

REPORT ON MEASURES TO COMBAT DISCRIMINATION

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

COUNTRY REPORT

Cyprus

Nicos Trimikliniotis

State of affairs up to 8 January 2007

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

human european consultancy
Hooghiemstraplein 155
3514 AZ Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

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

All reports are available on the European Commission's website:

http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

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INTRODUCTION

0.1 The national legal system

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

The background

On May 1st 2004 Cyprus acceded to the EU without resolving its long-standing problem on the basis of the United Nations Secretary General's settlement plan. Meanwhile, since the partial lifting of the restrictions of movement, which commenced in April 2003, there have been millions of crossings from and to the Government-controlled area (hereinafter referred to as "the south") to the area not under the control of the Government (hereinafter referred to as "the north") and vice-versa.¹ Across the country and running through its capital, Nicosia, runs what is referred to as a 'soft EU border' or 'the Green Line', which is regulated via an EU Directive.² A few hundred Turkish-Cypriots have, since April 2003, moved to the Government-controlled area, where they are now residing, while several thousands cross on a daily basis to the south to work.

The Constitution

The Cyprus constitution sets out a consociational power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'.³ The three recognised religious groups were obliged to decide which of the two communities they would exercise their civic rights and obligations with.⁴ The Constitution provides for a system of separate elections; separate majorities are required in both the executive and the legislature; a Greek-Cypriot President and a Turkish-Cypriot Vice-president with separate veto powers and a system of quota participation by the two major Cypriot Communities (i.e. the "Greeks" and the "Turks") in all areas of public life. The Constitution contains a general anti-discrimination provision in Article 28 but at the same time Article 6 specifically prohibits discrimination against any person on the ground of belonging to one or the other community.

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

² See Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004), [http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R(01)

³ See article 2(1) and 2(2). In 1960 Turkish-Cypriots constituted 18% of the population and Greek-Cypriots 78%.

⁴The '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.

The “doctrine of necessity”

In 1963 the President of the Republic of Cyprus Archbishop Makarios proposed 13 amendments to the Constitution, effectively taking away many of the rights of the Turkish-Cypriots. The Turkish-Cypriots withdrew from the Government in protest. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. Even though it was never officially proclaimed, in practice, Turkish ceased to be used as an official language since 1963, as the relevant provisions in the Constitution requiring the use of both languages in all legislative, executive and administrative acts⁵ ceased to be implemented. Instead, Greek is the only language used by the state in official documents, including laws, Ministerial decisions and the official Gazette. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the “doctrine of necessity”.⁶ The situation that has emerged gives rise to a number of claims of discrimination which rose sharply in number following the opening of the checkpoints in 2003.

General note

Following the adoption of legislation to transpose the directives, a crucial concern is the possibility of direct discrimination against Turkish-Cypriots on the ground of ethnic origin as well as indirect discrimination on the ground of religion.⁷ A key manifestation of these instances of discrimination is the fact that there are hardly any translations in Turkish language to enable Turkish-Cypriots to have access to public services, jobs, opportunities and pursuing their rights. The enactment of the new anti-discrimination legislation in May 2004, combined with the opening of the checkpoints in April 2003, as a result of which thousands of Turkish-Cypriots are working, seeking employment and access to public services in the south, has resulted in a totally novel situation, which opens up the possibility for on-going discrimination. The reason often offered for the non-use of the Turkish language since 1963 is the ‘doctrine of necessity’, but the legality of suspending Constitutional provisions on the basis of a Supreme Court judgement is questionable. An Equality Body decision pursuant to a complaint regarding the non-use of the Turkish language in the official Gazette, recognised that discrimination against Turkish-Cypriots does seem to exist at the level of access to public services but concluded that it cannot interfere on the issue of a Turkish publication of the Gazette, invoking the “doctrine of necessity”.⁸

Pursuant to the decision of the European Court of Human Rights (ECtHR) in the case of Aziz v. The Republic of Cyprus⁹ a law came into force in 2006¹⁰ granting the right to Turkish-Cypriots residing in the government-controlled areas to vote and to stand for election. In the Parliamentary Elections of 21.05.2006, Turkish Cypriots voted for the first time, whilst a Turkish-Cypriot woman stood as a candidate MP. A number of cases have emerged that affect the ‘doctrine of necessity’ matters ever since the case of Aziz, whereby the anti-discrimination acquis is beginning to challenge the use of the doctrine to justify setting aside human rights issues, a principle derived from the ECtHR case: Cypriot courts and the Cyprus equality body have begun to implement the ratio of the Aziz case which is interpreted in a

⁵ Article 3 of the Constitution.

⁶ The case was Attorney General of the Republic v Mustafa Ibrahim and Others (1964) CLR 195. See Nedjati 1970, Loizou 2001, Nicolaou 2000.

⁷ given that Greek-Cypriots are almost entirely Greek Orthodox and Turkish-Cypriots entirely Moslem.

⁸ File No. A.K.R. 29/2004

⁹ ECHR/ no. 69949/01 (22.06.2004).

¹⁰ Law on the Exercise of the Right to Elect and Be elected by the Members of the Turkish Community who have their Normal Residence in the Government-Controlled Area (21.01.2006).

way so that the ‘doctrine of necessity’ must be exercised in a manner that does not violate the nucleus of rights or the principle of equality.¹¹ Important developments have taken place as regards the question of ongoing language discrimination, covered by article 5 of the Constitution. There is currently a case before the Supreme Court, in which language was a preliminary issue; the court allowed the Turkish-Cypriot litigants to submit their pleadings in Turkish as provided in the constitution, rejecting the Attorney General’s argument that the court dismisses the request because they failed to submit their pleadings in the Greek language.¹² Also, the Court decision in the case of *Kiazim Halit et al v. The Republic of Cyprus*¹³ recognised that an order for the expropriation of property belonging to Turkish Cypriots, published in Greek in the Official Gazette of the Republic, did not constitute sufficient notice of expropriation in accordance with the law. The Supreme Court held that the Turkish-Cypriot property owners are construed to have only received sufficient notice of the expropriation when their Greek-Cypriot lawyer received from the Interior Ministry a letter (in response to his enquiry) informing him of the expropriation of his clients’ property.¹⁴

A number of cases involving Turkish-Cypriots’ access to their properties have been initiated and the powers of the Minister of Interior as ‘guardian’ of Turkish-Cypriot property have been successfully challenged by Turkish-Cypriots owners of land in two cases.¹⁵

Cypriot Law provides for exemption from armed military service for conscientious objectors and allows alternative service. However, this exemption does not apply for reserve military duty. Several Jehovah’s Witnesses faced legal proceedings for failure to report for reserve Military duty. Their cases were suspended in November 2002 pending revision of the law. The law does not enable persons who have served their ordinary military service, to be recognised as conscientious objectors when called up to serve as reservists. It is expected that the situation will be remedied by amending legislation, which is being drafted by the Legal Service in consultation with the competent Ministry. This is to be submitted to the Council of Ministers for approval and introduction to Parliament. At the point of writing, this law is still pending. It should also be noted that two complaints submitted to the Equality Body alleging that the exemption from military service for the other ethnic/ religious communities of Cyprus (Turkish-Cypriots, Maronites, Latins and Armenians) amounts to discrimination against Greek Cypriots, was found justified by the Equality Body only with regard to the three religious groups (Maronites, Latins and Armenians). As far as the Turkish-Cypriots are concerned, the decision did not examine the issue further as it “touches upon the historical reasons of creation of the National Guard and the enactment of the relevant legislation”.¹⁶

In July 2006, the Cypriot Constitution was amended to give supremacy to EU laws. The amendment had been debated for a couple of years amongst politicians and MPs and finally the government proposed a bill to amend the Constitution (until then the supreme law of the

¹¹ See further down details of the case examined by the Equality authority A.K.P. 29/2004.

¹² This is a case where two Turkish-Cypriots, Mr. Ali Erel and Mr. Mustafa Damdelen brought the lawsuit before the High Court against the Minister of Interior, the Attorney General and the Republic of Cyprus (see press release of Cyprus EU Association, 3rd December 2006. The case will proceed before the Grand Chamber of thirteen judges would begin the hearing of the case on 14th February 2006.

¹³ Supreme Court Case No. 18/2005, decision dated 29.11.2006.

¹⁴ The Court did not specifically decide on the point of language, since the Turkish-Cypriots themselves did not raise it as the reason why they could not access this information, but it did state that the publication in the Gazette in the Greek language was not sufficient means of communication.

¹⁵ *Kiazim Halit et al v. The Republic of Cyprus*, Supreme Court Case No. 18/2005, decision dated 29.11.2006. *Arif Mustafa v. The Ministry of Interior through the Limassol District Administration*, Supreme Court of Cyprus, Case No.125/2004, decision dated 24.09.2004

¹⁶ File no. A.K.R. 8/2005, A.K.R. 85/2005, dated 27.02.2006, page 1.

country), pursuant to its obligation to give supremacy to EU legislation, so that all EU laws and regulations be deemed superior to national laws (including the Constitution). The amendment adds a new article to the Constitution providing that nothing therein stated shall nullify laws, acts or measures rendered necessary as a result of Cyprus' obligations as an EU member state, or to prevent Regulations or Directives or other binding legal measures enacted by the EU or its bodies from having force in Cyprus. This development is significant vis-à-vis the national anti-discrimination legislative framework because, prior to its enactment, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the principle of equality enshrined in the Constitution. The new amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28.

On another note, the entry into force on 01.03.2006 of the law ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems¹⁷ has created new offences in the field of combating discrimination and has for the first time in Cyprus legislated on issues such as the holocaust denial and dissemination of racist material through the internet.

Regarding the grounds of sexual orientation, there has been little development during 2006. So far there has been no case so far before courts or the Equality Body; however, an opinion survey conducted by the Equality Body on public attitudes towards homosexuality has evidenced the extent of the intolerance and prejudice towards homosexuals. A number of important disability cases have been decided by the Equality body during 2006.

0.2 State of implementation

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

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

Cyprus has enacted four laws which entered into force on the date of its accession to the EU (01.05.2005): the law amending a previously enacted law on disability,¹⁸ the law transposing the employment directive,¹⁹ the law transposing the race directive²⁰ and the law appointing the Ombudsman as the Equality Body empowered to investigate complaints of discrimination. The national laws enacted for the purpose of transposing Directives 43/2000/EC and 78/2000/EC appear to be more or less in compliance with the said Directives. These laws are The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004); The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004); The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004); the Disability (Amendment) Law N.57(I)/2004. However:

- The duty to ensure that discriminatory laws and provision contained in contracts, collective agreements, internal rules of undertakings or rules governing independent

¹⁷ Cyprus/The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.

¹⁸ Law on Persons with Disabilities No. 57(I)2004 (31.03.2004).

¹⁹ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

²⁰ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004).

occupations and professions and workers and employers' organizations have been explicitly repealed²¹ by way of a general provision in the two main anti-discrimination laws²² has not been fully complied with. No review of the existing laws was made to ensure compliance with the Directives. Practice suggests that the process of formal repeal of older laws which do not comply with the Directives is somehow 'triggered off' only *after* a complaint is made. In some cases, the Equality Body examines the complaint and issues a report which, however, is usually a mere recommendation rather than a binding decision. There is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives

- The scope of the test of reasonableness as regards reasonable accommodation is much wider in the Cyprus law than in the Employment Directive which provides only for the test of "disproportionate burden on the employer" and clearly falls short of creating a full-blown mandatory regime.
- The principle of reversal of the burden of proof, as contained in Article 8 of the Race Directive as well as in Article 10 of the Employment Directive have been inadequately transposed into Cypriot law. This was pointed out to the Cypriot government by the European Commission and an amendment has been introduced since²³, which however remedies the problem only partly. As things stand now, Article 8 of the Race Directive is transposed only with regard to social protection, medical care, social advantages, education and access to goods and services. Also, reversal of the burden of proof is stated to apply only with regard to the procedure before the Court and not with regard to any other procedure, such as the procedure before the Equality Body.²⁴ The transposition of Article 10 of the Employment Directive suffers from the above inadequacies plus three more: a victim of discrimination has to *prove* facts from which a violation can be inferred instead of merely introduce them; the perpetrator is absolved from liability if his violation had no negative consequences on the victim; and the rule applies only to civil procedures and not to administrative ones.
- Certain provisions of the two Directives which require the Member States to take measures other than the enactment of legislation, have not been fully implemented. These measures include the promotion of dialogue with social partners and NGOs²⁵ and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned.²⁶ Since the adoption of the legislation, which was rushed through

²¹ As required by Directive 78/2000/EC, Article 16 and Directive 43/200/EC, Article 14.

²² Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (I)/2004 (31.3.2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31.3.2004).

²³ Law amending the Equal Treatment (Racial or Ethnic origin) No. 147(I)/2006.

²⁴ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Article 7(2).

²⁵ Directive 78/2000/EC, Paragraph 33 of the Preamble; Articles 13 and 14. Also, Directive 43/200/EC, Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were not informed as to which of their proposals were accepted or not, nor were any reasons given; they saw the final National Action Plans published. The only NGO dealing with racism and racial exclusions at the time (KISA) was not consulted in the formation of National Action Plans (for Employment, Social Inclusion, Education).

²⁶ Directive 78/2000/EC, Article 12 and Directive 43/200/EC Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. No alternative means are used to inform disabled people of non-discriminatory measures such as Braille.

Parliament on the eve of Cyprus' accession to the EU, with the exception of a few seminars, there has been little initiative or positive action taken by the Government or other public body.²⁷ The Labour Department of the Ministry of Labour has published a "Guide to Law No 58(I) of 2004 on the Equal Treatment in Employment and Occupation" as well as a "Guide on the rights and obligations of foreign workers"; however the dissemination of these leaflets to the vulnerable groups appears inadequate as most of the organisations representing groups at risk were not aware of the existence of these leaflets.

- A great deal more could be done for the dissemination of information to the discriminated groups themselves.²⁸ When it comes to policy-making, dialogue or consultation with non-governmental organisations, it is either non-existent, very limited or appears to have little impact over the outcome of the process; there is little feedback or proper engaging in a debate, so as to identify the best possible ways of combating discrimination.

The Equality Body's power to collect data and conduct independent surveys concerning racial or ethnic discrimination has not been utilised sufficiently, nor are there structures in place for the collection of such data.²⁹ The Equality Body has not as yet progressed in drafting codes of conduct intended to combat discrimination on the grounds provided by the Directives,³⁰ even though the relevant Cypriot law authorises it to do so.³¹ The Equality Body has conducted a research survey and found extensive homophobia in Cypriot society but has drafted no codes of conduct.

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

0.3 Case-law

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

- Name of the court
- Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- Name of the parties

²⁷ With the exception of two seminars little other Government organised activity has taken place. A number of civic initiatives and collaborations of NGOs with government departments have emerged recently, most in the form of EU-funded projects. One such project is the national campaign with the slogan "For Diversity. Against Discrimination." (see <http://www.stop-discrimination.info/index.php?id=5514>)

²⁸ As provided by Directive 43/200/EC, Article 12.

²⁹ As provided by Directive 43/200/EC, Article 13. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 44 empowers the specialized body to conduct research and collect statistics, however no such research or statistics have been collected, nor is there any definition of the categories for the collection of such relevant statistics.

³⁰ As provided by Directive 43/200/EC, Article 11.

³¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 40. The Specialized Body declined an offer to participate in an EQUAL project to develop such codes of conduct for employment, preferring instead of to leave it to other Government departments to participate.

d. Brief summary of the key points of law (no more than several sentences)

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

Cases which may involve discrimination elements are not yet classified as such in the Courts archives, rendering the search very difficult. From our enquiry to the Courts and to all members of the legal profession, it emerged that, since the enactment of the anti-discrimination laws in May 2004, only one case has been filed in Court, invoking a provision of the new laws. In particular the case concerns a complaint of discrimination on the ground of age filed by a prospective applicant for a job vacancy against the prospective employer, a co-operative banking institution, with regard to an advertisement for a position fixing a maximum age limit; the hearing of the case is scheduled for February 2007.³² Since the enactment of the laws, there have been several decisions of the national Equality Body invoking these laws: 41 decisions in 2004 and 150 decisions in 2005. In 2006, 169 complaints were received by the Equality Body but it is not yet clear how many of these were processed. In the cases involving employment matters, from an informal check, it emerged that only in 9 cases were decisions issued, as follows: disability 1, gender 1, language 3, national origin 1, age 3.

The case of Ibrahim Aziz

- a. European Court of Human Rights
- b. 22.06.2004. Reported at <http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>
- c. Aziz v. The Republic of Cyprus
- d. In 2001 Aziz, a Turkish Cypriot residing in the south applied to be registered on the electoral roll in order to vote in the forthcoming elections. His request was refused on the ground that under the Cyprus Constitution³³ Turkish-Cypriots could not be registered in the Greek-Cypriot electoral roll. Indeed, the Constitution did provide for separate electoral lists for Greek-Cypriots and for Turkish-Cypriots, but this was suspended in 1963. Following the rejection of his application, the complainant appealed to the Supreme Court, relying on Article 3 of Protocol No. 1 of the European Convention on Human Rights and arguing that, following the dissolution of the Communal Chambers in 1963, the Republic failed to set up two separate electoral lists to protect the electoral rights of members of both communities. The Cyprus Supreme Court rejected his application, holding that the applicable legislation³⁴ did not provide for Turkish-Cypriots living in the south to be included in the Greek-Cypriot electoral list and that the Cyprus Courts had no power to reform the Constitution. Following this rejection, the complainant

³² Avgoustina Hadjiavraam v. SPE Morfou (2005) Case No. 258/05.

³³ Article 63 of the Cyprus Constitution.

³⁴ Article 63 of the Constitution and Article 5 of Law No. 72/79 relating to the election of members of parliament.

applied to the European Court of Human Rights³⁵ who ruled in favour of the complainant. The Court found that Cyprus was in violation of Article 3, Protocol 1 of the ECHR for denying the complainant “the very essence of the applicant’s right to vote”; and of Article 14 of the same Convention, as the difference in treatment complained of was a result of the complainant’s ethnic origin and such difference could not be justified on reasonable and objective grounds. The Republic’s failure to pass legislation to resolve the problem which arose in 1963 from the suspension of several constitutional rights of Turkish-Cypriots, produced a clear inequality of treatment in the enjoyment of the right to vote.³⁶

The Case of Arif Mustafa

a. Supreme Court of Cyprus.

b. Referenced: Supreme Court of Cyprus Case no.125/2004, unreported as at the time of writing this report.

c. Mustafa v. The Republic of Cyprus

d. In February 2004 Arif Mustafa applied to the Supreme Court of Cyprus³⁷ for reinstatement of his property in the Republic- controlled south. The applicant, a Turkish-Cypriot, owns property in the south which he was forced to abandon during the 1974 war. Since then all properties belonging to Turkish-Cypriots, are ‘administered’ by the Interior Minister who acts as ‘guardian’ or “custodian” of these properties.³⁸ His application to the Interior Minister for reinstatement of his property was rejected. The applicant then filed an application to the Supreme Court³⁹ to reverse the Minister’s decision. His application was successful and the Court ordered the reinstatement of his property. The applicant’s arguments in the Court were, inter alia, that the law contravenes Article 28 of the Constitution, which embodies the equality principle and the prohibition of discrimination.

The Republic of Cyprus appealed against the decision of the Supreme Court, as a result of which execution of the judgement was suspended until 13.2.2006, until the appeal was heard on that date. On that date, the Attorney General withdrew his objection and the judgement of the court was executed: Arif Mustafa became the first Turkish Cypriot to recover his property in the south. For more details on this case, please see Report on Measures to Combat Discrimination – Cyprus Country Report Update 2005.⁴⁰

The case of Jean Mistrellides

a. District Court of Nicosia

b. Case No. 232/2004, decision issued on 20.1.2006, unreported as at the time of writing this report.

c. Police v. Jean Mistrellides

A group of youth were persistently harassing a half-Cypriot half African family man of 42 years of age, shouting insults and threats outside his house. When the man tried to chase them away with a sword, he was prosecuted for assault and was fined with CYP600 (approximate

³⁵ European Court of Human Rights Application No. 69949/01.

³⁶ On 23.01.2006 a new law was enacted purporting to comply with the ECtHR decision. The law grants the right of vote to Turkish-Cypriots to vote as part of the same electoral roll as Greek-Cypriots and provided

³⁷ Supreme Court of Cyprus Case no.125/2004.

³⁸ Cyprus/ Law on Turkish-Cypriot Properties (Administration and Other Matters) (Temporary Provisions) 1991.

³⁹ Under Article 146 of the Cyprus Constitution, which entitles all persons to file applications to the Supreme Court to repeal administrative acts.

⁴⁰ http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

Euro equivalent 1.000) to him. No charges were pressed against the youth for harassment and for threatening to use force, who continued to ride their bikes around Mr. Mistrellides house, shouting racist remarks and threatening him and his family.⁴¹ The selective treatment which the police have made of this incident raises doubts as to the impartiality, the objectivity and the effectiveness with which they can address serious incidents of racist crime such as the present one. For more details on this case, please see Report on Measures to Combat Discrimination – Cyprus Country Report Update 2005.⁴² A complaint filed with the Equality Body against the police for failing to prosecute the youth for their systematic racist behaviour, claiming discrimination in access to police protection on the ground of race/ethnic origin, has not as yet been processed.

Law granting priority in employment for war-disabled persons is declared unconstitutional

- a. Name of the court: Supreme Court
- b. Date of decision and reference number. 8.12.2006, Appeal No. 56/06.
- c. Name of the parties: Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service
- d. Brief summary of the key points of law: In 2004 the Commission for Public Service approved the promotion of two public servants, on the ground that, having been judged equal to all other applicants, they were also “sufferers” within the meaning of Law 87(I)/2004⁴³, which provides for priority in appointment/promotion for, inter alia, persons with war-related disabilities. The said decision was appealed against by a group of other public servants (the appellants), on the ground that it was contrary to the equality article of the Constitution (article 28). The appellants’ argument drew on the fact that in a previous court decision, a law granting 10% quota in employment in favour of persons with war-related disabilities (Law 100(I)98) was also found unconstitutional. The first instance court rejected this argument, on the ground that the 10% quota was not the same as priority among applicants who are otherwise judged as equal and that only Law 100(I)98 could be seen as violating the equality principle. On appeal, the Supreme Court found that the reason for which Law 100(I)98 was declared unconstitutional was not the quota per se but the entirety of its provisions which introduced unlawful discrimination in the criteria for appointment and promotion in the public service. Similarly, Law 87(I)/2004 was also found unconstitutional, on the ground that it introduced a class of beneficiaries (the war-related disabled, etc) which reversed the principle of equality of all applicants before the law. The judge also stated that since the purpose of this law is the vocational rehabilitation of this class of beneficiaries, and since the two persons

⁴¹Interview with the lawyer of Mr. Mistrellides, Mr Marios Constantinou of the Law office of Efsthathios K. Efsthathiou., in Nicosia, Cyprus.

⁴²http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

⁴³ Article 2 of Law 87(I)/2004 defines “sufferers” as: relatives of persons dead or missing as a result of the 1974 war; “disabled persons” and their spouse and children; persons or children of persons ‘enclaved’ in areas occupied by the Turkish army. For the definition of the term “disabled”, the law refers to an earlier law of 1988 (Law on Relief of Sufferers N. 114/1988), according to which “disabled” means partly or fully disabled. “Partly disabled” is defined as an army soldier rendered temporarily or permanently disabled to a degree between 16%-99% as a result of wounds or illness resulting from his service in the army; or a Greek-Cypriot rendered disabled to a degree between 16%-99% as a result of the war in 1974 or the anti-colonial struggle of 1955-1959. “Completely disabled” is defined in exactly the same terms, except that the degree of disability is 100% rather than 16%-19%. Law N. 114/1988 provides for the payment of pension to these categories as well as to some other classes of beneficiaries.

whose promotion is challenged are over fifty years of age, their promotion cannot be deemed as “rehabilitation”.⁴⁴

The above decision inevitably raises the question whether any law enacted in the future introducing positive action measures under article 7 of Directive 2000/78/EC would also be deemed as unconstitutional. An amendment to the Constitution introduced recently, giving priority to EU regulations and Directives over all domestic legislation (including the Constitution) could perhaps be utilised in order to avoid the cancellation of such positive measures. It appears, however, that there is an uneven treatment of the unconstitutionality of laws, suggesting that there is no mechanism for applying the equality principle in order to remedy laws introducing discrimination (as required by Article 16(a) of Directive 2000/78/EC), unless the specific law in question is challenged in Court by individuals. Law 114/1988 which continues to remain in force, grants war related pensions to Greek-Cypriots only, thus introducing unlawful discrimination against Turkish-Cypriots, who have also been adversely affected by inter-communal violence and by the 1974 war.⁴⁵

A number of complaints were submitted to the Equality Body that dealt with important discrimination issues.⁴⁶

A complaint⁴⁷ investigated by the Equality Body concerned an advertisement for a job vacancy in the Commission on Educational Service, fixing an age limit of 60, as required by the Public Educational Service Laws of 1969-2004⁴⁸. The Equality Body found that the advertisement was indeed discriminatory and asked for a revision of the relevant law. Instead of the Attorney General proceeding to revise this law, a bill was tabled in Parliament by an MP requesting its revision. However, discussion on the bill did not progress and the bill was abandoned and deleted when Parliament dissolved in May 2006 just before parliamentary elections.

A number of important decisions of the Ombudsman, acting in its capacity as Equality Body, during the years 2004 and 2005 include a decision on complaints against insurance companies for refusing to insure persons of non-Cypriot origin; a Complaint for religious discrimination at school following a complaint for religious discrimination against a female pupil, who is a Jehovah’s Witness, by a teacher of religious instruction;⁴⁹ a complaint that the criteria used by the state Nursing School in admitting students are discriminatory on the ground of disability following a complaint from the parent of an applicant with reduced hearing, the Equality Body investigated the criteria of admission into the state nursing school, where it ruled that the admission criteria constituted direct discrimination on the ground of disability. Generally, decisions and recommendations by the Equality Body are complied with by the authorities at an approximate rate of 60%, as stated by the Equality Body.⁵⁰ However,

⁴⁴ This of course applies not only to the two persons promoted but to the entire class of beneficiaries created by this law, since the reference point is the war of 1974 and persons affected must necessarily be of a certain age. This statement by the judge perhaps raises a question of age discrimination, albeit only theoretical, since the law is repealed anyway.

⁴⁵ There is a complaint before the Equality Body that this law is discriminatory.

⁴⁶ For details on the number and nature of complaints, please see Report on Measures to Combat Discrimination – Cyprus Country Report Update 2005
http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

⁴⁷ Commissioner for Administration File No. A.K.I. 25/2004, 08.11.2004.

⁴⁸ Article 4(4) (c) of the Law on Public Education Service 1969-2004.

⁴⁹ Report of the Cyprus Anti-discrimination body no. 31/2005, dated 2 November 2005

⁵⁰ Hadjivasilis M. 2004, “40% of the Ombudsman’s reports in the wastebin”. Phileleftheros, 28.10.2004.

there is at least one example where the Council of Ministers, the highest executive body, reversed and refused to comply the Equality Body's decision. The said decision had found that a school regulation requiring foreign public to declare upon enrolment the contact details of their parents in order for the migration department to ascertain the legality of their stay in Cyprus was unlawful and asked for its withdrawal. The Council of Ministers retained the regulation alleging sovereign state rights to protect national security.⁵¹

Although the Ombudsman's annual report for the year 2004 contained a large number of decisions pursuant to complaints by Turkish-Cypriots against the authorities, the 2005 annual report, published in December 2006 mentions no cases whatsoever involving Turkish-Cypriots. It is not clear whether this was because there have been no complaints by Turkish Cypriots during 2004 or whether the Ombudsman decided not to record any in her annual report.

Below are a number of landmark Equality Body decisions issued in 2006:

Accommodation for dyslectic children in education

In 2006, the Equality Body examined two complaints for the lack of suitable accommodation for dyslectic children at exams, which places them in a less favourable position than non-dyslectic children. The case covered the area of access to education based on the right to education and the rights of the child⁵² on the ground of disability discrimination.⁵³ The parents of a dyslectic pupil complained to the Equality Body for the absence of reasonable accommodation facilities for dyslectic pupils at the secondary school leaving examinations and at the tertiary school entry examinations. The law on carrying out Pancyprian School Exams (N.22(I)/2006) makes no provision for reasonable accommodation of children with dyslexia. Under this law, parents have to apply to a Special Exams Committee (SEC) consisting of persons not specialised in dyslexia, for permit to use facilities for their dyslectic students. In the case under examination, SEC refused to approve facilities for the exams other than additional examination time, the only facility provided for under the new exams law (N.22(I)/2006)⁵⁴ which facility however, was held by the Equality Body to be insufficient for ensuring equality in opportunity in the field of education

The decision found that the Education Ministry's practice was discriminatory towards dyslectic children; and also that the two national laws⁵⁵ introduced indirect discrimination on the ground of special needs in the field of education and asks the Attorney General to revise them. No decision was issued with regard to the complainant's case since the pupil in question had already taken the exam, but recommended to the Education Ministry in the future to act having in mind the equal treatment of pupils with special needs in relation to all other pupils.

This is the first attempt to reach a definition of "reasonable accommodation" for a person with a disability in education. Although focusing on dyslexia in particular, several findings of this decision may be extended to apply to other types of disability.

⁵¹ Council of Ministers decision dated 21.04.2005, No. 61.890.

⁵² UN Convention on the Rights of the Child (art. 3, 23 and 28 of the Convention); The European Social Charter; The Laws and Regulations on the Training and Education of Children with Special Needs 1999-2001; Law on Carrying out Pancyprian School Exams No. 2(I)/2006.

⁵³ Law ratifying Law on Combating Racial and Other Forms of Discrimination (Commissioner) 2004 (Art. 6(1) and 39(1)).

⁵⁴ Dated 31/10/2006, File No. A.K.I. 24/2006, A.K.I. 27/2006

⁵⁵ The Laws and Regulations on the Training and Education of Children with Special Needs 1999-2001; Law for the Carrying out of Pancyprian School Exams No. 22(I)/2006.

Access to training outside an employment relationship for a person with disability

The Civil Aviation Department (CAD) applied to the Equality Body for an opinion as to whether terminating the training of a trainee air traffic controller who had acquired a disability would constitute discrimination prohibited by law. The case involved a trainee (hereinafter G.C.) who was taking a training course on air traffic control on the basis of a state scholarship, and who lost one eye in an accident. Trainees who successfully complete the said course are eligible to apply for a position at the CAD as air traffic controllers and usually *are* offered placement by CAD but no guarantee is given that such placement is secured. The medical assessment of the CAD medical officer was that, as a result of his visual impairment, G.C. would not be able to work as air traffic controller: he had lost his stereoscopic vision and his perception of depth and distance was reduced. The same view was shared by the National Supervisory Authority, which based its decision on international regulations regarding the medical standards of air traffic controllers. The CAD applied to the Equality Body for an opinion as to whether G.C.'s training ought to be terminated, given the fact that he would be unable to work as air traffic controller upon completion.

The Equality Body decided that the eye injury acquired by G.C. was covered by the definition of disability contained in Article 2 of the Law on Persons with Disability 2000. The same law (as amended in 2004) prohibits discrimination in access to all levels of vocational training (Article 5(1)(b)) but does not apply to occupational activities for which a certain physical characteristic constitutes a genuine and determining requirement, provided the objective is legitimate and the requirement proportionate (Article 3A(1)(b)). Based on the above, on 20.09.2006 the Equality Body concluded that the discontinuation of G.C.'s training would amount to less favourable treatment compared to other trainees, which is prohibited by law, adding that the training constitutes a source of knowledge that may be utilised for purposes other than work as air traffic controller. The decision recommends that the issue of training should be seen separately from the issue of employment with the CAD as an air traffic controller after completion, which was not guaranteed in any case and which would, under the circumstances, fall under the exception of Article 3A(1)(b). The decision urges CAD to utilise the skills of G.C. after completion of his training first by contracting him for a period and then by employing him in an area other than air traffic control.

This is the first instance where a governmental body applies to the Equality Body for an opinion prior to taking a measure that may lead to a complaint of discrimination. The Equality Body took the opportunity to offer an interpretation of the relevant legislative provisions that complied with the letter as well as the spirit of the law.

Age discrimination in a state scheme for the subsidisation of the acquisition or repair of countryside houses excluding single persons under the age of 35

The Equality Body decided on a complaint for discrimination contained in the conditions for a state subsidy for the acquisition or repair of a house in the countryside payable to, inter alia, married persons (of any age) or single persons over 35 years of age and ruled that the exclusion from the scheme of persons due to their young age or their marital status could not be justified by any objective or reasonable cause. In addition, the Equality Body pointed out that the eligibility conditions of the scheme are not only discriminatory but touch upon the nucleus of fundamental rights such as the right to personality and private life, rendering the scheme even more problematic.

The scheme in question may, however, potentially contain discrimination on the ground of marital status, which was referred to in the decision only in passing. In a previous case of

14.06.2005, the Equality Body found that employment advantages granted only to married employees were discriminatory by virtue of Article 28 of the Constitution, as well as by virtue of the law transposing Directive 2000/78/EC on the ground of belief (for persons who choose to remain single as a matter of principle) and sexual orientation.

Non-use of Turkish language in Official Gazette and other government documents

The Equality Body examined a complaint of discrimination against Turkish-Cypriots in their access to public services and to employment and self-employment, resulting from the failure of the government to use Turkish language, one of the two official languages, in the Official Gazette, in public signs and posts, in public announcements and publications. The Equality Body found that the obligation to use the Turkish language in public documents, of Article 3(1) of the Constitution, was one of the provisions suspended by the ‘law of necessity’, adopted by the Supreme Court in the case of the Attorney General v. Mustafa Ibrahim, following the withdrawal of the Turkish Cypriots from the administration in 1963-1964. The report goes on to acknowledge that the opening of the checkpoints in 2003, which enabled Turkish-Cypriots to access public services in the south, must not leave the way in which the Republic addresses these issues unaffected and referred to the decision of the ECtHR in the case of Aziz v Republic, which established that state discretion must be exercised in a manner that does not violate the nucleus of rights or the principle of equality. Whilst acknowledging that the law of necessity cannot be invoked to justify human rights violations; that the non-use of Turkish must not prevent Turkish-Cypriots from accessing public services; and that discrimination against Turkish-Cypriots does seem to exist at the level of access to public services, it concludes that it cannot interfere on the issue of the Gazette, nor does it offer recommendations on the issue of discrimination.

The Gazette publishes information of vital nature for Turkish-Cypriots, such as the expropriation of their properties in the south, public tenders, vacancies in the public service and others, giving rise to further indirect discrimination; therefore in effect the ‘dogma of necessity’ *is* given priority over human rights, despite the proclamation to the opposite contained in the report. It is noted that Law N.59(I)2004 transposing the Race Directive makes no reference to the ‘law of necessity’ and it is questionable whether earlier Court decisions may be invoked to justify potential violations of this law.

The right of celebration of Turkish religious holidays for Turkish-Cypriot English School pupils

A Turkish-Cypriot parent of a pupil attending the English School, a semi-public school located in the Republic-controlled south and attended by both Greek-Cypriot and Turkish-Cypriot children, complained that the Turkish-Cypriot pupils of the school, who are of Muslim faith were not given the same treatment to celebrate their religious ceremonies as the Greek Orthodox pupils (File No.: A.K.P. 2/2006). Mr. Hilzi alleged that prior to 1963 Turkish-Cypriots were given the same opportunity to celebrate their religious festivities and this practice ought to be restored.⁵⁶

The Equality Body decided not to issue a ‘decision’ as such, but gave an ‘opinion’ instead⁵⁷ stating that “there is no actual legal obligation for the English School to officially declare two School days as holidays for the Muslim Bayram holidays because the English School is, by

⁵⁶ Letter by Mr. Hilmi Cavli to Eliana Nicolaou, Commissioner for Administration (Ombudsman) and Cyprus Anti-discrimination Body (File No.: A.K.P. 2/2006).

⁵⁷ Letter by Eliana Nicolaou, Commissioner for Administration (Ombudsman) and Cyprus Anti-discrimination Body to Mr. Hilmi Cavli, 14 July 2006 (File No.: A.K.P. 2/2006).

law, of a Christian nature”. At the same time, the letter acknowledges that, having the multicultural characteristics of the School in mind, the institutionalisation of the two Turkish religious holidays will play a significant role in the protection and promotion of the multicultural character of the School. The Equality Body submitted this suggestion also to the Board of Management of the school, requesting them to consider its implementation, but the Board has not acted on it yet.

In fact, the holidays provided by the English School over the recent years have been all Christian *Orthodox* and not all-round Christian celebrations, which may expose the school to claims that the school has become ‘Greek *Orthodox* Christian denominational’, contrary to the wording of the statute that set up the school. An opinion delivered by the Attorney General of the Republic (A.G. File No. 74/35) finds that “the English school envisaged by the law is a kind of inter-communal school the responsibility for the management of which vests with the Republic”. Even though the sensitive nature of the matter presumably prompted the Equality Body to issue an “opinion” as opposed to a binding decision, it is apparent that all ‘national celebrations’ provided by the Cyprus Constitution, including the ones for the Muslims ought to be accommodated as before, in line with the anti-discrimination acquis.

Employment application of a Greek national for a position at the University of Cyprus

In 2004 the University of Cyprus announced a vacancy for a teaching position. Cypriot nationality was not one of the selection criteria. One of the applicants, a Greek national, was found by the University Special Committee, to be the most qualified candidate. However, the Electorates’ Body of the University refused to endorse this decision and decided in favour of another candidate, a Cypriot national. The Equality Body found that the minutes of the relevant meeting of the Electorates’ Body where the complainant’s application was examined were repeatedly modified so much, that the actual deliberations could not be inferred from the final version. In addition, there were conflicting views amongst the participants as to what was said with regard to the selection criteria and that the applicant had successfully proven a *prima facie* case of discrimination, which reversed the burden of proof. The Equality Body concluded that it cannot make any concrete recommendations, because there are third party rights involved (referring to the person hired for the post in question) and because an appeal is in progress before the Supreme Court, filed by the complainant, seeking to cancel the University’s decision to select the other applicant.⁵⁸

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*
- b) *Are constitutional anti-discrimination provisions directly applicable?*
- c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

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

⁵⁸ File No. AKI 33/2004.

or any ground whatsoever, unless the Constitution itself otherwise provides. Therefore this provision has a more far-reaching application than the anti-discrimination Directives. Also there is a Supreme court decision which ruled that all constitutional and other rights that are constitutionally guaranteed are directly and indirectly applicable in the private and public sectors.⁵⁹

In addition, Law 13(III) 2002⁶⁰, which incorporates Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, provides a general prohibition against discrimination: “The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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

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

Article 28(2) of the Cyprus Constitution enshrines the enjoyment of economic, social and cultural rights by all persons without any discrimination and provides that every person shall enjoy all the rights and liberties provided for in the Constitution without any direct or indirect discrimination against any person on the grounds of community, race, religion, language, sex, political or other conviction, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless the Constitution itself otherwise provides.⁶¹ Prior to the anti-discrimination laws of 2004 that transposed the acquis, the grounds of age and sexual orientation were not expressly prohibited under Cyprus legislation, although one could possibly argue that they may be included in the “any ground whatsoever” provision of Article 28 of the Constitution. If one is to accept this interpretation of the “any ground whatsoever” provision of Article 28, it should be noted that in relation to sexual orientation, this interpretation can only be said to apply after 2002, when Cypriot legislation was amended to be brought in line with the decision of the ECtHR in the case of *Alexandros Modinos v. The Republic of Cyprus*.⁶² Prior to

⁵⁹ *Yiallourou v. Evgenios Nicolaou* (2001), Supreme court case, Appeal No. 9331, 08.05.2001.

⁶⁰ This Law entered into force on 1 December 2002.

⁶¹ 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.”

⁶² No. 15070/89(1993) ECtHR 19, 22.4.1993.

this decision, homosexuality was a criminal offence in Cyprus.⁶³ Moreover, policy-makers seemed quite reluctant and uneasy about whether and how to adopt the sexual orientation clause of the employment directive (see Trimikliniotis, 2003). To argue that during 2002 (i.e. prior to 2004 adoption of the antidiscrimination acquis) the general category of “whatsoever” covered sexual orientation seems to ignore the prevailing practices and attitudes in the social and legal context at the time: there was widespread discrimination on the ground of sexual orientation and homophobia with no Government or law enforcement being body interested in stopping such practices (for more see Trimikliniotis, 2003; Kountouros, 2005). Even in 2006, after the passage of the legislation, the same situation continues, as the Ombudsman’s survey on homosexuality in 2006 illustrates.

Prior to 2004, discrimination on the ground of disability was prohibited by Law 127(I)/2000, which was subsequently amended in 2004 by Law 57(I)/2004 in order to comply with the Equality Directive.

The notion of ‘ethnic origin’ was integrated into the notion of ‘race’; the term ‘ethnicity’ was very recently introduced in Cyprus law.⁶⁴

Article 28 of the Cyprus Constitution corresponds to Article 14 of the European Convention on Human Rights (ECHR) and hence the whole corpus of the case law of the ECHR is relevant (see Nedjati 1972: 166-167). However, Article 28 is not dependent on any other right granted (Loizou 2001: 173). In any case, the ECHR was ratified by the Republic of Cyprus in 1962 (Law 38/1962)⁶⁵. All the human rights Articles contained in the Cyprus Constitution under Part II (Articles 6-35) as well as rights conferred by the ECHR must be exercised in a non-discriminatory manner. The equality principle and the prohibition of discrimination form part of Article 28.⁶⁶

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. 105.⁶⁷ Like Article 8 of the ECHR, Article 15 of the Constitution provides for the right to private and family life.

Article 30 of Part II of the Constitution guarantees the right of access to the Courts as one of the fundamental rights and liberties. This is afforded to everyone, non-citizens and citizens alike and whether Greek-Cypriot, Turkish-Cypriot, Maronite, Armenian or Latin. No law

⁶³ Please Cyprus Country Report of 2003, for a more detailed description of the national legal order regarding homosexuality.

⁶⁴ See Trimikliniotis, 2004.

⁶⁵ 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).

⁶⁶ For more details see Nedjati 1972: 165-167; Charalambous 1995: 43-51)

⁶⁷ See Georghiou v. The Republic (1968) 8 J.S.C. 805, at p. 810.

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”.

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.⁶⁸

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

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

All the rights provided for by the Constitution, which must be enforced without discrimination, including the principles Equality of Treatment and Non-discrimination (Article 28), are enforceable in the public and the private domain.⁶⁹ Administrative acts may also be challenged via judicial review under Article 146 of the Constitution.⁷⁰ The procedure of application to the Supreme Court is simple and fast albeit expensive: the legal aid law does not cover administrative proceedings.⁷¹ The Supreme Court has power of annulment and appeal, with the power to declare any administrative act null and void. Once a case has been won at the Supreme Court, the aggrieved person is entitled to seek damages from a district court.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

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

All grounds referred to in the Directives⁷² as well as those contained in Protocol 12⁷³ are explicitly prohibited grounds for discrimination in national law. The Combating of Racial and

⁶⁸ See footnote 2 above.

⁶⁹ In the case of *Yiallourou v. Evgenios Nicolaou*, the court ruled that all rights guaranteed under the constitution are directly applicable in the public and private sphere: Supreme court, Appeal No. 9331, dated 08.05.2001

⁷⁰ Nedjati (1970: 96) cites the definition of ‘an administrative act’ provided by the first President of the Supreme Constitutional Court, Pro. E. Forsthoff Textbook on Administrative Law (8th Edition, 1961) as “all unilateral, authoritative acts of an authority of public, which have direct effect, with the exception of legislative and judicial acts”.

⁷¹ Law on Provision of Legal Aid (2002) N. 165(I)/2002.

⁷² Laws N. 42(1)/ 2004 (19.03.2004), N.58 (1)/2004, N.59 (1)/2004, N.57 (1)/2004, N.127 (1)/2000.

⁷³ The Ratification Law of Protocol 12 of the European Convention of Human Rights and Fundamental Freedoms N.13(III)/2002 (19.04.2002).

Some Other Forms of Discrimination (Commissioner) Law⁷⁴ appoints the Commissioner for Administration (or *the Ombudsman*), an independent officer, as the national Equality Body empowered with the task of (i) combating racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin⁷⁵; (ii) promoting equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law⁷⁶ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁷⁷ and (iii) promoting equality of opportunity irrespective of the grounds listed in the preceding Article (to which the grounds of ‘special needs’⁷⁸ and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Overall, the role of the Equality Body is to deal with all grounds provided for by the Directives including race or ethnic origin, religion, sexual orientation, disability and age as well as other grounds provided for in national law.

Prior to the introduction of the Equal Treatment in Employment and Occupation of 2004 N. 58 (1)/2004 (31.3.2004), there were no express provisions in Cyprus law on age and sexual orientation discrimination. There is therefore no tradition in discrimination on the basis of these two grounds, although there is significant development on the ground of age discrimination. The fact that no sexual orientation complaints have been submitted to the Equality Body, shows the reluctance of homosexuals to make their sexual orientation known in a most negative climate. The original framework for Cyprus law existing prior to accession that put into effect the principle of equal treatment and for combating discrimination was widened to cover beyond the grounds of racial or ethnic origin, religion or belief and disability, the grounds of age and sexual orientation to comply with Article 1 of the Directives. The ground of religion was covered at least nominally: ‘religion’ was referred to in the relevant anti-discrimination clause of the Cyprus Constitution. The absence of a comprehensive anti-discrimination legal framework and effective mechanisms for enforcement⁷⁹ beyond the public sector, rendered the constitutional references to religion

⁷⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

⁷⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3.(1).(a), Part I.

⁷⁶ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

⁷⁷ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1).(b), Part I.

⁷⁸ This is the term for disability used in the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, which includes mental disability. In a debate over the correct terminology, the organisations of persons with disabilities considered that in Greek the term ‘special needs’ («ειδικές ανάγκες»), particularly in the case of ‘mental disability’, was more appropriate than the Greek translation of ‘mental disability’ («πνευματικές αναπηρίες»).

⁷⁹ See Second ECRI of the Council of Europe Report on Cyprus (2001): The Report considers that “the establishment of comprehensive civil and administrative anti-discrimination provisions can be a useful tool to help counter discrimination in such vital fields as employment, housing, education etc. Consideration of these issues would also be in line with current developments

rather weak, although the case of Yiallourou set a precedent that constitutional rights are actionable per se.⁸⁰ Freedom of religion or belief is guaranteed by art. 18 of the Constitution and other international instruments ratified by the Republic as well protection from discrimination on the ground of religion.⁸¹ Religion or belief is also now covered by the new anti-discrimination legislation of 2004 transposing the acquis.

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

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation? Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

All the grounds for discrimination (racial or ethnic origin, religion or belief, disability, age, sexual orientation) are provided for as grounds within the competency of the Equality Body. However, the meaning of each of the recognised grounds for discrimination is not defined in the four anti-discrimination laws of 2004. The reason for not defining these terms can be traced back to the fact that the laws were rushed through Parliament, without a public debate as to the most appropriate means to tackle discrimination or as to the definitions of the terms. The practice adopted was that of replicating the wording of the directives, a practice which is perhaps indicative of the drafters' intention to adopt only what is necessary in order to satisfy the directives.⁸² Prior to the introduction of the new law, the approach taken on

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).

⁸⁰ Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001. In this case, the Director of the Nicosia Sewerage Board sued the civil engineer of the Board for damages for having tapped his telephone for a whole year, which violated his right to privacy and confidentiality of communication under articles 15 and 17 of the Constitution. No material damage was proved and the District Court awarded general damages. Upon appeal to the Supreme Court, the first instance decision was upheld. This decision opens the way for legal action against the state or private persons for discrimination, on the basis of Article 28 of the Constitution, which covers grounds not included in the laws transposing Directives 2000/78/EC and 2000/43/EC, such as community, language, national or social descent, birth, colour, wealth or "on any ground whatsoever (Art. 28.2) The resulting remedy from such action, which is just and reasonable compensation for pecuniary and non-pecuniary damage, is additional and of wider ambit than that of the laws transposing Directives 2000/78/EC and 2000/43/EC. Although the case deals with enforcement of human rights in general and not discrimination in particular, it is important for establishing that constitutional rights such as Article 28 are actionable per se against persons or the state. Given that no case has been decided by Cypriot courts yet on the basis of the laws transposing Directives 2000/78/EC and 2000/43/EC, and in the absence of legal literature, this decision, which preceded the transposition of these Directive, can be used in conjunction with the implementation of the anti-discrimination laws, in order to provide effective and dissuasive remedies.

⁸¹ Moreover, religious affairs of the Orthodox Christians and Muslims are vested with the Orthodox church and the Evkav respectively and are under the regulation of the two 'Communal Chambers' (art. 86-111 of the Constitution).

⁸² The issue has not arisen in Cypriot law in the past as it became an issue in other jurisdictions

discrimination was not to define the grounds, presumably considering that these are self-explanatory in the ordinary use of the language.

The term ‘disability’ is defined in the Law concerning Persons with Disabilities No. 127(I)2000 enacted prior to the new anti-discrimination laws of 2004: “Disability”⁸³ is defined in article 2 of Law N. 127(I)/2000 as “any form of deficiency or disadvantage that may cause bodily, mental or psychological limitation permanently or for an indefinite duration which, considering the background and other personal data of the particular person, substantially reduces or excludes the ability of the person to perform one or more activities or functions that are considered normal or substantial for the quality of life of any person of the same age that does not experience the same deficiency or disadvantage”. No express reference is made in the law protecting persons who have had a disability in the past or who will acquire one in the future.

When comparing the above definition with the concept adopted in the *Chacón Navas* case, it emerges that the ECJ focused equally on the source of the limitation (“physical, mental or psychological impairments”) and on the impact (“which hinders the participation of the person concerned in professional life”). The definition in the Cypriot law first describes the characteristics of this condition in a liberal fashion (“deficiency that *may* cause indefinite or permanent, mental or psychological or bodily limitation”) and then goes on to describe the impact in a rather restrictive mode (substantially reducing or excluding the ability to perform an activity that is “normal” or substantial for the quality of life).

Regarding the definitions of the concepts of ‘direct’ and ‘indirect discrimination’, ‘harassment’ and ‘instruction to discriminate’, all the anti-discrimination laws enacted in 2004 virtually replicate the text of the Directive.

There is no reported case law on the subject. The Ombudsman’s Annual Report for 2005 refers to two cases in which the welfare services discontinued the payment of a benefit to persons with a disability on the ground that the disability could potentially be remedied through an operation and that the disability was not permanent, respectively. In both cases, the Ombudsman found that the complainants’ disabilities did fit the definition of the term as found in the law because the inference that can be drawn from the medical certificates is that the disability in question is of an indefinite duration. The Ombudsman criticised the practice followed by the welfare office in discontinuing benefits on the basis of the impressions of the social worker who visited the person and stated that decisions touching upon medical knowledge cannot be justified exclusively on the basis of subjective judgement.⁸⁴

The Law concerning Persons with Disabilities⁸⁵ as amended in 2004⁸⁶ does not expressly prohibit or render the use of pre-employment medical examinations discriminatory.

The Law on Civil Service (1/1990), which provides for employment opportunities in favour of persons with disabilities in the public sector, defines a “disabled” person as “a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability

where there is jurisprudence defining for example what is an ‘ethnic’ or ‘racial’ group.

⁸³ This law uses the term ‘disability’ and not ‘special needs’, as used in the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law of 2004.

⁸⁴ File Nos. A/P 2175/04, A/P 368/05, described in the Ombudsman’s Annual Report for 2005, published in Nicosia in December 2006.

⁸⁵ Law N. 127(I)/ 2000.

⁸⁶ N.57 (1)/2004.

originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs." This definition follows the restrictive tradition of the Article 2 of Law N.127(I)/2000 and it is arguably more restrictive than the position adopted by the ECJ in the *Chacón Navas* case.

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

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

Relevant issues relating to religious freedom and discrimination on the ground of religion were raised by some religious groups. Some complaints have been brought about by minorities which are recognised in the Cyprus Constitution merely as 'religious groups'. Maronites have complained about their designation *merely* as a religious group; they consider themselves also as "a specific ethnic group". Furthermore, the Latin community⁸⁷ of Cyprus is not satisfied with the term "Latin" ascribed to them, as it does not properly reflect their Roman Catholic religious identity (see Opinion on Cyprus by the Advisory Committee on the Framework Convention for the Protection of National Minorities 2001).⁸⁸ It is notable that none of these groups have objected to their designation as 'groups' rather than as 'minorities'. The Roma community, notably, is not recognised either as Roma or as a religious group; instead, because of their language and religion, they were deemed to be an integral part of the Turkish-Cypriot community which is regarded as an ethnic community. In line with this policy, a small section of the Roma community who were Christians was deemed to belong to the Greek community. As part of the Turkish-Cypriot community, most of the Roma population of Cyprus are Cypriot passport holders and are entitled to all rights which all other Cypriot citizens have. Therefore differential treatment against Roma (or against Turkish Cypriots) amounts, in accordance with the provisions of Cypriot law, to discrimination on the ground of racial/ethnic origin. Another issue highlighted by international reports which primarily relates to religious freedom, is that of reservist conscientious objectors, many of whom are Jehovah's Witnesses⁸⁹ and who refuse to serve in the army due to their religious belief.

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

⁸⁷ The Latins are one of the three constitutionally recognised "religious groups". They form a small community of persons of Latin ethnic origin and of Catholic faith.

⁸⁸ 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.

⁸⁹ See Amnesty International Press Release 2002, Human Rights Without Frontiers 2003.

Law (N.42 (1)/2004) that empowers the Commissioner to act as the national Equality Body does *not* provide for any such restrictions whatsoever. The law transposing the employment Directive⁹⁰ does not contain any *specific* restrictions related to the scope of ‘age’ as a protected ground, nor does it specify a minimum age below which the anti-discrimination law does not apply; it follows almost verbatim the wording of Directive 2000/78/EC. However, the minimum age for entering employment is fifteen (except for children who are fourteen and who are placed in a program combining work and vocational training) so one may perhaps conclude that as far as discrimination in employment is concerned this does not apply to children under fifteen (and under fourteen in the case of vocational training). Law 48(I)/2001 on the ‘‘Protection of Young Persons at Work’’ also allows the employment of children (defined as young persons under fifteen years of age) in cultural, artistic, sports or advertising activities subject to a license being issued by the Minister under certain circumstances, to be determined by Regulations on condition that the safety, health and development of the child will not be harmed, and that the regular school attendance of the child will not be prevented.

Article 8(1) of the Law on Equality of Treatment in Occupation and Employment N. 58(I)/2004 includes a general provision that ‘‘differential treatment on the ground of age does not amount to discrimination, provided that

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

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

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

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

d) Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.

There are no legal rules or decisions on the matter. The Ministry of Justice has advised that there are no plans for the adoption of laws or regulations to deal with situations of multiple discrimination.

2.1.2 Assumed and associated discrimination

⁹⁰ Law on Equality of Treatment in Occupation and Employment N..58 (1)/2004.

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

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

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

There is no express provision to that effect in the two substantive anti-discrimination laws N.58(1)/2004 and N.59(1)/2004, nor any case-law, although both the aforesaid laws contain provisions for protecting against victimisation or recriminations in the form of “adverse treatment or consequences against any persons who complains or is involved in proceedings aiming at compliance with the principle of equal treatment”, in line with Article 9 of Directive 2000/43/EC and Article 11 of Directive 2000/78/EC. The spirit of this provision may be extended to cover the above. The Law on the Commissioner for Administration N. 42 (1)/2004 is much wider in scope, as it covers areas beyond the five grounds prescribed by the two directives. It is possible to infer that association with persons with particular characteristics is firstly, a fundamental human right issue as it relates to the rights of ‘freedom of association’ and as such one cannot be discriminated against in the exercising of this right. Secondly, discrimination on the basis of association with persons with particular characteristics is a direct violation of the principle of equal treatment and *illegal discrimination* within the mandate of the Equality Body as this type of discrimination is based on precisely the same grounds by way of association.⁹¹ Moreover, Article 1 (1) of Protocol 12 to the ECHR includes “association with a national minority, property, birth or other issues” as one of the prohibited grounds of discrimination.

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

a) How is direct discrimination defined in national law?

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

The Law (amendment) concerning Persons with Disabilities Law 57(I)/2004 is a replica of the above in providing the definitions of direct and indirect discrimination and harassment, inserted in Article 2 of the main Law Concerning Persons with Disabilities Law 127(I)/2000.

⁹¹ The powers go beyond the narrow scope of the two anti-discrimination directives covering all rights and freedoms covered by the constitution, Protocol 12, the European convention of Human rights and Fundamental Freedoms as well as any rights contained in any Treaty ratified by the Republic of Cyprus.

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)]. No definition is provided for instructions to discriminate.

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

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

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

The law generally does not permit justification of direct discrimination, save for specific situation in relation to the grounds of (a) religion in the cases of “occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief”, where “due to the nature of these activities or framework within which they are exercised, the religion or beliefs constitute a genuine, legitimate and justified occupational requirement”, as provided in the Framework Directive.⁹² (b) Age: this follows the exact wording provided for by Article 6 of the Employment Directive.⁹³

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

There is no specific reference relating to age discrimination. The basic test used is the same for all grounds of discrimination, which is contained in the definition of direct discrimination (less favourable treatment than the one which another person in an equivalent situation has been subjected to or would have been subjected to).⁹⁴

2.2.1 Situation Testing

- a) Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.*
- b) Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*
- c) Outline important case-law within the national legal system on this issue.*
- d) Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

There is no reference in legislation or case law on the subject. We therefore are obliged to examine the subject on the basis of the general rules of evidence as developed by case law, originally provided in the Law on Evidence Cap. 9, which codifies the sources of law and

⁹² Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 7.

⁹³ Law on Equality of Treatment in Occupation and Employment N.58 (1)/2004, Article 8.

⁹⁴ Law on Equal Treatment in Employment and Occupation N.58 (1)/2004, Article 2.

defines the hierarchy of law for both criminal and civil procedure. In this order, the hierarchy relies on the constitution, legislation of the Republic since 1960, Common Law and equity and the statutes of the U.K prior to independence.⁹⁵

The admissibility of *situation testing* as a method of proving discrimination in courts will be subjected to the general test of ‘relevance’ and ‘the best evidence rule’. A number of factors need to be considered before coming to any conclusion as to the way in which the courts are likely to treat ‘situation testing’. If *situation testing* is to be relied upon as a methodology that merely indicates a tendency as to the ‘general’ or ‘systematic’ behaviour of the defendant which is based on *previous* and/ or *similar* occasions, then the court may treat *situation testing* as ‘corroborative evidence’. The test will be the extent to which this methodology ascertains a probative value as to the behaviour of the defendant. General common law principles are defined in a series of criminal law cases.⁹⁶ In common law there is authority that considers the existence of previous and subsequent facts relevant as they may be indicative of certain situations⁹⁷ or as an indication of *habitual* behaviour.⁹⁸ It is up to the party who asserts to prove whether the *particular* behaviour is *systematic* or mere *coincidence* or *circumstantial*, that will determine the relevance to the particular fact at stake. If however, the situation test is to be relied directly as real evidence of discrimination in action against perpetrators, this is a matter that would require legal argument on the basis of authorities in Europe, the UK and the US which would have to prove that the particular test is widely used in Court as direct evidence of discrimination.

The Equality Body has not used such test but its officers have indicated that they would be willing to use such test as evidence in their investigations.⁹⁹ No NGOs, trade union or other civil society organisation has so far made use or referred to *situation testing* in Cyprus.

There is no information about reluctance to use situational testing as evidence in court (such as ethical or methodology issues). Nevertheless, the evolution in other countries utilising European strategic litigation will almost certainly influence Cypriot national law if and when such an issue arises.

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

a) How is indirect discrimination defined in national law?

In the three substantive anti-discrimination laws N. 127(I)2000 as amended by Law 57(I)2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive), indirect discrimination is defined, using the same wording as Article 2(b)(i) of the EU directives, as an apparently neutral provision, criterion or practice which would put persons having a particular race or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

⁹⁵ See Cacoyannis, G. (1983) *Η Απόδειξη*, Limassol, Cyprus and Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια Πρακτική Προσέγγιση*, Cyprus.

⁹⁶ See *R: V. Hartley* (1941) 1 KBS and *R V Mitchel* (1952) 36 Cr App. R 79.

⁹⁷ *Bereford V St. Albans* (1905) T L R 1.

⁹⁸ *Joy V Phillips* (1916) 1 K.B 849 Mills 2 C.

⁹⁹ Interview with Elisa Savvidou, Head of the Equality Body at the Ombudsman’s Office, 19.01.2006.

Disability is dealt with separately in Law N. 127(I)2000 as amended by Law 57(I)2004 which incorporates a definition identical to the other two laws (N.58(I)/2004 and N.59(I)/2004). The same law (N. 127(I)2000 as amended by Law 57(I)2004) contains an additional provision which, although not termed as a definition, offers elements of what would constitute discrimination, without clarifying whether these are to form an exhaustive description. The wording reads “a person discriminates against another if he treats that person: (a) in a more unfavourable way than what he treats or would treat other persons without disability in the same or in a similar situation; (b) on the basis of characteristics generally belonging to person with such disability or based on a presumed characteristic which generally belongs to a person with such disability or based on a presumed characteristic which is generally attributed to a person with disability; or (c) based on the fact that this person does not satisfy or is not in a position to satisfy a condition, the nature of which is such that a high percentage of persons who do not have such disability satisfy or are in a position to satisfy, when compared to persons who do have such disability and the existence of such a condition is not justified by the circumstances of the case”.¹⁰⁰ This provision appears to be narrower than the Directives requirement which extends to any “apparently neutral provision, criterion or practice [that] would put persons having a particular [disability]” at a disadvantage, but since the Directive’s definition is also incorporated no issue of compliance arises.

Prior to the introduction of the 2004 laws, indirect discrimination was not defined in the Constitution or in any other the legislation, save for the gender provisions in the recent law on equal treatment between men and women (see below). The relevant case law confirms the constitutional provisions that prohibit ‘direct’ and ‘indirect discrimination’ but no definition is provided in the court judgements.¹⁰¹

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

No case has been decided so far by a Court in Cyprus invoking any one of the new anti-discrimination laws of 2004. However, on the basis of the Cyprus case law on gender discrimination, European court decisions, as well as persuasive authority of UK court decisions, we may assume that the ‘but for test’ is likely to apply. The test involves asking the question as to how the victim would be treated had s/he not had the special characteristic, such as the particular ethnic origin or disability or religion or age that s/he had.

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

- In the case of age limits for job vacancies, the typical reason offered is to assist young people to join the labour market; however this excuse was never accepted by the Equality Body, which invariably found the fixing of age limits in job descriptions as discriminatory. The test used was whether the nature of the job justified the age limit and whether a similar position in another context would carry an age limit.
- A similar explanation was offered by the Ministry of Labour, when asked to comment on the law which provides that persons reaching retirement age lose their right to compensation for unfair dismissal. The Ministry considers this measure as ‘objectively and reasonably justified’, in accordance with Article 6 of the Employment Directive

¹⁰⁰ Article 3(2) of Law on Persons with Disabilities N. 127(I)/2000 as amended by Law N.57(I)2004.

¹⁰¹ Elia and another V. the Republic, 3 RSCC 1, at p. 6, per Forstshoff.

(transposed by Article 8(1) of Law 58(I)/2004), because it serves the policy goal of creating posts for young persons; because upon retirement age the employee becomes entitled to a state pension; because it provides an incentive for employers to employ older persons. The Equality Body has adopted the Ministry's position on this matter and has decided that a complaint against this measure was unfounded.

- In another complaint investigated by the Equality Body regarding the entry requirements into the state nursing school which effectively excluded persons with disabilities, the reasons offered by the nursing school in justification of the discriminatory criteria were mainly within the sphere of 'genuine occupational requirements'.¹⁰² The reasons were not accepted by the Equality Body which found that the entry requirements constituted discrimination prohibited by law. This decision was complied with by the nursing school who revised their entry requirements accordingly.

c) Is this compatible with the Directives?

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

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

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

2.3.1 Statistical Evidence

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

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

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

¹⁰² The school invoked reasons such as "good visual ability is necessary to enable the nurse to assess whether the patient's colour is a cause for concern"; "a stuttering nurse has communication problems"; "height and weight of the person is important for moving or lifting patients or for responding fast to emergencies". The case is elaborated under Article 0.3 (Case Law) above.

It is not common for statistical evidence to be used. The Equality Body has made use of data in only one such case so far, which concerned discrimination against female migrant domestic helpers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.¹⁰³ In the reasoning of this decision, the Equality Body also made reference to the low salaries paid to migrant domestic helpers¹⁰⁴ compared to Cypriot workers, pointing out that the number of migrant female domestic workers now in Cyprus is about 18,000.¹⁰⁵ However the data is used in this report in order to *demonstrate the acuteness* of the problem, based on the large size of this group and on the disparity in the salaries of migrants and locals, rather than to *determine* whether an act is or is not discriminatory.

There is no information about reluctance to use statistical data as evidence in court (such as ethical or methodology issues). Nevertheless, the evolution in other countries utilising European strategic litigation will almost certainly influence Cypriot national law.

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

There is no case law in this area.

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

There is a general rule prohibiting the collection of such data that derives from article 8 of the ECHR and is also contained in article 15 of Constitution, unless specifically provided under certain circumstances. Furthermore, article 5 (1) of the Law on Processing of Personal Data¹⁰⁶ provides that personal data may be processed only if the data subject has unambiguously given his consent. Notwithstanding, the provisions of subsection (1), personal data may be processed without the data subject's consent if at least one of the conditions referred in article 5 (2) are met. One of these is relevant:

Article 5 (2) (e): Processing is necessary for the satisfaction of lawful interest pursued by the processor or by a third party to whom the data is announced, provided that this lawful interest is superior to the rights and fundamental freedoms of the subject of the data.

Article 6 (1) of the same law expressly provides that “the collection and processing of sensitive data is prohibited”, and proceeds then to a list of circumstances under which this is exceptionally allowed (article 6(2)). Three of these are relevant:

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

¹⁰³ Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005. The Minister of Interior has informed us that he has issued the relevant order for the pay increase but is waiting for the relevant Government department to estimate the costs involved for pensioners who employ domestic helpers so that their benefit is increased accordingly. The decision of the Equality Body is still not complied with.

¹⁰⁴ Calculated at CYP0.82 per hour, contrasted with CyP4 –CyP 5 per hour for Cypriots carrying out the same work: Cyprus Ombudsman Report File No. A.K.I 2/2005, dated 4.11.2005, page 4.

¹⁰⁵ This figure is based on the data of the Ministry of Interior, according to which the number of female domestic workers in Cyprus in 2003 was 17.955.

¹⁰⁶ The full name of the law is: The processing of Personal Data (Protection of Individuals) Law 2001, N. 138 (I) / 2001.

-Article 6(2)(g): Processing concerns exclusively statistical, research, scientific¹⁰⁷ or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.

-Article 6(2)(h): Processing is made exclusively for journalistic reasons or as part of artistic expression, so long as there is no violation of private and family life.¹⁰⁸

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

The law on data protection was passed *before* the anti-discrimination laws and no revision of the former was made in the light of the latter. However, most of the grounds covered by the anti-discrimination laws are mentioned in the data protection law as constituting sensitive data. More specifically, the law on data protection defines “personal data” as any information referring to the subject of data, i.e. a physical person, who is still in life. Aggregate data of a statistical nature, from which the subjects of the data can no longer be detected, are not considered as personal data. ‘Sensitive data’ is defined in the law as data concerning racial or national origin, political convictions, religious or philosophical beliefs, participation in an organisation, association or trade union, health (which is much wider in scope than ‘disability’), sex-life and erotic orientation (presumably meaning sexual orientation) and data relating to criminal prosecution or criminal conviction.¹⁰⁹

Therefore although the scope of this law covers grounds beyond those of the anti-discrimination directives, age is not expressly listed in the characteristics which are protected by this law. One may argue however that age (and all other grounds too) are impliedly covered by the wide scope of the term “personal data”, defined in Article 2 of the law as any information that refer to a data subject who is alive. Also, the reference to ‘national’ origin, as opposed to ‘ethnic’ origin, may well be a reflection of the fact that in Greek the two terms have a similar sound and many people tend to use them interchangeably, as the distinction between the two may not be widely known in Cyprus.¹¹⁰ From the context, one may perhaps conclude that ‘ethnic’ would have been a better word, since personal data on national origin are widely used and processed.

The processing of employees’ sensitive data by employers i.e. data concerning racial or ethnic origin, political convictions, religious or philosophical beliefs, participation in a body, association and trade union, health, sex life and erotic orientation, criminal prosecutions or convictions, as a rule is prohibited.¹¹¹ In spite of this prohibition, sensitive data may be processed if the conditions of article 6 (2) (paragraphs a-i) of the law are fulfilled. For instance, according to article 6 (2) (a) και (b), sensitive data may be processed if the data

¹⁰⁷ The law does not define ‘scientific’ reasons. The author understands this term to mean scientific research or other relevant activity of scientific value.

¹⁰⁸ The law does not provide a definition for ‘private and family life’. However the term is frequently referred to in the meaning ascribed to it by Article 8 of the ECHR, which is copied verbatim in the Cyprus Constitution, Article 15. The ECtHR decision in the case of Niemietz v. Germany, 16.12.1992, Series A no. 25-B(29) provides an exhaustive definition of the term and is quoted in Loizou 2001:104.

¹⁰⁹ The definition for both terms is found in Article 2 of Law 138(I)/2001.

¹¹⁰ The Greek term for ‘national’ is εθνικός (ethnikos) and for ‘ethnic’ εθνοτικός (ethnoticos).

¹¹¹ Article 6 (1) of Law 138(I)/2001.

subject has given his explicit consent. According to paragraphs b-i, the explicit consent of the data subject is not required.

The aforementioned provisions of the Law also apply outside the employment field

In order to apply the regulation concerning access to the labour market¹¹², the Labour Office of the Ministry of Labour maintains records concerning country of origin, ethnic origin and whether they are asylum seekers or not.

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

2.4 Harassment (Article 2(3))

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

Harassment as a concept was first introduced into Cyprus law very recently with Law N. 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training that came into force on 1st January 2003. This law introduced “harassment based on sex” as part of the definition of “sexual harassment”. Later, in amending Law N. 40(I)/2006, the two terms are defined separately.

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

¹¹² A circular letter sent from the Immigration Office of the Ministry of Interior dated 18.04.2005 sets the order of priority in terms of employment as follows:

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

In 1992 a law was introduced amending the Law ratifying the Convention on the Elimination of all Forms of Racial Discrimination of 1967, rendering certain public statements a criminal offence, which bear similarity to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or any other way, intentionally incites acts which may cause discrimination, hatred or violence against persons or groups of persons for the sole reason of their racial or ethnic origin or their religion, is guilty of a criminal offence.¹¹³

No case has been adjudicated in Court so far under any of the above laws.¹¹⁴ However, in circumstances which may be interpreted as falling under the definition of the law ratifying the Convention on the Elimination of all forms of Racial Discrimination, as stated above, and potentially under the definition of harassment provided in Laws 58(I) and 59(I), the then Mayor of Nicosia Mr. Michalakis Zambellas made some public statements regarding the housing situation of migrants in the old part of the city, which formed the subject-matter of complaints submitted to the national Equality Body.

In its report, the Equality Body referred to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination 1966 concluding that the ex-Mayor's statements ought to have been avoided, as likely to produce xenophobic perceptions with unpredictable results. The Equality Body's report, however, fell short of framing this conduct as harassment and of recommending measures to be taken against the Mayor.¹¹⁵

b) Is harassment prohibited as a form of discrimination?

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

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

Prior to the introduction of the 2004 laws, there were no provisions for harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, even though there had been reports of complaints about racial harassment of migrants.¹¹⁶ There were however provisions for sexual harassment. The Law for Equal Treatment of Men and Women in Employment and Occupational Training defines sexual harassment as: "Sexual harassment shall mean any behaviour that is unwanted by the recipient of the behaviour of sexual nature or any other behaviour based on sex, which offends the dignity of women and men during employment or occupational education or during access to employment or

¹¹³ Article 2A(1) of the Law amending the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) Law of 1967, No. 11(III) of 1992.

¹¹⁴ But there are a number of decisions on the issue of sexual harassment.

¹¹⁵ Report of the Cyprus Anti-discrimination Body Ref. A.K.R. 81/2005, dated 01.12.2005.

¹¹⁶ A number of Reports indicate that there were complaints and allegation of discrimination (see ECRI Report 2001/ ISAG 2003). Several cases of complaints by migrant workers against the Police and the Immigration Office involving racial discrimination and harassment have been investigated by Commissioner. According to the 2001 Commissioner's Annual Report Ombudsman Annual Report, a total of 156 complaints were lodged. In the following years 2002 and 2003 the figures are similar. No details are available about these cases, other than the fact that they were mainly concerned with issues of entry, stay, violation of contracts or employment rights. These cases date back to the period before the enactment of the new anti-discrimination laws and the appointment of the Commissioner as the specialised anti-discrimination body, therefore these complaints were examined on the basis of the legal framework which existed prior to May 2004 and which did not contain comprehensive anti-discrimination provisions.

occupational education or training which is manifested via words or deeds”. In amending Law N. 40(I)/2006 on the Equal Treatment of Men and Women in Employment and Vocational Training, the terms “harassment” and “sexual harassment” are defined separately.

There are no other additional sources on the concept of harassment, like for instance an official Code of Practice, although the author is informed that the Equality Body is in the course of drafting a code of conduct on sexual harassment.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

National law prohibits instructions to discriminate on the grounds of race/ethnic origin, age, religion or belief, sexual orientation and disability.¹¹⁷

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

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

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

Cypriot law provides for the duty to provide “reasonable accommodation” to the extent and where the local economic and other circumstances allow.¹¹⁸ These measures are not restricted to the working place but cover: (a) basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to housing, buildings, streets, the environment, public means of transport, etc, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc etc);¹¹⁹ (b). employment including access to, working conditions, training etc etc;¹²⁰ (c). supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc;¹²¹ transport;¹²² and telecommunications.¹²³

Specifically with regard to reasonable accommodation at the working place, the law provides that “equal treatment” means, inter alia, “the obligation to provide reasonable access and

¹¹⁷ Article 6(1)(d) of Law 58(I)2004 (transposing the Employment Directive); Article 5(2)(d) of Law 59(I)2004 (transposing the Race Directive); Article 3(a) of Law 57(I)/2004 for the ground of disability.

¹¹⁸ Article 9(1) of the Law on Persons with Disabilities N.127(I)2000.

¹¹⁹ Article 4 of the Law on Persons with Disabilities N.127(I)2000.

¹²⁰ Article 5 of the Law on Persons with Disabilities N.127(I)2000.

¹²¹ Article 6 of the Law on Persons with Disabilities N.127(I)2000.

¹²² Article 7 of the Law on Persons with Disabilities N.127(I)2000.

¹²³ Article 8 of the Law on Persons with Disabilities N.127(I)2000.

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”.¹²⁴

The law defines the factors which must be taken into account in order to determine whether a measure is reasonable or not, as follows:¹²⁵ (1) The nature and required cost for the adoption of the measures; (2) the financial sources of the person who has the obligation to adopt the measures; (3) the financial situation and other obligations of the state in those cases where the obligation for the adoption of measures refers to the state; (4) the provision of donations by the state or other sources as a contribution towards the total cost of the said measures; (5) the socio-economic situation of the disabled claimant of the accommodation. The law provides that the aforesaid factor (socio-economic situation of the disabled) must not be taken into account as regards the principle of non-discrimination in employment.

It is apparent that, although the scope is wide, the test of reasonableness is much wider in the Cyprus law than in the Employment Directive (which provides only for the test of “disproportionate burden on the employer”) and clearly falls short of creating a full-blown mandatory regime.

No case has actually been examined in court so far to assess how courts would determine whether accommodation is ‘reasonable’ or whether it imposes a ‘disproportionate burden’; therefore we must interpret the statutes as they stand. When comparing the provisions under the Directive, which provide for a test of whether “such measures would impose a disproportionate burden on the employer” to the criterion introduced into Cyprus law regarding the socio-economic situation of the disabled (Article 9), the disparity between the Cyprus law and the Employment Equality Directive is apparent. A decision issued by the Equality Body in 2006 regarding accommodation for dyslectic pupils in exams is as close as the Cyprus legal order got to developing a definition for this term. However, the case did not involve any expenditure on the part of the state or of any other actor, which is often the element at stake when deciding whether accommodation must be provided or not. The Cypriot law itself only provides for economic considerations in order to determine whether there is an absolute obligation to provide any accommodation measures or not.¹²⁶ In the case of the dyslectic student, the considerations posed by the Education ministry in opposition to the request for the accommodation measures were connected to the credibility and prestige of the exam and to avoid giving the dyslectic pupil an unfair advantage over other pupils. The Equality Body’s decision, based on the practices followed abroad and on international reports on dyslexia, was that in order to give the dyslectic pupil an equal opportunity to compete in the exam, it was necessary to allow him the use of additional means than merely extra time of 30 minutes at the exam.¹²⁷

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

¹²⁴ Article 5(2)(d) of the Law on Persons with Disabilities N.127(I)2000, as amended by Law No. 57(I) of 2004.

¹²⁵ Article 9(2) of the Law on Persons with Disabilities N.127(I)2000.

¹²⁶ Law on Persons with Disabilities N. 127(I)/2000, as amended, Article 9.

¹²⁷ File No. AKI 24/2006, AKI 27/2006, dated 31.10.2006.

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

No such case was ever tried by the Courts on this point, so as to have an interpretation of these provisions. However, a decision of the Equality Body on this issue appears to consider the failure to meet this duty as discrimination prohibited by law. The complaint concerned a blind person working as a telephonist in the hospital, who was moved to a new hospital and had to cope with a more complicated and sophisticated telephone system, with more telephone lines and with a less favourable working schedule. The Equality Body decided that the hospital authorities ought to have transferred to the new post one of the other employees without who did not have a disability and to leave the blind employee at the post where he could cope. The report calls on the hospital authorities to explain, in a manner satisfactory to the Equality Body, why the employee had to be moved to the new hospital, failing which a decision would be issued against them by the Equality Body.¹²⁸ Also, the Equality Body’s decision in the case of reasonable accommodation for dyslectic pupils at school exams¹²⁹ stated that the accommodation measures do not give the dyslectic student an advantage over other students, as the Education Ministry claimed, but merely serve to place the dyslectic student in an equal position with other students. In support of this, the Equality Body cited the ECtHR decision in the case of *Thlimmenos v. Greece* which ruled that equal treatment can also mean the different treatment of unequal persons, from which it follows that in some cases failure to provide such measures may indeed amount to discrimination.

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

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

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

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

¹²⁸ Report of the Equality Authority No. A.K.I 58/2005, issued on 08.12.2005.

¹²⁹ File No. AKI 24/2006, AKI 27/2006, dated 31.10.2006

Furthermore, Article 4(1) of the Law on Persons with Disabilities N. 127(I)2000, as amended by Law N. 57(I)/2004, provides for the right of every person with disability to independent living, full integration to the community and equality of participation in economic and social life. The right of persons with disabilities to accessibility in housing, buildings and generally the environment and means of public transport is guaranteed in Article 4(2) of the same law. Article 6 of the law guarantees the right of equal treatment of persons with disabilities in relation to the supply of goods, services and facilities and expressly states that failure to effect changes to services or facilities rendering their use impossible or unjustifiably difficult for a person with disability does not constitute equal treatment. According to Article 6(2) such changes may concern the creation of the appropriate means of accessibility and facility for the safe and comfortable use of services and facilities; the use of special means, equipment or persons for communication with and informing certain groups of persons with disabilities; and the use of special equipment in particular places where services are supplied, such as schools, hospitals, clinics etc. Article 7(1) of the Law provides that the public means of transport or a certain number of them must be accessible to persons with disabilities including users of wheelchair. Article 8 provides for accessibility to telephone services for persons with a hearing impediment or other disability, for public means of telecommunication accessible to persons with disabilities including wheelchair users and for television programs to be broadcasted by television channels for deaf persons.

However, the above provisions do not impose a clear duty and do not provide for an enforcement mechanism. In accordance with Article 9(1) of the Law, all rights stipulated in the preceding paragraph, contained in articles 4-8 of Law 127(I)/2004, are to be implemented through the taking of reasonable measures and to the extent where local economic conditions and other circumstances allow. The definition of what is 'reasonable', is provided in Article 9(2) of the Law and consists of a list of five criteria, such as the cost of the measures, the financial means of the person required to take these measures and the socioeconomic condition of the person with disabilities affected, rendering this a voluntary rather than a mandatory regime. The result is that a large number of public buildings and infrastructure remain inaccessible to persons with disabilities.

A decision of the Equality Body on a complaint by a person with a disability, alleging that the lack of the necessary facilities for persons with disabilities in governmental buildings amounted to discrimination seemed to recognise that persons with disabilities are entitled to accessibility features in public buildings, but again fell short of creating a mandatory regime. The report cited all the aforementioned legislation, in order to arrive at the conclusion that the state must view the issue of accessibility of persons with disability to governmental buildings with greater sensitivity and recommended that the Ministry of Transport and Public Works compile a special program with specific targets for the implementation of the right of persons with disabilities to accessibility to all governmental buildings, with a specific time schedule for implementation.¹³⁰ The decision reinforces the impression that the current legislation on accessibility does not create any specific obligations for any persons or for the state.

2.7 Sheltered or semi-sheltered accommodation/employment

¹³⁰ Report of the Equality Body No. A.K.R. 48/2005, issued on 13.10.2005.

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

The closest practice to what is known as sheltered employment is a kind of ‘sheltered workshops’ called KEAA (Centres for Vocational Rehabilitations for the Disabled), whose role is to provide ‘training’ and ‘quasi-employment’ to persons with a disability. The goods produced at the workshops are bought by governmental agencies¹³¹ and NGOs.

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

There is no employment relationship between each Centre for Vocational Rehabilitations for the Disabled and the individual person with disabilities working there. The persons who work at the Centres are primarily treated as ‘trainees’ and as such they are paid a small amount termed as ‘training allowance’ for taking part in the workshops. The amount of the ‘training allowance’ varies according to the marital status of the person (married persons get more). The income derived from these workshops is termed as ‘production allowance’ and depends on the profits of each of the craft workshop.¹³² The vast majority of persons occupied at KEAA are already receivers of welfare (disability) benefit.¹³³

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

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

There are two separate approaches:

(i) Under Law N.42 (1)/2004, there are no residence or citizenship/nationality prerequisites for protection under the relevant national laws transposing the Directives. Protocol 12 guarantees “the enjoyment of all rights set forth by law” without discrimination, inter alia, of ‘national or ethnic origin’. The Equality Body is empowered to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by the Conventions ratified by Cyprus and referred to in the Law¹³⁴ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.¹³⁵

(ii) The drafters of the new laws have incorporated the Directives’ exceptions into the national legislation transposing the Directives. As a result, Law N.127(I)200 as amended by N.57(I)/2004 (on disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing in part the Race Directive) include provisions copying verbatim the

¹³¹ Such as the agency of the Department of Public Purchases and Storerooms of the Ministry of Trade and Industry as well as Cyprus Handicraft Service of the Ministry of Commerce.

¹³² According to Mr. Aggelides, an official at the Ministry of Labour, about 90% of the profits are shared amongst the producers of each craft workshop, 23.1.2005.

¹³³ Information from Mr. Aggelides, Official, Ministry of Labour, 23.1.2005.

¹³⁴ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

¹³⁵ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1)(b), Part I.

wording of the exceptions of the Directives. Article 32 of the Constitution stipulates that “nothing in this Part¹³⁶ contained shall preclude the Republic from regulating by law any matter relating to Aliens in accordance with International law.”

The above provision, combined with the antiquated immigration laws are often implemented with a tendency to considerably enlarge the scope of state discretion. The wide margin of discretion allows for discrimination to occur and immigration officers in Cyprus have been criticised by the Second Report of the European Commission on Racism and Intolerance (ECRI) on this score.¹³⁷ In any case, there is a strong body of opinion by authoritative legal scholars that the correct interpretation of the constitutional provision of Article 32 does not allow for differential treatment of non-Cypriots when it comes to human rights as this (a) merely indirectly incorporates international law within the corpus of Cyprus law¹³⁸ and (b) would most likely be a violation of Article 28¹³⁹ and other international treaties which have been ratified by the Republic which, under Article 169, prevail over domestic legislation.¹⁴⁰ The provisions regarding the transposition of the anti-discrimination acquis do not refer only to citizens or legally resident persons, but to all persons. In support of this argument there is also Protocol 12 to the ECHR.

Complaints by EU citizens are often filed with the Equality body alleging discrimination, possibly reflecting the fact that these persons are more familiar with this procedure than most third country nationals. On several instances, the Equality Body found that discrimination did indeed exist and recommended to the competent authorities to take measures to rectify the situation. Some examples of such decisions concern the failure of the authorities to advise EU citizens of their need to register themselves in the electoral rolls in order to be allowed to vote in municipal elections; the request of the road transport department for EU nationals to present immigration documents evidencing 6 months’ stay in Cyprus in order to acquire a Cypriot driving license; the University’s rejection of a job application because the applicant was a Greek national; the pre-condition that a manager speaks Greek in order for a permit to operate a tourist business can be granted.

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

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

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

In all matters concerning employment, since employees can only be physical persons and not legal persons, it follows that all rights arising under the law for employees are applicable only to natural persons. However, under Article 14 of Law N.58(I)/2004 and Article 9D of Law

¹³⁶ Part II of the constitution contains the human rights and fundamental freedoms.

¹³⁷ The ECRI report reads as follows: “Concern is also expressed at reports of discriminatory checks on the part of immigration officers of non-whites coming to Cyprus. Again, ECRI feels that further training aimed at preventing the occurrence of discrimination and discriminatory attitudes should be provided to immigration officers.”

¹³⁸ Tornaritis (1982: 212).

¹³⁹ Nedgati 1972: 166-167, Tornaritis 1982: 201-205.

¹⁴⁰ Loizou 2001, Nedgati 1972: 166-167; Georgiadis Van der Pol 2002: 22.

N.127(I)/2000 as amended by N.57(I)/2004, physical persons may be represented by legal persons in proceedings before the Court or before the Equality Body claiming discrimination: “employees organisations or other organisations” with legal standing or a legitimate interest can, with the consent of their members, act on their behalf. Similarly the Racial Equality Law N.59(I)/2004, Article12 provides that organisations or other legal personalities, which have as their constitutional aim to combat discrimination on the ground racial or ethnic origin”, and with legal standing or a legitimate interest can, with the consent of their members act on their behalf.

The fines which the Court may impose on physical or legal persons also vary. Natural person may be fined with up to 4,000 Cyprus pounds (about 6,700 euros) and/or six months imprisonment or both.¹⁴¹ If a legal person is found guilty of discrimination, the managing director, chairman, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined with up to 4,000 Cyprus pounds (about 6,700 euros) and/or six months imprisonment or both, if it is established that the offence is committed with their consent or collaboration or mere tolerance. In addition, the legal person can be fined up with up to 7,000 Cyprus pounds (about 12,000 euros).¹⁴² There is also a provision for ‘gross negligence’ with fines up to 2,000 Cyprus pounds (about 3,333 euros) for individuals and 4,000 Cyprus pounds (about 6,700 euros) for legal persons.¹⁴³

3.1.3 Scope of liability

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

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

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

¹⁴¹ For disability Article 9(e)(2) of the 127(I)/2000 as amended by Law N.57(I)/2004 Article 6(β); for employment N.58(I)/2004, Article15; for racial discrimination Law N.59(I)/2004, Article13.

¹⁴² For disability Article 9(e)(2) of the 127(I)/2000 as amended by Law N.57(I)/2004 Article 6(γ)(4); for employment N.58(I)/2004, Article15(1) and 15(2); for racial discrimination Law N.59(I)/2004, Article13(1) and 13(2).

¹⁴³ For disability, Article 9(e)(2) of the Law N.127(I)/2000 as amended by Law N.57(I)/2004 Article 6(γ)(5); for employment N.58(I)/2004, Article15(3); for racial discrimination Law N.59(I)/2004, Article13(3).

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

Trade unions or other trade/professional associations can be held liable for actions of their members to the extent they are considered to have acted as an organisation or legal person, as referred to above.¹⁴⁴

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

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

The national legislation transposing the Race and Framework directives [Law N.58(I)/2004, Article 4(a); Law N.57(I)/2004, Article 5(a)] applies to all sectors of public and private employment and occupation,¹⁴⁵ including contract work, self-employment, holding statutory office, with the exception of military service. The scope of Law N. 58(I)/2004 (transposing the Employment Directive) covers conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion; access to vocational guidance and training, including practical work experience; employment and working conditions, including dismissals and pay; membership in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations. In the case of military service, article 8(4) of the same law provides in exception to the prohibition of age discrimination, when the fixing of age limits is justified by the nature and the duties of the position.

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law¹⁴⁶ provides for the implementation of Protocol 12 and may therefore apply to military service issues. Both laws, N.58(I)/2004 (Article 2) and N.57(I)/2004 (Article 2) define ‘employee’ as ‘any person who works or is trained in full time or part-time occupation, fixed time or permanent employment, continuous or otherwise, irrespective of the place of employment, including home employees but excluding self-employment.

¹⁴⁴ Law N.58(I)/2004, Article 4(d) and Law N.127(I)/2000 as amended by Law N.57(I)/2004, Article 5(a)(1)(d).

¹⁴⁵ Following English common law, there is a sharp distinction in terms of employment rights between ‘employees’ and ‘self-employed’/ independent contractors. Employees are subject to direction and control and there is an ‘employment relationship’ between the employee and the employer, which is one of a contract of employment, with all the rights provided for by the law. The test of ‘control, dependence and direction of work’ is the one used to distinguish between ‘employees’ and self-employed’/ independent contractors. Employees are generally supervised and directed by others; they have a place and time of work, receive wages and have a contract of employment. A ‘contract of employment’ is sharply distinguished from a ‘contract for services’ as the latter does not provide for any employment rights guaranteed by labour law. Part-timers are employees and enjoy the same rights as other full-time employees based on the principle of ‘proportionality’ [Law N. 76(I)/2002 (14/06/2002) which transposed Directive 1997/81).

¹⁴⁶Law N.42(1)/ 2004 (19.03.2004).

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

The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law¹⁴⁷ appoints the Commissioner for Administration (or Ombudsman) as the national Equality Body, vested with powers to tackle discrimination in the areas of employment, access to vocational training, working conditions including pay, membership of trade unions or other associations, social insurance and medical care, education and access to goods and services including housing, as required by Article 3.1 of the Directives. Such discrimination is unlawful by law.

Prior to the enactment of the 2004 laws, the fields of application provided in Cypriot law (Article 28 of Constitution and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination - ICERD) which refer to equal treatment irrespective of racial or ethnic origin extended only to some of the areas covered. Article 5 of the ICERD mentions the right to work, but not the conditions for access to employment, to self-employment and to occupation. With regard to 3.1 (b) of the Directive, Article 5 of ICERD provides for the right to training, whereas the Directive focuses on access to all types and to all levels of vocational guidance, (advanced) vocational training and retraining. A comparison between Article 5 of the ICERD and Article 3.1(c) of the Directive reveals that the former does not include employment and working conditions relating to dismissal. Article 5 of the ICERD limits itself to the right to form and join trade unions, whilst Article 3.1(d) of the Directives is broader in the types of organisation that one can be a member of or involved in and further includes the benefits provided by such organisation or association.

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

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

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

So far, the only case known to have gone to the labour tribunal is that of Hadjiavraam v SPE Morphou, which was first decided by the Cyprus Equality Body¹⁴⁸ concerning a victim of age discrimination seeking damages for distress and loss of earnings. The court case is currently pending, with the first hearing scheduled for February 2007.

The Equality Body has examined complaints and issued decisions on a number of cases concerning access to employment and self-employment but the number is rather small,

¹⁴⁷ Law N.42(1)/ 2004 (19.03.2004).

¹⁴⁸ File AKI 7/2004.

suggesting that there is still some way to go before the provisions of Article 3(1) (a) are fully implemented. During 2006, two decisions were issued by the Equality Body concerning age discrimination where it was stated that the applicant's age as a criterion for access to employment and self-employment without any legitimate reason amounted to discrimination.¹⁴⁹

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

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

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

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

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

Article 4(c) of Law N.58(I)/2004 (transposing the Employment Directive) and Article Law N.57 (I)/2004, s.5 (a)(1) c) prohibit discrimination in all fields including “working conditions, terms of employment, pay and dismissals”, but nothing more is specified. Given the strong participation of the social partners in collective bargaining and the shaping of collective agreements, the Cyprus tripartite system is expected to deal with such matters in the long term future,¹⁵⁰ although in practice it has yet to happen. In the case of gender the process has just begun, so it is expected that the other five grounds will follow at some point in the future.

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

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78?

The Law on Pensions of 1997-2001, as amended, which regulates the payment of pensions to public employees contains no protection against discrimination. In the private sector, pension schemes are regulated by collective agreements or private employment contracts, whose

¹⁴⁹ File no. AKI 83/2005 dated 22.08.2006; File No. AKI 66/2005 and AKI 67/2005, dated 07.02.2006

¹⁵⁰ See Sparsis, M. (1998) *Tripartism and Industrial Relations (The Cyprus Experience)*, Nicosia, Cyprus.

conditions are difficult to monitor. In the private sector, benefits may also be paid to employees upon retirement from the company's Provident Funds, in which they are regulated by the law on provident funds.¹⁵¹ This law provides that the charters of such funds may not contain provisions which amount to gender discrimination.¹⁵² Although this law was amended as late as in 2005, no provision was added rendering provisions which discriminate on other grounds unlawful. However, in the event that the charter of a provident fund contains provisions leading to discrimination on any of the five grounds of Directive 2000/78/EC, it may be possible to declare them discriminatory and therefore unlawful on the basis of article 4(c) of Law 58(I)/2004 (transposing article 3.1(c) of Directive 2000/78/EC on conditions of employment), subject of course to the exception in article 6(2) of the Directive (transposed by article 8(3) of Law 58(I)/2004).

Another law¹⁵³ provides for the payment of special war-related pensions to Greek-Cypriots only (the term in this case including Maronites, Armenians and Latins but not Turkish Cypriots), thus introducing discrimination on the ground of ethnic origin against Turkish-Cypriots, who have also been adversely affected by inter-communal violence and by the 1974 war.

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

Some professions like doctors and lawyers have their own pension schemes which are based on members' contributions and are managed by a council, which also decides on the terms of the pension scheme. In the case of the Law on Advocates, a pension scheme is created for the benefit of persons registered in the Registry of advocates, which is based on contributions. The law, however, excludes from registration in the Registry lawyers from third countries (i.e. outside the EU but including member states of the European Economic Area and Switzerland),¹⁵⁴ which also deprives them from the right to participate in the pension scheme.

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

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities ?

Formally with the enactment of the Employment Anti-discrimination laws [Law N.58(I)/2004, s.4(b) and Law N.57(I)/2004, s.5(a)(1)(b)], there is compliance with Article 3(1)(b) of the Directive. Implementation and enhancing a tradition of anti-discrimination is more of a long-term process. Nevertheless, 'vocational training' and 'education', and in

¹⁵¹ Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81.

¹⁵² Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81, article 8A.

¹⁵³ Law on Relief of Sufferers N. 114/1988

¹⁵⁴ The Advocates Law, Cap. 2, article 4.

particular university courses may be the first to witness test cases as more educated and trained persons are more likely to be both aware and feel the competitive pressure to address issues of discrimination they face. This is of course speculation as there are a whole lot of other social and economic factors at play that cannot be ignored.

The scope of Law 58(I)/2004 which transposes Directive 2000/78/EC includes “training” without specifying whether or not this must be part of an employment relationship or not. In the absence of a provision restricting the scope to training within employment, it may safely be assumed that the law does appear to apply to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments. In an Equality Body decision of 2006, it was recognised that the anti-discrimination laws apply to access to training even though this does not take place in an employment relationship. The case concerned a trainee air traffic controller who suffered vision impairment as a result of which he would probably never be able to work as an air traffic controller. The Equality Body ruled that he should continue his training nevertheless, otherwise denying him access to training on the ground of his disability would amount to discrimination prohibited by law.¹⁵⁵

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

The wording of Article 3(1) (d) is repeated verbatim in Cyprus national law [Law N.58 (I)/2004, s.4 (d) and Law N.57 (I)/2004, s.5 (a) (1) (d)]. On 4.11.2005 the Equality Body issued a decision with regard to a term in the standard employment contract used for migrant domestic helpers, which prohibits their involvement in trade unions and has declared the said condition discriminatory and asked for its deletion from the contract. The new standard contracts issued by the authorities no longer contain that provision.

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

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

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

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

Law 58(I)/2004 transposing the Employment Directive, Article 3(a), as well as the Law on Persons with Disability (N.127(I)/2000 as amended by N.57(I)/2004) seek to rely on the exception in Article 3(3) of the Framework Directive. However, there are legal instruments which provide for social security and healthcare discrimination beyond the ground of race and ethnic origin. Firstly, the Public Assistance Law N.8/1991 provides for minimum standard for all living persons in Cyprus irrespective of ethnic, racial or national origin. Secondly, Protocol 12 extends the fields of application to all the grounds listed (in the enjoyment of any right granted under national law, against public authorities in the exercise of any power granted by

¹⁵⁵ File no. AKI28/2006, dated 20.09.2006.

national law, where the public authority has exercised discretionary powers, including both acts or omissions of public authorities). Protocol 12 is enforced by the expanded powers granted to the Equality Body¹⁵⁶ which prohibit discrimination for all grounds under the Protocol and covers “social protection, social security and medical care,” without any of the exceptions allowed for above.

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

The Equality Body found that the denial of heating allowance to EU citizens amounted to discrimination on the basis of race or ethnic background and of national background under Protocol 12 to the ECHR.¹⁵⁷ Also, the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin.¹⁵⁸ The Equality Body also found that the refusal of public assistance to an asylum-seeker because of his nationality amounted to indirect discrimination on the ground of race or ethnic origin in the area of social protection and social welfare.¹⁵⁹ The refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVF) was also held to be discriminatory.¹⁶⁰ As far as health is concerned, the Equality Body has ruled that the refusal to issue a health card (which entitles free treatment at hospital) to asylum-seekers due to the fact that they did not have their ‘pink slip’ (residence permit) was discriminatory on the basis of ethnic origin;¹⁶¹ as a result, and in compliance with the said decision, the Ministry of Health issued a circular to hospitals to issue health cards to asylum seekers even in the absence of pink slips, where there is an emergency.¹⁶²

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

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

There is an issue regarding the very term ‘social advantage’. The term is translated by the official translation unit of the European Commission in Luxemburg as ‘social provisions’ and

¹⁵⁶ Law N.42(I)/2004, Article 6(2)(e).

¹⁵⁷ Files AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

¹⁵⁸ Files AKP 75/2005 and AKP 78/2005.

¹⁵⁹ Files AKI 131/2005 and AKI 8/2005.

¹⁶⁰ File AKP 54/2004.

¹⁶¹ The three cases were the following: A Palestinian granted subsidiary protection, whose wife was refused medical care even though she was at the very last stage of her pregnancy because she did not have in her possession the temporary residence permit (File No A/P 1339/05). The second complaint came from an Indian asylum seeker whose wife was also in the last month of her pregnancy (File No A/P 1363/05). The third case involved a Kurdish couple from Syria with two underage children who applied for asylum. The wife was also in her last stage of pregnancy but was refused access to medical care because she did not have a health card (File No A/P 1487/05).

¹⁶² N. File YY11.23.03, 12 December 2005.

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

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

There are cases where persons become entitled to a type of benefit as a result of his/her employment status. One example is the case of sheltered workshops described in Article 2.7 of this Report, where persons with disabilities working in these workshops receive higher payment if they are married than if they are single. A number of benefits are available to certain¹⁶³ persons with disabilities, such as the exemption from fees for medical services in public medical institutions. By a decision of the Council of Ministers¹⁶⁴ a scheme of public assistance was created for the housing of single persons or families having a low income with special criteria for persons with disability. Also, persons with disability are exempted from certain charges concerning telecommunications and telephone services.¹⁶⁵

Following a recent comprehensive tax reform, there are no longer tax discounts applying to persons on the basis of their marital status or otherwise. There are only state benefits granted to parents for children, whether conceived inside or outside marriage and whether adopted or not. The child benefits are available to all parents irrespective of whether they are married or not.

Other than the above benefits, which must be seen from the perspective of positive measures, discrimination on the ground of race and ethnic origin in the provision of social advantage is prohibited, as per s.4(c) of Law 59(I)/2004. In the case of the Roma population of Cyprus, since most, if not all of them¹⁶⁶, are deemed to be part of the Turkish community of Cyprus and thus Cypriot citizens, they are entitled to all benefits that Cypriot citizens have and any differential treatment afforded to them would amount to discrimination on the ground of race/ethnic origin, as is the case with discrimination against Turkish-Cypriots.

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

¹⁶³ These are the war disabled, the pupils of the School for the Blind, the pupils of the School for the Deaf, the students of the Centre of Training and Vocational Rehabilitation of Persons with disability and persons who receive public assistance under the provisions of the Public Assistance Law.

¹⁶⁴ No. 53.863 of 19.06.2001.

¹⁶⁵ Regulations 311/2001, 382/2002, 473/2002, 525/2002 and a number of decisions of the Cyprus Telecommunications Authority.

¹⁶⁶ Generally speaking, the Roma of Cyprus are seen as indistinguishable from the Turkish Cypriots because of their religion (Muslim) and their language (Turkish), although one cannot exclude the possibility that today amongst the Roma population of Cyprus there may be persons who came from other countries, in which case they are not entitled to Cypriot citizenship.

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

In the field of education a certain number of measures have been adopted, partly as a result of the various international treaties that Cyprus has ratified,¹⁶⁷ particularly the European Social Charter (Revised)¹⁶⁸ and other international instruments.¹⁶⁹ The Second Report of the European Commission on Racism and Intolerance (ECRI) of the Council of Europe recommends further expansion of extra curricula activities and human rights awareness at schools¹⁷⁰ whilst the Third ECRI Report continues with a similar line of recommendations.¹⁷¹

Discrimination on the ground of race and ethnic origin in the provision of education is prohibited, as per s.4 (d) of Law 59(I)/2004. As is the case with social advantages, described in paragraph 3.2.7. above, the Roma population of Cyprus are holders of Cypriot passports and are thus entitled to all benefits that Cypriot citizens have; any differential treatment afforded to them would amount to discrimination on the ground of race/ethnic origin. In the case of education, a limited number of positive measures are in place, such as the provision of free food and free transport to the school and Turkish language classes.

Children with disabilities, physical and mental, are as a matter of general policy placed in mainstream schools, unless their condition is such that requires that they be placed in segregated specialised schools, such as the school for the blind, or the school for the deaf. Children with disabilities cannot be denied access to education on the ground that they are unable to learn. Decisions are taken on the basis of the interest of the child; however, many of the buildings of primary and secondary education schools are not fully accessible to children who are users of wheelchairs or are of other type of limited mobility, although this problem is gradually improving. At the moment, the new schools are equipped with disabled toilets and ramps for wheelchairs, but no provisions are made for accessibility by blind or deaf children. Gradually, some of the old schools are starting to acquire some basic accessibility features but

¹⁶⁷ Framework Convention for the Protection of National Minorities pursuant to Article 25.

¹⁶⁸ 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.

¹⁶⁹ e.g. Resolution ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

¹⁷⁰ “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.”

¹⁷¹ The *Third ECRI Report on Cyprus* which was made available in April 2006 notes that in spite of the general institutional improvement provided by the robust anti-discrimination laws that derived from the harmonisation of Directives EC/2000/43 and EC/2000/78, many of areas of concern noted in the Second ECRI Report are still prevalent and there are some new areas of concern. It further notes that in spite of increased attention to educating children in human rights with a particular emphasis on non-discrimination and the need to respect difference, it is reported that these aims contain only general guidelines and that they are only marginally translated into concrete long-term initiatives. Moreover, the same report notes that in spite of some training opportunities at the Pedagogical Institute, “the effectiveness of human rights initiatives is undermined by the lack of understanding of and a genuine sensitivity to human rights by many teachers” (para. 37 of the Report).

only for users of wheelchairs (ramps and toilets). There are no plans to acquire facilities for children with other disabilities.

In a decision of the Equality Body dated 27/7/2006¹⁷² it was decided that the legal framework in the field of education for children with disabilities, has as its central parameter the abandonment of the means-tested *welfare* mentality and the move towards a more universal anthropocentric attitude, where the state has an absolute obligation to ensure access to education as a means of providing equal opportunity to children with disability, in order to avoid phenomena of social exclusion. In this case, the complaint concerned the demand from the parents to pay a small monthly sum in order to enable the continuation of their child's attendance to a special school for children with learning disabilities.¹⁷³ The decision found that the obligation to pay this fee amounted to inequality and recommended that the state considers the possibility of covering all costs. The same principle underlies the decision of the Equality Body in the case of the facilities provided for dyslectic students at school exams, in which the Equality Body found that the facility of thirty minutes' extra time at exams was insufficient to guarantee the dyslectic students' equality in education.¹⁷⁴

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.¹⁷⁵ The Second ECRI report recommends that the Cypriot authorities ensure that all teachers are properly trained to teach in a multicultural environment and to react to any manifestations of racism or discriminatory attitudes in schools." As already noted in the Second ECRI Report on Cyprus, the authorities do not collect data broken down by categories of ethnic origin, religion, and nationality in different areas of policy, including education, something that "would be beneficial in order to monitor the situation of different minority groups and highlight possible problems of direct and indirect discrimination" (Third ECRI Report on Cyprus, para. 96). The ECRI report is of the view that the Ministry of Education does not comply with the recommendations of the European Monitoring Centre on Racism and Xenophobia (EUMC) on data collection.

The significance of data collection is manifested in the fact that, in spite of contrary policy by the Education Ministry, the Third ECRI Report on Cyprus refers to 'reports of de facto school segregation of Pontian Greek children' (para. 85), a fact which perhaps would have become obvious and addressed had proper data collection mechanisms been in place. Studies on racism and education record stereotypes and discrimination against migrant children, Turkish-Cypriots and Roma amongst the pupil population.¹⁷⁶ Therefore the claim by the Ministry of

¹⁷² File No. 109/2005.

¹⁷³ The actual term used in the decision, which is also used by Cypriot authorities, is 'special school for the spastics', a term is no longer acceptable in English.

¹⁷⁴ Dated 31/10/2006, File No. A.K.I. 24/2006, A.K.I. 27/2006.

¹⁷⁵ Research on the primary education of the Pontians reveals that a number of programs, albeit at an embryonic stage, have been introduced in primary and secondary in certain areas of Cyprus, particularly in central Nicosia (Faneromeni Schools), at Kato Paphos, Moutallos, Paralimni and Limassol and other areas of high migrant concentration (see Trimikliniotis, 2001). These schools have specific programs for multicultural education, with regular progress reports, however their budget is very limited, their training is not fully developed and planning is rather ad hoc. Multicultural education is not available across the board. For more details on discrimination in education see Trimikliniotis 2004.

¹⁷⁶ Other studies that appeared in 2006 confirm the findings and elaborate the themes that were established in previous research findings.¹⁷⁶ The final Cyprus Report was submitted for the EU DG Research project "The European Dilemma: Policy implication and Recommendation". The Report contains a general overview of the three year study and makes some recommendations on the subject of racism and discrimination in Cyprus. One of the most authoritative data is on the issues is provided in an important book on racism in Cyprus, which was published during late 2005 but was launched in Cyprus in

Education that “the pupils themselves are so well aware on human rights that they do not allow discrimination on racial grounds against their fellow pupils” appears groundless.¹⁷⁷

The need for reform of the whole educational system, away from hellenocentric Christian values and towards multiculturalism, has been stressed in a number of research findings and has been the subject of an important and comprehensive reform proposal from the Commission for Educational Reform. The Commission’s Report emphasizes that, in the light of “the accession of Cyprus to a multi-cultural globalised and democratic European union”, the multi-cultural make up of the Cypriot student population and the prospect for reunification of Cyprus, the introduction of inter-cultural education requires further development.¹⁷⁸

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

Schooling for Turkish-Cypriots and for other Ethnic/Religious Groups’

On 19.08.2005 the Cyprus Ministry of Education submitted to the Council of Ministers a proposal for the setting up of a Turkish school in Limassol, Cyprus’ second largest city which hosts a fairly large Turkish-speaking community, made of Turkish-Cypriots, Turks, Roma and Kurds. According to the Cyprus Constitution, the Turkish Cypriot community has jurisdiction through the Communal chamber over the educational issues of its community; this provision however ceased to be applied following the constitutional crisis of 1963. As at present, Turkish-speaking children attend the Greek-Cypriot school and particularly the Limassol 18th Elementary School, which has recently¹⁷⁹ hired¹⁸⁰ two Turkish-Cypriot teachers and has introduced Turkish language classes in order to provide for the needs of the Turkish-speaking children. However, no curriculum reform has as yet taken place to correspond to the needs and characteristics of these children. According to the proposal of the Ministry of Education, the school will be run by a five-member Board consisting of two representatives of the parents’ association, two representatives of the teaching staff and one representative of the Cyprus Government. The proposal stated that the school was to come into operation in September 2005, however, this has not happened as yet.

The Cyprus Ministry of Education has appointed four teachers to the Turkish school, two of whom will initially be the ones already teaching at the 18th Elementary School. Apparently,

April 2006 and contains information on significant quantitative and qualitative research data specifically designed to elicit information on attitudes, dispositions and discourses.

¹⁷⁷ Source: Letter with the Ministry’s comments attached to the Third ECRI report. The same claim is made in the letter of the Ministry of Education to the writer on 03.02.2006.

¹⁷⁸ Report of the Commission for Educational Reform (2004): “Demokratiki kai Anthropini Paedia stin Evrokypriaki Politeia”, p.82, available in summary from at

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

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

¹⁷⁹ The two teachers are as of 04.04.2005 working at the 18th Elementary School.

¹⁸⁰ Controversy arose with regard to the appointment of the Turkish-Cypriot teachers, with the Government claiming that they first approached the union of Turkish Cypriot teachers KTOS and asked them to search for the two teachers to be appointed at the school in Limassol, but since KTOS did not respond, they had to advertise for these positions in the Turkish-Cypriot press. By contract, KTOS claimed that although they were indeed approached initially and asked to extend their co-operation over this, subsequently the Government advertised in the press without consulting with them.

there are 107 teaching periods and thirty-three periods of non-teaching time which will be devoted to contacts with parents, programming etc. Free meals will continue to be provided to the pupils of Turkish-Cypriot origin.¹⁸¹ Transport is offered to those pupils whose residence is far from the new school, unless these pupils are already attending the 18th Elementary School, which effectively implies that they have already made their own arrangements for transport. There are no details released on the curriculum to be taught in the new school.

In the end, the Cyprus Government decided after all not to open a Turkish school in Limassol for the time being.¹⁸² The reason offered was that none of the families of the Turkish-speaking pupils of Limassol wished to have their children moved to a Turkish school. The 18th Elementary school has, since the school year 2004-2005, hired two Turkish Cypriot teachers who teach the Turkish speaking pupils “their culture, their civilisation, their religion and their literature in their mother tongue”.¹⁸³ No special provision is made for the Roma pupils attending the said school, who are treated by the authorities as “Turkish-speaking” and who are assumed to have Turkish as their mother tongue; although they all speak Turkish, they also speak Kurbetcha, a Romany dialect.¹⁸⁴ Romany language is not taught at school, nor is the Roma history or cultural matters. There is no differentiation between Roma and other Turkish-speaking pupils as far as the public records are concerned.

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

In another development, the Cyprus Government decided as from 2006 not to pay the full tuition fees for new Turkish Cypriot students enrolled at the English School, breaking with practice ever since the checkpoints opened in April 2003.¹⁸⁵

According to the *Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus*,¹⁸⁶ in general there is little awareness

¹⁸¹ The term is probably meant to include Roma children, who are considered to belong to the Turkish-Cypriot community.

¹⁸² the Ministry of Education has produced lists for the school year 2004-2005 showing the number per school of Greek-Cypriot pupils, Turkish-speaking pupils and pupils of non-Cypriot origin.

¹⁸³ Declaration of the Diplomatic office of the President of the Republic dated 27.09.2005, received under cover of a letter from the Ministry of Education to the Cyprus NFP dated 15.11.2005.

¹⁸⁴ A letter from the Ministry of Education to the Cyprus NFP dated 15.11.2005 states: “The term Roma is generally acceptable as reference to the special group but may not be the most appropriate one for the gipsies of Cyprus, as far as their language, cultural identity and special tradition are concerned...With regard to the language, Turkish classes are offered to them, which is their mother tongue, as well as support Greek classes, in order to improve their standard.” This is in line with the Cyprus Constitution which does not recognise any ‘minorities’, but only ‘religious groups’ which must necessarily belong to one of the two ‘communities’.

¹⁸⁵ Tuition fees cost at the prestigious semi-private semi-public English school cost somewhere in the area of CY£3,000 (Euro 5.170 approximately) per year per student, whilst the state will now only offer a total of £20,000 (Euro 34.500 approximately) as assistance each year, a mere fraction of what it was offering previously. This means the fifteen new Turkish Cypriot students expected at the forthcoming academic year will have to cover most of their expenses whilst, sensibly, students currently enrolled will continue to have all tuition fees paid until they graduate (see Hazou, E. “Turkish Cypriot students to pay full fees at English School” in *the Cyprus Mail*, 26.06.2005).

on the subject of promoting regional or minority languages and as such the area is in need for further research: there is “no overall language plan or any national strategy plan at the promotion of regional or minority languages in Cyprus” and “there are no specific laws or policies aimed directly at protecting or promoting regional or minority languages.”¹⁸⁷ Moreover, there is a “particular issue concerning the Turkish language”: although Turkish language is according to article 3 of the Constitution one of the official languages of the Republic, since 1963 “most of these provisions ceased to be implemented” and “with the *de facto* partition of 1974, the official bilingualism was terminated”. The Committee of Experts note that “Turkish has basically ceased to function as an official language and there are a number of Turkish speakers living in the government-controlled area – Turkish appears to be in a similar position to a regional or minority language in the government-controlled area” and therefore concludes that “the Turkish language does not seem to be fully operational as an official language” with “practical limitations of its use in communication with official bodies.”¹⁸⁸ Although the Committee considers that “the obligations under Part II of the charter are probably fulfilled concerning the Turkish language in the government-controlled area”, it requires more detailed information; the Report speaks of about 1000 Turkish-Cypriots living in the government-controlled area “with an upward trend”. Due to its mandate, the Committee of Experts did not examine the issue from the perspective of the general anti-discrimination provisions, nor does it refer to the fact that between 5000 to 8000 Turkish-Cypriot workers and other visitors cross over on a daily basis to the government-controlled area for employment, transaction or leisure, which makes the question of Turkish language a complex and central issue as regards both education and employment.

Cypriot authorities, according to the same Report, show “a high degree of awareness and sensitivity towards the Armenian and Maronite communities”, nevertheless the “the Armenian language remains vulnerable” and the “Cypriot Maronite Arabic is considered to be ‘a seriously endangered language’”.¹⁸⁹ The Report outlines details about the provision of general linguistic and cultural diversity and multiculturalism via the school curriculum as well as Armenian and Maronite schools. There is one Armenian primary school called “Nareg”, which is fully financed by the state, whilst the secondary education school for Armenians called the Melkonian Educational Institute in Nicosia is facing closure: a number of former students attend private secondary schools such as the American Academy. Now Armenian classes are restricted to afternoon class from 4-6pm. The Committee of Experts encourages the authorities to arrange teacher training in Armenian and to continue to offer secondary education in Armenian.

In 2002 a Maronite school was established, but Maronites complain this was called for thirty years before and this delay “is seen as a missed opportunity”.¹⁹⁰ The school is called “St. Maronas School” and currently has 110 pupils enrolled. The Committee of Experts encourages the authorities to provide teaching of Cypriot Maronite Arabic at primary school level.

186 See the subheading of the findings of the Report, Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006.

187 It is noted in the Report that any support are regarded as “side-effects of general support for religious groups or multilingualism in general.”

188 See “1.5 Particular issue concerning the Turkish language”, Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus, Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006.

189 See Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus, Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006.

¹⁹⁰ See point 65 of the Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus, Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006.

Religious Discrimination and Religious symbols in schools

In the past there has been little public debate on religious symbols in general due to the fact that the second largest ethnic community of Cyprus, the Turkish-Cypriots, do not make their religion visible; the Turkish-Cypriots are perhaps amongst the most secular Muslims. Regarding migrant workers who are not of the mainstream religion (in Cyprus, Greek-Orthodox Christianity), with other pressing needs such as pay, conditions of work, irregularity of stay and others, the issue of religious symbols has not surfaced since most of the Muslim children attending schools come from agnostic or secular societies or families. There has been some debate on the issue of religion and the symbols of religions in schools, but it did not take the form of the so-called ‘headscarf’ debates in Europe. The Ministry of Education claims that during the school year 2006-2007 at one school (which is not specified) ‘it was allowed for a Muslim pupil to wear a headscarf to school’, a matter it cites as ‘indicative of the tolerance and respect for difference.’¹⁹¹ There is no prohibition against wearing crosses.

The religious lesson curriculum contains some information about other religions, but it is heavily weighted in favour of the Greek Orthodox religion. In any case, other religions are presented from the vantage point of the Greek Orthodox faith with non-Christians presented more or less as ‘pagans’ and the other Christian dogmas as ‘heresies’, in spite of the efforts to present a more multi-faith approach to religious education.¹⁹² Based on an opinion of the Attorney General, the Ministry states that it has no obligation and therefore will not provide religion classes for “other” religious convictions.¹⁹³

Since 2005 secondary school pupils in primary education are no longer obliged to attend the religious instruction lesson offered at school; instead, during that teaching period, they can attend another class and return to their classroom once the religious instruction lesson is over. Exemption from the religious lesson is only allowed for primary education. When the Ministry tried to extend this practice to primary schools, by amending the relevant regulations, there was a negative reaction by some MPs. The issue is still pending.

Some schools also have their own Christian Orthodox Church built and operating in the schoolyard. Moreover, in some schools there is a room converted into a ‘Confession Room’ in the school building itself.¹⁹⁴ The Minister of Education and Culture, Pefkios Georgiades, stated that the Cyprus Government has no plans to stop the religious practice of ‘confessions’ inside the schools, as the Greek Ministry of Education has done this year.¹⁹⁵ In 2005 the Chair of the Commission of Educational Reform¹⁹⁶ publicly criticised the presence of churches and church symbols in the schools as being anachronistic and contrary to the multicultural spirit of a modern European education system.¹⁹⁷

¹⁹¹ Letter by the Ministry of Education of Culture to the researcher (File No. 12.10.04/5) dated 6 November 2006.

¹⁹² Illustrative of this is a paper presented by the Theology teacher- Inspector for the Ministry of Education and Culture, where he argued that there is a ‘modern’ and ‘enlightened’ approach in the teaching of Religious Studies in Primary and Secondary Schools in Cyprus. Nevertheless, in his presentation, he referred to other Christian dogmas as ‘heresies’ (see Tapakis, A. «I Thriskeftiki Agogi sti Simerini Polypolitismiki Kinonia», in: Paedia kai Evropi, a seminar organised by NGO ‘Anagennisi’ in Pafos (31.4.2004).

¹⁹³ Letter from the Cyprus Ministry of Education to the researcher dated 15.11.2005.

¹⁹⁴ This is the case in the school of Faneromeni, where there is a sign saying ‘Confession Room’.

¹⁹⁵ The President of the Secondary teachers Association, Iakovos Iakovou expressed the view that “confession is a clear religious practice and it is better that this takes place in the church” but where there are churches inside the schools, the confession can take place there “so that the institution is respected by pupils (See ‘Eksomologisi sto sholio’, *O Phileleftheros*, 14.9.2006).

¹⁹⁶ Cyprus Report of the Commission on educational Reform: “Democratiki kai Antropini Paedia stin Evrokypriaki Politeia”, p.50 summary available at <http://www.moec.gov.cy/metarithmisi/manifesto.pdf>

¹⁹⁷ Interview with Professor Andreas Kazamias, *Phileleftheros*, 31.7.2005.

The official national curriculum of the Ministry of Education¹⁹⁸ refers to “Orthodox Christian instruction/education”¹⁹⁹ and is aimed at “making pupils feel as members of the Orthodox Christian Church” and “to learn the fundamental truths of Christianity” (p.16). On 2.11.2005, the Equality Body issued a decision on a complaint submitted to it on 12.4.2005 for religious discrimination against a female pupil who is a Jehovah’s Witness by, inter alia, a teacher of religious instruction (a Christian Orthodox priest).²⁰⁰ The decision contained severe criticism against the content of the school textbook on religious instruction and particularly against the use of the term ‘heresies’ as descriptive of other religions/dogmas.²⁰¹ It is noteworthy that the EUMC Annual Report regarding the situation of Racism and Xenophobia in the Member States of the EU 2006 locates Cyprus as the one of the only two countries which has “discriminatory content in schoolbooks”²⁰²

In addition there are questions relating to the use of ‘national parades’ of pupils, where the top pupils are given the ‘privilege’ to carry the national symbols, the Hellenic flag (with the cross) and the Cyprus flag. Recently an initiative by teachers and parents called the interested parties to discuss the banning of such parades.²⁰³ which as an ideology is based on racist ideas of the ‘purity of the Greek nation’ and in practice it leads to racial discrimination whereby non-Greek-Cypriot pupils are either excluded²⁰⁴ or are forced to ‘assimilate’ so that they can ‘belong’.

The regulations for operation of secondary education schools, approved by the House of Parliament as an amendment to the old law on the operation of the Greek-Cypriot communal schools, provide that students will no longer be obliged to attend religious ceremonies during school periods if this is so requested by the parents of the student or by the student himself / herself provided he / she was at least sixteen years of age upon commencement of the school year.²⁰⁵ The Director of Primary Education informed the Education Committee of Parliament that that for 2006-2007, the religion of the pupils will not shown on the school certificate, after advice from the Commissioner for Personal Data.²⁰⁶

On the 22nd November 2006, there was an incident of a racial attack on Turkish-Cypriot pupils by Greek-Cypriot pupils connected with an extreme right-wing student group²⁰⁷ in the

198 This is the official national curriculum that was printed by the Education Ministry in 2002 and reprinted in 2004 and is sold to teachers, educators and others in 2006 from the official Ministry of education store, in spite of the strong criticism this curriculum has received from the Government appointed CER.

199 Letter by the Ministry of Education of Culture to the researcher (File No. 12.10.04/5) dated 6 November 2006.

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

201 More details about the case may be found in Appendix I hereto.

202 See EUMC Annual Report regarding the situation of Racism and Xenophobia in the Member States, p.75 at <http://eumc.europa.eu/eumc/material/pub/ar06/AR06-P2-EN.pdf>

203 In an open letter to the authorities, they have complained that this is a military-like practice that derives from the days of the dictatorship of Metaxas in Greece. The research of the investigative journalists of *Eleftherotypia*, “Ios tis Kyriakis”, 29.10/2006, where the para-fascistic dictatorship of Metaxas emulating Mussolini and Hitler imposed this ‘tradition’ in 1936 (See ‘Peripeties Ideon’, issue no. 6, October 2006).

204 This occurred in Greece, when an Albanian born pupil was denied the ‘privilege’ to carry the Greek flag due to his ethnic origin: The political scene in Greece is influential in the Greek-Cypriot controlled Republic of Cyprus (see “The arrival of the Tsenai phenomenon”, *Politis* 02.11.2003).

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

206 see *Phileleftheros*, 28.06.2006

207 The far right wing student group ‘EFEN’ (Ethniki Foni Ellinopsihon Neon) denied responsibility for the attack, but admitted some of their members were involved, who were meanwhile expelled from their organization (*Politis*, 27.10.2006). The attackers came from five different schools and are, according to the Police, children of ‘high class families.’ They were

English school, the only inter-communal school in Cyprus, attended by Turkish-Cypriot pupils living in the northern territories. The background to the incident involved a scuffle between two eleven-year-olds in the school yard: it was alleged that Turkish-Cypriot pupil insulted Greek-Cypriot pupil by showing disgust about a cross worn by the Greek-Cypriot pupil but the matter was resolved by the school authorities and apologies were exchanged between the pupils involved. Two right-wing newspapers (*Simerini* and *Mahi*) picked up on this minor incident that had occurred three weeks before and printed headlines about a 'climate of unrest' and 'injustice against Greek-Cypriots' and somehow 'connected' it to the introduction of a school code of conduct regarding wearing and using religious symbols that insult others inside the school, such as the swastika.²⁰⁸

A report based on a study of the English School prior to the incidents showed the potential sources of tension in the school and recommended specific action to be taken,²⁰⁹ but the authorities appeared to have failed to take the recommendations up.

Roma Education Issues

In September 2005, Cypriot media covered a series of events which took place in a remote Paphos village. The parents' association of the elementary school of Polis Chrysochoos in Paphos had closed down the school, demanding from the Cyprus Ministry of Education to suspend attendance to the school of Roma pupils until they receive confirmation that none of them suffers from Hepatitis, following some Hepatitis incidents in a nearby village three months earlier.²¹⁰ Even though the hepatitis cases were treated and the doctors gave assurances that there was no danger for the pupils of the school, the parents were not convinced. Out of a total of 341 pupils attending this school, 120 are non-Cypriots and eighteen are Roma. The parents association, protesting at the large number of Roma in this school, demanded that the Roma pupils be dispersed also to other schools in the region. Overall, the authorities expressed disagreement over the parents' action and gave assurances over the health and sanitary safety of the school, but did nothing to prevent the physical closure of the school by the parents or to support and protect the Roma pupils from this outburst. Whilst the authorities called on the parents to terminate the closure of the school and to enter into a dialogue on how to solve the problem, they conformed to the parents' demand to submit the Roma pupils, as well as the residents of a Roma settlement in the neighbouring village of Makounda to blood tests to establish whether any one suffers from Hepatitis. In an

arrested and apparently they will be charged with various breach of peace offences, illegal entry and assault. However, no offence connected with the apparent racial motive the attackers appeared to have had was included in the announcement of the charges by the Police.

²⁰⁸ The provocative headline 'He Spat on a Pupil's Cross' and the subtitle 'Incident with a Turkish-Cypriots Assailant' (*Simerini* 20.11.2006), it referred to a school yard incident involving an 11year old Turkish-Cypriot student with another Greek-Cypriot kid. In fact, on the very day in which the attacks occurred, the same newspaper carried a report with the headline, 'The English School is a Minefield, and capital lettered subtitle 'STUDENTS CONSIDERING MEASURES AFTER T/C BRAVADO [NTAILIKI]' (*Simerini* 22.11.2006) grossly exaggerating the 'problem' and more seriously implying that 'revenge' was to be taken, in essence inciting racial hatred.

²⁰⁹ The English School Summary Report of Findings School Climate Survey, prepared by Dr. Laurie Johnson, Fulbright Scholar, Hofstra University, New York in collaboration with Dr. Athena Michaelidou, Cyprus Pedagogical Institute June 2006. Recommendations included (a) the implementation of cultural awareness and sensitivity programming in the school; (b) incorporation of multicultural/intercultural education content and pedagogy into the curriculum; (c) the examination of the school policies for equity and sense of fair play; (d) at same time, conduct ongoing campaign to educate/inform the school community about the realities of these policies and (e) conducting harassment/bullying prevention and intervention strategies.

²¹⁰ Nanos, C. (2005): "Ekleisan to sxoleio gia na fygoun ta tsigganopoula" in *Politis* (23.09.2005); Nanos, C. (2005): "Se eksetaseis olio oi athigganoi" in *Politis* (24.09.2005); Nanos, C. (2005): "Xoris tsigganopoula to sxoleio" in *Politis* (26.09.2005); Nanos, C. (2005): "Ygii ta tsigganopoula" in *Politis* (29.09.2005).

effort to appease the parents, the authorities relocated a seven-member Roma family some of whose members had suffered from Hepatitis but were successfully treated, to another village.

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

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

Regarding the Roma of Cyprus, or the self designated name the Cypriot Roma use, Kurbet, the *Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus* notes that it “was unable to receive any information on whether the Roma still speak *Kurbetcha* or any other language than Turkish and/or Greek and would welcome more information in the next periodical report on this and on other matters relating to the Roma of Cyprus”.²¹¹ There are no special provision made for the Roma pupils attending school, who are treated by the authorities as “Turkish-speaking” and who are assumed to have Turkish as their mother tongue;²¹² although we are informed by Romany expert studies that although they all speak Turkish, they also speak *Kurbetcha*.²¹³ Meanwhile, the union of Turkish-Cypriot elementary school teachers K.T.O.S. together with two Turkish Cypriot families residing in Limassol, is suing the Cyprus government for violation of the Turkish Cypriot children’s right to education.

A positive policy that is sustainable and is producing some results is the Educational Priority Zones (EPZ). This is referred to in the government’s *National Report on Strategies for Social Protection and Social Inclusion 2006-2008*²¹⁴, which is derived from the principle of positive action and aims at reducing inequalities for pupils attending schools in disadvantaged areas with an increased proportion of immigrants. The aims of EPZ are “to promote the qualitative democratisation of educational opportunities and pedagogical conditions of success for all children” and that there are currently three EPZ in operation covering 17 school units. This is a very important policy tool and provides the basis for the implementation of the educational reform and combating discrimination and racism in education; it has also been praised by the Third ECRI Report. Moreover, the work being done in one of the EPZ schools, the 18th Primary School (which is attended by a large number of Turkish speaking pupils) has reached

211 See point 33 of the Report, Council of Europe, ECRML (2006)3, Strasburg, 27.09.2006.

212 See the Cyprus Report on Trends and Developments prepared by the Cyprus National Focal Point 2005, which quotes the letter from the Ministry of Education 15.11.2005.

213 See RAXEN Special Study: Roma, Sindi, Gypsies and Travellers in public education in Cyprus, Report by the Cyprus National Focal Point for the EUMC; see Demetriou, C. and Trimikliniotis, N. (2006) *The Primary Education the Roma / Gypsies: Anti-Discrimination and Multiculturalism as a Post-accession Challenge for Cyprus*, RECONCILIATION RESEARCH AND POLICY PAPER (SYMFILIOSI /ULUŞMA), Nicosia.

²¹⁴ Ministry of Labour and Social Insurance, Nicosia, September 2006.

the finalist stage in the “Commonwealth Education Good Practice Awards 2006”, which is run by the Commonwealth Secretariat.²¹⁵

General Social and Educational situation of Roma in Cyprus

The general picture of the educational situation of the Roma in Cyprus has not been a positive one since the arrival of the Roma from the Turkish-controlled northern territories in 1999-2001. The living conditions of the Roma in Cyprus residing in the southern part of the island are those of poverty, unemployment or semi-employment, facing wide-spread prejudice, racial discrimination and social exclusion. The authorities do not acknowledge the seriousness of the problem: the recent governmental Report on Social Exclusion does not even refer to the Roma and the Turkish-Cypriots as a group at risk of social exclusion.²¹⁶ However, the National Report on Strategies for Social Protection and Social Inclusion 2006-2008 under the heading “Policy Measures- Preventing social exclusion of children” refers to the Educational priority zones and multicultural education and includes Turkish-Cypriot pupils.²¹⁷

The Equality Body’s Office examined a study conducted by the Limassol Regional Welfare Office concerning the social exclusion of Turkish Cypriots in Limassol, seventy-five percent of whom are Roma, and has raised issues about low educational attainment of this specific group and a lack of interest by the parents over the educational opportunities of their children.²¹⁸ The same study establishes that the severe economic difficulties faced by these families, the squalid living conditions, low parental educational level and the wide spread prejudice against this group, generates a negative attitude from the Turkish Cypriots and Roma toward the educational system. The eventual outcome is the quick exit from the classroom seeking to enter the labour market, either as a beggar or working in unskilled manual labour. Furthermore, even if a child goes to Greek or English-speaking school, the linguistic barriers arising from the lack of understanding of the teaching material and instructions may and usually do drive the pupil out of education. In one research project, Turkish Cypriots and Roma parents raised doubts about whether it is worth sending their children to school at all, as the children do not understand a word of what is being said in the classroom and are subject to abuse.²¹⁹ Another two studies, one on the education of Turkish Speaking pupils in Cyprus²²⁰ and another on Roma primary education by the Cyprus Focal Point against Racism and Xenophobia (RAXEN)²²¹ have similar findings as to the education problems of the Roma in Limassol.

It is apparent that the generally poor living conditions of the Roma impacts on the education of their children. One study conducted refers to the inadequacy of light, the lack of space, desks, bookshelves or tables and chairs in their homes,²²² with references to a relevant study conducted by the Social welfare Office of Limassol.²²³

The RAXEN study of the primary public education of the Roma in Cyprus, conducted in 2004 found poor showings on the issues of enrolment, school attendance, educational performance

²¹⁵ Letter by the Ministry of Education of Culture to the researcher (File No. 12.10.04/5) dated 6 November 2006.

²¹⁶ National Action plan for Social Exclusion 2004-2006, Social Welfare Office.

²¹⁷ Ministry of Labour and Social Insurance, Nicosia, September 2006.

²¹⁸ Interview with the Ombudsman’s Office Human Rights Officer, Mr. Aristos Tsiartas 16.6.04.

²¹⁹ See Trimikliniotis (2003).

²²⁰ Spyrou, (2004).

²²¹ See Cyprus Labour Institute, 2004.

²²² Spyrou (2004).

²²³ The study supports that “some Turkish-speaking parents explained that they do not send their children to school because they do not have money to buy clothes and to provide them with food, and because they lack water in their homes to wash and clean them” (see Spyrou, S. 2004).

and dropout rates (Trimikliniotis and Demetriou, 2006). However, there is some improvement with regard to attendance to the primary school as a result of certain measures adopted.²²⁴ Enrolment and attendance for secondary school children was particularly bad, as out of at least fifteen Roma school children who are obliged to attend secondary school, only two pupils have enrolled (Trimikliniotis and Demetriou, 2006). No official study exists to examine the educational performance of various ethnic and social groups; as such there are no figures to report. However, there is evidence that Roma children generally fare far behind all other children. Many of them leave school ‘functionally illiterate’. Studies and appraisals show that the current curriculum is such that Roma children are not likely to succeed; far from it, as one study shows.²²⁵ Another study conducted in 2003 shows that Roma parents in Limassol see no reason to send their children to school as they understand nothing; they get into fights and are excluded.²²⁶ There has been some improvement in the school years 2003-2004, 2004-2005 and as far as attendance at primary school is concerned. However, there is a serious problem with the high level of drop outs as well as the transition between the primary and secondary education.

The official policy of the Ministry of Education and Culture is the adoption of measures to integrate pupils of all cultural backgrounds and the desegregation of pupils from ethnic or minority origin, to avoid ghetto-based schools. This policy is followed with particular persistence by the Ministry, as illustrated by the institution of educational districts in Paphos.²²⁷ Research shows that many Greek-Cypriot parents try to transfer their children from the school to avoid schools attended by migrants and Roma pupils; many Greek-Cypriot children do in fact show racial prejudice towards the Roma and migrant children.²²⁸

It is apparent that ‘family and socioeconomic problems’ penetrate school life with a vengeance. Studies show there is segregation between schools, in part reflecting the wealth or poverty of the surrounding neighbourhood with certain schools becoming the schools of the poor, the migrants, the Turkish-Cypriots and the Roma.²²⁹

In spite of the fact that Cyprus has ratified the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) since 1966²³⁰, which obliges states to “prevent, prohibit and eradicate all practices of racial segregation”, as expressed in General Comment 19 of ICERD, there is still segregation of the Roma in the Republic controlled south. In part this appears to be an unintended consequence of policy, and in part reflecting discriminatory

²²⁴ These include school meals and a small subsidy paid to the parents to allow them to buy school uniforms and material.

^{225c} ...most of the children are predestined for failure in school. As one teacher explained, the main problems are “the weakness of the system to accept them, to help them rather, to offer them the alternative solution, so that they are not simply viewers, simply listeners in the classroom, but to have substantial participation” (Spyrou, 2004).

²²⁶ See chapter ‘Voices of the Subaltern in Cyprus: A Study of Racial Exclusion’ in Trimikliniotis, N. (2006).

²²⁷ In April 2003 the Council of Ministers approved the school districts on the basis of a balanced distribution of pupils and the avoidance of concentration of pupils of Pontian origin in one school, with the aim of social integration of non Greek-speaking pupils into the wider educational system. The Commissioner investigated the issue as to whether has been adhered to or not in the case of the school of “Panagia Theoskepasti” in Paphos [See Cyprus Labour Institute (2004) *National Annual Report 2004 – Cyprus, RAXEN*].

²²⁸ See Trimikliniotis (2003; 2004b); Spyrou, (2004). Some recent studies by graduates focusing on participant observation and interviews at the same school has an abundance of examples that illustrate the pupil relations between Greek-Cypriots and Roma (see Keskenidou, A. and Tsakiri, M. (2003); also Agathokleous, G. (2004) *Politismikes Eterotites ton Tsiganon Mathiton stin Lemeso: Ekpedefitika Provlimata kai Anages*, [Cultural Differences of Gipsy Children in Limassol: Educational Problems and Needs], Dissertation for Graduate Degree, University of Cyprus.

²²⁹ See Trimikliniotis (2004a).

²³⁰ 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.

attitudes, the ‘cultural capital’ and socio-economic and family conditions of the Roma in Cyprus.

The Roma children are treated as children with special language requirements, in spite of the fact international conventions on human rights as well as on specific rights in the fields of education.²³¹ Over the past years the Cyprus Republic has been ratified treaties in the field of education and thus adopted certain measures as a result;²³² also it adopted the European Social Charter (Revised)²³³ and other international instruments.²³⁴ However, apart from the general provisions for the right to education and general ‘humanistic’ education, there is generally little connection in policy-making with the fact that Roma are Cypriot citizens with rights under anti-discrimination/ human rights law. At local level, some elements of multicultural education and teacher training for primary and secondary education have been introduced to cope with an increasingly multi-ethnic and multicultural setting, but this is at an early stage.²³⁵ As it is not known what the mother-tongue of the Cypriot Roma is (i.e. whether it is Kurbetcha or Turkish), we are unable to state with certainty whether the discrimination in education they may suffer is based on their mother tongue (which may not Turkish in many instances) is indirect or whether it is direct ethnic discrimination under the cope of Race Directive.

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

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

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

Discrimination on the ground of race and ethnic origin for access to and supply of goods and services available to the public is prohibited, as per Section 4(e) of Law 59(I)/2004. In addition, the law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, provides that any person who supplies goods and services by way of profession and refuses such goods or services to any person solely due to his/her racial or ethnic origin or religion is guilty of a criminal offence.²³⁶ The aforesaid prohibitions apply, inter alia, to the Roma population of Cyprus, most of whom have Cypriot nationality, although refusal to supply goods and services would, in any case, apply to all, whether they are Cypriot citizens or not.

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

²³¹ The Convention against Discrimination in Education (ratified by Law 18/1970).

²³² Framework Convention for the Protection of National Minorities pursuant to Article 25.

²³³ 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.

²³⁴ E.g. Resolution ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

²³⁵ Multicultural education is not available across the board. For more details on discrimination in education see Trimikliniotis (2004a).

²³⁶ Section 2A(4) of Law No. 11 of 1992.

Disability

For the ground of disability, the relevant law²³⁷ provides for equality of treatment of persons with disabilities with the rest of the citizens of the Republic in the provision of goods, facilities or services. 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.²³⁸

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.²³⁹

Also under Article 7 (1) of Law 127(I)/2000 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.²⁴⁰

Furthermore, Article 8(1) of Law 127(I)/2000 requires that the competent governmental departments must, within a short period of time, proceed to the installation of a suitable system of telephone services which assists persons with a hearing disadvantage or with any other disability of the senses or other speech disability to communicate through the telephone system in a manner proportionate to those persons without such disadvantages; (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.

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

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

Discrimination on the ground of race and ethnic origin in housing is prohibited by Section 4 (1)(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin, 59(I)/2004. This section describes the scope of application of the law and expressly refers to “the access to goods and services available to the public and the supply thereof, including housing” is one of the fields of application. Section 4(2) of the same law sets out the exception as provided for in the Directive, i.e. that the law does not apply to differential treatment due to nationality and does not extend to conditions of entry and stay of third

²³⁷ Law 127(I)/2000 as amended by Law 57(I)/2004.

²³⁸ Law 127(I)/2000, Article 6(1).

²³⁹ Law 127(I)/2000, Article 6(2).

²⁴⁰ The application of this Section shall be regulated with provisions issued by the Council of Ministers upon the recommendation of the Ministry of Labour and Social Insurance and of the Ministry of Transport and Works.

country nationals and stateless persons, nor to the treatment arising under the legal status of such persons.

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

Some restrictions apply in the field of acquisition of immovable property by non-Cypriots, under the Acquisition of Immovable Property (Aliens) Law, which require non-Cypriots to apply for permit before they can register immovable property in their name. Also, a housing scheme developed by the Interior Ministry intended to benefit both Cypriots and other EU citizens, requires EU citizens to submit evidence of their uninterrupted stay in Cyprus for five years as a precondition for their eligibility.²⁴¹

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

Cyprus has enacted four laws which entered into force on the date of its accession to the EU (01.05.2004): the law amending a previously enacted law on disability,²⁴² the law transposing the employment directive,²⁴³ the law transposing the race directive²⁴⁴ and the law appointing the Ombudsman as the Equality Body empowered to investigate complaints of discrimination. Interestingly enough, although the first three laws contain most of the exceptions provided by the two directives, the latter law²⁴⁵ does not contain any exceptions whatsoever. In this law, the Equality Body is empowered to deal with complaints of discrimination based on any law, including this particular law, which basically opens up the possibility for decisions on the basis of anti-discrimination provisions without exceptions, drawing on other instruments, such as Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and constitutional provisions.

Copying the wording of both Article 4 of the race directive 2000/43 as well as Article 4(1) of the employment Directive 2000/78, Section 5(2) of Law No. 58(1)²⁴⁶ transposing the employment directive allows for differential treatment based on racial or ethnic origin, religion, belief, age or sexual orientation when the nature of the particular occupational activities or the context within which these are carried out is such that a specific characteristic

²⁴¹ Letter from the Ministry of Interior to the Ministry of Justice, dated 09.05.2006.

²⁴² Law on Persons with Disabilities No. 57(I)2004 (31.03.2004).

²⁴³ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

²⁴⁴ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004).

²⁴⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004).

²⁴⁶ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. Along similar lines, the Law on Persons with Disabilities (Amendment) of 2004 provides²⁴⁷ that this law does not apply, inter alia, to those activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitute a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting ‘reasonable measures’, within the meaning which these take in this law. There is no authoritative explanatory material on the subject.

The Law on Public Service²⁴⁸ which used to provide that “only Cypriot citizens shall be appointed as civil servants” has been amended by replacing the term “Cypriot” with the term “European”. However, a stringent Greek language requirement has been introduced, rendering it very difficult, if not impossible, for non-native Greek speakers to become members of the civil service. The requirement provides that all non-university graduates and all graduates from non-Greek speaking universities must undergo a Greek proficiency test the standard of which is very high. Furthermore, although Turkish is an official language of the Republic, there is no provision for native Turkish-speakers accessing the civil service on the basis of their own language: they also have to undergo the Greek proficiency test.²⁴⁹

Turkish-Cypriots working in the south are considered to be a “vulnerable group” by the Third ECRI Report,²⁵⁰ which refers to ‘manifestations of racism and discrimination affecting Turkish-Cypriots’, expressing concern over the non-use of the Turkish language, which prevents Turkish Cypriots from exercising their rights. Although Turkish remains an “official language” according to the Constitution, its use has been abandoned, as noted by the Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus.²⁵¹ In addition to the language issue, the Third ECRI Report recommends, in para.82, that the attention of the Cypriot authorities be drawn to the conduct of law enforcement officials, to the issue of access to services, employment discrimination, reinstatement in and compensation for property.”

Since April 2003, when the ban on freedom of movement between north and south was partially lifted, the possibility for Turkish-Cypriots to seek employment and access to public

²⁴⁷ Law on Persons with Disabilities No. 57(I)2004 (31.03.2004), Section 4(1), amending Section 3A(b) of the basic law.

²⁴⁸ Public Service Law 1/90.

²⁴⁹ Article 123 of the Cyprus Constitution, which provides that 30% of the public service positions must be given to Turkish-Cypriots, has been defunct since 1963.

²⁵⁰ ECRI (2005) Third Report on Cyprus, European Commission against Racism and Intolerance, Council of Europe, Strasbourg, 16 May 2006. In particular the Third ECRI Report on Cyprus notes that “there are areas where direct and indirect discrimination against members of the Turkish Cypriot community exist and still need to be recognised and adequately addressed” (para. 104). The Report notes that “there is only an extremely limited amount of information in the Turkish language to enable Turkish-Cypriots to adequately access and exercise their rights in public life” (para.80). This leads ECRI to suggest that “the increasing presence of Turkish-Cypriots citizens in the government controlled part of Cyprus poses a more serious pressing need to secure and address the rights and needs of this part of the population of Cyprus, including the field of language” (para.80). The sheer volume of crossings since April 2003, which is said to be some eight million according to ECRI and considerable trade and crossing of goods according to the “Green Line Regulation”, opens up the question of access to employment, due to the language barrier, particularly in the public sector, for Turkish-Cypriots: Relevant is also the fact that there is an increasing number of Turkish-Cypriots who reside in the government-controlled part of Cyprus who are estimated to be around 2000 or “about 1000, with an upward trend”(Report of the Committee of Experts on the application of the European Charter for European or Minority Languages in Cyprus, Para.39, Council of Europe, ECRML (2006)3, Strasbourg, 27.09.2006) as well a large numbers of Turkish-Cypriots who have been issued with Cyprus passports (35000), identity cards (60000) and birth certificates (75000) (See para.78).

²⁵¹ Council of Europe, ECRML (2006)3, Strasbourg, 27.09.2006. In para. 39, the report states: “Turkish has basically ceased to function as an official language.”

services in the Republic has resulted in a dramatic change of the situation, creating a whole new category of vulnerable persons. This fact has also been recognised by the Equality Body in its Report on the use of Turkish language, where it stated: “This change cannot leave without effect the way in which the Republic is dealing with issues that affect Turkish-Cypriots and particularly as regard the way in which they exercise their rights.”²⁵²

4.2 Employers with an ethos based on religion or belief

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

Copying verbatim part of Article 4(2) of the employment Directive 78/2000, Article 7 of Law No. 58(1)²⁵³ provides that in the case of occupational activities of churches or other public or private organizations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination when, due to the nature of context of these activities, religion or belief are a genuine, legitimate and justified occupational requirement, having regard to the organization’s ethos.

The Cyprus Constitution under Article 110 provides for complete autonomy of the established religious organisations/churches of the two Cypriot communities, the Christian Orthodox church for the Greeks and the Vakf for the Muslim Turks. Under Article 110.1, the “Autocephalous Greek-Orthodox Church of Cyprus” has “the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right”. Similarly, under Article 110.2 “the institution of Vakf and the Principles and Laws of, and relating to, Vakfs are recognised by this constitution”.²⁵⁴ From the above Article it is apparent that the extent of the autonomy and right to self-regulation granted to the Church under the Constitution is wider than that allowed by Article 7 of Law 58(I)/2004 (transposing Article 4(2) of Directive 2000/78/EC). Pursuant to a new law which came into force in July 2006 amending the Constitution to the effect that that EU directives and regulations prevail over national legislation, it can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as it transposes an EU Directive.

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

There is no case law in Cyprus based on this provision. As indicated above, the anti-discrimination legislation was only recently enacted and has not been widely disseminated so as for interested parties to act on it. The autonomy of religious organisations may be subject to compatibility with the new anti-discrimination laws, however, this is part of the wider constitutional questions that go the heart of the Cyprus problem as explained in 4.1 above. One may safely assume that non-Orthodox Christians are excluded from employment in positions in church organisations since they cannot become priests in the orthodox church of Cyprus; women are excluded since they are not allowed to become priests anyway, and homosexuals are excluded too as homosexuality continues to be considered by the church as a sin. In practice, organisations with an ethos based on religion, such as the Bishoprics, often have no hesitation in hiring Muslims or Catholics for manual jobs such as working in the

²⁵² See File N. 29/2004.

²⁵³ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

²⁵⁴ For more details see Loizou 2000: 272-273.

fields owned by the Bishops.²⁵⁵ Under article 7 of Law N. 58(I)/2004, “in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos”. The above exception does not cover sexual orientation and the Law does not cover gender. Therefore, any different treatment in the course of employment due to religion, gender and sexual orientation is unlawful, unless it can be established that the test laid down in the Directive under art. 4.2 and incorporated verbatim under art. 7 of Law 58(I)/2004 is satisfied.

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

4.3 Armed forces and other specific occupations

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

The Law regarding persons with Disabilities, and hence the anti-discrimination provisions therein contained, do not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.²⁵⁶

Also, Law 58(I)/2004²⁵⁷ transposing the employment Directive 78/2004 provides that the anti-discrimination provisions²⁵⁸ of this law in relation to age shall not apply to the armed forces, to the extent to which the fixing of an age limit is justified by the nature and the duties of the occupation.

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

There are no express provisions or exceptions relating to employment in the police, prison or emergency services. A number of cases have recently been reported in the press, where women have been refused employment in the police for being too short, for having used drugs

²⁵⁵ Interview with Petros Lazarou, secretary of the Morphou Bishopric, 16.01.2005.

²⁵⁶ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(1)(a) of the basic law.

²⁵⁷ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).

²⁵⁸ To be found in Section 6 of the same law, which prohibits direct and indirect discrimination, harassment and instruction for discrimination on the grounds of religion or belief, age, sexual orientation, racial or ethnic origin in the areas of terms of access to employment, to vocational training, working conditions and membership to organizations.

in the past and for having previously worked as a masseuse, a profession which in Cyprus is often associated with prostitution.

4.4 Nationality discrimination

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

a) How does national law treat nationality discrimination?

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

A similar provision is also to be found in the law appointing the Ombudsman as the specialised body²⁵⁹ which bestows the Ombudsman with the task and the duty to promote equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin. Protocol 12 refers to principles that have a general application beyond public law. The Equality Body who is empowered to implement Protocol 12 is obliged to protect from discrimination on the grounds provided by public as well as by private bodies. The Equality body of Cyprus has rejected a complaint claiming that there is discrimination on the ground of gender and nationality (and indirectly of ethnic or racial origin) for descendants of women of Cypriot origin born between the 16th August 1960 until the 11th June 1999. The complaint alleged that discrimination is ongoing as the legal amendment N. 65(I)/99 expressly provided that the granting of citizenship/nationality as set out under section 109(1) and (2) for reasons of birth or origin shall not apply to those born abroad during this period if their mother was, or was entitled, to nationality of the Republic. Although the Report of the Equality body recognises that this provision is in violation of the laws against discrimination, it paradoxically chose not to intervene on the matter considering that on balance the new law constitutes an improvement.

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

Law 57(I)/2004 on persons with disabilities does not apply to differential treatment due to nationality and does not affect provisions and requirements relating to the entry and stay of third country nationals and stateless persons in Cyprus or the treatment arising from the legal status of such persons.²⁶⁰ Identical provisions are also to be found in Law No.59(I)/2004²⁶¹ transposing the employment Directive 78/2000 and in Law 59(I)/2004²⁶² transposing the race Directive 43/2000. When viewed independently, the reference to differential treatment due to nationality may appear to contradict the main prohibition of race discrimination. However, the fact that this reference is part of the same sentence with the reference to the conditions of

²⁵⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 3(1)(b).

²⁶⁰ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(3) of the basic law.

²⁶¹ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(1).

²⁶² The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 4(2).

entry and stay of third country nationals and stateless persons, may lead to the interpretation that differential treatment due to nationality is permitted *only* in relation to the conditions of entry and stay of third country nationals.

Several decisions by the Ombudsman have criticised a number of practices of the Population-data Archives Department (part of the Interior Ministry) in the process of granting citizenship. In particular, criticism is directed at the restrictive approach of the Director of the Population-data Archives as regards the acquisition of citizenship via registration and naturalisation; particularly critical are the decisions regarding the rejections of applications for citizenship based on marriage with Cypriots.²⁶³ Moreover, the decisions also highlight considerable delay in processing the applications, prejudice due to religion of the applicant and the exercise of administrative discretion regarding the interpretation of the regulation that excludes those who have entered the country illegally from acquiring citizenship.²⁶⁴

There is currently a complaint before the Equality Body that the law on the acquisition of citizenship by descent is discriminatory as there is an exception to the general rule which provides that children born to parents, one of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus even if the other parent holds or would have been entitled to Cypriot citizenship. They can become citizens only following a decision of the Council of Ministers.²⁶⁵ This amendment was apparently directed against Turkish nationals who settled in the north at a time when it was deemed politically 'necessary' or 'expedient' by policy-makers. However, it is obviously discriminatory against persons who have Turkish-Cypriot descent by one parent and is contrary to the Constitution and international obligations of the Republic. Making a child's nationality conditional on the status of 'legality' or 'illegality' of the parents, or even worse of one of the two parents, not only violates the rights of children, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect and respect. Due to the lack of transparency, it is not possible to assess the implementation of this law. The Third ECRI Report on Cyprus (2006: 8) notes that the Cyprus Ombudsman is currently investigating 'the conformity of this procedure with national and international standards'. Moreover, it notes that 'citizenship has been granted by this procedure to children whose Cypriot parent was a Turkish Cypriot and whose other parent was a citizen of Turkey'; however, it also states that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate'.²⁶⁶ It is apparent that the relevant provisions of the nationality law are contrary to art. 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign. In fact, the Second and Third ECRI Reports on Cyprus recommend that Cyprus signs and ratifies this Convention. In any case, the complaint before the Equality Body arguing that the above provision is contrary to the general prohibition of discrimination as laid down in article 1 of Protocol 12 to the ECHR, which has been ratified by the Republic of Cyprus.

²⁶³ See relevant Ombudsman Reports, Files No. 2599/2005, 1958/2005, 2059/2005, 2368/2005, 2599/2005, 2780/2005.

²⁶⁴ See Ombudsman Report, File No. 727/2006.

²⁶⁵ Art. 109 Population-data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.

²⁶⁶ For more details on the debate on nationality/citizenship see Trimikliniotis, N. (2007) "Nationality and Citizenship in Cyprus since 1945: Communal Citizenship, Gendered Nationality and the Adventures of a Post-Colonial Subject in a Divided Country", Rainer Baubøck, Bernhard Perchinig, Wiebke Sievers (eds.), *Citizenship in the New Europe*, Amsterdam University Press.

4.5 Work-related family benefits

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

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

The payment of work-related family benefits by employers is not expressly regulated by law in either the public or the private sector. In order to determine the legality of any provision or non-provision of work-related benefits, recourse must be made to the general anti-discrimination principles contained in the framework legislation. ‘Family condition’ is included in the prohibited grounds of discrimination in Article 28 of the Constitution which, under the Yiallourou case²⁶⁷ is applicable per se both in the public and the private sector. Apart from those sectors in which collective agreements are in force, all other benefits provided by employers must be considered as part of the employment contract, the conditions of which may legitimately vary from employee to employee. In practice, both in the private as well as in the public sector, free or subsidised medical care schemes are commonly made available to employees’ spouses. This may result in unfavourable treatment of the unmarried employees; furthermore the granting of benefits to married couples only, amounts to indirect discrimination on the grounds of sexual orientation, given that same sex couples are unable to marry in Cyprus.²⁶⁸

Regulation 12 of the Educational Officers (Placements, Transfers and Movements) regulations of 1987 to 1994 sets the family condition of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base. A decision of the Equality Body regarding this provision found that the differential treatment of unmarried employees vis-à-vis married employees without children amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation, in other words it amounts to discrimination on the ground of belief and/or sexual orientation. Thus the Equality Body asked for this regulation to be revised.²⁶⁹

²⁶⁷ Yiallourou v. Evgenios Nicolaou (2001), Supreme court case, Appeal No. 9331, 08.05.2001.

²⁶⁸ The state is under an obligation to recognise marriages concluded legally in other countries; therefore when a man, who is lawfully married to four wives in accordance with the laws of his country of origin, comes to Cyprus, the state is obligated to recognise all his wives, even though by Cyprus law this would be bigamy. Moreover, the supremacy of EU law over the Cypriot constitution makes the case for the recognition of homosexual marriage stronger. From this, one may perhaps conclude that the state is equally obligated to recognise a homosexual couple lawfully married in accordance with the laws of another country, although no such express provision exists yet in the Cypriot legal system.

²⁶⁹ Report of the Equality Body No. A.K.I 11/2004. Up until February 2007 there was no indication as to whether the regulation was revised.

Law No. 59(I)/2004 transposing the race Directive 43/2000 is stated to apply inter alia in the areas of “social protection, health care, social provision...[and] access to goods and services available to the public”²⁷⁰. However, Law No. 58(I)/2004 transposing the employment Directive is expressly stated not to apply to any type of provisions paid by public provision schemes or schemes similar to those, including public schemes of social insurance or social protection, except professional social insurance schemes. An exception to the exception is provided in the same provision, according to which differential treatment in any of the mentioned areas on the ground of racial or ethnic origin is not covered by the exception and presumably constitutes unlawful discrimination.²⁷¹ The same law also provides that the fixing of age limits as far as pensions or disability benefits are concerned shall not constitute discrimination provided it does not result in discrimination on the ground of sex.²⁷²

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

Common law marriage is not recognised in Cyprus so where benefits are available to married employees, these would necessarily apply to couples married in accordance with the law. From this perspective, same-sex and opposite sex unmarried couples are not treated differently by employers, although it should be added that homosexuality, only recently decriminalised in Cyprus²⁷³, continues to be a taboo subject.

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

4.6 Health and safety

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

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

Law 57(I)/2004 on persons with disabilities is stated not to affect any measures for, inter alia, the protection of “health and the rights and freedoms of others”²⁷⁴. The same law further provides that the principle of equal treatment does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.²⁷⁵

²⁷⁰ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 4(1).

²⁷¹ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(3)(a).

²⁷² Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(3).

²⁷³ Following the ECtHR decision against the government in *Alexandros Modinos v. The Republic of Cyprus*, No. 15070/89(1993) ECtHR 19, 22.4.1993.

²⁷⁴ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3A(2) of the basic law.

²⁷⁵ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(2) of the basic law.

Law 58(I)/2004 transposing the employment Directive 78/2000 is also stated not to affect measures provided by national legislation necessary for, inter alia, the “protection of health and the rights and freedoms of others”, unless the differential treatment is due to a person’s racial or ethnic origin, in which case it presumably constitutes unlawful discrimination.²⁷⁶

No exceptions are allowed relating to religion or other grounds where issues of dress or personal appearance are concerned. It should be noted, however, that for the moment there are no such issues or debates in Cyprus, as there are hardly any ethnic communities using symbols of religion or culture.²⁷⁷ The vast majority of Muslims of Cyprus, which are basically the Turkish-Cypriots, the Roma, migrant workers and asylum seekers from the Middle East are either secular or simply not using symbols in their appearance.

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

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

Law 58(I)/2004 transposing the employment Directive 78/2000 copies verbatim the whole provision in Article 6²⁷⁸ of the said Directive and it may thus be possible that the law does allow for direct discrimination on the ground of age. However, the law that empowers the Equality Body as the specialised body²⁷⁹ does not contain these exceptions. No case has been decided on the subject, neither in court, nor by the Equality Body. The ECJ case C-144/04, *Mangold* is binding authority on Cyprus’ courts and can be relied upon in the future.

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

Again, Law 58(I)/2004 transposing the employment Directive 78/2000 copies the whole provision in Article 3²⁸⁰ of the said Directive, which sets out the scope of the Directive. No differences of treatment based on age are allowed, other than the ones listed in Article 8 of the law which, as stated in the immediately preceding paragraph, is an exact copy of the provisions in Article 6 of the employment Directive.²⁸¹

²⁷⁶ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 5(3)(b).

²⁷⁷ The sharp rise in asylum seekers has recently brought Cyprus face to face with the phenomenon of women wearing headscarves being unable to find employment: UNHCR report on the Situation of Refugees in Cyprus from a Refugee Perspective, 2004.

²⁷⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8.

²⁷⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 3(1)(b).

²⁸⁰ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 4.

²⁸¹ This provision, as well as the whole body of anti-discrimination law which came into force on 1.5.2004 was rushed through Parliament in order to meet the deadline of accession. No discussions were recorded in relation to any of these laws.

c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?

Although the exception of Article 6(2) is not specifically invoked, there are provisions in the law regulating the payment of benefits under pension schemes in the public service, which depend at least partly on age. In particular, the Law Amending the Pensions Laws of 1997-2001 N. 59(I)2005 provides that the lump sum payable to public servants upon retirement is paid upon the attainment of certain ages in combination with the completion of a certain term of service. Entitlement to other benefits are linked to the term of service but also, in some cases, to the mandatory pensionable age, which is determined by this law. Besides this law, there is a long list of laws regulating the payment of benefits under pension schemes to employees in the various governmental and semi-governmental bodies, most of which follow the pattern of the aforesaid law, i.e. benefits become payable upon completion of a certain term of service and/or upon attainment of a certain age and/or upon attainment of pensionable age.

In the private sector, pension schemes are regulated either by collective agreements (where such exist in the particular sector) or by private employment contracts or by the Law on Provident Funds²⁸² where benefits are paid under a provident fund. In the first two cases, it is impossible to monitor the conditions of eligibility for benefits under these schemes. In the case of provident funds, the relevant law prohibits discrimination only on the ground of sex but it is possible that any private provident fund which discriminates on other grounds will be held unlawful on the basis of article 4(c) of Law 58(I)/2004, transposing article 3.1(c) of Directive 2000/78/EC on conditions of employment, subject of course to the exception in article 6(2) of the Directive (transposed by article 8(3) of Law 58(I)/2004).

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

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

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

4.7.3 Minimum and maximum age requirements

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

There is some evidence that in practice older workers face discrimination when it comes to new appointments, with many employers specifying in job advertisement upper age limit of

²⁸² Law Regulating the Setting-up, Operation and Registration of Provident Funds (1981-2005) N.44/81.

new recruits.²⁸³ Furthermore, there is evidence that employers are very often reluctant even to interview applicants who are older unemployed workers and it would not be surprising to find that age discrimination is practiced across the board, as until recently it was not considered to be discriminatory and for the time being there is no monitoring mechanism in place.

Since the enactment of the new laws, a number age discrimination complaints were referred to the Equality Body; at least three concerned an age limit fixed with regard to access to employment to governmental positions. When the Equality Body found in favour of the complainant in the first case,²⁸⁴ the second age limit provision was revoked from the prerequisites before this complaint was processed by the Equality Body. However, by the time that the age limit was revoked, the deadline for submitting applications for employment was already closed. The Equality Body pointed out that the revocation of the age limit provision would be given more substance if the same employment position was re-advertised without the age limit condition, to enable persons aged over the previously imposed age limit to apply. This recommendation was complied with and the position was re-advertised.

A number of cases have decided by the Equality Body which prohibits the setting of an upper age limit for the recruitment of persons in the Civil Service and the cooperative banks and a case is currently pending before the Courts, based on a decision by the Equality Body where a co-operative bank was held guilty of discrimination for having fixed a maximum age limit in a job advertisement. Presumably the same applies in the private domain, but no decision has been taken as yet.

The Ministry of Labour has advised that the District Labour Offices do not accept announcements for vacancies by employers that set age limits and that the managers of newspapers were informed by the Department of Labour that setting age as a criterion for hiring in a job vacancy announcement is prohibited. The Ministry did not specify the date that this measure was introduced; given the above instances of vacancy announcements with age limits, one may presume that either this measure was introduced very recently or that it is not yielding the intended results. The Ministry has not specified if there are any sanctions against newspapers/employers advertising jobs with an age limit.

The only exceptions permitting minimum or maximum age requirements in Cyprus law are the ones listed in Article 8 of Law 58(I)/2004 which, as stated above, are a direct copy of the provisions in Article 6 of the employment Directive. In addition thereto, the Cyprus law provides an exception relating to the armed forces, whereby the principle of non-discrimination on the ground of age is stated to be inapplicable in the armed forces to the extent that the fixing of an age limit is justified by the nature and the duties of the work.²⁸⁵ The law does not specify the age limit applicable in this case, which is determined by the service schemes of the armed forces.

4.7.4 Retirement

²⁸³ The only research undertaken is a paper by House 1992 which discusses the problems of older workers in the labour force generally.

²⁸⁴ The case involved a post for the Public Education Commission, which had a statutory upper age limit, whilst an equivalent post in the Public Commission did not contain such a restriction (File AKI 25/2004).

²⁸⁵ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 8(4).

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

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

Civil/public servants and public employees receive two types of pensions, one from the Social Insurance Scheme, which is based on the social insurance contributions they have made during their working lives and an additional one called State Pension, which is dependent on contributions. The Social Insurance pension begins at 63, which is dependent on contributions,²⁸⁶ whilst the State pension with their retirement at the age of retirement or under the early retirement scheme. As soon as the Social Insurance pension is activated, the State pension is reduced by an equivalent amount.

For full pension public servants²⁸⁷ have to complete 32 and 1/3 years of service, but there is provision for early retirement at 55 years at a reduced pension. Public servants and employees have the option to receive a retirement lump sum and a reduced pension, or receive a higher pension.²⁸⁸ The State pension for public servants is not contributory, but all state funded.

Up to 2005, for public servants the retirement age was 60, but it was extended to 63 following an agreement between the Government and the public service trade union, PASYDY, which was followed by an amendment in the laws on Pensions²⁸⁹ and on Public Service.²⁹⁰ The new laws provide for gradual extension of the mandatory retirement age to 63 for all those already in service, but for the new recruits the 63 age will be compulsory. For teachers in public education, an agreement was not possible to be reached between the government and the trade unions and therefore retirement age remained at 60.

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

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

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

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

²⁸⁶ The Social Insurance pension consist of the 'basic pension', which is available to all (roughly 200 Cyprus pounds or about 345 euro) plus the amount that derives from the 'proportional scheme', which is depends on national insurance contributions.

²⁸⁷ The actual amount for the full pension depends on scales etc.

²⁸⁸ This applies to all those who are part of the Pension scheme.

²⁸⁹ Ο περί Συντάξεων (Τροποποιητικός) Νόμος Ν. 69(Ι)/2005.

²⁹⁰ Ο περί Δημόσιας Υπηρεσίας (Τροποποιητικός) Νόμος Ν. 68(Ι)/2005.

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

Retirement age in Cyprus is statutory *only* for the civil servants and it is fixed at sixty-three for both the governmental as well as the semi-governmental sector (except teachers in public education).

A government proposal to extend retirement age for teachers in public education, who are civil servants, from the age of 60 to 63, was rejected in a recent referendum. The proposal provided for voluntary extension for those currently in employment. Early retirement, which is currently available at 55 was to be extended to 58. The proposal was opposed by many teachers' trade unions, who feared that the move would (a) have a negative effect on the employment of younger graduates, who face long periods of unemployment until there is a vacancy, (b) would have a negative effect on education, and (c) would be associated with an extension of teaching hours, something already proposed by the Ministry of Education, as the proposal is only the beginning of a process that will undermine working conditions and the terms of employment of teachers.²⁹¹

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

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

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

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

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

However, under s.4 of the Law on Unfair Dismissal, the right to protection from unfair dismissal is lost upon reaching pensionable age. This effectively means that the employer is free to dismiss an employee or force him/her to retire at any time after he/she has reached pensionable age without having to pay any compensation. A complaint submitted to the Equality Body that the loss of the right to protection from unfair dismissal for persons who have reached either their pensionable or their retirement age amounts to unlawful discrimination on the ground of age, was rejected as unfounded.

²⁹¹ See the relevant press release of the Coordinating Committee Against the Extension of the Age Limit in Education, 24.1.2005.

The position of the Ministry of Labour is in line with the Equality Body's position, in that the current situation is *not* discriminatory on the following grounds:

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

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

3. The third argument is that the specific provision creates an incentive to employ senior /older persons and the policy goal is to extend the professional life of senior citizens who are willing to continue in employment. However, this policy goal is the direct opposite of the first policy goal about increasing the access to employment of young persons. In fact, in Cyprus, there is a problem of unemployment amongst the young (under the age of 30)²⁹² and for the ages 55 to 65.²⁹³ The goal of introducing measures for the employment of over 65 seems rather odd under the current conditions in Cyprus. Moreover, there is a more serious legal issue, rather than one of employment strategy. The case of ECJ decision *C-144/04, Mangold* is relevant here. The logic of the decision applies to the situation of losing the right to unfair dismissal: Similar to the case of the Cyprus context, the goal in the *Mangold* case was to encourage employment amongst the older people. However, as with *Mangold* the goal cannot be objectively justifiable and it is similarly going beyond what is the appropriate and necessary to achieve the goal. The fear of the ECJ that older workers will be excluded from the benefits of stable employment solely on the basis of age applies equally to the denial of the right to unfair dismissal.

²⁹² See the Cyprus Labour Institute study on the job insecurity of the young workers in Cyprus, for the Cyprus Youth Board (2004-2005).

²⁹³ See Cyprus Statistical service for the unemployment rates in Cyprus. For an analysis of unemployment see the Cyprus Labour Institute (2006) *Annual Review of the Economy and Employment for 2005*, INEK-PEO.

4.7.5 Redundancy

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

The Termination of Employment Laws 1967-1994 which govern issues relating to redundancy do not provide for seniority or age to be taken into account in selecting workers for redundancy. However, there is extensive case law evidencing that the principle of “first in-last out” is accepted by the Courts and is used as a criterion for determining whether the right worker or workers have been selected for redundancy. In a significant number of cases, there is a collective agreement in force which explicitly provides for this principle, which however must be used in conjunction with the ability and efficiency of a particular worker, in other words the provision in the collective agreement states that the person to be made redundant must be the last one appointed, having taken into account significant differences in the ability and efficiency of the work of the workers who are about to be dismissed.²⁹⁴ All other things being equal, however, the Court will apply the principle of “first in-last out”²⁹⁵ although on other instances the Court has ruled that seniority *alone* cannot prevent the selection of a worker for redundancy.²⁹⁶

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

The general rule of law is that the following criteria are used to determine the amount of compensation payable in the case of redundancy: the number of years of service in the same employer;²⁹⁷ whether the period of employment was before 01.01.1964, as no compensation is payable for work before that date;²⁹⁸ whether employment was continuous;²⁹⁹ and the amount of weekly salary earned.³⁰⁰ It may be argued that some of these criteria may, by inference, be indirectly related to age.

Article 19(1) of the Termination of Employment Law provides that redundancy does not generate the right to compensation if the worker so dismissed was of retirement age on the date of termination of his/her employment.

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

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

²⁹⁴ Andreas Hadjidemetriou v. 1. Publishing company “To Vima” Ltd, 2. Redundancy Fund, 107/85.

²⁹⁵ Chrysostomos Stavrou v. Redundancy Fund, 328/92.

²⁹⁶ Charalambous v. Famagusta General Agency Ltd, 490/95.

²⁹⁷ Termination of Employment Law, Table IV, Section 1.

²⁹⁸ Termination of Employment Law, Table IV, Section 2.

²⁹⁹ Termination of Employment Law, Table IV, Section 3.

³⁰⁰ Termination of Employment Law, Table IV, Section 4.

to reject that offer was therefore entitled to compensation.³⁰¹ Similarly, a middle aged woman who was offered by her employer an alternative position at another location, which involved thirty minutes' walk from her residence, was held by the Courts as reasonable in rejecting it and was therefore entitled to compensation.³⁰² By contrast, a young woman who rejected her employer's offer for an alternative position which involved thirty minutes' walk from her residence to the workplace was held as unreasonable because of her young age and good health and her application for redundancy compensation was rejected.³⁰³ The same principle is applied where the employer introduces new or more advanced technology and requires the employee to accept training and/or adapt to the new methods: if the employee is young, his/her refusal to adapt to the new technology is held unreasonable and therefore redundancy compensation is not paid, whilst if the employee is old, the Court will afford more understanding to his/her inability or refusal to adapt and redundancy compensation is paid.³⁰⁴ It is presumed that the same rule would be applied by the Courts in the case of employees with disabilities, although no such case has been brought before the Courts so far, bearing in mind that in cases of employees with disabilities the employer is obliged to provide 'reasonable accommodation' to enable the employee to adapt to the new technology.

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

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

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

Article 5(3) (b) of the Cyprus law transposing the Framework Employment Directive³⁰⁵ copies the provision in Article 2(5) of the Directive verbatim. The same provision is also to be found in Article 4(2) of Law on Persons with Disabilities (Amendment) of 2004.³⁰⁶ There are no other provisions to be found in Cyprus laws relying on the exception set out in Article 2(5) of the Employment Directive.

4.9 Any other exceptions

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

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

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

³⁰¹ Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund, 295/96.

³⁰² Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund, 634/96.

³⁰³ Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund, 1164/97.

³⁰⁴ Fotis Mikellides v. Redundancy Fund, 577/90.

³⁰⁵ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

³⁰⁶ No. 57(I) of 2004 (31.03.2004).

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

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

Law N.59(I)/2004 renders non-discriminatory any differential treatment or the introduction or maintaining of special measures which, although indirectly appearing as discriminatory, aim at the prevention or compensate for disadvantages linked to ethnic or racial origin.³⁰⁷ The term would cover, inter alia, the Roma population of Cyprus who, although Cypriot citizens, are deemed

Along the same lines, Law 58(I)/2004 renders non-discriminatory any preferential treatment in employment which, although prima facie appearing discriminatory, aims at prevention and compensation for disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation.³⁰⁸

Law 57(I) 2004 on persons with disabilities, as amended by Law N. 57(I)2004, renders non-discriminatory any preferential treatment in occupation which although appearing prima facie discriminatory, aims to prevent or compensate for disadvantages due to disability. The same law provides that the principle of non-discrimination does not prevent the maintaining or introduction of regulations for the protection of health and safety at the workplace or any measures aimed at promoting the inclusion of persons with disabilities in the labour market.³⁰⁹

On 26.09.2002 the Supreme Court of Cyprus had declared void and unconstitutional, a set of legal provisions granting priority to employment in the public sector to persons with disabilities³¹⁰ and to persons related to the dead and the missing from the 1974 war or with war-related disabilities Law,³¹¹ on a the basis of a quota system. The Court's reasoning was based on an interpretation of Article 28 of the Constitution that such priority discriminates against other candidates eligible for appointment in the public service. As a result, Law No.245/1987, which had up until then provided priority to qualified candidates with disabilities for appointment in the public education sector, was abolished. On 16.04.2005 a new law came into force³¹² which restored the old law of 1997³¹³ (previously declared unconstitutional by the above decision of the Supreme Court) which gives priority in employment in the public sector to relatives of the dead and the missing from the 1974 war in Cyprus and to persons disabled by the 1974 war. The result was that the quota system was restored only for the relatives of the missing and dead and for persons with war-related disabilities, but not for persons with disability in general, which establishes a prima facie case of discrimination against persons with non-war related disabilities. In a further development, a

³⁰⁷ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 6.

³⁰⁸ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 9.

³⁰⁹ Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 4(1), amending Section 3B(1) and 3(B)(2) of the basic law.

³¹⁰ Law No.245/1987.

³¹¹ No. 55(I) 1997.

³¹² Law No. 87(I) 2004.

³¹³ Law No. 55(I) of 1997

court decision of 08.12.2006³¹⁴ found Law 87(I)/2004 (granting priority to war-disabled persons) also unconstitutional, on the ground that it introduced a class of beneficiaries (the war-related disabled, etc) that is favoured against others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution. Strangely enough, another law³¹⁵ granting pensions to Greek-Cypriots with a disability as a result of their army service or as a result of their involvement in the anti-colonial struggle of 1955-1959 or as a result of the war in 1974, still stands, presumably because it was not challenged in court by anybody.

The above court decisions beg the question whether any law enacted in the future introducing positive action measures would also be deemed as unconstitutional. The government and the parliament have to date been reluctant to introduce quotas in employment for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the ECJ decision in the Kalanke case.³¹⁶ An amendment to the Constitution introduced recently, giving priority to EU regulations and Directives over all domestic legislation (including the Constitution) could perhaps be utilised in order to avoid the cancellation of such positive measures introduced under the anti-discrimination laws transposing the *acquis*.

In December 2005, a set of four bills was presented to Parliament by a Socialist MP, in order to rectify this situation. The bills proposed to introduce, for persons with disabilities, a quota for their employment in the education sector; a scheme for preferential parking; a system for rendering temporary or hourly-based disabled civil servants permanent; a quota system for the employment of blind telephonists in the public and the educational sector; a quota for employment in the private sector where the number of employees exceed ten. In May 2006, when the Parliament dissolved before the parliamentary elections the said bills were, as a matter of standard practice, withdrawn and were not reintroduced yet, although there is a plan to reintroduce them shortly.

The law of 2004³¹⁷ purporting to transpose Directive 2000/78/EC did not introduce the wide scope of Article 7 of the Directive with regard to positive measures. In particular, the new law did not amend section 5(2) of the 2000 law which merely provides for three type of measures which may be introduced by regulations³¹⁸ but no such regulations have been introduced so far. The effect of this is that the provision now in force is the old law, which existed prior to the transposition of the Directive 2000/78/EC and which provides only for the introduction of regulations on three limited types of measures.

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

The following measures are in place in relation to disability:

³¹⁴ Charalambos Kittis et al v. The Republic of Cyprus (2006), Appeal case No. 56/06 (08.12.2006).

³¹⁵ Law on Relief of Sufferers N. 114/1988.

³¹⁶ Case No. C-450/93.

³¹⁷ Persons with Disabilities Law No. 57(I) 2004, amending the existing Law N.127 (I)/2000.

³¹⁸ These are: schemes for the employment of persons with disabilities by providing incentives; establishing posts in the public sector exclusively for persons with disabilities; and creation of incentives for employers to employ persons with disability.

The Public Education Service Law, as amended by Law 180/1987, provided that in filling first entry posts in the Public Education Service, persons with disabilities should be appointed in accordance with a proportion specified by Law. Subsequently, this provision was indirectly declared unconstitutional, following a highly controversial court decision relying on a strict and rather conservative interpretation of the equal treatment principle of the Constitution.³¹⁹

Following the Supreme Court decisions declaring unconstitutional, on the basis of Article 28 of the Constitution, the laws granting priority in employment to persons with disabilities, there has been a marked decrease in the number of disabled persons working. Surprisingly enough, one law has survived this trend: the Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (L. 17/1988). Article 3 of this law provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators³²⁰ are given priority in appointment. The same law also provides that for the appointment of a non-blind person to any post of telephone operator, the Pancyprian Organisation for the Blind must give its prior written confirmation that there are no blind telephone operators as candidates for the specific post. Article 3 of the same law also provides that in case there are no blind telephone operators as candidates for the said position, other candidates with disability will be preferred. These provisions have worked fairly well and have significantly contributed to the vocational rehabilitation and labour integration of blind persons; the job of telephone operator continues to be the job of the majority of the blind persons in Cyprus. This law, which has resulted in the employment about 55 blind persons since its enactment in 1988, applies to telephone operators who have completed training at the School for Telephone Operators of the School for the Blind. It is considered by the Pancyprian Organisation for the Blind as a significant positive measure, despite the fact that it refers to a relatively low status type of work that may fall short of utilising the affected persons' full potential. Recent technological developments in telephone services may present a risk for this institution and could mean that training may have to be channelled in other directions.³²¹

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.

³¹⁹ Republic of Cyprus through the Civil Service Commission v. Eleni Constantinou, Appeal Case No. 3385, 26.09.2002.

³²⁰ Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. Also, the Pancyprian Organisation for the Blind, a non-governmental organisation, offers further training free of charge.

³²¹ Florentzos, M. (2005) The Legal and Social Position of Persons with Disability in the new Legal order of the Republic of Cyprus as a Member State of the European Union, Nicosia, p.151. Mr Florentzos is the president of the Cyprus Confederation of organisations of persons with disabilities.

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

No positive action measures exist as regards young and old workers or persons affected by discrimination on the grounds of racial or ethnic origin, religion or belief or sexual orientation. There are no positive action measures in place for the Roma community except the provisions related to education of the Turkish-speaking children, mainly consisting in a small subsidy for school uniforms, the provision of meals at school and the supply of language classes; however the aforesaid are not provided to this group in their capacity as Roma but in their capacity as ‘Turkish speaking’ people.

The Law on Persons with Disabilities N.127 (I)/2000, as amended in 2004, provides a set of rights for persons with disabilities and implementation measures. These rights include the right to an independent way of living, full access to the community and equality of participation in the economic and social life of the country (Article 4(1)). Furthermore, Article 4(2) of the Law provides: “Without prejudice to the generality of sub-section (1), persons with disabilities have the following rights: (a) timely detection and diagnosis of the disability (b) personal support with auxiliary equipment (c) access to housing, buildings, streets and generally to the natural environment and to public means of transport (d) access to appropriate education according to their needs; (e) access to information and communication with special means where necessary, especially for certain groups of persons with disabilities of the senses; (f) services for social and economic access to professional assessment and orientation, professional training and employment in the open job market; (g) a dignified standard of living and, where necessary, through financial allowance and social services; (h) the creating of personal and family life; (i) participation in cultural, social, athletic, religious and entertainment activities.” Article 4(2)(a) of the same law provides for the following measures for the creation of employment opportunities: “(i) the introduction of employment schemes for persons with disability by providing incentives for the employers which shall be determined by regulations according to the number of employees or the business cycle of the enterprises concerned; and (ii) the creation of jobs in the governmental, semi-governmental and wider public sector to be fulfilled exclusively by persons with disability”. A number of other measures include “job reinstatement, where possible, of a person with a disability in the same enterprises where the disability occurred during their employment; special protection against dismissal; and the operation of special schemes of employment in the public and private sectors, by providing economic incentives”.³²²

The Law on Persons with Disabilities No, 127(I)2000 as amended makes reference, inter alia, to the right to accessibility in buildings and streets and to access to information and

³²² The impact of this article is severely limited by article 9 of the same law, which provides that all the rights set out in articles 4, 5, 6, 7 and 8 of the Law are not absolute but are conditional upon a number of prerequisites, such as: the nature and the required expense for the taking of the necessary measures; the financial resources of the person who has the obligation to take such measures; in the event that the measures are to be taken by the state, then public finances and other obligations of the state are to be taken into account; the provision of state aid or other contributions towards the cost of the required measures; and the socio-economic situation of the person with disability.

communication through special means and describes these as “basic rights”³²³ but no enforcement mechanism is provided and no legal obligation is cast on any party for the implementation of these rights. The same law provides that failure to carry out such adjustments to services or facilities so as to guarantee, inter alia, the use of specialised means, instruments and facilities to special places where services are provided, such as schools, hospitals, clinics and “similar places”, constitutes discrimination.³²⁴

It ought to be mentioned that all the rights set out in articles 4, 5, 6, 7 and 8 of Law 127(I)2000 are not absolute but are conditional upon a number of prerequisites, such as: the nature and the required expense for the taking of the necessary measures; the financial resources of the person who has the obligation to take such measures; in the event that the measures are to be taken by the state, then public finances and other obligations of the state are to be taken into account; the provision of state aid or other contributions towards the cost of the required measures; and the socio-economic situation of the person with disability.³²⁵

The issue of accessibility to Courts for persons with disabilities, in the form of physical accessibility, provision of documents in Braille language, sign language interpretations or other is not addressed and it is doubtful if the said legal provisions create any obligations with regard to guaranteeing full accessibility.

Good practice initiatives

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

(i). The National Report on Strategies for Social Protection and Social Inclusion (NRSSP) 2006-2008³²⁶ contains an evaluation of institutional policies and provides for future initiatives. In particular, the reference in NRSSP to the policies on refugees and immigrants is useful: it refers to the provision of free of charge Greek language lessons to refugees through the Training Centres of the Ministry of Education and Culture and states that “the government is in the process of introducing an integrated strategy for the employment of foreign workers with the participation of all relevant Ministries and the social partners”. In the field of monitoring the implementation of the 2004 National Action Plan for Social Inclusion, the Ministry of Labour and Social Insurance established a special working group comprised of representatives from the governmental sector, social partners and NGOs. The working group will monitor and assess all policy developments and interventions for combating social exclusion and will ensure transparency by promoting open dialogue in the implementation of the 2004 National Action Plan. It commits itself that in the future it will enhance the “Open Method of Coordination in the field of Social Exclusion”, as it did in the 2005 seminar which brought together about 120 representatives from the government, NGOs, social partners and academic institutions with the aim of discussing and evaluating the strategic objectives and interventions proposed in the 2004 Plan.

(ii). In June 2005, an intensive two-day seminar was held in the buffer zone of Nicosia, as part of a European Commission funded project,³²⁷ attended by representatives of fifty NGOs

³²³ Part II, Article 4(c) and 4(e) of the Law on Persons with Disabilities No. 127(I)2000.

³²⁴ Article 6(2)(iii) of the Law on Persons with Disabilities No. 127(I)2000..

³²⁵ Article 9(2) of the Law on Persons with Disabilities No. 127(I)2000.

³²⁶ Ministry of Labour and Social Insurance, Lefkosia, September 2006.

³²⁷ Mapping capacity of civil society dealing with anti-discrimination, (VT/2004/45). The project was managed by human european consultancy (www.humanconsultancy.com) in partnership with the Migration Policy Group (www.migpolgroup.com) and was carried out in the 10 new EU member states and Bulgaria, Romania and Turkey.

coming from both north and south of the divide,³²⁸ offering training in combating discrimination on the grounds of, inter alia, racial or ethnic origin. The training was carried out by 6 trainers from Cyprus who had been trained by a team of international experts in Istanbul earlier in 2005. It was the first of its kind in Cyprus and has, in addition to the anti-discrimination training, offered a unique opportunity for networking and co-operation between anti-discrimination NGOs north and south. An initiative to set up a federation of all such organisations is already under way.

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

(vi). In 2003, and in view of the partial lifting of the restrictions in movement between north and south of the island, the Cyprus government decided³²⁹ to recognise the academic qualifications of Turkish-Cypriots as evidence of their education - even though it considers the academic institutions in the north issuing such certificates as illegal - in an effort to promote the employability of Turkish-Cypriots in the south and to avoid discrimination against them. However, no research has been carried out to evaluate the effectiveness of this measure and practice has shown that the Turkish Cypriots finding employment in the south are mostly the skilled manual workers and not the university graduates.

(vii). On 18-19 March 2006, the student club 'Under the Same Sky', which is based at the semi-public English School organised a two-day workshop for pupils as part of an ongoing awareness-raising long term project operating since 2005. The workshop was attended by 64 pupils from all over Cyprus and aimed at promoting understanding, tolerance, reconciliation and respect for diversity. The workshop included presentations by relatives of persons missing as a result of inter-ethnic violence between 1963-1974 (one Greek-Cypriot and one Turkish-Cypriot) and other presentations by journalists, anti-discrimination experts and historians on rapprochement, racism and xenophobia and related issues.³³⁰

(viii). Between 16-19 November 2006 the Section for Youth of UNESCO in cooperation with the Cyprus National Commission for UNESCO organised a conference in Cyprus under the title: Euro-Mediterranean Youth Forum - "Young People and the Dialogue among Civilizations, Cultures, and Peoples: Interfaith and Intercultural Dialogue to Ensure Peace"

The participants, who were over 50 delegates nominated by the National Commissions for UNESCO and National Youth Councils from 34 Euromed countries included two Cypriot delegates, a Turkish-Cypriot nominated by the Cyprus Youth Board and a Greek-Cypriot nominated by the Cyprus National Commission for UNESCO and a number of Cypriot volunteers from the Cyprus Youth Board.³³¹

³²⁸ Regrettably, the representatives of governmental departments invited to the seminar either did not show up at all or came for an hour in the morning and then left.

³²⁹ Press and Information Office of the Republic of Cyprus, 'Movement of Persons, vehicles, goods, employment, issue of certificates and other documents', 30.04.2003).

³³⁰ <http://www.underthesamesky-es.org/content.php?content.23>

³³¹ <http://www.unesco.org.cy/docs/youthforuminfopress.doc>

(ix). On 8-9 June 2006 a Workshop was held in Nicosia's buffer zone, on the green line dividing north and south, under the title "The use of historical sources in teaching social and cultural history", organised by the Association for Historical Dialogue and Research (a national bi-communal NGO) in co-operation with the Council of Europe. It was actively participated by representatives of all teachers' trade unions across the divide and brought together 120 educators, history teachers and teacher trainers from all communities and from all educational levels (primary, secondary, tertiary) and from all over Cyprus. The results of the evaluation and of the plenary session discussion are published at the website of the organisation.³³²

(x). On 29 and 30 September the "Stop Discrimination Campaign" organising in Cyprus a European conference on "The Benefits of Diversity and Inclusion for Small and Medium-Sized Enterprises". The conference brought together about 130 representatives of European SME's and those working with the SME community.³³³

6. REMEDIES AND ENFORCEMENT

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

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

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

(1) Via the 'extra-judicial' process as the law refers to it,³³⁴ which is more like a 'quasi-judicial process' of the Equality Body, whereby individuals and interested parties may complain and the Equality Body will make binding recommendations.³³⁵ Natural or legal persons who allege discrimination on any of the prohibited grounds (EU Directives, Protocol 12 to the ECHR, the Cyprus Constitution) on any of the fields provided for may complain to the Equality Body. The Equality Body is empowered to issue binding decisions and/or make recommendations; moreover, it may impose small fines. The Equality Body has a duty to monitor the enforcement of the orders it makes³³⁶, which are published in the Official Gazette.³³⁷ The Equality Body is further empowered to impose fines, for failure to comply with her/his recommendations.³³⁸ Further failure is of course enforceable by the Courts. The decisions of the Equality Body may only be challenged in Court by way of judicial review of

³³²http://www.hisdialresearch.org/CoE/Multiperspectivity_Cyprus_November2004.doc and in the Council of Europe reports (see for instance report of 2004

http://www.hisdialresearch.org/CoE/Report_Cyprus_November2004.doc)

³³³See <http://www.stop-discrimination.info/?RDCT=fd6dc498e983758e3227>

³³⁴ In Greek, «Εξώδικη διαδικασία» as per Section 9Γ(1) of Law No. 57(I) of 2004 (31.03.2004); Section 9, Law No. 59(I) of 2004 (31.03.2004); Section 13, Law No. 58(I) of 2004 (31.03.2004).

³³⁵ Law N. 42(I) 2004 (31.03.2004).

³³⁶ Section 24(1), Law No. 42(I) of 2004 (31.03.2004).

³³⁷ Section 15, Law No. 42(I) of 2004 (31.03.2004).

³³⁸ Section 26(1), Law No. 42(I) of 2004 (31.03.2004). The Equality Body may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendation under Section 25 [Section 26(1)(a)] and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

administrative action at the Supreme Court under article 146 of the Cyprus Constitution.³³⁹ If after investigation the Equality Body finds that a certain law or regulation contravenes the equality laws, the Equality Body may recommend to the Attorney General the amendment of such law or regulation, who in turn reports to the relevant Minister. The Equality Body is thus given jurisdiction to deal with matters relating to discrimination via the 'extra-judicial' process.

(2) The judicial process is also available:

(i) Labour law and issues relating to employment matters are dealt with by the Labour tribunal.³⁴⁰ The Labour Tribunal consists of three persons: a judge, who chairs the hearing and two wing members, who come from the trade union and employer organisations side. The procedure in the tribunal is similar to a district court, but less formal. All employment matters are dealt with by Labour Tribunals. There is no legal aid scheme as yet, save for in criminal matters, though legislation is apparently being prepared to extend legal aid.

(ii) Civil matters such as all matters of 'race or ethnic origin' discrimination other than employment are dealt with in district courts³⁴¹;

(iii) Criminal law dealing with penal sanctions for incitement of racial hatred. Finally,

(iv) Challenge of administrative acts before the Supreme Court, via Article 146 of the Constitution.³⁴² The Supreme Court can examine the legality of the case but not the substantial merit of the case. All issues between civil servants regarding their employment (appointment, promotion, transfer etc) are considered to be administrative acts and are dealt with by the Supreme Court. This route is not available to private employees.

(3). The inspectorate process is available for employment discrimination issues. The Minister of Labour is empowered to appoint Inspectors for the purpose of the better implementation of the law.³⁴³ However, this process is yet to be implemented, as the regulations regarding the powers vested in the Chief inspector and inspectors³⁴⁴ are yet to be issued. It would seem reasonable to assume that the Labour Relations Department of the Ministry of Labour and Social Insurance would be the department in charge of implementing this provision,³⁴⁵ given also that this department's mandate includes the setting up of enforcement mechanisms (Inspectors, Research and Evaluation Committee etc) only in relation to gender equality.³⁴⁶ Nevertheless, the department responsible for Laws N. 57(I)/2004 and 58(I)/2004 is the Department of Labour of the Ministry of Labour. The Minister has not utilised his powers to appoint any inspectors.

³³⁹ Section 23, Law No. 52(I) of 2004 (31.03.2004).

³⁴⁰ For any of the employment directive grounds Section 12(1), Law N. 58(I) of 2004 (31.03.2004) and for disability discrimination and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).

³⁴¹ Section 8(1), Law N. 59(I) of 2004 (31.03.2004).

³⁴² Section 12(1), Law No. 58(I) of 2004 (31.03.2004); Section 19 of Law No. 57(I) of 2004 (31.03.2004) and Section 9B(1) of Law No. 57(I) of 2004 (31.03.2004).

³⁴³ Section 19 of Law No. 57(I) of 2004 (31.03.2004).

³⁴⁴ Section 19(2) of Law No. 57(I) of 2004 (31.03.2004).

³⁴⁵ This derived from (a) the fact it is an employment matter, (b) a reading of the text of law 58(I)/2004 provides that the Minister in charge is the Minister of Labour and Social Insurance [see article 2 of the law]; moreover the inspectorate 'aiming at better implementation of the provisions of the said law' is appointed by the same Minister, who also responsible for submitting a report on the implementation of the said law.

³⁴⁶ Letter from the Ministry of Labour to the national expert, dated 20.01.2006.

There is also a longer-term process for a general review of the state of implementation of the anti-discrimination legislation, by way of a report from the Minister of Labour submitted to the European Commission, the first due date being 19.07.2005 and thereafter every five years.³⁴⁷

b) Are these binding or non-binding?

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

The Equality Body has the power to issue legally binding decisions. However, in practice the decisions issued are usually mere recommendations which, although not legally binding, tend to be complied with at least by individuals. In some cases the Equality Body is vested with the power to impose fines³⁴⁸ but this power has not been used yet, except in one case involving gender discrimination. The Equality Body's decisions are generally regarded by both the authorities and the public as valid and credible and often as an indication of what the likely outcome would be, had the case been presented before the courts. The Equality Body itself has stated that governmental departments have, during 2004, complied with its recommendations to a degree of 60% but pointed out to a low compliance level by the police.³⁴⁹ The same pattern of compliance continued through 2005 and 2006.

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

There is no express provision on this point in the new anti-discrimination laws. However, the Laws on the Commissioner for Administration 1991-2004³⁵⁰ state that the complaint must be submitted to the Equality Body's office within twelve months from the date on which the complainant received notice of the activities or omissions for which he/she is applying to the Equality Body.³⁵¹ The 2004 amendment of this law renders this law applicable to the new mandate, duties and powers bestowed upon the Ombudsman by virtue of any law, on matters relating to gender equality, equality and enjoyment of human rights and freedoms irrespective of race, ethnic origin, community, language, colour, religion, political or other belief, special needs, age and sexual orientation.³⁵² It follows that the twelve month limitation applies also to the complaints submitted to the Ombudsman in its capacity as the national Equality Body, acting under the anti-discrimination legislation transposing the Race and the Employment Directives. Whether the employment relationship has ended or not at the time of submitting the complaint is immaterial, although the Equality Body, in the process of investigating a complaint, *will* take into account the surrounding circumstances of each case.³⁵³

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

³⁴⁷ Section 18 of Law No. 57(I) of 2004 (31.03.2004).

³⁴⁸ Elaborated in Section 6.5 here in below.

³⁴⁹ Hadjivasilis M. 2004, "40% of the Ombudsman's reports in the wastebin". Phileleftheros, 28.10.2004.

³⁵⁰ Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.

³⁵¹ Section 5(1) of Law N.1(I)/2000.

³⁵² Section 3(8) of Law N.36(I)/2004.

³⁵³ Interview with Elisa Savvides, Head of Equality Commission at the Ombudsman's office, dated 18.01.2006.

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

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

By far the cheapest and most effective procedure is the complaint to the Equality Body. All court actions entail costs and other necessities such as the need to instruct a lawyer if one is to have any chance to succeed against a generally speaking more powerful institution or employer, who are likely to be legally represented. There are also other deterrents in seeking redress in Court, such as strict time limits and complex procedures, the fact that legal procedures are generally slow, the difficult to secure witnesses willing to come and testify. Even the procedure before the Labour tribunals, originally designed to be informal and easy and accessible to ordinary working people is lengthy, complex and costly, although to a lesser extent than the normal courts are. The Equality Body will accept complaints submitted to it in English, however its website is only in Greek, with the Turkish and English version “under construction”. On its website, the electronic complaints submission form can be found in English but not in Turkish, which is an official language of the Republic. The Court will require all documents to be in Greek, although during the hearing an interpreter will be provided by the Court. However, in a recent case which is still pending before the Supreme Court, the court accepted the pleadings submitted by the Turkish Cypriot applicants in the Turkish language and instructed the Attorney General to serve pleadings to the applicants in Turkish.

Accessibility to buildings is also an issue to consider: the new premises of the Equality Body’s office are accessible by wheelchair but many of the Court buildings are not accessible to persons with disabilities and the legal documents are not made available by the Court in Braille language.

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

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

a) in support of a complainant

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

In the case of court action, the provision states that “employees’ organisations or other organisations” with legal standing or a legitimate interest can, with the consent of their affected members, act on their behalf.³⁵⁴ Similarly for discrimination on racial or ethnic grounds, “organisations or other legal personalities, which have as their constitutional aim the combating of discrimination on the ground racial or ethnic origin”, and with legal standing or

³⁵⁴Law N.58(I)/2004 Section 14 and Law N.57(I)/2004 Section 9Δ .

a legitimate interest can, with the consent of their affected members, act on their behalf.³⁵⁵ The provision on the legal standing of organisations acting on behalf of complainants applies in respect of all grounds covered by the relevant laws, being racial or ethnic origin, religion or belief, age, sexual orientation and disability.

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

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

The interpretation of Article 146(2) of the Constitution by the Supreme Court has restricted the right of recourse to physical and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives’ were not considered to have legitimate interest³⁵⁶ and the term “community” is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution.³⁵⁷ The Roma community of Cyprus has never received official recognition of its Roma identity; by virtue of their language and their Muslim religion, which were the criteria used to determine the “belonging” of all ethnic groups, they were deemed to belong to the Turkish community.³⁵⁸ The original test for an association to possess an “existing legitimate interest” was hard to satisfy, as it required that the specific administrative act ‘*directly affects*’ the whole or part of the membership, whereas if it only affects one member or if there are conflicting interests between members then the association has no legitimate interest.³⁵⁹

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

The Equality Body may investigate cases following applications by NGOs, chambers, organizations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.³⁶⁰

The new anti-discrimination laws do not make mention of the possibility of organisations representing more than one complainants at the same time. Law No. 58(I)/2004 transposing the employment Directive states, in Article 14, that organisations may, with their members’ permission, exercise the right to apply to the Courts or to the Equality Body on behalf of their members. The plural is used when referring to ‘members’ but it is not clear whether this enables class actions to be taken out by organisations in their members’ names. The

³⁵⁵ Law N.59(I)/2004, Section12.

³⁵⁶ Efthymios Ierodiakonou v. the Republic 3 RSCC 55-57.

³⁵⁷ Osman Saffet v. the Cyprus Palestine Plantations Co. Ltd and another 4 RSCC p.87, p.89.

³⁵⁸ The paradox of this practice is demonstrated by the fact that a small section of the Roma community which converted to Christianity was considered to belong to the Greek community.

³⁵⁹ The Police Association v. The Republic.

³⁶⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (article 12). The civil procedure rules make provision for class actions but only when these refer to the same subject-matter, in this case the same discriminatory treatment or act.

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

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

National law requires that in a civil procedure there is a shift of the burden of proof from the complainant to the respondent, once the complainant has established a prima facie case of discrimination was established. The respondent must then rebut the presumption of prima facie discrimination by disproving the allegations that no violation of the law occurred or that it had no adverse effect on the complainant.³⁶¹ For cases involving racial discrimination in fields other than employment and occupation, the law provides that should the respondent fail to rebut the presumption of discrimination, then the District Court considers that the breach has been established and the complainant is required to present on oath all relevant facts to assess the damages.³⁶²

The laws identify the different types of discrimination as defined by the Directives (direct and indirect discrimination, harassment instructions to discriminate).³⁶³ There are no other detailed criteria set so far specifically confined to these matters.

A new law which came into force in November 2006³⁶⁴ amends the 2004 law transposing (partly) Directive 2000/43/EC.³⁶⁵ The amendment, which was introduced in order to comply with a request from the European Commission, provides that the burden of proof is reversed not only in civil proceedings, as was the case with the 2004 law, but in “all judicial proceedings except criminal ones”. Moreover, under the 2004 law the claimant had to *prove* facts from which a violation could be inferred; this has now changed to a duty to merely *introduce* (rather than *prove*) such facts, upon which the burden of proof is automatically reversed. Finally, under the 2004 law, the accused was absolved from liability if he proved that his violation had no negative impact on the claimant; the new law removed this provision.

However, even with the above amendment, Article 8 of the Racial Equality Directive is still not transposed correctly, as the following problems continue to subsist:

- Article 8.1 of the Racial Equality Directive covers proceedings “before a court or other competent authority”. Law 59(I)/2004 (article 7.2), even after the amendment brought about by law 147(I)/2007, covers only judicial proceedings. As a result, the principle of the reversal of the burden of proof does not apply to proceedings before the Equality Body.

³⁶¹ Law N.58(I)/2004, Section 11; Law N.59(I)/2004, Section 7.

³⁶² Law N.59(I)/2004, Section 7.

³⁶³ Law N.58(I)/2004, Section 6; Law N.59(I)/2004, Section 5(2); Law N.57(I)/2004, Sections 3(a), 3(b).

³⁶⁴ Law amending the Equal Treatment (Racial or Ethnic origin) No. 147(I)/2006.

³⁶⁵ Law N. 59(I)/2004

- The employment component of Directive 2000/43/EC is not transposed by Law N. 59(I)/2004 (which is now amended) but by another law, namely the Law on Equal Treatment in Employment and Occupation N. 58(I)/2004. The Commission did not request a change of this law and no change was effected. As a result, Article 8 of the Race Directive is transposed only with regard to social protection, medical care, social advantages, education and access to goods and services
- No changes were effected in order to comply with Article 10 of Directive 2000/78/EC, even though the corresponding Cypriot laws³⁶⁶ contain the same provision on the burden of proof as did Law N. 59(I)/2004 prior to its amendment. As a result, a victim of discrimination has to *prove* facts from which a violation can be inferred instead of merely introduce them; the perpetrator is absolved from liability if his violation had no negative consequences on the victim; and the rule applies only to civil procedures and not to administrative ones.

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

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

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

Identical provisions against victimisation are to be found in all three laws recently enacted to transpose Directives 78/2000 and 43/2000. The said provisions prohibit any adverse treatment or consequence towards any person who files a complaint or is involved in a procedure aiming at implementing the principle of equal treatment.³⁶⁷ Therefore any person involved in the procedure in a capacity other than as a complainant (e.g. as a witness or as a lawyer or as a person helping a victim to present a complaint) is also covered by the protection against victimisation.

The Laws on the Commissioner for Administration 1991-2004³⁶⁸ provide a more detailed description of the scope of the protection against victimisation: “Anyone who refuses to employ, dismisses or threatens to dismiss from work, influences or threatens to influence, frightens or forces any other person or imposes any monetary or other punishment to any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Equality Body; (ii) has supplied or presented or intends to supply or submit any information or documents to the Equality Body; (iii) has testified or intends to testify before the Equality Body, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP300³⁶⁹ or to both penalties.”³⁷⁰ As stated

³⁶⁶ N. 57(I)/2004 and N. 59(I)/2004.

³⁶⁷ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004), Section 11; The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Section 10. The Law on Persons with Disabilities N. 57(I)/2004 (31.03.2004), Section 7, amending Section 9E of the basic law.

³⁶⁸ Laws N. 3/1991; N. 98(I)/1994; N.101(I)/1995; N.1(I)/2000; N.36(I)/2004.

³⁶⁹ Approximate Euro equivalent: 520 Euros.

above, the Laws on the Commissioner for Administration 1991-2004 are expressly stated to apply also to the new mandate, duties and powers bestowed upon the Equality Body under the new anti-discrimination laws.³⁷¹ I

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

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

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

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

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

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

Law 42(I)/2004 vests the Ombudsman with powers beyond those prescribed by the two EU Directives: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit³⁷² and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.³⁷³

³⁷⁰ Section 11(f) of Law No. 1(I)/2000.

³⁷¹ Section 3(8) of Law N.36(I)/2004.

³⁷² Which time limit shall not exceed 90 days from publication in the Official gazette (The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004), Section 28).

³⁷³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No.

The Equality Body is further empowered to impose small fines which cannot exceed CYP350 (approximate Euro:600) for discriminatory behaviour, treatment or practice; CYP250 (approximate Euro:430) for racial discrimination in the enjoyment of a right or freedom; CYP350 (approximate Euro:600) for non-compliance with the recommendation within the specified time limit; and CYP50 (approximate Euro: 85) daily for continuing non-compliance after the deadline set by the Equality Body.³⁷⁴ Generally speaking, the fines are very low and offer little deterrence to potential perpetrators.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.³⁷⁵ It is possible for the Equality Body to recommend school desegregation plans or the instigation of disciplinary proceedings against teachers or other persons guilty of discrimination; in practice, however, the Equality Body's recommendations hardly ever propose measures as drastic as that and there is a clear tendency towards 'diplomacy', evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed yet (except in a case involving gender discrimination).

All orders, fines and recommendations issued or imposed under this Law are subject to annulment³⁷⁶ by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest'.³⁷⁷ There is no requirement for special measures to be taken to ensure that persons with disabilities have access to the Equality Body and no such measures are taken for the time being.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues on his/her own right where the Ombudsman deems that any particular case that came to its attention may constitute a violation of the law.³⁷⁸ The Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. In fact, all cases investigated by the Equality Body

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

³⁷⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 18, 26(1).

³⁷⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

³⁷⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

³⁷⁷ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

³⁷⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

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

The findings and reports of the Equality Body must be communicated to the Attorney General of the Cyprus Republic who will, in turn advise on the adoption or not of appropriate legislative or administrative measures, taking into account the Republic's international law obligations and who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision. The findings of the Equality Body are also communicated to the House of the Representatives.

Under Law N.59 (I)/2004, the competent courts to try discrimination cases at first instance are the District Courts.³⁷⁹ Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,³⁸⁰ appeal to the Supreme Court of Cyprus. The same law also provides for the complainant's right to lodge a complaint to the Equality Body.³⁸¹

Under law 59(I)/2004 (transposing the Race Directive) the penalty to be issued by the Court against a physical person found to be guilty, is a maximum of CYP4.000 (approximate Euro: 6.900) and/or imprisonment of up to six months. For legal persons the maximum is CYP7.000 (approximate Euro 12.000). An offence committed under the same law out of gross negligence carries a penalty of up to CYP2000 for physical persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2.000 (approximate Euro 3.500); for legal persons, there is a fine of up to CYP2.000 (approximate Euro 3.500) for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was committed with his/her consent plus an additional fine of up to CYP4.000 (approximate Euro: 6.900) for the company or organisation.³⁸²

Under law 58(I)/2004 (transposing the Employment Directive) the penalties are identical to those provided for the law transposing the Race Directive.³⁸³ Same applies to procedures and penalties under Law N.57 (I)/2004 on persons with disabilities.³⁸⁴

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

³⁷⁹ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 8(1).

³⁸⁰ The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts

³⁸¹ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 9.

³⁸² The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 13.

³⁸³ The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 15.

³⁸⁴ Law on Persons with Disabilities N. 57(I)/2004 Section 6, amending Section 9 of the basic law.

conformity with a recommendation of the Committee for the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, such as incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services. The scope of this latter provision³⁸⁵ is stated to extend to goods or services supplied by a person in the course of his/her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training.

As a result of these amendments, it is no longer necessary that the incitement to racial hatred is intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence it is no longer necessary that race be the sole ground of discrimination³⁸⁶. The section referring to the refusal to provide goods and services has resulted in at least one conviction³⁸⁷. Under the Criminal Code (Cap.154) a number of discriminatory acts are punishable offences, such as s.47 (publication³⁸⁸ with a seditious intention), s.48 (“intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic”³⁸⁹), 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”³⁹⁰).

The law ratifying the Additional Protocol to the Convention on Cyber crime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems³⁹¹ also creates a number of criminal offences, each of which is punishable with a prison sentence of up to five years and/or a fine of up to CYP20.000 (approximately 34.500 euros):

- (a). Article 4 criminalises the dissemination of racist and xenophobic material through a computer system.
- (b). Article 5 criminalises racially and xenophobically motivated threat disseminated through a computer system.

³⁸⁵ Article 2A(4) of Law 28(III)1999.

³⁸⁶ Section 2A (4) “Any person who supplies goods or services by profession and refuses such supply to another by reason of his racial or ethnic origin or his religion, or who makes such supply subject to a condition relating to the racial or ethnic origin or to the religion of a person is guilty of an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding four hundred pounds or to both such punishments” [about 6700 euro].

³⁸⁷ In criminal case No. 31330/99 dated 12 December 2001 where the accused was actually convicted and a term of imprisonment was imposed.

³⁸⁸ 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.”

³⁸⁹ This is deemed to be seditious intention for the purposes of the above offence under s. 47.

³⁹⁰ A person who commits any of those acts is “guilty of a misdemeanour and is liable to imprisonment for twelve months or to a fine of one thousand pounds or to both such penalties and, if a body corporate, to a fine of three thousand pounds”. [1000 pounds is 1700 euro; 3000 pounds is 5000 euro]

³⁹¹ The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.

- (c). Article 6 criminalises racist and xenophobic motivated insult.
- (d). Article 7 of criminalises the denial, gross minimisation, approval or justification of genocide or crimes against humanity.
- (e) Article 8 criminalises the aiding and abetting of any of the crimes provided for in Articles 4-7 of the law.

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

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

No.

c) Is there any information available concerning:

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

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

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

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

7. SPECIALISED BODIES

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

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

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

Yes. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law³⁹² appoints the Commissioner for Administration (also referred to as the Ombudsman), as the specialised Equality Body. Under this law, two separate authorities are set up within the Ombudsman's office: the Equality Authority and the Anti-discrimination authority, dealing respectively with employment issues and with discrimination issues arising under the Racial Equality Directive. In this report, for ease of reference, both authorities are referred to as the Equality Body. Oddly enough the Equality Body itself seems to question its own jurisdiction to make binding decisions as required by the Directive, when she asserts in her communication to the Commission regarding the current report that Equality Body "decisions are not binding per se." If this is the interpretation of the law, then Cypriot law is not in compliance with the Directive.

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

The Ombudsman, which is Cyprus' national Equality Body, is appointed by the President of the Republic for a fixed term of office which is six years, following a recommendation by the Council of Ministers and with the prior written agreement of the majority of the House of Parliament.³⁹³ The Ombudsman can only be dismissed, during the term of his/her service, in the same way as Supreme Court judges are dismissed.³⁹⁴ According to the Cyprus Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until he/she reaches the age of sixty-eight³⁹⁵ and may only "be retired"³⁹⁶ due to such mental or physical incapacity or infirmity as would render him incapable of discharging his duties, or may be dismissed on the ground of misconduct.³⁹⁷

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

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

The Equality Body is vested with the power to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin³⁹⁸; (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus

³⁹² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

³⁹³ The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(1).

³⁹⁴ The Commissioner for Administration Laws 1991-2004 (N.3/1991, N.98(I)/1994, N.101(I)/1995, N.1(I)/2000, N.36(I)/2004) section 3(7).

³⁹⁵ Article 7(1) of the Cyprus Constitution.

³⁹⁶ This is the term used in the official translation of the Cyprus Constitution. Presumably, it means "be obliged to retire".

³⁹⁷ Articles 7(3) and 7(4) of the Cyprus Constitution, respectively.

³⁹⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3.(1).(a), Part I..

and referred to explicitly in the Law³⁹⁹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁴⁰⁰ and (iii) promote equality of opportunity irrespective of grounds listed in the preceding section (to which the grounds of special needs⁴⁰¹ and sexual orientation are added) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Its mandate covers all five grounds of the two anti-discrimination Directives but extends even further to include gender, nationality, community as well as rights and freedoms contained in the Cyprus Constitution and in international conventions ratified by the Republic of Cyprus.

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

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

The Equality Body may carry out independent investigations into various issues⁴⁰² on its own right where it deems that any particular case may constitute a violation of the law.⁴⁰³ The Equality Body may also issue Codes of Good Practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.⁴⁰⁴

The Equality Body has the duty to make recommendations to the competent Minister, the parliament and affected groups of persons on, inter alia, the amendment of any legal provision or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right⁴⁰⁵ or following a specific complaint to that effect referred to the Equality Body.⁴⁰⁶ In addition, the law casts an

³⁹⁹ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

⁴⁰⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1).(b), Part I.

⁴⁰¹ 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including mental disabilities. In Cyprus, the term 'disability' is not understood to include mental disability which is considered to be a special category requiring more sensitive treatment.

⁴⁰² E.g. Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31.05.2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26.05.2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 02.02.2005.

⁴⁰³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

⁴⁰⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 40, 41 and 42, Part VI.

⁴⁰⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 35(1)(d).

⁴⁰⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No.

obligation on the Equality Body to communicate its findings and reports to the Attorney General who will, in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures and prepare legislation for the abolition or substitution of the legislative provision which is contrary to the anti-discrimination law.⁴⁰⁷ However, there is some ambiguity in the law as to the procedure of repealing laws which are contrary to the anti-discrimination legislation.

The Equality Body can make binding recommendations⁴⁰⁸ ordering the guilty party to take steps to rectify the discrimination, for instance in the form of ordering the provision of goods and services which had been denied to the victim, including housing, education, health care⁴⁰⁹ and in the form of requesting the discontinuation of a certain practice that causes discrimination.⁴¹⁰ Although the total of these recommendations could potentially form part of a comprehensive code of conduct, the Equality Body has not as yet proceeded to the compilation of such a multi-purpose document, limiting its activity within the area of investigating particular issues. At the beginning of 2006, the Equality Body contracted an external firm which carried out an opinion survey into public attitudes on homosexuality. The results, which were presented in a special event organised by the Equality Body and given press publicity, showed highly increased levels of intolerance towards homosexuals. However, the Equality Body did not yet proceed to the issue of such a code (although a code of conduct for sexual harassment is under preparation).

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

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

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

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

f) Is the work undertaken independently?

42(1)/ 2004 (19.03.2004), Section 36(1)(b).

⁴⁰⁷The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 39(1).

⁴⁰⁸This applies only to the Cyprus Ant-discrimination Body and the Equality Body operating from within the Ombudsman's office and not to the other tasks and powers of the Ombudsman.

⁴⁰⁹The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, section 16(2).

⁴¹⁰The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004, section 21(1)(c).

Yes. Investigations are carried out by the officers of the Equality Body. For details regarding the number of complaints received and processed in 2004 and 2005, please see Report on Measures to Combat Discrimination – Cyprus Country Report Update 2005.⁴¹¹

There are certain weaknesses to the present framework which affect its overall effectiveness. The two major weaknesses have to do, on the one hand with the reluctance on the part of the government to approve and/or give sufficient funds to the Equality Body's office in order to make adequate staffing arrangements so as to cope with the additional duties bestowed upon it by the new legislation, and on the other hand with the fact that little or no measures have been taken in order to bring to the attention of vulnerable groups (members of the Turkish Cypriot community, the Roma, the Pontians, migrant workers and asylum seekers, persons with disabilities, gays and lesbians, religious groups) the new legal developments and the new complaint procedures open to them. Both weaknesses must be accounted to the lack of funding which the Equality Body is suffering from, another manifestation of which is the fact that no annual report has yet been issued by either of the two authorities making up the Equality Body. It is particularly notable that although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. As a result, very few complaints have been received by the Equality Body's office from Turkish-Cypriots, even though since the partial lifting of the restrictions in movements in April 2003, there are several thousands Turkish-Cypriots seeking employment and access to public services in the south. A decision of the Equality Body dated 31.05.2006 in response to a complaint submitted on 28.07.2004, found that the non-translation into Turkish of the Cyprus Government Official Gazette was not discriminatory, as the obligation to use the Turkish language in public documents, set out in Article 3(1) of the Constitution, was one of the provisions suspended by the 'law of necessity', despite the acknowledgement that discrimination against Turkish-Cypriots does seem to exist at the level of access to public services.

In addition to its duties as the specialised anti-discrimination body, the Equality Body, in its capacity as Ombudsman, is vested with the power to investigate complaints against the public service and its public officers, including the Police and the National Guard which expressly covers investigation into complaints that acts or omissions violate human rights, and thus examines complaints as to racial or other related forms of discrimination and intolerance. A Report⁴¹² prepared in relation to each particular case investigated, including cases of racial or other related forms of discrimination and intolerance, is submitted by the Ombudsman to the authority that is responsible for the public service or public officer concerned, and a copy is sent to the complainant. In the event that the Ombudsman concludes in this Report that the complainant has suffered some injury or injustice, the Report also contains the Ombudsman's suggestions or recommendations to the competent authority concerned for reparation of the injury or injustice, specifying at his/her discretion the time within which such reparation must take place. If the competent authority fails to give effect to a suggestion or recommendation for reparation, the Ombudsman may make reference to this, by a special report submitted to the House of Representatives and the Council of Ministers. The recommendations of the Ombudsman are persuasive, not binding, but the Ombudsman has proved to be the most

411 http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

412 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.

effective body so far in dealing with questions of racial, gender, age and other grounds of discrimination.

8. IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

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

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

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

(i). Initiatives of the Equality Body

a) 4 awareness raising seminars covering the following subjects: “The implementation of the principle of equality in employment. Directive 2000/78 (18.01.2005); Racism and Media (21.03. 2005); Racism and the challenge for Diversity (11.04.2005); Racism and Civilization (14.11.2005)

b) A Training Seminar in the Police Academy, concerning the importance of data collection, by the police, on racially motivated crime (Date: November 21st, 2005)

c) A Media campaign, which included (i) announcements in a Radio station and (ii) placement of announcements as well as awareness raising messages in local Newspapers

d) Publication of Information Leaflets informing the public about the anti discrimination legislation and the functions and the responsibilities of the Equality Body. The leaflets were published in 3 different languages, Greek, English and Turkish.

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

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

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

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

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

A number of other seminars had also been organised in 2003, including an awareness-raising Seminar on the two non-discrimination Directives, organized by the House of Representatives in which all key actors involved on the issue (Governmental and non-governmental sectors etc.) participated and had the opportunity within the framework of three workshops to express their views, to submit their suggestions and to identify needs for further activities/measures to be taken to prevent and combat racism at domestic level. A similar awareness-raising Seminar on the two Directives on non-discrimination, organised by the Ministry of Justice and Public Order and the European Commission, took place in 26 June 2003.⁴¹³

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

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

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

On the question of disability, a process of consultation with the Confederation of Organisations of Persons with Disabilities has taken place.

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

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

⁴¹³ During this Seminar, three experts from EU countries were invited in order to explain/discuss the provisions of the two Council Directives as well as their implementation with all key actors involved in discrimination issues.

The existing constitutional practice is such that any law or regulation contrary to the principle of equal treatment, as guaranteed by Article 28 of the Constitution, and the human rights sections of the constitution, is unconstitutional, as the principle underlies all relevant laws. Therefore, it is considered to be null and void and of no legal effect. However, in order to trigger this provision, an application must be filed in court, demanding the law to be declared unconstitutional.

The equality provisions contained in the international treaties, signed and ratified by the Republic, take precedence over any municipal law and therefore override any provisions that are contrary to the principle of equal treatment. Also, by virtue of a recent amendment of the Constitution, all EU Directives and regulations are deemed to take precedence over all domestic legislation including the Constitution itself.

The law on Equal Treatment (gender, disability and minority anti-discrimination) provides for the repealing of any contrary provisions; even though, under the doctrine of implied repeal, these would not normally prevail over the latest laws where there is a conflict.

The mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended is that provided for the functioning of the Equality Body. In spite of the explicit general repeal of all contrary laws, collective agreements, contracts or rules etc there is little screening as such on each and every law, collective agreements, contract or rule, unless a specific complaint is submitted on this matter.

b) Are any laws, regulations or rules contrary to the principle of equality still in force?

Yes there are some. In most cases examined by the Equality Body, where a decision was made that a certain law or regulation was contrary to the anti-discrimination laws and should therefore be repealed, no action was taken by the Attorney General's office. There are also those cases where no complaint was submitted and thus no decision of the Equality Body was issued for the need to repeal the discriminatory provisions.

9. OVERVIEW

Cypriot society today offers a constantly changing picture due to various factors. These include its EU accession; the lifting of the restrictions in movement that have brought about the relocation, in terms of residence and mainly employment, of many Turkish-Cypriots to the south; the increase in numbers of migrant workers and the even larger increase in numbers of asylum seekers.

These changes had a serious impact on the issue of discrimination in employment, education, housing, racial violence, access to goods and services, healthcare and social security to varying degrees. New legislation has come into force to deal with these issues, but it is too soon to say to what extent these new regulations have actually alleviated the problem. Further public awareness must be pursued, particularly among the vulnerable groups, to enable them to utilise these procedures. In addition, in order to make these new procedures more readily available to the affected groups, several obstacles must be addressed, such as the legal costs which are often prohibitive for many vulnerable groups as well as the risk of victimization which, in the cases of migrants, often takes the form of deportation.

There is, at the same time, an increasing rate of civil society initiatives to help raise public awareness and to take direct action on discrimination cases but NGOs have to struggle against

a difficult backdrop of homophobia and increasing nationalism and xenophobia. The participation of NGOs in all processes must be further encouraged and enhanced if discrimination issues against vulnerable groups are to be effectively addressed.

The increasing numbers of asylum seekers during 2004 and 2005 introduced a new category of vulnerable persons in Cyprus who are adversely affected by policies and practices and police heavy-handedness⁴¹⁴ aimed at reducing the number of asylum seekers in some cases; in others it is the result of heavy workload on the part of governmental departments involved which are understaffed and unprepared for this sharp rise in numbers.

The Ombudsman's Annual Reports for 2004 and 2005 criticise the practices and the low compliance rate of the Aliens and Immigration Office of the Interior Ministry, particularly with reference to the issue of deportation of migrants. The said department has also been criticised by members of parliament, by NGOs and by most of the print media that it has stepped up deportations in view of the forthcoming enactment of a law transposing Directive 2003/109/EC on long terms resident status of migrants. Discussion on the bill is still in progress at the time of writing, with the government receiving considerable criticism from MPs and NGOs for the delay in producing the bill and in making the necessary changes, for not consulting NGOs in the process of drafting,⁴¹⁵ for stepping up deportations of persons who might otherwise be entitled to long term status⁴¹⁶ and for introducing conditions that make it nearly impossible for any migrant to be entitled to this status.⁴¹⁷

Throughout 2004 till 2006, the police had the lowest record of compliance with the Equality Body's decisions.⁴¹⁸ In statements to the press, the Equality Body often complains of the low compliance record of the police.⁴¹⁹ A law setting up an independent authority to investigate allegations of police misconduct⁴²⁰ entered into force on 17.02.2006. The authority is run by a five-member board made up of persons with "recognised prestige and moral standing", of whom at least two must have legal background, and one is a senior former police officer, a provision that has attracted criticism from ECRI,⁴²¹ the Ombudswoman and NGOs. Each year the Committee will publish a report on its activities and make suggestions which will be

⁴¹⁴ A number of Equality Body reports condemn incidents of violence used by the police against asylum seekers in order to convince them to withdraw their asylum applications.

⁴¹⁵ Hazou, E. (2006) "Immigration blames staff shortages for new law delay" in: *The Cyprus Mail*, (05.07.2006).

⁴¹⁶ Hadjivasilis, M. (2006) "Proeidopoiisi gia ta dikaiomata ton Evropeon" in *Phileleftheros*, (26.09.2006); Theodoulou, J. (2006) "New delay to immigration bill", in: *The Cyprus Mail*, (04.07.2006); Saoulli, A. (2006) "Countdown to EU migrant law crackdown" in: *The Cyprus Mail* (22.01.2006).

⁴¹⁷ Vasiliou, V. (2006) "Kypropoiisan kai odigia tis E.E.", in: *Phileleftheros*, (12.09.2006).

⁴¹⁸ In October 2004, the Ombudsman Eliana Nicolaou presented a report to a Committee of the House of Parliament, where she criticized the police as having the lowest rate of compliance with her decision (reported in Hadjivasilis, M. (2004) "Ston kalatho ta 40% ton ektheseon tis Epitropou" in *Phileleftheros* (28.10.2004).

⁴¹⁹ Evaggelou, M. (2005) "Kleinei ta aftia stin Epitropo I Astynomia" in *Politis* (11.08.2005), p.3.

⁴²⁰ The Independent Authority for the Investigation of Complaints and Allegations (Concerning the Police) Law 9 (1)/2006.

⁴²¹ Third ECRI Report on Cyprus, adopted on 16.12.2005, Strasbourg 16.05.2006, Council of Europe, p. 28.

tabled at the Council of Ministers. For the time being, however, no decisions have been issued by this body, no efforts have been made to disseminate the information about this new procedure to vulnerable groups, such as migrants and ethnic communities and no material has been published on it in any language.

The Attorney General's office has explained the decision to set up this body⁴²² as an effort to enable criminal proceedings to be instigated by the Attorney General's office, arguing that in order for such proceedings to be commenced, the investigation carried out by the Equality Body will not suffice, as the law requires the investigation preceding the criminal procedure to have been carried out upon the instructions of the Attorney General. This move has raised concerns that, instead of strengthening the institution of the Equality Body by granting to it powers to conduct investigations which can lead to criminal prosecutions, the institution is being undermined, by transferring part of its mandate to the police.

For the first time in decades, in 2005 least three incidents of violence against Turkish-Cypriots were reported by the media,⁴²³ all three of which led to criminal prosecutions but not to any conviction. In two out of the three cases⁴²⁴, the accused was the same person, who also declared himself to be a member of the Greek neo-fascist organisation Chrysi Avgi ("Golden Dawn").⁴²⁵ He was acquitted by the court on the ground that the prosecution failed to prove its case beyond reasonable ground and that any actions of the accused were self-defence.⁴²⁶ The incidents and the acquittal that followed have raised concerns that acts inciting ethnic hatred are not effectively dealt with and the activities of Chrysi Avgi in Cyprus are not properly monitored and addressed. More incidents of violence against Turkish-Cypriots were recorded in 2006, with the violent attack against the English school pupils being the most prominent. The Attorney General has brought charges against the perpetrators of this attack but none of these relate to offences involving a racist motive. Incidents of racial violence against migrants are also regularly reported by NGOs and by the media; however, the system maintained by the police for recording racially motivated incidents has only recorded three of such incidents for the whole of 2005. The recording system suffered from technical problems for most part of 2006 as well, to the effect that no data is available for this year.

Special mention must be made of the constitutional provisions which set out quotas of participation for the two communities in Cyprus, the Greek-Cypriots and Turkish-Cypriots, in all major sectors: the army, the police, the House of Representatives, the Courts and the civil service. This quota arrangement may prima facie appear incompatible with the equality principle expounded in the two Directives. However it must be juxtaposed with the fact that the quota provisions are designed to provide for a wide scope of community autonomy so to create a consociational system of power-sharing, forming part of a democratic system of governance by securing the participation of two politically equal communities. As such, these provisions may be viewed in light of the two exceptions provided in the two Directives in respect of occupational requirements. Overall, there is an ongoing problem with the resulting

⁴²² In their letter to the national expert dated 12.10.2005.

⁴²³ Kalatzis, M. (2005) "Xespasan anev logou se Tourkokyprio" in *Politis* (30.09.2005), p.22; Nearchou J. (2005) "Katathese o Tourkokyprios: Anagnorise ton Chrysavgiti" in *Politis* (21.09.2005), p.21; Nearchou J. (2005) "Katigoreitai oti ktypise Tourkokyprious- Se apologia o Chrysavgitis" in *Politis* (05.10.2005), p.22.

⁴²⁴ The third case was still pending at the time of writing this report.

⁴²⁵ Chrysi Avgi was described by the major political parties in Cyprus as "Nazi", "racist", "fascist", as reported in Psyllides, G. (2005) "Ultra-nationalist group in the dock after Turkish Cypriot beaten" in *The Cyprus Mail*, (02.08.2005). Its symbol is based on the Nazi swastika.

⁴²⁶ Kalatzis, M. (2005) "Athoothike o Chrysavgitis" in *Politis*, (05.11.2005), p.47.

different treatment of Turkish-Cypriots due to provisions made under the ‘doctrine of necessity’ and other measures introduced to deal with the situation that resulted from the invasion, occupation and division of the island. It appears that many of these measures result in discrimination on the grounds of ‘racial’ or ethnic origin and possibly religious belief. Such examples include the right of enjoyment of their ‘abandoned’ properties, the ongoing indirect discrimination due to language as no public documents and signs are available in Turkish and the right to access to certain provision that require a valid address in the area under the control of the Republic, which is again indirect discrimination against Turkish-Cypriots.

In the field of disability, a number of decisions by the Equality Body in response to complaints submitted by persons with disability are gradually building up a new regime whereby persons with disabilities are claiming their rights and some obstacles in their social integration are starting to be removed. The newly established national branch of the European “Advocates and Activists” program is expected to bring significant developments in this field.

In the field of employment, following a number of Equality Body decisions addressing the issue of maximum age limits in advertised posts, it is expected that age will no longer constitute an obstacle for persons applying for jobs. Whether this will mean that more older people will be gaining access to employment remains to be seen.

Sexual orientation continues to be the reason for many persons’ exclusion from the labour market, with homosexuality being a taboo that has not as yet been addressed. Gay people themselves find it hard to come forward and claim their rights, for fear of social contempt.

10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the newly enacted legislation. Several ministries are involved depending on the issue at stake: the Ministry of Labour and Social Insurance deals with issues such as employment and social insurance benefits; the Ministry of Justice and Public Order deals with issues of legislation drafting and interpretation; the Ministry of Education and the Ministry of the Interior with their respective competencies.

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Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country CYPRUS

Date 23.01.2006

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
<i>This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.</i>	<i>Please give month / year</i>			<i>e.g. public employment, private employment, access to goods or services</i>	<i>e.g. prohibition of direct and indirect discrimination or creation of a specialised body</i>
<u>The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004</u>	19.3.2004	race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation.	civil	Combating of racist discrimination and of discrimination forbidden by law; promotion of equality of the enjoyment of rights and freedoms safeguarded by the Constitution or by the Conventions ratified by Cyprus; and promote equality of opportunity in the areas of employment, access to vocational training, working	<i>Creation of specialized body</i>

				conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.	
The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004	01.05.2004	Racial and ethnic origin religion or belief, age, sexual orientation	civil	conditions of access to employment, access to vocational orientation and training, working conditions and terms of employment and membership to trade unions	Discrimination in the workplace
The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004	01.05.2004	Racial and ethnic origin	civil	social protection, medical and medicinal care, social provisions, education, and access to goods and services including housing	Direct and indirect discrimination based on racial and ethnic origin
Law on Persons with Disabilities (Amendment) No. 57(I)/2004	01.05.2004	disability	civil	Public and private employment	Direct and indirect discrimination based on disability

The Cyprus Constitution	1960	community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever	administrative	Only the public sector	Declaration of rights
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ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country **Cyprus**

Date 23.01.2006

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention of Human Rights	Yes	Yes	None	Yes	Yes
Protocol 12, ECHR	Yes	Yes	None	Yes	Yes
Revised European Social Charter	Yes	Yes	None	Ratified collective complaints protocol? YES	Yes
International Covenant on Civil and Political Rights	Yes	Yes	None	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes	Yes			Yes
International Convention on Economic, Social and Cultural Rights	Yes	Yes	None	Yes	Yes
Convention on the Elimination of All Forms of Racial	Yes	Yes	None	Yes	Yes

Discrimination					
Convention on the Elimination of Discrimination Against Women	Yes	Yes	None	Yes	Yes
ILO Convention No. 111 on Discrimination	Yes	Yes	None	Yes	Yes
Convention on the Rights of the Child	Yes	Yes	None	Yes	Yes