Executive Summary
Cyprus 2007 country report on measures to combat discrimination
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1. Introduction

Cyprus was granted independence in 1960 with a Constitution that set out a power-sharing system, strictly communally divided between the 'Greeks' and the 'Turks'. The Constitution recognises two 'communities', the Greeks and three 'religious groups', the Maronites, the Armenians and the Latins. The 'religious groups' were obliged to opt to belong to one of the 'communities' and opted to belong to the Greek community. The Roma community of Cyprus was not invited to opt but was deemed by the authorities to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim) with the Turkish Cypriots.

The above legal order remained in place until 1963, when the Greek-Cypriot President proposed 13 amendments to the Constitution, effectively taking away some of the rights of the Turkish-Cypriots. The Turkish-Cypriots reacted by withdrawing from the Government in protest and inter-ethnic violence ensued between 1963 and 1967; since then, the administration of the Republic has been carried out by the Greek-Cypriots. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the 'doctrine of necessity' which mainly provides for the 'suspension' of those constitutional provisions that guaranteed the rights of Turkish-Cypriots to be represented in decision-making. Although an official language of the Republic, Turkish seized to be used from 1963 onwards and Greek became the only language of the state. Between 1963 and 1974, a large number of Turkish-Cypriots gradually vacated their villages and moved into enclaves, to escape from inter-communal violence. Cypriot society was forcefully divided further in 1974, following the military interventions from Greece and Turkey. The three 'religious groups' stayed in the south with the Greek-Cypriots and the Roma joined the Turkish-Cypriots in the north, until early 2000, when many of them returned to the south and settled in specifically designated Roma settlements, renowned for their squalor, poverty and lack of basic hygiene. The housing segregation inevitably led to the schooling segregation of Roma children, who have no choice but to attend those schools which are close to their residence. The only measure introduced by the government aiming at integrating the Roma is the introduction of the teaching of Turkish language in one of the schools where a large number of Roma pupils attend, but there are no classes on Roma history and culture. Expert reports show discrimination against Turkish speaking pupils in general and against the Roma in particular.

In April 2003 a partial lifting of the ban in freedom of movement allowed several thousands of Turkish-Cypriots to cross the dividing line from north to south on a daily basis to work, to access public services or just to visit. This has resulted in a novel situation, which opens up the possibility for on-going discrimination against Turkish Cypriots on the ground of language as well as ethnic origin in the field of access to public services, employment and housing, resulting from the non-use of the Turkish language in, inter alia, official state documents and from the suspension of other constitutional rights of the Turkish Cypriots, such as the right to their properties.

An ECtHR decision pursuant to a successful application from a Turkish Cypriot ruled that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality; this principle, however, was not consistently followed either by the Courts in Cyprus or by the equality body, as both have issued decisions upholding the 'doctrine of necessity' as legal justification for the suspension of the constitutional rights of the Turkish Cypriots.

Anti-discrimination is not a priority issue for the government, whose measures are limited to only a handful of one-off awareness raising events. It is not a priority for civil society either, with the exception of a few NGOs who are usually vulnerable groups themselves. There are no NGOs for the rights of the Turkish Cypriots or the Roma and only 2-3 NGOs for the rights of migrants and asylum seekers. By far the most organised of all anti-discrimination NGOs are those dealing with disability, whose actions are coordinated by a national confederation, recently afforded the status of a social partner, who regularly make use of the procedure before the equality body. There is only one gay rights NGO, with only one or two of its members being 'out of the closet' to fight openly for gay rights. Discrimination on the ground of sexual orientation is widespread amongst Cypriot society, despite decriminalisation of homosexuality since 2000, to the effect that homosexuals make little or no use of the rights and the procedures created under Directive 2000/78; only one complaint has so far been submitted to the equality body alleging discrimination on the ground of sexual orientation, and that was done by a non-Cypriot. An opinion survey carried out for the Equality Body in early 2006 revealed very high levels of prejudice amongst Cypriot society against homosexuals; unfortunately the momentum was not seized by the equality Body to create a code of conduct aimed at eradicating prejudice against homosexuals. In recent years, Cyprus has seen the emergence of anti-immigrant organisations and ultra nationalist groups using Nazi symbols that have on a number of occasions used violence against Turkish Cypriots.

Dialogue between policy makers and NGOs and/or social partners remains at low levels and is inexistent in most fields. During the year 2007, a consultation NGO group was set up by the Justice Ministry for coordinating preparatory actions for the European Year for Equal Opportunities 2007, but this concerned mostly the allocation of funding for events under the Year. The events organised were mostly one-off general awareness raising and/or of a 'celebratory' character, with little sustainability element. The group was dissolved at the expiration of the Year.

2. Main legislation

The Cypriot Constitution contains a general anti-discrimination provision which corresponds to Article 14 of the European Convention on Human Rights (ECHR), but includes additionally the ground of belonging to either the 'Greek' or the 'Turkish' community. Age, disability and sexual orientation are not covered by the Constitution. The Constitution does not recognise any groups as 'national minorities'. It recognises only two 'communities' (the Greek and the Turkish) and three 'religious groups' (the Latins, the Maronites and the Armenians). The stay of migrants is considered to be too short-term and precarious to be afforded the status of a 'minority'. In practice this means that the Framework Convention for the Protection of National Minorities, although ratified, has no applicability in Cyprus. Cyprus has also ratified most major international conventions on discrimination.

In 2000 the basic disability law came into force which included the prohibition of discrimination. Until 2004, the grounds of sexual orientation and age were not covered by any law. In 2004 the two anti-discrimination Directives were transposed into four separate national laws:

i) a law amending the existing disability law in order to bring it in line with Directive 2000/78;
ii) a law rendering discrimination in employment unlawful, roughly transposing Directive 2000/78, but on four instead of five grounds (i.e. excluding disability since this is dealt with by a separate law);
iii) a law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment which is covered by the aforesaid law); and
iv) the law appointing the Ombudsman as the equality body empowered to investigate complaints of discrimination in accordance with article 13 of Directive 2000/43, the mandate of which goes well beyond the minimum prescribed by the said Directive (please see section 6 below for more details).

Although there are several Equality Body decisions based on the 2004 anti-discrimination legislation, there is no court decision yet, evidencing at least partly the low degree of awareness of the legal profession into the new possibilities for victims of discrimination which have opened up with the adoption of these laws. The cost and length of time required in litigation can also explain the fact that it is not used so much by victims of discrimination. The legal aid legislation requires that legal aid be made available only in criminal and civil proceedings and not in administrative ones. Also, the scope of the legal aid law is restricted to offences punishable with imprisonment of at least a year; and as the maximum term of imprisonment provided in the anti-discrimination laws does not exceed six months, then no legal aid is available for discrimination. In spite of a recent court decision rendering this particular provision of the legal aid law unconstitutional, the law currently remains as is.

In July 2006, pursuant to the Cypriot government's obligation to give supremacy to EU regulations and directives, the Cypriot Constitution was amended to give supremacy to EU laws. Until then, the Constitution was the supreme law of the country. Prior to this development, 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, although there have been court decisions after this constitutional amendment which rejected applications by persons with disabilities for priority in employment on the reasoning that they violate the principle of equality.

Current practice indicates that the duty to ensure that discriminatory laws, contractual provision or internal rules of organisations have been explicitly repealed, as required by article 16 of Directive 2000/78, and article 14 of Directive 43/200, is not been fully complied with.

The process of formal repeal of laws or regulations which do not comply with the Directives is somehow 'triggered off' only after a complaint is submitted to the equality body, in other words there is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives. However, even where the equality body finds that a certain law or regulation violates the Directives, the procedure for repealing them, which is for the equality body to refer them to the Attorney General who will then inform the competent Minister and prepare the amending legislation, has proved inadequate.

None of the laws or regulation referred to the Attorney General by the equality body has been repealed. As a result we have a situation where a number of discriminatory laws and regulations against which a decision of the equality body has been issued, continue to remain in force.

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 Systems 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. No case has been brought to court under this law yet. Generally speaking, the authorities are reluctant to prosecute persons for offences related to racism or xenophobia, even where the motive of the attack is undoubtedly racist.

3. Main principles and definitions

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

Indirect discrimination also copies verbatim the wording of Directives, as an apparently neutral provision, criterion or practice which would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment is defined as 'unwanted conduct related to any of the [recognised] … grounds … with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'. Instructions to discriminate and victimisation, also prohibited on all five grounds, again follow verbatim the definition of the Directives.

The laws transposing Directive 2000/78 allows for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the particular occupational activities or the context within which these are carried out is such that a specific characteristic constitutes a substantial and determining employment precondition, provided that the aim is legitimate and the requirement proportionate. With regard to age, these provisions do not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and the duties of the occupation.

In the case of occupational activities of churches or other public or private 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 the context of these activities, religion or belief is a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.

The scope of the Law on Persons with Disabilities excludes activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability does not have, constitutes a substantial and determining precondition, provided the aim is legitimate and the precondition is proportionate, taking into consideration the possibility of adopting 'reasonable measures', within the meaning which these take in this law. Also the same law does not apply to the armed forces, to the extent that the nature of the occupation is such that it requires special skills which cannot be exercised by persons with disabilities.

The disability law was amended in 2007 to impose an obligation on employers to provide reasonable accommodation so long as the burden on the employer is not disproportionate. In addition to that provision, the law provides for the duty to adopt 'reasonable measures' to the extent and where the local economic and other circumstances allow. These measures are not restricted to the work place but cover also: basic rights (right to independent living, diagnosis and prevention of disability, personal support with assistive equipment, services etc, accessibility to housing, buildings, streets, the environment, public means of transport, etc, education, information and communication through special means, services for social and economic integration, vocational training, employment in the open market, etc); supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services; and telecommunications. The duty to adopt 'reasonable measures' is so widely phrased that it falls short from creating a mandatory regime. The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. However, a person who without due cause commits or omits an act which amounts to discrimination against a person with a disability is guilty of an offence and liable to a fine and/or to a prison sentence, none of which has ever been imposed so far.

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

4. Material scope

The scope of the anti-discrimination laws covers both the private and the public sector and includes all fields provided in the Directives. Thus, discrimination on all five grounds is forbidden in employment, access to vocational training, working conditions including pay, membership of trade unions or other associations.

In addition, discrimination on the ground of racial/ethnic origin is forbidden in the field of social protection, medical care, social provision, education and access to goods and services available to the public including housing. Subject to conditions, the disability law provides for the right to equal treatment in the provision of goods, facilities and services. The mandate of the equality body, however, goes well beyond the two Directives and includes the right to promote equality of opportunity in all the fields provided in the two Directives, on all five grounds plus some additional ones grounds (please see section 6 below).

5. Enforcing the law

Victims have the option of submitting a complaint to the equality body or to the courts. Litigation could either be in the field of administrative law, via recourse to the Supreme Court to set aside an administrative act, or to the district court in accordance with the laws transposing the two Directives, or to the district court for violation of the constitutional anti-discrimination provision. Litigation is hardly ever used by victims of discrimination for various reasons, mainly due to the high cost and length of time involved. The equality body may complete its investigation and issue a decision in a few months or sometimes with a delay of a couple of years, depending on the subject investigated and the complications involved. A large number of complaints are withdrawn before final determination because there was compliance by the perpetrator or other satisfaction of the complainant. In other cases, the equality body exercises mediation in order to reach a solution. Until recently the equality body would restrict itself in issuing non-binding recommendations, but very recently it started to follow the consultation process provided in its mandate which will lead to the issue of binding decisions.

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

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

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

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

The sanctions which Courts can impose against physical persons found to be guilty of discrimination cannot exceed CYP4,000 (Euros 6,835.27) and/or imprisonment of up to six months. For legal persons the maximum penalty is CYP7,000 (Euros 1,196.72). An offence committed, under the same law, out of gross negligence carries a penalty of up to CYP2,000 for physical persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2,000 (Euro 3,417.63); for legal persons, there is a fine of up to CYP2,000 (Euro 3,417.63) for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was committed with his/her consent plus an additional fine of up to CYP4,000 (Euro 6,835.27) for the company or organisation. The aforesaid fines, however, can only be imposed by the Courts; the Equality Body can only impose small fines which cannot exceed CYP350 (Euros 598) and such powers have so far been used in only one case concerning gender discrimination. Generally speaking, the fines are very low, offer little deterrence to potential perpetrators and they are hardly ever imposed by the equality body.

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

There are penal remedies available against discrimination. With the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent 11 amendments, a number of offences relevant to combating racism and intolerance, such as incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services.

The scope of this latter provision is stated to extend to goods or services supplied by a person in the course of his/her profession, but it is not defined any further and may thus be presumed to apply to, inter alia, health, education and training. Refusal to provide goods on the ground of racial ethnic origin is an offence. Under the Criminal Code some discriminatory acts are punishable offences.

6. Equality bodies

In 2004, the Ombudsman was appointed as the national equality body, empowered:

i) to combat racial discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin;
ii) to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol 12 of the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination) irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin; and
iii) to promote equality of opportunity irrespective of the aforesaid grounds plus the grounds of special needs and sexual orientation.

The scope of this provision covers not only the fields of Directive 2000/78 but additionally social insurance, medical care, education and access to goods and services including housing.

The equality body does not have the power to award compensation but its decisions may be relied upon to seek damages in Court. The Court may award all types of damages available in civil procedures, like pecuniary, nominal or punitive damages but no case of discrimination relying on the new laws has been decided in Courts yet. A victim of discrimination may apply to the labour tribunal seeking reinstatement to a position from which s/he was unlawfully dismissed, a remedy rarely sought or used.

There are certain weaknesses in the present framework which affect its overall effectiveness. Insufficient funds to the Equality Body's office resulted in inadequate staffing arrangements and in delays in issuing decisions. Moreover, the equality body is reluctant to adequately deal with cases that are considered to touch upon the so-called 'doctrine of necessity' or the 'Cyprus problem'.