

REPORT ON MEASURES TO COMBAT DISCRIMINATION

Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT/UPDATE 2005

Cyprus

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

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INTRODUCTION

0.1 The national legal system

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

The background

On May 1st 2004 Cyprus acceded to the EU without resolving its long-standing problem on the basis of the United Nations Secretary General's settlement plan. Meanwhile, since the partial lifting of the restrictions of movement, which commenced in April 2003, there have been over 12.000.000 crossings¹ from the Government-controlled area to the area not under the control of the Government and vice-versa. A few hundred Turkish-Cypriots have, since April 2003, moved to the Government-controlled area, where they are now residing, while several thousands cross on a daily basis to the south to work.

The Constitution

The Cyprus constitution sets out a power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'.² The three recognised religious groups were obliged to decide which of the two communities they would exercise their civic rights and obligations with.³ The Constitution provides for a system of separate elections; 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 two major Cypriot Communities 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.

The "doctrine of necessity"

In 1963 the President of the Republic of Cyprus Archbishop Makarios proposed 13 amendments to the Constitution, effectively taking away many of the rights of the Turkish-Cypriots. The Turkish-Cypriots withdrew from the Government in protest. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. Even though it was never officially proclaimed, in practice, Turkish ceased to be used as an official language since 1963; instead Greek effectively became the only language of the state. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the "doctrine of necessity".⁴ The situation that has emerged gives rise to a number of claims of discrimination which rose sharply in number following the opening of the checkpoints in 2003.

¹ The figure represents the number of *crossings* and not of *persons* who have crossed the dividing line; many persons have crossed the line several times. The number is derived from the author's own estimates.

² See article 2(1) and 2(2). In 1960 Turkish-Cypriots constituted 18% of the population and Greek-Cypriots 78%.

³ The 'religious groups', as referred to in the Constitution, 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 professing the same religion and either belonging to the same rite or being subject to the same jurisdiction thereof, the number of whom, on the date of the coming into operation of this Constitution, exceeded one thousand out of which at least five hundred become on such date citizens of the Republic. The Constitution recognises two Communities, the Greeks and the Turks, and three "religious groups" (Maronites, Armenians and Latins). These groups were to exercise the civil duties and enjoy their political rights as either of the two communities and they were obliged to opt for either of the communities. They opted to belong to the Greek community.

⁴ The case was Attorney General of the Republic v Mustafa Ibrahim and Others (1964) CLR 195. See Nedjati 1970, Loizou 2001, Nicolaou 2000.

General note

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 the ground of religion.⁵ 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 pursuing their rights. The enactment of the new anti-discrimination legislation in May 2004, combined with the opening of the checkpoints in April 2003, as a result of which thousands of Turkish-Cypriots are working, seeking employment and access to public services in the south, has resulted in a totally novel situation, which opens up the possibility for on-going discrimination. The reason often 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.

Cypriot Law provides for exemption from armed military service for conscientious objectors and allows alternative service. However, this exemption does not apply for reserve military duty. Several Jehovah’s Witnesses faced legal proceedings for failure to report for reserve Military duty. Their cases were suspended in November 2002 pending revision of the law. The law does not enable persons who have served their ordinary military service, to be recognised as conscientious objectors when called up to serve as reservists. It is expected that the situation will be remedied by amending legislation, which is being drafted by the Legal Service in consultation with the competent Ministry. This is to be submitted to the Council of Ministers for approval and introduction to Parliament.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

The national laws enacted for the purpose of transposing Directives 43/2000/EC and 78/2000/EC⁶ appear to be in full 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’ organizations have been explicitly repealed⁷ by way of a general provision in the two main anti-discrimination laws⁸ has not been fully complied with. No review of the existing laws was made to ensure compliance with the Directives. Practice suggests that the process of formal repeal of older laws which do not comply with the Directives is somehow ‘triggered off’ only *after* a complaint is made. In some cases, the Equality Body examines the complaint and issues a report which, however, is usually a mere recommendation rather than a binding decision. There is no procedure for continuous reviewing of

⁵ given that Greek-Cypriots are almost entirely Greek Orthodox and Turkish-Cypriots entirely Moslem.

⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004); The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004); The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004); the Disability (Amendment) Law N.57(I)/2004.

⁷ As required by Directive 78/2000/EC, Article 16 and Directive 43/200/EC, Article 14.

⁸ Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004).

existing legislation for the purpose of assessing compatibility with the anti-discrimination directives.

- The Equality Body is currently examining a complaint that a law, providing that persons who have reached retirement age lose their right to compensation for unfair dismissal, amounts to discrimination. The government has declared⁹ that it does not consider this provision discriminatory and that it has no intention of repealing it.
- The principle of reversal of the burden of proof, as contained in Article 8 of the Race Directive, is transposed in Cypriot law in a manner where this becomes applicable only with regard to the procedure before the Court and not with regard to any other procedure, such as the procedure before the Equality Body.¹⁰
- 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 NGOs¹¹ and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned.¹² Since the adoption of the legislation, which was rushed through Parliament on the eve of Cyprus' accession to the EU, with the exception of a few seminars, there has been little initiative or positive action taken by the Government or other public body.¹³ A great deal more could be done for the dissemination of information to the discriminated groups themselves.¹⁴ When it comes to policy-making, 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 engaging in a debate, so as to identify the best possible ways of combating discrimination.

The Equality Body's power to collect data and conduct independent surveys concerning racial or ethnic discrimination has not been utilised sufficiently, nor are there structures in place for the collection of such data.¹⁵ The Equality Body has not as yet progressed in drafting codes of conduct,¹⁶ even though the relevant Cyprus law authorises it to do so.¹⁷

Cyprus has not taken the option to defer implementation of the provisions of Directive 78/2000/EC relating to age and disability to 02.12.2006. The relevant laws came into force on or before 1st May 2004, the date of Cyprus' accession into the EU.

⁹ Letter from Director of Labour Department of Ministry of Labour to the author. Discussed further in Article 4.7.4.(e) below.

¹⁰ Cyprus/ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31.3.2004) Article 7(2).

¹¹ 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 not informed as to which of their proposals were accepted or not, nor were any reasons given; they saw the final National Action Plans published. The only NGO dealing with racism and racial exclusions at the time (KISA) was not consulted in the formation of National Action Plans (for Employment, Social Inclusion, Education).

¹² 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 of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. No alternative means are used to inform disabled people of non-discriminatory measures such as Braille.

¹³ With the exception of two seminars little other Government organised activity has taken place. A number of civic initiatives and collaborations of NGOs with government departments have emerged recently, most 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>)

¹⁴ As provided by Directive 43/200/EC, Article 12.

¹⁵ 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 (19.03.2004), Article 44 empowers the specialized body to conduct research and collect statistics, however no such research or statistics have been collected, nor is there any definition of the categories for the collection of such relevant statistics.

¹⁶ As provided by Directive 43/200/EC, Article 11.

¹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 40. The Specialized 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.

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

Please use this Article not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the 2 Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

Cases which may involve discrimination elements are not yet classified as such in the Courts archives, rendering the search very difficult. From our enquiry to the Courts and to all members of the legal profession, it emerged that, since the enactment of the anti-discrimination laws in May 2004, only one case has been filed in Court, invoking a provision of the new laws. In particular the case concerns a complaint of discrimination on the ground of age filed by a prospective applicant for a job vacancy against the prospective employer, a co-operative banking institution, with regard to an advertisement for a position fixing a maximum age limit.¹⁸ Since the enactment of the laws, there have been several decisions of the national Equality Body invoking these laws: 41 decisions in 2004 and 150 decisions in 2005.

The case of Ibrahim Aziz

- a. European Court of Human Rights
- b. 22.06.2004. Reported at <http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>
- c. Aziz v. The Republic of Cyprus
- d. In 2001 Aziz, a Turkish Cypriot residing in the south applied to be registered on the electoral roll in order to vote in the forthcoming elections. His request was refused on the ground that under the Cyprus Constitution¹⁹ Turkish-Cypriots could not be registered in the Greek-Cypriot electoral roll. Indeed, the Constitution did provide for separate electoral lists for Greek-Cypriots and for Turkish-Cypriots, but this was suspended in 1963. Following the rejection of his application, the complainant appealed to the Supreme Court, relying on Article 3 of Protocol No. 1 of the European Convention on Human Rights and arguing that, following the dissolution of the Communal Chambers in 1963, the Republic failed to set up two separate electoral lists to protect the electoral rights of members of both communities. The Cyprus Supreme Court rejected his application, holding that the applicable legislation²⁰ did not provide for Turkish-Cypriots living in the south to be included in the Greek-Cypriot electoral list and that the Cyprus Courts had no power to reform the Constitution. Following this rejection, the complainant

¹⁸ Avgoustina Hadjiavraam v. SPE Morfou (2005) Case No. 258/05.

¹⁹ Article 63 of the Cyprus Constitution.

²⁰ Article 63 of the Constitution and Article 5 of Law No. 72/79 relating to the election of members of parliament.

applied to the European Court of Human Rights²¹ who ruled in favour of the complainant. The Court found that Cyprus was in violation of Article 3, Protocol 1 of the ECHR for denying the complainant “the very essence of the applicant’s right to vote”; and of Article 14 of the same Convention, as the difference in treatment complained of was a result of the complainant’s ethnic origin and such difference could not be justified on reasonable and objective grounds. The Republic’s failure to pass legislation to resolve the problem which arose in 1963 from the suspension of several constitutional rights of Turkish-Cypriots, produced a clear inequality of treatment in the enjoyment of the right to vote.²²

The Case of Arif Mustafa

- a. Supreme Court of Cyprus.
- b. Referenced: Supreme Court of Cyprus Case no.125/2004, unreported as at the time of writing this report.
- c. Mustafa v. The Republic of Cyprus
- d. In February 2004 Arif Moustafa applied to the Supreme Court of Cyprus²³ for reinstatement of his property in the Republic- controlled south. The applicant, a Turkish-Cypriot, owns property in the south which he was forced to abandon during the 1974 war. Since then all properties belonging to Turkish-Cypriots, are ‘administered’ by the Interior Minister who acts as ‘guardian’ of these properties.²⁴ The applicant’s property was assigned by the Interior Minister for the use of a family of Greek-Cypriot refugees who came from the north in 1974. In 2002, the applicant moved to and settled in the south, residing in rented accommodation. His application to the Interior Minister for reinstatement of his property was rejected. The applicant then filed an application to the Supreme Court²⁵ to reverse the Minister’s decision. His application was successful and the Court ordered the reinstatement of his property. The applicant’s arguments in the Court were, inter alia, that the law contravenes Article 28 of the Constitution, which embodies the equality principle and the prohibition of discrimination. In deciding in favour of the applicant the judge stated, inter alia, that the purpose of the law which vested the Interior Minister with the power to administer Turkish-Cypriot properties, was to protect them in the owner’s absence and not to retaliate to the occupation of Greek-Cypriot properties in the north, which would constitute violation of Article 6 of the Constitution, prohibiting discrimination on the ground of belonging to one or the other community.

The Republic of Cyprus appealed against the decision of the Supreme Court, as a result of which execution of the judgement was suspended until 13.2.2006, until the appeal is heard on that date. Meanwhile, efforts are made by the Interior Minister for an amicable settlement of the applicant’s claim, with no success so far.²⁶

²¹ European Court of Human Rights Application No. 69949/01.

²² On 23.01.2006 a new law was enacted purporting to comply with the ECtHR decision. The law grants the right of vote to Turkish-Cypriots to vote as part of the same electoral roll as Greek-Cypriots and provided

²³ Supreme Court of Cyprus Case no.125/2004.

²⁴ Cyprus/ Law on Turkish-Cypriot Properties (Administration and Other Matters) (Temporary Provisions) 1991.

²⁵ Under Article 146 of the Cyprus Constitution, which entitles all persons to file applications to the Supreme Court to repeal administrative acts.

²⁶ The case will have grave political repercussions for the Republic, as it will open the way for other Turkish-Cypriots to claim their properties in the south, most of which are now used by Greek-Cypriots or by the government itself, hence the Minister’s efforts to find alternative accommodation solution for the applicant to avoid the forceful eviction of the current Greek-Cypriot residents from the applicant’s house. At the time of writing, the case had not yet been finalised and continues to be the subject of public debates. Another Turkish-Cypriot, Ibrahim Mustafa also filed lawsuits and lodged a complaint with the Commissioner for Administration seeking compensation for his vast areas of land which were expropriated by the government, but according to the Interior Minister no Greek-Cypriot refugees are affected by this case (Source: Psyllides, G. (2004), “Mustafa considers next move” in: *The Cyprus Mail* (12.10.2004), p. 5). It is anticipated however that many more Turkish-Cypriots will apply for

The case of Jean Mistrellides

- a. District Court of Nicosia
- b. Case No. 232/2004, decision issued on 20.1.2006, unreported as at the time of writing this report.
- c. Police v. Jean Mistrellides
- d. A group of youth (between 18-22 years of age) had been paying visits to Mr. Mistrellides (a half-Cypriot half African family man of 42 years of age) every night riding on their motorbikes, shouting racist remarks outside his house, demanding that he leaves the country and threatening to use violence. Mr. Mistrellides had repeatedly reported these incidents to the police who not only failed to prosecute the youth but also failed to offer any protection to the accused and his family. In June 2003, during one of the daily harassment visits of the youth outside his house, Mr. Mistrellides got out of his house and asked them to leave. In response, the group got very angry and became more aggressive and threatening. One of the group said that he knows the school attended by the Mr. Mistrellides' children and that he would go there to "take care of them". Mr. Mistrellides then went back into his house and got a long sword and chased away the group who started their motorbikes and run away. Mr. Mistrellides run after them and approached the young man who had shouted the threats against his children. When he got close, he lowered the sword next to the side of the young man, who got frightened, lost his balance and fell from the motorbike.

Mr. Mistrellides was prosecuted for assault; for getting out of his house with a sword; for threatening a group of youth); resisting arrest, for causing actual bodily harm to one of the group of youth who fell from the motorbike; for causing terror. He pleaded guilty to all charges and judge Nicos Yiapanas of the District Court imposed a fine of CYP600 (approximate Euro equivalent 1.000) to him. The judge added that the sentence was particularly lenient as it took into account the fact that the accused had been subjected to inhuman and racist treatment by the complainant, who had behaved in an unacceptable manner towards the accused without any justification. In the course of the trial, the priest of the community testified that the group of youth had been harassing, insulting and threatening Mr. Mistrellides on a daily basis.²⁷

Despite having openly demonstrated racist behaviour, the young man reported the accused to the police, who pressed charges against his own victim. No charges were pressed against the complainant or any other members of the group for harassment and for threatening to use force, who now continue to ride their bikes around Mr. Mistrellides house, shouting racist remarks and threatening him and his family.²⁸ The selective treatment which the police have made of this incident raises doubts as to the impartiality, the objectivity and the effectiveness with which they can address serious incidents of racist crime such as the present one.

reinstatement of, or compensation for their properties.

²⁷ This case was reported in a media article by Yiannakou, C. "Arpakse spathi kai kynigise nearous pou ton ivrisan" (He grabbed a sword and chased the young men who insulted him) in *Phileltheros*, 21.01.2006. No further details were provided in the article.

²⁸ Interview with the lawyer of Mr. Mistrellides, Mr Marios Constantinou of the Law office of Efstathios K. Efstathiou., in Nicosia, Cyprus.

A complaint has been filed at the Equality Body against the police for failing to prosecute the youth for their systematic racist behaviour, claiming discrimination in access to police protection on the ground of race/ethnic origin.

Complaints to the Equality Body

The national Equality Body examines discrimination complaints and issues decisions and/or recommendations.

From 01.05.2004, which is the date on which the three new laws transposing Directives 43/2000/EC and 78/2000/EC came into force, a total of sixty-one complaints had been filed with the Equality Body in 2004 for matters relating to the race directive, whilst thirty-three complaints had been filed during the same year for matters relating to the employment directive. In 2005, a total of 125 complaints had been filed for matters under the race directive and seventy-nine complaints for matters relating to the employment directive. A small number of complaints relate to violation of the rights of Turkish-Cypriots, many complaints are submitted by or on behalf of asylum seekers, refugees and other migrants for racial/ethnic discrimination, a number of complaints from Greek nationals of Pontian origin alleging discrimination on the ground of ethnic origin in supply of services and in access to health benefits, three cases concerning discrimination on the ground of religion, several complaints alleging age discrimination, but no complaint relating to sexual orientation, reflecting the fact that homosexuality continues to be a taboo in Cypriot society.

Complaint for a condition in an advertisement for a job vacancy, fixing an age limit.

A complaint²⁹ was investigated by the Equality Body alleging that the maximum age limit of 60, set by the Public Educational Service Laws of 1969-2004 as a pre-condition for the appointment of members of the Commission on Educational Service, constitutes discrimination.³⁰ The complaint was based on the fact that no age limit is set for appointment on other commissions of similar nature and mandate. Based on the new law³¹ transposing Directive 78/2000/EC, the Equality Body found that there was 'direct discrimination due to age' and that the relevant provision is therefore repealed under article 16(1) of Law No. 58 (1)/2004.

There are no precedents of repealing earlier legislation by reason of not complying with the new anti-discrimination laws based on the Equality Body's decision. The final paragraph of the relevant decision suggested that "should there be any doubt or challenge as to whether the law was repealed or not the issue is adjudicated by the competent District Court". Whilst there is no doubt that all provisions contrary to the new anti-discrimination laws (under article 16 of 58(I)/2004 and article 10 of 59(I)/2004) are rendered void, the procedure of actually repealing them is not clear. The Equality Body recommends that a bill is introduced to formally abolish the provision that contravenes the anti-discrimination law. Strangely enough, no such bill was introduced by the office of the Attorney General. The bill was introduced by a MP and continues to remain pending over a year since its introduction. The bill is very likely to be struck off when this parliament dissolves just before the next parliamentary elections in May 2006, as a matter of standard practice.

Complaints by Turkish Cypriots against the district administration

The cases listed below were drawn from the 2003 report of Cyprus Ombudsman which covers the period prior to the enactment of the Law on Combating Racial and Other Forms of Discrimination (Commissioner) 42(1) of 2004 appointing the Ombudsman as the specialised

²⁹ Commissioner for Administration File No. A.K.I. 25/2004, 08.11.2004.

³⁰ Article 4(4) (c) of the Law on Public Education Service 1969-2004.

³¹ The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Article 6(1).

Equality Body. They have been selected according to their significance and relevance to anti-discrimination. They all involve complaints by Turkish-Cypriots claiming discrimination by various District Administration offices in the handling of their applications to be registered with the Cyprus Republic's Citizens Record and the acquisition of identity cards and passports

According to the Ombudsman's Annual Report for 2003,³² since the establishment of the institution a decade ago, the complaints submitted by Turkish Cypriots did not exceed two annually and these concerned mostly administrative acts in relation to their properties in the south as well as complaints against the police for ill-treatment. Between the date of the opening up of the check-points (23.04.2003) and the end of the year 2003, only eight complaints had been filed by Turkish-Cypriots, despite the fact that several thousands of them sought access to public services and employment, presumably due to lack of public awareness about complaint procedures and the language problem.

-During 2003, a Turkish Cypriot lodged a complaint with the Ombudsman against the Ministry of Health, complaining of the fact that the application form for acquiring a medical card was drafted only in Greek and English, which inconvenienced Turkish speaking applicants. The decision was based on the Cyprus Constitution which provides that Turkish is an official language of the Republic³³ and stated that failure to make the document available in Turkish constituted discrimination on the basis of ethnic origin. Following the relevant report from the Ombudsman, the Ministry of Health immediately made arrangements for the translation and re-issue of the form in Turkish.³⁴

-A Turkish Cypriot woman filed a complaint because her application to be registered in the Republic's Citizens Record was rejected, on the basis that the birth of her mother had not been recorded in the Republic's archives. The complainant's mother had been born to Roma parents who failed to register her birth. It was also noted that the complainant was inconvenienced for several months due to ill advice by government officers as to the procedure with regard to her registration. In addition, the complainant complained for the rejection of her application to enrol her child in school because the child did not have a birth certificate from the Republic. The Ombudsman decided that the child's 'right to education' was paramount and the failure to enrol the child amounts to discrimination on the basis of ethnic or national background. Following the Ombudsman's relevant report, the child was finally enrolled in the school.³⁵ Both these occurrences involve regulations which are prima facie neutral and apply to all but the result is that persons of Roma/Turkish ethnic origin are adversely affected, essentially amounting to indirect discrimination which may not be justified on any of the lawful grounds.

-A Turkish Cypriot woman filed a complaint against the District Office for rejecting her application to be registered in the Republic's records, so as to receive an identity card and a passport. The reason offered by the District Office for the rejection was that, although the complainant's Cypriot nationality was not in doubt, it was not clear in which village the complainant was born. Following the report of the Ombudsman, the District Office registered the complainant and issued the requested identity card.³⁶ The requirement to establish the particular village of origin does not apply to Greek-Cypriots and the authorities' initial refusal

³² The Commissioner for Administration Report for 2003 is the latest available one. The Report for 2004 will only be made available in 2005.

³³ Article 3(1) of the Cyprus constitution.

³⁴ Commissioner for Administration Annual Report 2003, p.200, Complaint No. 1107/2003.

³⁵ Commissioner for Administration Complaint No. 760/2003

³⁶ Commissioner for Administration Complaint No. 1028/2003

to register the complainant for this reason can only be explained in terms of posing unnecessary obstacles due to the applicant's ethnic origin.

- A Turkish Cypriot woman married to a Turk filed a complaint for the delay in the examination of her application to have her under-age daughter registered as a Cypriot citizen. Her application was approved before the completion of the Ombudsman's investigation.³⁷

A decision of the Council of Ministers to grant nationality to a handful of Turkish Cypriot children born to parents where one was a Turkish-Cypriot and the other a Turkish settler has sparked off controversy and reactions from nationalist circles, with many right-wing politicians calling on the Interior Minister to resign. In a press release dated 2nd July, human rights NGO 'KISA' (Action for Equality, Support and Antiracism) expressed concern over the intolerant and racist attitudes developing around the issue of grant of nationality to these children. The current law provides that children born to parents from whom only one has entered or resides in the Republic lawfully do not automatically become Cyprus citizens but only following a decision of the Council of Ministers. This law came into existence at a time when it was deemed politically expedient to do so, but today appears anachronistic and contrary to the Constitution and international obligations of the Republic. To render the status of 'legality' or 'illegality' of the parents, or even worse of one of the two parents, a precondition for citizenship is likely to be contrary to the rights of children, as provided for in the Convention for the Rights of Children. It is also likely to constitute discrimination against the children, who are victimised by the political situation and whom the Republic has an obligation to protect and respect. The implementation of this law has resulted in an unjustified differential treatment of the Turkish-Cypriots on the ground of their ethnic origin, which may constitute unlawful discrimination.

Below are some important decisions of the Ombudsman, acting in its capacity as Equality Body, during the year 2005.

Complaints against insurance companies for refusing to insure persons of non-Cypriot origin

On 12.5.2004 and on 20.05.2005, the Equality Body received complaints that a number of insurance companies had either refused to insure individuals of non-Cypriot origin or had charged them premiums up to two or three times the amount charged to Greek-Cypriots with similar data. The investigation carried out by the Equality Body revealed that some of the companies investigated, considered persons of Pontian origin in particular, to be bad drivers, unreliable and generally 'high risk' and that there was a policy in place to avoid insuring persons of Pontian origin unless 'guaranteed' or 'recommended' by a Greek-Cypriot. In its report issued on 23.06.2005, the Equality Body declared this practice as discriminatory and illegal and recommended that the insurance companies revise their policies. The report pointed out that, although the use of criteria such as age, history of claims and condition of the car was acceptable, there is an absolute prohibition against policies based on ethnic or racial criteria. She warned that she would not impose penalties at this stage but that she would not hesitate to impose penalties if the insurance companies do not comply with this recommendation.

Prior to the introduction of the anti-discrimination legislation in May 2004, there was no legal provision prohibiting discrimination in the private sector, other than the general anti-discrimination provision in the Constitution, which lacks an enforcement mechanism. Thus, private companies have no tradition of being subjected to checks on the legality of their

³⁷ Commissioner for Administration Complaint No. 1765/2003

practices from the perspective of anti-discrimination. The openness with which they admitted their discrimination practices reveals that, at least some of them are not aware of the new obligations imposed on them by the new anti-discrimination legislation, a situation which will need to be addressed if discrimination in the private sector is to be combated.

Complaint for religious discrimination at school

On 2.11.2005, the Equality Body issued a decision on a complaint for religious discrimination against a female pupil, who is a Jehovah's Witness, by a teacher of religious instruction.³⁸

Although the presence of discrimination on the ground of religion is evident in this case, the Equality Body's report makes no reference to the relevant anti-discrimination law³⁹ or to the anti-discrimination rule of the Constitution.⁴⁰ Also, despite the fact that the decision found that the complainant's allegations were to a large extent true, it falls short from ruling that the teacher is guilty of illegal discrimination, restricting itself to general remarks and commendations. The decision contained severe criticism against the content of the school textbook on religious instruction and particularly against the use of the term 'heresies' as descriptive of other religions as well as of other Christian dogmas.

Complaint that the criteria used by the state Nursing School in admitting students are discriminatory on the ground of disability

Following a complaint from the parent of an applicant with reduced hearing, the Equality Body investigated the criteria of admission into the state nursing school. The investigation revealed that these include: age between 17- 35; 'good health'; height not below 1.53 m., weight not exceeding 35% of the normal; excellent hearing and visual ability; no stuttering. In 2005 a regulation was introduced to admit to the School persons with disabilities (2% of the admitted students) provided their disability does not affect their exercise of nursing tasks. It emerged that the persons admitted under this regulation were not persons with disabilities according to the definition provided in the Law on Persons with Disabilities N.127 (I) 2000, but persons suffering from thalassemia, diabetes, etc. The reasons given by the Nursing School authorities for these requirements were that: good visual ability was necessary to enable the nurse to assess whether the patient's colour is a cause for concern; a stuttering nurse has communication problems; height and weight of the person is important for moving or lifting patients or for responding fast to emergencies. Another problematic dimension of this policy was the procedure of allowing all applicants to take the exam for admission but then rejecting them at the oral examination that followed, on the basis of a disability.

The Equality Body ruled that the admission criteria constituted direct discrimination on the ground of disability. Citing examples of deaf persons being admitted into and graduating from many educational establishments internationally, the Equality Body pointed out that the employment positions available to graduates of the Nursing School are increasingly expanding and may include positions not requiring excellent vision or hearing or other characteristics. In view of the fact that a new regulation was in the process of being drafted on admission requirements, the Equality Body recommended that these are based solely on how the applicants' characteristics affect their performance as students and not their future employment performance, eradicating at the same time the maximum age limit of 35 years which, on the face of it, appears to constitute discrimination on the ground of age.

³⁸ Report of the Cyprus Anti-discrimination body no. 31/2005, dated 2 November 2005

³⁹ Cyprus/ The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

⁴⁰ Article 28.

The decision underlines elements of the new culture introduced by the anti-discrimination *acquis* aiming at promoting de-marginalisation and social inclusion of vulnerable groups such as the persons with disabilities. It should be noted that the decision did not rule directly on the issue of the age limit contained in the admission requirements but restricted itself to recommending its eradication from the guidelines currently in the process of being drafted.

Generally, decisions and recommendations by the Equality Body are complied with by the authorities at an approximate rate of 60%, as stated by the Equality Body.⁴¹ However, there is at least one example where the Council of Ministers, the highest executive body, reversed and refused to comply the Equality Body's decision. The said decision had found that a school regulation requiring foreign public to declare upon enrolment the contact details of their parents in order for the migration department to ascertain the legality of their stay in Cyprus was unlawful and asked for its withdrawal. The Council of Ministers retained the regulation alleging sovereign state rights to protect national security.⁴²

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

b) Are constitutional anti-discrimination provisions directly applicable?

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

Article 28(2) of the Cyprus Constitution guarantees the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties provided for in the Constitution without any direct or indirect discrimination against any person on the grounds of: community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.

In addition, Law 13(III) 2002⁴³, which incorporates Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, provides a general prohibition against discrimination: "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Prior to the transposition of the anti-discrimination Directives, the national framework embodying the principle of equal treatment and the combating of discrimination on the basis of racial/ethnic origin, nationality and religious belief, including sexual orientation and age was based on Constitutional, European and International law. These include treaties ratified by the Cyprus Republic on human rights which cover civil, political, economic, social and cultural rights, as well as rights in the field of protection and respect of minorities and migrant workers. Domestic legislation also prohibits discrimination in various fields such as education, acquisition of property and employment.

⁴¹ Hadjivasilis M. 2004, "40% of the Ombudsman's reports in the wastebin". *Phileleftheros*, 28.10.2004.

⁴² Council of Ministers decision dated 21.04.2005, No. 61.890.

⁴³ This Law entered into force on 1 December 2002.

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

Article 28(2) of the Cyprus Constitution enshrines the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties provided for in the Constitution without any direct or indirect discrimination against any person on the grounds of community, race, religion, language, sex, political or other conviction, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless the Constitution itself otherwise provides.⁴⁴ Prior to the anti-discrimination laws of 2004 that transposed the *acquis*, the grounds of age, disability or sexual orientation were not expressly prohibited under this provision. The notion of ‘ethnic origin’ was integrated into the notion of ‘race’; the term ‘ethnicity’ was very recently introduced in Cyprus law.⁴⁵

Article 28 of the Cyprus Constitution corresponds to Article 14 of the European Convention on Human Rights (ECHR) and hence the whole corpus of the case law of the ECHR is relevant (see Nedjati 1972: 166-167). However, Article 28 is not dependent on any other right granted (Loizou 2001: 173). In any case, the ECHR was ratified by the Republic of Cyprus in 1962 (Law 38/1962)⁴⁶. All the human rights Articles contained in the Cyprus Constitution under Part II (Articles 6-35) as well as rights conferred by the ECHR must be exercised in a non-discriminatory manner. The equality principle and the prohibition of discrimination form part of Article 28.⁴⁷ However, age and disability are not covered by this provision.

Part II of the Constitution sets out the “Fundamental Rights and Liberties”, incorporating verbatim and in some instances expanding upon the rights and liberties safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Fundamental Rights and Liberties of Part II of the Constitution are expressly guaranteed to “everyone” or to “all persons” or to “every person”, with no distinction or differentiation between citizens and non-citizens of the Republic, or between citizens of the Republic who belong to the Greek or Turkish community and without any distinction or differentiation on the grounds of community or religion or nationality, or on other grounds. However, Article 11 of the Constitution allows for detention of aliens with a view to deportation or extradition. Article 13 provides for freedom of movement. Article 14 provides for the right to abode for citizens (i.e. they are not subject to immigration control), but not of non-natives of the Republic who are subject to immigration control, under Cap. 105.⁴⁸ Like Article 8 of the ECHR, Article 15 of the Constitution provides for the right to private and family life.

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 whether Greek-Cypriot, Turkish-Cypriot, Maronite, Armenian or Latin. No law exists which deprives or limits the right of access to the Courts on any of the grounds contained in Article 28, and even if it did, it would be unconstitutional.

⁴⁴ Article 2 reads: “2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.

3. No citizen shall be entitled to use or enjoy any privilege of any title of nobility or of social distinction within the territorial limits of the Republic.”

4. No title or nobility or other social distinction shall be conferred by or recognised in the Republic.”

⁴⁵ See Trimikliniotis, 2004.

⁴⁶ In fact there are legal scholars who argue that the ECHR applied in Cyprus before it was actually ratified in 1962 as a ‘saved’ provision from the colonial times (Tornaritis 1983: 1-2).

⁴⁷ For more details see Nedjati 1972: 165-167; Charalambous 1995: 43-51)

⁴⁸ See *Georgiou v. The Republic* (1968) 8 J.S.C. 805, at p. 810.

Article 32 states that nothing in Part II of the Constitution “shall preclude the Republic from regulating by law any matter relating to aliens in accordance with International Law”.

Article 109 of the Constitution provides that each religious group has the right to be represented in the Communal Chamber by the elected members of the group, to which it opted to belong under Article 2.3 of the Constitution.⁴⁹

Article 169.3 of the Constitution ensures that all international legal instruments, by virtue of their ratification by Cyprus and publication in the Official Gazette of the Republic, are incorporated into the Republic's national law, and as from the date of their publication take precedence over any other national law.

The most relevant International and European instruments signed and ratified by the Cyprus Republic are listed in Annex 2 of this Report. However, it ought to be noted here that although the republic of Cyprus has ratified the Convention on the Protection of Minorities, it does not recognise any group as a ‘minority’: Turkish Cypriots and Greek Cypriots are ‘communities’; Armenians, Latins and Maronites are ‘religious groups’ and the Roma are considered as part of the Turkish Cypriot community.

All the rights provided for by the Constitution, which must be enforced without discrimination, including the principles Equality of Treatment and Non-discrimination (Article 28), are enforceable only in the public domain via judicial review of an administrative act under Article 146 of the Constitution. Enforceability is dependent on both the two following conditions: (a) these remedies are exclusively available against a legal person in public law (i.e. statutory authorities discharging state functions or self-governing professional bodies⁵⁰), and (b) it is an ‘administrative act’ as defined by law.⁵¹ The procedure of application to the Supreme Court is simple and easily accessible, but there is no provision for legal aid. The new legal aid legislation requires that legal aid be made available in human rights cases, but only in criminal proceedings. The Supreme Court only has power of annulment and appeal, with the power to declare the administrative action null and void. These remedies and courses of action are not available in the private sector against private individuals, save for situations in which labour or other private law provisions apply. Once a case has been won at the Supreme Court, the aggrieved person is entitled to seek damages from a district court.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

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

All grounds referred to in the Directives⁵² as well as those contained in Protocol 12⁵³ are explicitly prohibited grounds for discrimination in national law. The Combating of Racial and

⁴⁹ See footnote 2 above.

⁵⁰ For more details see Nedjati (1970), Charalambous (1995), Loizou (2001).

⁵¹ Nedjati (1970: 96) cites the definition of ‘an administrative act’ provided by the first President of the Supreme Constitutional Court, Pro. E. Forsthoff Textbook on Administrative Law (8th Edition, 1961) as “all unilateral, authoritative acts of an authority of public, which have direct effect, with the exception of legislative and judicial acts”.

⁵² Laws N. 42(1)/2004 (19.03.2004), N.58 (1)/2004, N.59 (1)/2004, N.57 (1)/2004, N.127 (1)/2000.

⁵³ The Ratification Law of Protocol 12 of the European Convention of Human Rights and Fundamental Freedoms N.13(III)/2002 (19.04.2002).

Some Other Forms of Discrimination (Commissioner) Law⁵⁴ appoints the Commissioner for Administration (or *the Ombudsman*), an independent officer, as the national Equality Body empowered with the task of (i) combating 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 origin⁵⁵; (ii) promoting 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 Law⁵⁶ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁵⁷ and (iii) promoting equality of opportunity irrespective of the grounds listed in the preceding Article (to which the grounds of ‘special needs’⁵⁸ and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Overall, the role of the Equality Body is to deal with all grounds provided for by the Directives including race or ethnic origin, religion, sexual orientation, disability and age as well as other grounds provided for in national law.

Prior to the introduction of the Equal Treatment in Employment and Occupation of 2004 N. 58 (1)/2004 (31.3.2004), there were no provisions in Cyprus law on age and sexual orientation discrimination. There is therefore no tradition and little sensitivity on discrimination on the basis of these two grounds. The original framework for Cyprus law existing prior to accession that put into effect the principle of equal treatment and for combating discrimination was widened to cover beyond the grounds of racial or ethnic origin, religion or belief and disability, the grounds of age and sexual orientation to comply with Article 1 of the Directives. The ground of religion was covered at least nominally: ‘religion’ was referred to in the relevant anti-discrimination clause of the Cyprus Constitution. However, the absence of a comprehensive anti-discrimination legal framework and effective mechanisms for enforcement,⁵⁹ beyond the public sector, rendered the constitutional references to religion rather weak. Religion or belief is now covered by the new anti-discrimination legislation of 2004 transposing the *acquis*.

With regard to the legal regime governing discrimination on the ground of disability, a law existed in this area prior to the transposition of the employment directive (Law N.127(I)/2000) which was amended in 2004 by Law N.57 (1)/2004.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

⁵⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

⁵⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3.(1).(a), Part I.

⁵⁶ 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.

⁵⁷ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1).(b), Part I.

⁵⁸ This is the term for disability used in the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, which includes mental disability. In a debate over the correct terminology, the organisations of persons with disabilities considered that in Greek the term ‘special needs’ («ειδικές ανάγκες»), particularly in the case of ‘mental disability’, was more appropriate than the Greek translation of ‘mental disability’ («πνευματικές αναπηρίες»).

⁵⁹ See Second ECRI Report on Cyprus (2001): The Report considers that “the establishment of comprehensive civil and administrative anti-discrimination provisions can be a useful tool to help counter discrimination in such vital fields as employment, housing, education etc. Consideration of these issues would also be in line with current developments taking place in the European Union (to which Cyprus is an acceding country) concerning the application of Article 13 of the Amsterdam Treaty” (under the heading “D. Civil and administrative law provisions”, point 5, page 6).

a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*

All the grounds for discrimination ('racial or ethnic origin', 'religion' or 'belief', 'disability', 'age', 'sexual orientation' are provided for as grounds within the authority of the Equality Body. However, the meaning of each of the recognised grounds for discrimination is not defined, as the terms 'racial or ethnic origin', 'religion' or 'belief', 'age', 'sexual orientation' are not defined in the three anti-discrimination laws. The reason for not defining these terms can be traced back to the fact that the laws were rushed through Parliament, without a public debate as to the most appropriate means to tackle discrimination or whether it is best to define such as terms. Moreover, the practice adopted was that of replicating the wording of the directives, a practice which is perhaps indicative of the drafters' intention to adopt only what is necessary in order to satisfy the directives.⁶⁰ Prior to the introduction of the new law, the approach taken on discrimination was not to define the grounds, presumably considering that these are self-explanatory in the ordinary use of the language.

The term 'disability' is defined in the Law concerning Persons with Disabilities No. 127(I)2000 enacted prior to the new anti-discrimination laws.⁶¹ As for the other grounds, the concept of 'discrimination' virtually replicates the Directive as regards 'direct' and 'indirect discrimination', 'harassment' and 'instruction to discriminate'. Prior to the new legislation, even though these grounds were recognised in Cypriot law as prohibited grounds for discrimination in some areas of the law,⁶² no definitions of racial or ethnic origin, religion or belief were provided. There is no reported case law on the subject.

The Law concerning Persons with Disabilities⁶³ as amended in 2004⁶⁴ does not expressly prohibit or render the use of pre-employment medical examinations discriminatory. "Disability"⁶⁵ is defined as "any form of deficiency or disadvantage that may cause bodily, mental or psychological limitation permanently or for an indefinite duration which, considering the background and other personal data of the particular person, substantially reduces or excludes the ability of the person to perform one or more activities or functions that are considered normal or substantial for the quality of life of any person of the same age that does not experience the same deficiency or disadvantage". No express reference is made in the law protecting persons who have had a disability in the past or who will acquire one in the future.

The Law on Civil Service (1/1990), which provides for employment opportunities in favour of persons with disabilities in the public sector, defines a "disabled" person as "a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs."

⁶⁰ The issue has not arisen in Cypriot law in the past as it became an issue in other jurisdictions where there is jurisprudence defining for example what is an 'ethnic' or 'racial' group.

⁶¹ N.42 (1)/2004, N.58 (1)/2004, N.59 (1)/2004, N.57 (1)/2004.

⁶² For example in administrative law or in employment law for the purpose of 'unfair dismissal'.

⁶³ Law N. 127(I)/ 2000.

⁶⁴ N.57 (1)/2004.

⁶⁵ 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, mentioned in footnote 82 above.

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?

No such issue has been raised so far. No case has considered such question.

Relevant issues relating to religious freedom and discrimination on the ground of religion were raised by some religious groups. Some complaints have been brought about by minorities which are recognised in the Cyprus Constitution merely as 'religious groups'. Maronites have complained about their designation *merely* as a religious group; they consider themselves also as "a specific ethnic group". Furthermore, the Latin community⁶⁶ of Cyprus is not satisfied with the term "Latin" ascribed to them, as it does not properly reflect their Roman Catholic religious identity (see Opinion on Cyprus by the Advisory Committee on the Framework Convention for the Protection of National Minorities 2001).⁶⁷ It is notable that none of these groups have objected to their designation as 'groups' rather than as 'minorities'. The Roma community, notably, is not recognised either as Roma or as a religious group; instead, because of their language and religion, they were deemed to be an integral part of the Turkish community which is regarded as an ethnic community. In line with this policy, a small section of the Roma community who were Christians was deemed to belong to the Greek community. Another issue highlighted by international reports which primarily relates to religious freedom, is that of reservist conscientious objectors, many of whom are Jehovah's Witnesses⁶⁸ and who refuse to serve in the army due to their religious belief.

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

Law (N.42 (1)/2004) that empowers the Commissioner to act as the national Equality Body does *not* provide for any such restrictions whatsoever. The law transposing the employment Directive⁶⁹ does not contain any *specific* restrictions related to the scope of 'age' as a protected ground, nor does it specify a minimum age below which the anti-discrimination law does not apply; it follows almost verbatim the wording of the Directive 78/2000. However, the minimum age for entering employment is fifteen (except for children who are fourteen and who are placed in a program combining work and vocational training) so one may perhaps conclude that as far as discrimination in employment is concerned this does not apply to children under fifteen (and under fourteen in the case of vocational training).

Article 8(1) of the Law on Equality of Treatment in Occupation and Employment includes a general provision that "differential treatment on the ground of age does not amount to discrimination, providing that

- (a) it is objectively and reasonably justified by a legitimate aim, especially regarding employment policy, labour market and vocational training objectives, and
- (b) the means of achieving that aim are appropriate and necessary."

⁶⁶ The Latins are one of the three constitutionally recognised "religious groups". They form a small community of persons of Latin ethnic origin and of Catholic faith.

⁶⁷ According to the Framework Convention for the Protection of National Minorities, Art. 4: 1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. 2. The parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. 3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

⁶⁸ See Amnesty International Press Release 2002, Human Rights Without Frontiers 2003.

⁶⁹ Law on Equality of Treatment in Occupation and Employment N..58 (1)/2004.

Article 8(2) of the same law then specifies that “such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- (b) The fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- (c) The fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.”

So far no case has been tried on the matter and no authoritative commentary is available on the subject as the legislation is still fairly new. There are a number of decisions of the Equality Body on complaints about age discrimination but none of them provides any interpretation of the law as to applicable restrictions in scope.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.

The law does not expressly make provision for assumed and associated discrimination. However the concept of discrimination itself, virtually replicating the directive, defines ‘direct discrimination’ in the following way: “where one person is treated less favourably than another is, has been or would be treated in a comparable situation”. Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide. There has been no known case in which this matter was considered by a Cypriot court.

b) Does national law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

There is no express provision in the two substantive anti-discrimination laws N.58(1)/2004 and N.59(1)/2004, although they both contain provisions for protecting against victimisation or recriminations in the form of “adverse treatment or consequences against any persons who complains or is involved in proceedings aiming at compliance with the principle of equal treatment”, in line with Article 9 of 2000/43/EC and Article 11 of 2000/78/EC. The spirit of this provision may be extended to cover the above. The Law on the Commissioner for Administration N. 42 (1)/2004 is much wider in scope, as it covers areas beyond the five grounds prescribed by the two directives. It is possible to interpret that association with persons with particular characteristics is firstly, a fundamental human right issue as it relates to the rights of ‘freedom of association’ and such one cannot be discriminated against in the exercising of this right. Secondly, discrimination on the basis of association with persons with particular characteristics is a direct violation of the principle of equal treatment and *illegal discrimination* within the mandate of the Equality Body as this type of discrimination is based on precisely the same grounds by way of association.⁷⁰ Moreover, Article 1 (1) of Protocol 12

⁷⁰ The powers go beyond the narrow scope of the two anti-discrimination directives covering all rights and freedoms covered by the constitution, Protocol 12, the European convention of Human rights and Fundamental Freedoms as well as any rights contained in any Treaty ratified by the Republic of Cyprus.

includes “association with a national minority, property, birth or other issues” as one of the prohibited grounds of discrimination.

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

a) How is direct discrimination defined in national law?

The definition of ‘discrimination’ contained in Articles 2 [of both Law N. 59(I) /2004 and Law N. 58(I) /2004] virtually replicates the Directive as “less favourable treatment afforded to a person due to [any recognised ground] than the treatment afforded to another person in a similar situation”. The translations appear accurate.

The Law (amendment) concerning Persons with Disabilities Law 57(I)/2004 is a replica of the above in providing the definitions of direct and indirect discrimination, instruction to discriminate and harassment, inserted in Article 2 of the main Law Concerning Persons with Disabilities Law 127(I)/2000. The Law concerning Persons with Disabilities (Law 127(I)/2000) contains provisions against direct discrimination, which is defined as “unfavourable treatment” when compared to “a person without disability in the same or similar situation” [s.3 (2)(a)], or on the basis of “characteristics which generally belong to persons with such disability” [s.3 (2)(b)], or “alleged characteristics” [s.3 (2)(c)], or in contravention of a code of practice [s.3(2)(d)].

There are comparable definitions of the term ‘discrimination’ when it comes to gender and the old law definition of disability based on Directive 76/207/EEC and inevitably reflect the differences that exist between this Directive and the Racial Equality Directive and Employment Equality Directive.

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

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

The law generally does not permit justification of direct discrimination, save for specific situation in relation to the grounds of (a) religion in the cases of “occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief”, where “due to the nature of these activities or framework within which they are exercised, the religion or beliefs constitute a genuine, legitimate and justified occupational requirement”, as provided in the Framework Directive.⁷¹ (b) Age: this follows the exact wording provided for by Article 6 of the employment directive.⁷²

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

There is no specific reference relating to age discrimination. The basic test used is the same for all grounds of discrimination, which is contained in the definition of direct discrimination (less favourable treatment than the one which another person in an equivalent situation has been subjected to or would have been subjected to.⁷³

⁷¹ Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 7.

⁷² Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 8.

⁷³ Law on Equal Treatment in Employment and Occupation N.58 (1)/2004, Article 2.

➔ 2.2.1 Situation Testing

- a) Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.
- b) Outline important case-law within the national legal system on this issue.
- c) Outline how situation-testing is used in practice and by whom (e.g. NGOs)

There is no reference in legislation or case law on the subject. We therefore are obliged to examine the subject on the basis of the general rules of evidence as developed by case law, originally provided in the Law on Evidence Cap. 9, which codifies the sources of law and defines the hierarchy of law for both criminal and civil procedure. In this order, the hierarchy relies on the constitution, legislation of the Republic since 1960, Common Law and equity and the statutes of the U.K prior to independence.⁷⁴

The admissibility of *situation testing* as a method of proving discrimination in courts will be subjected to the general test of ‘relevance’ and ‘the best evidence rule’. A number of factors need to be considered before coming to any conclusion as to the way in which the courts are likely to treat ‘situation testing’. If *situation testing* is to be relied upon as a methodology that merely indicates a tendency as to the ‘general’ or ‘systematic’ behaviour of the defendant which is based on *previous* and/ or *similar* occasions, then the court may treat *situation testing* as ‘corroborative evidence’. The test will be the extent to which this methodology ascertains a probative value as to the behaviour of the defendant. General common law principles are defined in a series of criminal law cases.⁷⁵ In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations⁷⁶ or as an indication of *habitual* behaviour.⁷⁷ It is up to the party who asserts to prove whether the *particular* behaviour is *systematic* or mere *coincidence* or *circumstantial*, that will determine the relevance to the particular fact at stake. If however, the situation test is to be relied directly as real evidence of discrimination in action against perpetrators, this is a matter that would require legal argument on the basis of authorities in Europe, the UK and the US which would have to prove that the particular test is widely used in Court as direct evidence of discrimination.

The Equality Body has not used such test but its officers have indicated that they would be willing to use such test as evidence in their investigations.⁷⁸ No NGOs, trade union or other civil society organisation has so far made use or referred to *situation testing* in Cyprus.

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

- a) How is indirect discrimination defined in national law?

In the three substantive anti-discrimination laws N. 127(I)2000 as amended by Law 57(I)2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive), indirect discrimination is defined, using the same wording as Article 2(b)(i) of the EU directives, as an apparently neutral provision, criterion or practice which would put persons having a particular race or ethnic origin, religion or belief,

⁷⁴ See Cacoyannis, G. (1983) *Η Απόδειξη*, Lemesos, Cyprus and Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

⁷⁵ See *R: V. Hartley* (1941) 1 KB 529 and *R V Mitchel* (1952) 36 Cr App. R 79.

⁷⁶ *Bereford V St. Albans* (1905) T L R 1.

⁷⁷ *Joy V Phillips* (1916) 1 K.B 849 Mills 2 C.

⁷⁸ Interview with Elisa Savvidou, Head of the Equality Body at the Ombudsman’s Office, 19.01.2006.

disability, age, or sexual orientation at a particular 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.

Disability is dealt with separately in Law N. 127(I)2000 as amended by Law 57(I)2004 which incorporates a definition identical to the other two laws (N.58(I)/2004 and N.59(I)/2004). The same law (N. 127(I)2000 as amended by Law 57(I)2004) contains an additional provision which, although not termed as a definition, offers elements of what would constitute discrimination, without clarifying whether these are to form an exhaustive description. The wording reads “a person discriminates against another if he treats that person: (a) in a more unfavourable way than what he treats or would treat other persons without disability in the same or in a similar situation; (b) on the basis of characteristics generally belonging to person with such disability or based on a presumed characteristic which generally belongs to a person with such disability or based on a presumed characteristic which is generally attributed to a person with disability; or (c) based on the fact that this person does not satisfy or is not in a position to satisfy a condition, the nature of which is such that a high percentage of persons who do not have such disability satisfy or are in a position to satisfy, when compared to persons who do have such disability and the existence of such a condition is not justified by the circumstances of the case”.⁷⁹ This provision appears to be narrower than the Directives requirement which extends to any “apparently neutral provision, criterion or practice [that] would put persons having a particular [disability]” at a disadvantage, but since the Directive’s definition is also incorporated no issue of compliance arises.

Prior to the introduction of the 2004 laws, indirect discrimination was not defined in the Constitution or in any other the legislation, save for the gender provisions in the recent law on equal treatment between men and women (see below). The relevant case law confirms the constitutional provisions that prohibit ‘direct’ and ‘indirect discrimination’ but no definition is provided in the court judgements.⁸⁰

b) What test must be satisfied to justify indirect discrimination?

No case has so far gone to court to deal with the new laws. However, on the basis of the Cyprus case law on gender discrimination, European court decisions, as well as persuasive authority of UK court decisions, we may assume that the ‘but for test’ is likely to apply. The test involves asking the question as to how the victim would be treated had s/he not had the special characteristic, such as the particular ethnic origin or disability or religion, that s/he had.

There is no judicial precedent on what test must be used in order for employers to justify a requirement, criterion or practice which results in discrimination. There are a number of examples of the reasons which employers or service providers tried to introduce in order to justify a discriminatory requirement, criterion or practice, without necessarily implying that these were accepted by the Equality Body or would have been accepted by the Court had the case been brought before it.

- In the case of age limits for job vacancies, the typical reason offered is to assist young people to join the labour market; however this excuse was never accepted by the Equality Body, which invariably found the fixing of age limits in job descriptions as discriminatory. The test used was whether the nature of the job justified the age limit and whether a similar position in another context would carry an age limit.
- A similar explanation was offered by the Ministry of Labour, when asked to comment on the law which provides that persons reaching retirement age lose their right to

⁷⁹ Article 3(2) of Law on Persons with Disabilities N. 127(I)/2000 as amended by Law N.57(I)2004.

⁸⁰ Elia and another V. the Republic, 3 RSCC 1, at p. 6, per Forstshoff.

compensation for unfair dismissal. The Ministry considers this measure as ‘objectively and reasonably justified’, in accordance with Article 6 of the Employment Directive (transposed by Article 8(1) of Law 58(I)/2004), because it serves the policy goal of creating posts for young persons; because upon retirement age the employee becomes entitled to a state pension; because it provides an incentive for employers to employ older persons. The Equality Body is investigating a complaint against this measure so the legality of these arguments will be put to the test.

- In another complaint investigated by the Equality Body regarding the entry requirements into the state nursing school which effectively excluded persons with disabilities, the reasons offered by the nursing school in justification of the discriminatory criteria were mainly within the sphere of ‘genuine occupational requirements’.⁸¹ The reasons were not accepted by the Equality Body which found that the entry requirements constituted discrimination prohibited by law. This decision was complied with by the nursing school who revised their entry requirements accordingly.

c) Is this compatible with the Directives?

Cyprus law appears to comply with Article 2.2(b) of the Directives.

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

No it does not. The concept of age discrimination is rather new in Cyprus law and it is doubtful whether there is a clear view as to how it will be applied. There have been a few decisions by the Equality Body on age discrimination, all having to do with the fixing of a maximum age in job advertisements. The test used in order to determine whether age discrimination existed or not was whether the nature of the job justified the fixing of a maximum age limit and whether similar positions in other contexts (i.e. of equivalent seniority, in similar fields etc) carry an age limit. For instance in the case of the complaint for the age limit fixed in respect of the appointment of members of the Commission on Educational Service (described in page 11 above), the test applied was whether the functions performed by the public service committee (where no age limit applies) are substantially different to those of the education committee; as the answer to this question was negative, the report concludes that there was no reasonable justification in permitting an age limitation for the latter.

➔ 2.3.1 Statistical Evidence

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

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

b) Is the use of such evidence commonly used?

It is not common for statistical evidence to be used. The Equality Body has made use of data in only one such case so far, which concerned discrimination against female migrant domestic helpers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.⁸² In the reasoning of this decision, the Equality Body also made

⁸¹ The school invoked reasons such as “good visual ability is necessary to enable the nurse to assess whether the patient’s colour is a cause for concern”; “a stuttering nurse has communication problems”; “height and weight of the person is important for moving or lifting patients or for responding fast to emergencies”. The case is elaborated under Article 0.3 (Case Law) above.

⁸² Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005.

reference to the low salaries paid to migrant domestic helpers⁸³ compared to Cypriot workers, pointing out that the number of migrant female domestic workers now in Cyprus is about 18.000.⁸⁴ However the data is used in this report in order to *demonstrate the acuteness* of the problem, based on the large size of this group and on the disparity in the salaries of migrants and locals, rather than to *determine* whether an act is or is not discriminatory.

c) *Please illustrate the most important case law in this area.*

There is no case law in this area.

d) *Are there national rules which permit data collection? Please answer in respect of all grounds.*

There is a general rule prohibiting the collection of such data that derives from article 8 of the ECHR and is also contained in article 15 of the Republic of Cyprus Constitution, unless specifically provided under certain circumstances. Furthermore, the Law on Processing of Personal Data Law 138(I)/2001, article 6(1) expressly “prohibits the collection and processing of sensitive personal data” and proceeds then to list the circumstances under which this is exceptionally allowed. Three of these are relevant:

-Article 5(1)(e): Processing is necessary for the satisfaction of lawful interest pursued by the processor or by a third party to whom the data is announced, provided that this lawful interest is superior to the rights and fundamental freedoms of the subject of the data.

-Article 6(2)(e): Processing concerns exclusively data that the subject of it has published or is necessary for the recognition or the exercise of a right before a court.

-Article 6(2)(g): Processing concerns exclusively statistical, research, scientific⁸⁵ or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.

-Article 6(2)(h): Processing is made exclusively for journalistic reasons or as part of artistic expression, so long as there is no violation of private and family life.⁸⁶

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

The law on data protection was passed *before* the anti-discrimination law and no revision of the former was made in the light of the latter. However, most of the grounds covered by the anti-discrimination laws are mentioned in the data protection law as constituting sensitive data. More specifically, the law on data protection defines “personal data” as any information referring to the subject of data, i.e. a physical person, who is still in life. Aggregate data of a statistical nature, from which the subjects of the data can no longer be detected, are not considered as personal data. ‘Sensitive data’ is defined in the law as data concerning racial or national origin, political belief, religious or philosophical conviction, participation in an organisation, association or trade union, health (which is much wider in scope than

⁸³ Calculated at CYP0.82 per hour, contrasted with CyP4 –CyP 5 per hour for Cypriots carrying out the same work: Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005, page 4.

⁸⁴ This figure is based on the data of the Ministry of Interior, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17.955.

⁸⁵ The law does not define ‘scientific’ reasons. The author understands this term to mean scientific research or other relevant activity of scientific value.

⁸⁶ The law does not provide a definition for ‘private and family life’. However the term is frequently referred to in the meaning ascribed to it by Article 8 of the ECHR, which is copied verbatim in the Cyprus Constitution, Article 15. The ECtHR decision in the case of *Niemietz v. Germany*, 16.12.1992, Series A no. 25-B(29) provides an exhaustive definition of the term and is quoted in *Loizou* 2001:104.

‘disability’), sex-life and sexual orientation, criminal prosecution or criminal conviction.⁸⁷ Therefore although the scope of this law covers grounds beyond those of the anti-discrimination directives, age is missing from the characteristics which are protected by this law. Also, the reference to ‘national’ origin, as opposed to ‘ethnic’ origin, may well be a reflection of the fact that in Greek the two terms have a similar sound and many people tend to use them interchangeably, as the distinction between the two may not be widely known in Cyprus.⁸⁸ From the context, one may perhaps conclude that ‘ethnic’ would have been a better word, since personal data on national origin are widely used and processed.

In response to an enquiry which the author made to the Cyprus Commissioner for the Protection of Personal Data, the Commissioner informed that: “The collection and keeping by employers of data of their employees in respect of their ethnic or racial origin, disability, religion or belief or sexual orientation (sensitive data) as a rule is prohibited. It is permitted if this is necessary so that the employer fulfil his/her obligations in the field of employment law and s/he obtains a license for this purpose from the Personal Data Commissioner (Article 6(1) (2) (a) of the Law on processing of Personal Data)”.⁸⁹ One may conclude that the employee’s written authorisation is not necessary in the aforesaid cases. Presumably the same principle would apply outside the employment field. Based on the Commissioner’s statement as aforesaid, one may safely assume that the law will be interpreted and applied by the courts in a way compatible with the Data Commissioner’s interpretation.

In order to apply the regulation concerning access to the labour market⁹⁰, the Labour Office of the Ministry of Labour maintains records concerning country of origin, ethnic origin and whether they are asylum seekers or not.

With regard to the keeping of data in the non-employment field, it appears that data on ethnic origin is kept at the national level for various purposes. The population census for instance keeps figures on each of the ethnic communities of Cyprus (Greek-Cypriots, Turkish Cypriots, Maronites, Armenians and Latins). The Roma are not classified separately nor identified as such by the educational system, as they are considered to be part of the Turkish Cypriot community. Constitutionally, the Roma do in fact form part of the Turkish-Cypriot community, since they could only belong to one or the other community; however, the same applies to the Maronites, the Latins and the Armenians, who are constitutionally part of the Greek-Cypriot community, and they are nevertheless afforded a separate classification from the Greek-Cypriots. The Ministry of Education also keeps data on school children according to their ethnic (as well as their national) origin; again the Roma are classified as Turkish-Cypriots. In some tables supplied by the Ministry, a group of pupils are classified as ‘Turkish-speaking’; this term would include primarily Turkish-Cypriots but to some extent also Roma and Kurdish pupils. However the records which are publicly accessible do not show names of

⁸⁷ The definition for both terms is found in Article 2 of the Processing of Personal Data Law 138(I)/2001.

⁸⁸ The Greek term for ‘national’ is *εθνικός* (ethnikos) and for ‘ethnic’ *εθνοτικός* (ethnoticos).

⁸⁹ Law No. 138(I)2001. In reply to a question she replied in writing dated 13.12.2005.

⁹⁰ A circular letter sent from the Immigration Office of the Ministry of Interior dated 18.04.2005 sets the order of priority in terms of employment as follows:

- i. First priority: Cyprus nationals, EU nationals and their families, irrespective of nationality. Also, persons of Greek origin who are holders of special identity card of the Republic of Cyprus, but not members of their families who are third country nationals.
- ii. Second Priority: Nationals of acceding countries.
- iii. Third priority: Family members of nationals of acceding countries who are already in Cyprus, irrespective of nationality.
- iv. Fourth priority: Third country nationals already in Cyprus, including asylum seekers.
- v. Fifth priority: Family members of third country nationals already in Cyprus, except asylum seekers.
- vi. Sixth priority: Third country nationals (new arrivals).

individuals, only numbers per ethnic origin. Schools do keep data on the pupils' religion, which is also noted on the school leaving certificate they receive upon graduation.

2.4 Harassment (Article 2(3))

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

Harassment as a concept was first introduced into Cyprus law very recently with the Law for Equal Treatment of Men and Women in Employment and Occupational Training, that came into force on 1st January 2003.

In Laws 58(I) and 59(I), as well as the Law (amendment) Concerning Persons with Disabilities Law 57(I)/2004, harassment is defined as “unwanted conduct related to any of the [recognised] ... grounds ... with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

In 1992 a law was introduced amending the Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination of 1967, rendering certain public statements a criminal offence, which bear similarity to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or any other way, intentionally incites acts which may cause discrimination, hatred or violence against persons or groups of persons for the sole reason of their racial or ethnic origin or their religion, is guilty of a criminal offence.⁹¹

No case been adjudicated in Court so far under any of the above laws.⁹² However, in circumstances which may be interpreted as falling under the definition of the law ratifying the Convention on the Elimination of all forms of Racial Discrimination, as stated above, and potentially under the definition of harassment provided in Laws 58(I) and 59(I), the Mayor of Nicosia Mr. Michalakis Zambellas made some public statements regarding the housing situation of migrants in the old part of the city, which formed the subject-matter of complaints submitted to the national Equality Body.

In its report, the Equality Body referred to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination 1966 concluding that the Mayor's statements ought to have been avoided, as likely to produce xenophobic perceptions with unpredictable results. The Equality Body's report, however, fell short of framing this conduct as harassment and of recommending measures to be taken against the Mayor.⁹³

b) Is harassment prohibited as a form of discrimination?

Harassment is a prohibited form of discrimination, under Article 3(1)(e) of Law N.127(I)2000 as amended by Law 57(I)2004 (disability), under Article 6(1)(c) of Law 58(I)2004 (transposing the Employment Directive) and under Article 5(2)(c) of Law 59(I)2004 (transposing the Race Directive).

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

⁹¹ Article 2A(1) of the Law amending the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) Law of 1967, No. 11(III) of 1992.

⁹² But there are a number of decisions on the issue of sexual harassment.

⁹³ Report of the Cyprus Anti-discrimination Body Ref. A.K.R. 81/2005, dated 01.12.2005.

Prior to the introduction of the 2004 laws, there were no provisions for harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, even though there had been reports of complaints about racial harassment of migrants.⁹⁴ There were however provisions for sexual harassment. The Law for Equal Treatment of Men and Women in Employment and Occupational Training defines sexual harassment as: “Sexual harassment shall mean any behaviour that is unwanted by the recipient of the behaviour of sexual nature or any other behaviour based on sex, which offends the dignity of women and men during employment or occupational education or during access to employment or occupational education or training which is manifested via words or deeds”. (The Law came into force on 1 January 2003)

There are no other additional sources on the concept of harassment, like for instance an official Code of Practice.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

National law prohibits instructions to discriminate on the grounds of race/ethnic origin, age, religion or belief, sexual orientation.⁹⁵ The Law on disability does not contain any provision rendering instructions to discriminate unlawful.

Prior to the above there were no provisions in Cyprus law concerning “instructions to discriminate” as provided by Article 2.4 on any grounds (race and ethnic origin, age, disability, religion, sexual orientation), nor was there any comparable definition of such provisions in relation to gender discrimination in the Sex Equality Law.

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

a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. ➔ does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?

Cypriot law provides for the duty to provide “reasonable accommodation” to the extent and where the local economic and other circumstances allow.⁹⁶ These measures are not restricted to the working place but cover: (a) basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to housing, buildings, streets, the environment, public means of transport, etc, education,

⁹⁴ A number of Reports indicate that there were complaints and allegation of discrimination (see ECRI Report 2001/ ISAG 2003). Several cases of complaints by migrant workers against the Police and the Immigration Office involving racial discrimination and harassment have been investigated by Commissioner. According to the 2001 Commissioner’s Annual Report Ombudsman Annual Report, a total of 156 complaints were lodged. In the following years 2002 and 2003 the figures are similar. No details are available about these cases, other than the fact that they were mainly concerned with issues of entry, stay, violation of contracts or employment rights. These cases date back to the period before the enactment of the new anti-discrimination laws and the appointment of the Commissioner as the specialised anti-discrimination body, therefore these complaints were examined on the basis of the legal framework which existed prior to May 2004 and which did not contain comprehensive anti-discrimination provisions.

⁹⁵ Article 6(1)(d) of Law 58(I)2004 (transposing the Employment Directive) and under Article 5(2)(d) of Law 59(I)2004 (transposing the Race Directive).

⁹⁶ Article 9(1) of the Law on Persons with Disabilities N.127(I)2000.

information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc etc);⁹⁷ (b). employment including access to, working conditions, training etc etc;⁹⁸ (c). supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc etc;⁹⁹ transport;¹⁰⁰ and telecommunications.¹⁰¹

Specifically with regard to reasonable accommodation at the working place, the law provides that “equal treatment” means, inter alia, “the obligation to provide reasonable access and facilities in the working environment, including: (i) the necessary modifications or adjustments of accessibility to existing facilities so as to make them accessible to persons with disabilities; (ii) the reshaping of work by creating working schedules of part-time occupation or modified working hours, with the acquisition of new or the modification of existing equipment, machinery, tools, means and any facilities or services”.¹⁰²

The law defines the factors which must be taken into account in order to determine whether a measure is reasonable or not, as follows:¹⁰³ (1) The nature and required cost for the adoption of the measures; (2) the financial sources of the person who has the obligation to adopt the measures; (3) the financial situation and other obligations of the state in those cases where the obligation for the adoption of measures refers to the state; (4) the provision of donations by the state or other sources as a contribution towards the total cost of the said measures; (5) the socio-economic situation of the disabled. The law provides that the aforesaid factor (socio-economic situation of the disabled) must not be taken into account as regards the principle of non-discrimination in employment.

It is apparent that, although the scope is wide, the test of reasonableness 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.

No case has actually been examined in court so far to assess how courts would determine whether accommodation is ‘reasonable’ or whether it imposes a ‘disproportionate burden’; therefore we must interpret the statutes as they stand. When comparing the provisions under the Directive, which provide for a test of whether “such measures would impose a disproportionate burden on the employer” to the criterion introduced into Cyprus law regarding the socio-economic situation of the disabled (Article 9), the disparity between the Cyprus law and the Employment Equality Directive is apparent.

b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?

The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. Article 6(b) of Law 57(I) of 2004, which amends Article 9 of the 2000 law (No. 127(I)/2000) provides that a person who *without due cause* commits or omits an act which amounts to discrimination against a person with disability is guilty of an offence and liable to a fine or to a prison sentence. As “due cause”, the law defines those cases where it

⁹⁷ Article 4 of the Law on Persons with Disabilities N.127(I)2000.

⁹⁸ Article 5 of the Law on Persons with Disabilities N.127(I)2000.

⁹⁹ Article 6 of the Law on Persons with Disabilities N.127(I)2000.

¹⁰⁰ Article 7 of the Law on Persons with Disabilities N.127(I)2000.

¹⁰¹ Article 8 of the Law on Persons with Disabilities N.127(I)2000.

¹⁰² Article 5(2)(d) of the Law on Persons with Disabilities N.127(I)2000, as amended by Law No. 57(I) of 2004.

¹⁰³ Article 9(2) of the Law on Persons with Disabilities N.127(I)2000.

was not possible to take measures for reasonable accommodation or where simply no such measures were taken.

No such case was ever tried by the Courts on this point, so as to have an interpretation of these provisions. However, a decision of the Equality Body on this issue appears to consider the failure to meet this duty as discrimination prohibited by law. The complaint concerned a blind person working as a telephonist in the hospital, who was moved to a new hospital and had to cope with a more complicated and sophisticated telephone system, with more telephone lines and with a less favourable working schedule. The Equality Body decided that the hospital authorities ought to have transferred to the new post one of the other employees without who did not have a disability and to leave the blind employee at the post where he could cope. The report calls on the hospital authorities to explain, in a manner satisfactory to the Equality Body, why the employee had to be moved to the new hospital, failing which a decision would be issued against them by the Equality Body.¹⁰⁴

c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?

No. There is no such duty for any ground other than disability, nor is reasonable accommodation offered for any of the other grounds.

d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/43?

The accessibility of persons with disabilities to public buildings is regulated by the Regulations on Streets and Buildings of 1999, which were issued by virtue of Article 19 of the Streets and Buildings law. The regulations apply to public buildings as well as to those buildings where entry to the public is allowed, to commercial centres, to buildings which include shops and/or offices, to educational institutions, clinics, doctors' offices and generally to any building which the competent authority decides that these Regulations should apply. The Regulations set the minimum necessary specifications for the erection of all the aforesaid buildings in relation to persons who, due to physical weakness or inefficiency, face permanent or temporary difficulty in accessing a building or a street and aim at securing the comfortable access of all persons with disability to the main entrance of such buildings and to the spaces within such buildings. The Regulations provide analytically the construction specifications for ramps to the main entrance, for the pavements, the staircases, the common use corridors, the elevators, the lavatories and other spaces where the public may go in, including the parking areas.

Furthermore, Article 4(1) of the Law on Persons with Disabilities N. 127(I)2000, as amended by Law N. 57(I)/2004, provides for the right of every person with disability to independent living, full integration to the community and equality of participation in economic and social life. The right of persons with disabilities to accessibility in housing, buildings and generally the environment and means of public transport is guaranteed in Article 4(2) of the same law. Article 6 of the law guarantees the right of equal treatment of persons with disabilities in relation to the supply of goods, services and facilities and expressly states that failure to effect changes to services or facilities rendering their use impossible or unjustifiably difficult for a person with disability does not constitute equal treatment. According to Article 6(2) such changes may concern the creation of the appropriate means of accessibility and facility for the safe and comfortable use of services and facilities; the use of special means, equipment or persons for communication with and informing certain groups of persons with disabilities;

¹⁰⁴ Report of the Equality Authority No. A.K.I 58/2005, issued on 08.12.2005.

and the use of special equipment in particular places where services are supplied, such as schools, hospitals, clinics etc. Article 7(1) of the Law provides that the public means of transport or a certain number of them must be accessible to persons with disabilities including users of wheelchair. Article 8 provides for accessibility to telephone services for persons with a hearing impediment or other disability, for public means of telecommunication accessible to persons with disabilities including wheelchair users and for television programs to be broadcasted by television channels for deaf persons.

However, the above provisions do not impose a clear duty and do not provide for an enforcement mechanism. In accordance with Article 9(1) of the Law, all rights stipulated in the preceding paragraph, contained in articles 4-8 of the Law, are to be implemented through the taking of reasonable measures and to the extent where local economic conditions and other circumstances allow. The definition of 'reasonable measure', provided in Article 9(2) of the Law, consists of a list of five criteria, such as the cost of the measures, the financial means of the person required to take these measures and the socioeconomic condition of the person with disabilities affected, rendering this a voluntary rather than a mandatory regime. The result is that a large number of public buildings and infrastructure remain inaccessible to persons with disabilities.

A decision of the Equality Body on a complaint by a person with a disability, alleging that the lack of the necessary facilities for persons with disabilities in governmental buildings amounted to discrimination seemed to recognise that persons with disabilities are entitled to accessibility features in public buildings, but again fell short of creating a mandatory regime. The report cited all the aforementioned legislation, in order to arrive at the conclusion that the state must view the issue of accessibility of persons with disability to governmental buildings with greater sensitivity and recommended that the Ministry of Transport and Public Works compile a special program with specific targets for the implementation of the right of persons with disabilities to accessibility to all governmental buildings, with a specific time schedule for implementation.¹⁰⁵ The decision reinforces the impression that the current legislation on accessibility does not create any specific obligations for any persons or for the state.

➔ 2.7 Sheltered or semi-sheltered accommodation/employment

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

The closest practice to what is known as sheltered employment is a kind of 'sheltered workshops' called KEAA (Centres for Vocational Rehabilitations for the Disabled), whose role is to provide 'training' and 'quasi-employment' to persons with a disability. The goods produced at the workshops are bought by governmental agencies¹⁰⁶ and NGOs.

b) Would such activities be considered to constitute employment under national law?

There is no employment relationship between each Centre for Vocational Rehabilitations for the Disabled and the individual person with disabilities working there. The persons who work at the Centres are primarily treated as 'trainees' and as such they are paid a small amount termed as 'training allowance' for taking part in the workshops. The amount of the 'training allowance' varies according to the marital status of the person (married persons get more). The income derived from these workshops is termed as 'production allowance' and it depends

¹⁰⁵ Report of the Equality Body No. A.K.R. 48/2005, issued on 13.10.2005.

¹⁰⁶ Such as the agency of the Department of Public Purchases and Storerooms of the Ministry of Trade and Industry as well as Cyprus Handicraft Service of the Ministry of Commerce.

on the profits of each of the craft workshop.¹⁰⁷ The vast majority of persons occupied at KEEA are already receivers of welfare (disability) benefit.¹⁰⁸

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

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

There are two separate approaches:

(i) Under Law N.42 (1)/2004, there are no residence or citizenship/nationality prerequisites for protection under the relevant national laws transposing the Directives. Protocol 12 guarantees “the enjoyment of all rights set forth by law” without discrimination, inter alia, of ‘national or ethnic origin’. The Equality Body is empowered to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by the Conventions ratified by Cyprus and referred to in the Law¹⁰⁹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.¹¹⁰

(ii) The drafters of the new laws have incorporated the Directives’ exceptions into the national legislation transposing the Directives. As a result, Law N.127(I)200 as amended by N.57(I)/2004 (on disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive) include provisions copying verbatim the wording of the exceptions of the Directives. Article 32 of the Constitution stipulates that “nothing in this Part¹¹¹ contained shall preclude the Republic from regulating by law any matter relating to Aliens in accordance with International law.”

The above provision, combined with the antiquated immigration laws are often implemented with a tendency to considerably enlarge the scope of state discretion. The wide margin of discretion allows for discrimination to occur and immigration officers in Cyprus have been criticised by the Second Report of the European Commission on Racism and Intolerance (ECRI) on this score.¹¹² In any case, there is a strong body of opinion by authoritative legal scholars that the correct interpretation of the constitutional provision of Article 32 does not allow for differential treatment of non-Cypriots when it comes to human rights as this (a) merely indirectly incorporates international law within the corpus of Cyprus law¹¹³ and (b) would most likely be a violation of Article 28¹¹⁴ and other international treaties which have

¹⁰⁷ According to Mr. Aggelides, an official at the Ministry of Labour, about 90% of the profits are shared amongst the producers of each craft workshop, 23.1.2005.

¹⁰⁸ Information from Mr. Aggelides, Official, Ministry of Labour, 23.1.2005.

¹⁰⁹ 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.

¹¹⁰ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1)(b), Part I.

¹¹¹ Part II of the constitution contains the human rights and fundamental freedoms.

¹¹² The ECRI report reads as follows: “Concern is also expressed at reports of discriminatory checks on the part of immigration officers of non-whites coming to Cyprus. Again, ECRI feels that further training aimed at preventing the occurrence of discrimination and discriminatory attitudes should be provided to immigration officers.”

¹¹³ Tomaritis (1982: 212).

¹¹⁴ Nedgati 1972: 166-167, Tomaritis 1982: 201-205.

been ratified by the Republic which, under Article 169, prevail over domestic legislation.¹¹⁵ The provisions regarding the transposition of the anti-discrimination acquis do not refer only to citizens or legally resident persons, but to all persons. In support of this argument there is also Protocol 12 to the ECHR.

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

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

Both legal and natural persons may apply to the Courts or to the Equality Body claiming discrimination. Article 7(1) of Law N.59(I)/2004, Article 9A of Law N.127(I)/2000 as amended by N.57(I)/2004 and Article 11 of Law N. 58(I) provide that any physical or legal person who considers that he/she has been discriminated on the prohibited grounds may apply to the competent courts (i.e. Labour Tribunal, District Court or Supreme Court) depending on the subject matter and the procedure of each the case, or to the Equality Body.

In all matters concerning employment, since employees can only be physical persons and not legal persons, it follows that all rights arising under the law for employees are applicable only to natural persons. However, under Article 14 of Law N.58(I)/2004 and Article 9D of Law N.127(I)/2000 as amended by N.57(I)/2004, physical persons may be represented by legal persons in proceedings before the Court or before the Equality Body claiming discrimination: “employees organisations or other organisations” with legal standing or a legitimate interest can, with the consent of their members, act on their behalf. Similarly the Racial Equality Law N.59(I)/2004, Article12 provides that organisations or other legal personalities, which have as their constitutional aim to combat discrimination on the ground racial or ethnic origin”, and with legal standing or a legitimate interest can, with the consent of their members act on their behalf.

The fines which the Equality Body may impose on physical or legal persons also vary. Natural person may be fined with up to 4,000 Cyprus pounds (about 6,700 euros) and/or six months imprisonment or both.¹¹⁶ If a legal person is found guilty of discrimination, the managing director, chairman, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined with up to 4,000 Cyprus pounds (about 6,700 euros) and/or six months imprisonment or both, if it is established that the offence is committed with their consent or collaboration or mere tolerance. In addition, the legal person can be fined up with up to 7,000 Cyprus pounds (about 12,000 euros).¹¹⁷ There is also a provision for ‘gross negligence’ with fines up to 2,000 Cyprus pounds (about 3,333 euros) for individuals and 4,000 Cyprus pounds (about 6,700 euros) for legal persons.¹¹⁸

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can

¹¹⁵ Loizou 2001, Nedgati 1972: 166-167; Georgiadis Van der Pol 2002: 22.

¹¹⁶ For disability Article 9(e)(2) of the 127(I)/2000 as amended by Law N.57(I)/2004 Article 6(β); for employment N.58(I)/2004, Article15; for racial discrimination Law N.59(I)/2004, Article13.

¹¹⁷ For disability Article 9(e)(2) of the 127(I)/2000 as amended by Law N.57(I)/2004 Article 6(γ)(4); for employment N.58(I)/2004, Article15(1) and 15(2); for racial discrimination Law N.59(I)/2004, Article13(1) and 13(2).

¹¹⁸ For disability, Article 9(e)(2) of the Law N.127(I)/2000 as amended by Law N.57(I)/2004 Article 6(γ)(5); for employment N.58(I)/2004, Article15(3); for racial discrimination Law N.59(I)/2004, Article13(3).

they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

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

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

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

Trade unions or other trade/professional associations can be held liable for actions of their members to the extent they are considered to have acted as an organisation or legal person, as referred to above.¹¹⁹

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

The national legislation transposing the Race and Framework directives [Law N.58(I)/2004, Article 4(a); Law N.57(I)/2004, Article 5(a)] applies to all sectors of public and private employment and occupation,¹²⁰ including contract work, self-employment, holding statutory office, with the exception of military service. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law¹²¹ provides for the implementation of Protocol 12 and may therefore apply to military service issues. Both laws, N.58(I)/2004 (Article 2) and N.57(I)/2004 (Article.2) define 'employee' as 'any person who works or is trained in full time or part-time occupation, fixed time or permanent employment, continuous or otherwise, irrespective of the place of employment, including home employees but excluding self-employment.'

¹¹⁹ Law N.58(I)/2004, Article 4(d) and Law N.127(I)/2000 as amended by Law N.57(I)/2004, Article 5(a)(1)(d).

¹²⁰ Following English common law, there is a sharp distinction in terms of employment rights between 'employees' and 'self-employed'/ independent contractors. Employees are subject to direction and control and there is an 'employment relationship' between the employee and the employer, which is one of a contract of employment, with all the rights provided for by the law. The test of 'control, dependence and direction of work' is the one used to distinguish between 'employees' and self-employed'/ independent contractors. Employees are generally supervised and directed by others; they have a place and time of work, receive wages and have a *contract of employment*. A '*contract of employment*' is sharply distinguished from a '*contract for services*' as the latter does not provide for any employment rights guaranteed by labour law. Part-timers are employees and enjoy the same rights as other full-time employees based on the principle of 'proportionality' [Law N. 76(I)/2002 (14/06/2002) which transposed Directive 1997/81).

¹²¹ Law N.42(1)/ 2004 (19.03.2004).

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

The Combating of Racial and Some Other Forms of Discrimination (Commissioner)¹²² appoints the Commissioner for Administration (or Ombudsman) as the national Equality Body, vested with powers to tackle discrimination in the areas of employment, access to vocational training, working conditions including pay, membership of trade unions or other associations, social insurance and medical care, education and access to goods and services including housing, as required by Article 3.1 of the Directives. Such discrimination is unlawful by law.

Prior to the new laws, the fields of application provided in Cypriot law (Article 28 of Constitution and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination - ICERD) which refer to equal treatment irrespective of racial or ethnic origin extended only to some of the areas covered. Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. With regard to 3.1 (b) of the Directive, Article 5 of ICERD provides for the right to training, whereas the Directive focuses on access to all types and to all levels of vocational guidance, (advanced) vocational training and retraining. A comparison of Article 5 of the ICERD with Article 3.1(c) of the Directive reveals that the former does not include employment and working conditions relating to dismissal. Article 5 of the ICERD limits itself to the right to form and join trade unions, whilst Article 3.1(d) of the Directives is broader in the types of organisation that one can be a member of or involved in and further includes the benefits provided by such organisation or association.

The scope of the anti-discrimination laws in Cyprus appears to cover all the areas listed in the directives,¹²³ however the grounds of sexual orientation and age are novel and the social environment is rather hostile, particularly to issues that involve the rights of homosexuals. Until a few years ago, homosexuality was a criminal offence in Cyprus.

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

Despite the formal adoption of the four main laws on anti-discrimination, there are no provisions known to facilitate or improve conditions for access as required by Article 3(1) (a) of the Employment Directive. There is no tradition of anti-discrimination and there are no specialist lawyers or groups on the subject, nor are there any mechanisms in the various Government departments for the implementation of the above provisions. Save for a few initiatives on coordination and information by the Ministry of Justice, there are no measures to monitor and collect data on such matters.

¹²² Law N.42(1)/ 2004 (19.03.2004).

¹²³ The scope of the two directives is described as follows: “1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; (e) social protection, including social security and healthcare; (f) social advantages; (g) education; (h) access to and supply of goods and services which are available to the public, including housing.

So far, the only case known to have gone to the labour tribunal is that of Hadjiavraam v SPE Morphou, which was first decided by the Cyprus Equality Body¹²⁴ concerning a victim of age discrimination seeking damages for distress and loss of earnings. The court case has not yet been tried.

The Equality Body has examined complaints and issued decisions on a number of cases concerning access to employment but the number is rather small, suggesting that there is still some way to go before the provisions of Article 3(1) (a) are fully implemented.

Is the public sector dealt with differently to the private sector?

The laws on discrimination apply equally to the public and private sector. However, in the public sector there are some positive measures in place in favour of persons with disabilities, whilst two new bills are under way to introduce quotas in employment in the public sector for persons with disabilities (discussed in Article 5 below).

There are, at the same time, projects applying only to employment in the private sector. The Ministry of Labour is currently compiling two schemes, under co-funding from the European Social Fund and from the Cyprus government, for the promotion of integration of persons with disabilities in the labour market in the private sector: a scheme for payment of social insurance for employers in the private sector and for persons with disabilities employed by them; and a scheme for providing incentives to employers to employ persons with serious disability in the private sector. Under the same funding line, the Ministry of Labour is also promoting a scheme for the vocational training of certain persons with disability by NGOs.

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

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

Article 4(c) of Law N.58(I)/2004 (transposing the Employment Directive) and Article Law N.57 (I)/2004, s.5 (a)(1) c) prohibit discrimination in all fields including “working conditions, terms of employment, pay and dismissals”, but nothing more is specified. Given the strong participation of the social partners in collective bargaining and the shaping of collective agreements, the Cyprus tripartite system is expected to deal with such matters in the long term future,¹²⁵ although in practice it has yet to happen. In the case of gender the process has just begun, so it is expected that the other five grounds will follow at some point in the future.

As far as legal anti-discrimination in employment is concerned, the issues of equality are likely to feature stronger in the Labour Tribunals. There is, for some time now, a general provision that renders dismissal on grounds such as “race, colour, family condition, religion, political opinion, national origin or social descent” unfair and therefore actionable, under the Law on Unfair Dismissal (Law N.24/1967). Nevertheless, very few cases actually go to court for unfair dismissal as the system is slow, lawyers’ fees can be high and the amount of compensation in damages is not particularly motivating for victims.

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

¹²⁴ File AKI 7/2004.

¹²⁵ See Sparsis, M. (1998) *Tripartism and Industrial Relations (The Cyprus Experience)*, Nicosia, Cyprus.

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category.

Formally with the enactment of the Employment Anti-discrimination laws [Law N.58(I)/2004, s.4(b) and Law N.57(I)/2004, s.5(a)(1)(b)], there is compliance with Article 3(1)(b) of the Directive. Implementation and enhancing a tradition of anti-discrimination is more of a long-term process. Nevertheless, ‘vocational training’ and ‘education’, and in particular university courses may be the first to witness test cases as more educated and trained persons are more likely to be both aware and feel the competitive pressure to address issues of discrimination they face. This is of course speculation as there are a whole lot of other social and economic factors at play that cannot be ignored.

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

The wording of Article 3(1) (d) is repeated verbatim in Cyprus national law [Law N.58 (I)/2004, s.4 (d) and Law N.57 (I)/2004, s.5 (a) (1) (d)]. On 4.11.2005 the Equality Body issued a decision with regard to a term in the standard employment contract used for migrant domestic helpers, which prohibits their involvement in trade unions and has declared the said condition discriminatory and asked for its deletion from the contract (case discussed more detailed above).

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

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

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

Discrimination on the ground of race and ethnic origin in the provision of social protection, including social security and healthcare is prohibited by per Articles 4(a), 4(b) and 4(c) of Law 59(I)/2004.

Law 58(I)/2004 transposing the Employment Directive, Article 3(a), as well as the Law on Persons with Disability (N.127(I)/2000 as amended by N.57(I)/2004) seek to rely on the exception in Article 3(3) of the Framework Directive. However, there are legal instruments which provide for social security and healthcare discrimination beyond the ground of race and ethnic origin. Firstly, the Public Assistance Law N.8/1991 provides for minimum standard for all living persons in Cyprus irrespective of ethnic, racial or national origin. Secondly, Protocol 12 extends the fields of application to all the grounds listed (in the enjoyment of any right granted under national law, against public authorities in the exercise of any power granted by national law, where the public authority has exercised discretionary powers, including both acts or omissions of public authorities). Protocol 12 is enforced by the expanded powers granted to the Ombudsman¹²⁶ which prohibit discrimination for all grounds under the Protocol and covers “social protection, social security and medical care,” without any of the exceptions allowed for above.

¹²⁶ Law N.42(I)/2004, Article 6(2)(e).

The scope of existing laws and provisions all Protocol 12 grounds goes well beyond the race and ethnic origin ground provided for by the Directive and extends to all the fields.

The Equality Body found that the denial of heating allowance to EU citizens amounted to discrimination on the basis of race or ethnic background and of national background under Protocol 12 to the ECHR.¹²⁷ Also, the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin.¹²⁸ The Equality Body also found that the refusal of public assistance to an asylum-seeker because of his nationality amounted to indirect discrimination on the ground of race or ethnic origin in the area of social protection and social welfare.¹²⁹ The refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVS) was also held to be discriminatory.¹³⁰ As far as health is concerned, the Equality Body has ruled that the refusal to issue a health card (which entitles free treatment at hospital) to asylum-seekers due to the fact that they did not have their 'pink slip' (residence permit) was discriminatory on the basis of ethnic origin;¹³¹ as a result, and in compliance with the said decision, the Ministry of Health issued a circular to hospitals to issue health cards to asylum seekers even in the absence of pink slips, where there is an emergency.¹³²

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

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

There is an issue regarding the very term 'social advantage'. The term is translated by the official translation unit of the European Commission in Luxembourg as 'social provisions' and finds its way in the national legislation in this form. However, the term is not referred to in Law 42(I)/2004, but in the Equal Treatment (Racial or Ethnic Origin) Law 59(I)/2004, s.4(c) and the Law concerning Persons with Disabilities (Law 127(I)/ 2000), s.6. The Equality Body's mandate covers all areas within the scope of Article 3 of the Race Directive save for 'social advantage'. In any case, to the extent that 'social advantage' is *state provided*, the Ombudsman (which is also the national Equality Body) is empowered to deal with it, as part of its mandate to investigate allegations for maladministration in the public sector.

National legislation explicitly refers to the category of 'social advantages' but does not provide any definition or list, which makes it even more difficult to monitor. Some groups do have such benefits (pensioners, other vulnerable groups), but given the relative

¹²⁷ Files AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

¹²⁸ Files AKP 75/2005 and AKP 78/2005.

¹²⁹ Files AKI 131/2005 and AKI 8/2005.

¹³⁰ File AKP 54/2004,

¹³¹ The three cases were the following: A Palestinian granted subsidiary protection, whose wife was refused medical care even though she was at the very last stage of her pregnancy because she did not have in her possession the temporary residence permit (File No A/P 1339/05). The second complaint came from an Indian asylum seeker whose wife was also in the last month of her pregnancy (File No A/P 1363/05). The third case involved a Kurdish couple from Syria with two underage children who applied for asylum. The wife was also in her last stage of pregnancy but was refused access to medical care because she did not have a health card (File No A/P 1487/05).

¹³² N. File YY11.23.03, 12 December 2005.

underdevelopment of public utilities and public transport system, this is not a major issue in Cyprus.

There are cases where persons become entitled to a type of benefit as a result of his/her employment status. One example is the case of sheltered workshops described in Article 2.7 of this Report, where persons with disabilities working in these workshops receive higher payment if they are married than if they are single. There are also tax discounts granted to persons who are married and have children which do not apply to single persons. A number of benefits are available to certain¹³³ persons with disabilities, such as the exemption from fees for medical services in public medical institutions. By a decision of the Council of Ministers¹³⁴ a scheme of public assistance was created for the housing of single persons or families having a low income with special criteria for persons with disability. Also, persons with disability are exempted from certain charges concerning telecommunications and telephone services.¹³⁵

Other than the above benefits, which must be seen from the perspective of positive measures, discrimination on the ground of race and ethnic origin in the provision of social advantage is prohibited, as per s.4(c) of Law 59(I)/2004.

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

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

In the field of education a certain number of measures have been adopted, partly as a result of the various international treaties that Cyprus has ratified,¹³⁶ particularly the European Social Charter (Revised)¹³⁷ and other international instruments.¹³⁸ The Second Report of the European Commission on Racism and Intolerance (ECRI) recommends further expansion of extra curricula activities and human rights awareness at schools.¹³⁹

Discrimination on the ground of race and ethnic origin in the provision of education is prohibited, as per s.4 (d) of Law 59(I)/2004.

Children with disabilities, physical and mental, are as a matter of general policy placed in mainstream schools, unless their condition is such that requires that they be placed in segregated specialised schools, such as the school for the blind, or the school for the deaf.. Children with disabilities cannot be denied access to education on the ground that they are unable to learn. Decisions are taken on the basis of the interest of the child; however, many of

¹³³ These are the war disabled, the pupils of the School for the Blind, the pupils of the School for the Deaf, the students of the Centre of Training and Vocational Rehabilitation of Persons with Disability and persons who receive public assistance under the provisions of the Public Assistance Law.

¹³⁴ No. 53.863 of 19.06.2001.

¹³⁵ Regulations 311/2001, 382/2002, 473/2002, 525/2002 and a number of decisions of the Cyprus Telecommunications Authority.

¹³⁶ Framework Convention for the Protection of National Minorities pursuant to Article 25.

¹³⁷ Incorporated in Law 27(III)/2000, Articles 11 and 12 state: to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families; to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant workers.

¹³⁸ e.g. Resolution ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

¹³⁹ "ECRI encourages the Cypriot authorities to continue their extra-curricular initiatives aimed at promoting human rights awareness in schools and, in this framework, to devote particular attention to the fight against racial prejudice, respect for difference and promotion of tolerance. It also encourages the Cypriot authorities to extend education in human rights to the curricula of all school children."

the buildings of primary and secondary education schools are not fully accessible to children who are users of wheelchairs or are of other type of limited mobility, although this problem is gradually improving. At the moment, the new schools are equipped with disabled toilets and ramps for wheelchairs, but no provisions are made for accessibility by blind or deaf children. Gradually, some of the old schools are starting to acquire some basic accessibility features but only for users of wheelchairs (ramps and toilets). There are no plans to acquire facilities for children with other disabilities.

At local level, multicultural education and teacher training for primary and secondary education have been introduced to cope with an increasingly multi-ethnic and multicultural setting.¹⁴⁰ The Second ECRI report recommends that the Cypriot authorities ensure that all teachers are properly trained to teach in a multicultural environment and to react to any manifestations of racism or discriminatory attitudes in schools.”

The need for reform of the whole educational system, away from hellenocentric Christian values and towards multiculturalism, has been stressed in a number of research findings and has been the subject of an important and comprehensive reform proposal from the Commission for Educational Reform. The Commission’s Report emphasizes that, in the light of “the accession of Cyprus to a multi-cultural globalised and democratic European union”, the multi-cultural make up of the Cypriot student population and the prospect for reunification of Cyprus, the introduction of inter-cultural education requires further development.¹⁴¹

The controversy regarding the circular issued by the Ministry of Education of 2 November 2004 requesting all school headmasters to notify the immigration authorities about the foreign children enrolled and the contact details of their parents remains unresolved, as explained at 0.3 above, with the government upholding this regulation against the recommendation of the Equality Body.

Turkish-Cypriot Schooling

On 19.08.2005 the Cyprus Ministry of Education submitted to the Council of Ministers a proposal for the setting up of a Turkish school in Limassol, Cyprus’ second largest city which hosts a fairly large Turkish-speaking community, made of Turkish-Cypriots, Turks, Roma and Kurds. According to the Cyprus Constitution, the Turkish Cypriot community has jurisdiction through the Communal chamber over the educational issues of its community; this provision however ceased to be applied following the constitutional crisis of 1963. As at present, Turkish-speaking children attend the Greek-Cypriot school and particularly the Limassol 18th Elementary School, which has recently¹⁴² hired¹⁴³ two Turkish-Cypriot teachers and has introduced Turkish language classes in order to provide for the needs of the Turkish-speaking

¹⁴⁰ Research on the primary education of the Pontians reveals that a number of programs, albeit at an embryonic stage, have been introduced in primary and secondary in certain areas of Cyprus, particularly in central Nicosia (Faneromeni Schools), at Kato Paphos, Moutallos, Paralimni and Limassol and other areas of high migrant concentration (see Trimikliniotis, 2001). These schools have specific programs for multicultural education, with regular progress reports, however their budget is very limited, their training is not fully developed and planning is rather ad hoc. Multicultural education is not available across the board. For more details on discrimination in education see Trimikliniotis 2004.

¹⁴¹ Report of the Commission for Educational Reform (2004): “Demokratiki kai Anthropini Paedia stin Evrokypriaki Politeia”, p.82, available in summary from at

<http://www.moec.gov.cy/metarithmisi/manifesto.pdf> and in full at

http://www.moec.gov.cy/metarithmisi/ethesi_epitropis.pdf

¹⁴² The two teachers are as of 04.04.2005 working at the 18th Elementary School.

¹⁴³ Controversy arose with regard to the appointment of the Turkish-Cypriot teachers, with the Government claiming that they first approached the union of Turkish Cypriot teachers KTOS and asked them to search for the two teachers to be appointed at the school in Limassol, but since KTOS did not respond, they had to advertise for these positions in the Turkish-Cypriot press. By contract, KTOS claimed that although they were indeed approached initially and asked to extend their co-operation over this, subsequently the Government advertised in the press without consulting with them.

children. However, no curriculum reform has as yet taken place to correspond to the needs and characteristics of these children. According to the proposal of the Ministry of Education, the school will be run by a five-member Board consisting of two representatives of the parents' association, two representatives of the teaching staff and one representative of the Cyprus Government. The proposal stated that the school was to come into operation in September 2005, however, this has not happened as yet.

According to a circular released by the Cyprus Ministry of Education on 22.08.2005 there will be four teachers appointed to the Turkish school, two of whom will initially be the ones already teaching at the 18th Elementary School. There will be 107 teaching periods and thirty-three periods of non-teaching time which will be devoted to contacts with parents, programming etc. Free meals will continue to be provided to the pupils of Turkish-Cypriot origin.¹⁴⁴ Transport will be offered to those pupils whose residence is far from the new school, unless these pupils are already attending the 18th Elementary School, which effectively implies that they have already made their own arrangements for transport. There are no details released on the curriculum to be taught in the new school.

In the end, the Cyprus Government decided after all not to open a Turkish school in Lemesos for the time being.¹⁴⁵ The reason offered was that none of the families of the Turkish-speaking pupils of Lemesos wished to have their children moved to a Turkish school. The 18th Elementary school has, since the school year 2004-2005, hired two Turkish Cypriot teachers who teach the Turkish speaking pupils "their culture, their civilisation, their religion and their literature in their mother tongue".¹⁴⁶ No special provision is made for the Roma pupils attending the said school, who are treated by the authorities as "Turkish-speaking" and who are assumed to have Turkish as their mother tongue; although they all speak Turkish, they also speak Kurbetcha, a Romany dialect.¹⁴⁷ Romany language is not taught at school, nor is the Roma history or cultural matters. There is no differentiation between Roma and other Turkish-speaking pupils as far as the public records are concerned.

The decision not to proceed with the opening of the Turkish school has raised objections amongst Turkish Cypriot teachers who have filed a recourse against the Cyprus government at the Supreme Court.

In another development, the Cyprus Government decided, as of the next academic year, not to pay the full tuition fees for new Turkish Cypriot students enrolled at the English School, breaking with practice ever since the checkpoints opened in April 2003.¹⁴⁸

¹⁴⁴ The term is *probably* meant to include Roma children, who are considered to belong to the Turkish-Cypriot community.

¹⁴⁵ the Ministry of Education has produced lists for the school year 2004-2005 showing the number per school of Greek-Cypriot pupils, Turkish-speaking pupils and pupils of non-Cypriot origin.

¹⁴⁶ Declaration of the Diplomatic office of the President of the Republic dated 27.09.2005, received under cover of a letter from the Ministry of Education to the Cyprus NFP dated 15.11.2005.

¹⁴⁷ A letter from the Ministry of Education to the Cyprus NFP dated 15.11.2005 states: "The term Roma is generally acceptable as reference to the special group but may not be the most appropriate one for the gipsies of Cyprus, as far as their language, cultural identity and special tradition are concerned...With regard to the language, Turkish classes are offered to them, which is their mother tongue, as well as support Greek classes, in order to improve their standard." This is in line with the Cyprus Constitution which does not recognise any 'minorities', but only 'religious groups' which must necessarily belong to one of the two 'communities'.

¹⁴⁸ Tuition fees cost at the prestigious semi-private semi-public English school cost somewhere in the area of CY£3,000 (Euro 5.170 approximately) per year per student, whilst the state will now only offer a total of £20,000 (Euro 34.500 approximately) as assistance each year, a mere fraction of what it was offering previously. This means the fifteen new Turkish Cypriot students expected at the forthcoming academic year will have to cover most of their expenses whilst, sensibly, students currently enrolled will continue to have all tuition fees paid until they graduate (see Hazou, E. "Turkish Cypriot students to pay full fees at English School" in *the Cyprus Mail*, 26.06.2005).

Religious Discrimination and Religious symbols in schools

Despite the Equality Body's decision on the complaint for religious discrimination against a Jehova Witness pupil, outlined at 0.3 above,¹⁴⁹ the issue of religious discrimination at schools remains unresolved. Although at secondary education level a pupil is entitled to be exempted from the religious instruction class, the Ministry of Education does not plan to make this subject optional or to reform its contents. The term 'religious instruction' is accurate in its description of the syllabus, as this class is not about religious education but about Christian teaching. Based on an opinion of the Attorney General, the Ministry of Education states that it has no obligation to, and therefore will not, provide religion classes for "other" religious convictions.¹⁵⁰ The Greek-orthodox church and the teachers of theology have reacted negatively to a proposal, submitted by an education inspector within the framework of the public dialogue for the educational reform, to reduce the number of religious teaching hours in secondary education. Their objections are based on their conviction that it is primarily through religious education that pupils will acquire consciousness of their "national-religious identity" and will come to "understand the transcendental truths of our Faith".¹⁵¹

No measures are taken to address the issue of religious symbols at schools. The Christian Orthodox religion is dominantly featured in classrooms, through saints' icons placed in the classrooms and sometimes even whole churches erected inside the schoolyards. The only state university in Cyprus has its own church inside the courtyard of the University campus. It is doubtful whether any pupil or student attempted to wear in school any religious symbols other than Greek Orthodox ones, so the issue has not yet been raised in public discourse.

The new regulations for operation of secondary education schools, recently approved by the House of Parliament as an amendment to the old law on the operation of the Greek-Cypriot communal schools, provide that students will no longer be obliged to attend religious ceremonies during school periods if this is so requested by the parents of the student or by the student himself / herself provided he / she was at least sixteen years of age upon commencement of the school year.¹⁵²

Roma Education Issues

In September 2005, Cypriot media covered a series of events which took place in a remote Paphos village. The parents' association of the elementary school of Polis Chrysochoos in Paphos had closed down the school, demanding from the Cyprus Ministry of Education to suspend attendance to the school of Roma pupils until they receive confirmation that none of them suffers from Hepatitis, following some Hepatitis incidents in a nearby village three months earlier.¹⁵³ Even though the hepatitis cases were treated and the doctors gave assurances that there was no danger for the pupils of the school, the parents were not convinced. Out of a total of 341 pupils attending this school, 120 are non-Cypriots and eighteen are Roma. The parents association, protesting at the large number of Roma in this school, demanded that the Roma pupils be dispersed also to other schools in the region. Overall, the authorities expressed disagreement over the parents' action and gave assurances over the health and sanitary safety of the school, but did nothing to prevent the physical closure of the school by the parents or to support and protect the Roma pupils from this

¹⁴⁹ Report of the Cyprus Anti-discrimination body no. 31/2005, dated 2 November 2005

¹⁵⁰ Letter from the Cyprus Ministry of Education to the national expert dated 15.11.2005.

¹⁵¹ Psara, G. (2006) "Antidra kai I ekklesia gia ta thriskeftika" in *Phileleftheros*, 11.01.2006.

¹⁵² This development was criticized by the Pancyprian Association of Greek Theologians who argue that this measure will undermine the foundations of the Greek orthodox tradition which has for so many years provided the students with spiritual support: Psaria, G. (2005) "Epi valletai I prostasia tou thesmou tou ekklesiasmou" in *Politis* (21.09.2005).

¹⁵³ Nanos, C. (2005): "Ekleisan to sxoleio gia na fygoun ta tsigganopoula" in *Politis* (23.09.2005); Nanos, C. (2005): "Se eksetaseis olio oi athigganoi" in *Politis* (24.09.2005); Nanos, C. (2005): "Xoris tsigganopoula to sxoleio" in *Politis* (26.09.2005); Nanos, C. (2005): "Ygii ta tsigganopoula" in *Politis* (29.09.2005).

outburst. Whilst the authorities called on the parents to terminate the closure of the school and to enter into a dialogue on how to solve the problem, they conformed to the parents' demand to submit the Roma pupils, as well as the residents of a Roma settlement in the neighbouring village of Makounda to blood tests to establish whether any one suffers from Hepatitis. In an effort to appease the parents, the authorities relocated a seven-member Roma family some of whose members had suffered from Hepatitis but were successfully treated, to another village.

On 26.09.2005 the parents agreed to allow the school to open again but only on the condition that the Roma pupils would not attend the school. According to media reports, the parents physically prevented the opening of the school. This act may well constitute a criminal 'offence against the maintenance of any public service' under article 66(a) of the Criminal Code (CAP. 154). However prosecution can only occur if specifically approved by the Attorney General under article 69 of CAP. 154. Furthermore, the prosecuting authorities could use their powers under article 70 of the Criminal Code to disperse unlawful assemblies; given that the aim of the 'assembly' was to collectively prevent children on racial grounds, this motive would presumably aggravate the offence. Moreover, article 13 of Law 59(I)/2004 (transposing the Race Directive), provides that discrimination on the ground of race or ethnic origin in the field of education is a criminal offence carrying a penalty of 4,000 pounds (about 6,900 euro) or six months imprisonment or both.

The Minister of Education succumbed to this request. On 28.09.2005 the blood tests showed that none of the Roma pupils suffered from Hepatitis and were thus allowed to return to their school.

General Social and Educational situation of Roma in Cyprus

The general picture of the educational situation of the Roma in Cyprus has not been a positive one since the arrival of the Roma from the Turkish-controlled northern territories in 1999-2001. The living conditions of the Roma in Cyprus residing in the southern part of the island are those of poverty, unemployment or semi-employment, facing wide-spread prejudice, racial discrimination and social exclusion. The authorities do not acknowledge the seriousness of the problem: the recent governmental Report on Social Exclusion does not even refer to the Roma and the Turkish-Cypriots as a group at risk of social exclusion.¹⁵⁴ The Equality Body's Office examined a study conducted by the Limassol Regional Welfare Office concerning the social exclusion of Turkish Cypriots in Limassol, seventy-five percent of whom are Roma, and has raised issues about low educational attainment of this specific group and a lack of interest by the parents over the educational opportunities of their children.¹⁵⁵ The same study establishes that the severe economic difficulties faced by these families, the squalid living conditions, low parental educational level and the wide spread prejudice against this group, generates a negative attitude from the Turkish Cypriots and Roma toward the educational system. The eventual outcome is the quick exit from the classroom seeking to enter the labour market, either as a beggar or working in unskilled manual labour. Furthermore, even if a child goes to Greek or English-speaking school, the linguistic barriers arising from the lack of understanding of the teaching material and instructions may and usually do drive the pupil out of education. In one research project, Turkish Cypriots and Roma parents raised doubts about whether it is worth sending their children to school at all, as the children do not understand a word of what is being said in the classroom and are subject to abuse.¹⁵⁶ Another two studies, one on the education of Turkish Speaking pupils in Cyprus¹⁵⁷ and another on Roma primary

¹⁵⁴ National Action plan for Social Exclusion 2004-2006, Social Welfare Office.

¹⁵⁵ Interview with the Ombudsman's Office Human Rights Officer, Mr. Aristos Tsiartas 16.6.04.

¹⁵⁶ See Trimikliniotis (2003).

¹⁵⁷ Spyrou, (2004).

education by the Cyprus Focal Point against Racism and Xenophobia (RAXEN)¹⁵⁸ have similar findings as to the education problems of the Roma in Lemesos.

It is apparent that the generally poor living conditions of the Roma impacts on the education of their children. One study conducted refers to the inadequacy of light, the lack of space, desks, bookshelves or tables and chairs in their homes,¹⁵⁹ with references to a relevant study conducted by the Social welfare Office of Limassol.¹⁶⁰

A study of the primary public education of the Roma in Cyprus, conducted in 2004 found poor showings on the issues of enrolment, school attendance, educational performance and dropout rates (Trimikliniotis and Demetriou, 2006). However, there is some improvement with regard to attendance to the primary school as a result of certain measures adopted.¹⁶¹ Enrolment and attendance for secondary school children was particularly bad, as out of at least fifteen Roma school children who are obliged to attend secondary school, only two pupils have enrolled (Trimikliniotis and Demetriou, 2006). No official study exists to examine the educational performance of various ethnic and social groups; as such there are no figures to report. However, there is evidence that Roma children generally fare far behind all other children. Many of them leave school 'functionally illiterate'. Studies and appraisals show that the current curriculum is such that Roma children are not likely to succeed; far from it, as one study shows.¹⁶² Another study conducted in 2003 shows that Roma parents in Limassol see no reason to send their children to school as they understand nothing; they get into fights and are excluded.¹⁶³ There has been some improvement in the school years 2003-2004, 2004-2005 and as far as attendance at primary school is concerned. However, there is a serious problem with the high level of drop outs as well as the transition between the primary and secondary education.

The official policy of the Ministry of Education and Culture is the adoption of measures to integrate pupils of all cultural backgrounds and the desegregation of pupils from ethnic or minority origin, to avoid ghetto-based schools. This policy is followed with particular persistence by the Ministry, as illustrated by the institution of educational districts in Paphos.¹⁶⁴ Research shows that many Greek-Cypriot parents try to transfer their children from the school to avoid schools attended by migrants and Roma pupils; many Greek-Cypriot children do in fact show racial prejudice towards the Roma and migrant children.¹⁶⁵

It is apparent that 'family and socioeconomic problems' penetrate school life with a vengeance. Studies show there is segregation between schools, in part reflecting the wealth or

¹⁵⁸ See Cyprus Labour Institute, 2004.

¹⁵⁹ Spyrou (2004).

¹⁶⁰ The study supports that "some Turkish-speaking parents explained that they do not send their children to school because they do not have money to buy clothes and to provide them with food, and because they lack water in their homes to wash and clean them" (see Spyrou, S. 2004).

¹⁶¹ These include school meals and a small subsidy paid to the parents to allow them to buy school uniforms and material.

¹⁶² "...most of the children are predestined for failure in school. As one teacher explained, the main problems are "the weakness of the system to accept them, to help them rather, to offer them the alternative solution, so that they are not simply viewers, simply listeners in the classroom, but to have substantial participation" (Spyrou, 2004).

¹⁶³ See chapter 'Voices of the Subaltern in Cyprus: A Study of Racial Exclusion' in Trimikliniotis, N. (2006).

¹⁶⁴ In April 2003 the Council of Ministers approved the school districts on the basis of a balanced distribution of pupils and the avoidance of concentration of pupils of Pontian origin in one school, with the aim of social integration of non Greek-speaking pupils into the wider educational system. The Commissioner investigated the issue as to whether has been adhered to or not in the case of the school of "Panagia Theoskepasti" in Paphos [See Cyprus Labour Institute (2004) *National Annual Report 2004 – Cyprus, RAXEN*].

¹⁶⁵ See Trimikliniotis (2003; 2004b); Spyrou, (2004). Some recent studies by graduates focusing on participant observation and interviews at the same school has an abundance of examples that illustrate the pupil relations between Greek-Cypriots and Roma (see Keskenidou, A. and Tsakiri, M. (2003); also Agathokleous, G. (2004) *Politismikes Eterotites ton Tsiganon Mathiton stin Lemeso: Ekpedefitika Provlimata kai Anages*, [Cultural Differences of Gipsy Children in Limassol: Educational Problems and Needs], Dissertation for Graduate Degree, University of Cyprus.

poverty of the surrounding neighbourhood with certain schools becoming the schools of the poor, the migrants, the Turkish-Cypriots and the Roma.¹⁶⁶

In spite of the fact that Cyprus has ratified the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) since 1966¹⁶⁷, which obliges states to “prevent, prohibit and eradicate all practices of racial segregation”, as expressed in General Comment 19 of ICERD, there is still segregation of the Roma in the Republic controlled south. In part this appears to be an unintended consequence of policy, and in part reflecting discriminatory attitudes, the ‘cultural capital’ and socio-economic and family conditions of the Roma in Cyprus.

The Roma children are treated as children with special language requirements, in spite of the fact international conventions on human rights as well as on specific rights in the fields of education.¹⁶⁸ Over the past years the Cyprus Republic has been ratified treaties in the field of education and thus adopted certain measures as a result;¹⁶⁹ also it adopted the European Social Charter (Revised)¹⁷⁰ and other international instruments.¹⁷¹ However, apart from the general provisions for the right to education and general ‘humanistic’ education, there is generally little connection in policy-making with the fact that Roma are Cypriot citizens with rights under anti-discrimination/ human rights law. At local level, some elements of multicultural education and teacher training for primary and secondary education have been introduced to cope with an increasingly multi-ethnic and multicultural setting, but this is at an early stage.¹⁷²

As it is not known what the mother-tongue of the Cypriot Roma is (i.e. whether it is Kurbetcha or Turkish), we are unable to state with certainty whether the discrimination in education they may suffer is based on their mother tongue (which may not Turkish in many instances) is indirect or whether it is direct ethnic discrimination under the cope of Race Directive.

As regards segregation, we may presume that it can be classified as a kind of discrimination under the general provision prohibiting discrimination as per s.4 (d) of Law 59(I)/2004. This is a verbatim the wording of the directive.

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

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

Discrimination on the ground of race and ethnic origin for access to and supply of goods and services available to the public is prohibited, as per Section 4(e) of Law 59(I)/2004. In

¹⁶⁶ See Trimikliniotis (2004a).

¹⁶⁷ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of March 7 1966, was ratified and incorporated as Law 12/67, as amended by Laws 11/92, 6(III)/95 and 28(III)/99.

¹⁶⁸ The Convention against Discrimination in Education (ratified by Law 18/1970).

¹⁶⁹ Framework Convention for the Protection of National Minorities pursuant to Article 25.

¹⁷⁰ Incorporated in Law 27(III)/2000, Articles 11 and 12 state: to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families; to promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant workers.

¹⁷¹ E.g. Resolution ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

¹⁷² Multicultural education is not available across the board. For more details on discrimination in education see Trimikliniotis (2004a).

addition, the law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, provides that any person who supplies goods and services by way of profession and refuses such goods or services to any person solely due to his/her racial or ethnic origin or religion is guilty of a criminal offence.¹⁷³

Neither of the two above provisions distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association) and it can only be assumed that they apply to both.

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

To which aspects of housing does the law apply? Are there any exceptions?

Discrimination on the ground of race and ethnic origin in housing is prohibited by Section 4 (1)(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin, 59(I)/2004. This section describes the scope of application of the law and expressly refers to “the access to goods and services available to the public and the supply thereof, including housing” is one of the fields of application. Section 4(2) of the same law sets out the exception as provided for in the Directive, i.e. that the law does not apply to differential treatment due to nationality and does not extend to conditions of entry and stay of third country nationals and stateless persons, nor to the treatment arising under the legal status of such persons.

However, given the fact that the powers of the Ombudsman (acting as the national Equality Body) extend well beyond the five grounds of the two directives and cover, inter alia, rights arising under Protocol 12, it is possible for the Equality Body to issue a decision on discrimination in housing on all grounds covered by Protocol 12 of the ECHR, including nationality. However, although generally speaking the Equality Body’s decisions may be relied upon in Court in order to obtain compensation, it may be that discrimination in housing on the ground of nationality or on any of the other grounds beyond the two directives, may fall outside the competencies of the Courts.

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

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

Cyprus has enacted four laws which entered into force on the date of its accession to the EU (01.05.2005): the law amending a previously enacted law on disability,¹⁷⁴ the law transposing the employment directive,¹⁷⁵ the law transposing the race directive¹⁷⁶ and the law appointing

¹⁷³ Section 2A(4) of Law No. 11 of 1992.

¹⁷⁴ Law on Persons with Disabilities No. 57(I)2004 (31.03.2004).

¹⁷⁵ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

¹⁷⁶ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004).

the Ombudsman as the Equality Body empowered to investigate complaints of discrimination. Interestingly enough, although the first three laws contain most of the exceptions provided by the two directives, the latter law¹⁷⁷ does not contain any exceptions whatsoever. In this law, the Equality Body is empowered to deal with complaints of discrimination based on any law, including this particular law, which basically opens up the possibility for decisions on the basis of anti-discrimination provisions without exceptions, drawing on other instruments, such as Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and constitutional provisions.

Copying the wording of both Article 4 of the race directive 2000/43 as well as Article 4(1) of the employment Directive 2000/78, Section 5(2) of Law No. 58(1)¹⁷⁸ transposing the employment directive allows for differential treatment based on racial or ethnic origin, religion, belief, age or sexual orientation when the nature of the particular occupational activities or the context within which these are carried out is such that a specific characteristic constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. Along similar lines, the Law on Persons with Disabilities (Amendment) of 2004 provides¹⁷⁹ that this law does not apply, inter alia, to those activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitute a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. There is no authoritative explanatory material on the subject.

The Law on Public Service¹⁸⁰ which used to provide that "only Cypriot citizens shall be appointed as civil servants" has been amended by replacing the term "Cypriot" with the term "European". However, a stringent Greek language requirement has been introduced, rendering it very difficult, if not impossible, for non-native Greek speakers to become members of the civil service. The requirement provides that all non-university graduates and all graduates from non-Greek speaking universities must undergo a Greek proficiency test the standard of which is very high. Furthermore, although Turkish is an official language of the Republic, there is no provision for native Turkish-speakers accessing the civil service on the basis of their own language: they also have to undergo the Greek proficiency test.¹⁸¹

Also, there are constitutional provisions that set a quota system of participation by the two communities in the public sphere: positions in the army must be filled at 60% by Greek-Cypriots and 40% by Turkish Cypriots,¹⁸² in the police the ratio is also 60-40;¹⁸³ in the public service the ratio is 70-30;¹⁸⁴ in the House of Representatives the ratio is 70-30¹⁸⁵; in the Constitutional Court one judge must be Greek-Cypriot and the other Turkish-Cypriot, presided over by a third 'neutral'¹⁸⁶ judge; and the High Court must consist of two Greek-Cypriots, one Turkish-Cypriot and one presiding neutral judge who has two votes¹⁸⁷. Further discussion on this issue is provided in the 'Overview', in section 9 herein below.

¹⁷⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004).

¹⁷⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

¹⁷⁹ Law on Persons with Disabilities No. 57(I)2004 (31.03.2004), Section 4(1), amending Section 3A(b) of the basic law.

¹⁸⁰ Public Service Law 1/90.

¹⁸¹ Article 123 of the Cyprus Constitution, which provides that 30% of the public service positions must be given to Turkish-Cypriots, has been defunct since 1963.

¹⁸² Article 129 of the Constitution.

¹⁸³ Article 130 of the Constitution.

¹⁸⁴ Article 123.1 of the Constitution.

¹⁸⁵ Article 62.2 of the Constitution.

¹⁸⁶ Neutral judge is defined in Article 133.3 of the Constitution as not a citizen of the Republic or Greece or Turkey or UK.

¹⁸⁷ Article 153.1(1) of the Constitution.

4.2 Employers with an ethos based on religion or belief

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

Copying verbatim part of Article 4(2) of the employment Directive 78/2000, Article 7 of Law No. 58(1)¹⁸⁸ provides that in the case of occupational activities of churches or other public or private organizations 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 context of these activities, religion or belief are a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.

The Cyprus Constitution under Article 110 provides for complete autonomy of the established religious organisations/churches of the two Cypriot communities, the Christian Orthodox church for the Greeks and the Vakf for the Muslim Turks. Under Article 110.1, the "Autocephalous Greek-Orthodox Church of Cyprus" has "the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right". Similarly, under Article 110.2 "the institution of Vakf and the Principles and Laws of, and relating to, Vakfs are recognised by this constitution".¹⁸⁹ From the above Article it is apparent that the extent of the autonomy and right to self-regulation granted to the Church under the Constitution is wider than that allowed by Article 7 of Law 58(I)/2004 (transposing Article 4(2) of Directive 2000/78/EC). It can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as it transposes an EU Directive. There are ECJ decisions in support of this position but at the same time, a bill is already under discussion in Parliament, which is likely to become law within a matter of months, amending the Constitution to the effect that EU Directives and Regulations will prevail over domestic legislation and the Constitution.

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

There is no case law in Cyprus based on this provision. As indicated above, the anti-discrimination legislation was only recently enacted and has not been widely disseminated so as for interested parties to act on it. The autonomy of religious organisations may be subject to compatibility with the new anti-discrimination laws, however, this is part of the wider constitutional questions that go the heart of the Cyprus problem as explained in 4.1 above. In practice, organisations with an ethos based on religion, such as the Bishoprics, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the fields owned by the Bishoprics.¹⁹⁰

4.3 Armed forces and other specific occupations

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

The Law regarding persons with Disabilities, and hence the anti-discrimination provisions therein contained, do not apply to the armed forces, to the extent that the nature of the

¹⁸⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

¹⁸⁹ For more details see Loizou 2000: 272-273.

¹⁹⁰ Interview with Petros Lazarou, secretary of the Morphou Bishopric, 16.01.2005.

occupation is such that it requires special skills which cannot be exercised by persons with disabilities.¹⁹¹

Also, Law 58(I)/2004¹⁹² transposing the employment Directive 78/2004 provides that the anti-discrimination provisions¹⁹³ of this law in relation to age shall not apply to the armed forces, to the extent to which the fixing of an age limit is justified by the nature and the duties of the occupation.

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

There are no express provisions or exceptions relating to employment in the police, prison or emergency services.

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).

a) How does national law treat nationality discrimination?

The most important provision relating to nationality discrimination is to be found in Article 1 of Protocol No. 12 to the Convention for the protection of Human Rights and Fundamental Freedoms which provides for freedom from discrimination on the grounds of, inter alia, national or social origin, association with a national minority birth or other status. This Protocol was embodied into national legislation on 19.04.2002 as Law 13(III)/2002.

A similar provision is also to be found in the law appointing the Ombudsman as the specialised body¹⁹⁴ which bestows the Ombudsman with the task and the duty to promote equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin. Protocol 12 refers to principles that have a general application beyond public law. The Equality Body who is empowered to implement Protocol 12 is obliged to protect from discrimination on the grounds provided by public as well as by private bodies. The Equality body of Cyprus has rejected a complaint claiming that there is discrimination on the ground of gender and nationality (and indirectly of ethnic or racial origin) for descendants of women of Cypriot origin born between the 16th august 1960 until the 11th June 1999. The complaint alleged that discrimination is ongoing as the legal amendment N. 65(I)/99 expressly provided that the granting of citizenship/nationality as set out under section 109(1) and (2) for reasons of birth or origin shall not apply to those born abroad during this period if their mother was, or was entitled, to nationality of the Republic. Although the Report of the Equality body recognises that this provision is in violation of the laws against discrimination, it paradoxically chose not to intervene on the matter considering that on balance the new law constitutes an improvement.

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

¹⁹¹ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(1)(a) of the basic law.

¹⁹² Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).

¹⁹³ To be found in Section 6 of the same law, which prohibits direct and indirect discrimination, harassment and instruction for discrimination on the grounds of religion or belief, age, sexual orientation, racial or ethnic origin in the areas of terms of access to employment, to vocational training, working conditions and membership to organizations.

¹⁹⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 3(1)(b).

Law 57(I)/2004 on persons with disabilities does not apply to differential treatment due to nationality and does not affect provisions and requirements relating to the entry and stay of third country nationals and stateless persons in Cyprus or the treatment arising from the legal status of such persons.¹⁹⁵ Identical provisions are also to be found in Law No.59(I)/2004¹⁹⁶ transposing the employment Directive 78/2000 and in Law 59(I)/2004¹⁹⁷ transposing the race Directive 43/2000. When viewed independently, the reference to differential treatment due to nationality may appear to contradict the main prohibition of race discrimination. However, the fact that this reference is part of the same sentence with the reference to the conditions of entry and stay of third country nationals and stateless persons, may lead to the interpretation that differential treatment due to nationality is permitted *only* in relation to the conditions of entry and stay of third country nationals.

➔ 4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

The payment of work-related family benefits by employers is not expressly regulated by law in either the public or the private sector. In order to determine the legality of any provision or non-provision of work-related benefits, recourse must be made to the general anti-discrimination principles contained in the framework legislation. ‘Family condition’ is included in the prohibited grounds of discrimination in Article 28 of the Constitution, the scope of which is rather limited and cannot be said to extend to employment in the private sector. Apart from those sectors in which collective agreements are in force, all other benefits provided by employers must be considered as part of the employment contract, the conditions of which may legitimately vary from employee to employee. In practice, both in the private as well as in the public sector, free or subsidised medical care schemes are commonly made available to employees’ spouses. This may result in unfavourable treatment of the unmarried employees; furthermore the granting of benefits to married couples only, amounts to indirect discrimination on the grounds of sexual orientation, given that same sex couples are unable to marry in Cyprus.¹⁹⁸

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) regulations of 1987 to 1994 sets the family condition of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base. A decision of the Equality Body regarding this provision found that the differential treatment of unmarried

¹⁹⁵ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(3) of the basic law.

¹⁹⁶ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(1).

¹⁹⁷ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31.3.2004), Section 4(2).

¹⁹⁸ The state is under an obligation to recognise marriages concluded legally in other countries; therefore when a man, who is lawfully married to four wives in accordance with the laws of his country of origin, comes to Cyprus, the state is obligated to recognise all his wives, even though by Cyprus law this would be bigamy. From this, one may perhaps conclude that the state is equally obligated to recognise a homosexual couple lawfully married in accordance with the laws of another country, although no such express provision exists yet in the Cypriot legal system.

employees vis-à-vis married employees without children amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation, in other words it amounts to discrimination on the ground of belief and/or sexual orientation. Thus the Equality asked for this regulation to be revised.¹⁹⁹

Law No. 59(I)/2004 transposing the race Directive 43/2000 is stated to apply inter alia in the areas of “social protection, health care, social provision...[and] access to goods and services available to the public”²⁰⁰. However, Law No. 58(I)/2004 transposing the employment Directive 43/2000 is expressly stated not to apply to any type of provisions paid by public provision schemes or schemes similar to those, including public schemes of social insurance or social protection, except professional social insurance schemes. An exception to the exception is provided in the same provision, according to which differential treatment in any of the mentioned areas on the ground of racial or ethnic origin is not covered by the exception and presumably constitutes unlawful discrimination.²⁰¹ The same law also provides that the fixing of age limits as far as pensions or disability benefits are concerned shall not constitute discrimination provided it does not result in discrimination on the ground of sex.²⁰²

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

Common law marriage is not recognised in Cyprus so where benefits are available to married employees, these would necessarily apply to couples married in accordance with the law. From this perspective, same-sex and opposite sex unmarried couples are not treated differently by employers, although it should be added that homosexuality, only recently decriminalised in Cyprus²⁰³, continues to be a taboo subject.

Same sex marriages are not allowed in Cyprus and none of the benefits applicable to opposite sex married couples currently apply to same sex couples.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

Law 57(I)/2004 on persons with disabilities is stated not to affect any measures for, inter alia, the protection of “health and the rights and freedoms of others”²⁰⁴. The same law further provides that the principle of equal treatment does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.²⁰⁵

¹⁹⁹ Report of the Equality Body No. A.K.I 11/2004.

²⁰⁰ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 4(1).

²⁰¹ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(3)(a).

²⁰² Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(3).

²⁰³ Following the ECtHR decision against the government in *Alexandros Modinos v. The Republic of Cyprus*, No. 15070/89(1993) ECtHR 19, 22.4.1993.

²⁰⁴ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(2) of the basic law.

²⁰⁵ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(2) of the basic law.

Law 58(I)/2004 transposing the employment Directive 78/2000 is also stated not to affect measures provided by national legislation necessary for, inter alia, the “protection of health and the rights and freedoms of others”, unless the differential treatment is due to a person’s racial or ethnic origin, in which case it presumably constitutes unlawful discrimination.²⁰⁶

No exceptions are allowed relating to religion or other grounds where issues of dress or personal appearance are concerned. It should be noted, however, that for the moment there are no such issues or debates in Cyprus, as there are hardly any ethnic communities using symbols of religion or culture.²⁰⁷ The vast majority of Muslims of Cyprus, which are basically the Turkish-Cypriots, the Roma, migrant workers and asylum seekers from the Middle East are either secular or simply not using symbols in their appearance.

4.7 Exceptions related to discrimination on the ground of age

➔ 4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?

Law 58(I)/2004 transposing the employment Directive 78/2000 copies verbatim the whole provision in Article 6²⁰⁸ of the said Directive and it may thus be possible that the law does allow for direct discrimination on the ground of age. However, the law that empowers the Equality Body as the specialised body²⁰⁹ does not contain these exceptions. No case has been decided on the subject, neither in court, nor by the Equality Body. The ECJ case C-144/04, *Mangold* is binding authority on Cyprus’ courts and can be relied upon in the future.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Again, Law 58(I)/2004 transposing the employment Directive 78/2000 copies the whole provision in Article 3²¹⁰ of the said Directive, which sets out the scope of the Directive. No differences of treatment based on age are allowed, other than the ones listed in Article 8 of the law which, as stated in the immediately preceding paragraph, is an exact copy of the provisions in Article 6 of the employment Directive.²¹¹

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

²⁰⁶ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(3)(b).

²⁰⁷ The sharp rise in asylum seekers has recently brought Cyprus face to face with the phenomenon of women wearing headscarves being unable to find employment: UNHCR report on the Situation of Refugees in Cyprus from a Refugee Perspective, 2004.

²⁰⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8.

²⁰⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 3(1)(b).

²¹⁰ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 4.

²¹¹ This provision, as well as the whole body of anti-discrimination law which came into force on 1.5.2004 was rushed through Parliament in order to meet the deadline of accession. No discussions were recorded in relation to any of these laws.

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

Law 58(I)/2004 transposing the employment Directive 78/2000 provides that differential treatment in the form of special conditions for access to employment and vocational training, employment and occupation including dismissal and remuneration conditions, for young and old persons and for working persons with dependents, so as to promote their vocational integration or ensure their protection, shall not constitute discrimination. However, no such measures or special conditions are actually provided by the law.

There is some evidence that in practice older workers face discrimination when it comes to new appointments, with many employers specifying in job advertisement upper age limit of new recruits.²¹² Furthermore, there is evidence that employers are very often reluctant even to interview applicants who are older unemployed workers and it would not be surprising to find that age discrimination is practiced across the board, as until recently it was not considered to be discriminatory and for the time being there is no monitoring mechanism in place.

Since the enactment of the new laws, a number age discrimination complaints were referred to the Equality Body; at least three concerned an age limit fixed with regard to access to employment to governmental positions. When the Equality Body found in favour of the complainant in the first case,²¹³ the second age limit provision was revoked from the prerequisites before this complaint was processed by the Equality Body. However, by the time that the age limit was revoked, the deadline for submitting applications for employment was already closed. The Equality Body pointed out that the revocation of the age limit provision would be given more substance if the same employment position was re-advertised without the age limit condition, to enable persons aged over the previously imposed age limit to apply. This recommendation was complied with and the position was re-advertised.

A number of cases have decided by the Equality Body which prohibits the setting of an upper age limit for the recruitment of persons in the Civil Service and the cooperative bank. Presumably the same applies in the private domain, but no decision has been taken as yet.

→ 4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

The only exceptions permitting minimum or maximum age requirements in Cyprus law are the ones listed in Article 8 of Law 58(I)/2004 which, as stated above, are a direct copy of the provisions in Article 6 of the employment Directive. In addition thereto, the Cyprus law provides an exception relating to the armed forces, whereby the principle of non-discrimination on the ground of age is stated to be inapplicable in the armed forces to the extent that the fixing of an age limit is justified by the nature and the duties of the work.²¹⁴ The law does not specify the age limit applicable in this case, which is determined by the service schemes of the armed forces.

²¹² The only research undertaken is a paper by House 1992 which discusses the problems of older workers in the labour force generally.

²¹³ The case involved a post for the Public Education Commission, which had a statutory upper age limit, whilst an equivalent post in the Public Commission did not contain such a restriction (File AKI 25/2004).

²¹⁴ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

Civil/public servants and public employees receive two types of pensions, one from the Social Insurance Scheme, which is based on the social insurance contributions they have made during their working lives and an additional one called State Pension, which is dependent on contributions. The Social Insurance pension begins at 63, which is dependent on contributions,²¹⁵ whilst the State pension with their retirement at the age of retirement or under the early retirement scheme. As soon as the Social Insurance pension is activated, the State pension is reduced by an equivalent amount.

For full pension civil/public servants²¹⁶ have to complete 32 and 1/3 years of service, but there is provision early retirement at 55 years at a reduced pension. Civil/Public servants and employees have the option to retired lump sum and reduced pension, or receive a higher pension.²¹⁷ The State pension for Civil/Public servants is not contributory, but all state funded.

Up to 2005, for civil servants the retirement age was 60, but it was extended to 63 following an agreement between the Government and the civil/public service trade union, PASYDY, there was an amendment in the in the law on Pensions²¹⁸ and on Civil / Public Service²¹⁹ which allowed for gradual extension of mandatory retirement age to 63 for all those already in service. However, for the new recruits the 63 age will be compulsory.

Pension schemes of semi-governmental and teachers in public education schools used the civil service model, but they are contributory pension schemes.

Late retirement is not allowed for civil servants, public employees, semi-governmental organisations employees and employees of public education institutions are prohibited by law.

b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

There is no fixed 'normal age' for such arrangements but this depends on each scheme.

²¹⁵ The Social Insurance pension consist of the 'basic pension', which is available to all (roughly 200 Cyprus pounds or about 345 euro) plus the amount that derives from the 'proportional scheme', which is depends on national insurance contributions.

²¹⁶ The actual amount for the full pension depends on scales etc.

²¹⁷ This applies to all those who are part of the Pension scheme.

²¹⁸ Ο περί Συντάξεων (Τροποποιητικός) Νόμος Ν. 69(Ι)/2005.

²¹⁹ Ο περί Δημόσιας Υπηρεσίας (Τροποποιητικός) Νόμος Ν. 68(Ι)/2005.

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

Retirement age in Cyprus is statutory *only* for the civil servants and it is fixed at sixty for both the governmental as well as the semi-governmental sector.

A government proposal to extend retirement age for teachers in public education, who are civil servants, from the age of 60 to 63, was rejected in a recent referendum. The proposal provided for voluntary extension for those currently in employment. Early retirement, which is currently available at 55 was to be extended to 58. The proposal was opposed by many teachers' trade unions, who feared that the move would (a) have a negative effect on the employment of younger graduates, who face long periods of unemployment until there is a vacancy, (b) would have a negative effect on education, and (c) would be associated with an extension of teaching hours, something already proposed by the Ministry of Education, as the proposal is only the beginning of a process that will undermine working conditions and the terms of employment of teachers.²²⁰

d) Does national law permit employers to set retirement ages by contract, collective bargaining or unilaterally?

There is no statutory retirement age in Cyprus for employees in the private sector. However, the majority of private sector workers retire on their 65th year, which is the pensionable age prescribed by the Social Insurance Law.

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?

For these above questions, please indicate whether the ages are different for women and men.'

Mandatory retirement age is fixed only in the civil service and is the same for men and women employees. Employees in the private sector usually retire at sixty-five although they are *not* legally compelled to do so. In the nationalised industries it is permissible to extend one's retirement age with the consent of the employer, in which case the retirement age is regulated by the employment contract or the collective agreement, if such exists in the particular field.

However, under s.4 of the Law on Unfair Dismissal, the right to protection from unfair dismissal is lost upon reaching pensionable age. This effectively means that the employer is free to dismiss an employee or force him/her to retire at any time after he/she has reached pensionable age without having to pay any compensation.. From a reasonable interpretation of the prohibition against age discrimination, one may derive that, the loss of the right to protection from unfair dismissal for persons who have reached either their pensionable or their retirement age, would amount to unlawful discrimination on the ground of age. So far, this provision has not been identified by the Cyprus authorities as resulting in non-compliance with Directive 2000/78.

²²⁰ See the relevant press release of the *Coordinating Committee Against the Extension of the Age Limit in Education*, 24.1.2005.

A complaint has already been filed with the Equality Body on this point of the law and a decision is pending. The Ministry of Labour and Social Insurance is opposed to any change of the law and considers that the current situation is *not* discriminatory on the following grounds:

1. The Ministry of Labour and Social Insurance seeks to rely on the provisions that allows differences of treatment on the grounds of age under article 6 of the Directive (which is copied verbatim as section 8(1) of Law 58(I)/2004) as a measure that is ‘objectively and reasonably justified’. The employment policy goal apparently is to create posts for employment of young persons by replacing the ones who have completed their cycle of work with younger persons in employment. However, this policy goal cannot be achieved with retaining the specific provision in question. In fact, if the aim is to encourage younger persons to access the labour market, then the measure in issue should not make the continuing employment of retired persons after retirement *more* attractive. Not being liable for unfair dismissal claims is an incentive to employers to prefer retired persons rather than any persons from other age groups, as this will mean more flexible employment conditions. It is therefore a measure likely to create ‘social dumping’ and unfair competition. Moreover, should an employer prefer to employ a retired person on the ground that this person can be dismissed more easily than persons of a younger age, may well be discriminatory against persons of younger ages that cannot be ‘objectively and reasonably justified’.

2. The second argument used by the Ministry of Labour is that the age of 65 is not an arbitrary one, but one that was chosen because it is the retirement age for both the Social Insurance law and the Social Pension law, which provide the employee with pension benefits. However, this argument is problematic as it may only justify the loss of the right to protection from unfair dismissal *at the moment of reaching pensionable age*, and not in perpetuity: an employer should not be obliged to pay damages for unfair dismissal for dismissing an employee who has reached the retirement age. However, there is no objective and reasonable justification for denying someone who has been employed *after* retirement age to be denied all other rights that employees enjoy, merely because of his/her age. The fact that he/she is in receipt of a pension is an irrelevant consideration, as the pension is funding that he/she (or the state) has contributed over the years.

3. The third argument is that the specific provision creates an incentive to employ senior /older persons and the policy goal is to extend the professional life of senior citizens who are willing to continue in employment. However, this policy goal is the direct opposite of the first policy goal about increasing the access to employment of young persons. In fact, in Cyprus, there is a problem of unemployment amongst the young (under the age of 30)²²¹ and for the ages 55 to 65.²²² The goal of introducing measures for the employment of over 65 seems rather odd under the current conditions in Cyprus. Moreover, there is a more serious legal issue, rather than one of employment strategy. The case of ECJ decision *C-144/04, Mangold* is relevant here. The logic of the decision applies to the situation of losing the right to unfair dismissal: Similar to the case of the Cyprus context, the goal in the *Mangold* case was to encourage employment amongst the older people. However, as with *Mangold* the goal cannot be objectively justifiable and it is similarly going beyond what is the appropriate and necessary to achieve the goal. The fear of the ECJ that older workers will be excluded from the benefits of stable employment solely on the basis of age applies equally to the denial of the right to unfair dismissal.

4.7.5 Redundancy

²²¹ See the Cyprus Labour Institute study on the job insecurity of the young workers in Cyprus, for the Cyprus Youth Board (2004-2005).

²²² See Cyprus Statistical service for the unemployment rates in Cyprus. For an analysis of unemployment see the Cyprus Labour Institute (2006) *Annual Review of the Economy and Employment for 2005*, INEK-PEO.

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

The Termination of Employment Laws 1967-1994 which govern issues relating to redundancy do not provide for seniority or age to be taken into account in selecting workers for redundancy. However, there is extensive case law evidencing that the principle of “first in-last out” is accepted by the Courts and is used as a criterion for determining whether the right worker or workers have been selected for redundancy. In a significant number of cases, there is a collective agreement in force which explicitly provides for this principle, which however must be used in conjunction with the ability and efficiency of a particular worker, in other words the provision in the collective agreement states that the person to be made redundant must be the last one appointed, having taken into account significant differences in the ability and efficiency of the work of the workers who are about to be dismissed.²²³ All other things being equal, however, the Court will apply the principle of “first in-last out”²²⁴ although on other instances the Court has ruled that seniority *alone* cannot prevent the selection of a worker for redundancy.²²⁵

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

The general rule of law is that the following criteria are used to determine the amount of compensation payable in the case of redundancy: the number of years of service in the same employer;²²⁶ whether the period of employment was before 01.01.1964, as no compensation is payable for work before that date;²²⁷ whether employment was continuous;²²⁸ and the amount of weekly salary earned.²²⁹ It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Termination of Employment Law provides that redundancy does not generate the right to compensation if the worker so dismissed was of retirement age on the date of termination of his/her employment. The retirement age is sixty five, except for women born before 1935, whose retirement age is sixty-three.²³⁰

Also, in accordance with Article 19(2) of the same law, when a worker’s employment is terminated within twelve months prior to his/her retirement age, the amount of compensation payable is reduced by one twelfth for every completed month of age during this 12-month period.

There are a number of cases decided by the Courts where age was used as a criterion in order to assess the worker’s application for compensation from the redundancy fund where there was an offer by the employer for an alternative position or job. In the case of a 58-year old stock-keeper who was made redundant but was offered by the same employer an alternative position as a door-to-door salesman, the Courts held that due to his advanced age he was right to reject that offer was therefore entitled to compensation.²³¹ Similarly, a middle aged woman

²²³ Andreas Hadjidemetriou v. 1. Publishing company “To Vima” Ltd, 2. Redundancy Fund, 107/85.

²²⁴ Chrysostomos Stavrou v. Redundancy Fund, 328/92.

²²⁵ Charalambous v. Famagusta General Agency Ltd, 490/95.

²²⁶ Termination of Employment Law, Table IV, Section 1.

²²⁷ Termination of Employment Law, Table IV, Section 2.

²²⁸ Termination of Employment Law, Table IV, Section 3.

²²⁹ Termination of Employment Law, Table IV, Section 4.

²³⁰ Section 2 of the Termination of Employment Law and Section 2 of the Law on Social Insurance.

²³¹ Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund, 295/96.

who was offered by her employer an alternative position at another location, which involved thirty minutes' walk from her residence, was held by the Courts as reasonable in rejecting it and was therefore entitled to compensation.²³² By contrast, a young woman who rejected her employer's offer for an alternative position which involved thirty minutes' walk from her residence to the workplace was held as unreasonable because of her young age and good health and her application for redundancy compensation was rejected.²³³ The same principle is applied where the employer introduces new or more advanced technology and requires the employee to accept training and/or adapt to the new methods: if the employee is young, his/her refusal to adapt to the new technology is held unreasonable and therefore redundancy compensation is not paid, whilst if the employee is old, the Court will afford more understanding to his/her inability or refusal to adapt and redundancy compensation is paid.²³⁴ It is presumed that the same rule would be applied by the Courts in the case of employees with disabilities, although no such case has been brought before the Courts so far, bearing in mind that in cases of employees with disabilities the employer is obliged to provide 'reasonable accommodation' to enable the employee to adapt to the new technology.

No cases have yet been presented before the Courts seeking to reverse the above rules on the basis of the newly enacted anti-discrimination laws and it is not yet clear whether or not these rules would withstand such a scrutiny.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

Article 5(3) (b) of the Cyprus law transposing the Framework Employment Directive²³⁵ copies the provision in Article 2(5) of the Directive verbatim. The same provision is also to be found in Article 4(2) of the recently enacted Law on Persons with Disabilities (Amendment) of 2004.²³⁶ There are no other provisions to be found in Cyprus laws relying on the exception set out in Article 2(5) of the Employment Directive.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The only exceptions to the prohibition of discrimination which are not mentioned above concern the positive action provisions which are discussed below.

➔ 5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.

²³² Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund, 634/96.

²³³ Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund, 1164/97.

²³⁴ Fotis Mikellides v. Redundancy Fund, 577/90.

²³⁵ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

²³⁶ No. 57(I) of 2004 (31.03.2004).

Positive action provisions exist in all three laws enacted recently for the purpose of transposing Directives 78/2000 and 43/2000. The provisions are geared towards rendering differential treatment lawful under certain circumstances but fall short from putting forward any concrete positive action measures or from creating a mandatory regime.

Law N.59(I)/2004 renders non-discriminatory any differential treatment or the introduction or maintaining of special measures which, although indirectly appearing as discriminatory, aim at the prevention or compensate for disadvantages linked to ethnic or racial origin.²³⁷

Along the same lines, Law 58(I)/2004 renders non-discriminatory any preferential treatment in employment which, although prima facie appearing discriminatory, aims at prevention and compensation for disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation.²³⁸

Law 57(I) 2004 on persons with disabilities, as amended by Law N. 57(I)2004, renders non-discriminatory any preferential treatment in occupation which although appearing prima facie discriminatory, aims to prevent or compensate for disadvantages due to disability. The same law provides that the principle of non-discrimination does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace or any measures aimed at promoting the inclusion of persons with disabilities in the labour market.²³⁹

On 26.09.2002 the Supreme Court of Cyprus had declared void and unconstitutional, a set of legal provisions granting priority to employment in the public sector to persons with disabilities²⁴⁰ and to persons related to the dead and the missing from the 1974 war or with war-related disabilities Law,²⁴¹ on a the basis of a quota system. The Court's reasoning was based on an interpretation of Article 28 of the Constitution that such priority discriminates against other candidates eligible for appointment in the public service. As a result, Law No.245/1987, which had up until then provided priority to qualified candidates with disabilities for appointment in the public education sector, was abolished. On 16.04.2005 a new law came into force²⁴² which restored the old law of 1997²⁴³ (previously declared unconstitutional by the above decision of the Supreme Court) which gives priority in employment in the public sector to relatives of the dead and the missing from the 1974 war in Cyprus and to persons disabled by the 1974 war. The result was that the quota system was restored only for the relatives of the missing and dead and for persons with war-related disabilities, but not for persons with disability in general, which establishes a prima facie case of discrimination against persons with non-war related disabilities.

The law of 2004²⁴⁴ purporting to transpose Directive 2000/78/EC did not introduce the wide scope of Article 7 of the Directive with regard to positive measures. In particular, the new law did not amend section 5(2) of the 2000 law which merely provides for three type of measures which may be introduced by regulations²⁴⁵ but no such regulations have been introduced so far. The effect of this is that the provision now in force is the old law, which existed prior to

²³⁷ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 6.

²³⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 9.

²³⁹ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(1) and 3(B)(2) of the basic law.

²⁴⁰ Law No.245/1987.

²⁴¹ No. 55(I) 1997.

²⁴² Law No. 87(I) 2004.

²⁴³ Law No. 55(I) of 1997

²⁴⁴ Persons with Disabilities Law No. 57(I) 2004, amending the existing Law N.127 (I)/2000.

²⁴⁵ These are: schemes for the employment of persons with disabilities by providing incentives; establishing posts in the public sector exclusively for persons with disabilities; and creation of incentives for employers to employ persons with disability.

the transposition of the Directive 2000/78/EC and which provides only for the introduction of regulations on three limited types of measures.

In yet another development, in December 2005, a set of four bills was presented to Parliament by a Socialist MP, in order to rectify this situation. The bills introduce, for persons with disabilities, a quota for their employment in the education sector; a scheme for preferential parking; a system for rendering temporary or hourly-based disabled civil servants permanent; a quota system for the employment of blind telephonists in the public and the educational sector; a quota for employment in the private sector where the number of employees exceed ten.

The government and the parliament have to date been reluctant to introduce quotas in employment for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the ECJ decision in the Kalanke case.²⁴⁶ It is now hoped that the example of many other EU countries, which have kept quotas in place or introduced quotas after transposing Directive 2000/78/EC, will enable these bills to be made law. The question remains, however, of what will become of Law 57(I)2004 granting priority for the war-affected and war-disabled persons, as, according to some interpretations, it violates Article 2 of the Directive.

b) Do measures of positive action exist in your country? Which are the most important? Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.

The following measures are in place in relation to disability:

The Public Education Service Law, as amended by Law 180/1987, provided that in filling first entry posts in the Public Education Service, persons with disabilities should be appointed in accordance with a proportion specified by Law. Subsequently, this provision was indirectly declared unconstitutional, following a highly controversial court decision relying on a strict and rather conservative interpretation of the equal treatment principle of the Constitution, which rendered unconstitutional a law imposing a quota system in favour of persons who were victims of the Turkish invasion in 1974.²⁴⁷ In December 2005, a series of new bills were tabled in Parliament introducing a quota for the employment of persons with disabilities in the education sector; a scheme for preferential parking; a system for rendering temporary or hourly-based civil servants permanent; a quota system for the employment of blind telephonists in the public and the educational sector; a quota for employment in the private sector where the number of employees exceed ten.

In the event that these bills are adopted, it is anticipated that the enforceability of this law will be restored, though this has not been achieved until this moment. It is notable that the same legislative provision applicable to victims of the Turkish invasion, previously declared unconstitutional by the aforesaid Court decision, was recently restored.

The Law on the Engagement of Trained Blind Telephone Operators of 1988 provides that, in filling vacant telephone operators posts in the Public Service, the Public Education Service and parastatal organisations, priority should be given to blind candidates who fulfil the schemes of service and who are trained operators and, in cases where blind candidates are not available, priority should be given to “disabled” persons, within the term defined by law. This

²⁴⁶ Case No. C-450/93.

²⁴⁷ Republic of Cyprus through the Civil Service Commission v. Eleni Constantinou, Appeal Case No. 3385, 26.09.2002.

law, which has resulted in the employment about 55 blind persons since its enactment in 1988, applies to telephone operators who have completed training at the School for Telephone Operators of the School for the Blind. It is considered by the Pancyprian Organisation for the Blind as a significant positive measure, despite the fact that it refers to a relatively low status type of work that may fall short of utilising the affected persons' full potential.

The Public Service Law 1/1990, provides that, in filling vacant posts in the Public Service, priority should be given to disabled candidates who fulfil the schemes of service, provided that the Commission responsible for the selection is satisfied that they are able to perform the duties of the posts and they are not inferior to the rest of the candidates as regards merit and qualifications.

The Protection of the Mentally Retarded Persons Law 117/1989, and the Street and Building (Amendment) Regulations No. 3322 30.4.99 provide for easier and safer access for disabled persons to public places and buildings. The establishment of a Special Fund Law 79(I)/ 1992 provides for services and programmes for the rehabilitation of the disabled.

The Special Education for young persons with Special Needs Law 1 13(I)/1999, as well as the Public Assistance and Services Law of 1991 guarantees a minimum standard of living for all persons legally residing in Cyprus. The law applies to any person whose resources do not meet his/her basic and special needs as defined by law. At the same time, this law includes special provisions for the disabled, single mothers, older persons, families with four children or more and internally displaced persons.

Following the Supreme Court decision declaring unconstitutional, on the basis of Article 28 of the Constitution, the laws granting priority in employment to persons with disabilities, there has been a marked decrease in the number of disabled persons working. Surprisingly enough, one law has survived this move: the Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (L. 17/1988). Article 3 of this law provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators²⁴⁸ are given priority in appointment. The same law also provides that for the appointment of a non-blind person to any post of telephone operator, the Pancyprian Organisation for the Blind must give its prior written confirmation that there are no blind telephone operators as candidates for the specific post. Article 3 of the same law also provides that in case there are no blind telephone operators as candidates for the said position, other candidates with disability will be preferred. These provisions have worked fairly well and have significantly contributed to the vocational rehabilitation and labour integration of blind persons; the job of telephone operator continues to be the job of the majority of the blind persons in Cyprus. Recent technological developments in telephone services may present a risk for this institution and could mean that training may have to be channelled in other directions.²⁴⁹

No positive action measures exist as regards young and old workers or persons affected by discrimination on the grounds of racial or ethnic origin, religion or belief or sexual orientation. There are no positive action measures in place for the Roma community except the provisions related to education of the Turkish-speaking children, mainly consisting in a small subsidy for school uniforms, the provision of meals at school and the supply of

²⁴⁸ Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. Also, the Pancyprian Organisation for the Blind, a non-governmental organisation, offers further training free of charge.

²⁴⁹ Florentzos, M. (2005) *The Legal and Social Position of Persons with Disability in the new Legal order of the Republic of Cyprus as a Member State of the European Union*, Nicosia, p.151. Mr Florentzos is the president of the Cyprus Confederation of organisations of persons with disabilities.

language classes; however the aforesaid are not provided to this group in their capacity as Roma but in their capacity as ‘Turkish speaking’ people.

The Law on Persons with Disabilities N.127 (I)/2000, as amended, provides a set of rights for persons with disabilities and implementation measures. These rights include the right to an independent way of living, full access to the community and equality of participation in the economic and social life of the country (Article 4(1)). Furthermore, Article 4(2) of the Law provides: “Without prejudice to the generality of sub-section (1), persons with disabilities have the following rights: (a) timely detection and diagnosis of the disability (b) personal support with auxiliary equipment (c) access to housing, buildings, streets and generally to the natural environment and to public means of transport (d) access to appropriate education according to their needs; (e) access to information and communication with special means where necessary, especially for certain groups of persons with disabilities of the senses; (f) services for social and economic access to professional assessment and orientation, professional training and employment in the open job market; (g) a dignified standard of living and, where necessary, through financial allowance and social services; (h) the creating of personal and family life; (i) participation in cultural, social, athletic, religious and entertainment activities.”

Also, the Law on Persons with Disabilities N.127(I)/2000 stipulates, under s.4(2)(a), measures for the creation of employment opportunities with “(i) the introduction of employment schemes for persons with disability by providing incentives for the employers which shall be determined by regulations according to the number of employees or the business cycle of the enterprises concerned; and (ii) the creation of jobs in the governmental, semi-governmental and wider public sector to be fulfilled exclusively by persons with disability;”

A number of other measures include 4-(b) “job reinstatement, where possible, of a person with a disability in the same enterprises where the disability occurred during their employment; (c) special protection against dismissal”; and (e) “the operation of special schemes of employment in the public and private sectors, by providing economic incentives.”

There are also further measures of positive action provided for by the Law of Civil Service (1/1990), which allow the authority to favour a disabled person, where that person possesses the necessary qualifications.

The Law on Persons with Disabilities No, 127(I)2000 as amended makes reference, inter alia, to the right to accessibility in buildings and streets and to access to information and communication through special means and describes these as “basic rights”²⁵⁰ but no enforcement mechanism is provided and no legal obligation is cast on any party for the implementation of these rights. The same law provides that failure to carry out such adjustments to services or facilities so as to guarantee, inter alia, the use of specialised means, instruments and facilities to special places where services are provided, such as schools, hospitals, clinics and “similar places”, constitutes discrimination.²⁵¹ However, the issue of accessibility to Courts for persons with disabilities, in the form of physical accessibility, provision of documents in Braille language, sign language interpretations or other is not addressed and it is doubtful if the said legal provisions create any obligations with regard to guaranteeing full accessibility.

²⁵⁰ Part II, Section 4(c) and 4(e) of the Law on Persons with Disabilities No, 127(I)2000.

²⁵¹ Section 6(2)(iii) of the Law on Persons with Disabilities No, 127(I)2000.

Minimum requirements

Equality of treatment is required with the rest of the citizens of the Republic in the provision of goods, facilities or services. In defining this, “less favourable treatment” constitutes discrimination when it (a) concerns a reason relevant to the person’s disability and such reason is not applicable to another person; and (b) is not justified.

The minimum requirements include provisions where, by definition, a number of practices shall not constitute equal treatment of persons with a disability, and strict liability is imposed. These situations include (a) the refusal to provide services; (b) the provision of services of a lower standard; (c) the provision of goods and services under less favourable terms; (d) the failure to carry out modifications to services or facilities which renders their use by a person with a disability impossible or unjustifiably difficult. Such modification may concern: (i) the creation of suitable means of access and facilities for the comfortable and safe use of services and facilities; (ii) the employment of special means, tools or persons for communication with and information of certain categories of persons with disabilities; (iii) the use of specialised means, tools and facilities in special areas of service provisions such as schools, hospitals, clinics and similar areas.

Also under Article 7 (1) the public means of transport of passengers or a certain number of those must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs.²⁵²

Furthermore, Article 8(1) requires that the competent governmental departments must, within a short period of time, proceed to the installation of a suitable system of telephone services which assists persons with a hearing disadvantage or with any other disability of the senses or other speech disability to communicate through the telephone system in a manner proportionate to those persons without such disadvantages; (2) there must be public means of telecommunication accessible to persons with disabilities, including persons using wheelchairs; (3) the television stations must make arrangements so that at certain hours the news broadcasts must be understood by deaf persons.

Good practice initiatives

Some of the most important initiatives which took place in Cyprus during 2004 and 2005 include:

(i). Cyprus National Action Plan for Employment 2004-2006

The Cyprus National Action Plan for Employment was compiled by the Cyprus Ministry of Labour and Social Insurance pursuant to Article 128.3 of the Treaty and within the framework of the Employment Guidelines adopted by the European Council and the Broad Economic Policy Guidelines (BEPGs). For the preparation of this Plan, a permanent Committee was set up including representatives from the Cyprus Planning Bureau, Ministry of Finance, Ministry of Education and Culture, Ministry of Justice and Public Order, Ministry of Trade Industry and Tourism, the Human Resource Development Authority and the Cyprus Statistical Service, whilst social partners were asked to contribute comments to the report.

Guideline 7 of the Cyprus National Action Plan for Employment 2004-2006 titled “Promote the integration of and combat the discrimination against people at a disadvantage in the labour market” is the only section dealing with the issue of discrimination and is silent on measures to combat discrimination on the grounds of racial or ethnic origin, a ground not dealt with at

²⁵² The application of this Section shall be regulated with provisions issued by the Council of Ministers upon the recommendation of the Ministry of Labour and Social Insurance and of the Ministry of Transport and Works.

all in the Plan. The promotion measures set forward in the Plan for the elimination of social exclusion²⁵³ are general and not focused on any group in particular, although special provision is made to encourage persons with disabilities to enter the labour market.

(ii). In June 2005, an intensive two-day seminar was held in the buffer zone of Nicosia, as part of a European Commission funded project,²⁵⁴ attended by representatives of fifty NGOs coming from both north and south of the divide,²⁵⁵ offering training in combating discrimination on the grounds of, inter alia, racial or ethnic origin. The training was carried out by 6 trainers from Cyprus who had been trained by a team of international experts in Istanbul earlier in 2005. It was the first of its kind in Cyprus and has, in addition to the anti-discrimination training, offered a unique opportunity for networking and co-operation between anti-discrimination NGOs north and south. An initiative to set up a federation of all such organisations is already under way.

(iii). An important initiative was carried out in the summer of 2005 by an NGO in Limassol, the second largest city in the south, whereby free classes of Turkish language were offered to Greek-speaking women and of Greek language to Turkish-speaking women. The project, funded by USAID and UNDP and executed by UNOPS, was largely aimed at peace-building but also on gender empowerment and on increasing the employability of the largely marginalised Turkish-speaking female residents of Limassol, of Roma, Turkish-Cypriot, Turkish or Kurdish origin.

(vi). In 2003, and in view of the partial lifting of the restrictions in movement between north and south of the island, the Cyprus government decided²⁵⁶ to recognise the academic qualifications of Turkish-Cypriots as evidence of their education - even though it considers the academic institutions in the north issuing such certificates as illegal - in an effort to promote the employability of Turkish-Cypriots in the south and to avoid discrimination against them. However, no research has been carried out to evaluate the effectiveness of this measure and practice has shown that the Turkish Cypriots finding employment in the south are mostly the skilled manual workers and not the university graduates.

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?

The procedures for the enforcement of the principle of ‘equal treatment’ are of three types:

(1) Via the ‘extra-judicial’ process as the law refers to it,²⁵⁷ which is more like a ‘quasi-judicial process’ of the newly empowered Equality Body, whereby individuals and interested

²⁵³ Cyprus National Action Plan on Employment 2004-2006, p.31: “Strengthening the attractiveness of the labour market and encouraging the participation therein; Improvement of skills; Employment to acquire valuable professional experience; Constant counselling support”.

²⁵⁴ Mapping capacity of civil society dealing with anti-discrimination, (VT/2004/45). The project was managed by human european consultancy (www.humanconsultancy.com) in partnership with the Migration Policy Group (www.migpolgroup.com) and was carried out in the 10 new EU member states and Bulgaria, Romania and Turkey.

²⁵⁵ Regrettably, the representatives of governmental departments invited to the seminar either did not show up at all or came for an hour in the morning and then left.

²⁵⁶ Press and Information Office of the Republic of Cyprus, ‘Movement of Persons, vehicles, goods, employment, issue of certificates and other documents’, 30.04.2003).

²⁵⁷ In Greek, «Εξώδικη διαδικασία» as per Section 9Γ(1) of Law No. 57(I) of 2004 (31.03.2004); Section 9, Law No. 59(I) of

parties may complain and the Equality Body will make binding recommendations.²⁵⁸ Natural or legal persons who allege discrimination on any of the prohibited grounds (EU Directives, Protocol 12 to the ECHR, the Cyprus Constitution) on any of the fields provided for may complain to the Equality Body. The Equality Body is empowered to make suggestions, recommendations; moreover, it may impose small fines. The Equality Body has a duty to monitor the enforcement of the orders it makes²⁵⁹, which are published in the Official Gazette.²⁶⁰ The Equality Body is further empowered to impose fines, for failure to comply with her/his recommendations.²⁶¹ Further failure is of course enforceable by the Courts. The recommendation of the Equality Body may only be challenged in Court by way of judicial review of administrative action at the Supreme Court under article 146 of the Cyprus Constitution.²⁶² If after investigation the Equality Body finds that the law contravenes the equality laws, the Equality Body may recommend to the Attorney General the amendment of the law, who in turn reports to the relevant Minister. The Equality Body is thus given jurisdiction to deal with matters relating to discrimination via the 'extra-judicial' process.

(2) The judicial process is also available:

(i) Labour law and issues relating to employment matters are dealt with by the Labour tribunal.²⁶³ The Labour Tribunal consists of three persons: a judge, who chairs the hearing and two wing members, who come from the trade union and employer organisations side. The procedure in the tribunal is similar to a district court, but less formal. All employment matters are dealt with by Labour Tribunals. There is no legal aid scheme as yet, save for in criminal matters, though legislation is apparently being prepared to extend legal aid.

(ii) Civil matters such as all matters of 'race or ethnic origin' discrimination other than employment are dealt with in district courts²⁶⁴;

(iii) Criminal law dealing with penal sanctions for incitement of racial hatred. Finally,
 (iv) Challenge of administrative acts before the Supreme Court, via Article 146 of the Constitution.²⁶⁵ The Supreme Court can examine the legality of the case but not the substantial merit of the case. All issues between civil servants regarding their employment (appointment, promotion, transfer etc) are considered to be administrative acts and are dealt with by the Supreme Court. This route is not available to private employees.

(3). The inspectorate process is available for employment discrimination issues. The Minister of Labour is empowered to appoint Inspectors for the purpose of the better implementation of the law.²⁶⁶ However, this process is yet to be implemented, as the regulations regarding the powers vested in the Chief inspector and inspectors²⁶⁷ are yet to be issued. It would seem reasonable to assume that the Labour Relations Department of the Ministry of Labour and Social Insurance would be the department in charge of implementing this provision,²⁶⁸ given

2004 (31.03.2004); Section 13, Law No. 58(I) of 2004 (31.03.2004).

²⁵⁸ Law N. 42(I) 2004 (31.03.2004).

²⁵⁹ Section 24(1), Law No. 52(I) of 2004 (31.03.2004).

²⁶⁰ Section 15, Law No. 52(I) of 2004 (31.03.2004).

²⁶¹ Section 26(1), Law No. 52(I) of 2004 (31.03.2004). The may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendation under Section 25 [Section 26(1)(a)] and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

²⁶² Section 23, Law No. 52(I) of 2004 (31.03.2004).

²⁶³ For any of the employment directive grounds Section 12(1), Law N. 58(I) of 2004 (31.03.2004) and for disability discrimination and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).

²⁶⁴ Section 8(1), Law N. 59(I) of 2004 (31.03.2004).

²⁶⁵ Section 12(1), Law No. 58(I) of 2004 (31.03.2004); Section 19 of Law No. 57(I) of 2004 (31.03.2004) and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).

²⁶⁶ Section 19 of Law No. 57(I) of 2004 (31.03.2004).

²⁶⁷ Section 19(2) of Law No. 57(I) of 2004 (31.03.2004).

²⁶⁸ This derived from (a) the fact it is an employment matter, (b) a reading of the text of law 58(I)/2004 provides that the Minister

also that this department's mandate includes the setting up of enforcement mechanisms (Inspectors, Research and Evaluation Committee etc) only in relation to gender equality.²⁶⁹ Given that the Labour Relations Department has stated that the anti-discrimination laws resulting from the Race and the Employment Directives do not fall within the competencies of this department,²⁷⁰ it remains uncertain which department of the above Ministry is responsible for the anti-discrimination laws resulting from the Race and the Employment Directives. In any case, the Minister has not utilised his powers to appoint any inspectors.

There is also a longer-term process for a general review of the state of implementation of the anti-discrimination legislation, by way of a report from the Minister of Labour submitted to the European Commission, the first date being 19.07.2005 and thereafter every five years.²⁷¹

b) Are these binding or non-binding?

Yes, the result of all procedures described above is binding.

The Equality Body has the power to issue legally binding decisions. However, in practice the decisions issued are usually mere recommendations which, although not legally binding, tend to be complied with at least by individuals. In some cases the Equality Body is vested with the power to impose fines²⁷² but this power has not been used yet. The Equality Body's decisions are generally regarded by both the authorities and the public as valid and credible and often as an indication of what the likely outcome would be, had the case been presented before the courts. The Equality Body itself has stated that governmental departments have, during 2004, complied with its recommendations to a degree of 60% but pointed out to a low compliance level by the police.²⁷³

c) ➔ Can a person bring a case after the employment relationship has ended?

There is no express provision on this point in the new anti-discrimination laws. However, the Laws on the Commissioner for Administration 1991-2004²⁷⁴ state that the complaint must be submitted to the Equality Body's office within twelve months from the date on which the complainant received notice of the activities or omissions for which he/she is applying to the Equality Body.²⁷⁵ The 2004 amendment of this law renders this law applicable to the new mandate, duties and powers bestowed upon the Ombudsman by virtue of any law, on matters relating to gender equality, equality and enjoyment of human rights and freedoms irrespective of race, ethnic origin, community, language, colour, religion, political or other belief, special needs, age and sexual orientation.²⁷⁶ It follows that the twelve month limitation applies also to the complaints submitted to the Ombudsman in its capacity as the national Equality Body, acting under the anti-discrimination legislation transposing the Race and the Employment Directives. Whether the employment relationship has ended or not at the time of submitting

in charge is the Minister of Labour and Social Insurance [see article 2 of the law]; moreover the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same Minister, who also responsible for submitting a report on the implementation of the said law.

²⁶⁹ Letter from the Ministry of Labour to the national expert, dated 20.01.2006.

²⁷⁰ This derived from (a) the fact it is an employment matter, (b) a reading of the text of law 58(I)/2004 provides that the Minister in charge is the Minister of Labour and Social Insurance [see article 2 of the law]; moreover the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same Minister, who also responsible for submitting a report on the implementation of the said law.

²⁷¹ Section 18 of Law No. 57(I) of 2004 (31.03.2004).

²⁷² Elaborated in Section 6.5 here in below.

²⁷³ Hadjivasilis M. 2004, "40% of the Ombudsman's reports in the wastebin". Phileleftheros, 28.10.2004.

²⁷⁴ Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.

²⁷⁵ Section 5(1) of Law N.1(I)/2000.

²⁷⁶ Section3(8) of Law N.36(I)/2004.

the complaint is immaterial, although the Equality Body, in the process of investigating a complaint, *will* take into account the surrounding circumstances of each case.²⁷⁷

In relation to each, please note whether there are different procedures for employment in the private and public sectors.

No, the same rules apply in both the private and the public sector. The Ombudsman, in his/her capacity as such, will investigate complaints of maladministration and discrimination from public bodies/state organs towards individuals; in his/her capacity as the national Equality body, s/he will investigate complaints in both the private as well as the public sector.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

By far the cheapest and most effective procedure is the complaint to the Equality Body. All court actions entail costs and other necessities such as the need to instruct a lawyer if one is to have any chance to succeed against a generally speaking more powerful institution or employer, who are likely to be legally represented. There are also other deterrents in seeking redress in Court, such as strict time limits and complex procedures, the fact that legal procedures are generally slow, the difficult to secure witnesses willing to come and testify. Even the procedure before the Labour tribunals, originally designed to be informal and easy and accessible to ordinary working people is lengthy, complex and costly, although to a lesser extent than the normal courts are. The Equality Body will accept complaints submitted to it in English, but the Court will require all documents to be in Greek, although during the hearing an interpreter will be provided by the Court. Accessibility to buildings is also an issue to consider: the new premises of the Equality Body's office are accessible by wheelchair but many of the Court buildings are not accessible to persons with disabilities and the legal documents are not made available by the Court in Braille language.

➔ 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

The Laws purporting to transpose the acquis have eased the criteria for an association to engage in judicial or other procedures allowing organisations who are interested parties to represent their members in discriminations proceedings both before the Equality Body as well as before the Court.

In the case of court action, the provision states that “employees’ organisations or other organisations” with legal standing or a legitimate interest can, with the consent of their affected members, act on their behalf.²⁷⁸ Similarly for discrimination on racial or ethnic grounds, “organisations or other legal personalities, which have as their constitutional aim the combating of discrimination on the ground racial or ethnic origin”, and with legal standing or a legitimate interest can, with the consent of their affected members, act on their behalf.²⁷⁹

²⁷⁷ Interview with Elisa Savvides, Head of Equality Commission at the Ombudsman's office, dated 18.01.2006.

²⁷⁸ Law N.58(I)/2004 Section 14 and Law N.57(I)/2004 Section 9Δ .

²⁷⁹ Law N.59(I)/2004, Section 12.

The provision on the legal standing of organisations acting on behalf of complainants applies in respect of all grounds covered by the relevant laws, being racial or ethnic origin, religion or belief, age, sexual orientation and disability.

In practice associations have made little use of this opportunity so far, with only a handful of human rights organisations filing complaints to the Equality Body on behalf of victims which they formally or informally represent.

Prior to the introduction of the new anti-discrimination legislation in 2004, individuals who had been *personally* aggrieved have a legitimate interest in Cyprus administrative law to engage in proceedings. Under Article 146(2) of the Constitution: “such recourse may be made by a person whose existing legitimate interest, which he has either as a person, or by virtue of being a member of a community, is adversely and directly affected by such decision or omission”. Since 1999 the common-law provisions have been codified into a single law that summarises the existing practice (Law 158(I)/99).

The interpretation of Article 146(2) of the Constitution by the Supreme Court has restricted the right of recourse to physical and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives’ were not considered to have legitimate interest²⁸⁰ and the term “community” is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution.²⁸¹ The Roma community of Cyprus has never received official recognition of its Roma identity; by virtue of their language and their Muslim religion, which were the criteria used to determine the “belonging” of all ethnic groups, they were deemed to belong to the Turkish community.²⁸² The original test for an association to possess an “existing legitimate interest” was hard to satisfy, as it required that the specific administrative act ‘*directly affects*’ the whole or part of the membership, whereas if it only affects one member or if there are conflicting interests between members then the association has no legitimate interest.²⁸³

b) on behalf of one or more complaints (please indicate if class actions are possible)

The Equality Body may investigate cases following applications by NGOs, chambers, organizations, 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.²⁸⁴

The new anti-discrimination laws do not make mention of the possibility of organisations representing more than one complainants at the same time. Law No. 58(I)/2004 transposing the employment Directive states, in Article 14, that organisations may, with their members’ permission, exercise the right to apply to the Courts or to the Equality Body on behalf of their members. The plural is used when referring to ‘members’ but it is not clear whether this enables class actions to be taken out by organisations in their members’ names. The equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (article 12). The civil procedure rules make provision for class actions but only when these refer to the same subject-matter, in this case the same discriminatory treatment or act.

²⁸⁰ Efthymios Ierodiakonou v. the Republic 3 RSCC 55-57.

²⁸¹ Osman Saffet v. the Cyprus Palestine Plantations Co. Ltd and another 4 RSCC p.87, p.89.

²⁸² The paradox of this practice is demonstrated by the fact that a small section of the Roma community which converted to Christianity was considered to belong to the Greek community.

²⁸³ The Police Association v. The Republic.

²⁸⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

National law requires that in a civil procedure there is a shift of the burden of proof from the complainant to the respondent, once the complainant has established a prima facie case of discrimination was established. The respondent must then rebut the presumption of prima facie discrimination by disproving the allegations that no violation of the law occurred or that it had no adverse effect on the complainant.²⁸⁵ For cases involving racial discrimination in fields other than employment and occupation, the law provides that should the respondent fail to rebut the presumption of discrimination, then the District Court considers that the breach has been established and the complainant is required to present on oath all relevant facts to assess the damages.²⁸⁶

The laws identify the different types of discrimination as defined by the Directives (direct and indirect discrimination, harassment instructions to discriminate).²⁸⁷ There are no other detailed criteria set so far specifically confined to these matters.

It is noted however that the principle of reversal of the burden of proof, as contained in Article 8 of the Race Directive is transposed in the Cypriot law in a manner where this is applicable only with regard to the procedure before the Court and not with regard to any other procedure, such as the procedure before the Equality Body.²⁸⁸

Provisions for shifting the burden of proof to the employer once a prima facie case of dismissal is established already exist in cases of alleged unfair dismissal. The Termination of Employment Law 1967, as amended, is framed in such a way that imposes the burden of proof on the employer, i.e. the employer has to prove that an employee had been discharged for one of the reasons that permit summary dismissal. If the alleged unreasonableness, resulting in dismissal, is based on discrimination, the burden of proof has to be discharged by the employer to prove, on the balance of probabilities, that (s) he had acted reasonably.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, → or person that help the victim of discrimination to present a complaint)

Identical provisions against victimisation are to be found in all three laws recently enacted to transpose Directives 78/2000 and 43/2000. The said provisions prohibit any adverse treatment or consequence towards any person who files a complaint or is involved in a procedure aiming at implementing the principle of equal treatment.²⁸⁹ Therefore any person involved in the procedure in a capacity other than as a complainant (e.g. as a witness or as a lawyer) is also covered by the protection against victimisation.

²⁸⁵ Law N.58(I)/2004, Section 11; Law N.59(I)/2004, Section 7.

²⁸⁶ Law N.59(I)/2004, Section 7.

²⁸⁷ Law N.58(I)/2004, Section 6; Law N.59(I)/2004, Section 5(2); Law N.57(I)/2004, Sections 3(a), 3(b).

²⁸⁸ Cyprus/ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 7(2).

²⁸⁹ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 11; The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 10. The Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 7, amending Section 9E of the basic law.

The Laws on the Commissioner for Administration 1991-2004²⁹⁰ provide a more detailed description of the scope of the protection against victimisation: “Anyone who refuses to employ, dismisses or threatens to dismiss from work, influences or threatens to influence, frightens or forces any other person or imposes any monetary or other punishment to any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Equality Body; (ii) has supplied or presented or intends to supply or submit any information or documents to the Equality Body; (iii) has testified or intends to testify before the Equality Body, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP300²⁹¹ or to both penalties.”²⁹² As stated above, the Laws on the Commissioner for Administration 1991-2004 are expressly stated to apply also to the new mandate, duties and powers bestowed upon the Equality Body under the new anti-discrimination laws.²⁹³ I

Special protection against victimization of complainants is also afforded by the Law Concerning the Equal Treatment of Men and Women in Employment and Occupational Training of 2002 which provides in Article 17(1) that “...the dismissal as well as the adverse alteration of the conditions of employment of an employee who has submitted a complaint or protested with the intention of implementing the principle of equal treatment, including complaints of contravention of the present Law, or of an employee who resisted or reported sexual harassment, is absolutely invalid unless the employer proves that the dismissal or adverse alteration is due to a reason irrelevant to the complaint or protest or resistance of sexual harassment.”

Furthermore, Article 9 of the Law on Equal Pay between Men and Women for the same work or for work of equal value N. 177(I)/2002 states that “no one shall be dismissed or shall be subjected to unfavourable treatment by his/her employer on the ground that (s)he has complained or testified or contributed to the prosecution of a perpetrator or to the adoption of any measures on the basis of the present law”.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

The Equality Body does not have the power to award damages to victims of discrimination, but the Equality Body’s report may be relied upon to seek damages for unlawful discrimination in a district Court or a labour tribunal. Strictly speaking, the Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages but no case of discrimination relying on the new laws has been decided in Courts yet to allow for any conclusions to be drawn with regard to the practice followed. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cyprus Courts tend to be rather low compared to the damages awarded in other countries.

In addition to damages, a victim of discrimination may apply to the labour tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, but again this is a remedy rarely sought or used.

²⁹⁰ Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.

²⁹¹ Approximate Euro equivalent: 520 Euros.

²⁹² Section 11(f) of Law No. 1(I)/2000.

²⁹³ Section3(8) of Law N.36(I)/2004.

Law 42(I)/2004 vests the Ombudsman with powers beyond those prescribed by the two EU Directives: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit²⁹⁴ and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.²⁹⁵

The Equality Body is further empowered to impose small fines which cannot exceed CYP350 (approximate Euro:600) for discriminatory behaviour, treatment or practice; CYP250 (approximate Euro:430) for racial discrimination in the enjoyment of a right or freedom; CYP350 (approximate Euro:600) for non-compliance with the recommendation within the specified time limit; and CYP50 (approximate Euro: 85) daily for continuing non-compliance after the deadline set by the Equality Body.²⁹⁶ Generally speaking, the fines are very low and offer little deterrence to potential perpetrators.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.²⁹⁷ It is possible for the Equality Body to recommend school desegregation plans or the instigation of disciplinary proceedings against teachers or other persons guilty of discrimination; in practice, however, the Equality Body's recommendations hardly ever propose measures as drastic as that and there is a clear tendency towards 'diplomacy', evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed yet.

All orders, fines and recommendations issued or imposed under this Law are subject to annulment²⁹⁸ by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest'.²⁹⁹ There is no requirement for special measures to be taken to ensure that persons with disabilities have access to the Equality Body and no such measures are taken for the time being.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues on his/her own right where the Ombudsman deems that any particular case that came to its attention may constitute a violation of the law.³⁰⁰ The Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of

²⁹⁴ Which time limit shall not exceed 90 days from publication in the Official gazette (The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 28).

²⁹⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 14(2) and 14(3), Part III, list the limitations to the Commissioner's power to issue orders as follows: where the act complained of is pursuant to another law or regulation, in which case the Commissioner advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 39(3) and 39(4)]; and where discrimination did not occur exclusively as a result of violation of the relevant law; where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties; where the eradication cannot take place without violating contractual obligations of persons of private or public law; where the complainant does not wish for an order to be issued; or where the situation complained of no longer subsists.

²⁹⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 18, 26(1).

²⁹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

²⁹⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

²⁹⁹ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

³⁰⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

the provision, term, criterion or practice. In fact, all cases investigated by the Equality Body until now have led to *recommendations*, as opposed to binding *decisions* enforceable in Court. The recommendations have often taken the form of suggesting to the authorities or to the private sector, to revise their practices over specific issues complained. Reports issued by the Equality Body's office have, for instance, recommended to insurance companies to revise their practice of refusing to insure persons of Pontian Greek origin; to employers to remove the maximum age limit fixed for advertised job posts; to the public nursing school to revise the entry requirements so as not to exclude persons with disabilities; to the immigration authorities to remove from the standard contract of employment of migrant workers a clause prohibiting them from joining trade unions, etc.

The findings and reports of the Equality Body must be communicated to the Attorney General of the Cyprus Republic who will, in turn advise 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. The findings of the Equality Body are also communicated to the House of the Representatives.

Under Law N.59 (I)/2004, the competent courts to try discrimination cases at first instance are the District Courts.³⁰¹ Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,³⁰² appeal to the Supreme Court of Cyprus. The same law also provides for the complainant's right to lodge a complaint to the Equality Body.³⁰³

Under law 59(I)/2004 (transposing the Race Directive) the penalty to be issued against a physical person found to be guilty, is a maximum of CYP4.000 (approximate Euro: 6.900) and/or imprisonment of up to six months. For legal persons the maximum is CYP7.000 (approximate Euro 12.000). An offence committed under the same law out of gross negligence carries a penalty of up to CYP2000 for physical persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2.000 (approximate Euro 3.500); for legal persons, there is a fine of up to CYP2.000 (approximate Euro 3.500) 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 CYP4.000 (approximate Euro: 6.900) for the company or organisation.³⁰⁴

Under law 58(I)/2004 (transposing the Employment Directive) the penalties are identical to those provided for the law transposing the Race Directive.³⁰⁵ Same applies to procedures and penalties under Law N.57 (I)/2004 on persons with disabilities.³⁰⁶

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 amendments (Law 11(III)/92 and Law 28(III)/99), Cyprus established, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, such as incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and

³⁰¹ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 8(1).

³⁰² The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts

³⁰³ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 9.

³⁰⁴ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 13.

³⁰⁵ The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 15.

³⁰⁶ Law on Persons with Disabilities N. 57(I)/2004 Section 6, amending Section 9 of the basic law.

services. The scope of this latter provision³⁰⁷ is stated to extend to goods or services supplied by a person in the course of his/her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training.

As a result of these amendments, it is no longer necessary that the incitement to racial hatred is intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence it is no longer necessary that race be the sole ground of discrimination³⁰⁸. The section referring to the refusal to provide goods and services has resulted in at least one conviction³⁰⁹. Under the Criminal Code (Cap.154) a number of discriminatory acts are punishable offences, such as s.47 (publication³¹⁰ with a seditious intention), s.48 (“intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic”³¹¹), s.51 and s.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 “procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance”³¹²).

There are no distinctions as to the sanctions between the private and the public domain, at least in the legislation. Nor are there any distinctions as to the sanctions within and beyond employment.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

No.

c) Is there any information available concerning:

➔ *- the average amount of compensation available to victims*

- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

As stated above, the Equality Body is not entitled to award compensation but merely to impose fines, which she has not done so far. There have not been any Court decisions so far applying the new anti-discrimination laws and thus no award of compensation to victims. In the only single case filed in the Court alleging age discrimination (concerning the maximum age limit fixed on a job advertisement) which is still pending, the complainant is claiming a disproportionately large amount of compensation (over 350.000 Euros) being, to the largest part, salaries she claims to have lost until retirement as a result of not having taken the advertised position due to the age limit. It is unlikely that the court will award loss of salaries from a job which the complainant may not have succeeded in getting even if there was no age limit.

³⁰⁷ Article 2A(4) of Law 28(III)1999.

³⁰⁸ Section 2A (4) “Any person who supplies goods or services by profession and refuses such supply to another by reason of his racial or ethnic origin or his religion, or who makes such supply subject to a condition relating to the racial or ethnic origin or to the religion of a person is guilty of an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding four hundred pounds or to both such punishments” [about 6700 euro].

³⁰⁹ In criminal case No. 31330/99 dated 12 December 2001 where the accused was actually convicted and a term of imprisonment was imposed.

³¹⁰ 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.”

³¹¹ This is deemed to be seditious intention for the purposes of the above offence under s. 47.

³¹² 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”. [1000 pounds is 1700 euro; 3000 pounds is 5000 euro]

It is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive or the fairness or other ways of penalties and remedies as there has not been a case in Court yet. The law does not provide for ‘punitive damages’ to be paid by the perpetrator to the victim to act as (a) disincentive for offenders and (b) incentive for victims to complain (and in particular as incentive for lawyers to specialise).

It is safe to state that the sanctions which the Equality Body is allowed to levy are too low to have any dissuasive effect, although the main incentive for compliance is likely to be public image.

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?

Yes. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law³¹³ appoints the Commissioner for Administration (also referred to as the Ombudsman), as the specialised Equality Body.

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.

The Ombudsman, which is Cyprus’ national Equality Body, is appointed by the President of the Republic for a fixed term of office which is six years, following a recommendation by the Council of Ministers and with the prior written agreement of the majority of the House of Parliament.³¹⁴ The Ombudsman can only be dismissed, during the term of his/her service, in the same way as supreme court judges are dismissed.³¹⁵ According to the Cyprus Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until he/she reaches the age of sixty-eight³¹⁶ and may only “be retired”³¹⁷ due to such mental or physical incapacity or infirmity as would render him incapable of discharging his duties, or may be dismissed on the ground of misconduct.³¹⁸

The budget for the Ombudsman’s office comes from the state national budget. There is no governing body, only various departments specialising in particular tasks, managed by members of staff. The Ombudsman is an independent officer and is not answerable to any other body, although it is supposed to submit an annual Report of her activities to the President and the House of Representatives.

³¹³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

³¹⁴ The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(1).

³¹⁵ The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(7).

³¹⁶ Article 7(1) of the Cyprus Constitution.

³¹⁷ This is the term used in the official translation of the Cyprus Constitution. Presumably, it means “be obliged to retire”.

³¹⁸ Articles 7(3) and 7(4) of the Cyprus Constitution, respectively.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

The Equality Body is vested with the power to (i) *combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin*³¹⁹; (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*³²⁰ *irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin*³²¹ and (iii) *promote equality of opportunity irrespective of grounds listed in the preceding section (to which the grounds of special needs*³²² *and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Its mandate covers all five grounds of the two anti-discrimination Directives but extends even further to include gender, nationality, community as well as rights and freedoms contained in the Cyprus Constitution and in international conventions ratified by the Republic of Cyprus.*

d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?

The only assistance offered to victims is the investigation of their complaints and the issuing of the decision. Unofficially, the staff may advise complainants as to what other or next steps to take in order to further pursue their aim.

The Equality Body may carry out independent investigations into various issues³²³ on its own right where it deems that any particular case may constitute a violation of the law.³²⁴ The Equality Body may also issue Codes of Good Practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.³²⁵

The Equality Body has the duty to make recommendations to the competent Minister, the parliament and affected groups of persons on, inter alia, the amendment of any legal provision

³¹⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3.(1).(a), Part I.

³²⁰ 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.

³²¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1).(b), Part I.

³²² 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including mental disabilities. In Cyprus, the term 'disability' is not understood to include mental disability which is considered to be a special category requiring more sensitive treatment.

³²³ E.g. Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31.05.2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26.05.2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 02.02.2005.

³²⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

³²⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 40, 41 and 42, Part VI.

or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right³²⁶ or following a specific complaint to that effect referred to the Equality Body.³²⁷ In addition, the law casts an obligation on the Equality Body to communicate its findings and reports to the Attorney General who will, in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures and prepare legislation for the abolition or substitution of the legislative provision which is contrary to the anti-discrimination law.³²⁸ However, there is some ambiguity in the law as to the procedure of repealing laws which are contrary to the anti-discrimination legislation.

The Equality Body can make binding recommendations³²⁹ ordering the guilty party to take steps to rectify the discrimination, for instance in the form of ordering the provision of goods and services which had been denied to the victim, including housing, education, health care³³⁰ and in the form of requesting the discontinuation of a certain practice that causes discrimination.³³¹ Although the total of these recommendations could potentially form part of a comprehensive code of conduct, the Equality Body has not as yet proceeded to the compilation of such a multi-purpose document, limiting its activity within the area of investigating particular issues.

The Equality Body has the power and the duty to monitor compliance with its decisions and to impose fines for non-compliance within the prescribed period. The Equality Body's orders are published in the Official Gazette.

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. Also, where there is a disciplinary offence, the Equality Body has the duty to refer this to the competent authority: for instance if the offender is a civil servant, the Equality Body must refer the case to the Minister in charge, so as to take action.

e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

The Equality Body can refer cases to the Attorney General's office so as for the latter to decide whether criminal charges must be instigated or whether a law needs to be repealed or revised in order to conform with the new anti-discrimination legislation. Although there is no power to bring a case in court, the Equality Body's decisions may be relied upon in court in order to claim compensation.

f) Is the work undertaken independently?

Yes. Investigations are carried out by the officers of the Equality Body.

With regard to the number of complaints received and investigated by the Equality Body since its appointment on 01.05.2004, the picture is as follows:

³²⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 35(1)(d).

³²⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 36(1)(b).

³²⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 39(1).

³²⁹ This applies only to the Cyprus Ant-discrimination Body and the Equality Body operating from within the Ombudsman's office and not to the other tasks and powers of the Ombudsman.

³³⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, section 16(2).

³³¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, section 21(1)(c).

In 2004 the department of the Equality Body dealing with the implementation of the employment directive examined nine complaints, out of a total of thirty-three submitted to it. Out of the complaints submitted, two were not investigated as they did not fall within its mandate. Reports with recommendations were issued in two cases. In three cases the investigations were discontinued because the complainant's claim was satisfied. One complaint was deemed to be unfounded and one complaint was discontinued for other reasons. The complaints concerned the grounds of age, ethnic origin, gender, language and religion.

During 2004, the department of Equality Body dealing with the race directive examined thirty two complaints, out of the sixty-one submitted to it, and has conducted two investigations on its own initiative. Out of the thirty-two complaints dealt with, two were deemed to fall outside its mandate, two were interrupted when the complainant's claim was satisfied, one was deemed unfounded and ten were interrupted for other reasons. In two cases, there was compliance by the accused to the satisfaction of the complainant following the Body's intervention and in fifteen cases reports were issued with recommendations.

In 2005, out of the eighty-three complaints received by the special department of the Equality Body dealing with the implementation of the employment directive, seventy cases were dealt with. In twenty-six cases, reports were issued with recommendations. Eleven complaints were deemed to fall outside its jurisdiction, nineteen complaints were deemed unfounded and nine were discontinued for other reasons. In five cases, there was compliance by the accused to the satisfaction of the complainant, following the Body's intervention. The complaints concerned age, ethnic origin, gender, disability, language, family status and religion.

During 2005, out of a total of 125 received by the special department of Equality Body dealing with the race directive, eighty complaints were dealt with and one investigation was conducted out of its own initiative. Eleven cases were deemed to fall outside the body's jurisdiction. In three cases the investigation was discontinued because the complainant's claim was satisfied. Sixteen complaints were deemed unfounded and the investigation of eighteen was discontinued for other reasons. In one case, there was compliance by the accused following the Body's intervention and in thirty-one cases reports with recommendations were issued.

There are certain weaknesses to the present framework which affect its overall effectiveness. The two major weakness have to do, on the one hand with the delay on the part of the government to approve and/or give sufficient funds to the Equality Body's office in order to make adequate staffing arrangements so as to cope with the additional duties bestowed upon it by the new legislation, and on the other hand with the fact that 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, persons with disabilities, gays and lesbians, religious groups) the new legal developments and the new complaint procedures open to them. It is particularly notable that although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. As a result, very few complaints have been received by the Equality Body's office from Turkish-Cypriots, even though since the partial lifting of the restrictions in movements in April 2003, there are several thousands Turkish-Cypriots seeking employment and access to public services in the south. A complaint was lodged with the Equality Body on 28.07.2004 about the non-translation into Turkish of the Cyprus

Government Official Gazette, of public signage and directions, of Ministerial and governmental publications and announcements, but no response has as yet been received.

In addition to its duties as the specialised anti-discrimination body, the Equality Body, in its capacity as Ombudsman, is vested with the power to investigate complaints against the public service and its public officers, including the Police and the National Guard which expressly covers investigation into complaints that acts or omissions violate human rights, and thus examines complaints as to racial or other related forms of discrimination and intolerance. A Report³³² prepared in relation to each particular case investigated, including cases of racial or other related forms of discrimination and intolerance, is submitted by the Ombudsman to the authority that is responsible for the public service or public officer concerned, and a copy is sent to the complainant. In the event that the Ombudsman concludes in this Report that the complainant has suffered some injury or injustice, the Report also contains the Ombudsman's suggestions or recommendations to the competent authority concerned for reparation of the injury or injustice, specifying at his/her discretion the time within which such reparation must take place. If the competent authority fails to give effect to a suggestion or recommendation for reparation, the Ombudsman may make reference to this, by a special report submitted to the House of Representatives and the Council of Ministers. The recommendations of the Ombudsman are persuasive, not binding, but the Ombudsman has proved to be the most effective body so far in dealing with questions of racial, gender, age and other grounds of discrimination.

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

(i). Initiatives of the Equality Body

We are informed by the Equality Body that they are currently in the process of preparing a number of activities in the area of dissemination of the new procedures which became available by the new laws, including training seminars for trainers, leaflets in six languages and an anti-racism festival. At its inception, this initiative did not include communication means accessible to persons with disabilities. However, following a recommendation by the Cyprus Labour Institute to the Equality Body, it is anticipated that the plans will be revised to include such measures.

(ii). Via the Cyprus National Action Plan for Employment 2004-2006, the involvement of the social partners in setting the employment priorities includes Guideline 7 of the Cyprus National Action Plan titled "Promote the integration of and combat the discrimination against people at a disadvantage in the labour market", dealing with discrimination but is silent on measures to combat racial or ethnic origin discrimination.

³³² The Commissioner submits an annual Report (which is published) to the President of the Republic, containing observations and suggestions, a copy of which is also submitted to the Council of Ministers and the House of Representatives.

(iii). Via the Cyprus National Action Plan for Social Inclusion 2004-2006 all interested parties, NGOs were invited to submit their views on the matter.

None of the Action Plans mentioned in (ii) and (iii) above were communicated to any disability organisation, nor were they made available in Braille.

(iv). In March 2004 the Cyprus Labour Institute INEK-PEO organised a series of seminars on the implementation of the new anti-discrimination legislation transposing Directives 2000/43/EC and 2000/78/EC, with focus on discrimination in employment. The seminars were attended by a few hundreds of persons, who were offered a comprehensive insight, with power point presentation, into the new anti-discrimination laws and practices.

(v). In December 2004 a seminar on disability discrimination was organised by the National Organisation for the Blind and the Ministry of Labour under an EU funded project. Sign language translations were provided throughout and programs were issued in Braille.

(vi). In January 2005 an awareness-raising seminar on discrimination was organised by the Equality Body

A number of other seminars had also been organised in 2003, including an awareness-raising Seminar on the two non-discrimination Directives, organized by the House of Representatives in which all key actors involved on the issue (Governmental and non-governmental sectors etc.) participated and had the opportunity within the framework of three workshops to express their views, to submit their suggestions and to identify needs for further activities/measures to be taken to prevent and combat racism at domestic level. A similar awareness-raising Seminar on the two Directives on non-discrimination, organised by the Ministry of Justice and Public Order and the European Commission, took place in 26 June 2003.³³³

Seminars are generally held in buildings which are accessible by wheelchairs. However, only the seminar of December 2004, mentioned in paragraph v above, offered sign language translation and documents in Braille, probably reflecting the fact that it was a seminar dedicated to disability and organised by a disability organisation. Funding may also partly account for the fact that these features were made available in this event.

Discrimination on the ground of sexual orientation is one of the topics covered in seminars dealing with discrimination in general, although no particular support is offered to organisations working in this field. Homosexuality continues to be a taboo subject in Cypriot society in spite of the fact that it has been decriminalised and homosexuals themselves are highly reluctant in revealing their sexual orientation to the public.

A number of anti-racist activities have been organised by the Youth Board of Cyprus with the financial support of the Government. These activities included a photographic exhibition, a camp for youth groups from Cyprus and abroad, anti-racism festivals on the occasion of the International Day of Tolerance, etc. Also, the Youth Board financed other Youth organizations anti-discrimination activities and the participation of young people to attend seminars abroad. Finally, the Youth Board financed a festival (Rainbow Festival) organised by the Action for Equality, Support and Anti-racism (formerly ISAG).

On the question of disability there has been consultation with the Federation of Organisations of the Disabled.

³³³ During this Seminar, three experts from EU countries were invited in order to explain/discuss the provisions of the two Council Directives as well as their implementation with all key actors involved in discrimination issues.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment?*
- b) *Are any laws, regulations or rules contrary to the principle of equality still in force?*

The existing constitutional practice is such that any matter that is contrary to the principle of equal treatment, as guaranteed by Article 28 of the Constitution, and the human rights sections of the constitution, is unconstitutional, as the principle underlies all relevant laws. Therefore, it is considered to be null and void and of no legal effect. Case law has confirmed this. Secondly, the equality provisions contained in the international treaties, signed and ratified by the Republic, take precedence over any municipal law and therefore override any provisions that are contrary to the principle of equal treatment. Thirdly, the laws of the republic on Equal Treatment (gender, disability and minority anti-discrimination) expressly repeal any contrary provisions; even if, under the doctrine of implied repeal, these would not normally prevail over the latest laws where there is a conflict.

The mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended is that provided for the functioning of the Equality Body.

In spite of the explicit general repeal of all contrary laws, collective agreements, contracts or rules etc there is little screening as such on each and every law, collective agreements, contract or rule, unless there is an actual complaint.

9. OVERVIEW

Cypriot society today offers a constantly changing picture due to various factors. These include its EU accession; the lifting of the restrictions in movement that have brought about the relocation, in terms of residence and mainly employment, of many Turkish-Cypriots to the south; the increase in numbers of migrant workers and the even larger increase in numbers of asylum seekers.

These changes had a serious impact on the issue of discrimination in employment, education, housing, racial violence, access to goods and services, healthcare and social security to varying degrees. New legislation has come into force to deal with these issues, but it is too soon to say to what extent these new regulations have actually alleviated the problem. Further public awareness must be pursued, particularly among the vulnerable groups, to enable them to utilise these procedures. In addition, in order to make these new procedures more readily available to the affected groups, several obstacles must be addressed, such as the legal costs which are often prohibitive for many vulnerable groups as well as the risk of victimization which, in the cases of migrants, often takes the form of deportation.

There is, at the same time, an increasing rate of civil society initiatives to help raise public awareness and to take direct action on discrimination cases but NGOs have to struggle against a difficult backdrop of homophobia and increasing nationalism and xenophobia. The participation of NGOs in all processes must be further encouraged and enhanced if discrimination issues against vulnerable groups are to be effectively addressed.

The increasing numbers of asylum seekers during 2004 and 2005 introduced a new category of vulnerable persons in Cyprus who are adversely affected by policies and practices and police heavy-handedness³³⁴ aimed at reducing the number of asylum seekers in some cases; in others it is the result of heavy workload on the part of governmental departments involved which are understaffed and unprepared for this sharp rise in numbers.

In 2004, the police had the lowest record of compliance with the Equality Body's decisions³³⁵ while in a more recent statement to the press, the Equality Body complained again of the low compliance record of the police.³³⁶ On 12.09.2005 a bill was tabled in Parliament, titled "The Police (Independent Authority for Investigating Allegations and Complaints) Law", intended to create a new procedure for investigating police practices, in which members of the police force themselves will also participate. The Attorney General's office has explained this move³³⁷ as an effort to enable criminal proceedings to be instigated by the Attorney General's office, arguing that in order for such proceedings to be commenced, the investigation carried out by the Equality Body will not suffice, as the law requires the investigation preceding the criminal procedure to have been carried out upon the instructions of the Attorney General. This move has raised concerns that, instead of strengthening the institution of the Equality Body by granting to it powers to conduct investigations which can lead to criminal prosecutions, the institution is being undermined, by transferring part of its mandate to the police.

For the first time in decades, at least three incidents of violence against Turkish-Cypriots were reported by the media,³³⁸ all three of which led to criminal prosecutions but not to any conviction. In two out of the three cases³³⁹, the accused was the same person, who also declared himself to be a member of the Greek neo-fascist organisation Chrysi Avgi ("Golden Dawn").³⁴⁰ He was acquitted by the court on the ground that the prosecution failed to prove its case beyond reasonable ground and that any actions of the accused were self-defence.³⁴¹ The incidents and the acquittal that followed have raised concerns that acts inciting ethnic hatred are not effectively dealt with and the activities of Chrysi Avgi in Cyprus are not properly monitored and addressed. Incidents of racial violence against migrants are also regularly reported by NGOs and by the media; however, the system maintained by the police for recording racially motivated incidents has only recorded two of such incidents for the whole of 2005.

Special mention must be made of the constitutional provisions which set out quotas of participation for the two communities in Cyprus, the Greek-Cypriots and Turkish-Cypriots, in all major sectors: the army, the police, the House of Representatives, the Courts and the civil service. This quota arrangement may prima facie appear incompatible with the equality principle expounded in the two Directives. However it must be juxtaposed with the fact that the quota provisions are designed to provide for a wide scope of community autonomy so to

³³⁴ A number of Equality Body reports condemn incidents of violence used by the police against asylum seekers in order to convince them to withdraw their asylum applications.

³³⁵ In October 2004, the Ombudsman Eliana Nicolaou presented a report to a Committee of the House of Parliament, where she criticized 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 *Phileltheros* (28.10.2004).

³³⁶ Evangelou, M. (2005) "Kleinei ta aftia stin Epitropo I Astynomia" in *Politis* (11.08.2005), p.3.

³³⁷ In their letter to the national expert dated 12.10.2005.

³³⁸ Kalatzis, M. (2005) "Xespasan anev logou se Tourkokyprio" in *Politis* (30.09.2005), p.22; Nearchou J. (2005) "Katathese o Tourkokyprios: Anagorise ton Chrysavgiti" in *Politis* (21.09.2005), p.21; Nearchou J. (2005) "Katigoreitai oti ktypise Tourkokyprios- Se apologia o Chrysavgitis" in *Politis* (05.10.2005), p.22.

³³⁹ The third case was still pending at the time of writing this report.

³⁴⁰ Chrysi Avgi was described by the major political parties in Cyprus as "Nazi", "racist", "fascist", as reported in Psyllides, G. (2005) "Ultra-nationalist group in the dock after Turkish Cypriot beaten" in *The Cyprus Mail*, (02.08.2005). Its symbol is based on the Nazi swastika.

³⁴¹ Kalatzis, M. (2005) "Athootherike o Chrysavgitis" in *Politis*, (05.11.2005), p.47.

create a consociational system of power-sharing, forming part of a democratic system of governance by securing the participation of two politically equal communities. As such, these provisions may be viewed in light of the two exceptions provided in the two Directives in respect of occupational requirements. Overall, there is an ongoing problem with the resulting different treatment of Turkish-Cypriots due to provisions made under the 'law of and other measures introduced to deal with the situation that resulted from the invasion, occupation and division of the island. It appears that many of these measures result in discrimination on the grounds of 'racial' or ethnic origin. Such examples include the right of enjoyment of their 'abandoned' properties, the ongoing indirect discrimination due to language as no public documents and signs are available in Turkish and the right to access to certain provision that require a valid address in the area under the control of the Republic, which is again indirect discrimination against Turkish-Cypriots.

In the field of disability, a number of decisions by the Equality Body in response to complaints submitted by persons with disability are gradually building up a new regime whereby persons with disabilities are claiming their rights and some obstacles in their social integration are starting to be removed. The newly established national branch of the European "Advocates and Activists" program is expected to bring significant developments in this field.

In the field of employment, following a number of Equality Body decisions addressing the issue of maximum age limits in advertised posts, it is expected that age will no longer constitute an obstacle for persons applying for jobs. Whether this will mean that more older people will be gaining access to employment remains to be seen.

Sexual orientation continues to be the reason for many persons' exclusion from the labour market, with homosexuality being a taboo that has not as yet been addressed. Gay people themselves find it hard to come forward and claim their rights, for fear of social contempt. At the time of writing this report, the Equality Body is about to present a report following its own investigation into this issue, but this is not available yet.

10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the newly enacted legislation. Several ministries are involved depending on the issue at stake: the Ministry of Labour and Social Insurance deals with issues such as employment and social insurance benefits; the Ministry of Justice and Public Order deals with issues of legislation drafting and interpretation; the Ministry of Education and the Ministry of the Interior with their respective competencies.

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Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country **CYPRUS**

Date **23.01.2006**

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
<i>This table concerns only <u>key</u> national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.</i>	<i>Please give month / year</i>			<i>e.g. public employment, private employment, access to goods or services</i>	<i>e.g. prohibition of direct and indirect discrimination or creation of a specialised body</i>
The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004	19.3.2004	race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation.	civil	Combating of racist discrimination and of discrimination forbidden by law; promotion of equality of the enjoyment of rights and freedoms safeguarded by the Constitution or by the Conventions ratified by Cyprus; and promote equality of opportunity in the areas of employment, access to vocational training, working	<i>Creation of specialized body</i>

				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 Equal Treatment in Employment and Occupation Law No. 58 (1)/2004	31.3.2004	Racial and ethnic origin religion or belief, age, sexual orientation	civil	conditions of access to employment, access to vocational orientation and training, working conditions and terms of employment and membership to trade unions	Discrimination in the workplace
The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004	31.3.2004	Racial and ethnic origin	civil	social protection, medical and medicinal care, social provisions, education, and access to goods and services including housing	Direct and indirect discrimination based on racial and ethnic origin
Law on Persons with Disabilities (Amendment) No. 57(I)/2004	31.3.2004	disability	civil	Public and private employment	Direct and indirect discrimination based on disability

fThe Cyprus Constitution	1960	community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever	administrative	Only the public sector	Declaration of rights
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ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country Cyprus

Date 23.01.2006

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention of Human Rights	Yes	Yes	None	Yes	Yes
Protocol 12, ECHR	Yes	Yes	None	Yes	Yes
Revised European Social Charter	Yes	Yes	None	Ratified collective complaints protocol? YES	Yes

International Covenant on Civil and Political Rights	Yes	Yes	None	Yes	Yes
➔Framework Convention for the Protection of National Minorities	Yes	Yes			Yes
International Convention on Economic, Social and Cultural Rights	Yes	Yes	None	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	Yes	Yes	None	Yes	Yes
Convention on the Elimination of Discrimination Against Women	Yes	Yes	None	Yes	Yes
ILO Convention No. 111 on Discrimination	Yes	Yes	None	Yes	Yes
➔Convention on the Rights of the Child	Yes	Yes	None	Yes	Yes