as these are not seen as paramount as quotas in employment, a key issue for the disability movement.

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

Social Policy measures

- The Department of Social Inclusion of Persons with Disabilities under the Ministry of Labour and Social Insurance offers several schemes for persons with physical disability. Amongst the schemes offered are the subsidising of disability organisations and measures to assist with the labour integration of persons with disability, such as vocational training, supported employment, the provision of financial incentives for the creation and operation of small units for

[510] Contained in a statement made on 15.10.2009. For details of KYSOA's objections please see Country Report for the year 2011, pages 15-16. The report is available at http://www.non-discrimination.net/content/media/2011-CY-Country%20Report%20LN_final_0.pdf.

the self-employment of people with disabilities.[511] These are detailed under section 2.7 (Sheltered or semi-sheltered accommodation/employment) above.

- In 2010 the Ministry of Labour agreed to fund a scheme for social escort services of the Pancyprian Organisation of the Blind for adult persons with visual disability. The scheme involves the hiring of persons for the purpose of escorting blind and blind/deaf persons to various public services (governmental and semi-governmental departments) and other venues such as banks, the post office, hospitals, law offices, shopping, conferences, cultural etc to assist them in the carrying out of personal tasks for which vision is absolutely necessary. Escorts will also read and write the escorted person's personal correspondence, transcribe short texts, letters, articles etc, archive, and copy digital or audio texts or enlarged texts and will buy books, tape, CDs, memory cards and other audiovisual equipment and stationary. The beneficiaries of this service are persons whose vision in their best eye is lower than 6/60 with corrective lenses if such are used, including persons with additional disability (kinetic, psychosocial, psychological). The escort services are managed by the Pancyprian Organisation of the Blind whose officers assess each request separately and will act depending on the seriousness of each case.[512] During 2013 a total of 885 blind persons benefited from this scheme; the total amount expended was €93,950.[513]
- The Social Welfare Services of the Ministry of Labour offers grants to persons with "intellectual deprivation"[514] irrespective of the income of his/her family but provided that the person is not in gainful employment and does now own property (immovable or cash). For the year 2009 this grant amounted to €452 monthly. If a person is in gainful employment then the grant is reduced; if the person's salary exceeds €512 monthly then the grant is discontinued.[515] In addition to this grant, benefits are offered for: travelling, disposable nappies, monthly benefit for personal comfort, subsidy for heating up to €102 per annum, benefit for special diet as a result of an illness, benefit for assistance outside the home; subsidy for household equipment (furniture, electrical appliances), benefit for clothing and shoes, benefit for special needs which cannot be covered by other ministries (e.g. visual or hearing aids, false teeth, etc), assistance for home improvements, assistance for mental treatments especially for children with "mental deprivation".
- The Social Insurance Department offers disability pensions and 'incapacity' pensions.

511 http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/All/22639CC7EC3343F9C2257A7C002D273F?OpenDocument&highlight=εργοδοτηση στηριξη.

512 Source: Interview with Christakis Nikolaides, president of the Pancyprian Organisation of the Blind dated 28.02.2011.

513 Consultation with officer from the Department of Integration of Persons with Disability of the Ministry of Labour and Social Insurance.

514 Terminology used in the text of the scheme. It refers to persons with intellectual disability.

515 This is a highly problematic approach as in practice it results in persons not taking up employment opportunities so as not to lose their state benefit.

- The Disability Welfare Services of the Labour Office has introduced two schemes of providing incentives to employers in the private sector to employ persons with disability, co-funded by the European Social Fund. One scheme targets persons irrespective of the degree of the disability and the other scheme focuses on persons with severe disability (physical, sensory or intellectual).
- The Ministry of Finance offers a monthly benefit to persons with a disability who are in employment and to students and pupils who attend vocational training courses.
- The Ministry of Health offers free medical care in Cyprus for all persons with "intellectual deprivation" who receive disability benefit (i.e. who do not own property and are not in gainful employment).
- The Ministry of Education offers special education to children with "intellectual deprivation".
- A number of services are offered by the Ministry of Health for persons with psycho-social disabilities:
    - Hospital Treatment;
    - Outpatient Clinic Services in all district hospitals, in urban and rural health centres and in community mental health centres;
    - Services at Home (community nursing and occupational therapy programmes);
    - Services for Drug Addiction (on Alcohol, pills or other legal or illegal substances)-offered mainly in the frame of the Nicosia General Hospital (THEMEA) and Limassol General Hospital (THEA) and in the counselling / prevention centres, like "PERSEAS" and "TOXOTIS";
    - Services for Children and Adolescents;
    - Psychosocial Rehabilitation Services offered mainly at Day Centres and at Vocational Rehabilitation Centres.
- The Special Education for young persons with Special Needs Law 1 13(I)/1999, as well as the Public Assistance and Services Law of 1991 guarantees a minimum standard of living for all persons legally residing in Cyprus. The law applies to all persons whose resources do not meet their basic and special needs as defined by law, although no public assistance is paid to migrants who live below the poverty line. At the same time, this law includes special provisions for persons with a disability, single mothers, older persons, families with four children or more and internally displaced persons.
- Under a law enacted in 2006, the national confederation of organizations of persons with disability KYSOA became a social partner of the state in all matters pertaining to disability. Under the same law, consultation with KYSOA is now obligatory for all governmental departments dealing with disability and KYSOA became a receiver of an annual state grant for its running expenses.516 However, this law has not made the automatic upgrading of the status of KYSOA. In the process of consultation which preceded the enactment

[516] Law on Consultation Process of State and Other Services on Issues concerning Persons with Disability N. 143(I)/2006, dated 3.11.2006.

of the new law on quotas enacted in December 2009, which is clearly the most significant development for the disability movement in years, the objections raised by KYSOA were largely ignored. KYSOA was also excluded from the multi-disciplinary committee that assesses whether an applicant fits the definition of 'person with disability' provided in the law. The fact that KYSOA is not afforded any role whatsoever with regard to the implementation of this law raises questions as regards the essence and significance of the status of a 'social partner'.

- The Special Fund Law 79(I)/ 1992 provide for services and programmes for the rehabilitation of persons with disability.

Quotas

- A new law enacted in 2009 introduces quotas in the employment of persons with disabilities in the wider public sector at 10 per cent of the number of the vacancies to be filled in at any given time, provided that this does not exceed seven per cent 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 disability 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"[517] (the army, the police, the fire department and the prisons). As previously stated, this law is now essentially defunct, since recruitments to the public service are frozen as part of the austerity package intended to contain public spending.
- 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), Article 3, provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators[518] are given priority in appointment. The same law also provides that for the appointment of a non-blind person to the post of telephone operator, the Pancyprian Organisation for the Blind must give its prior written confirmation that there are no blind telephone operators as candidates for the specific post. Article 3 of the same law also provides that in case there are no blind telephone operators as candidates for the said position, other candidates with disability will be preferred. These provisions have worked fairly well and have significantly contributed 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 the blind persons in Cyprus. This law, which has resulted in the employment

[517] Law introducing special provisions for the hiring of persons with a disabilities in the wider public sector 146(I)/2009, article 2.
[518] Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. Also, the Pancyprian Organisation for the Blind, a non-governmental organisation, offers further training free of charge.

about 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. It is considered by the Pancyprian Organisation of the Blind as 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 for this institution and could mean that training may have to be channelled in other directions.[519] Strangely enough, this is the only one that has survived the Courts' tendency to declare unconstitutional laws giving priority in employment to persons with disabilities; however an Equality Body decision in 2009 has found this law to be discriminatory against persons with other disability and has asked for its revision; no such revision has taken place yet.

- The Public Service Law 1/1990, provides that, in filling vacant posts in the Public Service, priority should be given to disabled candidates who fulfil the schemes of service, provided that the Commission responsible for the selection is satisfied that they are able to perform the duties of the posts and they are not inferior to the rest of the candidates as regards merit and qualifications.

The Public Education Service Law, as amended by Law 180/1987, used to provide that in filling first entry posts in the Public Education Service, persons with disabilities should be appointed in accordance with a proportion specified by Law. Subsequently, this provision was indirectly declared unconstitutional, following a controversial court decision relying on a strict and rather conservative interpretation of the equal treatment principle of the Constitution.[520] This quota provision should have been reinstated following the 2006 amendment to the Constitution by virtue of which the EU regulations and Directives become the supreme law of the country and take precedent over national laws including the Constitution, but so far this did not happen.

Preferential treatment

- When the soft border dividing north and south of the country, sealed since 1974, was opened up in April 2003, enabling the crossing of persons from north to south and vice cersa, several Turkish Cypriots started to visit the Republic-controlled areas and seek access to health services in public hospitals. To meet the needs generated by this development, the government introduced a policy of providing free medical care to all Turkish-Cypriots without requiring proof of low income, as it is required of Greek Cypriots. This policy derives from another policy followed by the government, according to which certificates issued by the Turkish Cypriot authorities in the north, including income certificates, are not recognised, lest that would amount to recognition of the unrecognised Turkish

[519] 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. Mr Florentzos is the president of the Cyprus Confederation of organisations of persons with disabilities.
[520] Republic of Cyprus through the Civil Service Commission v. Eleni Constantinou, Appeal Case No. 3385, 26.09.2002.

Cypriot regime in the north. In view of this, it was deemed politically safer to provide free medical care to all Turkish Cypriots independent of income rather than have to review and thus perhaps indirectly extend recognition to income certificates issued in the north. The measure, which had been rigorously criticised by a section of Greek-Cypriot society, for discriminating against Greek Cypriots, was finally abolished in 2013, when a new health care scheme was introduced, as part of the austerity measures adopted to address the economic crisis. According to the new regulation, which affects not only Turkish Cypriots, entitlement to free healthcare is limited to those Cypriots or EU nationals who have contributed to the public social insurance scheme for at least three years.[521]

- Educational Priority Zones (ZEP): This measure, introduced by the Ministry of Education and operating for some years now, aims at placing in a special category certain schools where special attention and particular measures are needed to address particular educational needs, such as pupils coming from particularly poverty-stricken areas, high concentration of non-native Greek speakers, high drop-out rate etc. Schools classified as falling within ZEP receive extra teaching hours and other measures where needed. The institution of ZEP aims at reducing inequalities for pupils attending schools in disadvantaged areas with an increased proportion of immigrants, combating school failure and illiteracy. The measure aims at strengthening the capacity of children already attending such schools because of the location of their residence to enable them to stay in school longer and attain better grades.[522] More information about this measure is provided below, under '*Good Practice Initiatives'*.

The following measures are in place in relation to certain groups of persons with disability:

- Exemption from fees for medical purposes in public medical institutions.
- Special parking tickets that secure preferential parking for persons with disability.[523]
- Exemption from certain charges concerning telecommunications and telephone services.[524]
- Preferential treatment is offered by semi-governmental organisations to all persons with disability: The Cyprus Telecommunications Authority offers reduced subscriptions for land lines; the Electricity Authority of Cyprus offers reduced electricity rates; and Cyprus Airways (the national air carrier) offers discount at 50 per cent on air tickets to all persons with disability including intellectual disability and their escorts.

[521] http://www.moh.gov.cy/moh/moh.nsf/page93_gr/page93_gr?opendocument.
[522] http://www2.cytanet.com.cy/fanerom-dim/zep/html/ie_aead_ooci_eydni.html.
[523] Article 7A of Law on Persons with Disabilities 127(I)/2000 as amended by Law 102(I)/2007.
[524] Regulations 311/2001, 382/2002, 473/2002, 525/2002 and a number o decisions of the Cyprus Telecommunications Authority.

Roma and Minority rights based measures

- There are no positive action measures in place for the Roma community or for any other community, except the provisions related to the education of the Turkish-speaking children, consisting mainly of language classes, plus a small subsidy for school uniforms, the provision of meals at school and transport to and from the school. The aforesaid are not provided to this group in their capacity as Roma but in their capacity as 'Turkish speaking" people; no special classes are offered on Roma history and culture. Also, although the institution of the Educational Priority Zone (ZEP) referred to above is intended to cover schools in deprived and impoverished areas, it does not include all the schools attended by Roma pupils residing in neighbouring Roma settlements, which are renowned for their squalor and poverty.
- A few measures are in place regarding the three constitutionally recognised 'religious groups': the Armenians, the Maronites and the Latins. The public broadcasting service CyBC (Cyprus Broadcasting Corporation) has for several years been airing radio programmes especially prepared for the Maronites, the Armenians and the Latins, albeit in Greek. There are however some measures in place to promote the use of the languages of the religious groups. As from October 2009, lessons in the Armenian language are being offered to the public by the Ministry of Education in evening classes. The most important measure however was the codification of Cypriot Maronite Arabic. On 9-10 November 2007, the Ministry of Interior and the Ministry of Education held a Symposium for the codification of the Cyprus-Maronite Arabic under the auspices of the Law Commissioner. For the first time in 2007 an alphabet was developed by an expert linguist and specialist in Cypriot Maronite Arabic based on the Latin alphabet and taking into account the specificities of the Cypriot Maronite Arabic language. This was launched by the Maronite community in December 2007. Following the codification, some news articles in Cypriot Maronite Arabic now appear in the Maronite periodicals.[525]

In 2008 a Committee of Experts on Cypriot Maronite Arabic was set up to look into the codification of the Cypriot Maronite Arabic. A Cypriot Maronite Arabic revitalisation group was set up, which is composed of the team of experts, representatives of the Cypriot Maronite Arabic-speakers and a representative of the Ministry of Education and Culture who acts as a co-ordinator.

[525] Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus of 23.09.2009.

In addition, the Council of Minsters has decided to formally set up a team of experts which will be responsible for drafting and implementing an action plan for Cypriot Maronite Arabic.[526] Other measures include the repair and maintenance of places of worship, cemeteries and schools, small grants for newspapers and other print media published by Maronites, Armenians and Latins and for the creation and upgrade of their websites, the funding of a monument in Larnaca to commemorate the Armenian Genocide, the funding of a documentary for the Latins of Cyprus, etc.

It should however be stated that the three religious groups enjoy a high degree of social integration and amicable relations with the majority population and the administration and their degree of vulnerability cannot be compared to that of the Roma, the Turkish Cypriots or the migrants.[527]

In view of the Cypriot government having recently recognised the Roma as a minority within the meaning of the Framework Convention on the Protection of National Minority, an issue of violation of the equality principle may arise with regard to the measures adopted in respect of the Roma and those adopted in respect of the other minorities. However one may argue that the needs and priorities of the different minority groups are very different and thus the measures must be commensurate with the realities facing each of the minority groups. In the case of the Roma, a housing scheme has been in operation for several years now, which is not available to other minority groups.

By contrast, the other minority groups (Latins, Maronites, Armenians) have lobbied for and have succeeded in receiving funding and in institutionalising measures adopted in other fields which are not available to the Roma.[528] There is however little

[526] The Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages in Cyprus of 23.09.2009 regrets the fact that the team of experts works without remuneration and the measures for the promotion of the newly codified language have been only partially funded by the government. The report pointed out that for the action plan to be implemented and the work of the team of experts and the revitalisation group to be carried out effectively in the long-run, more financial resources need to be allocated.

[527] In the case of the Turkish Cypriots, the constitutional crisis of 1963 and the inter-communal violence that ensued, culminating in the war of 1974 has essentially stripped them of their communal rights under the Constitution; in addition, they are facing discrimination and hostility from sections of the majority population. In the case of the Roma, even though they are Cypriot citizens, they live in extreme poverty with a low degree of integration and zero civic participation; however as efforts are being made at the level of education with the Roma children, it is expected that this situation will improve with the new generation of Roma. The migrants of Cyprus have to cope against their precarious and short-term stay in Cyprus in a hostile environment of police repression, discrimination by their employers and harsh treatment by the immigration authorities who will deport migrants after ten or 20 years of stay for reasons like petty crime or simply expiration of their residence visa.

[528] A few examples of these are: elections are held within the three minority communities to elect their own representative who has the status of an observer in the House of Parliament; the recognition of the Cypriot Maronite Arabic language as a regional or minority language; radio programmes especially prepared for the Maronites, the Armenians and the Latins (some of them in their own language); the funding of newspapers and other print media published by Maronites, Armenians and Latins; funding to create and strengthen their website.

justification for the fact that no efforts are made to facilitate the Roma in electing their representative and to afford such representative the same status as that of the representative of the other minority groups.

The situation may partly be explained (but not justified) by the fact that these three groups (Latins, Maronites, Armenian) are, broadly speaking, well integrated in Cypriot society and face little or no hostility from the majority community,[529] whilst the Roma live in squalor, extreme poverty and unemployment, do not speak the majority language (Greek) and face hostility from the majority population.

Good practice initiatives

Educational Priorities Zones (ZEP)

The Educational Priorities Zones (ZEP), a measure which has been in existence since 2003, promotes literacy and school achievement in economically and socially depressed areas throughout Cyprus and addresses youth delinquency and early school leaving.[530] Schools selected to join ZEP are those were delinquency and illiteracy in secondary education can be traced back to; the aim is to prevent these two phenomena at primary education and pre-school before they appear at secondary education. The institution has secured funding from the European Commission through the European Social Fund for the project "Programme against Early Abandonment of school, against School Failure and Delinquency in Educational Priority Zones", which has enabled ZEP to employ additional teachers to operate smaller units in the morning, to employ teachers to implement programmes of creative occupation in the afternoons and to set up in every district Centres for information and psychosocial support. The measure brings extra hours of teaching at the school for the weaker students, free breakfast, afternoon supervision for homework and generally extra state funds to enable the school to cope with disadvantaged areas and families, Cypriot or non-Cypriot, having to survive on low budgets; in practice the measure mostly benefits migrant children.

[529] The only time when the issue of equality between the three religious groups and the Greek Cypriots was raised was when a Greek Cypriot complained to the Equality Body that the exemption of the adult males of the religious groups from the obligation serve in the army amounted to violation of the equality principle. The Equality Body found the complaint well founded and recommended that the religious groups be obliged to serve in the army in the same way as Greek Cypriots. The recommendation was adopted by the government.

[530] For more information about this measure, please see Country Report for 2011, available at http://www.non-discrimination.net/content/media/2011-CY-Country%20Report%20LN_final_0.pdf. For more information see Demetriou, C (2011), Report on measures to combat discrimination: Cyprus, Country Report 2011.

For the year 2012, there were eight ZEP in operation covering the needs of about 5,000 pupils. The total budget for the project reached €10,775,638.[531] No information was released regarding the year 2013.
Opinions vary as regards the effectiveness of the practice of ZEP. Educationalists have noted that ZEP carries a stigma which leads certain schools to reject the Ministry's offer to join the institution. But criticisms from educationalists are mainly focused on the fact that in practice the measure has promoted segregation of migrant students into specific schools, which are staffed with the lowest quality of educationalists, because the migrant parents are not organised and do not have a strong lobby, as in other schools attended by Cypriots, and are thus unlikely to complain to the Ministry of Education or to school inspectors about problematic school practices.[532]

A new system of assessing disability and functioning: During 2012, the Department of Social Integration of Persons with Disabilities has commenced the design and implementation of a new system of assessing disability and functioning. This is an important project, intended to establish a scientific, reliable and credible data basis for the assessment of disability and functioning through professional and modern assessment procedures, commonly accepted and used by state services. It is anticipated that the new system will alleviate the inconvenience that persons with disabilities were subjected to in the course of multiple bureaucratic procedures in order to access benefits, services and jobs. The project involves the creation of a Register of persons with a disability, the establishment of an Assessment Centre, the issue of Assessment Manuals based on the International Classification of Functioning, Disability and Health of the World Health Organisation, special training of doctors and other health professionals etc. The aim is to compile comprehensive reports on disability and functioning through professional and modern assessment procedures, so that each person will have information not only on special needs for care, technical equipment, facilities, support, but also on capabilities and new prospects for training, employment and inclusion. The project's total value is €6,3 million which is co-financed by the European Social Fund (at 70%). In July 2012, the first phase of the training of public servants for the use of the system was completed and public procurement procedures were launched for the setting up of the premises where the assessment will be carried out.[533] Once completed, the Register of Persons with Disabilities which this project is set to build up will also serve as a centre-point for information, investigative checks and statistics, so as to better define and target policies, as required by the UN Convention on Persons with Disabilities.

[531] Annual Report of the Ministry of Education for the year 2012,Annual Report of the Ministry of Education for the year 2012, available in English at http://www.moec.gov.cy/etisia-ekthesi/pdf/annual_report_2012_en.pdf.. Additional details on this project are available in the Greek version of the Annual Report, available at: http://www.moec.gov.cy/etisia-ekthesi/pdf/annual_report_2012_gr.pdfAnnual Report.
[532] Consultation with stakeholders in public education.
[533] http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument.

The project started to be implemented in December 2013; at the time of writing, no evaluation of its progress was possible.

Children's Story for disability discrimination: In the framework of a PROGRESS programme the Social Welfare Services of the Ministry of Labour produced a story for children entitled "To Eftapodi" [the Seven-foot] depicting the adventures of a well-qualified octopus with only seven feet trying to secure a job placement.

The story ends up with the seven footed octopus winning a case in Court against the firm that refused to hire him because of his 'disability'. The story book was printed in about 5,000 hard copies and was disseminated at schools and at children's events.[534]

[534] The book can be downloaded from the Ministry of Labour's website at: http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/08653C382A93E712C22575E0004A66E6/$file/Project4_Layout.pdf?OpenElement.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

The procedures for the enforcement of the principle of equal treatment are of three types:

The Equality Body*:* Via the 'extra-judicial' process[535] before the Equality Body whereby individuals and organisations may submit complaints which the Equality Body has a duty to investigate and issue decisions or recommendations.[536] Complaints may be submitted by natural or legal persons alleging discrimination on any of the prohibited grounds (EU Directives, Protocol 12 to the ECHR, the Cyprus 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,[537] which are published in the Official Gazette.[538] The Equality Body is further empowered to impose fines, for failure to comply with its recommendations,[539] 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 has never so far imposed a fine, apart from once in a gender discrimination case. The decisions of the Equality Body may only be challenged in Court by way of judicial review of administrative action at the Supreme Court under article 146 of the Cyprus Constitution.[540] If after 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 in order to draft an amendment. This procedure does not always bear fruit.

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

[535] In Greek, «Εξώδικη διαδικασία» as per Section 9Γ(1) of Law No. 57(I) of 2004 (31.03.2004); Section 9, Law No. 59(I) of 2004 (31.03.2004); Section 13, Law No. 58(I) of 2004 (31.03.2004).
[536] Law N. 42(I) 2004 (31.03.2004).
[537] Section 24(1), Law No. 42(I) of 2004 (31.03.2004).
[538] Section 15, Law No. 42(I) of 2004 (31.03.2004).
[539] Section 26(1), Law No. 42(I) of 2004 (31.03.2004). The Equality Body may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendation under Section 25 [Section 26(1)(a)] and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.
[540] Section 23, Law No. 52(I) of 2004 (31.03.2004).

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 competencies 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).[541]

The only body with a mandate to investigate discrimination complaints and issue binding decisions is the Equality Body, afforded by the legislation a wide mandate to combat discrimination, well beyond the minimum required by article 13 of the Racial Equality Directive, on all grounds and in all fields but afforded very limited resources to do so. Currently the same office carries out the following additional functions: Ombudsman, NHRI, Independent Authority for the Prevention of Torture under the relevant Convention, Independent Mechanism for the monitoring of the implementation of the UN Convention on the rights of persons with disability, Monitoring Body for the implementation of the Return Directive. No additional budget has ever been allocated to this office every time its mandate was extended to include a new function. In its latest report on Cyprus, ECRI 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[542]. Due to its serious understaffing problem, which is highlighted in several national and international reports, discrimination complaints take three or more years to be examined, essentially leaving the complainant without a remedy, as in the meantime third party rights are often created whilst the complainant will be time-barred from seeking redress through the courts. The Equality Body does not have the capacity or mandate to represent victims in court or to otherwise provide assistance to victims. Its power to impose fines is so restricted that it exclusively resorts to mediation rather than to issuing binding decisions.

The judicial process:

- Labour law and issues relating to employment matters are dealt with by the Labour Tribunal.[543] 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

[541] Law amending and unifying the Laws on the Commissioner for Administration N. 3/91 as amended, Article 5(1)(a).
[542] ECRI, Fourth Country Report on Cyprus, Strasbourg 31 May 2011.
[543] For any of the employment directive grounds Section 12(1), Law N. 58(I) of 2004 (31.03.2004) and for disability discrimination and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).

in the case of *Hadjiavraam*[544] 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 as labour disputes. The disability law was not amended in the same manner as a result of which 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 as regards the Law on Persons with Disability.[545]

- 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 in some cases the possibility of conducting a private criminal law case.
- Law 59(I)/2004 (more or less transposing the Racial Equality Directive) provides in article 8(1) for resort to the District Court, for violation of the law's provisions.
- Rights guaranteed by the Constitution, such as the anti-discrimination provision of article 28, are according to legal precedent[546] actionable in Court per se against, inter alia, individuals.
- All administrative acts can be challenged before the Supreme Court, via Article 146 of the Constitution.[547] Persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,[548] apply to the Supreme Court to set aside the act complained of. 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 under 146 has been made may institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court.

There is a number of restrictions in place as regards the judicial process: time bars;[549] high fees and legal aid restrictions; security for costs; language barriers including issues relating to accessibility for persons with disabilities (e.g. blind, deaf

[544] Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou, date 30.07.2008, Case No. 258/05, reported in the Legal network's Cyprus Country Report for 2010.
[545] Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou, Appeal No. 287/2008, dated 11 July 2011, reported above under section 0.3.
[546] Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001.
[547] Section 12(1), Law No. 58(I) of 2004 (31.03.2004); Section 19 of Law No. 57(I) of 2004 (31.03.2004) and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).
[548] The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts
[549] Elaborated under 6.1.(c) below.

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, lawyers on issues relating to the conduct of cases they handle, etc; and various country-specific structural problems that in practice undermine the right of access (such as the doctrine of necessity analysed earlier in this report).

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.[550] However, this process is yet to be implemented, as the regulations regarding the powers vested in the Chief inspector and inspectors[551] are yet to be issued. It would seem reasonable to assume that the Labour Relations Department of the Ministry of Labour and Social Insurance would be the department in charge of implementing this provision,[552] 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.[553] Nevertheless, the department responsible for Laws N. 57(I)/2004 and 58(I)/2004 is the Department of Labour of the Ministry of Labour. The Minister has not yet utilised her powers to appoint inspectors.

The Labour Inspection unit of the Ministry of Labour which deals with issues relating to health and safety at work has no mandate to investigate discrimination.[554] 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 the law roughly transposing Directive 2000/78[555] and can receive and investigate discrimination complaints on all six grounds minus disability, although no procedure or rules have been set as regards such investigation. Regulations are currently under preparation in order to set this unit into motion to examine discrimination complaints, which are almost identical to the regulations concerning gender discrimination[556]. 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

[550] Section 19 of Law No. 57(I) of 2004.
[551] Section 19(2) of Law No. 57(I) of 2004.
[552] 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 also responsible for submitting a report on the implementation of the said law.
[553] Letter from the Ministry of Labour to the national expert, dated 20.01.2006.
[554] http://www.mlsi.gov.cy/mlsi/dli/dli.nsf/dmlmission_en/dmlmission_en?OpenDocument.
[555] Law on Equal Treatment in Employment and Occupation N. 58(I)/2004.
[556] Consultation with officer from the Department for the Promotion of Equality at the Workplace.

resources to properly address the issue of gender discrimination, a problem likely to accentuate when their mandate is extended to cover four additional grounds.

By far the cheapest and most effective procedure is the complaint to the Equality Body. All court actions entail costs and other necessities such as the need to instruct a lawyer if one is to have any chance to succeed against a generally speaking more powerful institution or employer, who are likely to be legally represented. There are also other deterrents in seeking redress in Court, such as strict time limits and complex procedures, the fact that legal procedures are generally slow, the difficulty in securing witnesses willing to testify. Even the procedure before the Labour tribunals, originally designed to be informal and easy and accessible to ordinary working people is lengthy, complex and costly, although to a lesser extent than the other courts. The Equality Body will accept complaints submitted to it in English. The Court will require all documents to be in Greek, although during the hearing an interpreter will be provided by the Court. However, in0 a case before the Supreme Court, the court accepted the pleadings submitted by the Turkish Cypriot applicants in the Turkish language and instructed the Attorney General to serve pleadings to the applicants in Turkish.

The same rules apply in both the private and the public sector. The Ombudsman, in his/her capacity as such, will investigate complaints of maladministration and discrimination from public bodies/state organs towards individuals; in his/her capacity as the national Equality Body, s/he will investigate complaints in both the private as well as the public sector.

No record is kept by any agency as to how many discrimination cases are brought before the Courts. Only the Equality Body publishes annually data regarding the number of complaints received, the ground complained of, the outcome etc. The ombudsman's office also publishes statistics about complaints received and investigated but it is not always clear from the data which of these complaints concern discrimination and which concern maladministration.

The inadequate provision of legal aid,[557] the low awareness of the anti-discrimination laws among legal circles and the length of time required for litigation to be completed, renders 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.

[557] 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 recourses are excluded, although a recent 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, dated 04.12.2008). 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.

b) Are these binding or non-binding?

The judicial as well as the inspectorate process lead to binding decisions.

The Equality Body has, by law, 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[558] but this power has not been used yet for cases under the anti-discrimination Directives. With the exception of the immigration authorities, who generally disregard and ignore Equality Body decisions issued against them, all other public authorities and the private sector generally regard Equaltiy Body decisions as valid and credible and often as an indication of what the likely outcome would be, had the case been presented before the courts.

c) What is the time limit within which a procedure must be initiated?

A new law enacted in 2012 introduces different time bars for different types of actions.[559] Claims that are to be submitted to the Labour Disputes Tribunal must be filed within 12 months from the event that gives rise to the claim. For civil offences and contracts to be submitted to the District Court, the time bar is six years. Additionally, there are *procedural time limits* that restrict actions allowed by litigants, for instance the time limits for lodging an appeal are strictly adhered to: 42 days from the date of the judgement for an appeal from the final determination; 14 for interlocutory injunctions; 75 days for an application to set aside an administrative decision under Article 146 of the Constitution, referred to above. In addition, there are *procedural time limits* that restrict actions allowed by litigants, for instance the time limits for lodging an appeal are strictly adhered to: 42 days from the date of the judgement for an appeal from the final determination, 14 for interlocutory injunctions and 75 days for filing a recourse against an administrative act under article 146 of the Constitution.

d) Can a person bring a case after the employment relationship has ended?

Yes both the Labour Disputes Tribunal and the District Court will examine cases after the emloymen relationship has ended. The limitation period for civil offences and contracts is six years.[560] If the claim involves damages for negligence, nuisance or breach of duty, the limitation period is three years. If a person who suffered the injury became aware of the damage later, the limitation period starts from the day the claimant acquired knowledge of the damage. The Court has discretion not to apply

[558] Elaborated in Section 6.5 here in below.
[559] Law on the Limitation Period for actionable rights N. 66(I)/2012.
[560] Law on the Limitation Period for Actionable Rights N. 66(I)/2012. Available in Greek at http://www.cylaw.org/nomoi/enop/non-ind/2012_1_66/full.html.

the statute of limitation for 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 incapacity to handle the case.

There is no express provision on limitations in the new anti-discrimination laws; the time bars foreseen by law for the different procedures will apply. The Laws on the Commissioner for Administration 1991-2004[561] which sets out the mandate of the Ombudsman (*note*: not the mandate of the Equality Body) state that the complaint must be submitted to the ombudsman's office within twelve months from the date on which the complainant received notice of the activities or omissions for which he/she is applying to the ombudsman.[562] The 2004 amendment of this law provides for a new mandate, duties and powers bestowed upon the Ombudsman by virtue of any law, on matters relating to gender equality, equality and enjoyment of human rights and freedoms irrespective of race, ethnic origin, community, language, colour, religion, political or other belief, special needs, age and sexual orientation.[563] 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/her complaint.[564] 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*. 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 to the fact that Law 58(I)/2004 ranks more highly than national laws because it transposes the acquis.[565]

e) *In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).*

Procedures before the Court are complex, costly and lengthy. 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. Migrants and the Roma community have little or no information as regards legal aid and no access to justice,

[561] Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.
[562] Section 5(1) of Law N.1(I)/2000.
[563] Section3(8) of Law N.36(I)/2004.
[564] Interview with Elisa Savvides, former Head of Equality Commission at the Ombudsman's office, dated 18.01.2006 and now Ombudsman and head of the Equality Body.
[565] Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou, Appeal No. 287/2008, dated 11 July 2011.

hence the fact that they have never pursued a non-discrimination case in Court. Even for those who can afford a lawyer, one major obstacle is that there is hardly any expertise in the market on discrimination law, which is a novel field that is not offered by any University and does not attract many clients. The time bars are set out in paragraph (c) above. The Courts buildings are not accessible to persons with disability (visual, kinetic, hearing impairment etc) nor are any court documents made available in Braille.

f) Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

No data is kept by any agency as regards discrimination cases brought to justice.

g) Are discrimination cases registered as such by national courts? (by ground? Field?) Are these data available to the public?

Courts maintain registers of cases tried, which are partly accessible to the public through a rather bureacratic and discretionary procedure which involves writing letters to the Courts Registrar and explaining the reason why one requires a copy of the judgement. 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 judgement. In recent years, two electronic data bases have been compiled, containing all court decisions, which can be searched through key words. 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)

Please list the ways in which associations may engage in judicial or other procedures

a) Are associations entitled to act on behalf of victims of discrimination? (to represent a person, company, organisation in court)

Organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a plaintiff in the proceedings.[566] Although no special definition of the plaintiff is provided, to the extent that a person or company or an organisation can act as a plaintiff, then such plaintiff may be represented by the organisation with the legitimate interest.

b) Are associations entitled to act in support of victims of discrimination? (to join already existing proceedings)

[566] Law N. 58(I)/2004, Article 14; Law 59(I), Article 12; Law on persons with disability N. 127(I)/2000 as amended, Article 9D.

The law does not specifically cover the possibility of an association joining already existing proceedings; however, it may safely be assumed that, since representation is permitted and no special conditions are imposed as to the stage of the proceedings in which they may join, this is permitted. There is no procedure foreseen in either the civil procedure rules or the criminal procedure rules of 'acting in support' of plaintiffs; a legal entity may either represent a plaintiff or join a legal action as plaintiff.

c) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).*

The laws purporting to transpose the anti-discrimination *acquis* do not go into any lengths to describe the type of entities that may act on behalf or 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 as well as 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. The presumption is reinforced by the fact that Law 59(I)/2004 (roughly transposing the Racial Equality Directive), article 12, requires that in order for organisations or other legal persons to be able to represent and act on behalf of persons in applying to the courts or the Equality Body, such organisations must (in addition to the victim's permission) have 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. The Equality Body may investigate cases following applications by NGOs, chambers, organisations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.[567] In practice, however, associations have made little use of this opportunity so far, with only a handful of human rights organisations filing complaints to the Equality Body on behalf of victims which they formally or informally represent. The Equality Body follows a flexible approach and does not demand to see permission from the victim or copies of articles of association in order to ensure that the law's requirements are met before investigation begins.

d) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or*

[567] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?

The laws purporting to transpose the anti-discrimination *acquis* do not go into any lengths to describe the type of entitles that may act on behalf or 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 as well as 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. The presumption is reinforced by the fact that Law 59(I)/2004 (roughly transposing the Racial Equality Directive), article 12, requires that in order for organisations or other legal persons to be able to represent and act on behalf of persons in applying to the courts or the Equality Body, such organisations must (in addition to the victim's permission) have 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. The Equality Body may investigate cases following applications by NGOs, chambers, organisations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.[568] In practice, however, associations have made little use of this opportunity so far, with only a handful of human rights organisations filing complaints to the Equality Body on behalf of victims which they formally or informally represent. The Equality Body follows a flexible approach and does not demand to see members' permissions or copies of articles of association in order to ensure that the law's requirements are met before investigation begins.

Article 14 provides that workers' organisations or other organisations with a legitimate interest can act on behalf of their members with the members' permission in claiming their right to resort to the Courts or to the Equality Body. Similarly, 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, as stated under paragraph (a) above, 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. No distinction is made between the two types of standing (on behalf/in support). As indicated in paragraph (a) above,

[568] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

it is necessary for these organisations to be registered in order to bring an action, at least in Court; the Equality Body is more flexible on the structure of the entity filing the complaint. In order to be able to file a case of discrimination on the ground of race/ethnic origin, the organisation's memorandum and articles must include the combating of discrimination in its stated aims.

There are no membership or permanency or other requirements in the law. No case involving an organisation acting in support of or on behalf of a victim has ever been presented in Court, so it is hard to say how the Court will interpret the term 'organisation' and whether any required features will be attached to the concept. The Equality Body which has examined a number of complaints from organisations does not impose any restrictions and has no requirements; for instance it has investigated complaints from organisations acting on behalf of a group of persons, which do not have to be named specifically (e.g. 'asylum seekers', 'children with disabilities' etc). However, this liberal approach is not indicative of the stand which the Courts are likely to take when hearing such a case.

With regard to legitimate interest, again the Equality Body raises no such issues but the Courts do in a substantive way. In three separate 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 at the time of filing the application become entitled to it;[569] and 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.[570]

Following the same approach, in an older case[571] alleging violation of the non-discrimination principle of Article 28 of the Constitution on the grounds of belief deriving from the fact that he is a homosexual, the respondent argued, by way of a preliminary objection, that the applicant lacked legitimate interest that would enable him to file the present recourse, as his failure to discharge his military obligations meant that he did not possess the required qualifications for the post. The Court sustained the respondent's preliminary objection and rejected the applicant's recourse. This case is by no means unique. Cases involving claimants who are purported to belong to certain categories or are ascribed certain characteristics seem to be particularly vulnerable to having their access blocked; such a category are Turkish-Cypriots claiming their properties located in the Republic-controlled areas

[569] Antonis Aresti v. Cyprus Athletics Organisation (Supreme Court Case No. 1406/2008 dated 10.02.2010); Andreas Potamitis, Carolina Pelendritou, Evripides Georgiou v. Cyprus Sports Organisation (Supreme Court Case No. 1377/2008, dated 30.01.2012).

[570] Eleni Kyriakidou v Cyprus Broadcasting Corporation (Supreme Court case no. 18/2008, dated 03.12.2010).

[571] *Stavros Marangou v. The Republic of Cyprus through the Public Service Commission* (17.07.2002, Case no. 311/2001). The applicant applied to the Court seeking the annulment of the decision of the Public Service Commission to reject his job application for a post at the Ministry of Interior because of his failure to serve in the army, pursuant to article 31(b) of the Public Service Law.

against the institution of the "Custodian" of Turkish Cypriot Properties, which is the Interior Minister. In *Mehmet Ahmet v. the Republic of Cyprus*[572] concerning the administration of an estate belonging to a deceased Turkish-Cypriot, the Custodian of Turkish-Cypriot Properties objected[573] to a request to sell and divide the proceeds of the sale to the heirs.[574] Counsel for the plaintiff argued that the Custodian had no locus standi and that Law 139/1991 providing for the administration of Turkish Cypriot properties by the 'Custodian' is incompatible with the EC law. The trial Court refused the claim and ruled that section 33 of Law 139/1991 does not apply to cases where the administrator of an estate is empowered to proceed with the allocation of property but is unable to do so as a result of an estoppel. An appeal to the Supreme Court for permit to submit a preliminary question to the CJEU about the legality of the Custodian law was dismissed. The Supreme Court rejected the argument on *locus standi* and noted that the appellant did not appeal against the trial Court findings on the provisions of section 33, therefore whatever the ruling of the CJEU, the trial Court decision should
stand.

In general, individuals who have been *personally* aggrieved, have a legitimate interest in Cypriot administrative law to engage in proceedings. Under Article 146(2) of the Constitution: "such recourse 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).

The interpretation of Article 146(2) of the Constitution by the Supreme Court has restricted the right of recourse to physical and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives were not considered to have legitimate interest[575] and the term "community" is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution.[576] The original test for an association to possess 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.[577]

[572] Cyprus/ Civil Case no. 277/2006 (13.01.2009).
[573] Based on sections 33, 53, 55 and 58 of the Law on Administration of Estates, Cap. 189, the relevant Regulations and sections 2, 3, 5, 6(α) and 6(γ) of the Law on Turkish-Cypriot Properties (Administration and Other Subjects) (Temporary Provisions) 139/1991.
[574] Based on sections 31, 32, 33, 51 και 53(1)(στ) of the Law on Administration of Estates, Cap. 189.
[575] Efthymios Ierodiakonou v. the Republic 3 RSCC 55-57.
[576] Osman Saffeet v. the Cyprus Palestine Plantations Co. Ltd and another 4 RSCC p.87, p.89.
[577] The Police Association v. The Republic.

e) Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?

The law does not specify any particular form of authorisation. The Equality Body has never requested any organisation submitting a complaint on behalf of a victim to present such an authorisation. As no such case has been brought before the Courts, it is difficult to predict what conditions the Courts will decide to attach to this requirement and how case law will evolve on this issue. There are no special provisions on victim consent where obtaining a formal authorisation is problematic. Generally speaking, children victims do not have any special status or enjoy any special rights in Court and they cannot participate in the judicial proceedings in any manner other than by testifying as witnesses. Given that the Courts in Cyprus have no hesitation in reading 'consent' in a minor's behaviour when it comes to sexual abuse[578] then strictly speaking they should put no obstacles in the way of an organisation obtaining consent from a minor in order to bring an action in Court.

f) Is action by all associations discretionary or do some associations have a legal duty to act under certain circumstances? Please describe.

There is no duty imposed by the laws transposing the anti-discrimination Directives or any other laws, bestowed upon any organisation to undertake action; this is purely a discretionary right. One cannot altogether exclude the possibility that such an obligation may exist in any internal regulations of an organisation but this would be the exception rather than the rule.

g) What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.

[578] In the case of *Kyriakos Kailis v. the Republic* (Criminal Appeal No. 7490, dated 21.04. 2004) the Appeal Court quashed the perpetrator's sentence on the ground that the minor's lack of consent had not been proven. No attention was paid to the fact that immediately after the event the victim was seen by her friends and her mother in a very distressed condition (bleeding, looking upset, unable to walk, with dusty and muddy clothes). According to the judge, the victim was upset not because she was raped but because she had consensual sex with the perpetrator and subsequently regretted losing her virginity. In the case of *Christodoulos Armeftis v. the Republic* (Criminal Appeal No. 56/06, dated 13.03.2008) the Appeal Court reduced the appellant's sentence for rape from ten years to five years on the ground that lack of consent had not been proven (the appellant's sexual abuse of the victim, who was his stepdaughter, started when the latter was 7 years old and lasted until she was 11). In the case of *Savvas Evangelou v. the Republic* (Criminal Appeal No. 152/2007, 09.06.2008) the perpetrator's conviction was quashed because the victim (who was 11 at the time) did not physically resist the assault and because when she become 14 the victim entered into a relationship and had sexual relations with her boyfriend.

The laws transposing the two Anti-discrmination Directives provide for civil and criminal judicial procedures and for the administrative procedure before the Equality Body. Associations may engage in all three of these procedures without any differences in their standing according to the different types of proceedings.

h) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

The laws are silent on this point but it may safely be assumed that associations may seek the same remedies as individuals applying to the Courts directly, which would be compensation and, in the case of unlawful dismissal, reinstatement. The Equality Body does not have the power to award compensation or order reinstatement and a complainant, whether the victim or an organisation acting on the victim's behalf, cannot request the imposition of fine or the issuing of a binding decision by the Equality Body, which are discretionary.

i) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

The Equal Treatment (Race and Ethnic Origin) Law N. 59(I)/2004 (transposing the Racial Equality Directive) does not expressly provide that the burden of proof is reversed where organisations engage in proceedings on behalf of victims. Article 7 of the law provides for the right to resort to the judicial process and the principle of the reversal of the burden of proof. Article 8 provides for the competent Courts to try disputes arising under the law. Article 9 provides for the resort to the Equality Body. The right of organisation to represent their members is contained in article 12 which states that organisations can exercise the rights deriving under articles 8 and 9. It is the author's view that this is a clerical error on the part of the drafter or the printer and that the intention of the law maker was to refer to the rights deriving under articles 7 and 9. This becomes evident if one is to examine the wording of the other laws transposing the Anti-discrimination Directives.

In the case of the Equal Treatment in Employment and Occupation Law N.58(I)/2004 (transposing roughly the Employment Equality Directive minus the disability component) the burden of proof is reversed in the case of organisations engaged in judicial proceedings as well as in proceedings before the Equality Body. Article 14 of Law N.58(I)/2004 reads: "Organisations of workers or other organisations with a legitimate interest may with their members' consent exercise in their name the rights deriving under articles 11 and 13". Article 11 provides for resort to the judicial process and for the reversal of the burden of proof; article 13 provides for resort to the procedure before the Equality Body.

In the Law on Persons with Disability N.127(I)/2000 as amended by the law(roughly) transposing the disability component of the Employment Equality Directive the legislator adopted the same line as in Law 58(I)/2004 transposing the Employment

Equality Directive. The right to resort to the judicial process and the principle of the reversal of the burden of proof are both contained in a single provision (article 9A). A separate provision (article 9C) provides for the resort to the Equality Body. The right of organisation to represent their members is contained in article 9D which states that organisations can exercise the rights deriving under articles 9A and 9C. In effect, organisations are authorised to engage in proceedings on behalf of victims both before the Courts and before the Equality Body and the principle of reversal of the burden of proof applies in the case of judicial proceedings.

The author believes that result achieved in the case of the two latters laws (N. 58(I)/2004 and N. 127(I)/2004) was also intended in Law N. 59(I)/2004; however this was not achieved as a result of an oversight. It may well be, however, that the Courts will not interpret these provisions in the same manner. In the case of the law (roughly) transposing the Racial Equality Directive (N.59(I)/2004), it is highly likely that the Court will not allow the reversal of the burden of proof, as this is not expressly provided in the law; the law will be interpreted in its own right without reference to the other laws transposing the Anti-discrimination Directives.

*j) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

There is no such provision in the legislation; in the absence of an express provision it is unlikely that the Courts will accept such an action, given that in the past they did reject claims because the law did not expressly provide for the right sought by the applicant.[579]

The Equality Body does accept and investigate complaints from associations (e.g. the RAXEN National Focal Point, the confederation of disability organisations KYSOA, anti-racist NGOs, the Social Welfare Committee of the Parliament of the Elderly) 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*.

*k) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please*

[579] In *Eleni Kyriakidou v Cyprus Broadcasting Corporation* (Supreme Court case no. 18/2008, dated 03.12.2010) 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 at the Legal Network's Cyprus Country Report for 2010.

describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.

The laws transposing the Anti-discrimination Directives are silent on the possibility of organisations representing more than one complainants at the same time but do not expressly prohibit this either. Law No. 58(I)/2004 transposing roughly 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 out 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 class actions but only when these refer to the same subject-matter, in this case the same discriminatory treatment or act. The Equality Body does accept and investigate complaints from associations acting in the interest of more than one victim, as indicated above.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

Initially, when the laws purporting to transpose the two Anti-discrimination Directives came in force, the laws required that in a civil procedure there was a shift of the burden of proof from the complainant to the respondent, once the complainant has established a prima facie case of discrimination. The respondent could rebut the presumption of prima facie discrimination by disproving the allegations that no violation of the law occurred or that it had no adverse effect on the complainant.[580]

The law did not reverse the burden of proof for procedures before the Equality Body.[581] For cases involving racial/ethnic discrimination in fields other than employment and occupation, the law provided that should the respondent fail to rebut the presumption of discrimination, then the District Court considers that the breach

[580] Law N.58(I)/2004, Section11; Law N.59(I)/2004, Section7.

[581] Nevertheless, in its 2011 report on the promotion of a member of the Maronite community in Cyprus Airways, the Equality Body states if the complainant cites facts from which discrimination can be inferred, the burden of proof is reversed (without clarifying whether it merely reiterates the law or whether it has applied this principle in order to reach its finding): see Report ref A.K.I 8/2010, dated 09.11.2011, summarised under section 0.3 above.

has been established and the complainant is required to present on oath all relevant facts to assess the damages.[582]

However, the Directives' requirements were not met in full and subsequently, following a request from the European Commission, the three laws were amended. In particular:

- In November 2006 a law came into force[583] which amended the 2004 law transposing (partly) the Racial Equality Directive.[584] The amendment, which was introduced in order to comply with a request from the European Commission, provides that the burden of proof is reversed not only in civil proceedings, as was the case with the 2004 law, but in "all [judicial] proceedings except criminal ones", in order to cover also administrative proceedings. Moreover, under the 2004 law the claimant had to *prove* facts from which a violation could be inferred; this has now changed to a duty to merely *introduce* (rather than *prove*) such facts, upon which the burden of proof is automatically reversed. Finally, under the 2004 law, the accused was absolved from liability if he proved that his violation had no negative impact on the claimant; the new law removed this provision.
- On 18 May 2007 an amendment to the Equal Treatment in Employment and Occupation Law N.58(I)/2004 (roughly transposing the Employment Equality Directive) was passed. As was the case with Law 59(I)/2004 (above), the amendment introduced the following changes: (a) the burden of proof is reversed in "all judicial proceedings except criminal ones"; (b) the claimant no longer has to *prove* facts from which a violation can be inferred, but merely to *introduce* such facts, upon which the burden of proof is automatically reversed; (c) the accused is no longer absolved from liability if he proves that his violation had no negative impact on the claimant; and (d) the aforesaid right is extended also to trade unions or other organisations with a legal standing who are, with the victim's permission, either suing the perpetrator in court or submitting a complaint to the Equality Body.
- Towards the end of 2007, a new law was enacted in order to bring the disability law in line with the burden of proof provision of the Employment Equality Directive. The new law (72(I)/2007) amended the old law (57(I)/2004) by: extending the scope of applicability of the reversal of proof principle to include administrative litigation proceedings (in addition to civil proceedings); removing the requirement for the claimant to prove (instead of merely introduce) facts from which a violation can be inferred, upon which the burden of proof is automatically reversed; deleting the provision that the accused is absolved from liability if s/he proves that her/his violation had no negative impact on the claimant.

[582] Law N.59(I)/2004, Section 7.
[583] Law amending the Equal Treatment (Racial or Ethnic origin) No. 147(I)/2006.
[584] Law N. 59(I)/2004.

In the case of the Equality Body, since it has the power to carry out its own investigations to establish the facts of a case, the procedure may be 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 already exist in cases of unfair dismissal. The Termination of Employment Law 1967, as amended, is phrased in such a way that 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 s/he had acted reasonably.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

Identical provisions against victimisation are to be found in all three laws enacted to transpose Directives 2000/78 and 2000/43. The said provisions prohibit any adverse treatment or consequence towards any person who files a complaint or is involved in a procedure aiming at implementing the principle of equal treatment.[585] 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 1991-2004[586] 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 to any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Equality Body; (ii) has supplied or presented or intends to supply or submit any information or documents to the Equality Body; (iii) has testified or intends to testify before the Equality Body, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP300[587] or to both penalties.”[588] As stated above, the Laws on

[585] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 11; The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 10. The Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 7, amending Section 9E of the basic law.
[586] Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.
[587] Approximate Euro equivalent: 520 Euros.
[588] Section 11(f) of Law No. 1(I)/2000.

the Commissioner for Administration 1991-2004 are expressly stated to apply also to the new mandate, duties and powers bestowed upon the ombudsman as Equality Body under the new anti-discrimination laws.[589]

The Code of conduct on disability discrimination at the workplace issued by the Equality Body in September 2010 defines victimization as the unfavourable treatment of a person (who may or may not have a disability) owing to the fact that: s/he gave evidence or testified against an employer in judicial or other procedures for investigation of discrimination complaints by persons with disabilities; s/he alleged that some employer is in breach of the law against a person with a disability; s/he encouraged or supported a person with a disability to submit a complaint or bring a legal action for discrimination. 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/her unfairly believing or suspecting that s/he did so or was intending to do so.

Special protection against victimization of complainants is also afforded by the Law Concerning the Equal Treatment of Men and Women in Employment and Occupational Training of 2002 which provides in Article 17(1) that "…the dismissal as well as the adverse alteration of the conditions of employment of an employee who has submitted a complaint or protested with the intention of implementing the principle of equal treatment, including complaints for violation of the present Law, or of an employee who resisted or reported sexual harassment, is absolutely invalid unless the employer proves that the dismissal or adverse alteration is due to a reason irrelevant to the complaint or protest or resistance of sexual harassment."

Furthermore, Article 9 of the Law on Equal Pay between Men and Women for the same work or for work of equal value N. 177(I)/2002 states that "no one shall be dismissed or shall be subjected to unfavourable treatment by his/her employer on the ground that (s)he has complained or testified or contributed to the prosecution of a perpetrator or to the adoption of any measures on the basis of the present law".

The extensive framework against victimisation is not being utilised in order to put an end to the practice of the authorities of arresting and deporting migrant female domestic workers who file complaints against their employers.[590]

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

[589] Section3(8) of Law N.36(I)/2004.
[590] See Ombudsman's report Ref. A.P. 588/2012 dated 05.06.2012 ("Arrest and detention of migrant worker for bringing complaint against her employer").

The Equality Body does not have the power to award damages to victims of discrimination.

Strictly speaking, the Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages but no case of discrimination relying on the new laws has been decided in Courts yet to allow for any conclusions to be drawn with regard to the practice followed.[591] Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cyprus Courts tend to be rather low compared to the damages awarded in other countries.
In addition to or in lieu of damages, a victim of discrimination may apply to the Labour Disputes Tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, but this is a remedy rarely sought or used.

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[592] and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.[593]

The Equality Body is further empowered to impose small fines which cannot exceed CYP350 (Euros 598) for discriminatory behaviour, treatment or practice; CYP250 (Euros 427) for racial discrimination in the enjoyment of a right or freedom; CYP350 (Euros 598) for non-compliance with the recommendation within the specified time limit; and CYP50 (Euros 85.44) daily for continuing non-compliance after the deadline

[591] In the only single case adjudicated in Cyprus no award was made because the labour tribunal decided it had no jurisdiction to try a case about discrimination in the selection procedure for a job placement: Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou, reported above under section 3.6.2.
[592] Which time limit shall not exceed 90 days from publication in the Official gazette (The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 28).
[593] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 14(2) and 14(3), Part III, list the limitations to the Commissioner's power to issue orders as follows: where the act complained of is pursuant to another law or regulation, in which case the Commissioner advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 39(3) and 39(4)]; and 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 subsists.

set by the Equality Body.[594] Generally speaking, the fines are very low; they offer little deterrence to potential perpetrators and they are hardly ever imposed by the Equality Body: since its inception, the Equality Body imposed a fine on only one case concerning gender.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.[595] 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 yet (except in a case involving gender discrimination). The power to issue sanctions is for the first time threatened to be used by the Equality Body in relation to the Ministry of Education's failure to provide effective exemption of pupils from the religious class lesson. If this case does lead to sanctions, this will be the first time that the Equality Body has made use of this power.

All orders, fines and recommendations issued or imposed under this Law are subject to annulment[596] by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest'.[597] There is no requirement for special measures to be taken to ensure that persons with disabilities have access to the Equality Body and no such measures are taken for the time being.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues on his/her own right where it deems that any particular case that came to its attention may constitute a violation of the law.[598] 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 suggesting to the authorities or to the private sector, to revise their practices over specific issues complained of.

[594] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 18, 26(1).
[595] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).
[596] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.
[597] Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.
[598] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

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 trade unions; to insurance companies to revise their policy of not insuring persons over 70 to drive cars or charging a higher premium for it, etc.

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 and who 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 the Representatives.

Under Law N.59 (I)/2004 transposing (roughly) the Racial Equality Directive, the competent courts for discrimination cases at first instance are the District Courts.[599] The same law also provides for the complainant's right to lodge a complaint to the Equality Body.[600] Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,[601] appeal 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 can have only an annuling effect on the adminsitrative 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 which had been created in 2008 by the decision in the case of *Hadjiavraam* was remedied in 2009 for all grounds except disability, by an amendment of the law, which now provides that all disputes arising under this law must be deemed as labour disputes.

Under law 59(I)/2004 (transposing the Race Directive minus the employment component) the penalty to be imposed by the Court against a physical person found to be guilty, is a maximum of CYP4.000 (Euros 6,835.27) and/or imprisonment of up to six months. For legal persons the maximum penalty is CYP7.000 (Euros 1,196.72). An offence committed under the same law out of gross negligence carries a penalty of up to CYP2000 for physical persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2.000 (Euro 3,417.63); for legal persons, there is a fine of up to CYP2.000 (Euro 3,417.63) for the

[599] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 8(1).
[600] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 9.
[601] The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts.

managing director, chairman, 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 CYP4.000 (Euro 6,835.27) for the company or organisation.[602]

Under law 58(I)/2004 (transposing the Employment Directive) the penalties are identical to those provided for the law transposing the Race Directive.[603] Same applies to procedures and penalties under Law N.57 (I)/2004 on persons with disabilities.[604] No such fines have been imposed by the Courts so far.

There are also penal remedies against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, 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 for the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, such as 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 provision[605] is stated to extend to goods or services supplied by a person in the course of his/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 that the incitement to racial hatred is 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.[606] The section referring to the refusal to provide goods and services has resulted in at least one conviction.[607] The Criminal Code (Cap.154) Article 51A 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.[608]

The law ratifying the Additional Protocol to the Convention on Cyber crime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed

[602] The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 13.
[603] The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 15.
[604] Law on Persons with Disabilities N. 57(I)/2004 Section 6, amending Section 9 of the basic law.
[605] Article 2A(4) of Law 28(III)1999.
[606] Section 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 6700 euro].
[607] In criminal case No. 31330/99 dated 12 December 2001 where the accused was actually convicted and a term of imprisonment was imposed.
[608] The fines are up to 1,000 Cyprus Pounds for individuals and 3,000 pounds for legal persons [1,000 Cyprus Pounds amounts to 1,708 Euros; 3,000 Cyprus Pounds amount to 5,126 Euros].

through Computer Systems[609] 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 CYP20.000 (Euros 34,176.35):

- Article 4 criminalises the dissemination of racist and xenophobic material through a computer system;
- Article 5 criminalises racially and xenophobicly motivated threat disseminated through a computer system;
- Article 6 criminalises racist and xenophobicly motivated insult;
- Article 7 of 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[610] 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 (€ 10 000) or to both such sentences. Same sanctions apply for other offences created by this law such the approval or denial or gross downplaying of crimes of genocide, crimes against humanity and war crimes.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

No. But in general, compensations awarded by Cypriot Courts tend to be very low compared to compensations awarded by other national Courts.

c) Is there any information available concerning:

i) the average amount of compensation awarded to victims?

[609] The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.
[610] Law on the Combating of Certain Forms and Expressions and Racism and Xenophobia through Criminal Law N. 134(I)/2011, http://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

ii) the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?

The Equality Body is not entitled to award compensation. Since the anti-discrimination Directives were transposed, the Court 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 1,500 Euros would be appropriate as this represents three salaries which 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 the Case C-180/95 Draehmpaehl [1997] ECR I-2195 which established that three salaries are sufficient to satisfy the three preconditions which the amount of compensation awarded must satisfy (essential protection, deterrent and proportional to the damage) in those cases where the job 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 appelant the equivalent of three months' salaries amounting to a total of €1,500 because, as it had established, the applicant would not have been hired to this post even in the absence of the age discrimination in the advert. [611]

In the absence of a body of case law on discrimination and awards of damages where discriminaton 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) disincentive for offenders and (b) incentive for victims to complain (and in particular as incentive for lawyers to specialise). It is safe to state, however, that the sanctions which 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.

In 2006 the Law on Compensation of Victims of Violent Crimes N.51(I)/1997, was amended by Law 126(I)/2006 in order to extend its scope to include, inter alia, EU citizens and to create a regime for cases of a "cross-border nature". However the Cypriot law does not transpose the aforesaid Directive in its entirety nor does it refer to it in the text of the law. There are no court decisions on this matter either.

[611] Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou, Appeal No. 287/2008, dated 11 July 2011, summarized in the Legal Network's Country Report for the year 2011.

Article 22 of Law Revising the Legal Framework Governing the Special Protection of Persons who are Victims of Trafficking and Exploitation N.8(I)/2007 provides for the trafficked victim's right to compensation from the perpetrator. Article 23 of the law also provides for the victim's right to compensation from the state. Article 29(2)(f) provides for the obligation of the state welfare services to inform victims of their right to compensation from the perpetrator under the aforesaid article 22 but there is no obligation to inform the victim of her right to compensation from the state under article 23. Article 44 of the law provides that the victim's repatriation must be done in a manner that will not adversely affect any procedure for claim of compensation from the perpetrator under article 22, but again no mention is made of the procedure under article 23. There are no precedents of victims claiming or receiving compensation. NGOs offering support to victims of trafficking claim that no victim was ever able to make use of the compensation right, because as soon as the criminal trial against the perpetrator is finished, the victims are deported or 'repatriated voluntarily'. –

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race Equality Body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

Yes, the Commissioner for Administration (also referred to as 'the Ombudsman'), was appointed as the national specialised Equality Body, in compliance with Article 13 of the Racial Equality Directive.[612] Under this law, two separate authorities are set up within the Equality Body: the 'Equality Authority' and the 'Anti-discrimination authority', dealing respectively with employment issues and with discrimination in fields beyond employment. In this report, for ease of reference, both authorities are referred to as the 'Equality Body'.

b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

The Ombudsman is appointed by the President of the Republic for a fixed term of office which is six years, following a recommendation from the Council of Ministers and with the prior written agreement of the majority of the House of Parliament.[613] The Ombudsman can only be dismissed, during the term of his/her service, in the same way as Supreme Court judges are dismissed.[614] According to the Cypriot Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until he/she reaches the age of sixty-eight[615] and may only "be retired"[616] due to such mental or physical incapacity or infirmity as would render him

[612] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004).
[613] The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(1).
[614] The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(7).
[615] Article 7(1) of the Cyprus Constitution.
[616] This is the term used in the official translation of the Cyprus Constitution. Presumably, it means "be obliged to retire".

incapable of discharging his duties, or may be dismissed on the ground of misconduct.[617]

The budget for the Ombudsman's office comes from the state national budget. Occasionally, the Ombudsman (in his/her 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 guidelines for the media it published in 2010. However the funding for its infrastructure and operation costs emanates exclusively from the state. There is no separate budget for the Equality Body, whose budget is part of the Ombudsman's budget. There is no governing body, only various departments specialising in particular tasks, managed by members of staff. The Ombudsman is an independent officer and is not answerable to any other body, although it is supposed to submit an annual Report of her activities to the President of the Republic and to the House of Representatives.

The law appointing the Ombudsman as the national Equality Body (N.42(I)/2004) does not expressly provide for the independence of the body; however this is implied from several provisions which 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 Ombudsman (customarily referred to in Cyprus as "Commissioner of Administration") provides that the Ombudsman or Commissioner is not allowed to hold any other office or carry out any other work with remuneration.[618] 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. Although since its inception there was never an issue as regards the independence and impartiality of the members of staff working at the Ombudsman/Equality Body, the fact that the body lacks the power to choose its own members of staff is generating discontent amongst the body itself[619] and has also attracted criticisms from ECRI.[620] Another issue potentially affecting its independence is the fact that its infrastructure budget is exclusively provided by the Ministry of Finance; but perhaps the most crucial factor of all as regards the institution's independence is the fact that the Ombudsman (and Head of Equality Body) is appointed by the President of the Republic and must be acceptable to the majority of the political forces. During 2011, when the term of the

[617] Articles 7(3) and 7(4) of the Cypriot Constitution, respectively.
[618] Article 3(3), Law amending and unifying the law on Commissioner of Administration N.3/91 as amended between 1994-2011. Available in Greek at:http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4C8D8386F1767914C22575B200438176/$file/Επιτρόπου%20Διοικήσεως%20Νόμοι%20του%201991%20έως%202011.pdf?OpenElement.
[619] Focus group with the Head of the Anti-discrimination Authority and Head of the Equality Authority respectively 05.05.2010 for the purposes of a study on Equality Bodies coordinated by Human European Consultancy and the Boltzman Institute for Human Rights in 2010 (VT/2009/012).
[620] The Fourth ECRI report on Cyprus published in 2011 states in 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."

former ombudsman expired and a new ombudsman had to be appointed, the body remained headless for several months until the political forces would agree on the person to be appointed.

Complaints data

Although at the time of writing the data for 2013 had not as yet been fully processed, the Equality Body made the following information available to the author:

During 2013, a total of 153 complaints were submitted to the Equality Body. Out of these, 63 complaints were employment-related and 88 were not employment related. The distribution per ground is as follows:

GROUND OF DISCRIMINATION	**No. of complaints submitted**	**Field of application (Employment or non-employment)**
AGE	3 4	Employment Non-employment related
ETHNIC, NATIONAL OR RACIAL ORIGIN	21 +66 =87	Employment Non-employment related (54 National origin; 12 Racial or ethnic origin) Total in all fields
SEXUAL ORIENTATION	4	non-employment related
GENDER IDENTITY	5	non-employment related
LANGUAGE	2 1	Employment related Non-employment related
RELIGION OR BELIEF	2	One was employment-related; One was education-related.
GENDER	22 2	Employment related Non-employment related
DISABILITY	14 2	Employment related Non- employment related. One related to access to welfare benefits. One related to the administration of the property of an intellectually disabled person

The Equality Authority *(all grounds, employment related issues)*

The Equality Authority officials have commented that the number of complaints in the employment field in 2013 reached an all time low, suggesting that this was evidence of underreporting relating to the rising unemployment and the fear of victims that if

they complain they may lose their jobs. The number of employment-related complaints from 2007 until 2013 is as follows:

Year	2007	2008	2009	2010	2011	2012	2013
Number of complaints submitted	115	93	103	121	144	106	63

During 2013, the Equality Authority examined a total of 81 complaints submitted from previous years. From these:

- 25 were deemed to be groundless;
- in 10 cases there was lack of competence/jurisdiction;
- in 5 cases the complaint was withdrawn;
- in 6 cases the investigation was interrupted;
- in 8 cases the Authority sent a letter of notification;
- in 1 case the Authority sent a letter with recommendations;
- in 8 cases there was satisfaction without intervention from the Equality Body;
- in 3 cases there was satisfaction following intervention from the Equality Authority;
- in 1 case guidance and asistance was offered to the complainant; and
- in 13 cases the complaints were deemed to be well-founded and reports were issued. The distribution per ground of these cases was as follows:
  - Gender: 5 reports;
  - Disability: 5 reports;
  - Age: 3 reports.

Anti-discrimination Authority (*all grounds, fields beyond employment)*

A total of 88 complaints were submitted to this body in 2013.

The origin of the complainants was as follows:

- 24 were Greek Cypriots
- 11 were Turkish Cypriots
- 24 were EU nationals
- 25 were third country nationals
- 2 were Maronites (Cypriots)
- 2 were naturalised Cypriots

The fields of application of the complaints were as follows:

- Social protection: 7
- Immigration: 17
- Education: 5

- Access to goods and services including housing: 41
- Health: 5
- Other: 13

During 2013 this body investigated 112 complaints. The outcome was as follows:

- In 9 cases a report was issued with recommendations;
- In 2 cases, the parties were invited for consultation (procedure foressen by law prior to issuing warning);
- In 1 case a warning for complaince was sent;
- In 3 cases there was insufficient evidence to allow any conclusions;
- In 10 cases the Equality Body had no jurisdiction;
- In 29 cases the compaints were unfounded;
- In 17 cases the complainants were informed about the applicable legislative/policy framework;
- In 2 cases letters with recommendations were sent;
- In 7 cases there was satisfaction without intervention;
- In 20 cases there was satisfaction following mediation by the Equality Body;
- In 1 case the Equality Body provided guidance to the complainant;
- In 9 cases the investigation procedure was interrupted;
- In 1 case the complaint was withdrawn;
- In 1 case the complaint could not be classified under any of the above categories.

Independent mechanism for the implementation of the UN Convention on the Rights of Persons with Disability

The newly set up independent authority overseeing the implementation of the UN Convention on the Rights of Persons with Disability has recorded 33 complaints for the year 2013. Most of these related to access to welfare and were directed against the Ministry of Labour and Social Insurance, and in particular against the Social Welfare Services and the Department for Social Integration of Persons with Disability, both of which run a number of schemes supporting the social and labour integration of persons with disability. Although the authority had, at the time of wriitng, not processed its statistical data regarding the complaints, it supplied the following information.

- The largest number of complaints were directed against the Department of Social Integration and the Social Welfare Services and were related to rejection of applications for grants;
- A number of complaints were directed against the Ministry of Education relating to the provision of escorts for students with disability;
- A small number of complaints were directed against the Ministry of Health regarding the practicial difficulties in obtaining medication from hospitals.

- A number of complaints were directed against local authorities as regards parking spaces for persons with disability.

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

The Equality Body is vested with the power to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin,[621] (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law[622] irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin[623] and (iii) promote equality of opportunity irrespective of grounds listed in the preceding section (to which the grounds of special needs[624] and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

Its mandate covers all five grounds of the two anti-discrimination Directives but extends even further to include gender, nationality, community as well as rights and freedoms contained in the Cypriot Constitution and in international conventions ratified by the Republic of Cyprus. Some of the decisions of the Equality Body in the last three years examine issues of discrimination on one or more of the five grounds beyond employment, in the fields covered by the Racial Equality Directive, in anticipation to and within the spirit of the decision of the European Commission to introduce a Directive addressing discrimination on all five grounds beyond the employment field. In its capacity as the independent mechanism for the monitoring of the implementation of the UN Convention on the rights of persons with disability, it examined disability discrimination complaints in fields beyind employment in both the private and the public sector and, in close collaboration with the confederation of

[621] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 3(1)(a).
[622] These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for 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 Inhuman and Degrading Treatment or Punishment.
[623] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1).(b), Part I.
[624] '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.

disability NGOs KYSOA carried out a number of self-initiated investigations into areas of concern.

At the level of the Equality Body, there appears to be a trend towards a more socio-legal approach that involves less the invocation, interpretation and application of legal provisions than in previous years, perhaps reflecting the non-legal specialisation of the members of staff of the Equality Body in this period. An interesting development may nevertheless be observed in the dynamic intervention of the Equality Body as regards the efforts of certain circles within the Ministry of Education to revoke exemption from the religious instruction class which was previously available to those students who would apply for it. For the first time, the Equality Body appears ready to impose the sanctions foreseen in its mandate, in order to restore the right to exemption from this class, as a means of safeguarding religious freedom in schools.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

Under article 44 of the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, the Equality Body has the power to conduct independent surveys on any matter within its competency concerning any activity or practice in the public or private domain.[625]

Its limited resources and budgetary restrictions have restricted the Equality Body's work mostly in the area of complaints investigation, although efforts are made to provide assistance and guidance to victims in spite of the constraints. In recent years a system was introduced whereby the various officers of this body take turns in answering phone calls from the public and offer oral advice on rights and procedures available.

The Equality Body may carry out independent investigations into various issues[626] on its own right where it deems that any particular case may constitute a violation of the law.[627] 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

[625] In 2007, in the framework of the European Year for Equal Opportunities, the Equality Body commissioned two independent surveys on perceptions of the Greek Cypriots issues pertaining to discrimination on the ground of racial/ethnic origin. Both surveys were funded by the European Commission.

[626] E.g. Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31.05.2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26.05.2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 02.02.2005.

[627] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.[628]

The Equality Body has the duty to make recommendations to the competent Minister, the parliament and affected groups of persons on, inter alia, the amendment of any legal provision or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right[629] or following a specific complaint to that effect referred to the Equality Body.[630]

In addition, the law casts an obligation on the Equality Body to communicate its findings and reports to the Attorney General who 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 which is contrary to the anti-discrimination law.[631] 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.

The Equality Body can make binding recommendations[632] ordering the guilty party to take steps to rectify the discrimination, for instance in the form of ordering the provision of goods and services which had been denied to the victim, including housing, education, health care[633] and in the form of requesting the discontinuation of a certain practice that causes discrimination.[634] Although the total of these recommendations could potentially form part of a comprehensive code of conduct, the Equality Body has not as yet proceeded to the compilation of such a multi-purpose document, except regarding sexual harassment and disability discrimination at the workplace.

The Equality Body has the power and the duty to monitor compliance with its decisions and to impose fines for non-compliance within the prescribed period. The Equality Body's orders must be published in the Official Gazette.

---

[628] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 40, 41 and 42, Part VI.
[629] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 35(1)(d).
[630] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 36(1)(b).
[631]The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 39(1).
[632] This applies only to the Cyprus Ant-discrimination Body and the Equality Body operating from within the Ombudsman's office and not to the other tasks and powers of the Ombudsman.
[633] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 16(2).
[634] The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, Article 21(1)(c).

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. Also, 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, so as to take action.

e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

Yes the tasks are generally undertaken independently, although at times the delays in publishing reports are such that in essence nullify the victim's claim. Assistance to victims is offered privately on an ad hoc basis and it is thus impossible to monitor its independence and impartiality, although the ethos and practice of the organisation so far does not raise concerns that this task might be carried out in a non-independent way. Its surveys are commissioned to external contractors and are independent, although on one occasion an organisation of Pontian Greeks living in Cyprus challenged the results of a survey on the attitudes of Greek Cypriots towards this community, raising methodological issues. The guidelines for the media, which the Equality Body published in September 2010, demonstrate a reluctance on the part of the organisation to create a mandatory regime for the all-powerful journalistic community which generally opposes any type of interventions, framing them as interference with journalistic freedom. The said guidelines, the drafting of which was assigned by the Equality Body to a journalist- member of the journalists' union, omit reference to important legislation criminalising certain public statements and to ECHR decisions recognising that certain limitations to freedom of expression are necessary in a democratic society. The media in Cyprus has repeatedly been criticised by international and Council of Europe reports for using racist discourse and problematic stereotypes of vulnerable groups. In light of this fact, this rather partial treatment of the question of the media must inevitably been seen as a missed opportunity to make a difference in a most problematic aspect of the fight against discrimination.

There are certain weaknesses to the present framework governing the Equality Body which affect its overall effectiveness. The most important weakness is the reluctance on the part of successive governments to allocate sufficient funds to it in order to make adequate staffing arrangements. Although this is perhaps more understandable now in light of the economic crisis, the under-financing of the Equality Body was a problem experienced during periods of significant economic growth, which indicates lack of political will rather than an austerity measure. Not only has its mandate been expanded with various new tasks, but the volume of the complaints submitted to the Equality Body is continuously increasing since its inception without the corresponding increase in staff. Since 2008, when the mandate of the Equality Authority (dealing with all employment issues) was extended by a new gender

discrimination law, [635] the sudden rise in gender discrimination complaints inevitably brought about a shift of emphasis in favour of gender and away from the other grounds. Between 2008 and 2012 half or more than half of the complaints received by the Equality Authority concerned gender discrimination. Since the 2008 the mandate of the organisation was repeatedly extended to including the monitoring of various other instruments without a corresponding increase in budget or resrouces. The emphasis on gender was partially balanced in 2013 when its mandate as the monitoring body for the UN Convention on the rights of persons with disability started to receive and investigate complaints, which brouhgt about a sharp increase in disability discrimination complaints.

The Equality Body has not been allowed to operate to its full capacity, compared to equality bodies in other EU countries; its submergence into the ombudsman has meant that it has been unable to develop and assert its own identity and is not well known to the public. It does not even have its own name: only the two authorities operating within the Equality Body have been assigned their rather confusing names: Equality Authority and Anti-discrimination Authority. As at present, the officers of the Equality Body have to carry out Ombudsman's duties as well; the Ombudsman's office renders secretarial and other services to the Equality Body. This rather confusing image it projects, coupled with the fact that the level of awareness of the vulnerable groups and legal profession remains low, is limiting the organisation's potential in combating discrimination particualrly in the private sector and on grounds which were not explicitly protected before the transposition of the anti-discrimination Directives.

The Equality Body does not have its own budget; it is operating within the budget of the ombudsman, with whom the Equality Body shares office premises, personnel and the person at the top of the hierarchy, which is the same for both bodies. An issue of independence from the ombudsman arises, which compromises the independence and impact of the Equality Body. Moreover, the independence of the institution of the Ombudsman itself is compromised by two factors: the fact that its budget is allocated by the state; and the fact that the state appoints the members of staff, who are civil servants. This situation has remained unchanged since the body's inception in 2004.

In addition to its duties as Equality Body the Ombudsman is vested with power to investigate complaints against the public service and its public officers, including the Police and the National Guard (the army) which expressly covers investigation into complaints that acts or omissions violate human rights, and thus examines complaints as to racial and other forms of discrimination. A report[636] prepared in relation to each particular case investigated, including cases of discrimination, is submitted by the Ombudsman to the authority that is responsible for the public service or public officer concerned, and a copy is sent to the complainant. In the

[635] Law on equal treatment between men and women in access to and provision of goods and services N.18(I)/2008.
[636] The Commissioner submits an annual Report (which is published) to the President of the Republic, containing observations and suggestions, a copy of which is also submitted to the Council of Ministers and the House of Representatives.

event that the Ombudsman concludes in this report that the complainant has suffered damage or injustice, the report also contains the Ombudsman's suggestions or recommendations to the competent authority concerned for reparation of the injury or injustice, specifying at his/her discretion the time within which such reparation must take place. If the competent authority fails to give effect to a suggestion or recommendation for reparation, the Ombudsman may make reference to this, by a special report submitted to the House of Representatives and the Council of Ministers. The recommendations of the Ombudsman are persuasive but not binding, although its decisions are generally seen as credible and are well respected.

f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

No, it cannot take discrimination complaints to Court nor can it intervene in litigation proceedings, although its officers may appear as witnesses. The legal officers of the Equality Body have repeatedly expressed their regret over the fact that they are not mandated to take cases to the Courts. Under the existing legislation, the Equality Body's duty is confined to referring cases to the Attorney General's office so as for the latter to decide whether criminal charges must be instigated or whether a law needs to be repealed or revised in order to conform to the new anti-discrimination legislation. So far, no charges have been brought against any person by the Attorney General invoking the anti-discrimination legislation.

g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts? Are the decisions well respected? (Please illustrate with examples/decisions).

Yes it is a quasi-judicial institution.[637] It is clearly an administrative organ but does have the power to issue binding decisions as well as sanctions. It is possible to appeal against a decision of the Equality Body by virtue of recourse to the Supreme Court for judicial review of an administrative act under article 146 of the Constitution.

Although no evaluation or assessment has been made publicaly available nor are compliance rates published, generally speaking the recommendations of the Equality Body are taken seriously into consideration by the private sector and to a certain extent by the public sector. Since the organisation's inception in 2004, the immigration authorities have undoubtedly the lowest rate of compliance amongst all public authorities. In previous years, the police also had a low compliance rate although in recent years a closer collaboration with the police developed over joint

[637] This view is also shared by the Equality Body itself (Consultation with Equality Body Officers dated 06/06/2014).

initiatives in the fight against racism and homophobia has improved the police's complinace rates.

h) Does the body register the number of complaints and decisions? (by ground, field, type of discrimination, etc.?) Are these data available to the public?

Yes the Equality Body publishes statistical data, albeit with some delay, and uploads all its decisions on its website.

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

Although not a number one priority, the Equality Body is concerned with the situation of the Roma and has on two occasions in 2003 conducted self-initiated investigations into their housing conditions. In 2011 it has published a report on discrimination against Roma children in education, in response to a complaint submitted in 2008.

No measures have been taken to raise awareness amongst the Roma community of rights and procedures available to them under the new antidiscrimination legislation, presumably as a result of the restricted budget and limited resources of the Equality Body and the practical difficulties involved in accessing the Roma communities (language problem, illiteracy, Roma settlements in remote locations). Although there are inherent difficulties in commencing a structured dialogue and consultation with the Roma community, which is a measure strongly recommended by the Fourth ECRI Report on Cyprus published in 2011, the Equality Body is in a unique position to launch such an initiative; under the current circumstances of austerity however, the Equality Body can hardly manage with its existing workload.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

There have not been any government activities during 2013 to disseminate information on non-discrimination and no good practices in the field either. A few awareness raising initiatives of the Equality Body in 2013 promoted tolerance, anti-racism and respect for diversity, but did not specifically disseminate information on legal protection from discrimination. These initiatives are the following:

(i) Initiatives of the Equality Body

Anti-racist school competitions

During 2013 the Equality Body in collaboration with the Representation of UNHCR in Cyprus and the European Commission Representation in Cyprus organized jointly a school competition entitled "Talk about racism and xenophobia: silence is not a solution".[638] The competition involved the editing by the students of their own school journal against racism, following their own field research. The competition was participated by 21 schools. An event for the award of the prizes involved migrant children telling their own personal stories of immigration and integration. The initiative aimed at raising awareness and sensitizing the school population over migration and asylum and to prevent and combat xenophobia and racism at schools. In 2012, the same actors (the Equality Body, UNHCR Representation, European Commission Representation) organized another school competition along similar lines, entitled 'Even one victim of racism and xenophobia is too many'.[639] Schools were invited to submit a video and a poster on the theme and to organize discussions in schools on immigration, asylum, xenophobia and racism.

Guidelines for bus companies and bus drivers

In 2013, in collaboration with a national bus company, the Equality Body published a set of guidelines for bus companies and for bus drivers, in the form of a non-binding

[638] http://www.no-discrimination.ombudsman.gov.cy/en/content/school-competition-talk-about-racism-and-xenophobia-silence-not-solution.
[639] http://www.no-discrimination.ombudsman.gov.cy/en/content/even-1-victim-xenophobia-and-racism-1-too-many.

code of conduct, on how foreign passengers using public transport[640] must be treated and on the complaints procedures to be followed in the event of allegations for discriminatory or racist behaviour[641]. The publication is divided into two, with the first section targeting the bus drivers and the second section targeting the bus companies, urging them to ensure that their drivers comply with the guidelines and to apply and encourage the practice of requiring bus drivers or bus conductors to submit written reports of any incidents that may fall under the ambit of the Guidelines. The dissemination of the Guidelines was assigned to OSEL, the bus company that collaborated with the Equality Body for the issue of this document, who promised to put it before the bus drivers and other company personnel as well as the board of directors in the form of a good practice code, hence the choice of the term 'guidelines'. The Equality Body has also sent the Guidelines to a national NGO that had in the past filed a complaint regarding this issue. Finally, the Guidelines were uploaded on the Equality Body's website[642]. Although in the absence of a facts based evaluation it is impossible to assess the impact of this practice, the apparent absence of a dissemination strategy particularly amongst the group at risk (migrants using public transport) may well hamper the effectiveness of this measure.

(ii) Other Equality Body initiatives

During 2013, the Equality Body has compiled, in collaboration with the police, a policy for addressing and preventing racist crime. The definition of the term is wide and includes incidents perceived by the victim as discriminatory on the ground of race, ethnic origin, sexual orientation, gender identity, religion, language, community and age. The policy paper is rather vague in its inception and does not create specific obligations for police officers nor does it foresee sanctions for those police officers who act in contravention of this policy.

A glossary in order to address hate speech is currently under way, as a result of a joint initiative of the Equality Body and the semi-governmental Cyprus Youth Board,[643] in the framework of the 'No Hate Speech' campaign.[644] The glossary will be launched in March 2014.

Through an Equality Body intervention, the new training programme for new recruits in the civil service will include a 90 minute lecture on racism and homophobia.

[640] As a result of a number of factors, very few Cypriots are using public buses, which are now in their majority used by migrants.
[641] Equality Body Guidelines for serving and transporting passengers of different nationalities by companies serving the public transport network and by bus drivers, June 2013.
[642] Information supplied by the Equality Body officer responsible for this initiative on 05.11.2013.
[643] http://www.youthboard.org.cy/default.asp?id=24.
[644] http://www.nohatespeechmovement.org/.

Governmental initiatives

There have been no governmental initiatives during 2013 focusing on anti-discrimination. As recession deepened and unemployed rose sharply in 2013, the Labour Ministry is pre-occupied with measures to address the rising unemployment and with industrial dialogue to ease tensions with the social partners resulting from the welfare austerity, privatisations and loss of labour rights. There were no anti-discrimination projects in 2013 and no good practices.

Governmental documents, such as annual reports and action plans suggest that gender-based discrimination is of particular concern for the government, but no resources are diverted towards combating discrimination on any other ground. There has never been any action plan to address discrimination on any ground other than gender.

b) 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) and

Generally speaking, on issues of policy making, consultation with NGOs is either poor or non-existing. In 2013 there was no policy making or law making in the field of anti-discrimination.

c) 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.

d) to specifically address the situation of Roma and Travellers

The government has not taken any measures to specifically target the Roma in terms of dissemination of information or dialogue.

The recognition in 2009 by the Cypriot government of the Roma as a minority within the meaning of the Framework Convention on National Minorities has not led to a change of policy or any measures to improve the situation of the Roma, a fact regretted by the Advisory Committee's Third Opinion on Cyprus published in 2010. The opinion 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.[645] The Fourth ECRI report on Cyprus published in 2011 also urged the authorities to engage into consultation with the Roma community in order to address problems of housing, employment and education.

There are no Travellers in Cyprus.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

The existing constitutional practice is such that any law or regulation contrary to the principle of equal treatment, as guaranteed by Article 28 of the Constitution, and the human rights sections of the constitution, is unconstitutional, as the principle underlies all relevant laws. Therefore, it is considered to be null and void and of no legal effect. 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 which 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 one vulnerable group.

The equality 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. Also, by virtue of a recent amendment of the Constitution, all EU Directives and regulations are deemed to take precedence over all domestic legislation including the Constitution itself.

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 if the Equality Body (Law N. 42(I)/2004).

[645] The Third Opinion of the Advisory Committee 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 Third opinion are available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Cyprus_en.pdf.

The procedure described in article 39 this law is for 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 Equality Body's referrals to the Attorney General under article 39 are not always taken up and often laws and regulations containing discriminatory provisions remain unaffected as a result.

There is no procedure for a 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 off only when a specific complaint is submitted on this matter. The procedure foreseen by article 39 does not appear to be particularly well known to legal and judicial circles, who tend to go for the constitutionality test, i.e. to request the Court to annul a provision or a law as 'unconstitutional', for 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.[646]

b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

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. 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. Based on the cases of non-compliance highlighted by the Equality Body, there are job advertisements in the public service which carry an age limit; job descriptions which require "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 which exclude third country nationals from their scope; restrictions in the retirement benefits paid to public employees aged under 45 who take early retirement in order to join EU institutions; the Termination of Employment law which deprives persons reaching pensionable age from their right to compensation for unlawful dismissal; and no doubt many others in respect of which no complaint was submitted and thus no decision of the Equality Body was issued to highlight the need for repeal.

[646] See for instance *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic*, Case no. 1223/2007, dated 22.11.2011; *Andreas Kattos v. The Republic of Cyprus through the Minister of Justice and Public Order and the Chief of Police,* Case N. 349/2010, dated 7 April 2011.

9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the newly enacted legislation. 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 of legislation drafting and interpretation; the Ministry of Education and the Ministry of the Interior with their respective competencies. The annual reports of the Ministry of Justice and Public Order sum up the Ministry's activities in this field in providing information that feeds into various national and European level reports.[647]

[647] For the latest available annual report of the Ministry of Justice, which is for the year 2012, see http://www.mjpo.gov.cy/mjpo/mjpo.nsf/3E7D11C068594790C2257C99003FB470/$file/Annual_Report_2012.pdf. The relevant references are in pages 19-20.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and Anti-discrimination legislation** at both Federal and federated/provincial level

Name of Country: Cyprus **Date: 1 January 2014**

Title of Legislation (including amending legislation)	Date of adoption :dd/m/y	Date of entry in force from :dd/m/y	Grounds covered	Civil/Admini-strative/ Criminal Law	Material Scope	Principal content
Title of the law: Law on Persons with Disabilities, as amended by Law N. 57(I)/2004. Abbreviation: 57(I)/2004 Date of adoption:31/03/2004 Latest amendments: 2007 Entry into force:01/05/2004 Webpage address: http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html	31/03/ 2004	01/05/2004	Disability	Civil	public employment, private employment,	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Title of the law: The Constitution of the Republic of Cyprus Abbreviation: Constitution Date of adoption: 16/06/1960 Latest amendments: 2013 Entry into force:16/08/1960 Webpage address: http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html	16/06/ 1960	16/08/1960	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	Mostly the public sector, although there is legal authority establishing that Some constitutional rights can be actionable per se against individuals (Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001.	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 in Employment and Occupation Law No. 58 (1)/2004 Abbreviation: Law 58(I)/2004 Date of adoption: 31/03/2004 Latest amendments: 2009 Entry into	31.03. 2004	01.05.2004	Racial and ethnic origin religion or belief, age, sexual orientation	Civil	Conditions of access to employment, access to vocational orientation and training, working conditions and terms of employment and membership to trade unions	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

force:01/05/2004 Webpage address: http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html						
Title of the law: The Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004 Abbreviation: Law 58(I)/2004 Date of adoption: 31/03/2004 Latest amendments: 2006 Entry into force:01/05/2004 Webpage address: http://www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html	31.03. 2004	01.05. 2004	Racial and ethnic origin	Civil	Social protection, medical and medicinal care, social provisions, education, and access to goods and Services including housing	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	19.3. 2004	01.05. 2004	Race, community, language, colour, religion, political or other	Civil	Combating of racist discrimination and of discrimination forbidden by law; promotion of equality	Creation of specialized body

No. 42(1)/ 2004 Abbreviation: Law 42(I)/2004 Date of adoption: 31/03/2004 Latest amendments: 2006 Entry into force:01/05/2004 Webpage address: http://www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html			beliefs, national or ethnic origin, special needs, age and sexual orientation.		of the enjoyment of rights and freedoms safeguarded by the Constitution or by the Conventions ratified by Cyprus; and promote equality of opportunity in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.	

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Cyprus **Date: 1 January 2014**

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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 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	01.02.1995	04.06.1996	None	N/a	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
for the Protection of National Minorities					
International Convention 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
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

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
Convention on the Rights of Persons with Disabilities	Convention on the Rights of Persons with Disabilities	03.03.2007	17.02.2011	A reservation as to article 27(1) of the Convention to the extent that the provisions of this article are incompatible with article 3A of the Law on Persons with Disabilities 2000-2007, which inter alia transposes the disability component of the Employment Equality Directive. The	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
				latter provision states that the law does not apply to the armed forces to the extent that the nature of the work requires special skills that persons with disability do not have, and neither does it apply to professional activities where the nature and framework within which they are	

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
				carried out is such that a characteristic or a skill that a person with a disability lacks constitute a substantial and determining professional requirement, provided the aim is legitimate and the means of achieving that aim are proportionate, taking into consideration the possibility	

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
				of adopting positive measures.	

ANNEX 3: PREVIOUS CASE-LAW

Supreme Court cases 2012

Rejection of student grant application from Turkish Cypriot

Name of the body: Supreme Court
Date of decision: 2 February 2012
Name of the parties: Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance
Reference number: Appeal No. 73/2009, Case No. 2411/2006
Address of the webpage: n/a
Brief summary: The applicants were Cypriot citizens belonging to the Turkish Cypriot community, residing in the northern part of Cyprus, currently occupied by the Turkish army. The applicants had applied to the Ministry of Finance for a student grant payable to all students attending tertiary education. Their application was rejected because the law under which these grants were paid[648] requires that the grant is paid to every family with its permanent residence in the areas controlled by the Republic (which excludes the Turkish-occupied part). The applicants argued that the Law's requirement regarding place of residence violates the equality principle safeguarded by Article 28 of the Constitution because it introduces unlawful discrimination against a group of Cypriots on the ground of ethnicity. The Court rejected the application, arguing on the one hand that if the law complained of is declared unconstitutional, then the applicants will derive no benefit since they will have no legal basis upon which to premise their claim for a grant; and on the other hand that in order for the grant to be paid to the applicants an amendment to the law is required, which cannot be performed by the Courts, but only by Parliament.

To justify its reasoning, the Court referred to a previous Supreme Court decision issued a few months earlier, that of *Ertalu*[649] where the applicants had applied for a student grant under the same law, rejected by the Ministry of Finance for the same reason (the applicants resided in the Turkish controlled north of Cyprus).The applicant had argued that the legal doctrine of refraining from declaring a law unconstitutional where this would not ensure the claimant satisfaction of his/her claim, has unjustifiably undermined the right to equality protected by article 28 of the Constitution. The Court responded that the constitutionality check cannot, through the invocation of the equality principle, be

[648] Law on the provision of Special Grants N. 77(I)/1996) as amended. The 1996 law had provided for student grants to be paid to "all Cypriot citizens"; however, when the sealed border between north and south of Cyprus was opened in 2003 and Turkish Cypriots started coming to the south to access services, the law was revised in 2006 in order to exclude Turkish Cypriots from eligibility to claim these state grants.
[649] Gonul Ertalu & Imge Ertalu v. Ministry of Finance, 17 November 2011, Review Appeal no. 104/2008.

transformed into a tool for expanding the scope of the law in areas beyond the legislator's will.

This decision signals a failure of the Courts to invoke and apply the law transposing the Racial Equality Directive (Law N59(I)/2004), which ought to have been applied in spite of any provisions to the contrary in the national legislation. Given that the law complained of indirectly but intentionally excluded Turkish Cypriots from its scope, this should have led the Court to the conclusion that the said law contained indirect discrimination. Also, the legal precedent of refusing to subject any law to the constitutionality test, which effectively (at least in this case) means refusing to test the law for compliance with the anti-discrimination principle, leaves a gap which creates an injustice as well as an issue of non-compliance with the Racial Equality Directive, which requires all discriminatory provisions to be revised.

Athletes with a disability are deemed to have no locus standi

Name of the body: Supreme Court
Date of decision: 30 January 2012
Name of the parties: Andreas Potamitis, Carolina Pelendritou, Evripides Georgiou v. Cyprus Sports Organisation
Reference number: 1377/2008
Address of the webpage: n/a
Brief summary: The applicants were athletes with a disability who, at the time of filing this action (21.08.2008), were due to participate in the 2008 Paraolympic Games in Beijing. The applicants challenged the legality of a decision which determined the financial reward payable to the athletes participating in the Peking Paraolympic Games lower than that payable to non-disabled athletes. The respondents filed a preliminary objection, arguing that the applicants had no legitimate interest, that their application to the Court was premature (because it was filed prior to the Paraolympic Games) and that the decision challenged could not have been executed at the time. They argued that at the time of filing the action the applicants had still not suffered any damage. The Court sustained the respondents' objection, ruling that the applicants lacked the legitimate interest which must be present at the time of filing the action. It concluded that the filing of the action on the part of the plaintiffs had been premature, since it was filed prior to the Paraolympic games. In rejecting the application, the judge stated that the applicants' entitlement to the grant foreseen in the scheme was their high performance at the games, which could not have been known at the time of filing the action, and mere participation or expectation was not sufficient.

In support of its findings, the Court referred to a previous Supreme Court decision in the case of *Potamitis*[650] where the applicant (who was also one of the plaintiffs in this

[650] Cyprus Athletics Organisation v. Andreas Potamitis, 18.06.2010, Case No. 111/2007.

case) participated in the Athens Paralympics of 2004 and won the seventh position in swimming. At the time, he was awarded by the Cyprus Athletics Organisation the sum of CYP12,000 (€20,505) out of the scheme of awards to Paralympics athletes. The applicant refused to receive this amount, claiming that he was entitled to CYP60,000 (€102,529) which would have been his award had he achieved the same success in the Olympic Games. He applied to the Court seeking to annul the decision of the Cyprus Athletics Organisation and to challenge the legality of differential treatment of the Paralympics athletes under the Awards Scheme, which provides for payment to Paralympics athletes amounting to 1/5 of the amount payable to the Olympics athletes. Although the application was deemed well founded by the trial Court which found there was discrimination against athletes with a disability, the appeal Court subsequently reversed this judgment and confirmed the legitimacy of the decision of the Cyprus Athletics Organisation. The appeal Court found that the trial Court had erroneously tried to compare two unequal things whilst the constitutional principle of equality found in article 28 of the Constitution requires equal treatment of equal situations. The plaintiffs were ordered to pay the costs of the respondent.

The Court did not invoke any of the wide ambit of Law 127(I)/2000 (Law on Persons with Disability) transposing 2000/78/EC, which prohibits provisions, criteria or practices likely to cause disadvantageous treatment of a person with disability (article 2 of Law 127(I)/2000). Nor was the decision of the CJEU in *Firma Feryn* invoked. The decision follows a trend visible in all Court decisions on disability claims, where the Courts apply a restrictive interpretation of article 28 of the Constitution, ignoring the provisions of the EU acquis

Employee is denied promotion on 'seniority' grounds

Name of the body: Supreme Court
Date of decision: 4 October 2012
Name of the parties: Maria Shambarta v Republic of Cyprus
Reference number: 417/2010
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201210-417-2010.htm&qstring=διακρισ*
Brief summary: The applicant was denied a promotion position as a Courts Stenographer. A colleague of her with less paper qualifications but more age seniority was promoted instead. She contested this decision mainly on the ground that the respondents placed disproportionate weight on the age seniority of the other candidate who was finally promoted (hereinafter, the successful candidate). The applicant in this case claimed that the element of age seniority, contained in article 49(2) of the Civil Service Laws 1990-1996 as a criterion for selection of the candidate to be promoted, produces age discrimination in violation of the law transposing 2000/78 (Law 58(I)/2004) and discrimination on the ground of birth (article 28 of the Constitution). The Court rejected the argument that the Civil Service Law produced age discrimination, stating that age seniority was used by the legislator in the law as

a criterion to be used as the very last resort, when there is no difference between the candidates regarding seniority in the position they served. However, the judge found that the respondents had placed disproportionate weight on the criterion of seniority, ignoring the additional qualifications of the applicant as compared to the successful candidate. Invoking previous precedents, the judge pointed out that seniority must be taken into consideration only where the assessment of the two candidates is equal or very marginally different. The Court accepted the application and cancelled the decision by which the successful candidate was promoted.

The decision placed little attention on the anti-discrimination dimension of the case and did not consider the argument that age seniority creates age discrimination. Instead, the focus was how the seniority criterion was to be used in assessing applicants for promotion.

Local authority challenges the mandate of the Equality Body

Name of the body: Supreme Court
Date of decision: 27 September 2012
Name of the parties: Limassol Municipality v. Commissioner for Administration-Equality Authority
Reference number: 780/2010
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-780-10.htm&qstring=διακρισ*
Brief summary: The Equality Body issued a warning against the Limassol Municipality to delete the age limit of 60 from the regulations governing the employment of school traffic wardens, pursuant to a complaint from a municipality employee, whose contract was obliging her to retire at 60. The Limassol Municipality applied to the Court seeking a cancellation of the said decision of the Equality Body as 'manifestly unlawful' and contrary to the Constitution. The Equality Body filed an objection. The Municipality requested an amendment of its initial pleadings in order to correct the wording of its application to the Court. The requested amendment sought the cancellation of the Equality Body's decision on the ground that articles 12 and 28 of Law 42(I)/2004[651] were contrary to article 30.2 of the Constitution which allocates the right of exclusive determination of a civil offence to the Courts.[652] The

[651] Law 42(I)/2004 sets out the mandate of the Equality Body. Articles 12 and 28 set out the Equality Body's power to issue decisions and publish them in the Official Gazette, respectively.
[652] Article 30.2 of the Constiution reads: "In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgement shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice."

Municipality argued that the decision is the result of an unconstitutional provision in the law and that the powers granted to the Equality Body under this law were contrary to the principle of separation of powers. The Equality Body objected to this amendment of the pleadings on the ground that it essentially introduces new reasons for cancellation which were not presented within the 75 days time limitation imposed by Article 146 of the Constitution for the annulment of administrative acts. The Court sustained the Equality Body's objection and rejected the Municipality's request because the latter essentially sought to completely redefine the basis of its claim rather than just amend it.

In essence, the claim which challenges the Equality Body's powers was rejected on technical grounds, i.e. because the arguments for the unconstitutionality of these powers were not put on the table from the beginning. It is certain that these arguments will be raised again in other contexts by actors and stakeholders who are dissatisfied with the Equality Body's interference with issues which are traditionally seen as the exclusive domain of the judicial power. Given that the constitution was amended so as to give predominance to EU Directives, then the powers of the Equality Body cannot be challenged, to the extent that they transpose article 13 of the Racial Equality Directive. Those powers which are over and above the minimum prescribed by article 13 may be challenged in Court with unpredictable results.

Discrimination on no particular ground is deemed acceptable by the Court

Name of the body: Supreme Court
Date of decision: 21 March 2012
Name of the parties: Andronicos Andreou v. Ministry of Finance
Reference number: 759/2011
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201203-759-11.htm&qstring=διακρισ*
Brief summary: The applicant's application to the Ministry of Finance for a grant to subsidise the acquisition of a new house was rejected on the ground that he failed to submit the necessary documentation. The applicant argued that other applications where the same documents were presented were approved by the Ministry of Finance without any justification for this differential treatment. He invoked discrimination under article 28 of the Constitution, without citing any particular ground. The Court accepted his application and annulled the challenged decision of the Ministry of Finance, stating that the challenged decision was taken without the necessary investigation and contrary to the principle of bona fide.

Although the Court did not expressly rule on the discrimination argument, it did not dismiss the idea that a claim for discrimination may succeed even where no particular ground is invoked.

Nationality discrimination in rent control case

Name of the body: Supreme Court
Date of decision: 5 June 2012
Name of the parties: Diogenis Christophorou Ltd v. Giosa Victoria Mikaela
Reference number: 161/2009
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2012/1-201206-161-09.htm&qstring=διακρισ*
Brief summary: The appellants rented an apartment to the respondent who was a Romanian national. The property was covered by the Rent Control Act (Law N. 23/83) which places certain safeguards for tenants. When the respondent failed to pay the rents as due, the appellants sought an order from the Rent Control Court for her eviction and the unpaid rents. The Rent Control Court claimed it had no jurisdiction to try the case because the appellant, being a non-Cypriot, was not covered by the Rent Control Act. The decision was based on article 2 of the Rent Control Act which indeed introduced unlawful discrimination by limiting the scope of and protection under this law to Cypriot nationals. The appellants then applied to the Supreme Court which reversed the judgement of the Rent Control Court because the latter had erred in its judgement as regards the applicability of the Rent Control Act to the respondent. The Rent Control Act should be considered as applying to all citizens of EU member states in the same way as it applies to Cypriots, based on the old article 12 of the Treaty of the European Union, replaced by article 18 of the Treaty for the Functioning of the European Union, which prohibits discrimination between citizens of member states on the ground of nationality or citizenship. The Court further noted that according to article 169.3 of the Constitution, Conventions concluded in accordance with this provision take supremacy over national legislation including the Rent Control Act. Additionally, the Fifth Amendment to the Constitution, introduced by law N. 127(I)/2006, provides for the supremacy of EU law in all areas. The Court noted that it expects the state to take the necessary measures for the revision of the Rent Control Act in accordance with the above.

Teachers contesting their retirement age

Name of the body: Supreme Court
Date of decision: 4 April 2012
Name of the parties: Athos Constantinides et al v. The Council of Ministers and the Ministry of Education and Culture
Reference number: 172/2010, 173/2010, 174/2010, 358/2010, 359/2010, 360/2010, 361/2010, 411/2010, 533/2010, 639/2010, 640/2010, 907/2010, 908/2010, 909/2010, 1189/2010, 1190/2010, 1191/2010, 1244/2010, 1529/2010, 1530/2010, 1570/2010, 1655/2010, 197/2011
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-172-10.htm&qstring=78 /-1,1/ 2

Brief summary: The applicants (23 in total) were all public education teachers seeking to extend their retirement age so that they serve as long as other civil servants (at their 61st, 62nd and 63rd year) for whom a relevant law was already in place. The Ministry of Education rejected their request on the ground that a law existed extending the retirement age for public servants and this law did not extend to public education teachers. The applicants applied to the Supreme Court to annul this decision of the Ministry of Education, on the ground that the differential treatment of the teachers compared to other civil servants was contrary to the equality principle of article 28 of the Constitution, article 38 of Law 158(I)/1999 on General Principles of Administrative Law and Law 58(I)/2004 transposing Directive 2000/78/EC. The Court found that the law regulating the retirement of civil servants (Law N. 97(I)/1997 as amended by Law 69(I)/2005) did not extend to teachers and the Court had no power to apply this law to the applicants. As regards the compatibility of this law with the Constitution, the Court relied on previous legal precedent to conclude that in the absence of a positive legislative provision granting the teachers the right to retire at the desired age, the denouncement of this law as unconstitutional for violating the equality principle would not benefit the applicants in any way. As a result, the applications were rejected.

The Court did not consider the compatibility of the challenged legislative provisions with Directive 2000/78 or the law transposing it, which clearly require the revision of laws containing discriminatory provisions. Such a test would not pose the challenges and dilemmas expressed by the Court as regards the denouncement of the as unconstitutional. However, none of the grounds recognised by 2000/78 are at play in this case, because the comparison invoked by the applicants is not between the applicants and their younger or older colleagues but between the applicants and other civil servants. Once again, both the applicants' lawyers and the Court demonstrate a lack of understanding of the anti-discrimination acquis.

Police officer contests retirement age

Name of the body: Supreme Court
Date of decision: 30 April 2012
Name of the parties: George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order
Reference number: *1497/2008*
Address of the webpage: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=78 /-1,1/ 2
Brief summary: The applicant was a police officer with a rank not higher than sergeant who was forced to retire at the age of 55, in accordance with a legislative provision (N. 97(I)/97, article 12(2)) which required police officers of this rank to retire at 55. The applicant claimed that the decision for the termination of his service amounted to age discrimination contrary to article 28 of the Constitution, the provisions of the ECHR and Law N. 58(I)/2004 transposing Directive 2000/78. The Court found that given the existence of a law providing for the applicant's retirement

at the age of 55, the Court had no power to extend or modify this provision. In addition, the Court found that the case under examination fell within the exception provided in article 6.2 of Directive 2000/78 (article 8 of Law 58(I)/2004 transposing the Directive), stating that the applicant did not prove that there was no difference between the police ranks so as not to justify the differential treatment. The judge stated that he saw no similarity between policemen with a rank higher than that of sergeant and those with a rank not higher than the sergeant, so as to talk of arbitrary discrimination, as the applicant did not claim that the nature of the work of the one category is the same as the work performed by the other group; therefore it was not proven that the differential treatment was not done on the basis of reasonable discrimination. The judge went on to say that according to legal precedent, article 28 of the Constitution provides protection only from arbitrary discrimination and does not preclude reasonable discrimination.

The Court seemed unaware of the provision regarding the reversal of the burden of proof as well as of the interpretations of the age discrimination provisions offered by the CJEU. In addition, the judicial precedent as regards the interpretation of article 28 of the Constitution (that 'reasonable' discrimination' is permitted), which is of doubtful legality in itself, was applied to the law transposing the Directive, introducing the test of 'reasonableness' to the prohibition of discrimination which is clearly meant by the EU legislators to be absolute.

Important decisions of the Ombudsman and the Equality Body in 2012

Exemption from religious class at school

Name of the court: Anti-discrimination Authority of the Equality Body
Date of decision: 3 December 2012
Name of the parties: n/a
Reference number: A.K.R. 93/2012
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: The parents of a 15-year-old school girl filed a claim with the Equality Body against the Ministry of Education, because their daughter was denied by the school headmaster the right to leave the classroom during the religious instruction lesson, even though she had secured permission to be exempted from this class due to her religious belief (she is a Jehova's Witness). The school's head master claimed that the exemption refers only to the marking for this lesson and that in no case does it exempt the pupil from the duty to be present in the classroom during this lesson. The pupil left the classroom in spite of this prohibition, which led to an oral attack against her by the school's headmaster and to her expulsion from the school for two days. The inspector appointed by the Ministry of Education for this school agreed with the headmaster's handling. The school's handling was premised upon a recent circular issued by the Ministry of Education which stated that exemption does not mean absence from the classroom. The pupil was also warned by the school that if she continued leaving the classroom during the religious class,

she would continue to be expelled and, as a result of the accumulated expulsions, she will be unable to graduate. The pupil continued to leave the classroom during this lesson and the school continued expelling her. At no point where the parents invited to the school to discuss this problem. The Equality Body asked the Minister of Education to submit his views within 15 days, pointing out that there appeared to be a prima facie case of violation of the complainants's rights. The Minister failed to respond.

During an interview to the press on 24.01.2013, and in response to the Equality Body's decision, high-level Ministry officials expressed disagreement with the Equality Body's position that exemption from the religious class means also absence from the classroom; they also challenged the Equality Body's position that an application for exemption need not specify the religion/belief held by the applicant. The Ministry representatives disagreed with the granting of exemptions altogether, stating that this is the common position of the Ministry and the teachers themselves.

The teachers' union OELMEK stated that the Cypriot Constitution provides for a Hellenic-orthodox education[653] and therefore Greek Cypriot pupils should not be exempted at all. The Ministry's Director of Secondary Education challenged the right of the Equality Body to intervene, stating that persons who are neither educationalists nor child psychologists and don't know how the school system works should refrain from interfering in educational matters as they don't understand the issue, cannot predict the impact of their intervention and can only undermine school discipline. One particular teacher of religious instruction stated that those who cross the doorstep of public education must accept its rules, or make "other arrangements" for their education.

The Equality Body report states that both the Constitution and international conventions guarantee the right to freedom of thought, conscience and religion, noting in particular that the Convention on the Rights of the Child obliges member states to respect the right of parents to guide their children in the exercise of this right (article 14.2). It stressed that the general framework of freedom of religion imposes an obligation not to attach to the exemption any indirect sanction or unfavourable precondition which would negate the right itself. The Equality Body underlined the fact that the Ministry circular, demanding that exempted pupils remain in the classroom, was issued after and in spite of the Equality Body's previous report on the

[653] There is no such provision in the Constitution. In fact, the Constitution provides for the right of all persons to receive education in conformity with their religion. Article 20 reads: "Every person has the right to receive, and every person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are 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 the public morals or the standard and quality of education or for the protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions."

matter (on 07.10.2010, ref. AKR 135/2009) where the issue of creative occupation of the exempted pupils was again raised by the Equality Body, as a means of avoiding tensions in the classroom and the stigmatisation and alienation of the exempted pupils from the school environment. The Equality Body stressed that the requirement that exempted students remain in the classroom during the lesson, revoked previous arrangements under which the exempted students were occupied in a special project, essentially cancels the exemption granted which is thereby rendered meaningless. The report stressed the fact that the circular in question deliberately ignored the Equality Body's repeated recommendations, treated the subject of religious instruction as any other subject in the school curriculum from which a student may be exempted, ignoring completely the connection between this subject and the respect for religious freedom. In concluding, the report found that the requirement that the complainants' daughter remained in the classroom violated her religious freedom. At the same time, whilst this practice was based on the instructions from the Ministry of Education, the report found fault also with the school itself for having used an unjustifiably harsh punishment for the student which led to her stigmatisation. Particular criticism was levelled against the fact that the pupil was asked by the school to sign a document releasing the school from liability, even though she was a minor.

The report of the Equality Body was not responded to. On 04.02.2013 the Equality Body issued a formal warning of 15 days to the Minister of Education to: (a) revoke the circular under which exempted pupils must remain in the classroom during the religious class; (b) erase the record of expulsions imposed on the pupil who did not remain in the classroom during this lesson; (c) to restore the previous practice of offering creative occupation to pupils exempted from the religious class and if this is not possible then (d) to rearrange the lessons in such way so that the religious lesson is delivered first in the school day programme allowing the exempted pupils to come to school when it finishes. The Minister did not respond within the 15 days. Another letter was sent to the Minister of Education on 20.02.2013 enquiring as to whether the Equality Body's recommendations were complied with. The competent officer of the Equality Body informed the expert that if there is no response to this letter, then the Equality Body will proceed with a relevant publication in the Official Gazette and the imposition of a sanction against the Ministry of Education.

This is the first time that state officials go as far as publically challenging the institution of the independent officers (the Ombudsman and the Child Commissioner) and they are doing so in a rather authoritarian manner. This confrontation presumably reflects the tensions and struggles taking place within the Ministry of Education, as regards the future of the educational reform, which is now at stake with the new right wing government, voted into power on 24.02.2013.

The procedure of exemption from the religious class is only a piece of a bigger puzzle that relates to contestations regarding the larger project of the comprehensive educational reform, that was commenced by the previous left wing government (2008-2013) and has somehow come to halt when the new right wing government

took office in February 2013. The dispute as to whether the students exempted from the class will sit in classroom or perform another activity has still not be resolved, but often teachers find an ad hoc solution by asking the student concerned what he or she prefers to do; in fact some exempted students choose to remain in the class and do something else rather than leave the classroom and be stigmatised. The odd cases where teachers or headmasters adopt the extreme position and exert pressure on the student, as was the case investigated by the Equality Body cannot be excluded, but remain the exception rather than the rule[654].

Racist behaviour of hospital staff

Name of the body: Decision of the Anti-discrimination Authority of the Equality Body
Date of decision: 21 September 2012
Name of the parties:n/a
Reference number: Ref. AKR 60/2009, AKR 110/2009, AKP 32/2011
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: Over the course of the three previous years, three complaints were submitted to the Equality Body alleging racist behaviour by staff members in public hospitals.

In the first case, a Lebanese complained to the hospital staff who was allegedly deliberately denying him treatment while he was in pain, upon which the staff informed him that he was obliged to speak Greek. An exchange between the complainant and another patient and his visitor led to the complainant saying that with such behaviour towards foreigners, Cypriots should not wonder why Turkey invaded. According to the complainant, this comment led to the doctors refusing to examine him in the next few days, whilst a doctor told him that the hospital is only for Cypriot and that he should learn Greek before he comes back for any treatment. When interviewed by the press, the doctors referred to the complainant as an “Arab” who should be grateful for the rights granted to him and who instead complained all the time and therefore they (the doctors) decided not to speak to him in English. The second complaint was submitted by an Iraqui refugee who visited the emergency unit of the Nicosia General Hospital following an industrial accident. Because he was unable, due to extreme pain, to take the positions required by X-ray doctor, the latter refused to assist him and told him that in Cypriot hospitals the only language spoken is Greek and if he does not like it he can go elsewhere. The third complaint was submitted by a Chinese who claimed that the doctor on duty by-passed the queue in order to delay examining her and subsequently refused to examine her. In the investigation that followed, the hospital staff denied these allegations and claimed instead that it was the patients’ behaviour that was inappropriate and provocative. The doctor who by-passed the queue admitted doing so but claimed it was done by mistake, adding that the complainant ought to have pointed this out at the spot. The

[654] Consultation with teacher in public education.

responses as regards the language issue were vague. In its report the Equality Body, after setting out the legislative framework[655] concluded that the allegations of the complainants had not been proven conclusively; that the vast majority of doctors and nurses are exercising their duties impartially, but there are exceptions; the inadequate response of the hospital staff complained of may possibly be faced by other (Cypriot) patients; it is extremely difficult to prove allegations of racist behaviour during oral exchanges, which is why health authorities should record incidents, whether verified or not, so as to assist with the identification and monitoring of patterns of behaviour by hospital staff.

A number of problems emerge with the conclusions of the Equality Body. First, the position that the patients' allegations were not proven is problematic. In the case of the first complainant, the doctor had repeated more or less the same statements when speaking to the press. In the second case, the fact that a refugee (most probably a manual labourer, judging by the fact that he was injured in an industrial accident) opted to be transferred to a private fee-paying hospital must surely prove that the treatment at the public hospital (which is free) was, at least, not optimum. In the third case, the doctor had admitted by-passing the queue. Although the Equality Body is not obliged to follow the rule of reversing the burden of proof, it is clear that all three complainants established a prima facie case. Directive 43/2000 does not impose reversal of the burden of proof where the competent body has the power to carry out its own investigations (article 8(5) of the Directive). However in this case the Equality Body did not exhaust its duty to investigate the facts: it did not examine any witness nor did it do its own fact finding; it merely sent letters to the hospital authorities and when the latter denied the allegations of the complainants, the Equality Body decided that the allegations were not proven. Although the mandate of the Equality Body entitles it to hold hearings, summon and examine witnesses and generally follow the procedure followed in the judicial process (article 45 of Law 42(I)/2004). It is clear that in this case no hearings were held; indeed the only action taken by the Equality Body was to send letters to the health/hospital authorities. An examination of the medical files of the patients would, at least, show whether the patients told the truth about not having received medical treatment. The report does not make clear whether these files were examined and whether the patients' allegations on this point were confirmed. The comparison between the treatment afforded to Cypriots and to foreigners may not be relevant where the main problem alleged by all three complainants was that of the staff refusing to speak any language other than Greek.

Request for disability grant is denied

Name of the body: Commissioner for Administration and Human Rights/Ombudsman

[655] The Doctors Law; the Law on Safeguarding and Protecting the Rights of Patients N. 1(I)/2005; the Public Service Law, all of which safeguard the right to impartial and dignified treatment by public servants.

Date of decision: 20 December 2012
Name of the parties: n/a
Reference number: A/P/434/2011 and A/P 534/2012
Address of the webpage
http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument
Brief summary: A person with diabetes and a history of severe obesity, of hypothyroidism and of lower extremity thrombosis, angiopathy and neuropathy, a recipient of a disability pension, for which he had been assessed with 100% disability complained to the Ombudsman because his application for a grant to buy a car was rejected. The rejection was justified on the premise that he did not meet the particular scheme's preconditions which required disability beyond 39%; a medical council which convened in 2011 assessed his disability for the purpose of driving a car at 25%. The rejection of the application was notified to the complainant through a letter of just a few lines without offering any explanation or justification. This decision followed a number of other negative decisions in similar cases, where the competent authority again arrived at the percentage of 25% as an assessment of an applicant's disability leading to the rejection of claims under the particular scheme, suggesting the existence of a policy of excluding as many applicants as possible.

The Ombudsman responded to this complaint with references to administrative law procedures[656] which require the detailed keeping of minutes of meetings and the recording in a clear and concise manner of all decisions. Reference was also made to the administration's duty to justify all its decisions especially where these have a negative impact on a person. Given that a case of differential treatment amounting to unlawful discrimination under the law transposing the disability component of Directive 2000/78 (Law N. 127(I)/2000) was hard to establish under the circumstances, the Ombudsman used administrative law principles in order to rule that the failure of the administration to provide sufficient justification for a decision negative for the applicant left room for presuming discrimination.

Transfer of teacher with a health problem to a new school

Name of the body: Equality Authority
Date of decision: 22 August 2012
Name of the parties:n/a
Reference number: AKI 69/2011; A/P 2140/2011
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki
Brief summary: The Director for Special Education complained to the Equality Body about the decision of the Public Education Commission to post her from a special school in one area to a special school in another part of Nicosia. She is suffering from ankylosing spondylitis, a severe back condition and was assessed by a medical

[656] General Principles of Administrative Law N. 158(I)/1999.

council to be 40% disabled; she was advised to avoid movement and ensure that her workplace is safe, without any risk of injury. She claimed that in order for her to go from her place of residence to her current place of work she has to drive for 15 minutes whilst if she was to be transferred to the new school she would need to drive through town for 30-40 minutes against the direction of the oncoming traffic for which she would need to keep her foot on the pedal all the time. She further claimed that whilst the school population of her current school consists of children with mental retardation[657] and serious kinetic difficulties, the new school she was posted to was attended by pupils suffering from emotional and serious behavioral problems with outbursts of aggressive behavior which can put her health at risk. The Public Education Commission responded that staff transfers are decided on the basis of the needs of the service and that if she moves to the new school her working conditions would not change.

The Equality Body found that the rights of the employer to change an employee's working environment are not exhausted in the Public Education Service Laws 1969-2007, but that regard must be had to the Law on Persons with Disability (transposing the disability component of Directive 2000/78/EC). It ruled that the policy of transferring teachers without consideration as to their disability is a neutral practice likely to lead to indirect discrimination prohibited by the Law on Persons with Disability (article 2) and article 27(1)(a),(b),(c) of the UN Convention on the Rights of Persons with Disability. The report points out that the Ministry of Education had drawn up a list of teachers with disability, as previously recommended by the Equality Body,[658] to be consulted whenever transfers needed to be made. Although the complainant's name was included in the list, this list was not consulted by the Public Education Commission. The Equality Body invited the parties to a consultation.

The case raises a number of unaddressed questions: Does the complainant's condition meet the legal definition of disability? The confederation of disability organisations does not think so.[659] Since the complainant applied for (and presumably received) permit to purchase a tax free car, why did she not buy a car for the disabled or at least an automatic car, to enable her to drive without having her foot continuously on the pedal? Are her allegations regarding the (potentially violent) behaviour of children with emotional problems sound or are they a mere reproduction of a stereotype? On the face of it, the only proven negative consequence for the complainant resulting from her transfer is the fact that she will have to drive for 15 minutes longer than what she does now.

The policy of the Public Education to transfer teachers using the needs of the service as the sole criterion is obviously producing discrimination. The previously proposed measure of drawing up a list of teachers with disabilities did not produce concrete

[657] Translation from the exact term used by the complainant.
[658] See flash report dated 3 November 2009.
[659] Statement from the confederation's president t the author.

results; however this report does not propose any institutional measures to be adopted in respect of this policy.

Access to education for autistic children

Name of the body: Equality Authority
Date of decision: 27 July 2012
Name of the parties: n/a
Reference number: AKI 50/2011
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki
Brief summary: The parents of three autistic children who attended the special unit of a certain school complained to the Equality Body about the decision of the Ministry of Education to transfer a fourth child from another school into that unit. The transfer was done without having secured the prior decision of the local Committee for Special Training and Education, as foreseen under the procedure. In addition to the complaint about the transfer of the child, the parents further complained that the Ministry failed: to provide the unit with additional equipment and staff to meet the increasing needs which resulted from the transfer; to adequately investigate the parents' complaints for physical and verbal abuse of their children by the teacher; to provide adequate training and information to the other staff members to sensitise them and reinforce their acceptance and understanding of their children's special needs; and to examine the parents' complaints objectively and impartially. As a result, the Ministry cancelled the transfer of the fourth child in order for the procedure to be repeated following the due process foreseen in the regulations. This meant that the fourth child had to go back to his old school, which brought about the reaction of the parents, who filed a complaint with the Child Commissioner. Following the latter's intervention, the Ministry allowed the fourth child to remain in the unit and hired an escort/carer for it, replaced the teacher who had been accused of abuse and installed specialised equipment in the unit (a sensory room, a changing table, etc.).

Since the parents filed a complaint to the police against the teacher suspected for abuse, which prompted a criminal prosecution against her, there was no further ground for investigation at an extra-judicial level, either by the Ministry or by the Equality Body. Nevertheless, the Equality Body noted that the system lacked a credible mechanism of locating cases of abuse, especially in circumstances where the children lack the intellectual, emotional or verbal ability to identify, describe and report wrongful and harmful behaviours experienced. The Equality Body's report found the parents' complaints justified as regards their allegations that the unit had been unprepared and unequipped to accept a fourth child, but agreed with the Child Commissioner's view that the fourth child should not have been forced to return to its old school. The report also recommended the review and reassessment of the framework of special education so that the attaining of the aims is not subjected to time consuming and inflexible procedures that can defeat its goals.

The report takes a bold leap away from the standard legalistic approach and into the field of educational theories in favour of standards and frames which are adjustable to the needs of the pupils themselves. The position that the failure to provide education meeting the children's needs amounts to discrimination is a progressive stand following the trends at the level of the ECHR.

Following the issue of this report, the Ministry of Education took significant steps towards adopting the Equality Body's recommendations as regards these units.[660]

Job advertisement with an age limit

Name of the body: Equality Authority
Date of decision: 23 May 2012
Name of the parties: n/a
Reference number: AKI 30/2011
Address of the webpage:
http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument
Brief summary: The Official Gazette published a vacancy for a cultural advisor for the 'House of Cyprus' (hereinafter 'the House'), a cultural centre in Athens belonging to the Cypriot state. The job specifications excluded retired persons and persons who are due to retire in the next five years, stating that applicants must not have completed the age of 55 or, in the event that s/he is a civil servant or a teacher, the age of 58. The complainant did not apply as she was 56 at the time, even though she was more qualified than the other applicants, and filed a complaint with the Equality Body for age discrimination. The Ministry of Education attempted to justify the age limit on the basis of the time required for the candidate to become familiar with the issues, to adjust to the duties of the position (acquaintance with the staff of the House and the Embassy, information on activities and planning work, etc.), and to meet and develop relationships and partnerships with organizations and institutions in Greece. The Ministry further argued that hiring a candidate over 55 would mean that in a period of less than four years they would have to hire a new person which would entail an additional financial burden for the state and would not contribute to the smooth and efficient running of the House.

The Equality Body examined the legality of the age limit of 55 which this job advertisement introduced in respect of applicants who are neither civil servants nor teachers, in light of the guidelines given by the ECJ as regards the justification required by article 6 of Directive 2000/78/EC and the ECJ ruling in C-388/07 which established that deviations from the prohibition of age discrimination are allowed only if the goal to be served is one of social policy, such as employment policy, the labour market and vocational training. The Equality Body concluded that the differential treatment introduced by this job advertisement as regards private employees is

[660] Consultation with the Equality Body.

unjustified discrimination prohibited by law. Regarding the justification offered by the Ministry, that the age limit was necessary to give the successful candidate the time to acquaint him/herself with the demands of the job before retirement, the Equality Body found this acceptable, as the containment of public spending, especially in times of economic crisis, was a legitimate goal. However the means used to achieve the legitimate aim, being the use of an age limit, were neither appropriate nor necessary.

The fact that the Equality Body examined this complaint within just over two months from receiving it is a significant first, that begs the question of what criteria are used in order to prioritise some complaints and leave others pending for years. Obviously, in cases involving job recruitment, third party rights will be created in the absence of any intervention, which would then render the Equality Body's intervention meaningless. However, this was the case in a number of other complaints examined by the Equality Body in recent years where the delay in issuing a decision created rights in favour of third parties which could not be cancelled, thus leaving the victim of discrimination without redress.

Religious rights of prisoners

Name of the body: Commissioner for Administration (Ombudsman)
Date of decision: 9 April 2012
Name of the parties: n/a
Reference number: A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11
Address of the webpage:
http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument
Brief summary: A group of Greek Pontic prisoners asked the prison authority for the right to celebrate a date of significant religious celebration for them by visiting the prison church. The prison authority rejected their request. A few months later, an evangelical priest was refused permission to visit a group of four Nigerian detainees who had expressed the wish to meet with representatives of the evangelical church. The prison authority rejected this request on the ground that it amounted to proselytism (forbidden under the Cypriot constitution and under prison regulations)[661] in view of the fact that no detainee had upon admission to the prison declared himself, upon admission to the prison, to be a follower of the evangelical church.[662]

The prison authorities sought to justify their actions on the assumption that "a detainee's will is variable due to the nature of his psychological condition." As a result, the policy is to allow visits only from representatives of the religion or dogma which the detainee had declared to be a follower of upon admission to the prison. The prison authorities further claimed that proselytism particularly affects third country nationals who are trying to delay their deportations.

[661] Regulations 121/97, reg. 109(3) prohibits acts intending to proselytise detainees.
[662] Although there is no obligation in law for detainees to declare their religion, this is a practice followed by the prison authorities.

The Ombudsman's report pointed out that UN rules on the treatment of prisoners do not allow the prohibition of visits from recognised representatives of religions where a prisoner so requests such a visit.[663] It added that proselytism was repeatedly interpreted by the ECtHR,[664] especially in, in a manner that does ***not*** include: public expressions of faith, mere persuasion by one person to another to change his/her religion, information, missions, meetings etc. It further stated that although some restrictions as regards the exercise of religious duties within the prison are understandable, such restrictions may not lead to a denial of the right of the prisoners to practice their religion.

Although in other contexts the Ombudsman had expressed the view that religion is sensitive personal data,[665] this report does not address the policy of requesting detainees to declare their religion upon admission to the prison. Furthermore, given the fact that orthodox priests regularly visit foreign detainees in the prison in order to offer them support and confessional service, without even requiring permit from the prison authorities,[666] one would need to investigate whether the prison authorities apply the same restrictive policy on visits to the representatives of the Greek Orthodox Church. This amounts to a direct violation of the non-discrimination principle, as enshrined in the Constitution (article 28), in the horizontal directive and in Directive 78/2000/EC if one is to endorse the scholarly position that the prison is also a workplace, since detainees are asked to perform specific tasks. The Ombudsman did not make use of the wide powers granted by law[667] to the Equality Body in order to apply the non-discrimination principle on the ground of religion or to introduce the provisions of the horizontal directive into the debate. It should also be stated that the prison population would be significantly smaller (and less 'ethnically and religiously diverse') if administrative detention was available to third country nationals who are serving sentences or merely detained on immigration related offences, as this category forms the majority of foreign detainees.

Up until the end of 2013 no steps were taken by the prison authorities towards adopting any of the Ombudsman's recommendations. In early 2014 the prison governor was forced to resign over a series of suicides within the prison. It remains to be seen whether the new director will address the problem and adopt the recommendations.[668]

---

[663] Standard Minimum Rules Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 , article 41.
[664] Kokkinakis v. Greece
[665] See Flash Report entitled *Equality Body report on confessions at schools*, dated 20 September 2011.
[666] Interview with orthodox priest in the framework of the ERF project 'DEVAS' led by JRS Europe, 2008-2010. For more details on this project, see http://www.detention-in-europe.org/index.php?option=com_content&view=article&id=220&Itemid=242.
[667] The Combating of Racial and other forms of Discrimination (Commissioner) Law N. 42(I)/2004.
[668] Consultation with the Equality Body.

Turkish Cypriot's change of name

Name of the body: Anti-discrimination authority of the Equality Body
Date of decision: 31 July 2012
Name of the parties: n/a
Reference number: A.K.R. 118/2010
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: A Turkish Cypriot who moved to the UK and changed his name by filing an affidavit with the British Courts, returned to Cyprus two years later and filed the same affidavit with the Cypriot Courts in order for his new name to appear in his birth certificate. The district authority declined his request on the justification that in order for him to take up a Greek name, he has to change his religion first and be baptised as a Christian. According to the Law on Population Archives 2002-2011, a name is granted from the parent to a child through a declaration at the Registrar's office and not through baptizing, which is a religious ceremony of no legal consequence. Article 43 of the said law sets as a precondition for the change of a name the presentation of evidence which the Registrar considers satisfactory, without specifying the nature of such evidence. According to the practice followed in other cases, the evidence required by the Registrar is intended to secure that the person requesting the change of name is already using the new name and is not seeking, through the change of name, to defraud third parties.

The Equality Body report states that EU law does not restrict the member states' power to regulate themselves the registration of names in their registries and as a result, national legislations differ significantly between member states. Thus, whilst some member states require specific or convincing reasons for the change of name, others (like the UK) do not set any preconditions. However, in the exercise of their discretion and competencies, any restrictions imposed by member states must serve the public interest and comply with the general principles of Union law, such as the prohibition of discrimination, proportionality, freedom of religion. A series of ECtHR decisions have established that whilst states have a wide margin of appreciation to regulate the change of names in light of cultural, historical or other specificities, any restrictions must have a sound legal basis and must respect the right to private and family life enshrined in article 8 of the ECHR. The report expressed its doubts as to the legality of connecting particular names with particular religions as obviously most names have a religious or historical origin whilst the choice of a name may be based on a variety of reasons that may not necessarily be indicative of the person's religious convictions. Finally, the policy of the District Authority to require a christening certificate for every person who seeks to change his/her name into a 'Greek' one lacks sound legal basis and violates the nucleus of the right to religious freedom, amounting to religious discrimination.
Following the Equality Body's intervention, the local authority appeared willing to re-examine the applicant's request, however the latter did not respond to the local authority's requests to produce additional documents and the case was thus closed.

The concept of urging as many members of one community into adopting the religion of the other community dates back many centuries in Cyprus, as it was used by successive colonial powers in order to adjust and regulate the 'minorities' and the 'majorities' on the island. Given the political baggage that this concept is loaded with, the Greeks and the Turks of Cyprus, although to a large extent secular, do not take the change of religion lightly. This fact alone should have prompted the authorities to steer clear from such an antiquated and discredited practice and the Equality Body to identify and criticise this practice as mediated by power politics deriving from the Cyprus problem.

Homophobic statements by a politician

Name of the body: Anti-discrimination Authority of the Equality Body
Date of decision: 29 July 2012
Name of the parties:n/a
Reference number: Ref. AKR 55/2010, AKR 56/2010,
AKR 57/2010, AKR 58/2010, AKR 61/2010, dated 29 July 2012
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: In 2010 the Equality Body received five complaints regarding homophobic statements made by a former MP who equated homosexuality with mental disorder, bestiality and paedophilia. The MP's statement came as a reaction to a previous report of the Equality Body on the cohabitation of same sex partners and the need to regulate this relationship in order to eliminate discrimination.
The report provides definitions for terms such as hate statement, hate crime and homophobia and points out that there is no national legislation specifically criminalising or otherwise addressing homophobia, homophobic speech and homophobic offences; instead, one has to resort to general provisions of common criminal law. It adds that this is the reason why most LGBT persons hide their sexual orientation and do not pursue their rights. The report goes on to make extensive reference to the relevant Recommendation of the Committee of Ministers of the Council of Europe adopted in 2010 on sexual orientation and gender identity,[669] to the first official inter-governmental discussion carried out by the Human Rights Council of the U.N. on 07.03.2012 on violence and discrimination against LGBT persons, where the U.N. Human Rights Commissioner recommended to member states to implement recording mechanisms for homophobic incidents and expand their legislation on sexual orientation discrimination and to implement sensitization programmes and training of police and other stakeholders to the rights of LGBT persons. The report also analyses the ECtHR ruling in V*ejdeland and others v. Sweden*[670] which established that homophobic statements are not protected by the right of expression contained in article 10 of the Convention. The report stresses that the absence of specific legislation to address holistically the rights of LGBT persons

[669] Recommendation CM/Rec (2010) 5, of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation and gender identity, 31 March 2010.
[670] App. No. 1813/07, 9 February 2012.

undermines the efforts to combat prejudices, homophobic attitudes and stereotypes, expressing regret over the fact that the recent law transposing the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law[671] contains no reference to homophobic behaviour.

The report makes no reference to the prohibition of harassment contained in the law transposing Directive 2000/78 as a means of addressing homophobic speech.

This case has prompted an interest from a number of actors on the issue of homophobia which has, in turn, led to a number of initiatives towards addressing the problem. These are described under section 5 above (positive action).

Disability – access to sports grounds

Name of the body: Anti-discrimination Authority of the Equality Body
Date of decision: 29 May 2012
Name of the parties: n/a
Reference number: Ref. A.K.I 30/2010 & A.I.T 1/2012
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki
Brief summary: A paraplegic sports journalist filed a complaint against the Cyprus Sports Organisation (KOA) for the non-accessibility of football grounds to persons with disability. The absence of suitable infrastructure did not allow him to access the football grounds on wheelchair, which prevented him from adequately carrying out his profession. Because accessibility to infrastructure for persons with disability is a necessary precondition for ensuring equal participation of persons with disability to their professional life but also to the social, economic and political life, the Equality Body carried out a country-wide on site investigation to all football grounds. From the investigation, it emerged that whilst some football pitches are accessible to wheelchair users, others were not or were facing accessibility problems: although there might be a ramp leading to the sitting area, the area which the ramp led to did not have a cover to protect spectators from the rain and/or there were no toilets suitable for wheelchair users; in other cases, there was no ramp at all, only stairs leading to the sitting area.

The Equality Body found that the lack of necessary infrastructure demonstrates the long-term gaps and weaknesses in the monitoring and certification system of accessibility of services offered to the public, which resulted in creating a hostile environment for people with disabilities, forcing them into social exclusion. The report adds that in the spirit of the U.N. Convention, the terms "accessibility" and "reasonable accommodation" are complementary concepts and the obligation to provide "reasonable accommodation" does not replace the obligation to take measures to ensure accessibility, especially in cases of services offered to the

[671] Law N. 134 (I) 2011.

general public. The report stated that all competent agencies involved should focus their efforts towards taking immediate corrective action for upgrading their services to persons with disabilities, for the gradual restoration of accessibility to existing sports facilities to eliminate existing barriers, adding that these policies must accommodate the rights of real people, not of mere statistical figures, and respond to the diversity of their needs. Turning the grounds accessible does not require an enormous economic cost and is a matter of principle and democratic functioning of the state.

The report did not address the complainant's claim that the lack of accessibility of the sports venue denied him the right to adequately carry out his profession and focused instead on the fact that sports venues should be accessible for all because they are open to the public. Had it examined also the employment parameter of the claim, it could have produced interesting conclusions as to the right to reasonable accommodation for employees who have to carry out part of their professional duties outside their workplace. However, the delay of over two years in examining this complaint also meant that any decision or other intervention of the Equality Body as regards the complainant's conditions of work would not necessarily be meaningful for the complainant, who probably had to resort to alternative solutions in the meantime. The measures proposed do not place any specific duty on any of the organisations concerned.

Police officer contests the maximum age limit for promotions within the police force

Name of the body: Anti-discrimination Authority of the Equality Body
Date of decision: 6 April 2012
Name of the parties: n/a
Reference number: A.K.I. 32/2008
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: On 02.04.2008, the complainant filed a claim with the Equality Body that the maximum age limit of 40 years foreseen in article 17A(1) of the Police Laws 2004-2010 as a prerequisite for appointment in the specialized position of Captain Third Class in the Pilot Police Boat, amounts to age discrimination. The complainant, who had just turned 40 when he applied for this position, was rejected for not fulfilling the law's requirement regarding the age limit. He filed an objection that the age limit was in breach of Law on Equal treatment in Employment and Occupation N. 58(I)/2004 (transposing Directive 2000/78). The Police authorities replied that the age limit was objectively and reasonably justified by a legitimate aim, which was the requirement for police officers to demonstrate " operational capacity that is interwoven and inextricably linked to the responsiveness and alertness of its members, all of which diminish over time." The Police authorities further cited a court

decision from 1990 which found the fixing of a maximum age limit of 25 for telephone operators as justified.[672]

The Equality Body decision found that, although the aim of seeking to secure the operational readiness of the police force was certainly legitimate, the means used to attain it were neither proportionate nor necessary. According to the Equality Body, given that the applicant was already a member of the police force, who had the necessary experience and would have served in the position he had applied for, for a period of 20 years before retirement, the age limit does not meet the requirements of article 8(2)(c) of Law N.58)(I)/2004,[673] which allows for the fixing of a maximum age for recruitment based on the training requirements of the position or the need for a reasonable period of employment before retirement. Also, the Equality Body pointed out that the view that older persons are not in good physical condition is based on stereotypes and hypotheses which may not necessarily be accurate and which turn out to be particularly harmful for persons such as the applicant who had already been assessed by the police as capable to perform the duties of the position he had applied for, from the point of view of physical capacity and experience. No reference was made to CJEU case law on the matter. The Equality Body rejected the argument of the respondents as regards the 1990 case where the age limit was found by the Court to be justified, pointing out that the Cypriot legal order had been comprehensively amended since then. The Equality Body found that Article 17A(1) of the Police Laws 2004-2010 introduced direct discrimination on the ground of age in access to employment with the police. Thus, using the powers granted to it under article 39 of the Combating of Racial and Other Forms of Discrimination (Commissioner) Law N42(I)/2004, the Equality Body notified its findings as regards the Police law to the Attorney General who, under the same legal provision,[674] is under an obligation to advise the competent Minister of measures to be taken and prepare the relevant draft law.

However, in the four years that elapsed between the complainant's application to the Equality Body and the latter's report, a third party was hired to the position in question, thus essentially leaving the complainant without a remedy, because third party rights had already been created. This is not the first instance where employees victims of discrimination had to forego their claim against their employers, because the Equality Body's response came too late. This must be seen as a systemic failure owing partly to the limited budgetary resources afforded to the Equality Body and partly to the latter's inability to freeze the hiring process that may deny a complainant of his/her rights.

[672] Christina Akarou v. Cyprus Telecommunication Authority, Case No. 912/88, issued on 23.06.1990.
[673] Corresponding to article 6(1)(c) of Directive 2000/78.
[674] Article 39 of the Combating of Racial and Other Forms of Discrimination (Commissioner) Law N42(I)/2004.

Handling of industrial accident involving a migrant worker

Name of the body: Anti-discrimination Authority of the Equality Body
Date of decision: 4 January 2012
Name of the parties: n/a
Reference number: Ref. A/P 351/2011
Address of the webpage: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr
Brief summary: The complaint was a migrant worker who had suffered severe permanent injuries as a result of an industrial accident at work. Prior to the accident, he had changed employer during his first year of employment in Cyprus without the necessary paperwork having been carried out, which had the effect of cancelling his work permit.[675] The accident, which severed most of the fingers of his right hand and caused him additional problems, happened in his new place of employment. As a result of the accident, he spent two months in hospital after which he was arrested and detained for unlawful stay and a deportation order was issued against him. His detention put several obstacles in his efforts to sue the employer for the industrial accident. He was finally released 6 months after he was arrested, but continues to be without a residence or work permit and without access to welfare or health services, awaiting the progress of his case.

The Ombudsman criticized the handling of the complainant's industrial accident by the authorities who, rather than investigate the accident, arrested and detained the complainant for six months, rendering the pursuit of his legal rights almost impossible. Also the fact that almost one year elapsed before the investigation of the accident commenced, meant that most of the evidence would become impossible to obtain, thus reducing the chances of successfully prosecuting the employer. The Ombudsman concluded that the consequences of the complainant's detention, in other words the loss of opportunity to pursue the implementation of basic rights, amounted to tolerance for discrimination and led to impunity for the employer, which were far more serious consequences than the purpose served by sending away one undocumented migrant. The complainant's six months of detention, which was so long that it could have been a prison sentence, meant that the authorities not only failed to protect him as a victim but victimized him for a second time for complaining about the discriminatory behaviour he had been subjected to when he filed his complaint for the industrial accident. The Ombudsman located discrimination on the ground of the complainant's race/ethnic origin on two levels: on the differential treatment he was subjected to by his employer, when compared to a hypothetical Cypriot worker, and on the handling of his case by the authorities, which amounted to institutional discrimination. The systemic failure to provide the complainant with the protection necessary under the circumstances amounted to discrimination on the ground of his race/ethnic origin. The Ombudsman expressed satisfaction over the

[675] As all migrant workers are "attached" to a specific employer, a special permit is required in order for a migrant employee to change employer. In the absence of such a permit, a migrant worker who changes employer automatically becomes illegal.

declared policy of the Labour Inspection Department that the exercise of its mandate does not depend on the legality of the residence or work of a person, but underlined the fact that, in spite of the said policy, the handling of this complaint and the complainant's detention has led to discrimination and to his further victimization, as well potentially to the impunity of the employer. If this handling, continues the report, is a general practice in the case of migrant workers, this will discourage victims from reporting accidents, it will exacerbate the adverse consequences of the informal economy and will impede the administration of justice for victims of discrimination. The report recommended the institutionalization of an interdepartmental process of handling industrial accidents involving migrant workers, following consultation with all stakeholders in order to act directly and concertedly with a timely and efficient investigation surrounding the circumstances of the accident. The report added that the primary purpose of the actions should be to safeguard the rights of the victim and the investigation of the case, and not the exercise of immigration control.

A self-initiated investigation of the Ombudsman in 2008 had found that most of the sectors where migrant workers are working in large numbers are dangerous and unhealthy, which means that migrants are exposed to higher risk for industrial accidents than Cypriots. The 2008 investigation concluded that, for the purposes of policy making, the authorities ought to take into account these characteristics of the employment of migrants and to inform migrant workers of protection measures they need to take to avoid accidents. In spite of information leaflets which the Labour Office printed in seven languages, industrial accidents continue to happen unobstructed: in 2010, 19.4% of victims of industrial accidents were EU citizens and 5,2% were third country nationals; also migrants were 11 out of 20 victims of fatal industrial accidents, which indicates that the rate of migrants falling victims to unsafe and unhealthy working environments is probably much higher

The report touches upon the crux of the disastrous effects of the rigid Cypriot immigration regime that places immigration control and the relentless hunt for undocumented migrants as a priority over all fundamental rights issues such as equality.

Supreme Court decisions in 2011

Name of the court: Supreme Court of Cyprus
Date of decision: 13 April 2011
Name of the parties Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice
Reference number Application No. 135/07
Brief summary: An unsuccessful job applicant filed a claim against the government challenging a public service scheme for temporary prison guards which requires prison guards to be aged between 20 and 30 years. The scheme also stipulated that persons aged between 30 and 40 are also eligible provided they had previously served as prison guards for at least one year. The claimant's application for such a position was rejected on the ground that he was over 30 and that his previous service

as a prison guard was not relevant as, according to the Attorney General, the requirement that the applicant must have served for at least one year applied to permanent positions only and not to temporary positions, such as the one which the applicant was applying for. The claimant argued there was a violation of Article 28 of the Constitution, which prohibits discrimination on all grounds, as well as a violation of the Law on Combating Racial and Other Forms of Discrimination (Commissioner) N.42 (I)/2004[676] and the Law on Equal Treatment in Employment and Occupation N.58(I)/2004,[677] which prohibits fixing an age limit in job advertisements. The respondent (the Republic) argued that the age limit did not amount to discrimination as it was connected to the nature of the duties of a prison guard.

The Supreme Court annulled the administrative decision by which the claimant's job application was rejected. In its reasoning, the Court stated the following: Article 28 of the Constitution prohibits discrimination and this constitutes a criterion through which any other legislative or other provisions should be viewed; Article 28 and the right to equality do not prohibit differential treatment premised upon an objective assessment of essentially different situations and based on public interest (citing a case of 1988); the principle of equality is breached when differentiation is not based on objective and reasonable discrimination (citing a case of 1969); in the case under examination, the differentiation between temporary and permanent employment was not objective and cannot be justified. The respondent's argument of age discrimination was found by the Court to be very weak; instead, the Court preferred to focus on discrimination between the conditions applicable to temporary employment and the conditions applicable to permanent employment, because the scheme had offered the latter additional possibilities in order to apply for the position, in comparison to the former.

Name of the court: Supreme Court of Cyprus
Date of decision: 17 November 2011
Name of the parties: Gonul Ertalu & Imge Ertalu v. Ministry of Finance
Reference number: Review Appeal no. 104/2008
Address of the webpage: The decision is not available electronically
Brief summary: The applicant was a Turkish Cypriot residing in the Turkish controlled north of Cyprus (hereinafter 'the north') but studying in the Republic (Greek-Cypriot) controlled area of Cyprus (hereinafter 'the south') who applied to the government for a student grant. According to the relevant law (Law on Providing Special Grants of 1996 N. 77(I)/1996 as it was subsequently amended by Law 90(I)/2006), in order to be eligible for the grant, one would have to be resident in the south. The 1996 law had provided for student grant to be paid to all Cypriot citizens; however, when the sealed border between north and south was opened in 2003 and Turkish Cypriots started coming to the south to access services, the law was revised in order to exclude them from eligibility to claim state grants. The applicant's application for the grant was thus rejected; the applicants claimed that the said

[676] This law appoints the Ombudsman as the equality body and sets out its mandate. It really is irrelevant to the context of this case, but it was nevertheless invoked by the parties.
[677] This law roughly transposes Council Directive 2000/78/EC.

rejection was contrary to article 28 of the Constitution and that it introduces unjustified discrimination[678] against a certain group of Cypriots.

The central line of argument examined in the case was that if the relevant legislative provision of the Law on Providing Special Grants was deemed unconstitutional, this would not have benefited the applicant in any way, because the entire provision of the law as regards the payment of a student grant would have been declared unconstitutional and thus null and void. In such a case, the applicant's appeal would not have succeeded, as there would be no relevant legislative provision upon which her claim could be premised. According to legal precedent, where the situation is such that the proclamation of a legislative provision as unconstitutional does not ensure satisfaction of the applicant's claim, then the Court refrains from assessing the constitutionality of the legislative provision.

The applicant's lawyer argued that the present case differs from the established legal precedent, in that if the law of 2006 is deemed unconstitutional, then the law in force would be that of 1996 which did not restrict the condition of eligibility to the applicants having their ordinary residence in the south. He further argued that the legal doctrine of not declaring a law unconstitutional where this would not ensure the claimant satisfaction of his/her claim has unjustifiably undermined the right to equality protected by article 28 of the Constitution.

The Court found that the constitutionality check cannot, through the invocation of the equality principle, be transformed into a tool for expanding the scope of the law in areas beyond the legislator's will.

The Court also rejected the argument that if the 2006 amendment is declared unconstitutional then the net result would be the law of 1996 which did not restrict the scope of the law to those ordinarily resident in the south. Instead, it found that if the relevant provision is declared unconstitutional, then the whole provision would be annulled, not just the 2006 amendment, as this would have meant altering the legislator's intention. The application was thus rejected.

A number of problematic issues emerge from this decision. First and foremost is the failure to invoke and apply the law transposing the Racial Equality Directive (Law N59(I)/2004), which ought to have been applied in spite of any provisions to the contrary in the national legislation. Given that the exclusion from the scope of the law

[678] This line of argument, which is not uncommon in Court decisions, suggests that neither of the parties involved were aware of the provisions of Law N. 59(I)/2004 transposing the Racial Equality Directive, and particularly the indirect discrimination provision, which rates higher than national law including the Constitution. Also the reference to "unjustified discrimination" signals an endorsement of the line taken by the Courts in previous Court decisions, where discrimination may be deemed acceptable if it is found to be "reasonable". This legal doctrine, which derives from Court decisions and has no legislative basis, is contrary to the Racial Equality Directive, which does not allow such deviations from the equality principle.

on the Provision of Special Grants of persons residing in the north is indirectly intended to exclude Turkish Cypriots, this should have led the Court to the conclusion that the law contained indirect discrimination prohibited by law. Secondly, the legal precedent of refusing to subject any law to the constitutionality test, which effectively (at least in this case) means refusing to test the law for compliance with the anti-discrimination principle, leaves a gap which creates an injustice as well as an issue of non-compliance with the Racial Equality Directive, which requires all discriminatory provisions to be revised. The Court's refusal to revise this provision, hiding behind an alleged reluctance to interfere with the legislator's will, is highly problematic. It is none other than the Courts who developed the doctrine of not subjecting laws to the constitutionality test when the result would not have offered satisfaction to the applicant's claim. It is also the Courts who interpreted the law in such a way so that the proclamation of the amending law of 2006 as unconstitutional would have erased the entire provision of student grants from the law. And it is the Courts who appear unaware of the changes brought to the Cypriot legal order by the EU acquis.

Name of the court: Supreme Court of Cyprus
Date of decision: 7 April 2011
Name of the parties: Andreas Kattos v. The Republic of Cyprus through the Minister of Justice and Public Order and the Chief of Police
Reference number Case N. 349/2010
Brief summary: The applicant was a police sergeant who was forced to resign when he completed his 55th year of age. He argued that he ought to have been allowed to work until his 60th year, as the other members of the police force or until his 63rd year as the rest of the public servants, claiming that the law which forced him to resign at his 55th year[679] was unconstitutional as it violated article 28 of the Constitution and was not in compliance with the principle of equality in employment guaranteed by article 8(1) of the law transposing the Employment Equality Directive (Law N.58(I)/2004) and by the preamble to the said Directive, as employees were unlawfully categorised according to age.

The Court rejected the arguments regarding the violation of the equality principle, pointing out that discrimination is prohibited only where the comparison is between two equal cases and is allowed when the circumstances of each case are different. He added that in the present case the circumstances are different since the comparison is between persons of different rank in the police force. The judge further stated that this case is covered by the judicial principle that an applicant cannot succeed in his claim that a certain legal provision is unconstitutional where this would not have any positive impact on his appeal. He added that the Court does not have the power to extend the retirement age of police sergeants as this would require an act of the legislature.

[679] Pensions Law N. 97(I)/97, article 12.

This decision follows the reasoning of the above case of *Gonul Ertalu & Imge Ertalu v. Ministry of Finance* which essentially disregards the law transposing the Employment Equality Directive and employs the doctrine of not subjecting the law to the constitutionality test on the ground that this will not help the applicant in any way.

Name of the court: Supreme Court of Cyprus
Date of decision: 19 September 2011
Name of the parties: Costakis Charalambous v. Republic of Cyprus through the Chief of Police
Reference number 1334/2008
Brief summary: The applicant was serving as a sergeant at the police force and was asked to retire at the age of 55, on the basis of legislation which requires police officers with a rank of not higher than a sergeant.[680] On the basis of the same legislation, the applicant was asked to take his unused leave prior to his retirement and thus leave the police force even before he turned 55. He applied to the Court to have this decision set aside on the ground that the law it is based on (i.e. the Pensions Law) violated the law transposing Directive 2000/78/EC (Law N. 58(I)/2004). The applicant argued that the said provision in the Pensions Law, differentiating between police officers of different ranks, ought to be abolished in view of article 16 of the law transposing Directive 2000/78/EC (Law 58(I)/2004) which requires the annulment of provisions containing discrimination. The Court rejected the applicant's claim on the following grounds:

- That the Directive allows exceptions where the differential treatment is objectively justified and the aim is legitimate. To this effect, the Court adopted the argument of the respondent that the potential adoption of the same retirement age for all police officers will result in the limitation of new jobs and in a failure to renew and restructure the ordinary and low-paid police staff, whilst the working conditions and tasks of the ordinary members of the police lead to the deterioration of their physical and mental capabilities. Rather than assessing the value of this argument and examining the applicability of the Directive's exception, the Court stated that Article 28.1 of the Constitution does not connote "numerical equality, but only guarantees protection against arbitrary discrimination" adding that the principle of equality does not preclude "reasonable discrimination which must be done because of the special nature of things."
- Secondly, the scope of the law transposing Directive 78/2000 does not extend to the fixing of retirement age, and
- Thirdly, the Court is not entitled to extend or alter the provisions of any law.

The Court's reasoning contains little of the jurisprudence of the anti-discrimination acquis and relevant ECJ decisions as regards Directive articles 6 (Justification of differences of treatment on grounds of age) and 16 (revising discriminatory laws),

[680] Article 12(2) of the Pensions Law of 1997, N.97(I)/1997.

showing once again a marked preference for the constitutionality test (which has never seemed to have benefited any victim of discrimination). The respondent's admission that the low-ranking police officers are assigned tasks which are both physically and emotionally draining and the indirect statement that because of this fact they become replaceable and indeed unsuitable for the police force, reveals a shocking reality of an employer who not only forces his employees to work to their limits but also victimises them for doing so, by forcing them to retire earlier than high ranking officers who are in better shape in their late 50s because they have been carrying out less strenuous duties in the preceding years. Rather than ruling that the overworked police sergeants should be offered reasonable accommodation to stay on the job, such as being assigned new tasks of a less strenuous nature, the Court has accepted the differential treatment of sergeants as "reasonable discrimination which must be done because of the special nature of things," a concept which is incompatible with the EU anti-discrimination acquis.

Name of the court: Supreme Court of Cyprus
Date of decision: 22 November 2011
Name of the parties: Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic
Reference number: Case no. 1223/2007
Brief summary: The applicant was a senior lawyer of the Republic who was obliged to resign at 61 under the Pensions Law N. N.69(I)/2005, in contrast with other senior lawyers of the Republic who could retire at 62 and 63 depending on the date of entering the Legal Service.[681] Retiring at 61 also meant receiving a smaller fixed bonus paid upon retirement, in comparison with those retiring at 62 or 63. The applicant claimed that he received less favourable treatment as a result of his age and that the legislative provision for the reduced bonus for those retiring at 61 was unconstitutional for failing to comply with the equality principle of article 28 of the Constitution.[682] The Court found that, since the applicant's claim was essentially to amend the legislative provision setting out the retirement ages, this could not be satisfied since the court was not entitled to extend or alter legislative provision in order to create a new instrument.

[681] Article 4(b) of the Pensions Law N. 69(I)/2005 fixes the age of retirement of public servants at 63, for those who turned 60 on or before 01.07.2008; 62 for those who turned 60 between 01.01.2007 and 30.06.2008; and 61 for those who turned 60 between 01.07.2005-31.12.2006.
[682] In spite of the fact that the Anti-discrimination Directives were transposed in 2004, members of the legal and judicial profession continue to apply the constitutionality test rather than demand the activation of the Directive's provision on revising discriminatory legal provisions.

The applicant further alleged non-compliance of the Pensions Law with Directive 78/2000 and the national legislation transposing it (N.58(I)/2004) which according to the applicant was enacted after the date of enactment of the Pensions Law and should thus take precedence over the pensions law.[683] The Court rejected also this argument, on the ground that the Directive expressly excludes retirement age from its scope.

This is a rather strange conclusion to arrive at; the applicant in this case did not seek to change his retirement age but rather to raise the lump sum payable upon retirement, so as to equate it with the sum receivable by persons retiring at 62 and 63.

Name of the body: Supreme Court
Date of decision: 11 July 2011
Name of the parties Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou
Reference number Appeal No. 287/2008
Brief summary: In 2009 the appellant had applied to the Labour Tribunal claiming a compensation of CYP288,257 (approximately €555,754) for damages sustained as a result of the refusal of the respondent to hire her due to her age, as the job advertisement for the position she had applied for contained a maximum age limit. The Tribunal at the time ruled that it had no jurisdiction to decide on this dispute because it concerned events taking place prior to the potential employment and since there was no employment relationship between the parties there was no labour dispute at all. The tribunal had also found that there was unlawful discrimination in the hiring procedure and decided the sum of 1500 Euros to be adequate damages, even though it had, according to its own reasoning, no power to award this compensation given its lack of jurisdiction. The appellant filed an appeal at the Supreme Court against the Labour Tribunal's decision on the issue of jurisdiction, as well as on the ground that the compensation calculated did not provide adequate deterrent.

At the appeal stage (second instance) the Supreme Court found that the trial court's decision as to its lack of jurisdiction was erroneous and had thus to be set aside. This was justified by reference to the Law on Equal Treatment in Employment and

[683] This invocation suggests that the lawyer was not aware of the fact that laws deriving from EU instruments take precedence over national laws. Indicative of the low degree of awareness by legal professionals as to the EU anti-discrmination acquis is the fact that in the case of Evagelia Tisakka and Markella Tstakki v the Republic (Supreme Court Case No. 952/2006, 19 December 2007) the applicants' lawyer, one of the most well known and eminent lawyers in Cyprus, invoked inter alia Directive 2000/43 to support the claim of the applicants (who are mother and daughter both of Greek Cypriot origin) that the daughter ought to be entitled to be recognized as a displaced person because the mother enjoys this status. 'Displaced persons' are those who were forced, as a result of the Turkish invasion in 1974 to abandon their homes in the north and move to the south of Cyprus; the status carries a number of state grants and benefits and has so far only been passed from a father to a child but not from a mother, which is what the applicants were contesting.

Occupation N.58(I)/2004, transposing Directive 2000/78/EC, which provides that the Labour Tribunal has jurisdiction to try all issues arising under that law. The Supreme Court stated that, although the Labour Tribunal did refer to the relevant provision in Law N.58(I)/2004, it failed to attribute due weight to it. However, the appeal Court endorsed the Labour Tribunal's reasoning as regards the amount of compensation to be awarded to the appellant, based on the reasoning of the ECJ in the case of *Draehmpaehl*[684] which distinguished the cases of applicants who would have been hired had it not been for the discrimination, from the cases where the applicant would not have been hired anyway because the other candidates were better qualified. According to the Appeal Court, the appellant in this case belongs to the second category, as the persons actually hired by the respondent were indeed better qualified than the applicant. In recognition of the fact that the appellant's job application was not seriously considered due to age discrimination, the Supreme Court upheld the award of three salaries, amounting to €1,500 as adequate and just compensation, on the justification that the ECJ in the case of *Draehmpaehl* found that Directive 76/207/EC[685] does not prohibit national legislation from fixing a ceiling of three monthly salaries to the amount of the compensation which a candidate can claim, where the employer has proved that due to better qualifications of the other candidates, the complainant would not have been hired anyway. The Supreme Court concluded that the amount of three monthly salaries meets the three requirements which an adequate compensation must have, i.e. it provides adequate protection, it is dissuasive and is proportionate to the damage caused. The Court also awarded interest on the sum of €1.500 starting from 2004, which is the year that the appellant applied for the job in question.

This decision has set a rather problematic precedent which is likely to pave the way for further age discrimination in access to employment, given the low amount of compensation it awards. The amount awarded **(**€1,500) does not under any circumstances appear sufficient to have a deterrent effect, whilst according to the ECJ, national courts have the duty to impose the most effective sanction they can deduce from national law.[686] It is for this reason that Directive 76/207/EC allows states to fill up the eventual gaps of national legislation implementing this Directive or disregard any inadequate sanctions or any national conditions for their application that diminish the effectiveness of the Directive.[687] In the Cypriot labour market of 2011, the sum of €1,500 is neither adequate nor dissuasive.

[684] Case C-180/95 [1997] ECR 1-2195.
[685] Directive on equal treatment for men and women as regards access to employment.
[686] Case 14/83 *von Colson* [1984] ECR 1891.
[687] S.Koukoulis-Spiliotopoulos The amended Equal Treatment directive (2002/73) and the Constitutional principle of gender equality, delivered at the expert conference under the title "Progressive Implementation: New Developments in European Union Gender Equality Law" The Hague 18-20 November 2004.

Equality Body and Ombudsman decisions in 2011

Name of the body: Ombudsman
Date of decision: 17 October 2011
Report title: Ombudsman's report on access to the labour market by HIV carriers
Reference number: A/P 587/2010, A/P 1616/2010, A/P 2309/2010
Brief summary: During 2010 the Ombudsman received three complaints from HIV carriers complaining about their problems in accessing the labour market. The two complaints were directed against the Labour Office and alleged discrimination against HIV carriers because they are not being sufficiently supported to find employment and because the kind of employment positions in which they are given priority, in accordance with a scheme adopted by the Council of Ministers,[688] is very restricted. The third complaint was directed against the Ministry of Health and was submitted by a HIV carrier who had been working at a state hospital as a cleaner for the past four years and was forced to come into daily contact with infectious waste which could affect his health. Although he had repeatedly asked to be transferred to another position, his request was not granted. A previous investigation of the Ombudsman into the vocational rehabilitation of HIV positive persons[689] had shown that there are problems in the implementation of the said scheme. Amongst other things, the procedure foreseen in the scheme involves the registration of prospective applicants with the Labour Office declaring 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.

In the case of the complaint against the Ministry of Health, the Director of the General Hospital where the complainant was working stated that the complainant's request for a transfer was taken into consideration and he will be called as a candidate when there are vacancies in the categories foreseen by the relevant decision of the Council of Ministers, adding that when the complainant applied for employment at the hospital, he presented a medical certificate that his condition was not prohibitive for his employment at a state hospital.

The Ombudsman's report welcomed the adoption of positive measures towards the labour integration of HIV carriers, pointing out however that there are issues of implementation involved. The report attributed the low response of HIV persons to the said scheme, ten years after its introduction, to the restricted scope of positions for which preferential employment is exercised as well as the procedures foreseen for the evaluation of the applicants. The nature of the duties involved in the positions

[688] By a Council of Ministers decision Ref. 52.186 dated 21/7/2000, a scheme aiming at the labour integration of HIV positive persons was adopted, providing for the preferential employment of HIV positive persons in hourly jobs as night guards, day guards, gardeners, park keepers, park cleaners, etc.
[689] Ombudsman Report on access of HIV/AIDS carriers in the labour market dated 23.11.2005 (File No. A/P 1015/2005).

included in the scheme is such that the HIV positive persons are isolated from the rest of the task force or are in an outside space (night guard, park keeper, gardener etc) which significantly reduces the possibilities of these persons to socialize through work and to benefit from the positive outcomes of employment, cancelling to a large extent the benefit intended by the said scheme. In addition, the procedure of notifying all the persons involved in the evaluation of the applicant that the latter is HIV positive does not serve any purpose but instead poses additional obstacles to the employment of HIV positive persons due to the prejudice which persists around this issue, a fact acknowledged by the Permanent Secretary of the Ministry of Labour. Apart from the fact that a person's seropositivity might be a reason to be rejected for a job applied for, the notification of his/her position to a number of persons every time s/he applies for a job position may be a deterrent in his/her decision not to take advantage of the said scheme. Besides, the notification of the competent Minister and of the Head of Department of an applicant's seropositivity does not meet any purpose at the stage of the evaluation, since the vacancy in question has already been considered and found suitable for HIV positive persons. The report recommends the acceleration of the procedures for enlarging the list of positions in which HIV positive persons can be employed as a matter of preference, as also previously recommended by the Ombudsman's 2005 report. The report further recommends that the applications of HIV positive persons should be forwarded to the departments concerned without notification of the applicant's condition, at least until the final determination by the employer as regards successful applicants. In the case of the complainant working as a cleaner at the hospital, the Ombudsman noted that the position he held did not fall within the scope of the scheme approved by the Council of Ministers and that the medical certificate recommended the employment of this person in the hospital and not in the specific position; the Ombudsman recommended the acceleration of the process for the transfer of this person to a position within the scope of the scheme where the conditions do not pose any health risks.

The Ombudsman decided to examine this subject in its capacity as Ombudsman and not as equality body; as such it missed an opportunity to use the positive action provisions of the legislation transposing Council Directive 2000/EC and in general to raise issues of discrimination in the access to the labour market. Also the measures recommended fall short of requiring the authorities to extend the preferential employment principle to the entire spectrum of the wider public sector, taking account of the possibility that several HIV positive persons may have skills and abilities beyond the manual and menial tasks of cleaning parks, gardening or guarding buildings.[690]

[690] The report is available at the Ombudsman's website at: http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument.

Name of the body: Equality Body
Date of decision: 29 July 2011
Report title: Report of the Anti-discrimination Authority regarding complaint 42/2010 concerning the conducting of religious confessions at schools
Reference number: AKR 42/2010
Brief summary: The Equality Body examined a complaint that the conducting of religious confession in the school premises and within the frame of the teaching time raised issues as regards respect to freedom of conscience and free expression of religious beliefs of the students and their parents. The complaint was submitted by the mother of a student who alleged that priests regularly visit almost all secondary education schools and conduct confessions of students aged 12-15; the students are notified in advance of the priest's visit and are requested to enrol without informing or securing the parents' consent; then the students go to a church within the school or to another designated place during school time and under the supervision of the school staff and confess to the priest. The complainant, who was informed of these activities by her child without having any notification from the school, complained that confession has no place in the learning process and its conducting within the school is not justified, adding that the voluntary participation of the students does not cancel the problematic nature of this activity within the school and raises dilemmas amongst under age students.

In response to this complaint, the Director of Secondary Education of the Ministry of Education agreed that the procedure is the one described by the complainant, but that this is in compliance with the directions issued by the Ministry and that it is standard policy of the school to provide students with opportunities for physical, spiritual, psychological, aesthetic, artistic etc development. She added that the school promotes a number of activities during school time, such as field trips, theatre performances, planting of trees etc and that this time is not considered as time lost from the curriculum; that confession is offered to students because many of them may not have the chance to confess outside school time due to their geographical origin or other reason and it is therefore the duty of the school to take care of their spiritual and moral support through confession, which is being done for purely educational and other reasons. With regard to the complainant's allegation that the school failed to notify the parents, the Director stated that the written approval of the parents for activities within the school is not sought as this would burden the school with bureaucratic procedures; she added that there is sufficient time for the students to notify their parents who may request their child's exemption. She further stated that since a student's refusal to participate may be due to a variety of reasons, such as the fact that the student may confess outside the school or because the student is not ready, such refusal is not recorded anywhere and no reasons are asked. She concluded that headmasters and schools in general admitted that the presence of priests significantly contributes to the support of the students and to the resolution of problems of the school and of the students themselves.

The Ombudsman's report stated that in a democratic society where many different religions coexist, the state has the duty to organize and ensure the smooth exercise

of everyone's religious beliefs, remaining neutral and impartial, in order to secure public order and safety, religious diversity and tolerance. In the case of children, religious freedom is exercised by the parents or guardians, in accordance with the Constitution and the Convention on the Rights of the Child which requires the signatories to respect the right of parents or legal guardians to guide the child in the exercise of its religious right in a manner that corresponds to the development of the child's skills. The report expressed its reservations as to whether the procedure followed finally does result in a conscious choice of accepting confession in the sense of a voluntary participation in the mystic acts of a dogma, in view of the doubts raised by the concept of 'voluntary' participation within the school space. The report rejected the argument of the director of secondary education regarding the 'voluntary' participation of the students, stating that by inviting priests into the schools, a real situation is likely to develop whereby children may feel obliged to participate or risk stigmatization. Quoting a document of the Greek Ombudsman, the report pointed out that secondary education students are undergoing a critical period of intense psycho-emotional development during which the student's participation in the group is necessary for his/her emotional security. Also, relations within the school community are very fragile; particularly, the relationship between a student and a teacher is not equal since the teacher possesses what the student is seeking (knowledge). In this context one cannot legitimately claim that a student is free from emotional influence to decide for his/her participation in 'proposed activities' especially when these are ab initio approved and organized by the school and will be held inside the school with the assistance of the teachers. In this context, the 'voluntary' participation of students in mysteries forming part of religious convictions creates fertile ground for discrimination, as the 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 categorization of some students as 'good Christians' or not. Additionally, schools in Cyprus receive a large number of students from third countries or EU member states who may well have different religious convictions than the majority of the students, hence the need to render the school a multicultural space where every student can express him/herself in an environment of freedom of thought, expression and conscience.

The Equality Body rejected the argument that confession plays an educational role or that some students are deprived of the opportunity to confess because of their geographical origin. As regards the latter argument, the report pointed out that churches in Cyprus are so widespread that the number of students not having access to them would be negligible; so much that the school could organize their transfer to a nearby church to confess in prior consultation with the parents. In its recommendations, the report states that although it does not challenge the presence of priests in schools for the purpose of informing on Christian mysteries, the conducting of confessions is problematic as it raises issues of respect of religious freedom of the students and their parents; additionally, the school environment does not provide the quiet and confidential environment necessary for confessions to be conducted with due holiness. It recommends that the Ministry of Education investigates the possibility of confessions to be carried out outside the school. The

report points out that it would consider acceptable for a group of parents to take the initiative of organizing confession outside the school but it should leave no margin of misinterpretation as to the non-endorsement of this activity by the school.

The report does not label this practice as discriminatory, however, nor does it offer robust recommendations to challenge and exclude the involvement of the church in education, which would be necessary in order to achieve a truly multicultural school setting.

Name of the body: Equality Body
Date of decision: 24 June 2011
Report title: Report of the anti-discrimination authority regarding the discriminatory treatment of persons with mental deprivation
Reference number : AKR 95/2009
Brief summary: The Equality Body examined a discrimination complaint submitted by the President of the Association of Parents of Retarded[691] Persons, which challenged the refusal of the Ministry of Finance to grant public assistance to persons with intellectual disability for: (a) travelling for the purpose of visiting doctors, attending events, entertainment and sports; (b) for buying a car; (c) for transfer to schools, day care centres or their workplace; (d) subsiding fuel for travelling. The complainant argued that the non-provision of these grants amounts to unequal treatment of persons with intellectual disability in relation to persons with other types of disability. The complainant also sought clarifications on the policy regarding the administration of the estate of children with intellectual disability especially after their parents' death. In response to the complaint, the Ministry of Finance stated that state grants for buying a car are discretionary and, based on an opinion of the Attorney General dated 19.08.86, can only be granted in very exceptional cases where there is no legislation regulating the issue and where there is a special problem and a moral obligation to pay such grant or where it would be unfair not to grant it. The Ministry further noted that a discretionary grant for buying a car is paid to families with children with disability aged under 18, after obtaining a socioeconomic report from the Social Welfare Services and that persons with a intellectual disability who have mobility problems and use a wheelchair are already covered by the said policy for grants. As regards the subsidy for fuel, the Ministry stated that no such grant is paid so no issue of discrimination arises. In response to the claim for a grant to cover transfers to schools, day care centres etc, the Ministry of Labour (to whom the claim was communicated from the Ministry of Finance) stated that it will examine the possibility of extending the current scheme. On the issue of the administration of the estate and the guardianship of persons with intellectual disability, the Committee for the Protection of Mentally Retarded Persons is currently promoting a bill to amend

[691] The term 'retarded' is a literal translation of the Greek term 'υστέρηση', which is widely used in Cyprus and in the equality body report examined. The author chose not to use this term, preferring instead the term 'intellectual disability', except where the term 'υστέρηση'(=retardation) was used in the Equality Body's text to describe a particular organization or legislation bearing this term in its title.

the relevant legislation[692] so that persons with intellectual disability will be granted legal capacity unless a scientific evaluation deems this to be impossible in view of a person's mental abilities, in which case the bill provides for supported decision-making and guardianship of that person. The Equality Body's report states that persons with intellectual disability are a particularly vulnerable group, hence the need to remove obstacles and to introduce supportive measures in order to complement and develop their autonomy, pointing out that support and assistance must also be extended to their carers. The report recommends that the Scheme of Transport Assistance is extended to include persons with intellectual disability and that a general grant is paid to facilitate the transportation and transfer of these persons to their schools, day care centres and other places.[693]

Name of the body: Equality Body
Date of decision: 30 November 2011
Report title: Report of the Anti-discrimination Authority on the handling of applications for citizenship by Turkish Cypriots
Reference number : AP 146/2007 et al.
Brief summary: The Equality Body received several complaints from Turkish Cypriots whose one parent is a Cypriot and the other a foreigner, regarding the delays (of up to three years) in the processing of their applications for Cypriot citizenship. The delays in the processing of these applications had, as a result, prevented the applicants from accessing public services such as health and welfare, from settling in other EU member states for the purposes of work,[694] from enrolling in UK Universities as community students paying reduced tuition fees and from travelling through Larnaca airport.[695] The report referred to the third ECRI report on Cyprus which described the problem of the grant of citizenship to Turkish Cypriots under these circumstances as a controversial political issue at the heart of the

[692] Law on the Protection of Mentally Retarded Persons N.117/89.
[693] In setting out the legislative framework, the report referred to: Article 9 of the Constitution, which guarantees the right to dignified living and social security; Article 28 of the Constitution which establishes the principle of equality and non-discrimination; the Law on Persons with Disability N. 127(I)/2000 which provides for the right to equal treatment and non discrimination (article 3) and to the right to independent living, participation in economic and social life, to accessible public transport, to personal and family life, to social, cultural, athletic and other activities and to a dignified standard of living; Article 21 of the Fundamental Rights Charter; Article 13 of the Treaty of the European Communities; the Communication of the European Commission of November 2011 on the new European Strategy on Disability covering the period 2010-2020; the ECJ decision in the case of *Coleman v. Attridge Law* [ECJ Case C-303/06] ; and the UN Convention on the Rights of Persons with Disabilities (articles 1 and 9).
[694] In the absence of a passport from the Republic of Cyprus, these persons would be unable to settle in any other EU country, as their own passports (issued from the "Turkish Republic of Northern Cyprus") is not recognized.
[695] This airport is located within the Republic- controlled area and cannot be used by persons holding a passport of the breakaway "Turkish Republic of Northern Cyprus" as this is not recognized by the Republic of Cyprus. Given that planes flying from airports in the north of Cyprus are only allowed to fly to Turkey, the restriction in the use of the airport in the south (Larnaca) effectively denies applicant of access to other countries, unless flying through Turkey.

Cyprus problem which causes xenophobic reactions. ECRI expressed its concern over the fact that the children are called upon to pay the price of an unresolved political conflict and of discrimination based on the nationality of one of the parents. The Equality Body report states that it comprehends the particularities in the granting of citizenship to Turkish Cypriots whose one parent is a foreigner, as these are directly linked to the political problem of Cyprus and in particular to the demographic change that is attempted by Turkey. However, the report expressed concern over the delay[696] in the processing of applications meeting the criteria and urged the authorities to introduce regulations (a) for the speedy processing of those applications which do meet the criteria and (b) for the written notification to failed applicants of the reasons why their applications are rejected.[697]

Name of the body: Equality Body
Date of decision: 09 November 2011
Report title: Report of the Equality Authority regarding a complaint of discrimination on the ground of ethnic origin in promotions in Cyprus Airways
Reference number: A.K.I 8/2010
Brief summary: In February 2010 the Equality Authority[698] received a complaint from a Cyprus Airways[699] employee that he was denied promotion on the ground of his ethnic origin; the complainant belongs to the Maronite community.[700] As a matter of standard practice, during the evaluation of candidates, the selection committee takes into account the experience, merit, seniority, skills and competence in relation to the position, performance and service of each candidate and the recommendation / evaluation of candidates by the relevant Director. The complainant was one of the four (out of a total of nine) candidates that had a postgraduate degree, which was considered an advantage. The Selection Committee noted that the Director of the Department had not completed evaluation reports of employees since 1998.[701] Given

[696] The Law on General Principles of Administrative Law 1991, which codified the general principles governing the actions of public administration provides (in article 10) that administrative bodies must perform their task within a reasonable time, so that their decision is timely in relation to the factual or legal situation which it relates. Article 35 of the Law on General Principles of Administrative Law 1991 provides that administrative authorities should give written information about the course of a case within 30 days.
[697] The Equality Body's report is available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument.
[698] The Equality Authority is one of the two departments comprising the national Equality Body which deals with the field of employment (all grounds).
[699] Cyprus Airways is the national air carrier which is partly state owned and partly privately owned.
[700] The Maronite community is one of the three religious groups recognized in the Constitution. It is also afforded the status of national minority under the Framework Convention on National Minorities. It forms part of the Greek Cypriot community and to a large extent enjoys a rather high degree of social integration. Maronites are Christian Catholics but their religious identity is very much engrained into their ethnic identity.
[701] The said Director completed assessment reports for all personnel only for the year 2008, which eventually were disregarded by the selection committee because the filling of forms took place after the announcement of the posts.

the absence of valid evaluation reports on the candidates, the Committee decided to accept the recommendations of the Director of the Department regarding the value, capabilities and suitability of the candidates for the said positions and selected the three candidates proposed by the Director. One of the three selected candidates did not have a postgraduate degree, whilst the other two selected candidates had eight years of service fewer than the complainant.

The Equality Body found that, in the absence of reports evaluating the candidates' abilities, the Director formulated an overly favourable picture for the candidates she favoured, which was not consistent with the other data on file, and failed to provide convincing reasons to justify her decision not to promote the complainant. The allegations of the Director in relation to the complainant, i.e. that he lacked noticeably in comparison with the three promoted employees regarding his administrative organizational skills, creativity, willingness to change, communication and initiative, do not find a sound basis in the written record, since she had filed no evaluation reports in recent years. The Equality Body found that, under the circumstances, the Director's effort to shape a situation as regards the evaluated quality of staff, affects the validity of her recommendation not to hire the complainant and the consequent legitimacy of the final decision. The report states that according to Article 11 of the Equal Treatment in Employment and Occupation Law (transposing Directive 78/2000), if the complainant cites facts from which discrimination can be inferred, the burden of proof is reversed. In this case, the failure of Cyprus Airways to provide adequate reasoning as to its decision, i.e. the failure to explain why better qualified candidates were not promoted, does not preclude the possibility of discrimination against the complainant on the basis of his ethnic origin. Despite the above finding, the equality body concludes that it has no possibility of eliminating the unfair treatment that the complainant may have suffered because the procedure has resulted in the creation of rights in favour of the employees promoted which the equality body has no power to overturn. As a result, the report confined itself in making a recommendation to Cyprus Airways to justify its decisions on future promotions procedures so as to exclude the possibility or even the mere suspicion of discrimination against applicants on the basis of their ethnic origin.[702]

The Equality body's delay of almost two years in investigating this rather simple complaint resulted in a situation where no justice could be made, as rights in favour of the successful candidates had already been created. Given its inability to order the employer to pay compensation, this delay (which reflects on its limited resources and lack of personnel) has rendered it powerless to act. The report has nevertheless raised an important issue: that a (rebuttable) presumption of discrimination on the ground of ethnic origin is created where the person who was treated unfairly belongs to a minority group. Had he not been a member of a minority, he would still be able to allege discrimination on the basis of article 28 of the Constitution, which prohibits discrimination "on any ground whatsoever" but, in the absence of any other

[702] The report is available at: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki.

'protected ground' being operative, the unfair treatment he would have suffered would not entitle him to the protection offered by the Anti-discrimination Directives.

Name of the body: Equality Body
Date of decision: 27 September 2011
Report title: Report of the Anti-discrimination Authority on the education of Roma pupils
Reference number : AKR 18/2008
Brief summary: In 2008 the Anti-discrimination Authority of the Equality Body received a complaint regarding the adequacy of measures for the support and integration of Roma children in the educational system. The complaint alleged prima facie discrimination on the ground of race/ethnic origin since the Ministry of Education repeatedly refused to support the Roma as a special ethnic group[703] and to promote their language and culture, thus violating international conventions ratified by the Republic. In June 2008 the Permanent Secretary of the Ministry of Education responded to these criticisms by stating that the government provides free access to education for all irrespective of race, colour or ethnic origin, confirming the position that the Roma do not constitute a separate ethnic group but belong to the Turkish Cypriot community and thus enjoy all rights deriving from their identity as citizens of the Republic and as members of the Turkish Cypriot community. The Ministry official also listed a number of measures for the support of the Roma students which include support teaching of Greek, grant in order to pay school fees in private schools, grant in order to purchase books and other necessities, free meals, exemption from the (Greek) religious and history classes, support from the Educational Psychology and Social Welfare staff, training of teachers into the needs of Roma children, etc. She added that the Roma language of Kurbetcha is nowadays no longer used, as only a few words survive in the spoken language of the Roma and that it is nowhere mentioned in the Second Opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities.[704] In the frame of its investigation, the Equality Body visited the 18th Elementary School of Limassol, where there is a great concentration of Roma children due to its proximity to a Roma settlement; in this school 35 out of a total of 85 students, are native Turkish speakers

[703] The Third Periodic Report on the Framework Convention for the Protection of National Minorities submitted by Cyprus on 30.04.2009, for the first time recognised the extension of protection under the Framework Convention to the Cypriot Roma (page 23). This constitutes a departure from previous policy, which did not recognise the Roma as a separate community but considered them as an inseparable part of the Turkish Cypriot community, due to their common language (Turkish) and religion (Muslims).
[704] The Permanent Secretary did not mention however that the 2009 Report of the Committee of Experts on the application of the European Charter for Regional or Minority Languages in Cyprus makes reference to four languages in need of attention, one of which is Kurbetcha (2nd Monitoring Cycle, 23 September 2009, ECRML (2009) available at: http://www.unhcr.org/refworld/docid/4abb46510.html). The same Report concludes that "despite efforts in recent years, the Roma continue to face prejudice and particular difficulties in various sectors. The implementation of the principle of free self-identification in respect of the Roma remains a source of concern."

and mostly Roma. The school was classified as part of the Educational Priority Zone[705]and offered classes in Greek and in Turkish and classes of Turkish history and religion, taught by Turkish Cypriot teachers. A Turkologist assigned to the school told the Equality Body officer visiting that the students only know a few words of Kurbetcha and that there had been no request for the teaching of Kurbetcha either by the students themselves or the UN or the European Union, representations of whom often visit the school. The school headmaster told the Equality Body officer that there were specific problems regarding the integration of the Roma children in the school, which include the fact that they have difficulties in staying within one room for a long time, they view the school as a game and they tend to leave school before completion, particularly the girls the majority of whom do not enrol into secondary education.

The report stressed the state's obligation to ensure that education aims at developing respect for the students' parents, identity, language and cultural values, to guarantee the right to one's own cultural life, to develop conditions that will enable persons belonging to national minorities to preserve and develop their own culture and maintain the basic elements of their identity such as religion, language, traditions and cultural heritage and, in the field of education, to take measures to promote knowledge of the culture, history, language and religion of the minorities. Particular emphasis was placed on the obligation to avoid school segregation which, as established by the ECtHR,[706] amounts to discrimination. Reference was also made to the obligation to encourage and facilitate the members of the Roma community to participate in the development, implementation and assessment of strategies affecting them[707] and particularly in the design of the school program and the training of the teachers.[708] The report concluded that educational policy as regards the Roma in Cyprus did not sufficiently take into account the fact that, in addition to Turkish Cypriots, the Roma also have their own special identify, urging the Ministry of Education to intensify its efforts in adopting policies that will address the special characteristics of the Roma, to promote their separate culture and reduce drop out and leaving rates. It adds that the Ministry should not expect mobilization from the Roma community since the characteristic of collective organization and the claiming of rights is often absent from this population, urging the Ministry to actively involve the members of the Roma community in a dialogue on the design and implementation of teaching methods and programs, pointing out that teaching

[705] This is an institution covering schools in areas which are economically and socially downgraded and is aimed at offering special programs towards the smooth socialization of the students. Schools which are classified as Educational Priority Zone benefit from a number of measures such as the reduction of the number of students per class, support teaching, free breakfast and other measures adopted in collaboration with the local communities.
[706] D.H. et al v. Czech Republic (2007); Shampanis et al v. Greece (2008); Orsus et al v. Croatia (2010).
[707] Position of the Human Rights Commissioner of the Council of Europe regarding the rights of the Roma [CommDH/Position/Paper(2010)3].
[708] Recommendation No R (2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe.

methods must be adapted to the special characteristics of the Roma such as their difficulty to be confined in a closed space for a long time and the increased absences due to the frequent movement of their parents from one area to the other. Finally, the report refers to the Fourth ECRI report on Cyprus, published in 2011, which deplores the fact that none of the Roma children residing in a particular Roma settlement attend school, since the nearest school is too far away and there is no transport; in this respect the Equality Body adopts the ECRI recommendation that transport be provided without delay for these children to attend school.[709]

The measures proposed by the Report are vague and do not offer any ground for the Ministry of Education to build upon. The report falls short from identifying the current policies and practices of the Ministry of Education as discriminatory and thus unlawful. The references to the Roma community lacking characteristics of collective organisation and being unable to stay within a confined space for long are problematic and may contain notes of stereotyping. No insight is offered as to how the Ministry can involve the Roma community into dialogue, which is a target recommended both by ECRI and by the Advisory Committee on the Implementation of the Framework Convention. One would also have to question the adequacy of the measure of providing transport for the Roma children to attend a far away school, when there is research suggesting that forcing the Roma children to attend a school located far away from their place of residence will only result in school leaving and drop outs, as the long journey on the bus takes its toll on the children's ability to concentrate. The proposed measure of the provision of transport needs to be contrasted with the equivalent measure that would have been adopted had the children been Greek Cypriots, in which case the answer would probably be that the Greek Cypriot children would not have been facilitated (or, worse, forced) to settle far away from schools.

Name of the body: Equality Body
Date of decision: 02 November 2011
Report title: Self initiated intervention of the Anti-discrimination Authority regarding recent incidents of racial violence and their handling by the police**.**
Reference number: AKR/AYT. 2/2011
Brief summary: A press report about a racist violent incident against an unsuspecting Indian man by unknown young men riding a van without number plates and holding metallic bats, prompted a self initiated intervention by the Anti-discrimination Authority of the Equality Body into the handling of such incidents by the police because, as stated in the report, the dimensions of the problem of racist violence are not reflected either in the recording system of the police or in the prosecutions against perpetrators. The incident took place on 26.08.2011 and the police investigation showed that between 25-28.08.2011 a number of other attacks took place in the same area most probably by the same perpetrators; according to

[709] The report can be downloaded from http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument.

the police report, although some of these attacks were against Cypriots, the circumstances were such that the assailants probably mistook the Cypriots for foreigners and so attacked them.

The report of the Equality Body stressed the significance of recording racial incidents, with references to the ECRI Recommendations,[710] to the 2009 Annual report "Hate crimes in the OSCE Region – Incidents and Responses" and to the ECHR decision in the case of Nachova et al v Bulgaria (06.07.2005) where the Court underlined the duty of the state to investigate the possible connection between racial perceptions and violent acts. The report highlighted the weaknesses in the reporting system in Cyprus, which recorded 3 hate crimes in 2007 and none for 2008 and 2009, whilst no charges were pressed against anybody in respect of any racial incidents. The report expresses its concern over the fact that the particular incident reported in the press suggests for the first time that that there are organized groups attacking immigrants, pointing out that one cannot exclude the possibility of wider anti-immigrant violent activity which goes unreported due to the victims' lack of trust in the authorities or because of the victims being undocumented migrants. The report adds that the economic crisis is likely to intensify these phenomena, particularly as public discourse attributing the economic crisis to migrants reinforces xenophobic perceptions. The report states that the current landscape, as it has evolved, is particularly worrying, as the underestimation of the problem of racist violence, the erroneous assessment of the risk and the ineffective handling may lead to worse consequences. The report lists a number of recommendations so as for the government to adequately record racist crime and adopt policies to prevent the commission of new offences, offering protection and security to all persons within its jurisdiction. The recommendations include: the intensification of activities for the investigation of racist attacks perhaps through delegating the task of investigation to persons with experience and knowledge; the investigation of racist incidents through utilization of the organizations of the migrants or of the NGOs working in this field; the publicising of racist incidents and public awareness raising aiming at attracting informants; the public encouragement of victims to report the crimes; the recording of all incidents in order to adequately comprehend the nature and extent of racist violence so as to better inform policy initiatives; a comprehensive plan of action to improve and upgrade the system of recording and investigating racist violence. The authorities are called upon to use the rich legislative framework on combating racist violence, through the extensive powers they have to prosecute and punish perpetrators, because if inaction, tolerance and silence prevail, the confusion and impunity will result in the reproduction of the phenomenon.[711]

[710] ECRI General Policy Recommendation No 11 on combating racism and racial discrimination in policing 2007.
[711] The report can be found at: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-akr.

Name of the body: Equality Body
Date of decision: 19 April 2011
Report title: Report of the Equality Authority regarding the investigation of a complaint by a migrant domestic worker for sexual harassment
Reference number: AKI 67/2010
Brief summary: A sexual harassment complaint was submitted on behalf of a migrant female domestic worker for the mishandling of her claim against her employer for sexual harassment. The NGO claimed that complaints by migrant workers for violence or sexual harassment at the workplace are not examined through the 'lenses' of specialized modern legislation but on the basis of the antiquated Criminal Code which offers neither the same potential for criminalization nor the same efficiency as regards the protection of the victims. As soon as the victim turned up at the police station to file a complaint against her employer, she was arrested and detained on the basis of an arrest warrant issued by the Court as a result of a complaint that had been filed against her by her employer for allegedly having stolen money from his house. She was subsequently released for lack of evidence but she was ordered to leave the country because her application to change employer was rejected.[712] The Equality Body investigation revealed a series of systemic weaknesses and discriminatory practices that denied migrant victims of the protection of the law[713] afforded to non-migrant women.

The Equality Body expressed its intention to issue a binding Recommendation and thus invited all parties to a consultation on the content of such Recommendation.[714]

Even though it is clear that this problematic practice is followed only in the cases of migrant workers and *precisely* because they are migrants, the equality body does not see this case through the lenses of racial/ethnic discrimination, nor does it raise issues of multiple discrimination. However, this means that the institutional racism underlying the regulations and procedures is not adequately addressed or identified as discrimination prohibited by the law transposing the Racial Equality Directive.

Name of the body: Equality Body
Date of decision: 22 December 2011
Report title: Position paper of the Anti-discrimination Authority regarding the need to institutionalize relationships between heterosexual and homosexual couples

[712] Migrant workers are not granted a blank permit to work in Cyprus, but a permit to work for a specific employer. If that permit is terminated or if it expires, the worker has to leave the country. Migrant workers can file a complaint against their employers and while the examination of this complaint is pending, the worker is allowed to remain in the country. But if the complaint is decided in favour of the employer, which is usually the case, the worker is ordered to leave Cyprus. If the complaint is decided in favour of the worker, the latter is allowed to change employer and remain in Cyprus. Female migrant domestic workers are not allowed to change employer during the first year of their employment.
[713] The Law on Equal Treatment of Men and Women in Employment and Vocational Training of 2002-2009.
[714] The report is available at: http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki.

Reference number: AKR TOP 1/2011
Brief summary: The Equality body decided to present its position on the regulation of the issue of the couples cohabiting outside marriage because Cyprus is one of the few remaining EU countries which have not legislated on the possibility of registering a partnership. The nature of the complaints submitted to the equality body on this issue indicate that in view of the free movement of workers and their families and the legal recognition of same sex couples in many EU countries, the issue of the registered partnership will keep coming up again and again. The position paper refers to Directive 78/2000 and to article 14 of the ECHR and particularly to ECtHR case law which established that the meaning of marriage has been disconnected from the purpose of having children, whilst the family is protected irrespective of the right to enter into marriage. The paper referred to the need to legislate on and protect de facto relationships because the current framework in Cyprus does not create any rights for the partners nor does it regulate property or other issues amongst the partners. Instead, the registered partnership as an alternative mode of cohabitation carries legal obligations and rights, protecting minimum rights for the partners and regulating issues arising from insurance and pension schemes, equating children born to such partnerships with children born to married couples. The paper adds that same sex couples could not be excluded from such regulation as this would amount to discrimination on the ground of sexual orientation and would run contrary to the rapidly developing European legislation and case law on the matter. It finally pointed out that the non-regulation of the matter leads to negative stereotypes and that legislation can contribute to the creation of new social consciousnesses that can break down prejudices. The paper calls upon the Minister of the Interior and the President of the House of Representatives to examine the prospect of legislating on registered partnerships, adding that the Ombudsman's office is available to assist in the process.