

# EVALUATING THE ANTI-DISCRIMINATION LAW IN THE REPUBLIC OF CYPRUS: A CRITICAL REFLECTION

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## Abstract

This paper sets out to critically evaluate the situation as regards the current state of affairs on combating discrimination in Cyprus. It concentrates primarily on the legal aspects of the struggle to put an end to discriminatory ideologies, policies, practices and prejudices on all grounds recognised by the EU antidiscrimination acquis apart from gender, the grounds of race or ethnic origin, religion, age, disability and sexual orientation. Moreover, it also examines other grounds recognised by the constitution and international conventions but the legislative measures to counter gender discrimination are dealt with foremost because they provide the pivotal dimension which created the groundwork for anti-discrimination in those other fields. More often than not legislative measures are treated separately from other grounds but if a comprehensive picture of the anti-discrimination framework is to be understood, then an integral approach must be taken to view the system operating as a whole; legal development in one ground or field both influences and has a knock-on-effect on the other.

**Keywords:** direct and indirect discrimination, anti-discrimination acquis, ethnic conflict, national question.

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## Introduction

This paper draws on research conducted over the last five years as part of the EU Network of Non-discrimination experts,<sup>1</sup> along with various other research papers undertaken since 2004 on the subject of discrimination. The paper begins with a historical introduction of the ethnic conflict framed within the complex constitutional structure of the Cyprus Republic, and a brief outline of the background to the political situation, which led to the ethnic conflict and violence in the 1960s and the de facto partition of the country since 1974. If the issues surrounding the implementation and impact of various reform measures are to be understood in the

field of anti-discrimination since accession to the EU in 2004, a contextualisation of the situation is essential.

### **Historical Background**

The historical setting of Cyprus has been dominated by the ethnic relations between the two constitutionally recognised Greek- and Turkish-Cypriot communities,<sup>2</sup> as well as the role of foreign forces, something also reflected in the political, economic, ideological, social and cultural life of the country. Historically, the research agenda on Cyprus which focused on the central political problem, still dominates Cyprus and the restoration of the unity and constitutional order of the country has inevitably resulted in the relative neglect to initiate studies on the various grounds of discrimination. Indeed, tackling discrimination on grounds other than ethnic or racial origin has somehow been subsumed in the 'national question'; there, the emphasis has been on studying relations between the two communities, undervaluing discrimination as such, or looking at the treatment of smaller minorities. Even though the Cyprus problem remains unresolved and there is currently another initiative for its resolution, following the rejection of the 2004 Annan plan, the situation has changed dramatically. As regards the question of knowledge, research, institutions, and actual policies, there has been enormous development since the first Expert Report was written to confront discrimination in Cyprus as a result of transposing the anti-discrimination acquis.<sup>3</sup> In the daily lives of people there is, however, widespread intolerance as several studies have shown, and a great deal more needs to be done before various forms of discrimination are halted and society is free from bigotry.<sup>4</sup> Good practices can be utilised, but these measures need further enhancement if they are to be effective instruments in the struggle against victimisation.

### **Ethnic Conflict, Discrimination and the Cyprus Problem**

The Cyprus constitution, adopted under the Zurich-London Accord of 1959, contains rigorous bi-communalism, whereby the two 'communities', the Greek-Cypriot population who make up 78% and 18% who are the Turkish-Cypriot population, share power in a consociational system of power-sharing. Citizenship is strictly communally divided. There are also three other minority groups who have the constitutionally recognised status of 'religious groups':<sup>5</sup> the Maronites,<sup>6</sup> the Armenians<sup>7</sup> and the Latins.<sup>8</sup> A small Roma community also exists, registered as part of the Turkish-Cypriot community.<sup>9</sup> This system has been criticised by the Council of Europe (2001).<sup>10</sup> The Constitution provides for a system of separate elections; separate majorities are required in both the executive (Council of Ministers) and legislature (House of Representatives) and both the Greek-Cypriot President and the Turkish-Cypriot Vice-president have separate veto powers. A system of quota participation by the two major Cypriot Communities in all areas of public life is also provided for in the Constitution. Parliamentary seats are allocated

by the Constitution on a 70% to 30% basis between the Greek and the Turkish communities. Furthermore, laws of 'personal' nature (education, religion, and family) are organised along communal lines, under the supervision of separate communal chambers.

In 1963, following a Greek-Cypriot proposal for amendment of the Constitution, the Turkish Cypriots withdrew from the Government. Since then, the administration of the Republic has been undertaken by the Greek Cypriots. While inter-communal strife ensued until 1967, the Supreme Court ruled in 1964 that the functioning of the government must adopt the "doctrine of necessity" and continue despite the constitutional deficiencies created by the Turkish-Cypriot withdrawal from the administration.<sup>11</sup> Since 1974 the northern part of Cyprus – some 35% of its territory – has been under Turkish occupation and outside the control of the Cyprus Government. Since the war only a few hundred Greek-Cypriots inhabit the northern territory, with only a few hundred Turkish Cypriots living in the government-controlled south (see ECRI Report, 2001, 2006; Kyle, 2000). However, since the end of May 2003 the regime in the occupied territories has allowed Turkish Cypriots to visit the Republic-controlled south on condition that they return before midnight and the Greek Cypriots have been allowed to visit the north, following passport inspection and the adherence to restrictions on their stay.<sup>12</sup> This paper refers only to the Cyprus Government controlled area.

As is often repeated, the starting point for the new negotiations is the rejection of the comprehensive plan put forward by the UN Secretary-General, Kofi Annan, for the resolution of the Cyprus problem, on the basis of a bi-zonal, bi-communal federation. The plan failed to provide a settlement due to the rejection of the plan by the Greek Cypriot community in the referendum held on 24 April 2004. The plan contained a new constitution, which if implemented, would have dramatically transformed the current structure of government and constitutional provisions. On 1 May 2004 Cyprus acceded to the EU as a de facto divided country, having failed to resolve its long-standing problem. Meanwhile, since the partial lifting of the restrictions of movement, which commenced in April 2003, there have been millions of crossings to and from the Government-controlled area (hereinafter referred to as "the south") to the area not under the control of the Government (hereinafter referred to as "the north") and vice-versa.<sup>13</sup> Across the country and cutting through its capital, Nicosia, runs what is referred to as a 'soft EU border' or 'the Green Line', which is governed via an EU Regulation.<sup>14</sup> Since April 2003 a few hundred Turkish Cypriots have moved to the Government-controlled area, where they now reside, while several thousand cross to the south on a daily basis to work.

Problems between the relations of the two communities began directly after the newly formed Republic was established in 1960; in fact the first inter-communal incidents began in 1957. The imposed constitution was extremely rigid and

complicated and quickly led to conflict between the two communities as the Report by the UN special envoy, Mr Galo Plaza,<sup>15</sup> makes clear. This Report was written for the UN Secretary-General by Mr. Plaza in his capacity as United Nations Mediator on Cyprus. The community leaderships viewed the provisions of the Constitution quite differently concerning their respective participation in the Government.<sup>16</sup> The social lives of the two communities, including the question of discrimination, were inevitably shaped by the turbulent political history of the island that brought the two communities into conflict. There has been very little research on the question of discrimination as such, given the apparent dominance of the political question and the widespread ethnic violence. The Plaza Report makes some reference to underlying ethnic divisions and the fact that individual human rights, including the right not to be discriminated against, were deficient between the 1960-1965 period. Under the heading "The protection of individual and minority rights", Mr. Plaza notes the difficulty in applying the principle of equality of treatment and human rights without discrimination due to "the fact that the population of the island continues to consist of two principal ethnic communities, the further fact that they are unequal in numbers and finally the gravity of the conflict which has developed between them". The same Report noted the difficulty involved in the task of rebuilding a "progressive re-birth of confidence and the re-establishment of social peace", as the obstacles "are no less psychological than political".<sup>17</sup> The way forward in Cyprus, according to the Report, is "the establishment of the most rigorous guarantees of human rights and safeguards against discrimination", which illustrates, if in an indirect manner, the prevalence of discriminatory practices that inevitably go hand-in-hand with the ethnic conflict and turbulence that existed, not only during the particular period of 1963-1967, but also throughout the short life of the Cyprus Republic.

The rigorous bi-communal provisions of the Constitution did not prove very useful in the end. When examining relations between the two communities, given that Greek Cypriots are almost entirely Greek Orthodox and Turkish Cypriots entirely Muslim, ethnic discrimination in Cyprus can be viewed interchangeably in prejudicial practices against members of each community on the grounds of ethnicity and religion. 'Religious' discrimination is not exhausted there, however, as the treatment of Jehovah Witness conscientious objectors refusing to serve in the military illustrate.

The current de facto division of the island creates an awkward situation (see ECRI, 2001, 2006; Kyle, 1997). The opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities concludes that there is reason for concern about Reports from Turkish Cypriots on cases of ill treatment by police officers, as well as difficulties in instituting criminal proceedings against officials under suspicion. The Committee recommends that the Cyprus authorities ensure that these proceedings are properly conducted. The situation has radically changed, however, with the recent partial lifting of restrictions on freedom

of movement by the Turkish-Cypriot authorities, which has resulted in thousands of Turkish Cypriots crossing over into the territory controlled by the Republic. The police authorities may no longer be able or interested in monitoring so closely the lives of Turkish Cypriots living in the south.

### **The Dominance of the ‘National Question’ and Ethnic Conflict Resulted in a Weak Anti-discrimination Tradition in Operation**

Given the background of ethnic conflict and war, it is hardly surprising that historically there has been very little said about the general discriminatory practices in Cyprus. The dominance of the ‘national question’ resulted in a very weak tradition of anti-discrimination laws and policies being in operation, with the exception of sex anti-discrimination, where some measures did exist. Prior to accession to the EU, research on discriminatory practices was virtually non-existent as the monitoring systems are either archaic or non-existent.<sup>18</sup> Recent studies on the subject, however, show a new interest in unjust and unfair treatment with the development of research centres working on migration/discrimination<sup>19</sup> and the RAXEN and FRALEX, gender and migration,<sup>20</sup> gender equality,<sup>21</sup> labour and employment issues,<sup>22</sup> NGOs, researchers and a more pluralistic media.<sup>23</sup>

In reality anti-discrimination has never been a priority issue for the government, whose measures are limited to only a handful of one-off events where awareness is raised. It is not a pressing concern for civil society either, with the exception of a few NGOs who are usually vulnerable groups themselves. There are no NGOs to act on behalf of the rights of the Turkish Cypriots or the Roma, and only two or three NGOs to handle the rights of migrants and asylum seekers. By far the most organised of all anti-discrimination NGOs are those dealing with disability, whose actions are coordinated by a national confederation, recently afforded the status of a social partner, who regularly makes use of the procedure before the Equality Body. There is only one gay rights NGO, with only one or two of its members being ‘out of the closet’ to fight openly for gay rights. Discrimination on the ground of sexual orientation is widespread amongst Cypriot society, despite decriminalisation of homosexuality since 2000, to the effect that homosexuals make little or no use of the rights and the procedures created under Directive 2000/78. So far, only two complaints have been submitted to the Equality Body alleging discrimination on sexual orientation grounds, and one was made by a non-Cypriot. An opinion survey carried out for the Equality –Body in early 2006 revealed very high levels of intolerance amongst Cypriot society against homosexuals; unfortunately the momentum was not seized by the Equality Body to create a code of conduct aimed at eradicating prejudice against them.

In general, dialogue between policymakers and NGOs and/or social partners remains at low levels and is in-existent in most fields of discrimination apart from disability. During the year 2007, a consultation NGO group was set up by the Justice

Ministry for coordinating preparatory actions for the European Year for Equal Opportunities 2007, but this mostly concerned the allocation of funding for events during the year. The organised occasions were predominantly one-off events to raise general awareness or were of a 'celebratory' character, with little sustainability element. The group was dissolved at the expiration of the Year.

The specific legal provisions are examined in the next section.

## **Legislative Framework**

### **Legal Developments in Combating Discrimination**

The current reality means that the legal system is essentially dealing with a society that was forcibly divided further in 1974, following the military interventions by Greece and Turkey. The three 'religious groups' stayed in the south with the Greek Cypriots, and the Roma joined the Turkish Cypriots in the north until early 2000, when many of them returned to the south and settled in specifically designated Roma settlements, renowned for their squalor, poverty and lack of basic hygiene. The housing segregation inevitably led to the schooling isolation of Roma children, who had no choice but to attend schools close to their residence. The only measure introduced by the government that aims at integrating the Roma community is the introduction of the teaching of Turkish language in one school where a large number of Roma pupils attend, but there are no classes on Roma history and culture. Expert reports show discrimination against Turkish speaking pupils in general and against the Roma in particular.

The partial lifting of the ban on freedom of movement in April 2003 allowed several thousands of Turkish Cypriots to cross the dividing line from north to south on a daily basis to work, to access public services or just to visit. This has resulted in a novel situation, which opens up the possibility for on-going discrimination against Turkish Cypriots on the grounds of language as well as ethnic origin in the field of access to public services and employment and housing, resulting from the non-use of the Turkish language, inter alia, official state documents, and from the suspension of other constitutional rights of the Turkish Cypriots, such as the right to their properties. An ECHR decision pursuant to a successful application from a Turkish Cypriot ruled that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality; this principle, however, has not been 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 suspension of the constitutional rights of the Turkish Cypriots, including voting rights. As mentioned earlier, anti-discrimination has not been a pressing concern for the government or for civil society and little has been done other than organise a few one-off events to raise some awareness. There are only a handful of NGOs engaged to protect the rights of the Turkish

Cypriots, the Roma, migrants, asylum seekers and homosexuals, but the rights for people with disabilities are more organised and this area fairs better.

The Republic of Cyprus has recently introduced a comprehensive system of anti-discrimination that covers six grounds overall, as will be examined below. The system is operating effectively but there is considerable room for improvement and for better implementation in the public sector, whilst unfairness in the private sector is widespread because legislation has so far not changed matters on that front. As for the situation in the occupied north of the island, the European Court of Human Rights has ruled that the government of Turkey is responsible for restrictions imposed on Greek Cypriot residents in the north with regard to access to their places of worship and participation in other areas of religious life. Recently, however, there have been some moves by the EU, NGOs and some policymakers to introduce legislation in line with the *acquis*, particularly as hopes for a resolution of the political problem of the division have been rekindled.<sup>24</sup>

Below we set out analytically the various legal instruments to confront discrimination which, although a dynamic area of law, it unfortunately remains underutilised by legal practitioners, activists and scholars, despite the impressive possibilities in redressing prejudice in the country.

### **Constitutional Provisions on Human Rights and Equality**

The Constitution: A Consociational Power-sharing System

The Cypriot constitution sets out a consociational power-sharing system, communally divided strictly between the 'Greeks' and the 'Turks'.<sup>25</sup> When the Republic of Cyprus was initially established the three main religious groups existing at that time were asked to decide which of the two communities they would exercise their civic rights and obligations with – all three opted to belong to the significantly larger Greek community with whom they also share a common religion.<sup>26</sup> The Constitution provides for a system of separate elections for the 'Greeks' and the 'Turks'; separate majorities are required in both the executive and the legislature; a Greek-Cypriot President and a Turkish-Cypriot Vice-president with separate veto powers and a system of quota participation by the 'Greeks' and the 'Turks' in all areas of public life. The Constitution contains a general anti-discrimination provision in Article 28 but at the same time Article 6 specifically prohibits discrimination against any person on the ground of belonging to one or the other community.

Prior to Cyprus' EU accession the legal regime in the field of discrimination was based on the Cyprus Constitution to a large extent. Article 28(1) of the Cyprus Constitution, which corresponds to Article 14 of the ECHR provides that "[a]ll persons are equal before the law, the administration, and justice, and are entitled to equal protection thereof and treatment thereby" whilst Article 28(2) enshrines the

enjoyment of rights and liberties by all persons without any direct or indirect discrimination on the grounds of community, race, religion, language, sex, political or other conviction, national or social descent, birth, colour, wealth, social class or any ground whatsoever. Part II of the Constitution which applies in full to natives and non-natives alike, sets out the “Fundamental Rights and Liberties”, incorporating verbatim and in some instances expanding upon the rights and liberties safeguarded by the ECHR. However, Article 11 of the Constitution allows for the detention of aliens with a view to deportation or extradition. 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 ethnic origin.

Age, disability and sexual orientation are not covered by the Constitution. The Constitution does not recognise any groups as ‘national minorities’. It recognises only two ‘communities’ (Greek and Turkish) and three ‘religious groups’ (Latins, Maronites and Armenians). The stay of migrants is considered to be too short-term and precarious to be afforded ‘minority’ status. In practice this means that the Framework Convention for the Protection of National Minorities has no applicability in Cyprus even though ratified. Most major international conventions on discrimination have also been ratified by Cyprus.

In July 2006, the Cypriot Constitution (until then the supreme law of the country) was amended to give supremacy to EU laws. The amendment adds 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.<sup>27</sup> The new amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28. This development has not as yet led to the reinstatement of quotas in employment in the public service in favour of persons with disabilities, as the disability movement was hoping, even though the law transposing the disability component of Directive 2000/78,<sup>28</sup> which is now deemed to be superior to the Constitution, includes provisions legalising “the creation of employment opportunities by introducing schemes for the employment of disabled persons with motivation to the employers ... and the creation of posts in the public and semi-public sector to be filled in exclusively by persons with a disability”.<sup>29</sup>



## **International Conventions on Human Rights**

### **General Anti-discrimination Laws**

Cyprus has ratified a number of international conventions on human rights which include anti-discrimination provisions, although not necessarily creating complaint procedures for victims. By the end of the year 2000, when the second ECRI Report on Cyprus<sup>30</sup> was adopted, Cyprus had signed but not ratified: the Additional Protocol 12 to the European Convention on Human Rights, which widens the scope of application of Article 14 of the Convention; the European Charter for Regional or Minority Languages; the Convention on Participation of Foreigners in Public Life at Local Level; and the European Convention on Nationality. The European Convention on the Legal Status of Migrant Workers had not been signed and still waits to be signed. In 2002 Cyprus ratified Protocol 12 to the Convention for the protection of Human Rights and Fundamental Freedoms<sup>31</sup> which will enter into force three months after the date on which ten member states of the Council of Europe will have ratified the Protocol. Also in 2002 Cyprus ratified the European Charter for Regional or Minority Languages by means of a ratification instrument deposited on 26 August 2002. The Convention on the Participation of Foreigners in Public Life and Local Level has not been ratified yet, in spite of recommendations from the Ombudsman to proceed with ratification and despite the Ombudsman's criticisms for the lack of governmental policies towards social integration of migrants.<sup>32</sup> In spring 2007, Directive 2003/109/EC was finally transposed, after more than a year's delay, by amending the existing Aliens and Immigration Law Cap. 105. The scope of the amending law (Law 8(I)/2007) covers third country nationals staying lawfully in the areas controlled by the Republic for at least five uninterrupted years.<sup>33</sup> Excluded from the scope of the law are the foreign students, persons on a vocational training course, persons residing in the Republic under the Refugee Law, persons staying in the Republic for reasons of a temporary nature and foreign diplomats.<sup>34</sup> A decision by the Supreme court has, however, stalled the process as it excludes the vast majority of third country migrants residing in Cyprus.<sup>35</sup>

Council Directive 2003/86/EC was transposed into Cypriot law in 2007 (Law 8(I)/2007) without making use of the provision found in Article 4/3 of the Directive. The effect is that the right to family reunification is not extended to the unmarried partner of the sponsor with whom the sponsor is in a duly attested stable long-term relationship, or to a person who is bound to the sponsor by a registered partnership. The current legal framework essentially excludes homosexual partners of the sponsor, although the question remains whether the right to family reunification may cover the homosexual spouse of the sponsor – lawfully married in accordance with the laws of another jurisdiction remains open – as recognised by the recent Equality Body Report on the subject (see File No AKP 68/2008).

#### Ratification of Convention on Cybercrime

The entry into force on 1 March 2006 of 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<sup>36</sup> 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. There is no case law yet invoking the said law.

#### Convention on the Elimination of All Forms of Racial Discrimination

With the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>37</sup> as well as with the subsequent amendments introduced to the basic law,<sup>38</sup> Cyprus established a number of offences relevant to combating racism and intolerance, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination. The offences include incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services. 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. Article 2A of the amended law<sup>39</sup> renders criminally liable those persons who:

- (a) Incite acts which are likely to cause discrimination, hatred or violence against persons on account of their racial or ethnic origin or religion;
- (b) Establish or participate in organisations that promote propaganda aiming at racial discrimination;
- (c) Express ideas that insult persons by reason of their racial or ethnic origin or religion;
- (d) Refuse to supply goods or services to people by reason of their racial or ethnic origin or religion.

The penalty is up to two years imprisonment and/or a fine of up to CYP £1,000 (approximately €1,720).

Article 2A (4) of the same law reads: "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". This section has resulted in at least one conviction.<sup>40</sup>

### **Criminal Provisions on Racial Crime**

Under the Cypriot Criminal Code (Cap.154) a number of discriminatory acts are punishable offences:

- (a) Article 47: publication<sup>41</sup> with a seditious intention;
- (b) Article 48: “intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic”;<sup>42</sup>
- (c) Articles 51 and 51A: the calculated statement, printed or published to “encourage recourse to violence on the part of any of the inhabitants” or to “encourage recourse to violence or promote feelings of ill will between different classes of communities or persons in the Republic of Cyprus” or which “procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance”.<sup>43</sup>
- (d) Article 138: the destruction, damaging or defiling of any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion.
- (e) Article 142: the publication of a book or pamphlet or any article or letter in a newspaper or magazine which is perceived by a group of people as a public insult to their religion, with intent to ridicule such religion or to shock or insult its followers. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent.
- (f) Article 149: the uttering of any word or the making of any sounds with the deliberate intention of wounding the religious feelings of any person in the hearing of that person, or any gesture in the sight of that person, or the placing of an object in the sight of that person.

The Criminal Code contains two more provisions which may, in the opinion of the Cyprus Expert of the Legal Network of Independent Experts on Fundamental Rights,<sup>44</sup> indirectly lead to a conviction for discriminatory acts:

- (g) Article 105 provides that civil servants (i.e. government employees) may be held guilty for “abuse of power” and may be sentenced to imprisonment of up to two years and/or a fine of up to CYP £1,500 (approximately €2,580). Abuse of power may well include using their position to discriminate against persons in the course of their duties.
- (h) Article 136 provides that any person who violates the law on purpose, in relation to an act involving the public or part of the public, is guilty of an offence and is liable to up to two years imprisonment and/or a fine not exceeding CYP £1,500 (approximately €2,580). It can therefore be inferred that an act violating the anti-discrimination provision of the Cypriot

Constitution (article 28) or any other law, may constitute a criminal offence under Section 136 of the Criminal Code if committed with a racist motive.

### **Legal Provisions in Employment**

In the area of employment, the Law on Unfair Dismissal No. 24/1967 renders dismissal on grounds such as race, colour, family condition, religion, political opinion, national origin or social descent 'unfair' and therefore actionable. However, a recent decision by the Limassol Labour Tribunal has thrown doubt as to whether the courts themselves would interpret their jurisdiction in the context of the 'employment relationship', as covering combating discrimination in cases of advertising, recruitment and selection, even when the laws on discrimination empower them to do so. The first case under anti-discrimination acquis on the ground of age was decided by the Limassol Labour Tribunal (Avgoustina Hajjavraam vs. The Cooperative Credit Company of Morphou no. 258/05 delivered on 30 July 2008) regarding the claim that the maximum age limits for an advertised job post of secretary amounted to unlawful age discrimination. However, the court considered it had no jurisdiction: since there was no employment relationship between the parties there was no labour dispute at all. This very restrictive definition of the scope of 'employment', if adopted by the Cyprus Supreme Court in the upcoming appeal, will mean that there is no protection from discrimination prior to appointment and in the process of advertisement, selection and hiring as the employment tribunal has no jurisdiction.

### **Gender and Sex Equality and the EU Anti-discrimination Acquis**

As the only legal anti-discrimination was essentially on gender, it is worth referring to some of the key cases that form part of the jurisprudence of Cyprus, prior to accession to the EU. A number of cases have been decided by the Supreme Court that have established the right to equality between men and women, as provided for in Article 28 of the Constitution, as a fundamental right that the Courts are obliged to uphold. Save for some exceptions, the way the Court approaches the right to equality is similar to that of the European Court of Justice, as the relevant case law indications. However, the most important legislative measures relating to sex equality came with the enactment of Law 205(1) of 2002 on the equal treatment of men and women in employment and vocational training and Law 177 of 2002 on equal pay for men and women for similar work or work of equal value. These were adopted within the framework of harmonisation of Cyprus law with the EU acquis prior to accession in May 2004. They transpose EU Directive 76/2007/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working condition and Directive 97/80/EC on the burden of proof in cases of discrimination based on sex.

### **The Disability Laws and the EU Anti-discrimination Acquis**

In 2000 the basic disability law came into force which included the prohibition of discrimination. The term 'disability' is defined in the Law concerning Persons with Disabilities No. 127(I)2000 enacted prior to the new anti-discrimination laws of 2004.<sup>45</sup> The scope of the Law on Persons with Disabilities excludes activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. Also the same law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities. The disability law was amended in 2007 to impose an obligation on employers to provide reasonable accommodation so long as the burden on the employer is not disproportionate. In addition to that provision, the law provides for the duty to adopt 'reasonable measures' to the extent and where the local economic and other circumstances allow. These measures are not restricted to the work place but cover also: 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); supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services; and telecommunications. The duty to adopt 'reasonable measures' is so widely phrased that it falls short from creating a mandatory regime. The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. However, a person who without due cause commits or omits an act which amounts to discrimination against a person with a disability is guilty of an offence and liable to a fine and/or to a prison sentence, none of which has ever been imposed so far.

### **The Laws Transposing the EU Anti-discrimination Acquis on the Five Other Grounds**

Until the eve of its EU accession, Cyprus lacked a comprehensive primary anti-discrimination legal framework: the pre-accession anti-discrimination framework did not provide an effective enforcement mechanism, even though there was one case that provided that human rights created rights against the state and individuals.<sup>46</sup> This ineffective regime was noted by the Second ECRI Report on Cyprus (2001), as well as the European Commission Report of 2002, under the heading On the issue of human rights and the protection of minorities, states that significant work still needs to be done in the area of anti-discrimination.<sup>47</sup>

On 1 May 2004 three laws came into force purporting to transpose Directives 43/2000/EC and 78/2000/EC: (a) The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law<sup>48</sup> purporting to discharge the Republic's obligation to appoint a national Equality Body under Article 13 of the Race Directive (hereinafter Law No. 42(1)); (b) The Equal Treatment (Racial or Ethnic Origin) Law<sup>49</sup> purporting to transpose the Race Directive; and (c) The Equal Treatment in Employment and Occupation Law<sup>50</sup> purporting to transpose the Framework Directive. Cyprus did not take the option to defer implementation of the provisions of Directive 78/2000/EC relating to age and disability to 2 December 2006. The relevant laws came into force on or before 1 May 2004, the date of Cyprus' accession into the EU.

Law No. 42(1) appoints the Commissioner of Administration or Ombudsman, an independent officer appointed by the President of the Republic, as the specialised body 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;<sup>51</sup> (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<sup>52</sup> irrespective of 'race', community, language, colour, religion, political or other beliefs, national or ethnic origin<sup>53</sup> and (iii) 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.

The Law vests the Ombudsman with powers beyond those prescribed by the two EU Directives as the designated Equality Body of Cyprus: 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<sup>54</sup> of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.<sup>55</sup> The Ombudsman's decisions can be used for the purposes of obtaining damages in a district court or at an employment tribunal. The Ombudsman is further empowered to impose small fines,<sup>56</sup> to 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.<sup>57</sup> However, all orders, fines and recommendations issued or imposed by the Ombudsman under this Law are subject to annulment<sup>58</sup> by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest.'<sup>59</sup> The Ombudsman may also investigate issues on his/her own right where the Ombudsman deems that any particular case that came to his/her attention may

constitute a violation of the law.<sup>60</sup> Also, the Ombudsman 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.<sup>61</sup> In such cases, the Ombudsman 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. The findings and Reports of the Ombudsman must be communicated to the Attorney General of the Cyprus Republic who will, in turn advise the Cyprus Republic on the adoption or not of appropriate legislative or administrative measures, taking into account the Republic's international law obligations and who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision.

### **Main Principles, Definitions and Material Scope: Evaluating Anti-discrimination Law**

#### **Main Principles and Definitions of Anti-discrimination Law**

All definitions of 'discrimination' contained in the Directives are virtually replicated in the national laws. Thus, discrimination is defined as less favourable treatment afforded to a person due to [any recognised ground] than the treatment afforded to another person in a similar situation. In the case of disability, direct discrimination is 'unfavourable treatment' when compared to 'a person without disability in the same or similar situation', or on the basis of 'characteristics which generally belong to persons with such disability', or 'alleged characteristics', or 'in contravention of a code of practice'. Discrimination by association is not explicitly covered in the law. Also, the grounds for discrimination are not defined anywhere in the national law.

Indirect discrimination also copies verbatim the wording of Directives, as an apparently neutral provision, criterion or practice which would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a disadvantage compared with 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.

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'. Instructions to discriminate and victimisation, also prohibited on all five grounds, again follow verbatim the definition of the Directives.

The laws transposing Directive 2000/78 allow for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the 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. With regard to age, these provisions do 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. 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 of the context of these activities, religion or belief is a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

There is no provision in the Cypriot legal order for multiple discrimination and no plans for the adoption of laws or regulations to deal with situations of multiple discrimination as yet.

### **Material Scope: What Fields Does the Law Cover?**

The scope of the anti-discrimination laws cover both the private and the public sector and include all fields provided in the Directives. Thus, discrimination on all five grounds is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations. In addition, discrimination on the ground of racial/ethnic origin is forbidden in the field of social protection, medical care, social provision, education and access to goods and services available to the public including housing. Subject to conditions, the disability law provides for the right to equal treatment in the provision of goods, facilities and services. The mandate of the Equality Body, however, goes well beyond the two Directives and includes the right to promote equality of opportunity in all the fields provided in the two Directives. On all six grounds plus some additional ones (please see, Equality Bodies: The Designated Bodies beyond the Courts to Combat Discrimination, p.16).

### **Enforcing the Law**

Victims have the option of submitting a complaint to the Equality Body or to the courts. Litigation could either be in the field of administrative law, via recourse to the Supreme Court to set aside an administrative act, or to the district court in accordance with the laws transposing the two Directives, or to the district court for violation of the constitutional anti-discrimination provision. For various reasons, but mainly due to the high cost and length of time involved, litigation is hardly ever used by victims of discrimination. The Equality Body may complete its investigation and issue a decision in a few months or sometimes with a delay of a couple of years,



depending on the subject investigated and the complications involved. A large number of complaints are withdrawn before final determination due to compliance by the perpetrator or an alternative outcome satisfactory to the complainant. In other cases, the Equality Body exercises mediation in order to reach a solution. Until recently the Equality Body would restrict itself to issuing non-binding recommendations, but very recently it started to follow the consultation process provided in its mandate which will lead to the issue of binding decisions.

Victims may address complaints either to NGOs or trade unions, who may then submit them to the Equality Body on their behalf, or directly to the Equality Body, where the procedure is cost-free, simple and flexible. The national laws transpose verbatim the Directives' provisions regarding the right of organisations to engage in procedures on behalf of their members. There are a number of NGOs available to initiate and support victims' complaints in the field of disability, including the confederation for all disability NGOs. There are fewer NGOs (2-3) supporting the complaints of migrants and asylum seekers but none to support the complaints of Turkish Cypriots or Roma. Regarding the other grounds, there are few or no NGOs to take up cases on behalf of their members. In the case of sexual orientation, victims are unwilling to submit complaints so as not to make their sexual orientation known to the public. In general, more complaints are submitted by individuals rather than by organisations acting on their behalf. Whether the party initiating the complaint is the victim him/herself or an organisation representing him/her, the outcome of the case is not affected by it.

Equality Body decisions are occasionally reported in the media, but this is an exception rather than the rule. Some of these decisions are uploaded on the Ombudsman's website and some appear in the Equality Body's Annual Reports which, although made available to the public upon request, are not widely disseminated.

There is no mention in the legislation, or in case law, or in any decision of the Equality Body on the use of situation testing and statistical data. If an argument in favour of admitting such evidence is used in Court, it is likely to be allowed if it is shown that it was deemed admissible in other EU jurisdictions. The general rules of evidence for criminal and civil procedure apply. The admissibility of situation testing as a method of proving discrimination in courts will presumably be subjected to the general test of 'relevance' and 'the best evidence rule'. However, it is not possible to state with certainty whether the courts will consider this as admissible evidence in order to prove discrimination. It may well be that it might be relied upon as a methodology that merely indicates a tendency as to the 'general' or 'systematic' behaviour of the defendant, which is based on previous and/or similar occasions, and would be persuasive but not necessarily binding.

Although in 2004, upon transposition of the two Directives, the burden of proof provision was incorrectly transferred hence amending legislation was introduced in 2006 and 2007 that brought national law in line with the Directives. As the law now stands, the burden of proof is only reversed in Court and not in procedures before the Equality Body, since the latter's mandate includes the right to carry out its own investigation to establish the facts.

The sanctions which Courts can impose against physical persons found to be guilty of discrimination cannot exceed CYP £4,000 (€6,835.27) and/or imprisonment of up to six months. For legal persons the maximum penalty is CYP £7,000 (€1,196.72). An offence committed, under the same law, out of gross negligence carries a penalty of up to CYP £2,000 for physical persons. If the offence has been committed out of gross negligence, a fine of up to CYP £2,000 (€3,417.63) is levied for physical persons; for legal persons, there is a fine of up to CYP £2,000 (€3,417.63) for the 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 CYP £4,000 (€6,835.27) for the company or organisation. The aforesaid fines, however, can only be imposed by the Courts; the Equality Body can only impose small fines which cannot exceed CYP £350 (€598) and such powers have so far been used only in one case concerning gender discrimination. Generally speaking, the fines are very low, offer little deterrence to potential perpetrators, and they are hardly ever imposed by the Equality Body.

The Equality Body does not have the power to award compensation to victims of discrimination, but its decisions may be relied upon to seek damages for unlawful discrimination in a district Court or a labour tribunal.

There are penal remedies available against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent 11 amendments, 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 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, inter alia, to health, education and training. Refusal to provide goods on the ground of racial ethnic origin is an offence. Under the Criminal Code some discriminatory acts are punishable offences.

### **Equality Bodies:**

#### **The Designated Bodies beyond the Courts to Combat Discrimination**

In 2004, the Ombudsman was appointed as the national Equality Body,

empowered: (i) to combat racial 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; (ii) to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol 12 of the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination) irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin; and (iii) to promote equality of opportunity irrespective of the aforesaid grounds plus the grounds of special needs and sexual orientation. The scope of this provision covers not only the fields of Directive 2000/78 but additionally social insurance, medical care, education and access to goods and services including housing.

The Equality Body does not have the power to award compensation but its decisions may be relied upon to seek damages in Court. 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 yet been decided in Court. A victim of discrimination may apply to the labour tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, a remedy rarely sought or used. There are certain weaknesses in the present framework which affect its overall effectiveness. Insufficient funds to the Equality Body's office resulted in inadequate staffing arrangements and in delays in issuing decisions. Moreover, the Equality Body is reluctant to adequately deal with cases that are considered to touch upon the so-called 'doctrine of necessity' or the 'Cyprus problem'.

### **Distortions and State of Implementation of the EU Anti-discrimination Acquis**

#### **The "Doctrine of Necessity": A Distortion and Flaw in the System**

The so-called 'doctrine of necessity', which has been operative since 1964 is a major obstacle to its proper anti-discrimination operation in Cyprus and as such it needs to be dealt with in more detail. 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. Even though it has never been officially proclaimed Turkish ceased, in practice, to be used as an official language from 1963 onwards, as the relevant provisions in the Constitution that required the use of both languages in all legislative, executive and administrative acts<sup>62</sup> discontinued to be implemented. Instead, Greek is the only language used by the state in official

documents, including laws, Ministerial decisions and the official Gazette. In 1964 the Supreme Court ruled that the functioning of the government must continue on a “doctrine of necessity” basis.<sup>63</sup> The situation that emerged gave rise to a number of claims of discrimination by Turkish Cypriots but this number rose sharply following the 2003 partial lifting of the restrictions of movement between north and south of the country. A typical manifestation of this irregular situation which has been in place since 1964 is the fact that all Turkish Cypriot properties located in the south of the country are placed under the control of the Interior Minister who acts as property “guardian” or “custodian”, essentially denying the Turkish Cypriot owners of any rights in relation to their properties, including the right of access, the right to sell or rent, the right to receive compensation when expropriated, until the “resolution of the Cyprus problem”. This has resulted in a number of law suits by Turkish Cypriots against the Republic as well as a number of applications by Turkish Cypriots to the ECtHR,<sup>64</sup> although the ECtHR has not yet issued any decision.

Following the adoption of legislation to transpose the directives, a crucial concern is the possibility of direct discrimination against Turkish Cypriots on the ground of ethnic origin as well as indirect discrimination on religious grounds.<sup>65</sup> A key manifestation of these instances of discrimination is the fact that there are hardly any translations in Turkish language to enable Turkish-Cypriots to have access to public services, jobs, opportunities and to pursue their rights. The enactment of the new anti-discrimination legislation in May 2004, combined with the partial lifting of restrictions on movement in April 2003, has resulted in thousands of Turkish Cypriots working, seeking employment and access to public services in the south, which is a totally original situation and opens up the possibility for on-going unjust employment practices. The reason frequently offered for the non-use of the Turkish language since 1963 is the ‘doctrine of necessity’, but the legality of suspending Constitutional provisions on the basis of a Supreme Court judgement is questionable. An Equality Body decision pursuant to a complaint regarding the non-use of the Turkish language in the official Gazette recognised that a bias against Turkish Cypriots does seem to exist at the level of access to public services, but it concluded that it could not interfere on the issue of a Turkish publication of the Gazette, invoking the “doctrine of necessity”.<sup>66</sup> In another case the Supreme Court, in an interim decision, allowed the Turkish-Cypriot litigants to submit their pleadings in Turkish as provided in the Constitution, rejecting the Attorney General’s arguments that Turkish Cypriots should not be allowed to do so.<sup>67</sup>

Pursuant to the decision of the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*,<sup>68</sup> a law came into force in 2006<sup>69</sup> which granted Turkish Cypriots residing in the south the right to vote and to stand for election. As a consequence, in the Parliamentary Elections of 21 May 2006, Turkish Cypriots voted for the first time since 1964. The ECtHR decision that the ‘doctrine

of necessity' in the case of Aziz 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.

### **State of Implementation: An Overview**

We now summarise the key areas where national law is in breach of the EU Directives, which result in defective implementation of anti-discrimination law and practice.

Cyprus has enacted four laws which entered into force on the date of its accession to the EU (1 May 2004): the law amending the existing disability law,<sup>70</sup> the law transposing (roughly) the employment directive,<sup>71</sup> the law transposing (roughly) the race directive<sup>72</sup> 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.<sup>73</sup> The national laws enacted for the purpose of transposing the two Directives are more or less in compliance with the said Directives. However:

- The duty to ensure that discriminatory laws and provision contained in contracts, collective agreements, internal rules of undertakings or rules governing independent occupations and professions and workers and employers' organisations have been explicitly repealed and not fully complied with<sup>74</sup> by way of a general provision in the two main anti-discrimination laws.<sup>75</sup> 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.
- According to the law appointing the Ombudsman as the specialised body, the latter 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.<sup>76</sup> Although some cases of discriminatory laws/regulations/practices have been referred by the Equality Body to the Attorney General, no change in any discriminatory law/regulation/practice has resulted so far. Meanwhile, unless and until the discriminatory law/regulation/practice is expressly repealed by law, it continues to remain in force, in contravention of article 16 of Directive 2000/78 and of article 14 of Directive 2000/43. As a manifestation of the above 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 age grounds, in violation of article 8(1) of the Equal Treatment in Employment and Occupation Law N.58(I)/2004, transposing Directive 2000/78/EC (see later in this paper). 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.

- Initially, when the disability component of Directive 2000/78 was transposed in 2004, the scope of the test of reasonableness as regards reasonable accommodation was much wider in the Cypriot law than in Directive 2000/78. In particular, whilst article 5 of the Directive provided only for the test of “disproportionate burden on the employer”, the Cypriot disability law provided for a long list of prerequisites which need to be taken into account before a mandatory obligation to provide reasonable accommodation is created: the nature and the required expense for taking the necessary measures; the financial resources of employer; public finances and other obligations of the state, in the event that the measures are to be taken by the state; the provision of state aid or other contributions toward the cost of the required measures; and even the socio-economic situation of the person with disability (albeit only in the non-employment field).<sup>77</sup> Employers could escape liability for not providing reasonable accommodation where their failure or omission was justified by ‘reasonable cause’.<sup>78</sup> “Reasonable cause” is defined as a case where reasonable accommodation measures had not been taken because one or more of the said prerequisites were not met. In 2007, amendments to this provision were implemented and employers are now obliged to adopt all appropriate measures so that a person with a disability can have access to the workplace, to promotion and to vocational training as long as these measures are not disproportionately onerous on the employer.<sup>79</sup>
- The principle of reversal of the burden of proof, as contained in Article 8 of the Race Directive and in Article 10 of the Employment Directive was initially transposed into Cypriot law inadequately. This was pointed out to the Cypriot government by the European Commission and amendments have since been introduced to all three laws.<sup>80</sup> As things stand now, reversal of the burden of proof applies only with regard to the procedure before the Court and not to any other (administrative) procedure such as the procedure before the Equality Body.<sup>81</sup> The provision governing the extent of the Equality Body’s power to investigate the facts of the case, falls under article 10(5) of Directive 2000/78 or article 8(5) of Directive 2000/43.
- Certain provisions of the two Directives which require the Member States to take measures other than the enactment of legislation have not been fully implemented. These measures include the promotion of dialogue with social partners and NGOs<sup>82</sup> and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned.<sup>83</sup> Since the adoption of the

legislation, which was rushed through Parliament on the eve of Cyprus' accession to the EU, there has been little initiative or positive action taken by the Government or other public body<sup>84</sup> with the exception of a few seminars that did not target vulnerable groups specifically. A small number of publications issued by the Ministry of Labour and the Ministry of Justice to raise awareness were neither published in the languages of vulnerable groups nor were they disseminated to them especially.

Since its inception in 2004, the Equality Body has been greatly understaffed and underfunded by the government,<sup>85</sup> which accounts for the fact that it has not made full use of the powers granted to it by the law, i.e. the power to collect data, to conduct independent surveys concerning racial or ethnic discrimination,<sup>86</sup> or to draft codes of conduct intended to combat discrimination on the grounds provided by the Directives and others. Thus, the Equality Body has not utilised the opportunity to issue such a code on discrimination against homosexuals at the workplace, when an opinion survey, commissioned in 2006, demonstrated extensive homophobia in Cypriot society. Given the fact that prejudice against homosexuals in Cyprus is so predominantly high, only one Cypriot homosexual (and one other non-Cypriot homosexual living in Cyprus) has ever filed a complaint to the Equality Body, the issue of a code of conduct is crucial.

Cyprus did not take the option to defer implementation of the provisions of Directive 2000/78 relating to age and disability to 2 December 2006. The relevant laws came into force on or before 1 May 2004, the date Cyprus acceded to the EU.

## **Conclusions**

### **General Assessment**

General protection from discrimination on all six grounds was not comprehensive prior to accession; it was uneven and under-developed in certain areas, and was considered inadequate. As matters currently stand there has been some improvement but discrimination has not been stemmed:

- Protection against religious discrimination is provided for by the constitution and courts have regularly made declarations to this effect. However, the rigorous bi-communalism of the Republic, the role of religion in the education system and the recognition afforded to the 'established' religious groups shows little societal tolerance of other religions, particularly those which engage in proselytising. In the past, Jehovah's Witnesses have particularly been the target of discrimination. Cypriot authorities prosecute conscientious objectors, as in the case of Jehovah's Witnesses<sup>87</sup> because they refuse to perform reservist exercises; however, a new amending law has been recently introduced.

- The issue of gender discrimination is the argument with the longest legal history in Cyprus. The introduction of the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002 (Law 205(I)/2002) marks an important qualitative step in the history of anti-discrimination and serves as a model for the further development of other areas of discussion. The introduction of the new law has not, however, had any great effect on redressing gender discrimination in society, particularly when it comes to pay and working conditions in the employment field.<sup>88</sup>
- On the question of disability some progress over the past twenty years can be reported. Nevertheless, despite the change in attitude, a great deal remains to be done as the vast majority of persons with disabilities aged 15 and over (73%) reported that they were not in work, with only 25.2% working and 1.2% reported as unemployed (ILO 2002). The Law concerning Persons with Disabilities (Law 127(I)/2000) introduced a comprehensive framework for tackling disability discrimination.
- There is very little data available in Cyprus on discrimination based on sexual orientation. Progress on the issue of sexual orientation discrimination has been slow due to the attitudes on the subject, which is still very much treated as taboo. A more enlightened approach and progress can be noted following the successful challenge by Mr. Alexandros Modinos at the European Court of Human Rights (Modinos vs. Cyprus 16 E.H.R.R 485). Prior to 2004, there was no history of legal protection against discrimination of lesbians and gay men, because this remained an outlawed and unacceptable subject. There were, however, two recent positive decisions by the Equality Body in 2008 and there are two recent Reports on Homophobia<sup>89</sup> to add to the scarce Cypriot literature on the subject.
- Similarly, prior to accession there was no provision to prohibit age discrimination, or any study on the extent of age discrimination in Cyprus. Some Equality Body Decisions have been made on the subject and there has been a recent court decision of the Labour tribunal, referred to above, which examined the claim that the maximum age limits for an advertised job post of secretary amounted to unlawful age discrimination.<sup>90</sup>
- Currently, there is no provision in the Cypriot legal order for multiple discrimination and no plans as yet for the adoption of laws or regulations to deal with situations of multiple discrimination.

### **Weaknesses of the System**

- The duty to ensure that discriminatory laws and provision contained in contracts, collective agreements, internal rules of undertakings or rules governing independent occupations and professions and workers and employers' organisations, have been explicitly repealed<sup>91</sup> by way of a general provision in the two main anti-discrimination laws,<sup>92</sup> and these fail to comply



fully with Directives. No review of existing laws has been made to ensure compliance with the Directives, and practice suggests that the process of formal repeal of earlier laws which do not conform to the Directives is somehow 'triggered off' only after a complaint is made. In some cases, the Equality Body examines the complaint and issues a report which is usually a mere recommendation rather than a binding decision. There is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives.

- The scope of the test of reasonableness as regards reasonable accommodation is much wider in the Cyprus law than in the Employment Directive which provides only for the test of "disproportionate burden on the employer" and clearly falls short of creating a full-blown mandatory regime.
- The Equality Body has rejected a complaint that a law, providing that persons who have reached retirement age lose their right to compensation for unfair dismissal, amounts to discrimination.<sup>93</sup>
- The principle of reversal of the burden of proof, as contained in Article 8 of the Race Directive as well as in Article 10 of the Employment Directive has been inadequately transposed into Cypriot law. This was pointed out to the Cypriot government by the European Commission and an amendment has since been introduced<sup>94</sup> that only partially remedies the problem. As things stand, Article 8 of the Race Directive is transposed only with regard to social protection, medical care, social advantages, education and access to goods and services. Also, reversal of the burden of proof is stated to apply only with regard to the procedure before the Court and not to any other procedure, such as the procedure before the Equality Body.<sup>95</sup> The transposition of Article 10 of the Employment Directive suffers from the above inadequacies in addition to three others: a victim of discrimination has to prove facts from which a violation can be inferred; the perpetrator is absolved from liability if his violation had no negative consequences on the victim; and the rule applies only to civil procedures and not to administrative ones.
- Certain provisions of the two Directives which require the Member States to take measures other than the enactment of legislation have not been fully implemented. These measures include the promotion of dialogue with social partners and NGOs<sup>96</sup> and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned.<sup>97</sup> Since the adoption of the legislation, which was rushed through Parliament on the eve of Cyprus' accession to the EU, there has been little initiative or positive action taken by the Government or other public body with the exception of a few seminars.<sup>98</sup> The Labour Department of the Ministry of Labour has published a "Guide to Law No 58(I) of 2004 on the Equal Treatment in Employment and Occupation" as well as a "Guide on the Rights and Obligations of Foreign Workers"; however the dissemination of these leaflets to the vulnerable groups appears inadequate

as most of the organisations representing groups at risk were not aware of the existence of these leaflets.

- A great deal more could be done for the dissemination of information to the discriminated groups themselves.<sup>99</sup> When it comes to policymaking, dialogue or consultation with non-governmental organisations, it is either non-existent, very limited or appears to have little impact over the outcome of the process; there is little feedback or proper engagement in debates in order to identify the best possible ways of tackling discrimination.
- There are, however, certain weaknesses affecting the overall effectiveness of the system. The apparent reluctance of the government to allocate human and financial resources to the Ombudsman's office is foremost; to allow it to cope with the increased volume of work it faces, as a result of investigating ever more complaints, many of which are urgent in nature. In its third Report on Cyprus, ECRI stresses the need for resources to be made available to the Ombudsman to enable her to respond to her tasks.<sup>100</sup> The lack of resources is also the reason why little or no measures have been taken in order to bring to the attention of vulnerable groups (members of the Turkish-Cypriot community, the Roma, the Pontians, migrant workers and asylum seekers) the new legal developments and complaint procedures open to them. By way of example, to date the Ombudsman's website continues to be displayed only in Greek.
- Another weakness is the fact that the maximum fines which the Ombudsman/Equality Body is entitled to impose range from CYP £4,000 (approximately €6,900) to CYP £7,000 (approximately €12,000); in some cases penalties can include, in addition to the fine, imprisonment of up to six months.<sup>101</sup> In fact, the fine for racial or indirect racial discrimination in the enjoyment of a protected right or freedom (€436) is lower than the fine for "discrimination prohibited by law" (€610).<sup>102</sup> The amounts are clearly not high enough to constitute a deterrent. Theoretically victims may use the Ombudsman's decision in order to claim compensation from the Courts but in practice this has not happened so far, perhaps because victims of racial/ethnic discrimination very rarely have the means to instigate a legal suit. However, the biggest drawback is not in the institutional framework but the way the Ombudsman has chosen to utilise it. Since it commenced its work as the national Equality Body in May 2004, the Ombudsman's office has neither issued any binding orders, nor has it imposed any fines, restricting itself to mere recommendations; this policy is at least partly responsible for its low decision compliance rate, particularly on the part of the police.<sup>103</sup>
- The Equality Body's power to collect data and conduct independent surveys concerning racial or ethnic discrimination has neither been utilised sufficiently, nor have structures been put in place for the collection of such data.<sup>104</sup> The Equality Body (consisting of the Equality Authority and Anti-discrimination Body) has not yet progressed to drafting codes of conduct intended to combat discrimination on the grounds provided by the Directives,<sup>105</sup> even though the

relevant Cypriot law authorises it to do so.<sup>106</sup> The Equality Body has conducted a research survey and found extensive homophobia in Cypriot society but has drafted no codes of conduct.

- The limitations in the mandate of the Equality Body can be located in the ways in which its functions are carried out. Firstly, sanctions in the form of the maximum fines it can impose are so minor that it is questionable whether they can act as a genuine deterrent of discrimination. Secondly, whether the duties of the Equality Body are properly discharged by the Ombudsman is a matter that is open to dispute. The Equality Body seems to be submerged under Ombudsman logic: it neither has a separate budget, staff or website, nor is the public aware of its distinct role or powers.<sup>107</sup> Moreover, after four years of operation and investigating over 900 complaints, one branch of the Equality Authority, the Anti-discrimination body has so far failed to impose any sanctions or make any binding recommendations, preferring to act in a mediating role as though it were a toothless mediating institution.<sup>108</sup> Only the Equality Authority, in exceptional circumstances, has imposed some fines and made its decisions binding. It seems that the ethos, practice and operation of the Ombudsman create some confusion as regards the 'dual' role played by the Equality Body/Ombudsman. The fact that these bodies are headed by one person, and the same offices are used by officers of the Ombudsman, who also appear on behalf of the Equality Body, makes matters even more perplexing. Overall, the benefits of having a large office are outweighed by the apparent inability of the Equality Body to assert itself by creating its own identity and profile as a public institution for citizens and vulnerable groups to recognise and develop trust. Most importantly the Equality Body has failed to make its decisions binding and to impose sanctions, except for one case involving gender discrimination. It has overall failed to take any actions that make the practice of discrimination dissuasive, preferring general remarks and advice. For this reason the authors are of the view that the Equality Body cannot be genuinely independent and comply with the aim of the Anti-discrimination acquis, unless it is separated from the Ombudsman to carry out its duties in a more effective way.<sup>109</sup> The situation in Cyprus is not comparable with other countries where the Ombudsman has always undertaken the function of an Equality Body.<sup>110</sup>

### **The Key Issues for Improving Anti-discrimination**

- The national specificities of Cyprus are the result of what can be termed as country-specific structural problems. These include various issues that derive from the unresolved 'Cyprus problem', which creates practical discriminatory problems originating from the de facto division of the country, and leads to practices amounting to discrimination against Turkish-Cypriots mostly (e.g. failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish-Cypriots in access to property and various other

constitutional rights; the violation of Greek-Cypriot rights by Turkey and a certain tendency of the authorities and the courts to “seek revenge”). The continuous, if not rigorous, application of the ‘doctrine of necessity’ by both government and courts engenders a legal vacuum within which several discriminatory policies are established and practiced.

- There is a visible lack of legal anti-discrimination tradition, owing, at least partly, to the predominance that ‘the Cyprus problem’ has enjoyed for the past forty years in terms of prioritisation of issues to be addressed in the public sphere. This phenomenon manifests itself in several fields such as the lack of consumer awareness or consumer-consciousness, the authorities’ tendency to ‘hide’ problems of racism and discrimination and label as ‘unpatriotic’ any person who ‘exposes Cyprus’ to the European fora, or the lack of monitoring mechanisms and the service failures of agencies and institutions of the state (e.g. police and immigration authorities that consistently refuse to comply with the Equality Body’s recommendations). The relative weakness of civil society and their lack of training and skills often allow these service failures to go undetected and/or to be tolerated.
- Even though the Directives highlight the importance of consultation, little, if any, takes place in practice. A way to address this might be an annual consultation process with NGOs, experts, trade unions, employers and policy/law makers.
- There is no procedure in place for regular reviewing or revising of discriminatory laws/regulations. In practice, a review is only triggered once a complaint is submitted to the Equality Body. In this case, the law requires the Equality Body to refer discriminatory laws/regulations to the Attorney General who is then duty bound to prepare the amending legislation. In spite of several referrals to the Attorney General, none of the laws found by the Equality Body to be discriminatory have been amended and they continue to remain in force. In order to comply with the Directives’ requirements, a procedure should be institutionalised to accommodate the regular review of all laws and regulations. In addition, the Equality Body should be given powers to suspend the application of laws which are found to be discriminatory, until an amending legislation is enacted.
- The mandate and the sanctions of the Equality Body are unsatisfactory and should be expanded. In particular, the sanctions within the Equality Body’s mandate are too weak to act as effective deterrents.
- There are challenges for civil society such as dealing with shortcomings in victim support, organisational problems, weak campaigns, lack of coordination and solidarity between NGOs, and weak advocacy skills/lobbying. Personal agendas, competition for funding and various other problems stand as obstacles in the way of NGOs, preventing the building of alliances and co-operations to be effected fruitfully. There is a need to develop coalition building at national, regional and European level.

- Apart from limited and short-term financing provided by EU projects like EQUAL or ERF, there is no public or private funding available for anti-discrimination NGOs, which renders their sustainability very difficult in terms of infrastructure and personnel, and prevents the development of skills, expertise and professionalism. There is also no regular consultation process in place between the government and NGOs.
- Regarding discrimination in the workplace, there is an inequality of power between the strong employers' lobby and the weak representation of vulnerable groups, despite the apparent strength of trade unions. To accentuate this problem, Cyprus has a very large Small and Medium Enterprise (SME) sector, whose individual members lack professionalism and awareness generally on issues of labour rights and discrimination.
- Litigation is not used sufficiently, partly due to the cost and length of time involved and partly to the lack of awareness of new laws among the legal profession. Given the fact that the Equality Body's decisions have so far been mere recommendations, victims of discrimination are, in practice, not afforded the mandatory legal protection foreseen in the Directives.
- The legal aid law covers only cases where the sentence foreseen in the law for the actual complaint exceeds one year. This excludes acts of discrimination, for which the maximum sentence foreseen in the law is six months.
- There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination or imposing a general anti-discrimination public duty on authorities. Many complaints directed against various governmental departments are simply not addressed or dealt with, resulting in no consequences for the departments concerned and serious instances of discrimination go unpunished.
- The recent emergence of anti-immigrant and ultra nationalist far right groups has not been addressed by the government. There are no convictions against perpetrators in cases of racist attacks.
- Although the Equality Body takes a very brave stand regarding some issues (e.g. immigrants' rights), it is very reluctant to address discrimination against Turkish Cypriots and adopts the governmental position of endorsing the 'doctrine of necessity', hence denying Turkish Cypriots their constitutional rights by invoking a court decision of 1964. The Equality Body also appears reluctant to take up issues of anti-Turkish public discourse in the media, particularly when this is expressed by politicians (there are complaints pending since 2004). A more courageous and impartial approach is needed by this Body, which effectively is the only institution that can pursue issues of discrimination against the most vulnerable of victims, given the failures of the court system.
- Awareness of anti-discrimination laws amongst the legal profession is very low and there is an apparent unwillingness by its members to undergo training. There is no coordination between NGOs and lawyers for effective handling of cases.

- Unless anti-discrimination enters the school curriculum, the process of developing a culture and tradition without prejudice will be inept and slow.

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### Notes

1. A number of expert reports on discrimination were produced since 2003. See Cyprus Report on Measures to Combat Discrimination in the EU Countries: A Comparison between council Directives and national legislation on the grounds of racial or ethnic origin, gender, sexual orientation, disabilities, age, religion or belief – Report on Cyprus, 2007, for EU Commission report on behalf of Human European Consultancy and the Migration Policy Group, at [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cyrep07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf)], accessed on 10 August 2008.
2. Only the Greek- and Turkish-Cypriot people are recognised by the constitution as 'communities', endowed with specific power-sharing rights; three other ethnic groups (Armenians, Latins, Maronites), who only have certain minority rights (see note 4), are treated by the constitution as religious groups.
3. Trimikliniotis, Nicos (2003) Report on Measures to Combat Discrimination in the 13 Candidate Countries (VT/2002/47). Country Report Cyprus.
4. Studies that expand on this are beyond the scope of this paper, but see the ECRI reports 2001, 2006 and several studies produced for RAXEN 2004-2008 by Trimikliniotis and Demetriou.
5. In an area of 9,251 sq. kilometres, the total population of Cyprus is around 754,800, of whom 666,800 are Greek Cypriots (living in the Cyprus Republic-controlled area). In 1960 Turkish Cypriots constituted 18% of the population, whilst the smaller 'religious groups' – Armenians, Latins, Maronites and 'others' – referred to in the Constitution, comprised 3.2% of the population. For the purpose of the Constitution a 'religious group' means a group of persons ordinarily resident in Cyprus, who profess the same religion and either belong to the same rite or are subject to the same jurisdiction thereof. The number, on the date the Constitution came into operation, exceeded one thousand out of which at least five hundred became citizens of the Republic on that same day. The Constitution recognised two Communities, the Greeks and the Turks, and three 'religious groups' (Maronites, Armenians and Latins). These groups could exercise their civil duties and enjoy political rights as members of either of the two communities but they were obliged to opt for one or other of the communities. They opted to belong to the Greek community.
6. For more on the Maronites see Iacovou (1994).
7. For more on the Armenians of Cyprus see Ashdjian (2001).
8. For more on the Latin minority in Cyprus see "The Latin Community in Cyprus", Interview by Latin Representative Benito Mantovani, The Cyprus Weekly, 1-7 September 2000.
9. The term 'Rroma' tends to be used to describe the Cypriot Roma population (see

- Kenrick and Taylor, 1986; Williams, 2000). This paper, however, uses the more general 'Roma' to describe this population of Cyprus which is said to have been over a thousand. In 1960 they were classified as part of the Turkish-Cypriot community due to their Muslim faith; however the 'mantides' (μάντιδες), who were Christian Roma, were classified as part of the Greek-Cypriot community (Kenrick and Taylor, 1986; Williams, 2000; Kyrris, 1969, 1985). In fact they were never politically organised to have any voice in their affairs, although there is certainly an important internal social arrangement.
10. The 2001 report reads: "A number of problematic issues still need to be addressed considering at the same time that there are particular circumstances, including constitutional matters, to be taken into account in the case of Cyprus. These issues include the obligation for religious groups and their members to choose adherence to the Greek-Cypriot or to the Turkish-Cypriot community, and the impossibility for Turkish Cypriots to cast a vote in elections and to conclude civil marriages, including with Greek Cypriots". Since then the law has been changed and Turkish Cypriots can now vote and run in all elections in the south (provided that they are residents there, so the above now applies to those resident abroad or in the north). The problem with this law is that (a) the Turkish-Cypriots are placed on the same electoral roll as Greek-Cypriots and (b) the exception to the rule is that they cannot run in the presidential elections.
  11. The case was Attorney General of the Republic vs. Mustafa Ibrahim and Others (1964) CLR 195. See Negati, 1970; Loizou, 2001; Nicolaou, on such date 2000.
  12. Over 300,000 visits have taken place so far. The restrictions on freedom of settlement and stay are, however, still enforced, and Greek Cypriots evicted from their homes during the 1974 Turkish army invasion, still cannot enjoy their houses and property in the occupied northern area. The treatment of displaced Greek Cypriots who have visited their homes over the last few months by average Turkish-Cypriot people who live in them has, on the whole, been quite remarkably welcoming and friendly.
  13. The figure represents the number of crossings and not the number of persons who have crossed the dividing line; many have crossed the line several times. The number is derived from Nicos Trimikliniotis' own estimates.
  14. See Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004), at [[http://eur-lex.europa.eu/smartapi/gi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R\(01\)](http://eur-lex.europa.eu/smartapi/gi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R(01))], accessed on 20 October 2008.
  15. The Report is illuminating: "It is enough to observe that the difficulties in implementing the Treaties began almost immediately after independence ... The events which have taken place since December of 1963 have created a situation which makes it impossible to return to the previous situation" (para 129). See [[http://www.cyprus-conflict.net/galo\\_plaza\\_Report.htm](http://www.cyprus-conflict.net/galo_plaza_Report.htm)], accessed on 20 October 2008.
  16. As the Plaza Report notes, the restrictions enacted by the Constitution were viewed by both the Turkish Cypriots and the Turkish government as a means to secure the treatment of Turkish Cypriots as a "community with distinct political rights", and not as a minority, whereas Greek Cypriots saw the very same provisions as a hindrance to what they considered exercising their 'legitimate' majority rights, including the right to self-determination.
  17. The same Report notes: "The violent sharpening of 'national' sentiments over the months of crisis will for some time make it extremely difficult for officials at all levels to

impose or even exercise strict impartiality towards all the citizens of the country, and without that impartiality and understanding there will be a constant risk of acts of discrimination, even if laws are respected in the formal sense. Furthermore, there are personal hatreds, which will last beyond any political settlement”.

18. See endnote 3.
19. Such as the Centre for the Study of Migration, Interethnic and Labour Relations.
20. Such as MIGS.
21. PIC.
22. E.g., the Cyprus Labour Institute.
23. For a more detailed treatment on the matter of migration and racism in Cyprus see ECRI, 2001, 2006. Also see Trimikliniotis (1999) “New Migration and Racism in Cyprus: The Racialisation of Migrant Workers”, chapter in a book edited by Anthias, F. and Lazaridis, G.: *Into the Margins: Migration and Exclusion in Southern Europe*, 1999, Avebury, Ashgate, pp. 139-178.
24. The negotiations between the community leaders began on 3 September 2008.
25. See article 2(1) and 2(2). In 1960 Turkish Cypriots constituted 18% of the population and Greek-Cypriots 78%.
26. As referred to in the Constitution, the ‘religious groups’, consisting of Armenians, Latins, Maronites and ‘others’, constituted 3.2% of the population. For the purposes of the Constitution a ‘religious group’ means a group of persons ordinarily resident in Cyprus, who profess the same religion and either belong to the same rite or are subject to the same jurisdiction thereof. The number, on the date the Constitution came into operation, exceeded one thousand out of which at least five hundred became citizens of the Republic on that same day. The Constitution recognised two Communities, the Greeks and the Turks, and three ‘religious groups’ (Maronites, Armenians and Latins). These groups could exercise their civil duties and enjoy political rights as members of either of the two communities but they were obliged to opt for one or other of the communities. They opted to belong to the Greek community.
27. See for instance *Charalambos Kittis et al vs. Republic of Cyprus through the Commission for Public Service* (8 December 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 8 January 2007) available at [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cyrep07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf)], accessed on 20 October 2008.
28. Law on Persons with Disability N. 127(I)/2000 as amended by Law 57(I)/2004, Law N 72(I)/2007 and Law N102(I)/2007.
29. Law on Persons with Disabilities 127(I)/2000 as amended, article 5.
30. Second ECRI Report on Cyprus adopted on 15 December 2000, Strasbourg 3 July 2001, Council of Europe.
31. By enacting Law No. 13(III)/2002 dated 19 April 2002.
32. Cyprus Ombudsman Report No. AKR 61/2004, dated 10 June 2005. The Report was communicated by the Ombudsman to the Ministers of Interior, External Affairs and Justice and to the House of Representatives.



33. Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18Z(1).
34. Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18Z(2).
35. The case of Motilla stands out amongst these as a most significant development in the transposition and implementation of Directive 2003/109/EC on long-term residency of third country nationals, affecting many thousands of migrants who will not be able to access the residency rights provided in the Directive.
36. 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.
37. The Convention on the Elimination of All Forms of Discrimination (Ratification) Law, N. 12/1967.
38. Laws amending the Convention on the Elimination of All Forms of Discrimination (Ratification) Law, No. 11(III)/1992 and 28(III)/1999.
39. Laws amending the Convention on the Elimination of All Forms of Discrimination (Ratification) Law, No. 11(III)/1992 and 28(III)/1999.
40. In criminal case No. 31330/99 (12 December 2001) where the accused was actually convicted and a term of imprisonment was imposed. This is a District Court decision and is unreported; no additional details are available publicly.
41. The wording reads “any person who publishes any words or documents or makes any visible representation whatsoever with a seditious intention is guilty of a felony and is liable to imprisonment for five years”.
42. This is deemed to be seditious intention for the purposes of the above offence under article 47.
43. A person who commits any of those acts is “guilty of a misdemeanour and is liable to imprisonment for twelve months or to a fine of one thousand pounds or to both such penalties and, if a body corporate, to a fine of three thousand pounds” [CYP £1,000 amounts approximately to €1,700; CYP £3,000 amounts approximately to €5,000].
44. See Opinion on Racial Profiling, submitted to the EU Network of Independent Experts on Fundamental Rights by the Cyprus Expert Achilleas Demetriades, 31 August 2006, pp. 4-5.
45. 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.
46. The Attorney General’s office holds the view that a Supreme Court judgement of 2001 (Yiallourou vs. Evgenios Nicolaou) establishes a precedent whereby any person suffering discrimination in the enjoyment of his/her Constitutional rights on the grounds, inter alia, of, race, community, colour, religion, language or national origin, can sue the state or private persons and claim damages or other civil law remedies. The Attorney General’s office also considers this remedy to be “... additional, and of wider ambit ...” than the procedure offered by the law transposing the Race Directive: Information on developments since the Second Report on Cyprus (adopted on 15 December 2000) pp. 2-3.
47. The relevant section reads: “Cyprus has ratified all major human rights conventions and signed Protocol 12 to the European Convention on Human Rights on 4 November 2000

prohibiting discrimination on any grounds. Whereas Art. 28 (2) of the Constitution prohibits any direct or indirect discrimination against any person on the grounds of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or any ground whatsoever, there is no specific implementation legislation for the EC non-discrimination directives adopted in 2000.”

48. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19 March 2004).
49. The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31 March 2004).
50. The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31 March 2004).
51. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19 March 2004), Section 3.(1).(a), Part I.
52. 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.
53. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19 March 2004), Section 3(1).(b), Part I.
54. 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 March 2004), Section 28].
55. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), section 14(2) and section 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 March 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.
56. The fine to be imposed cannot exceed CYP £350 for discriminatory behaviour, treatment or practice [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 18(a)], CYP £250 for racial discrimination in the enjoyment of a right or freedom [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 18(b)], CYP £350 for non-compliance with the Commissioner’s recommendation within the specified time limit [The Combating of

- Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 26(1) (a)] and CYP £50 daily for continuing non-compliance after the deadline set by the Commissioner [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 26(1) (b)]. Generally speaking, the fines are considered to be very low.
57. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 24(1).
  58. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Section 23.
  59. Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.
  60. Law No. 42(1)/2004 (19 March 2004), art. 33.
  61. Law No. 42(1)/2004 (19 March 2004), art. 34(2).
  62. Article 3 of the Constitution.
  63. The case was Attorney General of the Republic vs. Mustafa Ibrahim and Others (1964) CLR 1995. See Nedjati, 1970; Loizou, 2001; Nicolaou, 2000.
  64. The initials ECtHR refer to the European Court of Human Rights, whilst the ECHR refers to the European Convention of Human Rights
  65. Given that Greek Cypriots are almost entirely Christians and Turkish Cypriots entirely Moslem.
  66. 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 8 January 2007) available at [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cyrep07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf)], accessed on 20 October 2008.
  67. Eli Erel and Mustafa Damdelen vs. The Republic of Cyprus through the Interior Minister and the Attorney General (30 April 2007) Supreme Court of Cyprus, Case No. 759A/2006.
  68. ECHR/no. 69949/01 (22 June 2004), Reported at [<http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>], accessed on 20 October 2008. 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 8 January 2007) available at [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cyrep07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf)], accessed on 20 October 2008.
  69. 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 January 2006).
  70. Law on Persons with Disabilities No. 57(I)2004 (31 March 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.
  71. Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31 March 2004). This law was subsequently amended in 2006 in order to rectify the wrong

- transposition of the reversal of the burden of proof.
72. The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004). This law was subsequently amended in 2006 in order to rectify the wrong transposition of the reversal of the burden of proof.
  73. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N. 42(1)/2004 (19 March 2004).
  74. As required by Directive 2000/78, Article 16 and Directive 43/200/EC, Article 14.
  75. Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31 March 2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004).
  76. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N. 42(1)/2004, articles 39(1) and 39(3) respectively.
  77. Law on Persons with Disabilities N. 127(I)2000, article 9(2).
  78. Article 9(3) of the Law on Persons with Disabilities N. 127(I)2000.
  79. Article 5(1A) of the Law on Persons with Disabilities N. 127(I)2000, as amended by Law 72(I)/2007.
  80. Law amending the Equal Treatment (Racial or Ethnic origin) No. 147(I)/2006; Law amending the Equal Treatment in Employment and Occupation Law N. 50(I)/2007; Law amending the Law on Persons with Disability N. 72(I)/2007.
  81. The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004) Article 7(2).
  82. Directive 2000/78, Paragraph 33 of the Preamble; Articles 13 and 14. Also, Directive 43/200/EC, Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were neither informed whether any or all of their proposals had been accepted or not, nor were any reasons given; they viewed 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).
  83. Directive 2000/78, Article 12 and Directive 43/200/EC Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any former 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, for example Braille, to inform disabled people of non-discriminatory measures.
  84. With the exception of two seminars, little other Government organised activity has taken place. A number of civic initiatives and the collaboration of NGOs with government departments have emerged recently, mostly in the form of EU-funded projects. One such project is the national campaign with the slogan "For Diversity Against Discrimination". See [<http://www.stop-discrimination.info/index.php?id=5514>].
  85. In his 2006 Report (dated 29 March 2006), the Commissioner for Human Rights of the Council of Europe, Mr. Alvaro Gil-Robles, expresses regret that the necessary increase in funding to deal with the extra work-load has not been provided to the ombudswoman 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 May 2006, ECRI also stresses the need for resources to be made available to the Ombudswoman to enable her to respond to her tasks.
86. As provided by Directive 43/200/EC, Article 13. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Article 44 empowers the specialised body to conduct research and collect statistics, however, no such research or statistics have been collected, or any definition of the categories verified for the collection of such relevant statistics.
  87. Some of them have been convicted and imprisoned.
  88. See Ioakimoglou, E. and Soumeli, E. (2008) *Οι Μισθοί στην Κύπρο, Προσδιοριστικοί Παράγοντες και Μισθολογικές Ανισότητες*, INEK, Nicosia.
  89. Nicos Trimikliniotis and Corina Demetriou (2008) Thematic Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus, February 2008, Expert Report for the Fundamental Rights Agency of the EU, Vienna; Nicos Trimikliniotis and Stavros Stavrou Karayanni (2008) The Social Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation in Cyprus, Policy Document for SIMFILIOSI, May 2008.
  90. See Avgoustina Hajjavraam vs. The Cooperative Credit Company of Morphou (no. 258/05 delivered on 30 July 2008).
  91. As required by Directive 78/2000/EC, Article 16 and Directive 43/200/EC, Article 14.
  92. Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31 March 2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004).
  93. Letter from Director of Labour Department of Ministry of Labour to the authors. Discussed further in Article 4.7.4.(e).
  94. Law amending the Equal Treatment (Racial or Ethnic origin) No. 147(I)/2006.
  95. The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004) Article 7(2).
  96. Directive 78/2000/EC, Paragraph 33 of the Preamble; Articles 13 and 14. Also, Directive 43/200/EC, Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were neither informed whether any or all of their proposals were accepted or not, nor were any reasons given; they viewed 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, and Education).
  97. Directive 78/2000/EC, Article 12 and Directive 43/200/EC Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any former 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, for example Braille (for the blind), to inform disabled people of non-discriminatory measures.
  98. With the exception of two seminars little other Government organised activity has taken place. A number of civic initiatives and the collaboration of NGOs with government

- departments have emerged recently, mostly in the form of EU-funded projects. One such project is the national campaign with the slogan “For Diversity. Against Discrimination”. See [<http://www.stop-discrimination.info/index.php?id =5514>].
99. As provided by Directive 43/200/EC, Article 12.
  100. Third ECRI Report on Cyprus, adopted on 16 December 2005, Strasbourg 16 May 2006, Council of Europe.
  101. The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004) Section 13.
  102. Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004, art. 18.
  103. In October 2004, the Ombudsman, Eliana Nicolaou, presented a Report to a Committee of the House of Parliament, where she criticised the police as having the lowest rate of compliance with her decision (Reported in Hadjivasilis, M. (2004) “Ston kalatho ta 40% ton ektheseon tis Epitropou” in Phileleftheros (28 October 2004). However, since 2005 a special Police complaints authority has been set up which has effectively removed jurisdiction from the Ombudsman, but not necessarily the Equality Body.
  104. As provided by Directive 43/200/EC, Article 13. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Article 44 empowers the specialised body to conduct research and collect statistics, however no such research or statistics have been collected, or any definition of the categories verified for the collection of such relevant statistics.
  105. As provided by Directive 43/200/EC, Article 11.
  106. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004), Article 40. The Specialised Body declined an offer to participate in an EQUAL project to develop such codes of conduct for employment, preferring instead of to leave it to other Government departments to participate.
  107. Even MPs, who are lawyers by profession do not seem to be aware that the Equality Body can make binding decisions, as was discovered during the debates on the rights and freedom of movement of homosexual partners of EU citizens in Cyprus following a report by the Anti-discrimination body (see File No AKP 68/2008).
  108. For the latest report for the Network of Legal Experts on Cyprus see Demetriou, C. (2008) CYPRUS COUNTRY REPORT 2007, State of affairs up to 29 February 2008. For the latest published report see Trimikliniotis, N. (2007) CYPRUS COUNTRY REPORT 2007 (State of affairs up to 29 February 2008), 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) at [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cysum07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cysum07_en.pdf)].
  109. For an analysis on public human rights organisations, see Trimikliniotis, N. (2008) Thematic Legal Study on National Human Rights Institutions and Human Rights Organisations – Cyprus, September 2008, Expert Report for the EU Fundamental Rights Agency, Vienna.
  110. Ibid.