

# **REPORT ON MEASURES TO COMBAT DISCRIMINATION IN THE 13 CANDIDATE COUNTRIES (VT/2002/47)**

## **COUNTRY REPORT**

### **CYPRUS**

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## ***Introductory Remarks<sup>1</sup>***

Over recent years, Cyprus has introduced a range of equality and human rights legislation, primarily as a result of its accession commitments, as well as for the purpose of compliance with international law instruments. At the time of writing this Report, the Government of Cyprus has not yet transposed Directives 2000/43/EC and 2000/78/EC. A Legislation-Drafting Committee was set up under the presidency of the Ministry of Justice and Public Order, with the participation of representatives/experts from the Law Office of the Republic and various Ministries (Ministry of Labour and Social Insurance; Ministry of Education and Culture; Ministry of Interior; Ministry of Finance; Ministry of Health; Ministry of Commerce, Industry and Tourism; and the Council Office of the Planning Bureau), in order to transpose Directive 2000/43/EC into domestic legislation. A new piece of legislation - supplementing existing legislation on equality and non-discrimination - is to be introduced. Upon completion of the first draft of the relevant Bill, social partners and human rights NGOs will be consulted<sup>2</sup>. Because the adoption of the Directives and their incorporation into Cyprus legislation is still pending, combating racial discrimination in Cyprus is principally based on Constitutional provisions, such as Article 28 of the Constitution, as well as on the human rights provisions contained in other Constitutional articles, legislation and international conventions.

As with all EU accession matters, this Report only covers the territory controlled by the Cyprus Republic and does not extend to the 35% of Cyprus territory that has been under Turkish occupation since 1974. With the settlement of the Cyprus problem an additional section will be required so that the northern part of the island and the specific issues of discrimination related to the Turkish-Cypriot community are addressed.

The accession process has activated an increasing interest in resolving the Cyprus dispute. This factor combined with the socio-economic development of the Republic over recent years and the economic transformation of the island means that Cyprus has gone from being an exporter to an importer of migrants. Hence the presence of about 40,000 migrant workers in the Republic and concerns over their treatment (ECRI 2001) has further highlighted the need to enhance anti-discrimination measures and practices. This report will consider all grounds of discrimination, focusing on employment, as provided in the two directives.

## ***Historical Background***

The specific historical setting of Cyprus has been dominated by the ethnic relations between the two constitutionally recognised communities<sup>3</sup>, Greek-Cypriots and Turkish-Cypriots, as well as the role of foreign forces, something also reflected in the research agenda on Cyprus. The result is that this has somehow led to neglect in initiating studies on the various grounds of discrimination. Indeed, tackling discrimination on grounds other than ethnic or racial origin was somehow subsumed in the ‘national question’; even there the emphasis has been on studying the relations between the two communities, undervaluing discrimination as such, or looking at the treatment of the smaller minorities. This study will deal with all the grounds of discrimination referred to in the two directives, starting with a historical introduction of the ethnic conflict in the context of the complex constitutional structure of the Cyprus Republic

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<sup>1</sup> This report was written by Nicos Trimikliniotis, in association with Michael Trimikliniotis, under the direction of MEDE and the Migration Policy Group for the European Commission project on comparing existing national legislation in EU Candidate countries on equal treatment and combating discrimination and the measures taken by 13 candidate countries to comply with the anti-discrimination Directives 2000/43/EC (Racial Equality Directive) and 2000/78/EC (Employment Equality Directive).

<sup>2</sup> Following a decision taken by the Council of Ministers, another Law-Preparatory Committee is drafting a bill aiming at establishing an independent body on racism (probably a Commissioner) and facilitating the implementation of Article 13 of Directive 2000/43/EC.

<sup>3</sup> Only the Greek-Cypriots and the Turkish-Cypriots are recognised by the constitution as ‘communities’, endowed with specific power-sharing rights; three other ethnic groups (Armenians, Latins, Maronites) are treated by the constitution as religious groups, who only have certain minority rights (see note 4).

## The Ethnic Conflict, Discrimination and the Cyprus Problem

The Cyprus constitution, adopted under the Zurich-London Accord of 1959, contains a rigorous bi-communalism, whereby the two ‘communities’, Greek-Cypriots, who make up 78% of the population, and Turkish-Cypriots who account for 18% of the population, share power in a consociational system of power-sharing. Citizenship is strictly communally divided. There are also three other minority groups who have the constitutionally recognised status of ‘religious groups’<sup>4</sup>: the Maronites<sup>5</sup>, the Armenians<sup>6</sup> and the Latins<sup>7</sup>. A small Rroma community also exists, registered as part of the Turkish-Cypriot community<sup>8</sup>. This system has been criticised by the Council of Europe (2001)<sup>9</sup>. The Constitution provides for a system of separate elections; separate majorities are required in both the executive (Council of Ministers) and legislature (House of Representatives) and both the Greek-Cypriot President and the Turkish-Cypriot Vice-president have separate veto powers. A system of quota participation by the two major Cypriot Communities in all areas of public life is also provided for in the Constitution. Parliamentary seats are allocated by the Constitution on a 70% to 30% basis between the Greek and the Turkish communities. Furthermore, laws of ‘personal’ nature (education, religion, family etc.) are organised along communal lines, under the supervision of separate communal chambers.

In 1963, following a Greek-Cypriot proposal for amendment of the constitution, the Turkish-Cypriots withdrew from the Government. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. Inter-communal strife ensued until 1967. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the “doctrine of necessity”, in spite of the constitutional deficiencies created by the Turkish Cypriot withdrawal from the administration<sup>10</sup>. Since 1974 the northern part of Cyprus, some 35% of its territory, has been under Turkish occupation and outside the control of the Cyprus Government. Some 100 thousand Greek-Cypriots inhabit the northern territory, with only a few hundred Turkish-Cypriots living in the government-controlled south (see ECRI Report 2001; Kyle 2000). However, since the end of May 2003 the regime in the occupied territories has allowed Turkish-Cypriots to visit the Republic-controlled south on the condition that they return before midnight and the Greek-Cypriots to visit the north, on the condition of passport inspection and with restrictions on their stay<sup>11</sup>. This report inevitably refers only to the Cyprus Government controlled area.

<sup>4</sup> In an area of 9,251 sq. km, the total population of Cyprus is around 754,800, of whom 666,800 are Greek-Cypriots (living in the Cyprus Republic-controlled area). In 1960 Turkish-Cypriots constituted 18% of the population, whilst the smaller ‘religious groups’, 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.

<sup>5</sup> For more on the Maronites see Iacovou (1994).

<sup>6</sup> For more on the Armenians of Cyprus see Ashdjian (2001).

<sup>7</sup> For more on the Latin minority in Cyprus see “The Latin Community in Cyprus”, Interview by Latin Representative Benito Mantovani, *The Cyprus Weekly*, September 1-7, 2000.

<sup>8</sup> The term ‘Rroma’ tends to be used to describe the Cypriot Roma population (see Kenrick and Taylor 1986; Williams 2000). The Rroma population of Cyprus is said to have been over a thousand. In 1960 they were classified as part of Turkish-Cypriot community due to their Muslim faith; however the ‘mantides’ (μάντηδες), who were Christian Rroma, were classified as part of the Greek-Cypriot community (Kenrick and Taylor 1986; Williams 2000; Kyrris 1969, 1985). In fact they were never politically organised to have any say into their affairs, although there is certainly an important internal social arrangement.

<sup>9</sup> “A number of problematic issues still need to be addressed considering at the same time that there are particular circumstances, including constitutional matters, to be taken into account in the case of Cyprus. These issues include the obligation for religious groups and their members to choose adherence to the Greek Cypriot or to the Turkish Cypriot community, and the impossibility for Turkish Cypriots to cast a vote in elections and to conclude civil marriages, including with Greek Cypriots”

<sup>10</sup> The case was Attorney General of the Republic v Mustafa Ibrahim and Others (1964) CLR 195. See Negati 1970, Loizou 2001, Nicolaou 2000.

<sup>11</sup> Over 300,000 visits have taken place so far. However, the restrictions on freedom of settlement and stay are still enforced, whilst Greek-Cypriots evicted from their homes during the 1974 Turkish army invasion still cannot enjoy their houses and property in the occupied North. The treatment of Greek-Cypriot displaced persons who have visited their homes over the last few months by ordinary Turkish-Cypriots in these homes on the whole has been quite remarkably welcoming and friendly.

The comprehensive plan put forward by the UN Secretary-General, Kofi Annan, for the resolution of the Cyprus problem, on the basis of a bi-zonal, bi-communal federation, has so far not led to a settlement due to the rejection of the plan by the Turkish-Cypriot side prior to the European Council meeting in Copenhagen<sup>12</sup>. The plan contains a new constitution that, if implemented, would dramatically transform the current structure of government and constitutional provisions<sup>13</sup>.

The problems in the relations of the two communities started directly after the establishment of the newly formed Republic in 1960; in fact the first inter-communal incidents had begun in 1957. The constitution imposed was extremely rigid and complicated and it quickly led to conflict between the two communities, as the Report of the UN special envoy Mr Galo Plaza<sup>14</sup> makes clear. This report was written for the UN Secretary-General by Mr. Plaza in his capacity as United Nations Mediator on Cyprus. The community leaderships viewed quite differently the provisions of the Constitution concerning their respective participation in the Government<sup>15</sup>. The social life of the two communities, including the question of discrimination, was inevitably shaped by the turbulent political history of the island that brought the two communities into conflict. There has been very little research on the question of discrimination as such, given the apparent dominance of the political question and widespread ethnic violence. The Plaza Report makes some reference to the underlying ethnic divisions and the fact that individual human rights, including the right not be discriminated against, were deficient between the years 1960-65. Under the heading “The protection of individual and minority rights”, Mr. Plaza notes the difficulty in applying the principle of equality of treatment and human rights without discrimination due to “the fact that the population of the island continues to consist of two principal ethnic communities, the further fact that they are unequal in numbers and finally the gravity of the conflict which has developed between them”. The same Report noted the difficulty involved in the task of rebuilding a “progressive re-birth of confidence and the re-establishment of social peace”, as the obstacles “are no less psychological than political”<sup>16</sup>. The way forward in Cyprus according to the Report is “the establishment of the most rigorous guarantees of human rights and safeguards against discrimination”, which goes to illustrate, if in an indirect manner, the prevalence of discriminatory practices that inevitably go hand-in-hand with the ethnic conflict and turbulence that existed, particularly during the period 1963-67, but also throughout the short life of the Cyprus Republic.

The rigorous bi-communal provisions of the Constitution did not prove very useful in the end. As regards relations between Greek-Cypriots and Turkish-Cypriots, given that Greek-Cypriots are almost entirely Greek Orthodox and Turkish-Cypriots entirely Moslem, in examining ethnic discrimination in Cyprus, one can view discriminatory practices against members of each community on the ground of ethnicity and religion interchangeably. However, ‘religious’ discrimination is not exhausted there, as the treatment of Jehovah witness conscientious objectors refusing to serve in the military illustrate.

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<sup>12</sup> Held on the 12-13 December 2002.

<sup>13</sup> Should there be a settlement in the next months, before formal accession to the EU a new study needs to be written taking into account the new structures and the new situation of the eventual agreed plan for solution of the dispute.

<sup>14</sup> The Report is illuminating: “It is enough to observe that the difficulties in implementing the Treaties began almost immediately after independence... The events which have taken place since December of 1963 have created a situation which makes it impossible to return to the previous situation”. (para 129) (see [http://www.cyprus-conflict.net/galo\\_plaza\\_report.htm](http://www.cyprus-conflict.net/galo_plaza_report.htm)).

<sup>15</sup> As the Plaza Report notes, the restrictions enacted by the Constitution were viewed both by the Turkish Cypriots and the Turkish government as a means to secure the treatment of Turkish Cypriots as a “community with distinct political rights”, and not as a minority, whereas Greek-Cypriots saw the very same provisions as a hindrance on the exercise of what they considered as ‘legitimate’ *majority* rights, including the right to self-determination.

<sup>16</sup> The Report notes: “The violent sharpening of “national” sentiments over the months of crisis will for some time make it extremely difficult for officials at all levels to impose or even exercise strict impartiality towards all the citizens of the country, and without that impartiality and understanding there will be a constant risk of acts of discrimination, even if laws are respected in the formal sense. Furthermore, there are personal hatreds, which will last beyond any political settlement.”

The current de facto divide of the island creates an awkward situation, as very few hundreds of Turkish-Cypriot live in the Republic-controlled area (see ECRI 2001, Kyle 1997). The opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities concludes that there is reason for concern about reports from Turkish Cypriots on cases of ill treatment by police officers, as well as difficulties in instituting criminal proceedings against officials under suspicion. The Committee recommends that the Cyprus authorities ensure that these proceedings are properly conducted. However, the situation has radically changed with the recent partial lifting of restrictions on freedom of movement by the Turkish-Cypriot authorities, which resulted in thousands of Turkish-Cypriots crossing over into the territory controlled by the Republic. The police authorities may no longer be able or interested in monitoring so closely the lives of Turkish Cypriots living in the south.

### **The other Grounds for Discrimination in Perspective**

There is no study to illustrate the extent of general discriminatory practices in Cyprus, nor is there a tradition of anti-discrimination laws, given the dominance of the ‘national question’, save for sex discrimination. Research on discriminatory practices is virtually non-existent as the monitoring systems are either archaic or non-existent. Only very recently has there been an interest in matters of discrimination with the development of NGOs, researchers and a more pluralistic media<sup>17</sup>.

Protection against religious discrimination is provided for by the constitution and courts have regularly made declarations to this effect. However, the rigorous bi-communalism of the Republic, the role of religion in the education system and the recognition afforded to the ‘established’ religious groups shows little societal tolerance of any other religions, particularly those religions which engage in proselytising. Jehovah’s Witnesses in particular have in the past been the target of discrimination. According to the 1996 U.S. State Department Report on Human Rights, missionaries have a legal right to proselytise in both communities but their activities are closely monitored by the Greek-Orthodox church and the authorities of the Republic. Furthermore according to the Human Rights Without Frontiers (HRWF) International Secretariat,<sup>18</sup> Cypriot authorities have again started to prosecute conscientious objectors who refuse to perform reservist exercises who happen to be Christian Jehovah’s Witnesses. Already some of them have been convicted and are facing the possibility of imprisonment.

As for the situation in the occupied north of the island, the European Court of Human Rights has ruled that the government of Turkey was responsible for restrictions imposed on Greek Cypriot residents in the north with regard to their access to their places of worship and participation in other areas of religious life (U.S. State Department International Religious Freedom Report 2002).

The issue of gender discrimination is the ground with the longest legal history in Cyprus. The introduction of the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002 (Law 205(I)/2002) marks an important qualitative step in the history of anti-discrimination and serves as a model for further development of the other grounds. However, the introduction of the new law is too recent to allow for any safe assessment as to its effect on society.

On the question of disability some progress over the past twenty years can be reported, as shown in the statistics from the census (1982, 1992 and anticipating the 2002 census). In 1982 only 22.6 disabled persons per 1000 persons were recorded, compared to 39.5 per 1000 recorded in 2002, presumably reflecting the social attitudes prevailing over the matter. However, despite the change in attitude, a great deal remains to be done, as the vast majority of the persons with disabilities aged 15 and over (73%) reported that they were not working, with only 25.2% working and 1.2%

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<sup>17</sup> For a more detailed treatment on the matter of migration and racism in Cyprus see Trimikliniotis (1999) and ISAG (2003).

<sup>18</sup> Date 03/08/2002.

reported as unemployed (ILO 2002). The Law concerning Persons with Disabilities (Law 127(I)/2000) introduced a modern framework for tackling disability discrimination.

There is very little data available in Cyprus on discrimination based on sexual orientation. Progress on the issue of sexual orientation discrimination has been slow due to the attitudes on the subject, which is still very much a taboo subject. A more enlightened approach and progress can be noted following the successful challenge by Mr. Alexandros Modinos at the European court of Human Rights (Modinos v Cyprus 16 E.H.R.R 485). There is no history of legal protection against discrimination of lesbians and gay men, as this remains a taboo subject.

Similarly, there is no provision that prohibits age discrimination as such, nor is there any study on the extent of age discrimination in Cyprus.

## **Chapter 1 The legal framework, definitions and scope**

### **a. The legal framework**

#### **ARTICLE 1 (RACIAL EQUALITY DIRECTIVE AND EMPLOYMENT EQUALITY DIRECTIVE)**

*Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?*

*Where there is no anti-discrimination law, the reports should make note of any relevant public or academic discussion, policy debate or legislative proposals at the national level. In particular, the reports should explain what any proposed legislation entails.*

A framework exists in Cyprus at national level to put into effect the principle of equal treatment and for combating discrimination on the basis of racial/ethnic origin, nationality and religious belief; however this does not include sexual orientation or age. This framework is built on Constitutional European and International law, Treaties ratified by the Republic of Cyprus 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.

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.”

Furthermore, 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<sup>19</sup>.

Article 28 of the Cyprus Constitution corresponds to Article 14 of the European Convention on Human Rights 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)<sup>20</sup>. 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

<sup>19</sup> 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.”

<sup>20</sup> 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).

equality principle and the prohibition of discrimination is part of Article 28<sup>21</sup>.

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<sup>22</sup>. Article 15 provides for the right to private and family life (like Article 8 of the ECHR).

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.

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”. Not discounting the fact that the principle of Equality and non-discrimination must be enforced, the human rights section of the Constitution applies in full to non-natives. In any case, the international treaties ratified by the Republic include provisions guaranteeing rights to all, irrespective of ethnic or ‘racial’ or national background and irrespective of whether they are nationals or migrants or aliens.

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.

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 municipal law, and are, as from the date of their publication take precedence over any municipal law.

As for the relevant International and European instruments signed and ratified by the Cyprus Republic, these are the following:

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. Article 1(1) of this Convention provides: “In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Protocol No. 12 to The Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Government of Cyprus on 19/4/2002 and incorporated in its domestic legislation as Law 13(III)2002, provides in Article 1 a general prohibition of discrimination: “The

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<sup>21</sup> For more details see Nedjati 1972: 165-167; Charalambous 1995: 43-51)

<sup>22</sup> See Georghiou v. The Republic (1968) 8 J.S.C. 805, at p. 810.

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.” This law entered into force on 1/12/2002.

The Discrimination (Employment and Occupation) Convention (ILO No. 111), 362 U.N.T.S. 31, ratified and incorporated as Law 3/ 1968, prohibits in Article I(a) “...any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.

Cyprus has ratified a number of other international conventions on human rights<sup>23</sup> as well as on specific rights in the fields of education<sup>24</sup>, the rights of refugees<sup>25</sup>, rights of migrant workers (ILO Convention 143)<sup>26</sup>, disabled persons (ILO Convention 159)<sup>27</sup>, and stateless persons<sup>28</sup>. The main body of the revised European Social Chapter of 1996 (ratified by Law 27(III)/2000) has also been ratified<sup>29</sup>.

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 services. As a result of these amendments, it is no longer necessary that the incitement to racial hatred is intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence it is no longer necessary that race be the sole ground of discrimination<sup>30</sup>. The section referring to the refusal to provide goods and services has resulted in at least one conviction<sup>31</sup>. Under the Criminal Code (Cap.154) a number of discriminatory acts are punishable offences, such as s.47 (publication<sup>32</sup> 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

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<sup>23</sup> Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Also Cyprus ratified the European Convention against Torture and Inhuman or Degrading Treatment or Punishment, together with Protocols No. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).

<sup>24</sup> The Convention against Discrimination in Education (ratified by Law 18/1970).

<sup>25</sup> The 1951 Geneva Convention on the Status of Refugees and the Protocol Relating to the Status of Refugees (ratified by Law 73/68). In the case of migrants and asylum seekers, discrimination on the basis of nationality is expressly excluded from the directives: “This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.” The Geneva Convention Relating to the Status of Refugees was ratified by the UK and extended to Cyprus in 1956, when Cyprus was still a British colony. After independence, on 16/5/63, the Government of Cyprus ratified the Secretary General that it considered itself bound by the Convention.

<sup>26</sup> Convention 143 concerning Migration in Abusive conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ratified by Law 36/1977).

<sup>27</sup> The Law relating to Vocational Rehabilitation of Disabled Persons (ILO Convention 159) (ratified by Law 42/87).

<sup>28</sup> Protocol relating to certain cases of Statelessness (ratified by Law 64/77).

<sup>29</sup> The Republic has ratified the following articles of the Chapter: 1, 5, 6, 9, 10, 11, 12, 14, 15, 19, 20, 24, 28; and also paragraphs 1, 2, 5 and 7 of art.2; paragraphs 1, 2, and 3 of art.3; paragraphs 1, 2, 3, 4, 6, 8 and 10 of art.7; paragraphs 1, 2 and 3 of art.8; paragraphs 2 and 3 of art.13; paragraph 4 of art.18; and paragraph 3 of art.27.

<sup>30</sup> 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.”

<sup>31</sup> In criminal case No. 31330/99 dated 12 December 2001 where the accused was actually convicted and a term of imprisonment was imposed.

<sup>32</sup> 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.”

Republic”<sup>33</sup>), 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”<sup>34</sup>).

As far as anti-discrimination laws in employment are concerned, there is 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 24/67).

There is, however, an absence of comprehensive primary anti-discrimination legislation as indicated by the second ECRI Report on Cyprus (2001)<sup>35</sup>. In a similar vain, the European Commission Report (2002), under the heading *On the issue of human rights and the protection of minorities*, states that “Cyprus continues to respect human rights and freedoms”, but refers to the significant work to be done, particularly in the area of anti-discrimination. The Report adds that “Cyprus still needs to ensure full transposition and implementation of the EC anti-discrimination *acquis* based on Article 13 of the EC Treaty”<sup>36</sup>. However, the Republic is committed to implementing the Directives by July 2003, however no such legislation draft has far been presented or consulted upon. This remains the case to date, as was reiterated recently in the Copenhagen summit (under the heading *Overall Assessment*, page 83)<sup>37</sup>.

Some issues have been brought forward recently on issues relating to religious freedom and discrimination on the ground of religion. Some complaints have been brought about by recognised ‘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 group is not satisfied with the term “Latin” 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)<sup>38</sup>. This was adopted by the Committee of Ministers (Council of Europe 2002). Another issue, primarily relating to religious freedom, highlighted by international reports is that of reservist conscientious objectors (see Amnesty International Press Release 2002, Human Rights Without Frontiers 2003).

Recently there has been a change in the law that has allowed the decriminalisation of homosexuality following the case of Modinos. In Modinos v Cyprus 16 E.H.R.R 485, the

<sup>33</sup> This is deemed to be seditious intention for the purposes of the above offence under s. 47.

<sup>34</sup> 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”.

<sup>35</sup> 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).

<sup>36</sup> The relevant section reads: “Cyprus has ratified all major human rights conventions and signed Protocol 12 to the European Convention on Human Rights on 4 November 2000 prohibiting discrimination on any grounds. Whereas Art. 28 (2) of the Constitution prohibits any direct or indirect discrimination against any person on the grounds of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or any ground whatsoever, there is no specific implementation legislation for the EC non-discrimination directives adopted in 2000.”

<sup>37</sup> “Legislation transposing the EC anti-discrimination Directives based on Article 13 of the EC Treaty will have to be introduced and implemented. Although the constitution of the Republic of Cyprus includes a general anti-discrimination clause, Cyprus must adopt specific legislation to transpose the *acquis*.”

<sup>38</sup> 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.

European Court of Human Rights ruled that the criminalisation of homosexuality, under the antiquated Cyprus Criminal code dating back to 1885, was a violation of Article 8 of the European Convention of Human Rights. The law, which outlawed homosexuality between consenting male adults, was only amended in 1998<sup>39</sup> after five years of stalling, however, the age of consent is 18 for homosexuals and 16 for lesbians and heterosexuals. Up until 2002 the criminal law contained discriminatory provisions against homosexual men, which were repealed only after significant pressure from the EU<sup>40</sup>. There was significant delay in responding to the recommendations of the European Court of Human Rights<sup>41</sup>, as there was strong opposition from some Christian organisations and church leaders<sup>42</sup>, who threatened unrepentant homosexuals with excommunication. The House of Representatives had initially planned to reduce the age of consent for homosexual males from 18 to 16, to bring it in line with legislation on heterosexuals. But the House Legal Affairs Committee decided instead to raise the age of consent for heterosexuals to 17, to avoid having to reduce the age for homosexuals to 16, therefore the age of consent for all is now 17.

Some surveys do illustrate that Cypriot society is less tolerant of homosexuals and homosexuality than the average European society and marginally better than some eastern European societies<sup>43</sup>, and that the practice of homosexuality is not tolerated in Cyprus by a large number of people.<sup>44</sup>

Currently there are no provisions in Cyprus law on age and sexual orientation discrimination.

**ASSESSMENT:** Although in Cyprus a framework does exist that puts into effect the principle of equal treatment and for combating discrimination, for Cyprus law to comply with Article 1 of the Directives, this framework ought to be widen to cover beyond the grounds of racial or ethnic origin, religion or belief and disability, the grounds of age and sexual orientation. Furthermore, with regard to the ground of religion, even though nominally covered, in practice little is being done to implement this prohibition. The scope of existing laws and provisions only covers employment and needs to be extended to other fields. There is a definition of the ground disability, but no definitions of racial or ethnic origin, religion or belief exist, though this is not to say that this means that these grounds are not recognised.

## **b. The definition of discrimination**

*Article 2 (Racial Equality Directive and Employment Equality Directive)*

### ***Direct and indirect discrimination***

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to

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<sup>39</sup> May 21, 1998.

<sup>40</sup> The report by the daily *Cyprus Mail* (24 November 2001) is indicative: "Cyprus has come under pressure from the European parliament to bring its human rights provisions up to scratch. Several Euro MPs warned they would oppose the island's accession until the changes were made".

<sup>41</sup> Even after passing the law decriminalising homosexuality the parliament managed to further insult gays by retaining in the text a reference to "unnatural licentiousness", which the gay community strongly objected to. It took two years for the House to change the offending phrase to "intercourse between men", (*Cyprus Mail* 06 July 2002 - George Psyllides).

<sup>42</sup> Archbishop Chrysostomos, the veteran primate of Cyprus' Orthodox church, made an appeal to his womenfolk to "revolt against homosexuals", whom he called "depraved sinners". He also pledged to "personally excommunicate the perverts" if they refuse to repent their "unnatural acts ... You must stop them." (*The Guardian*, Tuesday October 16, 2001).

<sup>43</sup> A study conducted by the University of Melbourne (Melbourne Institute of Applied Economic and Social Research) with regards to the attitudes towards homosexuality in 29 countries, using data from the 1999/2000 International Social Science Survey/Australia, finds that the level of tolerance of homosexuality in Cyprus is significantly less than that of the majority of the European countries in the survey. Cyprus scores a 26/100 compared to 77/100 of the Netherlands, but it is slightly better than Northern Ireland with 25/100, Hungary 23/100, Bulgaria and Portugal 21/100 (*Australian Social Monitor*, vol.4, no.1, 2001).

<sup>44</sup> This is confirmed by opinion polls, for what they are worth: seventy-four percent of Cypriots say homosexuality is wrong, according to a Cyprus College poll released April 7th 1998. The poll has exposed a yawning generation gap, revealing that 92 percent of Cypriots over the age of 60 oppose decriminalizing homosexuality, while 75 percent of 18- to 24-year-olds hold the opposite view. For the record, the survey also found that 45 percent of Cypriots believe women should be virgins when they marry but only 20 percent said men should avoid pre-marital sex.

the definitions in the Directives?

Please make precise reference to the relevant legal provisions and case law.

As mentioned above, save for age and sexual orientation discrimination, which are not yet recognised as prohibited grounds of discrimination, the existing body of Cyprus law considers direct or indirect discrimination on any of the recognised grounds to be unconstitutional (Article 28) and unreasonable as a ground for dismissal. However, save for the laws on gender and disability, the terms ‘direct’ and ‘indirect’ discrimination are not defined in the Constitution. Relevant Cyprus case law indicates that courts do recognise both direct and indirect discrimination, even though they have not defined it. The grounds of discrimination covered include “race, colour, family condition, religion, political opinion, national origin or social descent”, which extends more grounds than is required by the Directives, but does not cover the grounds of age and sexual orientation, as required by Articles 2.2(a) or 2.2(b) of the Directives.

There are comparable definitions of the term ‘discrimination’ when it comes to gender and disability, however these definitions are based on Directive 76/207/EEC, hence the comparison must inevitably refer back to 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.

As for discrimination on the ground of disability, 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)].

**ASSESSMENT:** In order to comply with Article 2.2(a) of the Directive it is advised that the Law be amended to provide for all the grounds of discrimination.

#### Indirect discrimination

Indirect discrimination is not defined either in the constitution or in 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<sup>45</sup>.

Nevertheless, the concept of indirect discrimination in terms of age or sexual orientation is not defined either by the constitution or by any Law, or by ICERD.

For disability there appears to be an *indirect* discrimination provision, however this is not defined as such (s. 3(2)(c) of Law concerning Persons with Disabilities (Law 127(I)/2000)). The wording reads “a person discriminates against another if he treats that person differently, 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”.

This provision is not defined as indirect discrimination and, on construal, may not have the same effect, as it is a matter of interpretation by the Courts. Furthermore, s. 3(2)(c) seems 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.

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<sup>45</sup> Elia and another v. the Republic, 3 RSCC 1, at p. 6, per Forsthoff.

ASSESSMENT: Consequently, the Cyprus law does not comply with Article 2.2(b) of the Directives. In order to fully comply with Article 2.2 (b) it is best that Cyprus Law 127(1)/2000 be amended so that indirect discrimination is referred to explicitly and situations involving any apparently neutral provision, criterion or practice are also covered.

#### *Gender discrimination*

As regards gender, there are comparable, but more advanced definitions in the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002 (Law 205(I)/2002), which states that “discrimination as regards sex means any act or omission that constitutes or entails unfavourable treatment because of sex, including sexual harassment”<sup>46</sup>. “Indirect discrimination as regards sex” exists when certain arrangements, conditions, criteria, or code of practice, which are *prima facie* neutral, offend a high number of persons of a certain gender, unless these certain arrangements, conditions, criteria, or code of practice are suitable and necessary and can be justified by objective factors unrelated to sex”<sup>47</sup>.

ILO Convention 100 of 1952, which was incorporated into national law by Law 213/1987, provides for equal pay for equal work. Law 177/2002<sup>48</sup> introduced the machinery for the implementation of the Convention. The Law makes it a criminal offence punishable with a maximum fine of £2,000Cy and suspends any contractual terms that are found to be discriminatory (Section 4 of the Law 158/89). Law 100(I) of 1997, as amended by Laws 45/2000 and 64(I)/2002, makes it a criminal offence to dismiss a woman from employment due to pregnancy. As with all criminal matters, the burden of proof is ‘beyond reasonable doubt’ and so far no prosecution has taken place.

The Termination of Employment Law (Law 24 of 1967) entitles the dismissed employee to claim compensation on the grounds unfair dismissal<sup>49</sup>. As with all civil matters, the burden of proof lies with the claimant and the standard of proof is on the balance of probabilities; however under s.6 the burden of proof shifts to the employer once a *prima facie* case of dismissal has been established.

#### *Case law*

A number of cases have been decided by the Supreme Court that have established the right to equality between men and women, as provided for in Article 28 of the Constitution, as a fundamental right that the Courts are obliged to uphold. Save for some exceptions, the way the Court approaches the right to equality is similar to that of the European Court of Justice, as the relevant case law indications.

The case of The Republic v. Alexia Christoforou and Others (1986)<sup>50</sup> involved an appeal against a decision of the Council of Ministers that set a quota on a 50-50 basis between men and women, by successful female candidates in the relevant examination, who scored higher than their male counterparts, but were prevented from taking a post in the Pedagogical Academy due to the quota. The Supreme Court upholding their appeal stated: “The appellants had a right to equal treatment as candidates, without direct or indirect discrimination against them on the basis of sex, unless there was a constitutional provision to the contrary, and such a provision does not exist”.

A number of cases followed this basic principle, applied in different fields such as the right to

<sup>46</sup> The Greek text reads: “Ο Περί Ισης Μεταχειρίσεως Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση του 2002”: «διάκριση λόγω φύλου» σημαίνει κάθε πράξη ή παράλειψη που συνιστά ή συνεπάγεται δυσμενή μεταχείριση λόγω φύλου, περιλαμβανομένης της σεξουαλικής παρενόχλησης»

<sup>47</sup> The Greek text reads: *Ο Περί Ισης Μεταχειρίσεως Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση του 2002*: «έμμεση διάκριση λόγω φύλου» υπάρχει όταν μια διάταξη, ένας όρος, ένα κριτήριο, ή μια πρακτική εκ πρώτης όψεως ουδέτερη/ο θίγει ένα σημαντικά υψηλότερο ποσοστό απόμων ενώς φύλου, εκτός εάν η διάταξη, ο όρος, το κριτήριο, ή η πρακτική είναι κατάλληλη/ο και αναγκαία/ο και μπορεί να δικαιολογηθεί από αντικειμενικούς παράγοντες ύσχετους προς το φύλο».

<sup>48</sup> This law replaced 158/1989.

<sup>49</sup> See Case 32/93, Frosou Apostolidou v Radio and Television ‘O Logos’.

<sup>50</sup> The Republic v. Alexia Christoforou and Others (1986) 3 CLR 1523.

access to professional training<sup>51</sup>. The opportunity accorded to a pregnant woman to sit a special examination due to a miscarriage was a duty imposed by the principle of equality.<sup>52</sup>

Jenny Xinari v The Republic of Cyprus<sup>53</sup> involved the discontinuing of a wife's "cost-of-living allowance" due to a policy change.<sup>54</sup> The court held that the notion of 'equal pay for equal work' was an integral part of the principle of equality safeguarded by Article 28 of the Constitution"; and moreover, to deprive either one of a married couple of the cost-of-living allowance which was part of the remuneration, would result in disparity in the remuneration of public officers doing the same work and would not constitute a case of "reasonable differentiation"<sup>55</sup>.

Unequal treatment needs to be justified, as emphasised in Theophanis Hadjisavva<sup>56</sup>, where the Supreme Court ruled that Article 28 of the Constitution is contravened by not affording equal treatment to the applicants and the interested party and by treating the interested party more favourably without sufficient grounds to justify this treatment.

The case of Tomboli<sup>57</sup> concerned regulations, whereby the retirement age of the employees of the respondent was the 55th year for female employees and the 60th for male. The applicant argued, inter alia, that this was sex discrimination contrary to Article 28 of the Constitution. The court did not address this question as the action was dismissed on the basis that the applicant had, in the past, unquestionably and unreservedly accepted the relevant regulation and thus possessed no legitimate interest to challenge the decision. A factually similar case was Charalambous<sup>58</sup>, where a male applicant challenged the decision to reject his application for an old-age pension in his 63rd year as is the case for female employees. Unfortunately, once more, the recourse was rejected on technical grounds.

**ASSESSMENT:** From the case law, in cases actually brought before the courts, it is apparent that the equality principle is respected and there has been an attempt by the courts to extend it to cover specific situations as society evolves. This principle, as expounded by the Supreme Court in the implementation of Article 28 of the Cyprus Constitution, although covering some areas grounds beyond the directives, falls short of the grounds covered by them in other areas (e.g. age and sexual orientations). In the cases of gender there is a definition of both direct and indirect discrimination, as there appears to be such definitions for the disability grounds; these definitions can easily be extended to cover the other grounds in order to comply with Article 2 of the Directives. The definition of harassment, as defined in the Directives is identical to the definition provided in the Cyprus gender equality law and can therefore be easily expended to cover the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. As for instruction to discriminate, national law ought to outlaw instructions to discriminate in line with the Directives.

### ***Harassment***

*Does national law define harassment, as defined in the Directives?*

*Are there any existing or forthcoming Codes of Practice on harassment?*

<sup>51</sup> Marina Christoforou v. The Republic (1985) 3 CLR 1868.

<sup>52</sup> Athina Metaxa v. Arhi Viomihanikis Katartisis (19.6.1992, case 652/89, 676/ 89). It was stated there that the "favourable treatment not only did not violate equal treatment" but on the contrary it was in fact the means for the implementation of the principle as "equal treatment of unequal (persons) is as unacceptable as unequal treatment of equals".

<sup>53</sup> Jenny Xinari v The Republic of Cyprus, decision given 19.4.1962

<sup>54</sup> The introduction in 1955 of General Order 111/1.16(2).

<sup>55</sup> On the issue of "reasonable differentiation" see the case Xenophon Tsinontas v Cyprus Land Development Corporation (1987) 3 CLR 1766.

<sup>56</sup> Theophanis Hajisavva and Another v. The Republic of Cyprus, through the Public Service Commission (1967) 3 CLR 155.

<sup>57</sup> Maria Tomboli v. The Cyprus Telecommunications Authority (1980) 3 CLR 266.

<sup>58</sup> Charalambous Constantinos v. The Republic of Cyprus and others, 12 Nov. 1993, unreported.

*Please make precise reference to the relevant legal provisions and case law.*

In Cyprus Law there are no provisions for harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, even though there have been reports of complaints about racial harassment of migrants (ECRI Report 2001/ ISAG 2003). A number of cases by migrant workers against the Police and the Immigration Office involving racial discrimination and harassment have been investigated by Commissioner on Administration (a total of 156 complaints were lodged, see Ombudsman Annual Report 2001).

Sexual harassment however is provided for. 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”<sup>59</sup>. (The Law came into force on 1 January 2003)

There is a difference in the definition of harassment in Cyprus law and the way it is defined in the Directives, in that the Cyprus law is of a more limited scope as it only refers to the first criterion set out in the Directive<sup>60</sup>. The Directives also define harassment as “creating an intimidating, hostile, degrading, humiliating or offensive environment”. Although, the Directive also allows a margin of appreciation for the concept of harassment to “be defined in accordance with the national laws and practice of the Member States”, the gap may in fact be a little too large. Consequently, compatibility with Article 2.3 of the Directives, even on the ground of gender, should be reviewed.

**ASSESSMENT:** In order to comply with Article 2.3 of the Directives the new Cyprus law must introduce a provision on harassment on the grounds of racial ethnic origin or religion or belief, disability, age or sexual orientation. Such provision can be based on the sex equality law, but must extend it to cover also “creating an intimidating, hostile, degrading, humiliating or offensive environment”.

### ***Instruction to discriminate***

*Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?*

*Please make precise reference to the relevant legal provisions and case law.*

There are 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 is there any comparable definition of such provisions in relation to gender discrimination in the Sex Equality Law.

**ASSESSMENT:** As it stands, Cyprus law does not comply with Article 2.4 of the Directives. To comply it is necessary to introduce a relevant legal provision that makes it a prohibited discriminatory practice to give instructions to discriminate.

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<sup>59</sup> The Greek text reads: “Σεξουαλική παρενόχληση σημαίνει ανεπιθύμητη από τον αποδέκτη της συμπεριφορά σεξουαλικής φύσεως ή άλλη συμπεριφορά βασιζόμενη στο φύλο, η οποία θίγει την αξιοπρέπεια γυναικών και ανδρών κατά την απασχόληση ή την επαγγελματική εκπαίδευση ή κατάρτιση ή κατά την πρόσβαση σε απασχόληση ή επαγγελματική εκπαίδευση ή κατάρτιση και εκφράζεται λόγω ή έργω.”

<sup>60</sup> The provisions contained in this provision reflect the requirements of directive76/207 and not the provisions of the two equality directives of 2000.

### **c. Scope**

#### **Fields of application**

*Article 3.1 (Racial Equality Directive and Employment Equality Directive)*

*Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?*

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 of the 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 bodies<sup>61</sup>), and (b) it is a public law matter. The procedure of application to the Supreme Court is simple and it is accessible, however legal aid is not available. The new legal aid legislation apparently provides that legal aid be made available in human rights cases. 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.

The fields of application provided in Cypriot law (Article 28 of Constitution and ICERD article 5) which refer to equal treatment irrespective of racial or ethnic origin, only covers some of the areas covered by Article 3.1 of the Directives.

In comparing Article 3.1 (a) of the Directives to Article 5 of ICERD, it emerges that the latter 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 Directives, Article 5 of ICERD stipulates a 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 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 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 this.

With regard to the right to marry and found a family, previous restrictions on Turkish-Cypriots living in the Cyprus government controlled area have been abolished and the law regarding civil marriages extends to persons of all faiths<sup>62</sup>. The right of Turkish-Cypriots living in the government controlled areas to vote in national elections is still not available, as this would entail a constitutional revision. Apparently a new bill according to which Turkish Cypriots will be allowed to participate in municipal, communal and European Parliament elections, is to be tabled soon in the House of Representatives, but this has not been made available for analysis in this study.

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<sup>61</sup> For more details see Nedjati (1970), Charalambous (1995), Loizou (2001).

<sup>62</sup> See COMMISSION OF THE EUROPEAN COMMUNITIES (2002) *2002 Regular Report On Cyprus' Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1401: "The restrictions to the right to marry for Turkish Cypriots living in the south have been abolished after the European Court of Human Rights, in September 2001, had declared an application of a Turkish Cypriot admissible under various Articles of the ECHR. A law of May 2002 now allows civil marriages to be celebrated by mayors as marriage officers irrespective of the faith of one or both parties involved, superseding previous legal provisions according to which only judges of the Turkish Communal Courts could act as marriage officers in these cases."

Same sex marriages are not allowed in Cyprus.

#### *Education*

In the field of education some measures have been adopted, partly as a result of the various international treaties that Cyprus has ratified,<sup>63</sup> particularly the European Social Charter (Revised)<sup>64</sup> and other international instruments<sup>65</sup>. The second ECRI report recommends further expansion of extra curricula activities and human rights awareness at schools.<sup>66</sup>

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<sup>67</sup>. Again the 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.” Cyprus is yet to ratify the European Charter on Regional and Minority Languages, which the Government signed in 1992. The Supreme Court has ruled on cases involving sex discrimination in education<sup>68</sup>.

#### *Social Protection on Gender*

Social Insurance Legislation is aimed at bringing Cypriot legislation into line with aspects of the acquis on equal treatment for men and women in matters of social security (Law 51(I)/2001 and Law 133(I)/2002 and amending Law 130(I)/2002).

#### *Social Security*

The Public Assistance Law 8/91 provides for minimum standard for all living persons in Cyprus irrespective of ethnic, racial or national origin.

There are no provisions for discrimination in the fields of application such as health, goods and services or housing, apart from the general provisions (criminal, constitutional and employment provisions).

Cyprus has ratified Protocol 12, therefore all the fields of application on the grounds listed are covered (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).

#### *Is gender discrimination covered in the same fields?*

There are two statutory provisions in the same fields: the Law of Equal Pay between Men and Women for the Same Job or Occupation of Equal Value of 2002 (Law 177/2002) Article 2, and the Law of Equal Treatment between Men and Women in Occupation and Professional Training of 2002, Article 2.

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<sup>63</sup> Framework Convention for the Protection of National Minorities pursuant to Article 25.

<sup>64</sup> 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.

<sup>65</sup> e.g. Resolution ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

<sup>66</sup> “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.”

<sup>67</sup> Recent 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 and Pantelides 2003.

<sup>68</sup> The Republic of Cyprus through 1.The Ministry of Education, 2.The Director of Higher and Highest Education, 3. The Council of Ministers v. Alexia Christoforou and Others (1985) C.L.R. 1523.

*Please make precise references to the relevant legal provisions and case law, briefly describing the facts of the case(s) and the judicial arguments involved.*

In the case of Melpo Gregoriou v The Municipality of Nicosia (1991) C.L.R. 3005 the Municipality was held to be in contravention of Article 28 of the Constitution, which forbids direct or indirect discrimination on the ground of sex.

c. Scope

*Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?*

Save for gender, and to some extent disability, the scope of the anti-discrimination laws in Cyprus does not cover all the areas listed in the directives<sup>69</sup>. The grounds of age and sexual orientation are not provided for in any anti-discrimination laws.

*Exceptions and exemptions*

National (army) service, which is compulsory for all Greek-Cypriot males<sup>70</sup>, has since 1994 been voluntary for minority groups (i.e. constitutionally deemed as “religious groups”), by virtue of a Council of Ministers’ decision (No.41.296). Since then, only a very small fraction of Maronites, Armenians and Latins have voluntarily joined the army for national service. Since 1995 females may also serve in the army on a voluntary basis. There are no provisions regarding sexual orientation or age discrimination in the army, although there are media reports claiming that the real reason for dismissal of various persons from the army was homosexuality, even if the official reason given is health. Persons with certain types of disabilities are exempt from army service, whilst others with minor disabilities are obliged to serve but are exempt from certain types of training following medical tests at a military hospital.

The Gender Equality Directive applies to all public and private bodies including the National Guard and security forces. However, there are certain positions in the National Guard that are exempted.

The Cypriot authorities prosecute conscientious objectors who refuse to perform reservist military exercises, such as Christian Jehovah's Witnesses. Jehovah's Witnesses who refuse to perform their reservists military obligations and apply to the Ministry of Defence for alternative civilian service are refused conscientious objector status. This is due to the fact that existing legislation does not apply to the reservists; thus reservists in Cyprus have no right to opt between civilian or military service. The present legislation gives the right to conscripts to apply for civilian service and generally Jehovah's Witnesses are granted conscientious objector status. However, since for the reservists there is no such provision in the Cypriot law, reservist Jehovah's Witnesses face the possibility of fine and/or imprisonment provided by the law, such as the pending case of five Jehovah's Witnesses<sup>71</sup> (see Human Rights Without Frontiers 2003). The case of Thlimmenos v

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<sup>69</sup> 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.

<sup>70</sup> The National Guard was set up in 1964, after the Turkish-Cypriots withdrew from participation in the Government.

<sup>71</sup> Jehovah's Witnesses prosecuted and sentenced are listed in the Human Rights Without Frontiers Website [<http://www.hrwf.net/>]. Some have already faces sentences up to three months imprisonment and hefty fines.

Greece (6 April 2000) is relevant to these practices<sup>72</sup>. In this case the Greek Chartered Accountants' body refused to appoint Mr Thlimmenos as a chartered accountant, even though he had passed the relevant qualifying exam, because he had a criminal record, due to conviction as a conscientious objector on the ground of religion. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different. The applicant had served a prison sentence for his refusal to wear the military uniform, therefore imposing a further sanction on him was considered disproportionate by the European Court of Human Rights. Although the facts of this case deal with registration with a specific professional body, there is a general principle applicable to the case of reservist conscientious objectors in Cyprus. Problematic in prosecuting these persons is the fact that the prosecuted offence has been so significantly amended that in effect it no longer exists as a *main* offence (i.e. the main offence of refusing to wear a uniform on religious grounds no longer exist as alternative service is available). Secondly, the prosecution of reservist conscientious objectors may not only violate the right not to be discriminated against on the grounds of religion, but may result in imposing a further disproportionate sanction on such persons, as in the case Thlimmenos.

What is required is amendment of the relevant law; however no indication has been given as to whether the authorities are willing to modify existing legislation so as to include the reservists as conscientious objectors.

ASSESSMENT: Cyprus Law does not comply with Article 3 of the Directives, as the prohibition of racial and ethnic discrimination does not apply to all the fields of application listed in Article 3 of the Racial Equality Directive. It needs to be extended to include conditions for access to employment, to self-employment and to occupation, including both the private and the public sector. Also the new law needs to be extended beyond the right to form and join trade unions to cover broader types of organisation one can join. Prohibition of discrimination so far only covers the grounds of racial or ethnic origin, religion or belief and disability, however does not include age or sexual orientation. As with other provisions, the example of the Sex Equality Law can be followed.

#### *Occupational requirements*

#### **Article 4 (Racial Equality Directive and Employment Equality Directive)**

*Do such exemptions exist on the national level? Does national law define 'genuine and determining occupational requirements' and, if so, how?*

There are provisions in the Civil Service Law 1/90, as amended, which stipulate that "only Cypriot citizens shall be appointed as civil servants". The relevant laws are to be amended to allow Europeans to be appointed. Also, as already indicated above, there are constitutional provisions that require specific percentages allocated for specific public positions for each of the two communities, Greek-Cypriots and Turkish-Cypriots (60-40 for the army, 60-40 for the police and 70-30 for civil servants). It is not clear how this will be dealt with, as these provisions form part of the so-called fundamental clauses of the constitution<sup>73</sup>. It is possible that they can be construed as similar provisions to the 'particular provisions' referring to Northern Ireland under Article 15 of the Employment Equality Directive and that they form primary a legal source of the *aquis*. This matter is likely to remain unclear until a settlement in Cyprus is reached, since such provisions are likely to be retained in a future settlement of the Cyprus problems, as the recent

<sup>72</sup> In this case the European Court of Human Rights held unanimously that there had been a violation of Article 14 (prohibition of discrimination) in connection with Article 9 (freedom of thought, conscience and religion) and a violation of Article 6 § 1 (right to a hearing within a reasonable time) of the European Convention on Human Rights.

<sup>73</sup> However they have not implemented since at least 1964.

plan submitted by the UN Secretary General for the resolution of the problem illustrates.

Furthermore, there are professional organisations that grant licences to persons to practice a profession (doctors, dentists, nurses, lawyers, accountants, pharmacists, architects) that have specific training and education requirements, some containing provisions about national origin. The relevant laws are also to be amended.

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”<sup>74</sup>. From the above article it is apparent that the extent of the autonomy and right to self-regulation under the Constitution is such that it may well allow for different treatment based on religious belief in cases of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief.

*Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?*

No, it does not. However, there are several exemptions in the disability law (Law 127(I)/ 2000) regarding the “reasonableness” of the various “measures” required from the employer (see Article 5 further down).

ASSESSMENT: Consequently, the Cyprus Law does not comply with Article 4 (Racial Equality Directive and Employment Equality Directive).

### **Reasonable accommodation**

#### ***Article 5 (Employment Equality Directive)***

*Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide ‘reasonable accommodation’?*

The Law concerning Persons with Disabilities (Law 127(I)/ 2000) does not expressly prohibit or render the use of pre-employment medical examinations discriminatory. “Disability” 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”.

The provisions on discrimination on the ground of disability, as defined in s.2 of this law, combined with the definition of discrimination under s.3(2) may be construed as rendering pre-employment medical examinations discriminatory<sup>75</sup>. This is because the requirement for such an

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<sup>74</sup> For more details see Loizou 2000: 272-273.

<sup>75</sup> Section 3(2) provides as follows: “For the purposes of subsection (1), a person discriminates against another if he treats such person-(a). in a less favourable manner than he treats or would have treated a person without disability in the same or similar situation; or (b) on the basis of characteristics which generally belong to persons with such disability or on the basis of an alleged characteristic which generally belongs to persons with such a disability or on the basis of an alleged characteristic generally attributed to persons

examination may result in “unfavourable treatment”, when comparing “a person without a disability in the same or similar situation” (s.3(2)(a)) to a disabled person or to a person having “characteristics which generally belong to persons with such a disability” (s.3(2)(b)), or “alleged characteristics”. Unfavourable treatment would result from contravention of a code of practice (s.3(2)(d)) or from the implementation of a practice or a policy that would produce discrimination against a high percentage of disabled persons, in what appears to be an indirect discrimination provision (s.3(2)(c)).

The Law of Civil Service (1/1990) 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 or lower ends, 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.”

*Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?*

Again, as above, construal of the Law 127(I)/ 2000 may render an inquiry about disabilities prior to entering into a contractual relationship with a prospective employee discriminatory, however this is not expressly provided by the Law. In fact there may well be a strong case that a prospective employer is entitled to enquire about the employee’s disabilities in order to make the necessary arrangements for access facilities and other rights of the disabled person as provided by the Law (s.4-8), rights which are then subjected to such a wide margin of appreciation that may well be rendered redundant (s.9) (see further down). No such cases have been considered by the Courts.

*Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?*

The duty to provide “reasonable accommodation” is not specifically provided for by Cypriot Law. However, there are certain rights specifically covered by laws relevant to this. A disabled person has, inter alia, the right to “be treated equally with the rest of the employees of the employer with regard to the procedure for application for employment, appointment, promotion, dismissal, compensation, training and other conditions and rights in relation to employment” (s.5(1) of Law 127(I)/ 2000). It includes a number of positive measures to encourage the employment opportunities of disabled persons<sup>76</sup>.

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with such 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, as opposed to persons who do have such disability and the existence of such condition is not justified by the circumstances of the case; or (d) in contravention of any provision included in a code of practice issued by virtue of this present Law.

<sup>76</sup> The law reads: “2(a) 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; (ii). The creation of jobs in the governmental, semi-governmental and wider public sector to be fulfilled exclusively by persons with disability; (b) the job reinstatement, where possible, of a person with disability in the same enterprises where the disability occurred during their employment; (c) special protection against dismissal; (d) 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

When comparing the above provision with Article 5 of the Directive (which defines “reasonable accommodation” as the responsibility of employers to “take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training”) one may detect a *prima facie* conformity of the Cyprus law with the Directive. The specific provisions of the Law are sections 2(d) “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”. However, when comparing the exceptions of the directive to those found in section 9 of the Cypriot law, the latter are far wider in scope than those of the directive, which renders conformity questionable.

*How do courts determine whether accommodation is ‘reasonable’ or whether it imposes a ‘disproportionate burden’? What type of criteria is used (medical, occupational, educational, grants etc.)?*

No such case has actually been examined in court so far; 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 long list of provisions in the Cyprus law (s.9), the disparity between the Cyprus law and the Employment Equality Directive (Article 5) is apparent. Under the Cyprus Law “the principles referred to in s.4 and 8 are applied with the adoption of reasonable measures and to the extent that the economic and other circumstances allow”. Furthermore, s.9(2) of the Cyprus Law states: “reasonable measures” means “those measures which are provided for in any other law or regulation and which must be adopted for the implementation of the above principles, taking into consideration certain factors which affect the meaning of reasonable measures, among which are the following: (a) The nature and required cost for the adoption of the measures; (b) the financial sources of the person who has the obligation to adopt the measures; (c) the financial situation and other obligations of the state in those cases where the obligation for the adoption of measures refers to the state; (d) the provision of donations by the state or other sources as a contribution towards the total cost of the said measures; (e) the socio-economic situation of the disabled.”

The exceptions listed in the Cypriot law are wider than those provided for in the Directive (which are confined to the test of “disproportionate burden on the employer”) and fall short of creating a mandatory regime.

*How does, under national law, a failure to provide reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?*

Such a failure will result in a fine against the perpetrator.

#### **Minimum requirements and positive action**

The law provides a set of rights of the disabled 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 (s.4(1)). Furthermore, s.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,

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equipment, machinery, tools, means and any facilities or services; (e) the operation of special schemes of employment in the public and private sector, by providing economic incentives.”

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 under s.4(2)(a) stipulates 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;”

Moreover, 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.

#### *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<sup>77</sup>.

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.

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<sup>77</sup> The application of this article 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.

**ASSESSMENT:** The Cyprus disability Law would comply with Article 5 of the Employment Equality Directive if some of its current provisions were amended, in particular by reducing the exceptions listed in the Cypriot law to a single test of whether “such measures would impose a disproportionate burden on the employer” as provided in Article 5.

***Article 6 (Employment Equality Directive)***

*When is differentiation on grounds of age ‘objectively and reasonably’ justified under national law? How is this test being applied?*

*Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Directive).*

No, there are none.

*Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?*

There is no statutory retirement age in Cyprus. However, the majority of workers retire on their 65<sup>th</sup> year, which is the pensionable age as provided under the Social Insurance Law. Save for civil servants, who may retire at 55 if they so wish, but are compelled to retire at 60, persons reaching 65 are *not* legally compelled to retire. In the nationalised industries it is permissible to extend one’s retirement age with the consent of the employer.

*Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)?*

There are no mandatory retirement ages fixed at national level, except for in the civil service.

*Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?*

Mandatory retirement ages are generally not imposed by employers. Under s.4 of the Law on Unfair Dismissal, the rights to protection from unfair dismissal are lost upon reaching retirement age.

*Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?*

No, they are not promoted any more due to the fact that Cyprus has a very low unemployment rate. The only exception is that of civil servants, who are entitled to retire at 55, a policy intended to release positions in the service, as a measure to combat the high level of unemployment among tertiary education graduates.

*Is selection for redundancy widely decided on age grounds?*

There is little research on this matter. It is highly unlikely that labour law on unfair dismissal would allow such practices on the selection of such grounds, although age discrimination is nowhere recognised so far in Cyprus law as a ground for discrimination. If a person is discriminated on the ground of age it is likely that the court will consider it as unreasonable within the meaning of the labour law on unfair dismissal. However, grounds for redundancy such

as technological change or modernisation may mean in practice that older workers are more likely to be selected, particularly if they are not in tune or adaptive to new technologies. For the years 1999, 2000, and 2001 statistical data shows that about one third of all persons applying for redundancy were aged 50 or over. This factor combined with the fact that the chances of finding a job at that age is generally speaking less, particularly for the low skilled workers, it may well be the case that the age factor is indeed a consideration for redundancies. Furthermore, it is significant that the Termination of Employment Law 1967, paragraph 6 (2c), specifically precludes redundancy payments in the case of termination of employment.

*Is there obvious evidence of age discrimination in access to training opportunities?*

One study that shows that older workers face discrimination when it comes to new appointments with many employers specifying in job advertisement upper age limit of new recruits (House 1992)<sup>78</sup>. Furthermore there is evidence that employers are very often reluctant even to interview applicants who are older unemployed workers (House 1992) and it would not be surprising to find that age discrimination is practiced across the board, as it was not considered to be discriminatory in the past and there is no monitoring on the subject. A monitoring system is required and research on the matter would be welcomed.

**ASSESSMENT:** Consequently, Cyprus Law does not comply with Article 6 of the Employment Equality Directive, as age is not one of the recognised grounds of unlawful discrimination. A new law that covers age discrimination is necessary to transpose the aquis.

**Positive action**

***Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)***

*Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures?*

Certain measures exist in relation to disability:

The Public Education Service Law, amended by Law 180/1987 provides 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.

The Law on the Engagement of Trained Blind Telephone Operators, enacted in 1988, mainly 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.

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.

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<sup>78</sup> The only research undertaken is a paper by House 1992 which discusses the problems of older workers in the labour force generally.

The Special Education for young persons with Special Needs Law 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.

In practice the quotas for public employment of disabled persons are not fully complied with, but there has been an increase in the level of employment of disabled persons in this sector. 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.

*Are there comparable specific measures in relation to gender discrimination?*

No such provisions exist in the sex equality law as regard gender discrimination.

ASSESSMENT: Consequently, the Cyprus Law does not comply with Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

## ***Chapter 2 Remedies and enforcement***

### ***Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)***

#### **a. Judicial and/or administrative procedures**

*What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?*

The procedures for the enforcement of the principle of ‘equal treatment’ are primarily judicial. There are no administrative or conciliatory procedures specifically dealing with these issues although there is a strong tri-partite system, which has a very effective voluntary code of practice for dealing with industrial disputes.

The judicial procedures are of the following types:

- (a) Challenge of administrative acts before the Supreme Court, via Article 146 of the Constitution. The Supreme Court can look only at the legality of the case not the substantial merit of the case.
- (b) Labour law matters dealt with by the Labour tribunal.
- (c) Criminal law dealing with penal sanctions for incitement of racial hatred.

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.

Immigration law is worth mentioning separately, as there are procedures and law that apply solely to immigrants and ‘aliens’. There is a wide margin of discretion afforded to immigration offices that may result in discriminatory practices (see ECRI Report 2001<sup>79</sup>). Immigration policy is formulated according to the Aliens and Immigration Laws and Regulations, the decisions of the Minister of Interior, in his capacity as Chief Immigration Officer, and the decisions of the Ministerial Committee on Aliens. The discretionary power of the Chief Immigration Officer and the Migration officer are said to be exercised according to the Immigration policy and the decisions are supposed to be based on the merits of each case and on the policy mentioned above. Beyond the court system there are also administrative procedures for complaints by migrants in particular<sup>80</sup>.

The government maintains that the Aliens and Immigration Law is to be harmonized with the Immigration acquis through the new immigration legislation and that the discretionary powers of the Chief Immigration Officer will be limited to those areas that are not in contradiction with the acquis.

#### **b. Associations**

*Are associations and other entities with a legitimate interest in ensuring compliance with anti-*

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<sup>79</sup>The ECRI report states: “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.”

<sup>80</sup>This involves a Committee consisting of the Migration Officer, the Director of the Department of Labour and the Head of the Aliens and Migration Unit of the Police, which examines complaints of migrant workers concerning conditions of employment, breaches of contracts, etc. In cases in which complaints are submitted to the Ombudsman, the Migration Department examines them and takes all necessary measures to comply with the Ombudsman’s recommendations. Moreover, ‘foreign workers’ complaints concerning employment and violation of conditions of work, may be directly submitted to the Court.

*discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?*

Individuals who have 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) 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 do not have legitimate interest<sup>81</sup> and the term “community” is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution<sup>82</sup>. The test for an association to possess an “existing legitimate interest” is hard to satisfy, as it requires that the specific administrative act *directly affect* 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<sup>83</sup>. In practice associations have made little use of this opportunity.

#### **c. Time limits**

All claims and rights of recourse to the Courts are subject to expiry by statutory time-barring with the exception of cases where evidential material cannot be adduced before the Court for reasons based on the continuing occupation of part of Cyprus by Turkish troops and/or where the claim is related to immovable property situated in the areas occupied by Turkish troops.

Since 1964, there has been a suspension of all time bars in respect of actions instituted on or after 21<sup>st</sup> December 1963, as a result of the enactment of the Law on Suspension of Limitation of Actions No. 57/1964. The wording of the Law is such that it only covers statute, whilst any agreement entered into by parties as to time limits is enforceable<sup>84</sup>.

There are no labour law time limits; neither are there time bars for criminal offences.

Under Article 146 of the Constitution, there is a fixed time bar of 75 days for any person who wishes to challenge judicially any administrative act.

**ASSESSMENT:** In assessing compliance with Articles 7.1 and 9.1, the recommendation of ECRI (2001) regarding the absence of “comprehensive civil and administrative anti-discrimination provisions” has already been noted.

#### **d. The burden of proof**

#### ***Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)***

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<sup>81</sup> Efthymios Ierodiakonou v. the Republic 3 RSCC 55-57

<sup>82</sup> Osman Saffet v. the Cyprus Palestine Plantations Co. Ltd and another 4 RSCC p.87, p.89.

<sup>83</sup> The Police Association v. The Republic.

<sup>84</sup> Law 110(I)/2002 follows the same principle, subject to some exceptions relating to the rights that are effected as a result of the Turkish invasion and occupation.

*Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)?*

*Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex).*

The burden of proof shifts to the employer once a *prima facie* case of dismissal is established. 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.

In administrative and labour proceedings, the burden of proof reversal occurs in cases of gender discrimination (Law for Equal Treatment of Men and Women in Employment and Occupational Training) on the basis of Directive 97/80/EC. Article 14 (1) of the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002, as well as Article 7 of the Law for Equal Pay between Men and Women in the Same Job or Occupation of Equal Value (Law 177/2002) make specific provisions for the reversal of the burden of proof as required by the Directives.

**ASSESSMENT:** Cyprus law does not comply with Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive) as there are no provisions for shifting or easing the burden of proof in cases involving constitutional, civil, penal and administrative matters; nor are there any provisions covering the grounds of age or sexual orientation discrimination. The law can be amended, as the principle already exists in unfair dismissal cases, and the recent Sex Equality Law has introduced this mechanism and can thus be used as the basis for shifting the burden of proof. Furthermore, associations and other entities should be granted by statute the legitimate interest in ensuring compliance with anti-discrimination laws and be entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant.

#### e. **Victimisation**

##### ***Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)***

*Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?*

Protection against victimisation on one of the prohibited grounds of discrimination is afforded via labour legislation in the case of unlawful dismissal on the basis that the employer acted unreasonably in dismissing the person. There are no provisions specifically dealing with protection for age or sexual orientation discrimination. However, on the ground of gender where there are specific provisions, Art. 9 of Law 177(I)/2002 provides 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”.

Art. 17(1) of the Law Concerning the Equal Treatment of Men and Women in Employment and Occupational Training of 2002 provides: “Without prejudice to the provisions of Article 15 of the present law regarding compensation, 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.”

**ASSESSMENT:** Consequently, Cyprus Law does not comply with Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive). However, victimisation as a concept already exists in sex equality law.

#### **f. Sanctions**

##### ***Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)***

*What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?*

Where legislation provides for specific sanctions, they appear to be proportionate and potentially effective. In the prevention of any form of racial, age and sexual orientation discrimination the sanctions in general do not appear to be effective, proportionate and dissuasive enough, although there is scope for damages in unfair dismissal cases. Firstly, the implementation of the law has not proved effective. The trade unions complain that basic labour rights of migrant workers are routinely violated; and the district labour offices do no operate as genuine judicial bodies that investigate matters (ISAG 2003). Secondly, legislative provisions are required to outlaw types of discrimination not yet recognised in Cyprus (i.e. age and sexual orientation) as well as provide for effective remedies for the others in line with the new gender equality laws that are now in place (see below). Thirdly, discrimination is not considered to be an aggravating factor when it comes to sentencing for criminal offences. Fourthly, a significantly higher number of non-Cypriots, when compared to Cypriots, are held in prison and ECRI has recommended that this be investigated (Second ECRI Report).

Although ICERD lists the spheres in which the government should guarantee the desired equal treatment, Cypriot legislation on the elimination of racial or religious discrimination does not establish sanctions in cases of violation of the principle of equal treatment. Of course, where the relevant recognised unlawful discrimination results in unlawful dismissal, labour law sanctions apply (damages to injured party and/or re-instatement).

##### *Gender discrimination*

For gender discrimination, Article 15 of the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002 bestows the Labour Tribunals with the duty and authority to impose damages that are “fair and reasonable” to the aggrieved party [s.15(a)] or the whole of the positive damages, including overtime and a monetary value for any possible mental or bodily harm suffered that was caused by the decision, action or omission that was declared null and void, plus lawful interest. There are also provisions for re-instatement. An identical provision is contained in Article 22 of the Law for Equal Pay between Men and Women in the Same Job or Occupation of Equal Value (No. 177/2002). The two Laws also contain powers for inspectors to inspect and to receive relevant information and submit annual reports on the implementation of the law to the minister and other governmental bodies. Heavy sanctions are imposed on those who mislead the inspectors (up to 4000 Cyprus Pounds and 6 months imprisonment).

Disability discrimination is sanctioned by a fine of up to £3000Cy (Article 9(3) of the Law concerning Persons with Disabilities). However, no sanctions are available for discriminatory grounds that are not recognised by law such as age or sexual orientation.

With regard to criminal sanctions, as noted by ECRI (2001), there is no provision in Cypriot criminal law penalising common offences that are of a racist nature as specific offences, or explicitly enabling the racist motives of the offender to be taken into account as an aggravating

factor in sentencing<sup>85</sup>.

ASSESSMENT: Consequently, Cyprus Law does not comply with Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive); effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases must be introduced to apply to all grounds of discrimination covered by the directives.

#### **g. Dissemination of information**

##### ***Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)***

*What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?*

A number of seminars have been organised such as the one held by the House of Representatives in 2003 as well as other seminars. An awareness-raising Seminar on the two Directives on non-discrimination was organized by the House of Representatives in which all key actors involved on the issue (Governmental and non-governmental sectors, NGOs 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 (M.J.P.O.) and the European Commission, will take place in Nicosia on 26 June 2003<sup>86</sup>.

Two publications are presently being drafted by the M.J.P.O. (in Greek and English) to be widely distributed among participants of the Seminar (June 2003) and also to the public, to pupils of elementary and high schools and to governmental and non-governmental organizations and/or bodies. Also, in the light of the European and World Conferences against Racism (2000-2001), an Action Plan was drawn up and a booklet was edited by the M.J.P.O. in March 2002, which was widely disseminated to all governmental and non-governmental organizations, International and European Organizations on human rights, as well as to any interested person (upon request and free of charge).

A number of anti-racist activities have been organized 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 Immigrants Support Action Group.

Special educational programmes, seminars and lectures on human rights are offered by the Cyprus Police Academy, underlining equal treatment for all people, natives and foreigners. The Police Academy provides general awareness training to all its trainees, and, at the same time courses reinforced with the presence of specialists from abroad are offered to a selected group of policewomen and men. During recent years the Police Human Rights Office translated into Greek and published leaflets and texts<sup>87</sup>, which were distributed to all police officers and to the public.

<sup>85</sup> In line with its General Policy Recommendation N°1 on combating racism, xenophobia, anti-Semitism and intolerance, ECRI encourages the Cypriot authorities to consider the introduction of such provisions.

<sup>86</sup> During this Seminar, three experts from EU countries will be 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.

<sup>87</sup> Including the Declaration 690 (1979) of the General Assembly of the Council of Europe and the CPT (The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), Standing Orders.

In addition, Cyprus Police continues to apply the Council of Europe Programme “Police and Human Rights Beyond 2000” through numerous activities. Among other things, the “Police Human Rights Office” has translated into Greek publications of the Council of Europe on human rights, which are expected to be published and distributed to all members of the police within the first quarter of 2003. Publications include “Discussion Tools – A Police and Human Rights Training Manual” and “A pamphlet for Police Human Rights and their Protection under International Law”. Furthermore, Cyprus Police have adopted the Recommendation of the Council of Europe on the “European Code of Police Ethics” and is in the process of translating into Greek the “Recommendation (2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and Explanatory Memorandum on the European Code of Police Ethics”.

As regards training of the judiciary, the Supreme Court has established a permanent programme for the training of judges of first instance courts. In accordance with this programme, judges of subordinate courts will receive regular training in various fields of the law and matters that from a broader perspective are relevant to the administration of justice<sup>88</sup>.

According to a decision taken by the Council of Ministers on 28/8/02, a Ministerial Committee consisting of the Ministers of Interior (President), Labour and Social Insurance, and Justice and Public Order, was assigned to study the establishment of a new independent specialized body on racism issues, to prepare the relevant Law, submit it to the Council of Ministers for approval and then deposit it to the House of Representatives for enactment into law.

Meanwhile, a Committee consisting of the Law Commissioner and representatives of the Law Office and the Ministries of Interior, Labour and Social Insurance, and Justice and Public Order, considered the matter and entrusted the representative of the Law Office of the Republic with drafting the new piece of legislation, taking into account the provisions of Article 13 of Directive No 2000/43/EC. The legislation is still being drafted. Finally, a meeting of the Permanent Secretaries of the three Ministries involved in the issue will be held in order to reconsider the whole issue of the establishment of the new independent body with a view to expanding its powers and/or jurisdiction to all fields relevant to racism such as equality etc.

#### **h. Social dialogue and NGOs**

##### ***Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)***

*Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?*

On the question of gender discrimination, preparatory work was undertaken by a committee that involved the social partners, as well as other women’s groups. The result was the adoption of the two major gender equality/anti-discrimination laws.

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

No formal consultation has taken place in the preparation of the law currently being prepared to implement the Racial Equality Directive and the Employment Equality Directive. ISAG (2003) is of the view that social dialogue on the issue of racism and migrants has been deficient due to the

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<sup>88</sup> Amongst others, the subjects of training include human rights with particular reference to Cyprus case law and European Court of Human Rights case law, European Law and International Conventions, conduct of judges with emphasis on psychology of witnesses and advocates, rules of etiquette, behaviour towards the public and advocates and study of various social phenomena, Family Court Judges’ training on matters relating to dealing with children and social matters relating to personal status.

negative role of the media and the fact the government has treated this NGO with suspicion and has never properly consulted those directly involved.

ASSESSMENT: Consequently, the Cyprus government is encouraged to do more in order to comply with Articles 11 and 12 (Racial Equality Directive) and Articles 13 and 14 (Employment Equality Directive) to promote social dialogue, to broaden the debate and to disseminate information on the need for effective anti-discrimination in Cyprus.

## ***Chapter 3 Specialised bodies***

### ***Article 13 (Racial Equality Directive)***

There is no independent body for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. However, there are other bodies that play a role to this end but do not fulfil the requirements of Article 13, for instance, the Attorney General of the Republic, who is an independent officer of the State and is Head of the Law Office of the Republic, an independent Office (Article 112). The powers afforded by the Constitution to the A-G, to institute, conduct, take over and, continue or discontinue proceedings for any offence (Article 113) and to exercise control and coordination over the machinery of administration of criminal justice, in the public interest<sup>89</sup>. The Law Commissioner is also an independent officer, who is responsible for the updating of legislation and has also been charged with the identification of areas of inconsistency of municipal law and administrative practice in relation to current international law standards in the field of human rights, and proposing necessary action. Any restrictions to the human rights guaranteed under the Constitution, must be specifically provided for by law and must be absolutely necessary only in the interests of the security of the Republic, the constitutional order, public safety, public order, public health, or for the protection of the rights guaranteed by the Constitution to any person<sup>90</sup>.

The Ombudsman or Commissioner for Administration<sup>91</sup> 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 Report<sup>92</sup> prepared in relation to each particular case investigated, including cases of racial or other related forms of discrimination and intolerance, is submitted by the Commissioner 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 Commissioner concludes in this Report that the complainant has suffered some injury or injustice, the Report also contains the Commissioner's suggestions or recommendations to the competent authority concerned for reparation of the injury or injustice, specifying at his 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 Commissioner may make reference to this, by special report submitted to the House of Representatives and the Council of Ministers. The recommendations of the Commissioner are persuasive, not binding, however, the Ombudswoman (as the post is held by a very able woman) has proved to be the most effective body in dealing with questions of racial, gender and other discrimination.

The National Institution for the Protection of Human Rights, established in 1998, has a general mandate as a body respecting government officials, as well as representatives from some NGOs and the House of Representatives, to scrutinise the respect for human rights. Among its functions is the hearing and investigating of complaints regarding violations of human rights, including complaints from migrant workers and other non-citizens of the Republic<sup>93</sup>.

The National Machinery for Women's Rights under the Ministry of Justice and Public Order was established in 1989 and was reformed in 1994. It provides advice to the Council of Ministers on

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<sup>89</sup> The A-G is furthermore the sole legal adviser of the Republic, the President, the Council of Ministers and the Ministers with responsibility to ensure the observance of legality and the rule of law.

<sup>90</sup> Provisions relating to such limitations or restrictions are interpreted strictly by the Courts.

<sup>91</sup> Set up by virtue of s.5(l)(a) of the Commissioner for Administration Law 1991 (Law 3/91 as amended by Law 10(1)795).

<sup>92</sup> 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.

<sup>93</sup> Another function of the Institution is to promote proposals for the amendment of statutory provisions, which may conflict with principles set out in international legal instruments in the field of human rights.

issues relating to equality and is directly involved in the implementation of national policy, the organization of information and education programmes and the provision of support to women's organizations. The Council of Women's Rights consists of representatives of women's organizations, trade unions and other NGOs and, chaired by the Minister of Justice and Public Order, is the most important body of the Machinery.

The House of Representatives and its Committees in the exercise of their functions including parliamentary control, can and do consider, any allegations or situations that may involve violations of human rights.

### **NGOs**

The main Non-Governmental Organisations working on the issue of combating discrimination are as follows: the International Association for the Protection of Human Rights in Cyprus, the National Committee for the Protection of Human Rights and the Committee for the Restoration of Human Rights throughout Cyprus, which are concerned solely or principally with the rights of Greek-Cypriot refugees.

The Immigrants Support Action Group caters for migrant rights and asylum seekers.

The gay organisation in Cyprus is AKOK (Cypriot Gay Liberation Movement<sup>94</sup>). There is also the GLBCY (Gay-Lesbian-Bi Nation of Cyprus) a mainly internet-based support group.

The Federation of Organisations for the Disabled.<sup>95</sup>

The Pancyprian Organisation for the Blind.<sup>96</sup>

*Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?*

The second ECRI report refers to the absence of an effective monitoring system as well as an independent system, particularly to examine complaints about abuse by the Police: "ECRI stresses the need for an independent body entrusted with examining all complaints of misbehaviour on the part of the police, including complaints of racism and discrimination."

*Are existing bodies addressing the issue of multiple discrimination?*

There is no such body at national level, although the semi-independent National Institution for the Protection of Human Rights was set up in part to be responsible for this. However, it is a body with no resources and it is not independent from the government. There is some discussion amongst officials about what body needs to be established. However, NGOs and trade unions have not been consulted as yet. Apparently, the committee responsible for drafting the new anti-discrimination legislation has met but the government has provided no further information on this. In any case, the Copenhagen summit (under the heading Overall Assessment, page 83) leaves little room for manoeuvre by stating: "Cyprus should also establish the Equality Body provided for under the *acquis*".

**ASSESSMENT:** Consequently, the Cyprus government is urged to openly debate with experts, NGOs and policy-makers the formation of the most effective Specialised bodies, and the necessary resources (staff and budget), powers and duties necessary to properly carry out the requirements of the Racial Equality Directive. Furthermore, the issue of multiple-discrimination

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<sup>94</sup> AKOK - Απελευθερωτικό Κίνημα Ομοφυλοφίλων Κύπρου.

<sup>95</sup> Ο.Π.Α.Κ. - Ομοσπονδία Παραπληγικών Κύπρου.

<sup>96</sup> ΠΙΟΤ - Παγκύπρια Οργάνωση Τυφλών.

needs to be properly addressed and a debate on which body on the national level is best suited to carry out these functions would be valuable. The examples of the laws on sex discrimination and disability, for which all relevant NGOs and trade unions were consulted, ought to be followed.

## **Chapter 4 Compliance and implementation**

### ***Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)***

#### **a. Screening**

*Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?*

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.

There are of course matters that the Constitution or legislation or jurisprudence does not recognise as “unequal treatment”, for example on the grounds of age and sexual orientation. Further, there are situations that European jurisprudence may recognise as coming under the heading of one of the grounds of discrimination that have not yet featured in Cyprus case law or are not recognised as such, even though the Cyprus courts always refer to European human rights law (both EU and Council of Europe).

In the case of gender discrimination all laws, regulations and administrative provisions that are contrary to the principle of equality, clauses in collective agreements and the other situations listed in Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive) that are contrary to the Law for Equal Treatment of Men and Women in Employment and Occupational Training of 2002 [Article 7(3)] and Law for Equal Treatment of Men and Women in Employment and Occupational Training (I/2002) (Article 10) are abolished.

*Is there a 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?*

There is no mechanism as such. The National Institution for the Protection of Human Rights, a body with no resources, makes a yearly report. The most effective means of screening has proved to be the Commissioner for Administration, as noted also by the ECRI Report. Beyond complaints by aggrieved individuals and NGOs, as well as international reports (e.g. ECRI, UN etc.), there is little internal screening as such, and therefore there may well be a problem with enforcement, as cases may never be brought to court, but only feature in the media from time to time (see ECRI Report 2001).

**ASSESSMENT:** Consequently, the specific provision of Cypriot law need to be brought into line with Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive) by providing an effective mechanism for the abolition of laws, regulations and administrative provisions contrary to the principle of equal treatment, as defined in the two directives. The most effective means to achieve this is to specify explicitly in the Law that this legislation takes precedence over ordinary laws thus ensuring that any 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 accordingly. The principle of equal treatment in the new planned legislation can be interpreted more widely to cover not only the grounds

prohibited by the constitution but also age and sexual orientation discrimination, to be enforced in all fields covered by the directives.

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