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Country report

Non-discrimination

Cyprus

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including summary



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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Cyprus

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Reporting period 1 January 2020 – 31 December 2020

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EXECUTIVE SUMMARY

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 the Turks, 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 which community to belong to but was deemed to belong to the Turkish community, because of its assumed common language (Turkish) and religion (Muslim) with the Turkish Cypriots. The Roma population of Cyprus is estimated to range between 650 and 1 250 people, amounting to a maximum of 0.11 % of the population.¹ Because the Government does not recognise the Roma as a distinct community, official statistics do not provide figures for the Roma community but for the broader category of 'Turkish speakers'. The Government does not adopt or apply policies targeting the Roma, who are expected to benefit from horizontal policies intended for the entire population. The Roma are allocated housing in specifically designated Roma settlements, renowned for their poverty and bad state of repair. Their housing segregation inevitably leads to schooling segregation, as all children must attend schools close to their residence. Despite slight improvements to the housing situation and measures in education, the Roma remain the most excluded and vulnerable Cypriots. The Government does not recognise any migrant community as a 'minority'.

The Constitution functioned until 1963, when the Greek Cypriot President proposed 13 amendments to it, effectively taking away the most basic rights of the Turkish 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. Following years of inter-communal violence and foreign military interventions, the doctrine of necessity was subsequently extended to other areas affecting Turkish Cypriots, including their right to welfare and to access their properties.

Few NGOs are active in the non-discrimination field. No NGOs advocate for the rights of Turkish Cypriots and only a handful of NGOs advocate for the rights of migrants and asylum seekers. New groups have been formed following the increase in migration and refugee flows, but they focus on humanitarian support rather than on advocacy for defending rights, which requires skills and funds. In 2017, a new NGO was set up to address the rights of the Roma, however in 2020 this group, alongside many other NGOs defending rights of victims, was deleted from the Government registry as a result of a legislative amendment adopted during the summer holidays.² According to the 2020 amendment, NGOs that did not submit the required documentation by a set date were deleted from the NGO registry, which is maintained by the Ministry of the Interior. Organisations that are not registered in the ministry's registry³ lack legal personality, cannot open bank accounts and cannot claim Government or EU funding.⁴ Most disability NGOs are organised in a national confederation, which in 2006 was afforded the status of social partner. In practice, the confederation is afforded little say in key processes, such as legislation or action plans for the implementation of the Convention on the Rights of Persons with Disabilities (CRPD).

¹ Pelekani C & Symeou L. (2018), "Εκθεση παρακολούθησης της κοινωνίας των πολιτών σχετικά με την εφαρμογή των εθνικών στρατηγικών ένταξης των Ρομά" (Civil society monitoring report regarding the implementation of the national Roma inclusion strategies), Roma Civil Monitor, available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-cyprus-2017-eprint-fin-cy.pdf>.

² Law on organisations and foundations and other related matters of 2017 (*Ο περί Σωματείων και Ιδρυμάτων και για Άλλα Συναφή Θέματα Νόμος του 2017*) N. 104(I)/2017, Article 56.

³ For details on the registry and the registration procedure, see the Ministry of the Interior's webpage [here](#).

⁴ There is a procedure for registering an organisation as a non-profit company, however the registration process and maintaining the company is costly and bureaucratic.

In recent years, NGOs advocating for the rights of the LGBTQ community have emerged, and have held some successful public events, although NGO space was severely limited during 2020 as a result of Covid-19 related restrictions. After years of campaigning, a law was finally adopted in 2015 recognising civil partnerships.⁵ However, the focus of LGBTQ NGOs is not restricted to sexual orientation but covers a variety of fields and activities, including contributions to discussions on gender identity legislation, public interventions in campaigns regarding masculinity and stereotypes, transphobia and homophobia and others. A number of far-right groups have appeared in recent years, including a political party with two seats in the national Parliament, which has capitalised on voters' fear of migrants, refugees, LGBTQ people and Turkish Cypriots.⁶

2. Main legislation

The Cypriot Constitution contains a general anti-discrimination provision (Article 28), 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 explicitly covered by the Constitution, although they are deemed as included in the term 'any other ground whatsoever' of Article 28.⁷ Sexual orientation continues to be a taboo in Cypriot society and was never considered by the courts in the context of Article 28; legally speaking however Article 28 can be used for sexual orientation discrimination. Judicial interpretation of this provision, however, has been problematic as it validates discrimination, which is deemed to be 'reasonable' because the subjects are different. This approach does not comply with the comparability element foreseen in the jurisprudence of the equality directives but, rather, it attempts to differentiate between the two comparators in an arbitrary and often discriminatory manner, citing even protected grounds as the reason for the differentiation.⁸

Cyprus has ratified the following international conventions on discrimination: the ECHR, including its Protocol No. 12; the Revised European Social Charter, including its Collective Complaints Protocol; the International Covenant on Civil and Political Rights; the Framework Convention for the Protection of National Minorities; the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of Discrimination Against Women; ILO Convention No. 111 on Discrimination; the Convention on the Rights of the Child; and the CRPD. In 2004 the two anti-discrimination directives were transposed into four separate national laws:

- A law amending the existing disability law in order to bring it in line with the disability component of the Employment Equality Directive.⁹

⁵ Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cyllaw.org/nomoi/arith/2015_1_184.pdf.

⁶ ELAM. The initials stand for 'National Popular Front' in Greek: Εθνικό Λαϊκό Μέτωπο.

⁷ See for instance, the Appeal Court decision in *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Appeal No. 190/2012, 4 October 2018, where the Court examined potential discrimination in an age limit for a disability scheme in light of Article 28 of the Constitution.

⁸ In the cases of *Antonis Aresti v. Cyprus Athletics Organisation* (Ref. 1406/2008, dated 10 February 2010) and *Cyprus Athletics Organisation v. Andreas Potamitis* (Ref. 111/2007, dated 18 June 2010), the court rejected the allegations of discrimination by disabled athletes in the state grants paid to athletes participating in the Paralympics, compared to the grants paid to non-disabled athletes participating in the Olympics, on the basis that the schemes complained of dealt with different things (athletes with and without disability) which could only be treated differently. In essence, the court adopted the view that the disability constituted a 'difference' which could justify discrimination.

⁹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at www.cyllaw.org/nomoi/arith/2000_1_127.pdf.

- A law prohibiting discrimination in employment on the grounds of religion or belief, age, sexual orientation and racial or ethnic origin, transposing parts of the Employment Equality Directive and the Racial Equality Directive.¹⁰
- A law rendering discrimination on the ground of racial/ethnic origin unlawful in the fields provided by Directive 2000/43 (except employment).¹¹
- A law appointing the Ombudsman as the Equality Body empowered to investigate complaints of discrimination, with a mandate that goes much further than the minimum required by Article 13 of Directive 2000/43, covering rights guaranteed by the Constitution and by major international conventions.¹² The only assistance to victims foreseen in the mandate of the Equality Body is the issuance of reports with recommendations. It does not include the power to advise victims on their rights or to represent victims in court.

In July 2006, the Constitution was amended to give supremacy to EU laws. Prior to that, the anti-discrimination provision of Article 28 of the Constitution had been interpreted by the courts to mean that positive action violated the constitutional equality principle. In 2015, the judicial trend began to shift towards recognising that positive action does not infringe the equality principle and that it is in fact a necessary component of equality.¹³ The legal route most commonly used to challenge discrimination remains the Constitution, rather than the laws transposing the equality *acquis*, as lawyers tend to ignore the anti-discrimination directives, which have rarely been invoked in court. This sometimes leads to the emergence of legal norms of doubtful validity, like the use of concepts such as 'reasonable discrimination' which is allowed and necessary 'because of the special nature of things'.¹⁴ Along the same lines, the Supreme Court ruled that age is a legitimate criterion to determine seniority for the purposes of deciding promotions in the public service. An additional problem of the judicial review process is that it requires applicants to have a 'legitimate interest', which essentially precludes applications from organisations acting on behalf of victims. From 2014 onwards, there was a sharp decline in discrimination claims, attributed to the economic crisis, the general lowering of fundamental rights standards and rising unemployment, which made victims reluctant to pursue their rights.

Current practice suggests that the duty to ensure that discriminatory laws, provisions or rules of organisations have been explicitly repealed is not fully complied with. The process to formally repeal laws or regulations was sometimes triggered when a complaint was submitted to the Equality Body under the previous Ombudsman. Even when a discriminatory legislative provision is reviewed within the framework of a judicial process, this does not trigger the procedure of revision. If the Equality Body found that a provision

¹⁰ Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) N. 58(I)/2004, 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹¹ Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

¹² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*) Νόμος No. 42(1)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

¹³ Supreme Court, *Eleni Paroutsi v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015. Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos. 1519/2010 και 1520/10, 3 September 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

¹⁴ Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (*Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη*) No. 111/2007, 18 June 2010; Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation* (*Αντώνης Αρέστη v. Κυπριακού Οργανισμού Αθλητισμού*) No. 1406/2008, 10 February 2010; Supreme Court, *Tassos Tratonikola v. The Republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice* (*Τάσος Τρατονικόλα v. Κυπριακής Δημοκρατίας μέσω Διευθυντή Τμήματος Φυλακών και του Υπουργείου Δικαιοσύνης*), No. 135/07, 13 April 2011; *Costakis Charalambous v. Republic of Cyprus through the Chief of Police* (*Κωστάκης Χαράλαμπος v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας*), No. 1334/2008, 19 September 2011.

was contrary to the directives, the procedure for repealing it did not always bear fruit. A Supreme Court ruling in 2014, which established that the Attorney General is not at liberty to ignore the Equality Body's recommendation to amend a discriminatory law,¹⁵ prompted hopes for change but this did not happen in the years that followed, as courts are unwilling to disapply discriminatory provisions in the law, perceiving this to be a violation of the doctrine of the separation of powers.

3. Main principles and definitions

All definitions of 'discrimination' contained in the directives are virtually replicated in the national laws. Discrimination by association is not explicitly covered in the anti-discrimination laws, but is covered by Protocol No. 12 to the ECHR. In addition, Equality Body decisions in 2010 and 2015 applied the principle established in *Coleman*,¹⁶ extending the prohibition of disability discrimination to the primary carers of persons with disability even if they are not parents or spouses of the person with a disability.¹⁷

The laws transposing Directive 2000/78 allow for differential treatment based on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation when the nature of the 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. The provisions on age do not apply to the armed forces, to the extent that the fixing of an age limit is justified by the nature and duties of the occupation. In practice, age limits apply in recruitment and promotion, particularly within the police force, and are aimed less at serving labour market policy goals and more at addressing deterioration in the physical fitness of employees, which allegedly comes with age. An Appeal Court decision in 2018 found that an age limit in a disability scheme did not infringe the equality principle because it was reasonable in light of the poor state of public finances.¹⁸

In the case of the occupational activities of churches or other public or private organisations, the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief does not constitute discrimination when, due to the nature or the context of these activities, religion or belief is a genuine, legitimate and justified occupational requirement, having regard to the organisation'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. The law does not

¹⁵ Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

¹⁶ CJEU, Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, C-303/06, ECLI:EU:C:2008:415. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=150145>.

¹⁷ Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, Ref. A.K.I. 38/2015, 16 October 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

¹⁸ Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

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.¹⁹

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. The law was further amended in 2014 to extend the reasonable accommodation duty to fields beyond employment, provided the burden is not disproportionate or unjustified.²⁰ The fields of application covered by this duty, as introduced in 2014, are: the 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, education, information and communication through special means; services for social and economic integration; vocational training; employment in the open market; equality in the provision of goods, services and facilities where this is 'justified'; telephone services especially adapted for persons with disability and television programmes accessible to deaf persons.

There is no provision in the Cypriot legal order for multiple discrimination, although the concept was repeatedly raised in Equality Body decisions concerning a number of groups: migrants with disabilities applying for nationality; young asylum-seeking women with babies forced to work in agriculture; and women of foreign national origin subjected to harassment at work. While the law does not explicitly cover assumed discrimination, direct discrimination is widely defined in a manner that can be interpreted as covering discrimination by assumption.

4. Material scope

The anti-discrimination laws cover both the private and the public sector and include all fields provided for 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. Discrimination on the ground of racial/ethnic origin is forbidden in the fields 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 safeguards the right to equal treatment in the provision of goods, facilities and services.

5. Enforcing the law

Victims have the option of submitting a complaint to the courts or to the Equality Body. However, since 2017, when a new Ombudsman (and head of the Equality Body) was appointed, the institution's activities as an Equality Body, applying the anti-discrimination legal framework per se, have been minimised. Discrimination complaints are often treated as administrative law matters without addressing the issue of discrimination, whilst other complaints are rejected because they were filed by persons other than the victims, e.g. parliamentarians. Although the statistical record for the post-2017 period is poor, it is likely that the number of complaints dropped as some vulnerable groups and NGOs appear to have lost confidence in the complaints mechanism. Discrimination complaints concerning children may also be examined by the Commissioner for the Rights of the Child, who investigates and issues recommendations but lacks the power to impose sanctions. Labour inspectorate committees can examine employment-related complaints but do not have the expertise to handle discrimination-related complaints, except in specific gender-related fields. A consumer association examines complaints, although its mandate does not explicitly cover discrimination and its work does not make reference to discrimination; the

¹⁹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

²⁰ Law Amending the Law on Persons with Disabilities. No. 63(I)/2014, 23 May 2014. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626.

right to non-discrimination is not among the consumer rights that the association promotes in the public sphere.

Litigation can take the form of an application for judicial review under Article 146 of the Constitution or an application to the labour tribunal or to the district court for violation of the constitutional anti-discrimination provision. A study of the case law reveals a number of problems in the Cypriot courts' interpretation of the equality laws, which, more often than not, results in the rejection of discrimination claims. Litigation is hardly ever used by vulnerable groups for various reasons: low level of awareness of the anti-discrimination laws among victims and in legal circles; the high cost of litigation and limited access to legal aid; and the length of time involved, which is prohibitive for people who need an urgent solution and have no use for a judgment delivered in five years' time. From the body of decisions emerging in recent years, it appears that the more vulnerable a group is, the less access it has to judicial or Equality Body proceedings. Thus, most anti-discrimination claims brought before the court are filed by civil servants and relate to promotions, pensions and retirement ages. There are a few court decisions concerning the claims of Turkish Cypriots to their properties in the south or to state grants, but no cases involving migrants or Roma claiming violation of the equality *acquis*. No case was ever decided before the Cypriot courts on the basis of the Racial Equality Directive; although this Directive has been invoked before the courts on various occasions, they found that it was not applicable to the case at hand.

The national laws transpose verbatim the directives' provisions regarding the right of organisations to engage in procedures on behalf of victims. However, long-standing judicial precedent holds that applications for judicial review may only be filed by persons with a 'legitimate interest' and organisations acting on behalf of victims are unlikely to be deemed by the court as having a legitimate interest. The legal framework for the operation of NGOs adopted in 2017 imposed a number of new duties and formalities on NGOs but did not provide for their right to represent victims in judicial review proceedings. Victims may address complaints directly to the Equality Body, where the procedure is cost-free, simple and flexible, or to NGOs or trade unions, which may then submit complaints to the Equality Body on their behalf. Whilst in previous years the Equality Body would accept and handle complaints from organisations or even members of the public regarding issues that were the subject of public debate, this practice appears to have been reversed when the current Ombudsman took office in 2017. In 2018 the Ombudsman resolved that she only examines complaints from persons with a 'legitimate interest' which means only the victims themselves can file complaints.²¹

LGBTQI persons are becoming more visible and accepted in the public sphere and have gained allies amongst most political parties, although church representatives, such as the Archbishop of Cyprus and the Bishop of Morphou continue to engage in homophobic public statements, with no legal repercussions. The institutionalisation of same-sex partnerships has contributed significantly to the normalisation of homosexuality in the eyes of the public, but an issue remains with the fact that same-sex couples are still denied the right to adopt children. A bill on gender identity, which has been debated since 2018, will purportedly attempt to address some of the gaps in the legal and policy framework affecting transgender persons; the adoption of this bill was still pending at the end of 2020.

The use of situation testing and statistical data is not mentioned in the legislation, case law or Equality Body decisions. If an argument in favour of admitting such evidence is used in court, it is likely to be allowed, although the courts often do allow technicalities to place

²¹ During a public exchange between a MP and the Ombudsman, the Ombudsman stated that according to the ombudsman's mandate, she examines complaints only from persons personally affected or on her own initiative, and the latter depends entirely on her own judgement. When the MP clarified that she lodged a complaint to the Equality Body, the ombudsman responded that there is no separate equality body but rather an extension of her mandate: Charalambous P. (2019), '[Καβγάς για τις αρμοδιότητες της Επιτρόπου Διοικήσεως](#)', *Phileltheros*, 26 April 2018.

obstacles in the delivery of justice. The general rules of evidence for criminal and civil procedure apply. The admissibility of situation testing as a method of proving discrimination in court will presumably be subjected to the general test of 'relevance' and 'the best evidence rule'. However, although courts are likely to accept the submission of statistical data this is not a guarantee that such data will play any role in the court's decision.

The burden of proof may be reversed in judicial proceedings where the laws transposing the directives are involved; a claimant who invokes the Constitution or uses other laws as the basis of his or her claim cannot benefit from the principle of the reversal of the burden of proof. The burden of proof has never been reversed in any discrimination-related cases before the Cypriot courts. In 2017 the court *considered* such a reversal in a case concerning sexual harassment at the workplace but concluded that the claimant's allegations were too vague to create a *prima facie* case of discrimination. The burden of proof is not reversed in procedures before the Equality Body since its mandate includes the right to carry out investigations to establish facts. The burden of proof is also not reversed in judicial review proceedings, which is the legal route prescribed by the national legal framework for discrimination claims against the state. This does not fall under the Directives' exception for those cases where the court can investigate the facts of the case; the court examining judicial review applications does not carry out any kind of investigation but merely examines the facts placed before it by the litigants.

Discrimination carries criminal sanctions as follows:

- Natural persons convicted by the courts for violating these laws can be fined up to EUR 6 835.27 and/or sentenced to imprisonment of up to six months.
- In cases involving legal persons, the managing director, the chairperson, the director, the secretary, or other officer of the organisation can be fined up to EUR 6 835.27 and/or sentenced to up to six months' imprisonment, provided it can be proven that the offence was committed with the permission or tolerance of these persons. The legal person will also be fined up to EUR 11 695.33.
- If the offence has been committed out of gross negligence, as opposed to wilful intent, the courts can impose a fine for natural persons of up to EUR 3 417.63, whether acting independently or in their capacity as managing director, chairperson, director, secretary, or other company officer, provided it can be proven that the offence was committed with their consent. In cases of gross negligence, the courts may fine the legal person up to EUR 6 835.27.

The upper limit on the fine, which is common in the Cypriot legal system, is found in all three laws transposing the equality directives. No ceiling exists on the amount of compensation that can be awarded by the court to a victim. The Equality Body can only impose small fines, which cannot exceed EUR 598, and lacks the power to award compensation to victims of discrimination.

6. Equality bodies

In 2004 the Ombudsman was appointed as the national equality body, with a wide mandate to combat discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin; to promote equality of enjoyment of rights safeguarded by the Constitution or by the Conventions ratified by Cyprus (which include Protocol No. 12 to the ECHR and the Convention for the Elimination of All Forms of Racial Discrimination); and 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. Although a quasi-judicial body with powers to issue binding decisions, the Equality Body resorts to mediation and/or to non-binding recommendations as more effective means of tackling

problems rather than the small fines foreseen in the law. Since its inception, the Equality Body has not imposed a single fine or sanction on perpetrators; its reports are permeated by the logic of mediation rather than seeking to pin responsibility on perpetrators. A number of new functions were added to its mandate in subsequent years without necessarily adding to its budget or resources. These functions include the National Human Rights Institute (NHRI), the independent mechanism for the prevention of torture, the independent mechanism for the implementation of the CRPD and the monitoring body for the Return Directive.

In previous years, insufficient funds (in relation to the numerous tasks of the Body) allocated to the Equality Body's office resulted in inadequate staffing arrangements, delays in issuing decisions, a difficulty to conduct surveys, awareness campaigns or research and to issue codes of conduct unless external funding was secured.²² The limited resources allocated to the Equality Body led to delays of three to four years, sometimes more, in investigating complaints; by the time the Equality Body had published its decision, third party rights could have been established, rendering justice for the victim impossible and making their claim time-barred, which in turn meant they could not apply to the courts.

In April 2017, a new Ombudsman was appointed, which has led to some changes in the practice of the body. Even though the institution's mandate was not officially changed, its activities as an Equality Body, applying the anti-discrimination legal framework per se, have been minimised. The set-up of the office has also changed to the effect that there is no longer a separate authority to examine complaints under the two anti-discrimination directives; instead, all complaints submitted are examined in the institution's capacity as Ombudsman. The last full annual activity report published by the Equality Body covers the year 2014; the annual reports for 2015 and 2016 were pending publication at the time when the current Ombudsman took office in 2017 and were never published. For the year 2017, a handful of equality-related cases were included as a chapter in the annual activity report of the Ombudsman, whose mandate is restricted to maladministration in the public sector, with discrimination being one of the issues dealt with. Since April 2017, although there was no legislative amendment to support this change, the Ombudsman no longer appears to issue any decisions based on the two anti-discrimination directives. In 2020, the Ombudsman's office issued annual reports in its capacity as Equality Body for 2017-2018.²³ The reports do not provide statistical data, the description of its mandate does not include the law transposing the Racial Equality Directive and the decisions listed, most of which concerned gender discrimination, were not decided on the basis of the laws transposing the two equality directives. There is a gap for the years 2015 and 2016, for which there are no statistical records and no annual reports were published. The Ombudsman declined the Auditor-General's request to reveal the number of cases handled.

7. Key issues

- For several years now, no awareness activities, no action plan, no training and no equality data have been available in the public domain. A national action plan on combating discrimination on the grounds of sexual orientation, age, disability, ethnicity and religion, which started to be discussed at the beginning of the year was abandoned at the outbreak of the pandemic and did not resume by end of the year.²⁴
- The Equality Body has essentially ceased to act as such, by no longer applying the national anti-discrimination legislation. In the author's view, the Equality Body policy from 2017 onwards not to apply the equality directives to complaints of discrimination

²² See notably: Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

²³ Commissioner for Administration and for the Protection of Human Rights (Ombudsman) acting as Equality Body (2020), 'Annual Reports for the years 2017-2018', 24 July 2020.

²⁴ Interview with Advisor to the President of the Republic on issues of multiculturalism, acceptance and respect for diversity, 5 October 2020.

within the scope of these directives, in combination with the framework for the selection appointment of the Ombudsman, give rise to an issue of compliance of Cyprus with Article 13 of the Racial Equality Directive. It is recalled that the procedure for selecting and appointing the Ombudsman provides no safeguard that the work of the institution will be carried out independently.

- Very rarely do discrimination cases make it to the courts. The most vulnerable amongst the discriminated groups lack both rights awareness and the means to pursue their case in court. When they do, the anti-discrimination legal framework is not invoked; instead, recourse is made to the 40-year-old constitutional provisions which do not offer the far-reaching protection of the directives, the burden of proof is not reversed and the procedure excludes persons without a 'legitimate interest', such as NGOs acting on behalf of victims. The decision is often based on problematic legal doctrines developed by the courts which do not comply with the directives.
- Litigation is not sufficiently used, owing to the cost and time involved, the fact that legal aid is made available only subject to insufficient means, and the lack of awareness of the anti-discrimination laws amongst the legal profession. Legal aid is at the discretion of the court and is subject to a means test, as well as, in some cases to a merits test, i.e., the court must be convinced that the case has merits. In recent years, the Government has completely abandoned efforts to raise awareness about the directives, to promote anti-discrimination initiatives or to consult with civil society. The EU's structural funds package for the period 2014-2020 is not used to fund projects promoting anti-discrimination but only to fund existing 'horizontal policies'. The beneficiaries have expressed fierce criticism of various aspects, e.g., the disability classification system (ICF).²⁵
- There is no procedure in place to regularly review or revise discriminatory laws/regulations. In the past, a review could potentially be triggered if a complaint was submitted to the Equality Body and even then, the process did not necessarily lead to the amendment of discriminatory laws. Under the current Ombudsman, this procedure has never been used. The courts will not refrain from applying discriminatory laws, as they are reluctant to interfere with what they see as the domain of the legislature.
- The Equality Body has the right to issue reports with recommendations but has no mandate to offer advice or court representation to victims.
- The Equality Body lacks the power to advise victims or to fund litigation so as to enable them to pursue their claims in court.
- Issues deriving from the unresolved 'Cyprus problem' have been the source of ongoing ethnic discrimination against Turkish Cypriots.²⁶
- The transposition in 2016 of two asylum-related Council directives (the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33) introduced into the national asylum law provisions dealing with discrimination on the grounds of ethnic origin, disability and sexual orientation in the fields of education, freedom from detention and access to the asylum procedure.

²⁵ For more details about this system, please visit www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd06_gr/dsipd06_gr?OpenDocument.

²⁶ Following years of inter-ethnic violence between the country's two main communities, the Greek Cypriots and the Turkish Cypriots, and following military intervention from Greece and Turkey, the country is divided by barbed wire, separating Turkish Cypriots (in the north) and Greek Cypriots (in the south). In 2003 the barbed wire was partly unsealed, allowing movement between north and south. This regime was governed by a European Council Regulation when Cyprus acceded to the EU in 2004 (the Green Line Regulation). Since then, Turkish Cypriots can visit and even settle in the south, enabling them to (try to access) services, to vote and to claim their properties.

INTRODUCTION

The national legal system

The Cypriot Constitution contains a far-reaching equality provision which prohibits discrimination on, inter alia any ground whatsoever.²⁷ This provision has been interpreted restrictively by the courts as prohibiting differential treatment only where this was deemed 'unreasonable'²⁸ or only where two 'equal' things were being compared.²⁹

The most popular legal channel for challenging discrimination is the judicial review foreseen under Article 146 of the Constitution. This process rarely leads to satisfaction for the victim of discrimination because it does not entitle the court to look into the merits of the contested decision but merely to assess the legality of the decision-making process; it also has the disadvantage that it cannot be used to challenge discrimination in the private sector, which remains an unexplored potential, 17 years after the non-discrimination directives were transposed. This process can only be used by persons with a 'legitimate interest', a prerequisite that essentially excludes organisations acting on behalf of victims. The burden of proof is not reversed in judicial review proceedings. According to all three laws transposing the Directives, the competent courts to try disputes arising thereunder are the labour courts (for labour-related disputes) and the district courts (for non-labour-related disputes), 'without prejudice to the exclusive jurisdiction of the Supreme Court under Article 146 of the Constitution'. Therefore, although the option of applying to the district court to claim compensation is available in the legislation, the judicial review procedure of Article 146 must be used in order to annul an administrative decision or omission that has adversely affected an individual and this can only be used by the individual affected. In this context, the Directives' requirement that national law must grant organisations the legitimate interest necessary in order to represent victims in proceedings (Article 9(2) of Directive 2000/78 and Article 9(2) of Directive 2000/43) is not correctly transposed.

In 1963, the President of the country proposed 13 amendments to the national Constitution, which removed the consociational element by limiting the communal rights of the Turkish Cypriots, following which the Turkish Cypriots withdrew from the administration in protest. In *Ibrahim*³⁰ the Supreme Court ruled that the functioning of the Government must continue on the basis of the 'doctrine of necessity', which effectively suspended the constitutional rights of the Turkish Cypriots. A decade later, this doctrine was extended by the courts to legitimise measures, of questionable legality, affecting Turkish Cypriots. In the years that followed, the courts extended this doctrine into new areas, denying Turkish Cypriots access to their properties³¹ and to welfare. Until 2006 Turkish Cypriots were also denied the right to vote; however, Cyprus was forced to change

²⁷ The Constitution of the Republic of Cyprus (*To Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 28, 11 February 1959. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

²⁸ Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=%EC%E%F4%E8%E1%E9%*%20and%201497%20w/1%202008.

²⁹ Supreme Court, *Cyprus Athletics Organisation v. Andreas Potamitis* (Κυπριακός Οργανισμός Αθλητισμού v. Ανδρέα Ποταμίτη), No. 111/2007, 18 June 2010. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0315.htm&qstring=%F0%E%F4%E1%EC%E9.%F4%*%20and%2018%20and%20%E9%EF%F5%ED%*%20and%202010. The claimant in this case was a Paralympics athlete who had been awarded a sum of one-fifth of the amount payable to the Olympics athletes. Although his discrimination claim was deemed valid by the trial court, the Appeal Court found that the trial court had erroneously tried to compare two unequal things whilst Article 28 only requires equal treatment of equal situations.

³⁰ Supreme Court, *Attorney General of the Republic v. Mustafa Ibrahim and Others* (1964). Available at www.cylaw.org/cir/1964/1964_1_195.pdf.

³¹ Trimikliniotis, N. and Demetriou, C. (2012), *Displacement in Cyprus – Consequences of Civil and Military Strife, Report 3, Legal framework in the Republic of Cyprus*, PRIO Cyprus Centre, <http://www.prio-cyprus-displacement.net/images/users/1/Report%203%20-%20TRIM.DEM%20ENG.WEB.pdf>.

this law³² following the European Court of Human Rights (ECtHR) ruling in the case of *Aziz v. Cyprus*.³³ Repeated efforts of Turkish Cypriots to challenge the law depriving them of their properties located in the south as an infringement of the equality principle on the ground of ethnicity have been met with refusal by national courts.³⁴ Several applications were filed by Turkish Cypriots at the ECtHR challenging the deprivation of their properties, which were settled amicably in an effort to avoid a ECtHR ruling against Cyprus.³⁵

List of main legislation transposing and implementing the directives

The two anti-discrimination directives were transposed through four different laws:

1. Disability: The Law on Persons with Disabilities was adopted on 31 March 2004 and entered into force on 1 May 2004, amending the existing legislation on disability.³⁶ The amending legislation transposed the disability component of the Employment Equality Directive (2000/78/EC) by introducing the Directive's prohibition of discrimination in employment.
2. Racial and ethnic origin, religion or belief, age, sexual orientation: The Equal Treatment in Employment and Occupation Law was adopted on 31 March 2004 and entered into force on 1 May 2004 in order to transpose the Employment Equality Directive (2000/78/EC) minus the disability component. Its scope covers the field of employment.³⁷
3. Racial and ethnic origin: The Equal Treatment (Racial or Ethnic Origin) Law 59 (1)/2004 was adopted on 31 March 2004 and entered into force on 1 May 2004 in order to transpose the Racial Equality Directive (2000/43/EC) in all the fields foreseen by this Directive minus employment, i.e., social protection, medical and medicinal care, social provisions, education, and access to goods and services including housing. The law was last amended in 2006 to rectify a transposition problem as regards the reversal of the burden of proof.³⁸
4. All grounds: The Combating of Racial and other Forms of Discrimination (Commissioner) Law was adopted on 19 March 2004 and entered into force on 1 May 2004 in order to transpose Article 13 of the Racial Equality Directive (2000/43/EC).³⁹ The Equality Body's mandate covers the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and

³² 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 (*Ο περί Άσκησης του Δικαιώματος του Εκλέγειν και Εκλέγεσθαι από Μέλη της Τουρκικής Κοινότητας που Έχουν Συνήθη Διαμονή σε Ελεύθερο Έδαφος της Δημοκρατίας (Προσωρινές Διατάξεις) Νόμος του 2006*) N. 2(I)/2006, 21 January 2006. Available at www.cylaw.org/nomoi/indexes/2006_1_2.html.

³³ ECtHR, *Aziz v. Cyprus*, No. 69949/01, 22 June 2004. Available at <http://echr.ketse.com/doc/69949.01-en-20040622/view/>. The decision of the ECtHR in the case of *Aziz*, that the 'doctrine of necessity' must be exercised in a manner that does not violate the nucleus of rights or the principle of equality, was not consistently followed either by the courts in Cyprus or by the Equality Body, as both have issued decisions upholding the 'doctrine of necessity' as legal justification for the suspension of the constitutional rights of the Turkish Cypriots.

³⁴ After the cut-off date for this report, in *Djemil Cufi v The Republic*, No. 4193/08, 27 January 2021, the Court concluded that the refusal of the state to permit Turkish Cypriots to use their properties did not infringe the Racial Equality Directive because the deprivation was reasonable and objectively justified, without explaining why that was case and ignoring the fact that no such exception is permitted for direct discrimination.

³⁵ Trimikliniotis, N. and Demetriou, C (2021), '[Displacement in Cyprus](#)', PRIO Cyprus Centre, ISBN 978-82-7288-420-7.

³⁶ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at http://www.cylaw.org/nomoi/enop/non-ind/2000_1_127/index.html.

³⁷ Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁸ Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*) No. 42(1)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

under a list of international conventions ratified by Cyprus. Although the Equality Body's mandate goes far beyond that foreseen in Article 13 in terms of grounds and fields of application, it does not include advice to victims or court representation.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Cyprus includes the following articles dealing with non-discrimination:

Article 28(1) provides that all persons are equal before the law, the administration and justice and are entitled to equal protection and treatment. Article 28(2) guarantees the enjoyment of economic, social and cultural rights by all persons without discrimination and provides that every person shall enjoy all the rights and liberties foreseen in the Constitution without direct or indirect discrimination on the grounds of: community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides. The open-ended constitutional provision has been used to address discrimination on the grounds of age and disability but not for sexual orientation, in respect of which social prejudices did not provide a fertile ground for cases to be taken to court.

Article 6 provides that no law or decision of the House of Representatives or of any of the Communal Chambers (no longer active), and no act or decision of any organ, authority or person exercising executive power or administrative functions, shall discriminate against any of the two 'Communities' or any person by virtue of being a member of a 'Community'.⁴⁰

Given that the Equality Body's mandate extends to the exercise of rights guaranteed by the Constitution, the above constitutional provisions must be seen as applicable to all areas covered by the directives, at least as far as the Equality Body is concerned. The material scope of these provisions is in fact broader than those of the directives and it applies to both the private and the public sector, against private individuals and against the state.⁴¹

⁴⁰ The term 'Community' is used in the Constitution as meaning either the Greek or the Turkish Community in Cyprus.

⁴¹ Supreme Court, *Yiallourou v. Evgenios Nicolaou* (Τάκη Γιαλλούρου v. Ευγένιου Νικολάου), No. 9331, 8 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF*%20and%20%E5%F5%E3%E5%ED*%20and%20%ED%E9%EA%EF%EB%E1%EF*.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The grounds of discrimination explicitly prohibited in the main legislation transposing and implementing the two EU anti-discrimination directives (as listed in the Introduction) are set out below.

- The Equal Treatment (Racial or Ethnic Origin) Law 59 (1)/2004 covers racial and ethnic origin.
- The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 covers racial and ethnic origin, religion or belief, age and sexual orientation.
- The Law on Persons with Disabilities 127(I)/2000 as amended covers only disability.
- Article 28 of the Constitution prohibits discrimination on the grounds of community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides.
- The Combating of Racial and other Forms of Discrimination (Commissioner) Law 42 (1)/2004, which sets out the mandate of the Equality Body, defines this mandate as covering the grounds of race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation, as well as the rights protected under the Constitution and under the following international conventions ratified by Cyprus: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights; and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

Racial/ethnic origin is only defined in the law ratifying the ICERD,⁴² which incorporates the Convention's definition. The Convention defines neither race nor ethnic origin but offers a wide definition of racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'⁴³

There are no officially recognised ethnic minorities in Cyprus. The Constitution recognises three 'religious groups' (the Armenians, the Maronites and the Latins) and two 'communities' (the Greek Cypriots and the Turkish Cypriots). The Roma are deemed to be part of the Turkish Cypriot community. Modern perceptions of evolving identities conceptualise these groups as having multiple identities: the religious groups are also ethnic groups and national minorities, whilst the Turkish Cypriots are at the same time a community and a minority in the southern part of Cyprus. Ethnicity is inherent in the identity of the five groups, who may therefore claim protection under the Racial Equality Directive. The Equality Body has invariably extended protection under the Racial Equality Directive to all of these groups, irrespective of their official denomination.

⁴² Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination 12/1967, 30 March 1967.

⁴³ International Convention on the Elimination of All Forms of Racial Discrimination, Article 1. Available at www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

In November 2015, the Ministry of Education published a code of conduct for handling racial incidents in schools which provides non-legal definitions for the following terms: identity, diversity, race, prejudice, stereotype, discrimination, racism, xenophobia, nationalism, intolerance, homophobia, transphobia, bullying, hate speech, underreporting and racial incident.⁴⁴

According to the Code of Conduct, race is a social construct used to categorise persons on the basis of assumed physical and cultural similarities originating from their common descent. According to the Code, the term 'race' is a construct with no biological or literal status and, scientifically speaking, has no application to humankind, despite the fact that it is widely used for social action, policy development and as justification for differential treatment of groups in relation to other groups.

The Code defines racism as the process of marginalisation, exclusion and discrimination against those considered to be 'different' or 'diverse'. Racism does not have to be intentional and is not static. It can take many different forms. Some are obvious and direct, such as national denomination, forms of religious or other type of superiority or violent attacks against individuals or groups deemed to be 'other'. Some forms of racism are indirect and less obvious, such as institutional racism, the various forms of discrimination perpetrated by Governments, companies or other large essential organisations against non-privileged population groups like minorities and immigrants.

b) Religion and belief

Although there is no definition of what 'religion' is for the purposes of the anti-discrimination legislation, Equality Body decisions have established that the term includes atheism. In particular, a 2010 decision of the Equality Body criticised a set of school regulations that exempts students from religion class only if they are 'not of Christian Orthodox faith', adding that the regulation forcing students and parents to reveal their religious convictions (in order for the students to be granted exemption from religion class) is incompatible with the principle of freedom of thought, conscience and religion.⁴⁵ Extending this principle further, a 2011 Equality Body report dealing with religious confessions in schools found that the participation of students in ceremonies forming part of religious convictions creates fertile ground for discrimination, because non-participation inevitably leads to conclusions as to one's religious convictions and thus revelation of personal sensitive data, as well as to the labelling and categorisation of some students as 'good Christians' and others as not being 'good Christians'.⁴⁶ A further intervention by the Equality Body in 2015 on religious freedom in schools criticised the Ministry of Education's initiative to encourage the setting up of teams of children to assist with the religious ceremony in church as a violation of the children's freedom of religion, challenging the position of the ministry that the activity was not obligatory and that it was intended to promote volunteerism. The Equality Body questioned whether there can be such a thing as 'free consent' in the context of the school environment and accused the ministry of clearly favouring one religion over others and restricting religious freedom, which inevitably leads to discrimination against all those who do not belong to the particular religion.⁴⁷ In 2012 the Ombudsman dealt with complaints from prison inmates regarding their right to access a church within the prison grounds and the rights of visitation by representatives of a religion or dogma other than the one declared by the prisoner upon admission. Although

⁴⁴ For more details, see [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4E90A39191DE8B85C2257E8100424C0E/\\$file/Kodikas_Symperiforas_Nov2015.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4E90A39191DE8B85C2257E8100424C0E/$file/Kodikas_Symperiforas_Nov2015.pdf).

⁴⁵ Anti-discrimination Authority, Report no. A.K.R. 135/2009, 7 November 2010.

⁴⁶ Anti-discrimination Authority, Report no. 42/2010, 29 July 2011.

⁴⁷ Anti-discrimination Authority, Report on the respect of religious freedom in schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

both these were framed as unlawful, the Ombudsman did not consider these complaints through the lens of discrimination.⁴⁸ There has never been a decision attempting to interpret or address the distinction between the *forum internum* and the *forum externum* as in *CJEU Achbita*.⁴⁹

'Belief' is a rather neglected ground; it is not defined in the law transposing the Employment Equality Directive nor has it been the subject of any decision of the Equality Body. The law adopted in 2015 on the political participation of employees in the public sector purports to safeguard the right of such employees to 'freely express their political beliefs, political views and convictions'.⁵⁰ This, however, should not be viewed as an exhaustive definition of 'belief' as found in the law transposing the Employment Equality Directive, particularly in light of the fact that legislation transposing the EU *acquis* ranks higher than other national laws.

A court decision in 2019 defined belief as including both the existence of beliefs as well as the public manifestation of beliefs, following the CJEU rulings in *Markus Achatzi*⁵¹ and in *Egenberger*⁵² where the CJEU instructed the German Court to guarantee the full effectiveness of the Employment Equality Directive by disapplying, if necessary, any contrary provision of national law.⁵³ The case examined the right of an atheist to refrain from paying cemetery tax as he did not want to have a religious burial. The Court rejected the position of the municipal council that the burden is on the defendant to show that he is not a Christian, failing which there is a presumption that he is a Christian. It held instead that a statement as to one's belief is perfectly legitimate without any other formality.

c) Disability

Disability is defined in the Law on Persons with Disabilities 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'.

When the above definition is compared with the concept of disability adopted in *Ring and Skouboe Werge*,⁵⁴ it can be seen that the definition in the Cypriot law falls short of incorporating the juxtaposition of the *impairment* with the *barriers* that impede effective participation; instead, the definition in the Cypriot law requires disability to cause permanent or indefinite limitations when juxtaposed with the person's background and other personal data, but not when juxtaposed with external factors such as structural barriers. The definition of disability in the Cypriot law also fails to meet the test set in *Ring and Skouboe Werge* in that, according to Cypriot law, the limitation must be either 'permanent' or of 'indefinite duration', in contrast with the 'long-term' limitation set by the

⁴⁸ Ombudsman's Report Ref. A/P 2430/10, 2445/10, 2446/10, 2447/10, 2467/10, 1728/11, 9 April 2012.

⁴⁹ CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203.

⁵⁰ Law Providing for the Political Rights of Public Servants, Local Authority Employees and Employees of Public Organisations (*Ο περί των Πολιτικών Δικαιωμάτων Δημόσιων Υπαλλήλων, Εκπαιδευτικών Λειτουργών, Δημοστικών Υπαλλήλων, Κοινοτικών Υπαλλήλων και Υπαλλήλων Νομικών Προσώπων Δημόσιου Δικαίου Νόμος του 2015*) N.102(I)/2015, Article 3, 10 July 2015. Available at www.cylaw.org/nomoi/enop/non-ind/2015_1_102/full.html.

⁵¹ Court of Justice of the European Union (CJEU), 22 January 2019, *Cresco Investigation GmbH v. Markus Achatzi*, C-193/17, ECLI:EU:C:2019:43.

⁵² CJEU, 17 April 2018, *Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV*, C-414/16, ECLI:EU:C:2018:257.

⁵³ District Court of Larnaca (*Επαρχιακό Δικαστήριο Λάρνακας*), *Voroklini Community Council v. XXXX Zarifis et al*, No. 1243/2018, 25 January 2019.

⁵⁴ CJEU, Judgment of 11 April 2013, *Jette Ring and Lone Skouboe Werge*, joined cases, C-335/11 and C-337/11, ECLI:EU:C:2013:222.

Court of Justice of the European Union (CJEU). This essentially means that the Cypriot definition requires a more stringent test to be satisfied in order for a disadvantage to be deemed a 'disability' and thus be offered protection under the law.

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 to quality of life). The definition of disability in the Cypriot anti-discrimination law does not refer to the source of the disability and persons with disabilities caused by a curable illness may be denied access to welfare. The justification for such a denial is that their symptoms of limitation can be alleviated if they have an operation. Such was the case of a 90-year-old man with limited vision resulting from a cataract, whose application for welfare was rejected on the grounds that his vision would improve if he had the operation.⁵⁵

The Law on Social Insurance defines disability as the 'loss of health, strength or the ability to enjoy life'.⁵⁶ However, this should not be seen as an exhaustive definition of disability but rather a means to determine eligibility to disability benefit under the particular law.

The Law on Public Service, which contains a positive action provision for hiring persons with disabilities in the public sector, defines a 'disabled' person as 'a person who congenitally or by a subsequent incident suffers full or limited impairment, and the disability originates from a serious deformation or mutilation of the upper part of the lower limbs, or muscle disease, paraplegia, tetraplegia, or loss of sight in both eyes or loss of hearing in both ears or any other serious condition that substantially reduces a person's physical condition confining the person to a limited circle of jobs'.⁵⁷ This definition follows the restrictive tradition of Article 2 of Law No. 127(I)/2000, and it is arguably more restrictive than the more liberal approach taken by the CJEU in *Ring and Skouboe Werge*.

A law which came into force in late 2009 introducing quotas in favour of persons with disabilities in the public sector defines 'person with a disability' as a person who, following an assessment by a multidisciplinary committee, is found to be suffering from a permanent or indefinite insufficiency or disadvantage causing physical, intellectual or mental restrictions in finding and keeping suitable employment.⁵⁸ In 2015, when the Supreme Court was asked to review an administrative decision to reject a disabled applicant from inclusion in the catalogue of persons entitled to a quota position in the public service, the Court ruled that the appointing body was not justified in disregarding medical opinion which had classified the applicant as a person with a disability. The Court therefore annulled the administrative act by which the applicant's request to be included in the quota list had been rejected, thus paving the way for the applicant to submit a fresh application.⁵⁹

The Ombudsman's *Annual Report 2005*⁶⁰ refers to two cases in which the Social Welfare Services discontinued the payment of a benefit to persons with disabilities on the grounds 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

⁵⁵ Consultation with KYSOA, the confederation of disability organisations, 8 May 2017.

⁵⁶ Law on Social Insurance (*Ο περί Κοινωνικών Ασφαλίσεων Νόμος*) 2010 N. 59(I)/2010-2014, Article 2(1). Available at www.cylaw.org/nomoi/enop/non-ind/2010_1_59/full.html.

⁵⁷ Law on Public Service (*Περί Δημόσιας Υπηρεσίας Νόμος*) N. 1/1990, 1990-2014, Article 44(3). Available at www.cylaw.org/nomoi/enop/non-ind/1990_1_1/full.html.

⁵⁸ Law Introducing Special Provisions for the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*) No. 146(I)/2009, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

⁵⁹ Supreme Court, *Eleni Paroutsi v. Educational Service Committee*, Case No. 5700/2013, 30 October 2015. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015.

⁶⁰ Although the Ombudsman is also the Equality Body, reference is made here to the Ombudsman's annual report.

complainants' disabilities did fit the definition of the term as found in the law because the inference that could be drawn from the medical certificates was that the disability in question was of indefinite duration.⁶¹

An Equality Body decision in 2007⁶² criticised a Ministry of Labour scheme for the provision of care to tetraplegic persons, where tetraplegia was defined as paralysis of the lower limbs resulting from injury to or illness of the bone marrow. The decision found the scheme to be discriminatory as it treated differently tetraplegic persons whose condition resulted from different reasons and excluded, for instance, persons whose tetraplegia was due to brain injuries, muscular condition or multiple sclerosis. A 2010 decision of the Equality Body included a speech impediment as falling within the definition of disability as found in the Law on Persons with Disabilities 127(I)/2000.⁶³

In a judicial review application decided by the court in 2016, the decision of the Social Welfare Services to discontinue the payment of a disability grant to a 15-year-old child following an operation which partly improved his condition, was annulled by the court as unjustified.⁶⁴ According to the authorities, the child's condition no longer met the definition of 'disability' found in the Law on Public Grants, because, following the operation, he was able to walk without support. The Law on Public Grants defines disability as any form of insufficiency or disadvantage which causes permanent or indefinite physical, intellectual or mental restriction, taking into account the history and other personal data of the person, and restricts substantially or excludes the possibility of one or more activities considered natural and essential for the quality of life of any person of the same age with no such insufficiency or disadvantage.⁶⁵ The court found that, even after the operation, the applicant continued to have a disadvantage compared to other children of his age, as other 15-year-olds could run, walk and exercise without difficulties and without having to rest at regular intervals, for an indefinite or permanent period of time. The fact that, after the operation, the applicant could walk without support did not lead to the conclusion that his functionality was not substantially restricted compared to his peers.

In 2014, a law was adopted replacing the welfare grant, known as 'public benefit', with a 'minimum guaranteed income'. To be eligible, applicants must meet the law's definition which, on the one hand, endorses the concept introduced by the CRPD on impairments which hinder equal participation in society when interacting with barriers, but, on the other hand, makes eligibility conditional upon passing a 'classification of disability' test of the System of Classification of Disability.⁶⁶ This is a test that assesses disability on the basis of functionality using an international standard known as ICF (International Classification of Functioning, Disability and Health). The system is operated by the Ministry of Labour,

⁶¹ Ombudsman, *Annual Report 2005*, Case Nos. A/P 2175/04 and A/P 368/05.

⁶² Anti-discrimination Authority, Nos. A.K.I. 58/2007, A.K.I. 59/2007, A.K.I. 60/2007, A.K.I. 61/2007 and A.K.I. 64/2007, 19 June 2007.

⁶³ Ombudsman, Report of the Equality Authority regarding the dismissal of a person with a natural disadvantage from the position of hourly governmental worker, File No. A/P 2898/2007/ A.K.I. 10/2010, 23 February 2010.

⁶⁴ Supreme Court, Review Jurisdiction, *Christos Theodosiou through his guardian Theodosia Theodosiou v. The Republic of Cyprus through the Director of Social Welfare Services et al*, Case No. 1517/2013, 30 June 2016. Available at http://cyllaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201606-1517-2013.htm&qstring=%E1%ED%E1%F0%E7%F1%2A.

⁶⁵ Law on Public Benefits and Services of 2006 and 2012 (Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος 2006 και 2012) N. 95(I)/2006, Article 2. Available at http://cyllaw.org/cqi-bin/open.pl?file=nomoi/enop/ind/2006_1_95/section-scd1bb10a4-bb5c-68a5-d813-b5bd55b6b547-lnb9c5298e-5300-551d-119b-c161849ec308.html&qstring=%F0%E5%F1%E9%20and%20%E4%E7%EC%EF%F3%2A%20and%20%E2%EF%E7%E8%E7%EC%E1%2A%20and%20%EA%E1%E9%20and%20%F5%F0%E7%F1%E5%F3%2A%20and%20%ED%EF%EC%F9%ED%2A%20and%202006%20and%20%EA%E1%E9%20and%202012.

⁶⁶ Law on the Minimum Guaranteed Income and Generally on Social Provisions of 2014 (Ο Περί Ελάχιστου Εγγυημένου Εισοδήματος και Γενικότερα περί Κοινωνικών Παροχών Νόμος του 2014) N. 109(I)/2014. Available at http://www.cyllaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

Welfare and Social Insurance⁶⁷ and has attracted criticism from the disability movement for adopting the medical rather than the social model of addressing disability. Despite criticism from the disability movement, the ICF system continues to function as the mechanism for determining eligibility to welfare for persons with disabilities.

d) Age

Although no definition is provided anywhere, equality body and court decisions appear to endorse the view that the victim need not be either young or old and that any discriminatory treatment based on age is prohibited. Thus, in 2006, a funding scheme to cover the cost of repairing rural houses that excluded single persons under the age of 35 was deemed to be discriminatory by the Equality Body on the ground of age.⁶⁸ In 2014 a court decision found that the reduced entitlement to pension benefits for civil servants resigning from the civil service before they turned 48 (or 45 for medical staff) amounted to age discrimination.⁶⁹ However, the legislative provision for the reduced benefits⁷⁰ remains in force in spite of this ruling. The only procedure available for changing a discriminatory law in the Cypriot legal order is for the Attorney General to promote a bill to be approved first by the Council of Ministers and then by Parliament. The courts are not required to disapply the discriminatory law pending its official annulment by Parliament.

The question of seniority was found by the court to be a permissible criterion for a job promotion where the two competing candidates had the same or similar qualifications.⁷¹

e) Sexual orientation

No definition is provided either in the legislation or in any other official or unofficial document. This term does not appear in any piece of legislation other than the law transposing Directive 2000/78/EC. An Equality Body decision in 2005 found that employment advantages granted only to married employees amounted to indirect discrimination by virtue of the law transposing Directive 2000/78/EC on the ground of, inter alia, sexual orientation, thus extending the definition of this ground to cover potential situations of LGB persons, whose sexual orientation may be presumed by their decision not to get married and who are more negatively affected by this provision as a result.⁷²

⁶⁷ Implementation of new system of assessing disability and functionality (*Εφαρμογή στην Κύπρο ενός Νέου Συστήματος Αξιολόγησης της Αναπηρίας και Λειτουργικότητας*). Available at www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsidpd06_gr/dsidpd06_gr?OpenDocument.

⁶⁸ Anti-discrimination Authority, State subsidy provided to single persons in the frame of a housing scheme for the revitalisation of communities with up to 200 residents (*Κρατική χορηγία που παρέχεται σε μονήρη άτομα στα πλαίσια στεγαστικού σχεδίου για αναζωογόνηση κοινοτήτων με κατοίκους μέχρι 200 άτομα*), Ref. 127/2005, in: *Annual Report 2006*. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%B%CF%85%20%CE%A1%CF%B1%CF%84%CF%83%CE%B9%CF%83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CF%B9%20%CF%84%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CF%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/4903B68B9FDAB92CC2257E90003CBE81/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%BA%CE%B1%CF%84%CE%AC%20%CF%84%CE%B%CF%85%20%CE%A1%CF%B1%CF%84%CF%83%CE%B9%CF%83%CE%BC%CE%BF%CF%8D%20%CE%BA%CE%B1%CF%B9%20%CF%84%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CF%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%20%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%88%CE%9A%CE%98%CE%95%CE%A3%CE%97%202006.pdf).

⁶⁹ Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%2058(%E9)#).

⁷⁰ Law on Pensions (*Ο περί συντάξεων νόμος*) N. 97(I)/1997, Article 27(1). Available at http://cylaw.org/nomoi/enop/ind/1997_1_97/section-sce0f71256-16f1-48aa-8563-fd75afcd5cfc.html.

⁷¹ Supreme Court, *Charis Christodoulidou v. Republic of Cyprus through the Public Service Committee*, Case No. 12/10, 3 April 2015. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2015/3-201504-12-10.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*%20and%202015; Cyprus, Supreme Court, *María Shambarta v. Republic of Cyprus* (Μαρία Σιαμπάρτα v. Κυπριακής Δημοκρατίας) No. 417/2010, 4 October 2010.

⁷² Equality Authority (2005), Report regarding the application forms for appointment in the Central Forum for the Equal Distribution of Burdens, Ref. A.K.I. 26/2005. Not available online.

The law on civil unions does not provide any definitions whatsoever, since it applies equally to all persons who choose to register their relationship in this manner, irrespective of sexual orientation.⁷³ No court case on discrimination on the ground of sexual orientation has ever shed light on the definition of the term. The Greek term is literally translated as 'genetic orientation' and as such it may be presumed to cover all cases of persons declaring a certain sexual or gender identity. When the gender identity bill was first presented in 2018, the term gender identity was more accurately translated into Greek (as 'ταυτότητα φύλου') but it was not explicitly defined. Although not explicitly spelled out, the introduction of 'gender identity' into the legal framework essentially differentiates between sexual preferences which are covered by 'sexual orientation' and experiences of gender, which are covered by the term 'gender identity'.

The Equality Body, whose mandate does not explicitly cover intersex persons, has on occasion addressed the vulnerable situation of intersex persons under its wider mandate to deal with matters pertaining to sexual orientation and gender identity, recognising at the same time that a more specialised framework is needed for their more effective protection.

2.1.2 Multiple discrimination

In Cyprus, multiple discrimination is not explicitly prohibited by law. There are no plans to adopt legislation on multiple discrimination.

In Cyprus, there is no case law dealing with multiple discrimination; in some cases, the court deals with claims involving more than one ground but does not address the intersectionality of grounds as a special circumstance that must be treated differently. The procedure selected by all multiple discrimination victims so far has been that of judicial review of an administrative action, which does not in itself lead to an award of compensation; if the claim is deemed to be well founded, the court will annul the administrative decisions that adversely affected the victims. If the claimants want to pursue a claim for compensation, they will have to initiate a different procedure before a civil court, which has not happened yet. We therefore have no picture as to whether the amount of compensation awarded is higher in cases of multiple discrimination.

The treatment of multiple discrimination cases by the courts and by the Equality Body has been uneven, demonstrating the weaknesses of not having a specific legal framework on this offence. An Equality Body decision in 2008 found that the age restrictions contained in a disability benefit scheme were discriminatory,⁷⁴ but did not look into the specificities created by the combination of the two grounds. With reference to the same case, in January 2016 the Supreme Court also ruled that the age restriction in the disability scheme amounts to unlawful age discrimination; however, the court also failed to address the case from the perspective of multiple discrimination.⁷⁵ A report issued in 2016 by the Ombudsman on the conditions of access to the labour market for women asylum seekers criticised the policy framework, which failed to take into account the multiplicity of grounds of discrimination at play (origin, age, gender, religion, maternity, health, etc.) but did not term this multiplicity as an aggravated instance of discrimination.⁷⁶ A report issued in 2017 by the Ombudsman in her capacity as monitoring body for the implementation of the CRPD

⁷³ Law on Civil Marriages of 2015 (*Ο περί Πολιτικής Συμβίωσης Νόμος του 2015*), 184(I)/2015, 9 December 2015. Available at http://cyllaw.org/nomoi/arith/2015_1_184.pdf.

⁷⁴ Equality Body, Decision Ref. 114/2007, 10 November 2008.

⁷⁵ Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

⁷⁶ Commissioner for Administration and Human Rights (2016) 'Report on access by women asylum seekers to labour and social welfare', File No. A/P 1799/2016, 11 November 2016. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).

established that a legislative provision excluding persons with intellectual disability from acquiring citizenship amounts to multiple discrimination, rendering the illegality even more serious.⁷⁷ In 2018, however, the appeal court considered an age limit in a disability scheme and concluded that it was reasonable and therefore lawful because of the bad state of public finances; the multiplicity of grounds was not considered at all.⁷⁸

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Cyprus, discrimination based on a perception or assumption of a person's characteristics is not explicitly prohibited in national law, except in the case of disability. The Law on Persons with Disabilities defines discrimination based on disability as treatment based on characteristics which generally belong to a person with such disability or based on an assumed characteristic which generally belongs to a person with such disability or based on an assumed characteristic generally attributed to a person with such disability.⁷⁹ The other two laws transposing the directives do not contain an equivalent provision, they merely reproduce the wording of the directives. However, the concept of discrimination itself, which virtually replicates the directive, defines 'direct discrimination' in the following way: 'where one person is, due to this ethnic or racial origin, treated less favourably than another is, has been or would be treated in a comparable situation'.⁸⁰ Assumed or mistaken characteristics may thus be presumed to satisfy the test of discrimination, which is fairly wide.

This matter has never been considered by a Cypriot court or the Equality Body.

b) Discrimination by association

In Cyprus, discrimination based on association with persons with particular characteristics is not explicitly prohibited in national law. There is no judicial interpretation of any related terms or concepts. However:

- All three laws transposing the equality directives (58(I)/2004, 59(I)/2004 and 127(I)/2000 as amended) contain protection against victimisation in line with the said directives. The spirit of the prohibition of victimisation may be extended to cover discrimination by association.
- Freedom of association is protected by the Cypriot Constitution (Article 21). All constitutional rights are to be enjoyed without discrimination, according to Article 28 of the Constitution.
- Article 1(1) of Protocol No. 12 to the ECHR, which Cyprus has ratified, includes 'association with a national minority' as one of the prohibited grounds of

⁷⁷ Independent Authority for the Promotion of the Rights of Persons with Disabilities, Report on the rejection of an application by a person with an intellectual disability for Cypriot citizenship and infringement of the CRPD (Έκθεση αναφορικά με την απόρριψη αίτησης ατόμου με νοητική αναπηρία για απόκτηση κυπριακής υπηκοότητας και την παραβίαση της Σύμβασης του ΟΗΕ για τα Δικαιώματα των Ατόμων με Αναπηρία), File No. S.A.A. 40/2016, 26 January 2017. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/\\$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/78055D2C9EBD67D0C22580CF00356750/$file/1%20%CE%A3%CE%91%CE%91%2040%2016%20%CE%91%CE%9A%2048-13-26012017.doc?OpenElement).

⁷⁸ Supreme Court, Appeal Jurisdiction, *Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites*, Review Appeal No. 190/2012, 4 October 2018. Available at www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%E9%E3%2A.

⁷⁹ Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000), Article 3(2)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

⁸⁰ Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Law on Persons with Disabilities No. 127(I)/2000).

discrimination. Such association may take various forms, including living with a particular community and/or otherwise sharing in its misfortunes or being assumed by the perpetrator to be of a particular ethnic minority origin. Such association is in line with the CJEU ruling in *Chez Razpredelenie*, which established that the Racial Equality Directive covers 'those who, without possessing that [ethnic] origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure'.⁸¹

- The law setting up the Equality Body defines the Equality Body's mandate as including the promotion of equality in the enjoyment of rights and freedoms safeguarded by the conventions ratified by Cyprus and referred to explicitly in law.⁸² These include Protocol No. 12, irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.⁸³ It may be inferred from this provision that association then becomes a prohibited ground of discrimination, at least as far as the Equality Body is concerned. However, the grounds expressly affected by this provision are those related to race/ethnic origin (language, colour, religion, etc.) and do not seem to extend to disability, age or sexual orientation. There is no jurisprudence to clarify this issue.

An Equality Body decision in 2010 established that discrimination against the primary carer of a person with a disability, in this case the mother of a child with a disability, is unlawful discrimination under the law transposing the Employment Equality Directive⁸⁴ decision citing the principle established by *Coleman v. Attridge Law and Steve Law*⁸⁵ and referred explicitly to this case.⁸⁶ The difference between the case examined by the Equality Body and *Coleman v. Attridge Law and Steve Law* is that the latter case involves direct discrimination whilst in the former case the complainant was refused preferential treatment as regards her job posting. However, the principle was nevertheless established and was reiterated by the Equality Body in the Code of Conduct on Disability Discrimination in Employment and Occupation it issued in September 2010,⁸⁷ thus making it harder for the courts to ignore if and when such a case is presented before them. In 2015 the Equality Body once again dealt with discrimination by association. On this occasion, it was in relation to a female employee in the public sector who was to be transferred to a post in another city, far from her brother who had a psychosocial disability and for whom she was the primary carer.⁸⁸ The administration's policy was to transfer employees to different districts on rotation. Whilst the system of transfers provided for consideration of the family circumstances of the employee to be transferred, the term

⁸¹ CJEU, Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, Case C-83/14, Paragraph 129.1, ECLI:EU:C:2015:480.

⁸² These conventions are Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on 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 other Cruel, Inhuman or Degrading Treatment or Punishment.

⁸³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*) Νόμος No. 42(I)/ 2004, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁸⁴ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 5(1).

⁸⁵ CJEU, Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, Case C-303/06, ECLI:EU:C:2008:415.

⁸⁶ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67793&pageIndex=0&doclang=EN&mod=e=lst&dir=&occ=first&part=1&cid=150145>.

⁸⁷ Anti-discrimination Authority, Report of the Equality Authority regarding the appointment of a contracted teacher with a disabled child at a school outside her area of residence, Report No. A.K.I. 82/2009, 25 June 2010.

⁸⁸ The Code of Conduct can be downloaded at http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/index_gr/index_gr?opendocument.

⁸⁹ Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, 16 October 2015, Ref. A.K.I. 38/2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

'family' did not extend beyond spouse⁸⁹ and children, as that would, in the opinion of the competent administrative body, infringe upon the principle of proportionality. The administrative body insisted that any exception to this rule would amount to preferential treatment of an employee compared to other employees. The Equality Body pointed out that the complainant's brother was in need of 24-hour supervision and care and had been declared by the court to be an 'incapable person'; the complainant had been appointed by the court as the person in charge of all his affairs. She was also his only close relative in Cyprus and his sole carer, taking care of all his survival needs around the clock. The Equality Body relied on the strengthening of the Employment Equality Directive by the CJEU decision in the *Coleman* case to establish that the restrictive interpretation given to this legal framework by the administration – limiting the application of discrimination by association to only spouses and children – was violating the principle established by the CJEU ruling, which was clearly intended to cover any type of discrimination by association with a person with a disability under the care of the complainant. The Equality Body found that any other interpretation of the Directive would truly weaken the scope of protection, pointing out a number of examples of other Member States that have extended the principle of discrimination by association to relationships beyond the sphere of the family, covering third persons acting as carers of persons with disabilities. The Equality Body invited the administration to look at the facts of each case separately before deciding on any particular transfer and to prioritise respect for fundamental rights over other considerations.

To date, neither the courts nor the Equality Body have examined any cases in which the primary carer of a person with a disability was not a close relative. That would indeed be an interesting area to investigate, especially given the fact that the vast majority of professional carers in Cyprus are migrant women, which would open up the possibility of multiple discrimination.

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

a) Prohibition and definition of direct discrimination

In Cyprus, direct discrimination is prohibited in national law. It is defined using the same wording as in the Directive.⁹⁰

The Law on Persons with Disabilities defines direct discrimination as '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.⁹¹

b) Justification for direct discrimination

In Cyprus, the law does not permit justification of direct discrimination, save for specific situations which are explained in Section 4 below.

A number of court decisions interpreting Article 28 of the Constitution attempt to establish a norm that essentially deviates from the approach of the two anti-discrimination directives and their CJEU interpretations. The norm emerging from a list of Supreme Court decisions is that equality must be applied only to equal situations and that 'different things can only be dealt with differently,' with references to 'reasonable discrimination which must be done

⁸⁹ In the period following the adoption of the Law on Civil Partnerships (from 2016 onwards) the term 'spouse' should be deemed to include partners who have registered a civil partnership, irrespective of gender.

⁹⁰ Law on Equal Treatment (Racial or Ethnic Origin) ([Ο περί Ισής μεταχείρισης \(Φυλετική Εθνοτική Καταγωγή\) Νόμος](#)) N. 59(I)/2004, Article 5(1); Law on Equal Treatment in Employment and Occupation ([Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος](#)) 2004 N. 58(I)/2004, Article 6(1)(a).

⁹¹ Law on Persons with Disabilities ([Ο Περί Ατόμων με Αναπηρίες Νόμος](#)) No. 127(I)/2000 Article 3(2)(a)-(d).

In 2017, another Supreme Court decision rejected a claim for age discrimination in the different lump sums paid to retiring public servants, which are calculated on the basis of a formula that includes the age of retirement. The Court concluded that retirement lump sums fell outside the scope of the Directive. It added, however, that, even if they were covered by the Directive, they would be justified under the exception of Article 6(1). The judgment did not clarify the legitimate aim served by this differential treatment, presumably assuming that if national legislation foresees such a differentiation, then it must somehow be valid and lawful. In order to justify the different treatment of civil servants retiring at different ages, the Court cited a 1998 judicial precedent, which established that differential treatment of dissimilar subjects does not amount to discrimination prohibited by law. Given that the claimant belonged to a different category than the civil servants retiring at 63, the differential treatment afforded to him was permissible.⁹⁵ The prevalent logic of these judgments is that discrimination is permitted where the individuals concerned are dissimilar and therefore not comparable. This judicial tradition marks a departure from the principle established in the directives, which essentially prohibit discrimination where 'dissimilar' subjects are treated differently in similar circumstances, provided the dissimilarity is due to a protected characteristic. The interpretation of equality given by the Cypriot courts defeats the rationale of the directives, which view such 'dissimilarity' as a potentially protected characteristic that could only justify less favourable treatment under specific and narrowly defined circumstances. In yet another problematic development, four police officers applied to the court arguing that they should be entitled to work longer as a result of a change in the law that took place whilst they were serving their pre-retirement leave. The court did not endorse their age discrimination claim and rejected their application because, although the discrimination

⁹³ Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού της Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012. In this case, the Court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

⁹⁵ Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017. Available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20F1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

argument was expounded in the final address of counsel for the applicants, it was not listed in the application as a reason for annulling the decision.⁹⁶

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

a) Prohibition and definition of indirect discrimination

In Cyprus, indirect discrimination is prohibited in national law.⁹⁷ For all five grounds except disability, indirect discrimination is defined by replicating the wording of the directives.⁹⁸

The disability law incorporates the directives' definition but also contains an additional provision, which, although not specified as a definition, offers elements of what would constitute discrimination, without clarifying whether these elements 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 the way 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 a 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 a 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 a disability satisfy, or are in a position to satisfy, when compared to persons who do have such a disability and the existence of such a condition is not justified by the circumstances of the case.'⁹⁹ 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 with the directive arises.

In 2016 the decision of the parents' association at the English School, a semi-public school attended by both Greek Cypriot and Turkish Cypriot students, to hold the finishers' prom on the day of the Turkish language exam was found by the Equality Body to be discriminatory. Although apparently neutral and affecting all students in the school, the decision to hold the prom on that particular date had placed only Turkish Cypriot students in a less favourable position compared to other students in the school whose mother tongue was not Turkish and were not taking this exam. The Equality Body at the time rejected the majoritarian logic underpinning the decision of the parents' association, as it is inevitably destined to always place the minority in a disadvantageous position.¹⁰⁰ Moreover, a law which required persons wishing to register as assistant estate agents to present a 'certified educational attainment', when there is no procedure in place for third country nationals to

⁹⁶ Administrative Court (2020), *Kyriakou et al v. Republic of Cyprus through the Ministry of Justice and Public Order and the Chief of Police*, Case No. 650/2018, 25 November 2020.

⁹⁷ Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 6(1)(b). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁹⁸ Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁹⁹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 3(2). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁰⁰ Anti-discrimination Authority (2016), 'Report on the organisation of the school leavers' prom of the English School for 2015', Ref. No. AKR 30/2015, 3 August 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/\\$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/DE2B47CF1E92C9A8C225801B00409B58/$file/%CE%91%CE%9A%CE%A130.2015_03082016.doc?OpenElement).

obtain this, was held by the Equality Body to lead to indirect discrimination against third country nationals.¹⁰¹

In 2019, on the first day of school, the newly appointed principal of a public school made use of the school regulations, which provided that the students' heads must be uncovered, in order to expel a Syrian female student because of her headscarf. The student had attended the same school wearing her headscarf for two years under the previous headmaster without any issues. The new school principal argued that he was merely adhering to the rules which require that student's heads should be left uncovered, arguing that he had no issues with anybody's religion. The student's expulsion led to several reactions from opposition parties and teachers' and students' organisations, who described the act as Islamophobic.¹⁰² The official report that followed the incident did not address discrimination and maintained an equal distance from the school principal and the student protesters.¹⁰³ Neither the head-scarf wearing student nor her family were informed of the outcome of the investigation, nor was any report communicated to them. In 2019 the Ombudsman announced that she was going to commence a self-initiated investigation into this affair but there is no publicly available information about any report being issued following that investigation and the family of the expelled student did not receive any communication from the Ombudsman.

b) Justification test for indirect discrimination

Although this issue has not been dealt with directly by the courts so far, we may nevertheless assume, on the basis of Cypriot case law on gender discrimination, European court decisions and the persuasive authority of UK court decisions, that the 'but for' test is likely to apply. This test involves asking how the victim would be treated had they not had the special characteristic, such as the particular ethnic origin or disability or religion or age or sexual orientation, that they had.

There is no judicial precedent for the test to be used in order for employers to justify a requirement, criterion or practice that results in discrimination. The case law on the subject is not particularly enlightening. A Supreme Court decision in 2008, where the claimant contested his obligatory retirement at 55 based on his low rank, failed to consider either the aim or the legitimacy of the contested provision or whether the means were appropriate or necessary; instead, the Court's decision was premised upon the rather odd theory that the applicant failed to prove that the differential treatment was not based on reasonable discrimination.¹⁰⁴ In other cases, the courts allowed wider exceptions to the non-discrimination principle than those foreseen in the directives, such as 'unequal' situations that must be treated 'unequally', without offering any definitions of the terms found in the laws transposing the two anti-discrimination directives. Judicial practice may evolve, however, following a more recent Supreme Court decision of January 2016. In this decision, the justification of the poor state of public finances, offered by the authorities in support

¹⁰¹ Equality Authority (2016), 'Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent', File number A.K.I.22/2016, 15 April 2016. Available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

¹⁰² National Confederation of Parents' Associations of Secondary Education (2019) 'Secondary Education Parents: The behaviour of the school principal in Nicosia's Lyceum is unacceptable', Press statement, 6.09.2019, available at: https://paideia-news.com/goneis-mesis-qenikis/2019/09/06/goneis-mesis-aporadekti-symperifora-dieythynti-se-lykeio-tis-leykosias/?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter&fbclid=IwAR0hA2zDdOkCxitk1RLuiSH4IC4fhrX7_KBDAGkc7GozU_EV0sr99D-ZjWU.

¹⁰³ Ministry of Education, Culture, Sports and Youth (2019) 'Announcement with regard to the findings of the investigation of the incident at the Apostle Barnabas Lyceum', 17 September 2019, available at <http://enimerosi.moec.gov.cy/archeia/1/ypp9637a>.

¹⁰⁴ Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Αρχηγού Αστυνομίας και του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης), No. 1497/2008, 30 April 2012.

of an age criterion in a disability scheme, was rejected by the Court as failing to meet the test of reasonableness, proportionality and objectivity.¹⁰⁵

By contrast, the Equality Body has issued a number of reports pursuant to complaints on age discrimination, where the tendency is to uphold the general principle of equality and to approach the issue from a fundamental rights perspective. The Equality Body's decisions at the time showed a good understanding and articulation of the concepts of legitimate aim and appropriate means as well as of decisions and debates at EU level. Below are some examples of how the Equality Body had assessed the allegations of employers over the years as to what amounts to 'legitimate aim' and how it interpreted the 'appropriate and necessary measure':

- The Equality Body issued a decision in relation to the procedure followed by a certain school for exempting students from the religious instruction lesson. The report criticised the school regulations, which provided for the exemption of students only if they were 'not of Christian Orthodox faith', pointing out that a person's religion constitutes sensitive personal data that should not be revealed unless there is objective and reasonable justification serving a legitimate aim. In the case at hand, these two requirements were not in place.¹⁰⁶
- A job advertisement which stated that applicants would be assessed on the basis of their academic qualifications and experience, but in the event of applicants scoring equally they would be further assessed on the basis of their date of birth (priority was to be given to younger applicants) was held by the Equality Body to be unlawful. Resorting to age differentiation as a means of resolving the dilemma of candidates scoring equally was not a legitimate aim.¹⁰⁷
- A legislative provision in the Pensions Law, which provides for a less favourable retirement package for public servants under the age of 45 who choose to take early retirement, was found by the Equality Body to be disproportionate, as it covers two-thirds of the public service workforce; the aim served was not legitimate because the shortages in scientific personnel invoked have since been covered.¹⁰⁸ The issue was the subject of a court decision in 2014¹⁰⁹ and of infringement proceedings initiated by the European Commission against the Cypriot Government, which resulted in a ruling against Cyprus.¹¹⁰
- The Equality Body found the policy of insurance companies refusing to insure persons over 70 to drive cars, or charging them a higher premium if they do insure them, unjustified and unsupported by reliable statistical evidence to prove that persons over 70 have more accidents than younger persons.¹¹¹
- A legislative provision allowing the dismissal without compensation of employees who have reached retirement age was found by the Equality Body to be discriminatory. The Ministry of Labour's argument that this measure was justified because employees aged 65 or older are secure due to their pension and provident fund benefits was rejected.¹¹² However, the provision continues to remain in force. With high youth unemployment, an argument that perhaps might be considered is that the provision is justified in the context of a labour market policy to combat youth unemployment.

¹⁰⁵ Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016.

¹⁰⁶ Equality Body, Report Ref. no. A.K.R. 135/2009, 7 November 2010.

¹⁰⁷ Equality Authority (2016), *Report on unlawful direct discrimination on the ground of age in the announcement of vacancies by the Nicosia Municipality for 11 fixed-term employees*, 6 September 2016, File No. A.K.I. 18/2015.

¹⁰⁸ Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 4 June 2009.

¹⁰⁹ Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General (Νικολέττα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα)*, No. 1695/2009, 17 December 2014.

¹¹⁰ CJEU, Judgment of 21 January 2016, *European Commission v. Cyprus*, C-515/14, ECLI:EU:C:2016:30.

¹¹¹ Anti-discrimination Authority, Report No. 125/2007, 21 October 2008.

¹¹² Equality Authority, Report No. A.K.I. 13/2005, 11 April 2007.

In 2017 the Supreme Court ruled *obiter* that a law providing for different retirement lump sums to be paid to persons retiring at different ages did not infringe the equality principle because it was justified on the basis of a legitimate aim under Article 6(1) of the Employment Equality Directive, without explaining what the legitimate aim was.¹¹³ The failure of the Court to specify the legitimate aim may perhaps be explained in light of the fact that it had already decided that the case fell outside the scope of the law and the issue was in any case not of the essence; or it may even suggest that the Court thought of the legislative act itself as sufficient justification. In either case, this type of legitimisation does not meet the high standard of legitimisation set in *Age Concern England* where the CJEU clarified that mere generalisation concerning the capacity of a specific measure to contribute to employment policy will not suffice.¹¹⁴

2.3.1 Statistical evidence

a) Legal framework

In Cyprus, there is legislation regulating the collection of personal data.

In 2018 the existing data protection legislation was replaced with a new law purporting to provide for the effective implementation of the GDPR.¹¹⁵ The old law, which had relied on Directive 95/46/EC and which contained a special provision on sensitive data, was annulled. The new law defines personal data as 'any information relating to an identified or identifiable natural person'. An 'identifiable natural person' is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as name, identity number, location data, online identity card, or one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person. The new law makes no provision for 'sensitive data'.

Under the GDPR, a number of practices that were common and widespread in the past are being reviewed and revised, as the consent of data subjects is now required for all types of data processing. In 2018, amidst an industrial dispute that broke out between teachers and the Ministry of Education, a number of teachers filed a complaint with the data protection authority (DPA) against the ministry for the wrongful use of a special platform. This platform, originally intended for programming and for processing various administrative procedures such as applications for leave of absence or sick leave or applications for transfers or secondment, was instead used to send emails to all teachers in the context of an industrial dispute. The DPA found in favour of the teachers, since they had submitted their email addresses to the platform in order to be used for the purposes of the platform and not for any other reason.¹¹⁶

In Cyprus, statistical evidence is neither prohibited nor permitted by national law in order to establish indirect discrimination and may be admitted to establish discrimination, although the court may choose to disregard it in its findings.

¹¹³ Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

¹¹⁴ CJEU, Judgment of 5 March 2009, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, C-388/07, ECLI:EU:C:2009:128.

¹¹⁵ Law on the Protection of Natural Persons against Processing of Personal Data and Free Movement of Such Data (Ο *περί της Προστασίας των Φυσικών Προσώπων Έναντι της Επεξεργασίας των Δεδομένων Προσωπικού Χαρακτήρα και της Ελεύθερης Κυκλοφορίας των Δεδομένων αυτών Νόμος*), 2018 (125(I)/2018).

¹¹⁶ Office of the Commissioner for the Protection of Personal Data, File No. 22.20.001, A/P 152/2018, 21 September 2018. Available at [http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/all/9324217C650A15E7C2258313002F15AB/\\$file/%CE%B1%CF%80%CF%8C%CF%86%CF%B1%CF%83%CF%B7%20Vs%20%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF%CF%85%20%CE%A0%CE%B1%CE%B9%CE%B4%CE%B5%CE%AF%CE%B1%CF%82.pdf?openelement](http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/all/9324217C650A15E7C2258313002F15AB/$file/%CE%B1%CF%80%CF%8C%CF%86%CF%B1%CF%83%CF%B7%20Vs%20%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF%CF%85%20%CE%A0%CE%B1%CE%B9%CE%B4%CE%B5%CE%AF%CE%B1%CF%82.pdf?openelement).

In 2010 the Ombudsman¹¹⁷ issued a report pursuant to a complaint submitted a month earlier by a lawyer on behalf of a migrant woman, who was HIV positive. She had been detained for the purposes of deportation after her asylum application had been rejected.¹¹⁸ The guards at the detention centre informed all the other inmates that she was suffering from HIV/AIDS and should therefore be using a separate washroom. The Ombudsman's report concluded that sensitive data concerning the complainant's health was revealed to third parties unlawfully and without her consent. The fears expressed by the members of staff that the non-revelation of the complainant's condition would have endangered the health of other persons using the same space were not seen as valid, since the medical certificate, which the complainant was issued with by the state hospital and which had been notified to the management of the detention centre, expressly stated that the complainant did not suffer from any contagious disease endangering public health. Similarly, in 2011 an Ombudsman's report¹¹⁹ on access to the labour market by HIV positive individuals revealed the low response of HIV positive persons to a special scheme for employment in the public sector 10 years after its introduction. According to the report, the low response was largely attributed to the fact that the procedure foreseen in the scheme involves the registration of prospective applicants with the Labour Office, declaring that they are HIV positive, a fact which is in turn communicated to the Minister of Labour for further communication to the ministry involved and to the head of department where the applicant is applying for employment. The Ombudsman noted that the declaration of the applicant's health condition to a number of persons every time he or she applies for a job may deter an applicant from taking advantage of the said scheme but may also be a reason for rejecting a job application. The Ombudsman urged the authorities to remove this obstacle from the procedure.¹²⁰

In the field of disability, where positive measures often take the form of grants, there is little evidence of the use of statistical data in order to design positive measures. A measure introduced in 2010, involving the covering of costs for escorts for persons with disability, was designed after the Ministry of Labour requested disability organisations to submit details on the numbers of their members that would make use of such a service. The funding granted was commensurate with the numbers of persons with disabilities that would be benefiting from the services of the escorts. Other measures in the disability field that do not involve the granting of monetary benefits, such as the preferential parking provided under the disability law,¹²¹ appear to be the result of pressure from the disability movement rather than the result of the use of statistical data.

b) Practice

In Cyprus, statistical evidence is sometimes used in practice in order to establish indirect discrimination. Court practice does not generally involve argumentation on ethical or methodological issues, although litigants may use statistical evidence to support their line of argument.

The Equality Body occasionally uses statistical data to demonstrate the depth or intensity of a problem. One such case concerned discrimination against female migrant domestic workers whose right to join a trade union was restricted by the standard employment contract they were forced to sign.¹²² In the reasoning for this decision, the Equality Body

¹¹⁷ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹¹⁸ Ombudsman, Report No. AP 1188/2010, 8 July 2010.

¹¹⁹ Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman.

¹²⁰ Ombudsman, Report No. A/P 587/2010, A/P 1616/2010, A/P 2309/2010, 17 October 2011.

¹²¹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 7A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹²² Ombudsman, Report File No. A.K.I 2/2005, 4 November 2005. The Minister of the 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.

also made reference to the low salaries paid to migrant domestic helpers¹²³ compared to Cypriot workers, pointing out that the number of migrant female domestic workers at the time in Cyprus was about 18 000.¹²⁴ The data was used in this report to highlight 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. In 2010 the Equality Body commissioned a survey into the vocational training needs of female migrant domestic workers. This provided a series of interesting results on the profile of this highly vulnerable group. Although the purpose of choosing to focus on vocational training needs is not clear, the interest of the Equality Body in the use of statistical data is obvious. Opinion surveys were also commissioned by the Equality Body in previous years, mainly in order to assess public opinion towards various vulnerable groups (LGBT persons, Pontian Greeks, persons with disability). Practice suggests that surveys are intended more for awareness raising and less for informing the court in the course of a litigation.

In 2008 the Equality Body examined an age discrimination complaint against several insurance companies whose policy was to refuse to insure persons over 70 to drive cars or to charge them higher premiums. The Equality Body's decision found that the practice or policy complained of, unsupported by reliable statistical evidence, is not reasonably and objectively justified and therefore amounts to discrimination.¹²⁵ It follows that, had statistical evidence shown that persons over 70 are indeed more accident-prone, then the difference in treatment would have been justified and therefore not discriminatory. Thus, the Equality Body appears to have been prepared to accept statistical evidence in order to decide whether discrimination had taken place or not. Statistical evidence has been accepted by the courts in cases not related to discrimination.¹²⁶

Statistics were also used in an Ombudsman's report in order to describe the situation of domestic workers in Cyprus, which highlighted the systemic gaps leading to discrimination but fell short of invoking the Racial Equality Directive or its transposing legislation, avoiding the connection between the policy weaknesses identified and any infringement of the Directive.¹²⁷

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Cyprus, harassment explicitly constitutes a form of discrimination.¹²⁸ It is prohibited in national law, covering all fields of application foreseen in the two equality directives in both the private and the public sector.¹²⁹

¹²³ Calculated at CYP 0.82 per hour, compared to CYP 4–CYP 5 per hour (approximately EUR 8.5) for Cypriots carrying out the same work: Ombudsman, Report File No. A.K.I 2/2005, 4 November 2005, page 4.

¹²⁴ This figure is based on Ministry of the Interior data, according to which the number of migrant female domestic workers in Cyprus in 2003 was 17 955.

¹²⁵ Equality Body, Report No. 125/2007, 21 October 2008.

¹²⁶ Supreme Court, *Andreas Kaskavalis v. The Republic of Cyprus through the Ministry of Transport and Public Works and the Licensing Authority* (Ανδρέας Κασκαβάλης v. Κυπριακής Δημοκρατίας μέσω του Υπουργείου Συγκοινωνιών και Δημοσίων Εργων και της Αρχής Αδειών), N. 1132/2005, 10 August 2007; District Court of Nicosia, *Theophanis Chrysanthou et al v. Sotiris Liasi et al*, Case No. 4567/2010, 29 December 2017.

Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseised/pol/2017/1120170768.htm&qstring=%F3%F4%E1%F4%E9%F3%F4%2A.

¹²⁷ Hadjigeorgiou, N. and Ombudsman (2020), 'Report on the status of foreign domestic workers in Cyprus', 18 December 2020.

¹²⁸ Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (Ο περί Ισως μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (Ο Περί Ισως Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος), 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹²⁹ Law on Persons with Disabilities (Ο Περί Ατόμων με Αναπηρίες Νόμος) No. 127(I)/2000, Article 3(2)(e). Available at www.cylaw.org/nomoi/enop/ind/2000_1_127/section-sc9bdee5c7-e5ee-6b41-b244-

As a concept, harassment was first introduced into Cypriot law in 2002 with Law 205(I)/2002 on the Equal Treatment of Men and Women in Employment and Vocational Training, which came into force on 1 January 2003. This law introduced 'harassment based on sex' as part of the definition of 'sexual harassment'. Later, in amending Law 40(I)/2006, the two terms were defined separately. The law refers to 'persons' rather than men or women and does not exclude harassment between individuals of the same sex.

In the legislation transposing the equality directives, 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'.¹³⁰ Although the laws refer to 'a person', there is no reason to interpret this as excluding harassment of more than one person or indeed of a group or a community, so long as unwanted conduct violating the dignity of one or more persons can be proven. The issue as to whether this provision may be used to prosecute hate speech against ethnic or sexual minorities or other groups has never been tested in court but cannot be ruled out.

The Criminal Code¹³¹ provides for a number of offences that relate to harassment and may potentially be used to prosecute discrimination falling under the scope of the directives:

- Article 138 prohibits damage to a place of worship or to an object held sacred by any class of persons with the intention of insulting the religion of any class of persons;
- Article 139 prohibits the disturbing of religious assemblies;
- Article 140 prohibits trespassing on burial places with the intention of insulting the religion of any person;
- Article 141 prohibits the uttering of words, the making of any sound or any gesture with the intent of wounding the religious feelings of any person;
- Article 142 prohibits publications insulting any religion;
- Article 51A prohibits public incitement to violence amongst residents and the cultivation of a spirit of intolerance;
- Article 47(1)(b) prohibits action taken publicly with the intention of promoting feelings of hostility amongst communities or religious groups due to race, religion, colour or gender.

In terms of international and EU law, a number of legislative instruments transposed or ratified by Cyprus contain provisions that may be used to prosecute harassment. 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. This bears similarities to the above definition of harassment. The law provides that any person who publicly, either orally or in writing through written text, imaging or in any other way, intentionally incites acts that 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.¹³²

[0cb1668ed558.html](#); Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5(2)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 6(1)(c). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹³⁰ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 2. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

¹³¹ Criminal Code (*Ο Ποινικός Κώδικας*), Cap 154. Available at www.cylaw.org/nomoi/enop/non-ind/0_154/index.html.

¹³² Law Ratifying the Convention on the Elimination of all Forms of Racial Discrimination (Ratification) 1967, Article 2A(1).

An Equality Body decision in 2016, drawing on the relevant Eurofound report,¹³³ defined harassment as ‘conduct which may include psychological violence consisting of either isolated incidents or systematic patterns of behaviour manifested by persons in a hierarchically higher position than the victim at the workplace’.¹³⁴

The following laws contain provisions that may be used to prosecute acts that may be termed as harassment:

- Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia through Criminal Law 134(I)/2011,¹³⁵ which purports to transpose the corresponding Framework Decision;¹³⁶
- Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems 26(III)/2004; and
- Law Ratifying the Convention on the Prevention and Punishment of the Crime of Genocide 59/1980.

No case has been adjudicated in court so far under any of the above provisions. A major obstacle is the fact that all the above instruments create criminal offences and under the Constitution the consent of the Attorney General must be obtained in order for such prosecutions to be launched. As a rule, the Attorney General who is by virtue of the Constitution appointed by the President and has the dual role of an independent officer and at the same time the advisor to the Government, tends to refuse to prosecute public persons openly engaging in hate speech. As in previous years, in 2020, the Attorney General rejected a request to prosecute a newspaper for an article that was found by the Media Complaints Board to contain hate speech in breach of the law transposing the Framework Decision.¹³⁷ As a standard practice, the procedure followed by the Attorney General’s office is to instruct the police to conduct an investigation to establish whether the law transposing the Framework Decision was violated, which is a rather odd procedure given that there is no need to establish a motive in order to prosecute the offender. The police investigation has never yet yielded a criminal prosecution.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Cyprus both the perpetrator and the employer (if it is a different person) are liable.

Under Article 13 of the Law on Civil Offences (Cap. 148),¹³⁸ a ‘master’ is responsible for the actions or omissions of his ‘servant’ for acts authorised or approved by the former or for acts carried out by the servant in the course of his work. The terms ‘master’ and ‘servant’ used in the text of the law mean employer and employee, respectively. The master is not responsible for the actions of persons to whom the servant has assigned work without the authorisation of the employer. An act is deemed to have been conducted

¹³³ Eurofound (2015), *Violence and Harassment in European Workplaces: Extent, impacts and policies*. Available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>.

¹³⁴ Equality Authority (2016), Report regarding a complaint for harassment at work and for discrimination on the grounds of gender and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

¹³⁵ Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law of 2011 (Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος του 2011) N. 134(I)/2011. Available at www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

¹³⁶ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

¹³⁷ Legal Service of the Republic, Office of the Assistant Attorney General, Ref. 93/84/259, 4 August 2020.

¹³⁸ Civil Offences Law (Περί Αστικών Αδικημάτων Νόμος), Cap 148. Available at http://www.cylaw.org/nomoi/enop/non-ind/0_148/full.html.

in the course of one's work if it was committed by a servant in their capacity as such and whilst they were carrying out the normal tasks of their work, irrespective of whether the act was the result of negligent performance of a task assigned by the employer. An act is not deemed to have been committed in the course of one's work when it is perpetrated by employees acting for their own purposes and not on behalf of their employers. None of these provisions exempt employees from liability for acts of harassment committed by them. Harassment committed by a person who is a relative of the employer or any other person who is on the premises with license by the employer is not covered by the law. This is a common problem faced by foreign domestic workers whose employer is only one of the two spouses. In such cases, if the other spouse harasses the employee, the employer is not liable. An Equality Body decision from 2016 held that the failure of the public TV channel Cyprus Broadcasting Corporation (CyBC) to take measures against an employee who was harassing another employee gave rise to liability for the employer.¹³⁹ Employers who fail to take measures to stop harassing behaviour are equally liable in law as the perpetrators themselves.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Cyprus, instructions to discriminate are prohibited by law.¹⁴⁰ Instructions are not defined. Instructions explicitly constitute a form of discrimination. The law does not explicitly require that the instructor be in a hierarchically higher position, which means that all situations where a person instructs another to discriminate are covered.

b) Scope of liability for instructions to discriminate

In Cyprus, the instructor is liable. The law is silent on the liability of the person carrying out the instructions and it is presumed that liability will be pinned on perpetrators acting on instructions if there is evidence that they had the choice of not carrying them out and instead chose to do so, in which case liability can be shared between instructor and perpetrator. Although the laws transposing the directives are silent on the employers' liability as regards the actions of their employees, the general principles of labour law hold that employers are vicariously liable for the actions of their employees. An employee who has discriminated because they have received an instruction to discriminate is not explicitly covered by the laws transposing the directives. However, it is likely that such an employee will be held liable for direct or indirect discrimination, irrespective of whether the motive was to follow the employer's instructions, depending on the circumstances and on what choices the employee had. The dismissal of an employee because they refuse to carry out an unlawful instruction, such as an instruction to discriminate, is unlawful and gives rise to compensation.

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

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

¹³⁹ Equality Authority (2016), 'Report regarding a complaint for harassment at work and for discrimination on the grounds of gender and national origin of an employee at the Cyprus Broadcasting Corporation', File No. A.K.I. 45/2015, 12 October 2016. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement).

¹⁴⁰ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 2. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (*Ο Περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 5(2)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 6(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

In Cyprus, the duty to provide reasonable accommodation is included in the law and is defined.

Even prior to the transposition of the Employment Framework Directive, the disability law provided for the duty to adopt 'reasonable measures' where and to the extent the local economic and other circumstances allow.¹⁴¹ These measures, which are still in place now, are not restricted to the workplace, 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.);¹⁴² (b) employment including access to employment, working conditions, training etc.;¹⁴³ (c) supply of goods and services, including the facilitation of accessibility for safe and comfortable use of such services, etc.;¹⁴⁴ transport;¹⁴⁵ and telecommunications.¹⁴⁶ An amendment to the law adopted in 2014 extended the reasonable accommodation duty by providing that the rights set out in the foregoing provisions (Articles 4, 5, 6 and 8) must be implemented through suitable measures ensuring reasonable accommodation to the maximum of available resources. 'Reasonable accommodation' for the purposes of these provisions means necessary and suitable amendments and adjustments that do not require disproportionate or unjustified burden, where necessary in order to ensure the exercise and enjoyment of human rights and fundamental freedoms.¹⁴⁷ The burden is not considered disproportionate when it is sufficiently counter-balanced by measures adopted in the context of State policy in favour of persons with disabilities.¹⁴⁸

With regard to reasonable accommodation at the workplace, the law provides that 'equal treatment' means, inter alia, 'the obligation to provide reasonable access and facilities in the working environment, including: (i) the necessary modifications or adjustments of accessibility to existing facilities so as to make them accessible to persons with disabilities; (ii) the reshaping of work by creating schedules for 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'.¹⁴⁹

The above provisions did not entirely transpose the spirit of the Directive, which provided for a mandatory duty to provide reasonable accommodation. Thus, an amendment to the disability law in 2007 added a new article which provides that, in order for the principle of equal treatment of persons with disabilities to be implemented, the employer must take reasonable measures, depending on the needs arising in any particular case. The measures must ensure that persons with disabilities have access to an employment post, to carry

¹⁴¹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9(1). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴² Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 4. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴³ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁴ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 6. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁵ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 7. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁶ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 8. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁴⁷ Law Amending the Law on Persons with Disabilities (*Νόμος που τροποποιεί τον Περί Ατόμων με Αναπηρίες Νόμος*, 63(I)/2014, 23 May 2014).

¹⁴⁸ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9(2). Available at http://www.cylaw.org/nomoi/enop/ind/2000_1_127/section-sce0615cb8-d50c-5b6d-88ad-218c5a8db790.html.

¹⁴⁹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(2)(d). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

out their profession or to be promoted, or to undergo training, so long as these measures do not lead to a disproportionate burden for the employer.¹⁵⁰

b) Case law

Over the years, the Equality Body has interpreted the duty to provide reasonable accommodation in employment as follows:

- The Ministry of Education’s policy to transfer public education teachers based solely on the needs of the service, without reference to the existence or not of any disability and disregarding the complainant’s need to work in a stable and safe environment, amounts to indirect discrimination on the ground of disability.¹⁵¹
- The revocation by the employer of the right initially granted to an employee with multiple sclerosis to take two afternoons off in order to undergo physiotherapy was found to be discriminatory. Citing a landmark ECtHR ruling,¹⁵² the decision stressed that the treatment of persons without a disability in relation to persons with disabilities cannot be the same, if equality is to be attained.¹⁵³
- In 2009 a complaint was submitted to the Equality Body by a job applicant who had achondroplasia, whose job application was rejected as a result of her height. The Equality Body concluded that the employer had an obligation to place files on shelves that would be accessible to the complainant and/or provide a ladder to enable her to reach files on high shelves.¹⁵⁴
- A reduction in teaching hours can constitute reasonable accommodation if the symptoms of the disability render teaching painful or exhausting.¹⁵⁵

Under the Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in September 2010, the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure equality in opportunity and not in the result. The measure must therefore be such that it offers the person with a disability the same opportunity as all other persons, e.g., persons with arthritis applying for the position of a typist must be given a special keyboard in order to be able to compete with the other applicants in terms of typing speed. In addition, persons with disabilities who take an exam for the purposes of a selection procedure for a job must be given such facilities that enable them to compete with the non-disabled candidates on equal terms. The employer’s obligation to provide reasonable accommodation affects regulations or criteria set by the employer as well as the way in which the workplace is organised (e.g., offering a wheelchair user the chance to work on the ground floor of a building where this is available). The Code offers a non-exhaustive list of guidelines on reasonable accommodation measures: changes or adaptations to the building infrastructure (ramps and toilets for wheelchair users, Braille language on the buttons in the lifts, etc.); reallocation of duties amongst employees so as to allocate to employees with disabilities duties they can perform; transfer to another job position if available; sick leave for the purposes of therapy; vocational training including training related to a person’s disability, e.g. use of new technologies or new equipment or logistics that can upgrade a disabled person’s skills; facilitating participation in trade unions; the upgrading of existing equipment; other forms of support or assistance.¹⁵⁶ The law setting out the Equality Body’s

¹⁵⁰ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁵¹ Equality Authority, File No. 9/2007, 12 September 2007.

¹⁵² ECtHR, *Thlimmenos v. Greece*, Application No. 34369/97, 6 April 2000. Available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:\[%22001-58561%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561#{%22itemid%22:[%22001-58561%22]}).

¹⁵³ Equality Authority, Report No. A.K.I. 65/2007, decision of 04 September 2007.

¹⁵⁴ Equality Authority, Report No. A.K.I. 12/2009, 21 September 2009.

¹⁵⁵ Equality Authority, File A.I.T. 1/2009, 20 September 2009.

¹⁵⁶ Equality Authority (2010), Code of good practice on discrimination on the ground of disability in employment and occupation (*Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση*). Available at

mandate foresees the issuing of codes of conduct by the Equality Body, which can impose specific duties on persons in the public or private sector.¹⁵⁷ However, such codes must be appended to regulations issued with the approval of the Council of Ministers; this procedure was not followed in the case of the Code of Conduct on Disability Discrimination and in essence this Code has the character of a clarification document rather than a binding set of rules. The court may refer to the Code and derive guidance from the examples contained in it, but it is not legally bound to do so and in fact the Code has never been referred to in court or in any official documents.

In 2015 the Equality Body issued a report against the state TV company, CyBC: the lack of accessibility features in its building, which dates back to the 1950s, had prevented an employee, who was a wheelchair user, from carrying out his work. The employee, who became tetraplegic following an accident, was asked to work in a different department than before and to perform different tasks. In his new position, the rooms were more accessible than in his previous post but even there he was unable to perform the tasks assigned to him. This was because, in order to supervise the flow of TV programmes, he needed access to two other rooms which he didn't have because those rooms were not accessible to wheelchair users. He was forced to resign and filed a discrimination complaint against CyBC. The Equality Body found that CyBC's delay in responding to its obligation as an employer to provide reasonable accommodation amounted to direct discrimination and advised CyBC to perform all the necessary structural modifications to make its building accessible.¹⁵⁸

c) Definition of disability and non-discrimination protection

The definition of disability does not differ whether one is claiming reasonable accommodation or claiming general protection from discrimination.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Cyprus, failure to meet the duty of reasonable accommodation in employment for people with disabilities may be interpreted as amounting to discrimination. The law does not clarify which form of discrimination the denial to reasonable accommodation takes and this may well depend on the circumstances under which reasonable accommodation was denied.

Although the law does not expressly provide that failure to meet the duty of reasonable accommodation counts as discrimination, this may be inferred from the wording of the law. It stipulates that, in order to comply with the principle of equal treatment, reasonable accommodation is foreseen and for this purpose the employer must take all necessary measures so as the person with a disability may have access to a job, may exercise their profession or may attend training, provided the burden is not unreasonable.¹⁵⁹ No case has ever been adjudicated in court on this point but this interpretation is invariably followed by the Equality Body.¹⁶⁰ The absence of any legislation specifically recognising the denial of

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Co_depracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Co_depracticedisabilityemployment.pdf).

¹⁵⁷ Law on Combating Racial and other Forms of Discrimination (Commissioner) of 2004 (*Ο Περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004*) N. 42(I)/2004, Article 40. Available at www.cylaw.org/nomoi/enop/ind/2004_1_42/section-sce220abc3-c0c8-c38b-6534-cc2265a17e12.html.

¹⁵⁸ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

¹⁵⁹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 5(1A). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁰ Equality Authority, Report on discriminatory treatment of employee at CyBC on the ground of his disability, File No. A.K.I. 31/2014, 5 March 2015. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/\\$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/871A8C8BFAA25BF4C2257E7B00271328/$file/%CE%91%CE%9A%CE%99%2031%202014-05032015.doc?OpenElement).

reasonable accommodation as a form of disability discrimination in all areas of life was one of the issues flagged by the UN Committee on the Rights of Persons with Disabilities in its first observations regarding the implementation of the CRPD in Cyprus.¹⁶¹

If one adopts the interpretation that breach of the duty to provide reasonable accommodation amounts to discrimination, it follows that breach of such duty leads to the sanctions foreseen in the law on discrimination.¹⁶² In the case of both discrimination and breach of the duty to provide reasonable accommodation, the sanctions are imposed where the perpetrator has acted without reasonable cause.¹⁶³ The Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in 2010 explicitly states that the employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination and, as with all other forms of discrimination, is punishable with a fine of up to EUR 6 834 (CYP 4 000) or imprisonment for up to six months.¹⁶⁴

There is no explicit provision in the law for the reversal of the burden of proof in cases where there was a breach of the duty to provide reasonable accommodation. However, if one adopts the view that breach of this duty amounts to discrimination, then the reversal of the burden of proof foreseen in the law for discrimination cases¹⁶⁵ applies. It should be noted that the burden of proof is reversed only in employment-related cases and not in fields beyond employment.

No case was ever tried by the courts on reasonable accommodation. However, the Equality Body's decisions on this issue consider the failure to meet this duty as discrimination prohibited by law, even before the 2007 change in the law, which rendered the duty to provide reasonable accommodation as a binding obligation on the employer. Thus, a complaint from a blind telephonist working in a hospital, who was moved to a new hospital and had to cope with a more complicated telephone system with more telephone lines and with a less favourable working schedule, was found by the Equality Body to be well founded. The Equality Body decided that the hospital authorities ought to have transferred one of the other employees without a disability to the new post and to leave the blind employee at the post where he was familiar with the system. The report called 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.¹⁶⁶

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

¹⁶¹ UN Committee on the Rights of Persons with Disabilities (2017), *Concluding observations on the initial report of Cyprus*, 12 April 2017. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fCYP%2fC%2f1&Lang=en.

¹⁶² Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶³ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁴ Equality Authority (2010), *Code of good practice on discrimination on the ground of disability in employment and occupation (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση)*. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codeofgoodpracticeonemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codeofgoodpracticeonemployment.pdf).

¹⁶⁵ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000), Article 9A. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

¹⁶⁶ Equality Authority, Report No. A.K.I. 58/2005, 8 December 2005. A summary of the case is available in the Equality Authority's *Annual Report 2005*, pp. 12-13. Available at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202005.pdf).

In Cyprus, there is a conditional duty to provide reasonable accommodation for people with disabilities outside the employment field.¹⁶⁷ The 2014 amendment to the disability law, which extended the duty to provide reasonable accommodation to a number of areas beyond employment, falls short of creating a mandatory regime as is the case with the duty in employment. The different treatment afforded by the law to the different fields of application may be explained by the fact that under the EU *acquis* reasonable accommodation is only mandatory in employment, whilst the extension of this duty to fields beyond employment was the result of lobbying from the disability movement. In light of the economic crisis, the defence of the disproportionate burden is likely to be successfully invoked by service providers or merchants in court in order to avoid any kind of expenditure. The definition of disproportionate burden in fields beyond employment does not differ from that used in the context of employment.

In 2018, as monitoring body for the CRPD, the Ombudsman investigated a claim from the parents of a pupil with ADHD. They had complained because their son had not been promoted to the next grade as a result of too many absences. The school had failed to promptly diagnose the boy's ADHD, as a result of which he was labelled 'naughty' and 'unruly' at school. Even after the ADHD diagnosis, the school failed to support him in his classroom performance and overall behaviour. The school psychologist verified that the student's fragmented class attendance was a symptom of his ADHD and recommended that his disorder be taken into account when assessing his performance. The Ombudsman found against the school and the Ministry of Education for failing to take measures to accommodate the pupil in light of his disorder, pointing out that treating unequal things in the same manner amounts to discrimination.¹⁶⁸ A few days later, the Ombudsman issued another report in response to a complaint against a private kindergarten that refused to enrol a child with Down syndrome on the justification that the child would require an escort, which the school was unable to provide. The Ombudsman concluded that the current legal framework governing the operation of kindergartens does not require them to provide escorts and refrained from issuing an order or imposing a sanction.¹⁶⁹

In 2017, the Commissioner for the Rights of the Child (the Child Commissioner) dealt with a complaint from the mother of a student with a visual disability whose grade was reduced by the school to bring it to the same level as that of another student who had no disability and therefore received no accommodation measures. By reducing the blind student's grades, the two students were announced as joint best finalists in the school. The Child Commissioner's report stressed that the right to non-discrimination does not merely mean 'same treatment', adding that discrimination may occur not only as a result of differential treatment of persons in identical circumstances but also as a result of the same treatment of persons in different situations. The Child Commissioner found that accommodation for children with disabilities does not give a comparable advantage to these children over other children but merely enables children with disabilities to start on an equal footing with other children.¹⁷⁰

f) Duties to provide reasonable accommodation in respect of other grounds

In Cyprus, there is no legal duty to provide reasonable accommodation in respect of other grounds in either the public or the private sector.

¹⁶⁷ Law Amending the Law on Persons with Disabilities. N. 63(I)/2014, 23 May 2014. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100626.

¹⁶⁸ Ombudsman (2018), 'Report of the independent mechanism for the protection and monitoring of the UN Convention on the Rights of Persons with Disabilities on the decision not to allow a student with ADHD to advance to the next grade due to incomplete attendance as a result of unjustified absences', Ref. SAA 86/2017, 30 October 2018.

¹⁶⁹ Ombudsman (2018) 'Report of the independent mechanism for the protection and monitoring of the UN Convention on the Rights of Persons with Disabilities regarding the integration of children with disabilities in childcare centres and kindergartens', File No. SAA 126/2017, 12 November 2018..

¹⁷⁰ Commissioner for the Rights of the Child (2017), 'Report of the Commissioner for the Rights of the Child Leda Koursoumba on the complaint regarding the reduction of the grades of a pupil who is granted accommodation due to disability', File No. G.E.P. 11.17.07.05.217, January 2017. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_qr/index_qr?opendocument.

Nevertheless, the Equality Body in the past recognised such a right in respect of religion, or at least recommended that the relevant authorities respect religious freedom for students and for prisoners by providing reasonable accommodation for them to practise their faith. This approach is premised more on the conviction that religion is a sensitive issue rather than an interpretation of the law as granting such a right. However, there is no legal framework providing specifically for such a right, which is, strictly speaking, at the discretion of the authority concerned, even if in the context of freedom of religion such a right could presumably be inferred.

In December 2005 the Equality Body criticised the practice of restricting pupils exempted from religion class to the library and recommended that a more creative occupation be sought for the exempted pupils.¹⁷¹ In 2010 another Equality Body report criticised the procedure used for exempting pupils from religion class and for the fact that the handling of the exemption request by the school led to the stigmatisation of the student who had made the complaint, as she was isolated from her classmates for several months.¹⁷² In its reports, the Equality Body does not cite the anti-discrimination laws, which do not impose a duty to provide reasonable accommodation on the ground of religion. Instead, it cites Article 18 of the Cypriot Constitution, which provides that all religions are equal before the law;¹⁷³ Article 14 of the International Convention on the Rights of the Child; and Article 9 of the ECHR.¹⁷⁴ In 2012, a circular from the Ministry of Education required pupils exempted from religion class to remain in the class during the lesson. Based on this circular, a school prohibited a pupil who was a Jehovah's Witness from leaving the classroom during this lesson. The pupil decided to leave the classroom anyway and was repeatedly sanctioned with expulsion each time she left, risking accumulating so many expulsions that she would be unable to graduate. The Equality Body threatened the school with fines for every day of non-compliance with its recommendations.¹⁷⁵ In the years following the economic crisis of 2013, the Equality Body toned down its requirement for schools to provide alternative creative activities for exempted pupils, perhaps as a result of the staff shortages that emerged from the Government's measures to address the economic crisis, focusing instead on the need to establish a culture of neutrality in schools that does not favour the dominant religion.¹⁷⁶

In 2016 the Ministry of Education introduced a new policy regarding the exemption of students from school classes, including religion class. According to this policy, students aged 18+ (or the parents of students under the age of 18) may apply for an exemption from religion class if they are not Christian Orthodox; applications for exemption from religion class for other reasons 'will be examined individually'. Where an application for exemption is approved, the student can choose either to remain in the classroom during the lesson or to leave the classroom. In the case of the latter, the school's headmaster will decide which other class the student must attend during this time.¹⁷⁷ There are no published rules, guidelines or criteria on how applications for exemptions are to be assessed.

The Ministry of Education's policy on the subject had also been flagged as an 'issue of concern' by the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) in its Fourth Opinion on Cyprus. An issue raised by the

¹⁷¹ Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

¹⁷² Anti-discrimination Authority, Report No. 135/2009, 7 November 2010.

¹⁷³ Constitution of the Republic of Cyprus, Article 18. Available at <http://cylaw.org/nomoi/enop/non-ind/syntagma/full.html>.

¹⁷⁴ Anti-discrimination Authority, Report No. 31/2005, 2 November 2005.

¹⁷⁵ Anti-discrimination Authority, Report No. AKR 93/2012, 3 December 2012.

¹⁷⁶ Anti-discrimination Authority, Report on the respect of religious freedom in schools of primary and secondary education, File Nos. AKR 1/2014, AKR 6/2014, AKR 19/2014, AKR 73/2014, 18 June 2015. Available at

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

¹⁷⁷ Ministry of Education, *Procedure for securing exemptions from classes*, 15 September 2016. Available at <http://enimerosi.moec.gov.cy/archeia/1/ypp4633a>.

Committee was the fact that although 'non-Christian' students could be exempted from religious education, students of Armenian, Maronite or Latin background faced difficulties in securing exemptions. The Committee further criticised the failure of schools to provide creative activities for students who are exempted from religion classes, which made parents of minority students reluctant to pursue exemptions for fear that their children would be marginalised.¹⁷⁸

The policy of requiring students to declare their religion persists today. The automatic exemption from religion class applies only to those who are not Christian Orthodox, i.e., a small minority. As for the rest, exemption applications are examined on an individual basis by the Ministry of Education and, if granted, the exempted student will either be instructed to stay in the classroom at the time of religion class and be occupied with something else or be allocated to another classroom. Typically, students of migrant origin or of a non-Christian Orthodox religion will be exempted from the religious lesson without preconditions, whilst Greek Cypriot children, regardless of religion or belief, will be exempted subject to carrying out a project. This differentiation suggests that the Ministry of Education views 'other' religions as a valid reason for exemption but the right to such exception is somehow lessened in the case of persons of a Greek Cypriot origin, for whom the state only reluctantly recognises the right not to be Greek Orthodox.

¹⁷⁸ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

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)

In Cyprus, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. National legislation, however, has incorporated the directives' residence/citizenship/nationality preconditions for protection under the relevant national laws transposing the directives. Each of the three laws transposing the two directives provides that its scope does not cover differential treatment due to nationality; nor does it affect provisions or conditions regarding the entry and stay of third country nationals and stateless persons, or the treatment derived from the legal status of such third country nationals or stateless persons.¹⁷⁹ Irregular status is not in itself a reason for losing protection under the laws transposing the equality *acquis*. However, if the differential treatment relates to a person's status rather than their race or ethnicity, then the exception of the Directives applies. However, accessing rights is an issue for irregular migrants because of fear of deportation as no special protection from deportation applies for potential victims of discrimination, unless they are identified as victims of trafficking.

In spite of the above, Protocol No. 12 to the ECHR, which Cyprus has ratified, guarantees 'the enjoyment of all rights set forth by law' without discrimination, inter alia, against 'national or ethnic origin'. Under Law 42 (I)/2004, which establishes the Equality Body, there are no residence or citizenship/nationality prerequisites in the Equality Body's mandate in order to extend protection under the national laws transposing the directives. The Equality Body is empowered to promote equality in the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by the conventions ratified by Cyprus and referred to in the law,¹⁸⁰ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin.¹⁸¹ We therefore have a situation where nationality is a protected ground under the Equality Body's mandate, but is an exception in terms of the scope of the laws transposing the two directives. In its decisions, the Equality Body has made considerable use of its extended mandate and considered discrimination on the grounds of nationality and national origin as prohibited by international law as well as by the non-discrimination directives; on several occasions, nationality and ethnic origin has been used interchangeably. The Cypriot Equality Body considered that the phrase 'racial or ethnic origin' in the Racial Equality Directive must be seen as including EU citizens¹⁸² and cited the transposing legislation of this Directive when it handles complaints from EU citizens.¹⁸³

¹⁷⁹ Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*), 2004 N. 58(I)/2004, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html; Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 3A(3). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ίσης μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

¹⁸⁰ These conventions are: Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on 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 Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁸¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 3(1)(b), Part I, 19 March 2004.

¹⁸² Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

¹⁸³ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority Nos. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

Article 32 of the Constitution stipulates that ‘nothing in this Part¹⁸⁴ contained shall preclude the Republic from governing by law any matter relating to aliens in accordance with international law.’ This provision, combined with the far-reaching provisions of Cypriot immigration law, is often implemented with a tendency to considerably enlarge the scope of state discretion and state sovereignty.

In previous years, complaints by EU citizens alleging nationality discrimination were often filed with the Equality Body, possibly reflecting the fact that EU nationals were better informed about the Equality Body’s procedures than most third country nationals. Some examples of Equality Body decisions where the equality directives were applied to EU nationals 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 by the road transport department for EU nationals to present immigration documents evidencing six months’ stay in Cyprus in order to acquire a driving licence; the refusal of the Ministry of Education to accept the candidacy of a Greek national for an honorary grant;¹⁸⁵ a university’s rejection of a job application because the applicant was a Greek national; attempts by the immigration authorities to expel Greek nationals who had settled legally in Cyprus before Cyprus’ EU accession for not having sufficient financial resources to maintain themselves;¹⁸⁶ the requirement of good knowledge of Greek as a prerequisite for accessing public sector jobs or for starting a business; and the refusal of the recruitment bodies in the public sector to recognise the prior work experience of applicants who are Greek nationals.¹⁸⁷ Although the law transposing the Racial Equality Directive has transposed verbatim the Directive’s Article 3(2), differential treatment that is not related to a victim’s legal status must be seen as protected. In 2017 the Child Commissioner issued a report on the conditions of eligibility for child welfare benefit, ruling that the requirement of prior residence amounts to discrimination prohibited by various instruments, including the Racial Equality Directive.¹⁸⁸

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

a) Protection against discrimination

In Cyprus, the personal scope of anti-discrimination law covers persons for the purpose of protection against discrimination, provided they meet the definitions in the relevant laws. In the case of disability, the definition is clearly met only by natural persons,¹⁸⁹ but organisations with a legitimate interest have the right to apply to court or the Equality Body in order to bring a discrimination claim on behalf of a victim.¹⁹⁰ It should, however, be noted that although an action may be pursued by organisations acting on behalf of victims in the district court to claim compensation, an application to annul a discriminatory act of the administration may only be filed by individuals with a ‘legitimate interest’,¹⁹¹ as discussed under Section Introduction, the national legal system above. Similarly, only natural persons are protected from religious, age or sexual orientation discrimination at

¹⁸⁴ Part II of the Constitution contains the human rights and fundamental freedoms.

¹⁸⁵ Reference A.K.P 73/2008, 30 December 2009.

¹⁸⁶ Ref. AK 168/2008, AK 199/2008, AK 80/2009, AK 43/2010, AK 48/2010, AK 93/2010, AK 114/2010, ΑΠ 2358/2010, 01 November 2011.

¹⁸⁷ Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority No. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

¹⁸⁸ Report of the Commissioner for the Rights of the Child regarding the precondition of residence for a specific time in the areas controlled by the Republic of Cyprus for the provision of social welfare grants, September 2017. Available at www.childcom.org.cy/ccr/ccr.nsf/All/12C85642ECC6B291C22582D3003A7EC6?OpenDocument.

¹⁸⁹ Law on Persons with Disabilities No. 127(I)/2000), Article 2.

¹⁹⁰ Law on Persons with Disabilities No. 127(I)/2000), Article 9D.

¹⁹¹ The Constitution of the Republic of Cyprus (*To Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 146.2, 11 February 1959. Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

the workplace,¹⁹² since only natural persons meet the definition of an employee. However, organisations can represent victims in their claims before the court and the equality body.¹⁹³ With regard to race/ethnic origin: although no explicit provision is made in the law as to whether victims of racial or ethnic discrimination can be legal or only natural persons, there is no reason why protection may not be extended to organisations of persons who are victims of racial or ethnic discrimination. The law offers explicit protection to individuals who are treated disadvantageously due to their ethnic or racial origin¹⁹⁴ and, in line with Article 7(2) of the Racial Equality Directive, organisations may apply to court on behalf of such individuals.¹⁹⁵

b) Liability for discrimination

In Cyprus, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination in all fields and on all five grounds. The disability law defines 'employer' as any legal or natural person in the public or private sector.¹⁹⁶ An identical definition of the term can also be found in the law prohibiting employment discrimination.¹⁹⁷ The scope of the law prohibiting racial and ethnic discrimination in fields beyond employment includes 'all persons in the public and private sector'.¹⁹⁸ The provisions on criminal sanctions, which are identical in all three laws, explicitly foresee that legal persons as well as natural persons can be liable for discrimination.¹⁹⁹ The fines which the court may impose vary, depending on whether the perpetrators are natural or legal persons. Natural persons may be fined up to EUR 6 835 (CYP 4 000) and/or sentenced to six months' imprisonment, or both.²⁰⁰ If a legal person is found guilty of discrimination, the managing director, chairperson, 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 up to EUR 6 835 (CYP 4 000) and/or sentenced to six months' imprisonment, or both, if it is established that the offence has been committed with their consent or collaboration or mere tolerance. In addition, a legal person can be fined up to EUR 11 962 (CYP 7 000).²⁰¹ There is also a provision for 'gross negligence' with fines of up to EUR 3 417 (CYP 2 000) for individuals and EUR 6 835 (CYP 4 000) for legal persons.²⁰²

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Cyprus, the personal scope of national anti-discrimination law does not explicitly cover the private or public sector or public bodies for the purpose of protection against discrimination. No explicit provision is made in legislation as to who is protected from discrimination but the definition of discrimination in all laws transposing the two equality directives refers to 'persons', which precludes public bodies. The scope of the law covers

¹⁹² Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 2.

¹⁹³ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 14.

¹⁹⁴ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Articles 2 and 5(1).

¹⁹⁵ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 12.

¹⁹⁶ Law on Persons with Disabilities No. 127(I)/2000, Article 2.

¹⁹⁷ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 2.

¹⁹⁸ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 4(1).

¹⁹⁹ Law on Persons with Disabilities No. 127(I)/2000 Article 5(5); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 15(2); Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 13(2).

²⁰⁰ Law on Persons with Disabilities No. 127(I)/2000 Article 5(4); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 15; Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 13.

²⁰¹ Law on Persons with Disabilities No. 127(I)/2000; Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Articles 15(1) and 15(2); Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Articles 13(1) and 13(2).

²⁰² Law on Persons with Disabilities No. 127(I)/2000 Articles 5(4) and 5(5); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 13(3).

persons in the public and private sector including public bodies, local governance bodies and organisations of public and private law.²⁰³

b) Liability for discrimination

In Cyprus, the personal scope of national law covers both the private and public sector, including public bodies, for the purpose of liability for discrimination. Law 58(I)/2004 (employment field, all grounds except for disability) defines (in Article 2) an employer as meaning 'the Government of the Republic, the local self-governance authorities and any natural or legal person or organisation of public or practice law in any public or private sector or industry which employed or employs workers.' An identical provision is found in Article 2 of the Law on Persons with Disabilities 127(I)/2000. Law 59(I)/2004 (race/ethnic origin, fields beyond employment) defines in Article 4(1) the scope of the law as covering all persons in the public and private sector, including public bodies, local self-governance authorities and public and private law organisations in the fields of social protection, healthcare, social provision, education and access to goods and services.

3.2 Material scope

3.2.1 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))

In Cyprus, national legislation prohibits discrimination in relation to 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 of an organisation of workers or employers, or any organisation whose members engage in a particular profession, including the benefits provided for by such organisations, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds in both the private and public sectors, as described in the directives.²⁰⁴ Age limits in job advertisements have been repeatedly found to amount to discrimination, both by the courts and by the Equality Body,²⁰⁵ albeit the compensation awarded by the courts was nominal as the courts have interpreted the margin of the loss sustained by the victim very narrowly.²⁰⁶ The law offers protection to self-employed persons only as regards access to their profession or trade. For all other types of protection, the term 'working person' is interpreted to exclude self-employed persons. The prohibition of discrimination in access to a profession was interpreted in the past to include permits and requirements to practice a profession, where there were no procedures in the countries of origin for acquiring the required certifications.²⁰⁷

Despite the formal adoption of the four main laws on anti-discrimination, there are no provisions for the facilitation or improvement of conditions for access as required by Article 3(1)(a) of the Employment Equality Directive. There is little tradition of anti-discrimination

²⁰³ Law on Equal Treatment in Employment and Occupation 58(I)/2004, Article 2; Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 2; Law on Persons with Disabilities N. 127(I)/2000, Article 2.

²⁰⁴ Law on Persons with Disabilities No. 127(I)/2000, Article 5(1)(a); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 4(a).

²⁰⁵ Equality Authority, Report No. AKI 30/2011, 23 May 2012.

²⁰⁶ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου)*, Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

²⁰⁷ Equality Authority (2016), 'Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent', File number A.K.I.22/2016, 15 April 2016. Available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

and there are very few specialist lawyers in this area. There are no special mechanisms in the various Government departments for the implementation of the above provisions and no measures or mechanisms to monitor implementation or collect data.

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

In Cyprus, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.²⁰⁸

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

In Cyprus, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The Law on Persons with Disabilities prohibits discrimination in access to all kinds and levels of vocational guidance, vocational training, educational training, reorientation and professional apprenticeship.²⁰⁹ The Law on Equal Treatment in Employment and Occupation contains an identical provision as regards the remaining four grounds.²¹⁰

Neither of the aforesaid provisions specifies whether or not such training 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 extends to vocational training outside the employment relationship, such as that provided by technical schools or universities or other educational establishments, including lifelong learning courses. The Equality Body has interpreted this provision as including training outside and independently of an employment relationship: in a legal opinion supplied by the Equality Body in 2006 upon the request of a Government department, it was established that the anti-discrimination laws apply to access to training even if this does not take place within 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 nevertheless continue his training, as denying him access to training on the ground of disability would amount to discrimination prohibited by law.²¹¹ Other Equality Body decisions found unlawful discrimination in the fixing of an age limit for applying for state scholarships and in the exclusion of persons with disability from admission to the state nursing school. In a 2010 decision, the Equality Body stated explicitly that access to an Open University adult lifelong learning course amounts to access to vocational training.²¹²

3.2.4 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))

In Cyprus, national legislation prohibits discrimination in relation to membership of, and involvement in, workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.²¹³

²⁰⁸ Law on Persons with Disabilities No. 127(I)/2000, Article 5(1)(c); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 4(c).

²⁰⁹ Law on Persons with Disabilities No. 127(I)/2000, Article 5(1)(b).

²¹⁰ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 4(b).

²¹¹ Equality Authority, Report No. AKI 28/2006, 20 September 2006.

²¹² Equality Authority, Report No. A.K.I. 74/2009, 22 November 2010.

²¹³ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 4(d); Law on Persons with Disabilities No. 127(I)/2000, Article 5(1)(d).

In spite of the above prohibition, an issue of non-compliance persists in the case of the specific contract used for the employment of foreign domestic workers, which the Ministry of Interior requires in order to issue their entry and work permit. The English version of the contract prohibits any 'political activity' by the employee; the prohibition of membership of a trade union was removed following the intervention of the Equality Body.²¹⁴ However, the Greek version of the contract contains a general prohibition on engaging in 'any activity' without specifying its nature.²¹⁵

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

In Cyprus, national legislation prohibits discrimination in social protection, social security and healthcare as formulated in the Racial Equality Directive.

National law explicitly prohibits discrimination in the field of social protection, social security and healthcare only on the ground of race/ethnic origin.²¹⁶ An exception to the general prohibition is made in two laws transposing the Employment Equality Directive (Law on Persons with Disabilities and Law on Equal Treatment in Employment and Occupation) for payments made by state schemes or similar, as in Article 3(3) of the Employment Equality Directive. The Equality Body's mandate, however, does cover discriminatory treatment in social protection on the grounds of religion/belief, age, disability and sexual orientation, as well as all rights protected by the Constitution, including Article 28, with its far-reaching, open-ended grounds, but narrow judicial interpretation. In the past, the Equality Body has made numerous interventions in this area. Protocol No. 12 to the ECHR, which assumes additional momentum through the powers granted to the Equality Body,²¹⁷ prohibits discrimination on all grounds protected under the Protocol on social protection, social security and medical care, without any of the exceptions allowed for above.

Between 2010 and 2016, several decisions were issued by the Equality Body and the courts on access to social protection, highlighting a tendency to impose age limits in schemes as part of an effort to restrict public expenditure. Two Equality Body decisions in 2010 established that setting the age limit at 65 for funding radical prostatectomy procedures and setting the age limit at 40 as a condition of eligibility for financial support for artificial insemination were both discriminatory.²¹⁸ In 2012 the Supreme Court also found that there was unlawful discrimination in a scheme that set an age limit as a precondition for entitlement to a grant that helped cover taxes and duties related to the acquisition of a car.²¹⁹ In 2015 the Court found that an age criterion in a disability scheme amounted to discrimination and that the justification of 'poor state of public finances' was insufficient to fall within the exceptions foreseen by the directives.²²⁰

²¹⁴ Commissioner for Administration in its capacity as National Human Rights Independent Authority (2013), 'Position regarding the status of domestic workers in Cyprus' (Τοποθέτηση Επιτρόπου Διοικήσεως ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων αναφορικά με το καθεστώς των νοικοκυριών νεργαζομένων στην Κύπρο), File No. A/D3/2013, 2 July 2013. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/\\$file/%CE%91%CE%943_2013_02072013.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/EF5814885D4539CDC2257E7D0036FC97/$file/%CE%91%CE%943_2013_02072013.doc?OpenElement).

²¹⁵ The standard contract for the employment of foreign domestic workers is available at http://www.moi.gov.cy/moi/moi.nsf/index_gr/index_gr?OpenDocument.

²¹⁶ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 4(1).

²¹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος) No. 42(I)/2004, Article 6(2)(e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

²¹⁸ Equality Body, Decision dated 24 November 2010, Ref. A.K.R. 164/2008, Ref. A.K.R. 63/2010 and Ref. A.K.R. 126/2009, dated 27 April 2010, respectively.

²¹⁹ Supreme Court, *Mikis Lakatamitis v. The Republic through the Minister of Finance* (Μίκης Λακαταμίτης v. Υπουργείου Οικονομικών) No. 1477/2010, 4 September 2012. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201209-1477-10.htm&qstring=διακρισ*.

²²⁰ Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, 27 January 2016. Available at <http://cylaw.org/cgi->

The change of Government in 2013 brought several policy changes that led to a deterioration in reception conditions for asylum seekers, including access to welfare. A 2016 Ombudsman report found that the refusal of the Social Welfare Services to pay a welfare grant to vulnerable female asylum seekers, based on their refusal to accept work in agriculture under harsh and unsuitable working conditions, led to indirect discrimination on multiple grounds including gender, race, culture, health and religion.²²¹ In 2017 the Commissioner for the Rights of the Child (the 'Child Commissioner') issued a groundbreaking decision against welfare provisions that set prior residence requirements as a precondition for welfare eligibility. The decision examined three different welfare schemes: the minimum guaranteed income, which requires five years of residence in the Republic-controlled part of Cyprus prior to submission of the application;²²² the single parent benefit, which also requires five years of residence; and the child benefit law,²²³ which currently requires three years of prior residence²²⁴ and was extended to five years from 2018 onwards. The Child Commissioner had previously raised concerns about the compatibility of the prior residence requirement with the Racial Equality Directive and other human rights instruments in the context of the parliamentary discussion for the bill purporting to amend the child benefit law, pointing out that the prior residence requirement amounts to an apparently neutral criterion that effectively excludes vulnerable children from welfare.²²⁵ However, her concerns were ignored by Parliament, which proceeded with the adoption of the law. The Child Commissioner's report referred to the ECtHR ruling of 2005 in *Niedzwiecki v. Germany*, where the Court found that eligibility requirements involving extended prior residence for the granting of child benefits to EU citizens amounted to discrimination prohibited by ECHR Articles 8 and 14. The report further found that the EU Charter (Articles 21 and 34.3) must be seen as applicable in this case since it concerns social assistance to EU citizens and third country nationals whose legal status is governed by the EU *acquis*.

a) Article 3(3) exception (Directive 2000/78)

National law relies on the exception in Article 3(3) of the Employment Equality Directive for disability, age, sexual orientation and religion or belief.

The scope of the transposing legislation excludes differential treatment based on all types of provisions paid by state schemes or schemes similar to these, including state social insurance or social protection schemes. The exception does not extend to professional social protection schemes or to differential treatment on the ground of racial or ethnic origin, which are protected by the non-discrimination legislation.²²⁶

[bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016).

²²¹ Ombudsman, Commissioner for Administration and Human rights (2016), Report on access by women asylum seekers to labour and social welfare, File No. A/P 1799/2016, 11 November 2016. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/\\$file/1799_2016_11112016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/76DC695A60333E16C225807D0023C731/$file/1799_2016_11112016.doc?OpenElement).

²²² Law on Minimum Guaranteed Income. Available at www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html.

²²³ Law on the Provision of Child Benefit of 1987 (*Ο περί Παροχής Επιδόματος Τέκνου Νόμος του 1987*) N.314/1987. Available at http://cylaw.org/nomoi/enop/ind/1987_1_314/section-sc16df8ab4-8538-450d-9e94-1780633145d7.html.

²²⁴ Ministry of Labour, Welfare and Social Insurance, Department of Social Welfare Benefits, Information on completing an application for a child benefit. Available at [http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/\\$file/Information%20Leaflet%20For%20CBApplication2018.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/$file/Information%20Leaflet%20For%20CBApplication2018.pdf).

²²⁵ Memorandum of the Commissioner for the Rights of the Child to the Parliamentary Committee on Labour, Welfare and Social Insurance, 20 June 2017. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument.

²²⁶ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 5(3).

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

In Cyprus, national legislation prohibits discrimination in social advantages, as formulated in the Racial Equality Directive.²²⁷ The term 'social advantage' was translated by the official translation unit of the European Commission as 'social provisions' and finds its way into the national legislation in this form.

'Social provision' or 'social advantage' is not explicitly included in the scope of the Equality Body's mandate, which explicitly covers all areas (save for 'social advantage') covered by Article 3 of the Racial Equality Directive. Social advantage may, however, be implied in the mandate of the Equality Body as this covers 'any field whatsoever'.²²⁸ 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.

Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus*, which established that differential treatment based on place of residence (i.e. in the north or south of Cyprus) is unlawful, the approach followed by the courts²²⁹ and the Equality Body is that persons residing in the north of Cyprus, in other words Turkish Cypriots, are not entitled to state benefits, even if they work in the south and pay their social insurance contributions to the state.²³⁰ In *Gonul Ertalu & Imge Ertalu v. Ministry of Finance*, the claimant's application for a student grant was rejected because eligibility depends on residence in the south of the country and the claimant was a Turkish Cypriot residing in the north.²³¹ The court followed the same approach in *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance*. The claimant's argument that the law was unconstitutional for violating the equality principle was rejected because, in the absence of a positive legislative provision entitling the claimant to a student grant, the claimant will derive no benefit if the law is declared unconstitutional.²³²

In November 2020, the NGO Accept LGBTI Cyprus filed a complaint with the Minister of Labour, Welfare and Social Insurance against a legislative provision that regulates eligibility for survivor's occupational pension. The legislative provision that was the subject of the complaint had been revised in 2019 in order to remove gender discrimination, as the eligibility conditions had until then included different provisions for women and men survivors.²³³ The provision, after its 2019 revision, was worded in such a way that excluded same-sex surviving partners, despite the fact that the same-sex partnership law adopted in 2015, expressly provided that same-sex partners have all the rights of heterosexual partners, apart from the right to adopt children.²³⁴ According to Accept LGBTI, the revised provisions on widowers' pensions infringed Article 14 of the ECHR, Protocol 12 to the ECHR and Article 28 of the Cypriot Constitution, which provides an overarching and far reaching

²²⁷ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 4(c).

²²⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 6(2).

²²⁹ Supreme Court, *Mehmed and Meral Birinci v. The Republic of Cyprus (Mehmed kai Meral Birinci v. Κυπριακής Δημοκρατίας)* No. 911/2004, 14 February 2006.

²³⁰ Anti-discrimination Authority, Report No. A.K.R. 27/2005, 19 April 2006, in which the Equality Body found that the Finance Ministry's rejection of the complainant's application for child benefit was justified and that no discrimination existed, because it was not possible for the authorities to carry out the checks necessary to verify whether the information supplied by the applicant was true or not. The report also stated that those Turkish Cypriots residing in the areas under the control of the Government are not subjected to discriminatory treatment in the field of state benefits.

²³¹ Supreme Court, *Gonul Ertalu & Imge Ertalu v. Ministry of Finance (Gonul Ertalu & Imge Ertalu v. Υπουργείου Οικονομικών)* Appeal No. 104/2008, 17 November 2011.

²³² Supreme Court, *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance (Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Υπουργείου Οικονομικών)* Case No. 2411/2006, Appeal No. 73/2009, 2 February 2012.

²³³ [Law on social insurance \(amendment\) of 2019 N.126\(I\)/2019](#) [Ο περί Κοινωνικών Ασφαλίσεων (Τροποποιητικός) Νόμος του 2019] N. 126(I)/2019, Article 41 of the annotated law.

²³⁴ Law on civil cohabitation ([Ο περί Πολιτικής Συμβίωσης Νόμος του 2015 N. 184\(I\)/2015](#)), N. 184(I)/2015.

non-discrimination provision.²³⁵ Accept LGBTI argued that the denial of a widowers' pension to survivors of same sex partnerships further infringed Article 9 of the Cypriot Constitution, which provides that every person has the right to a decent existence and to social security.²³⁶ Given the fact that the Parliamentary Committee on Labour, Welfare and Social Insurance recognised that the right to a survivor's pension is a property right that cannot be restricted, Accept LGBTI concluded that the said legislative provision violates Article 23 of the Constitution, which safeguards the right to property.²³⁷ The extension of the right to a survivor's pension to include same-sex partners would inevitably result in an increase to the state budget. As such, the proposal for this amendment cannot be tabled by parliamentarians, and must emanate from the executive, because a law increasing the state budget may be deemed unconstitutional if it is proposed by the legislature and not the executive. In order to comply with this requirement, the NGO called on the Minister of Labour as the competent officer to submit to Parliament a proposal for legislative amendment, clarifying that survivors of same-sex partnerships are also eligible for a survivor's pension. At the time of writing, this proposal had not been submitted.

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

In Cyprus, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive. The national laws transposing the directives explicitly prohibit discrimination in education only in the case of race/ethnic origin.²³⁸ However, the Equality Body's broad mandate extends to discrimination in, inter alia, education on the grounds of race or ethnic origin, religion, belief, community, language, colour, special needs (which covers disability), age and sexual orientation.²³⁹ In the past, the Equality Body had repeatedly applied this provision by finding in favour of complainants who alleged discrimination in education on the grounds of not only racial or ethnic origin but also sexual orientation, disability and religion. Disability-related decisions related mostly to accommodation measures for disabled students during exams,²⁴⁰ whilst religion-related decisions concerned exemptions from religion class.²⁴¹ The Equality Body has devoted special attention to homophobia in schools, offering a series of recommendations on systemic approaches for addressing the problem.²⁴² In 2017 the Commissioner for the Rights of the Child issued an important report on the duty of schools to provide accommodation for disabled pupils, criticising the school's decision to reduce the grades of a pupil who had received accommodation measures.²⁴³ The measures adopted by the Government in relation to the pandemic had a disproportionate impact on migrant and Roma children, who were not consistently and adequately supplied with hardware and connectivity in order to be able to follow remote education classes.²⁴⁴ Children in 'closed' detention centres and shelters were denied access to remote education, and some

²³⁵ [The Constitution of the Republic of Cyprus](#), Article 28.

²³⁶ [The Constitution of the Republic of Cyprus](#), Article 9.

²³⁷ [The Constitution of the Republic of Cyprus](#), Article 23.

²³⁸ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004. Article 4(1)(d).

²³⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 6(2)(f).

²⁴⁰ Equality Authority, File No. AKI 24/2006, AKI 27/2006, 31 October 2006; Anti-discrimination Authority (2008), Report Ref. A.K.I. 37/2008, 8 October 2008.

²⁴¹ Anti-discrimination Authority (2014), Report on the respect for religious freedom in schools of primary and secondary education (*Έκθεση της Αρχής κατά των Διακρίσεων αναφορικά με τον σεβασμό της θρησκευτικής ελευθερίας στα σχολεία Δημοτικής και Μέσης Εκπαίδευσης*), File No. AKP 1/2014, AKP 6/2014, AKP 19/2014, AKP 73/2014, 18 June 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/\\$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/48A86AFDC420D5F4C2257E7C0039C9CD/$file/%CE%91%CE%9A%CE%A11_2014%CE%BA%CE%B1_18062015.doc?OpenElement).

²⁴² Anti-discrimination Authority, Report No. AKR 63/2011, AKR 131/2011, 20 November 2012.

²⁴³ Commissioner for the Rights of the Child (2017), 'Report of the Commissioner for the Rights of the Child Leda Koursoumba on the complaint regarding the reduction of the grades of a pupil who is granted accommodation due to disability', File No. G.E.P. 11.17.07.05.217, January 2017. Available at http://www.childcom.org.cy/ccr/ccr.nsf/index_gr/index_gr?opendocument. The report is discussed extensively in section 2.6 above.

²⁴⁴ Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report](#)', commissioned by the Fundamental Rights Agency of the EU, 3 November 2020.

remained closed without any justification, when the entire country was open and other children could attend classes in person. The Child Commissioner reported that the closure of the asylum camps infringed fundamental freedoms and basic rights of children who are vulnerable for multiple reasons, adding that the restrictive measures regulated by the orders of the Minister of Health must not exceed what is necessary for the protection of public health.²⁴⁵

The general approach to education for pupils with disabilities gives rise to problems. Access to integrated education is stipulated as a basic right for all persons with disability but failure to provide such a right is not termed as discrimination.²⁴⁶ Integrated education has been the focus of both the Ombudsman and the Child Commissioner²⁴⁷ in recent years. Both have repeatedly criticised the inadequate structures and processes in schools receiving and supporting children with disabilities. They have urged the authorities to improve the training of teachers; increase awareness and enhance coordination amongst professionals; establish a credible recording mechanism;²⁴⁸ and create a more effective structure for the diagnosis and placement of children in schools, which better addresses their needs. The fragmentation in support services for both children with disabilities and their parents in recent years has led to a trend towards special education, where the provision of support services is free and more adequate. The economic crisis, budget cuts and staff shortages in schools are impeding any efforts to improve inclusive education.²⁴⁹

A bill compiled by the Ministry of Education²⁵⁰ was met with negative reactions from the Confederation of Disability Organisations KYSOA, for promoting the entrenched separation and exclusion of children with disabilities from the education system.²⁵¹ The consultation on the bill was interrupted by the outbreak of the pandemic and remained pending until the end of 2020.

A court decision in 2019 on the right to 'mainstream' education²⁵² found that although the CRPD safeguards the right to education, it does not regulate the manner and procedure for implementing this right and thus the court refrained from ruling that special education infringes the CRPD. The court ruled in favour of the applicant, a student with disabilities, but only on technical grounds and not because of the substance of her claim. The applicant had challenged an administrative decision that forced her to attend a special rather than a 'normal' school, as spelled out in the pleadings. The multi-thematic committees established by the legislative framework on special education had examined her and concluded that she was unable to care for herself, follow instructions or comply with rules and should therefore be placed in a special education unit in order to be supported and treated by

²⁴⁵ Report of the Commissioner for the Rights of the Child (2021), '[Living conditions in asylum reception centres](#)', 18 January 2021.

²⁴⁶ Law on Persons with Disabilities No. 127(I)/2000, Article 4(d).

²⁴⁷ Commissioner for the Rights of the Child (2011), *Position regarding training and education of children with disabilities: Result of public consultation*, Nicosia, December 2011. Available at www.childcom.org.cy/ccr/ccr.nsf/DMLpapers_gr/DMLpapers_gr?OpenDocument&Start=1&Count=1000&Expand=2.

²⁴⁸ For a critique on the absence of a single registry of all children with disabilities see Playbell, S. (2010), *Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities, National Report of Cyprus*, December 2010. Available at http://publications.europa.eu/resource/ellar/7c846628-6225-412f-a94f-9e6162650f49.0002.01/DOC_1.

²⁴⁹ Demetriou, C. (2015), *Country Report on Cyprus for the Study on Member States Policies for Children with Disabilities*, project led by Milieu, commissioned by the European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs. Available at http://publications.europa.eu/resource/ellar/7c846628-6225-412f-a94f-9e6162650f49.0002.01/DOC_1.

²⁵⁰ Bill entitled 'Law on integrated education (Support structures) of 2019'. Not available online.

²⁵¹ KYSOA (2019), 'Statement from KYSOA and the Pancyprian Alliance on Disability: The position of the disability movement on the bill entitled Law on special education (Support structures) of 2019'.

²⁵² The practice in Cyprus is for special units to operate within the mainstream schools, where the children with disabilities follow a different curriculum but share the school grounds with the other children. In a few cases, children with disabilities may attend the mainstream classes with an escort, depending on the case and the nature of the disability.

specialists. The applicant's parents applied to the court, claiming that the decision infringed their child's right to education in a regular school where she can develop skills, socialise and develop with dignity and self-respect. The applicants claimed that the decision to place their disabled child in special education infringed Articles 1-4 and 5-24 of the CRPD, as it imposed on her exclusion and segregation due to her disability, failed to place the best interests of the child as a first priority issue and restricted her right to quality education.

The court admitted that it lacks the specialised expert knowledge necessary to determine the best way to realise the right to education and therefore could not decide on the merits of the decision challenged. It rejected the applicants' position that special education a priori infringed the CRPD but proceeded to annul the administrative decision challenged in this case for not having been adequately justified. The justification offered to the parents, that their child must be placed in special education in order for her needs to be better served, was deemed by the court to be far too vague to be acceptable'.²⁵³

The COVID-19 pandemic and its impact on students with disabilities

The pandemic has been a watershed as regards non-discrimination of students with disabilities. Upon the end of the first lockdown, on 20 May 2020, the Ministry of Education announced that special education students or those students requiring attendance by assistants or escorts should not go to school with the rest of the students on 21 May 2020. The ministry stated that it would grant a discretionary exception to those disabled students who had a medical report about their good state of health.²⁵⁴ The decision led to negative reactions²⁵⁵ and was criticised by the Ombudsman²⁵⁶ and by academics²⁵⁷ for being discriminatory and unlawful. On 29 May, the ministry announced that 323 special education students without any COVID-19 symptoms could return to school,²⁵⁸ however concerns remained about the remaining children with disabilities who were met with preconditions as regards obligatory testing and documents to be submitted in order to be allowed to return to school.²⁵⁹ Special schools re-opened on 9 June; once again in order for students to be allowed to return to school, the parents had to fill out and submit a special form providing information about the child's state of health with an attached medical certificate and a recommendation from the child's doctor as to whether school attendance for the particular child was recommended or not. The form also required parents to acknowledge the contents of the health protocol that must be followed at school and to take responsibility for 'the risks that may potentially arise'. Depending on the information supplied in this form, a special committee would decide whether the child with disabilities would be permitted to return to school or not. The same form was requested of all children attending special education schools or using the services of escorts in integrated schools or other children with serious problems of 'health and adjustment', whose parents were required to fill out a document to enable the assessment of their children by a special committee.²⁶⁰ The requirement to fill out this form as a prerequisite for children with disabilities to return to school led to several reactions from parents who argued that the

²⁵³ Cyprus Administrative Court, *E.A. through her parents and guardians v The Republic of Cyprus through the Minister of Education and Culture*, Case No. 1594/2018, 2 September 2019.

²⁵⁴ Ministry of Education, Culture and Sports (2020), *Ανακοίνωση του Υπουργείου Παιδείας, Πολιτισμού, Αθλητισμού και Νεολαίας αναφορικά με τη φοίτηση παιδιών με ειδικές ανάγκες*, Press release, 20 May 2020.

²⁵⁵ Omegalive (2020), *Έξω από το Υπουργείο Παιδείας οι γονείς μαθητών της ειδικής εκπαίδευσης*, 22 May 2020; Dialogos (2020), *Έναν έξω από το Υπ. Παιδείας οι γονείς παιδιών με αναπηρίες*, 25 May 2020.

²⁵⁶ Kathimerini (2020), *Επίτροπος Διοικήσεως: Παραβίαση των δικαιωμάτων των παιδιών ΑμεΑ*, 21 May 2020.

²⁵⁷ Symeonidou, S. (2020), *Για άλλη μια φορά τα παιδιά με αναπηρία εκτός σχολείου...*, 21 May 2020.

²⁵⁸ Ministry of Education, Culture and Sports (2020), *Απόφαση της Ειδικής Επιτροπής για άμεση φοίτηση παιδιών στις Ειδικές Μονάδες ή στις γενικές τάξεις*, 29 May 2020.

²⁵⁹ Trimikliniotis, N. and Demetriou, C. (2020), *Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 4*, commissioned by the Fundamental Rights Agency of the EU, June 2020.

²⁶⁰ Ministry of Education, *Λειτουργία της Ειδικής Επιτροπής για τα παιδιά των ειδικών μονάδων και με εξυπηρέτηση από ειδικό συνοδό σε συνεργασία με μέλη της Συμβουλευτικής Επιστημονικής Επιτροπής Λοιμοξιολόγων του Υπουργείου Υγείας*, Press release, 25 May 2020.

requirement amounts to discrimination and an infringement of the children's right to education.²⁶¹

On 21 August 2020, the Council of Ministers announced that schools would resume in September with the physical presence of all students on the basis of a revised health protocol which includes the use of masks by everyone aged over 6. This announcement was met with negative reactions from teachers and parents, including the parents and teachers of children with disabilities for whom the practical difficulties in using the mask essentially affected their right to education. The Ombudsman's office, in its capacity as monitoring body for the implementation of the CRPD, issued a self-initiated intervention, stating that the decision of the relevant authority cannot be challenged as it concerns a public health matter. The report set out the WHO recommendations for the use of masks by children and suggested the use of masks with a transparent shield around the lips to enable lip reading and the use of a face shield in those instances where the student's participation in the classroom would be difficult with the mask. The report referred to the CRPD's provisions on reasonable accommodation, non-discrimination, equality of opportunity and respect for the developing capacities of children with disabilities, concluding that no reasonable accommodation measures were adopted to enable children with disabilities to access education on equal terms with other students.²⁶² The decision for all children aged over 6 to wear masks was replaced with a decision for all children at secondary school to wear masks, exempting primary school children from this obligation.

At the end of 2020, the Confederation of Disability Organisations KYSOA issued a statement highlighting the problems facing disabled students, leading to their increasing marginalisation and eventually their total exclusion from education. The statement pointed out that this was the result of the refusal of the Ministry of Education to proceed to a suitable design of remote education almost a year after the outbreak of the pandemic in order to safeguard the unobstructed participation of children with disabilities in education and their full involvement in all distance learning processes, impacting on their participation and integration into the community and the protection and dissemination of democratic values and human rights. KYSOA submitted a statement to the Parliament's Education Committee with proposals for reasonable adjustment measures to remove the participation barriers of children and adults with disabilities from education and adult learning, addressing the shortcomings of the non-accessible internet platforms, the deficient access to connectivity for some students with disabilities, the absence of technical support to guide students with disabilities and their families on how to connect and use the internet education platforms, the unsuitability of internet material that is not adjusted to the learning needs of children with disabilities, the lack of training for teachers on how to provide accessible educational material in digital form, and the failure to provide specialised individual support to children with mental disability that would enable them to join the classroom and interact with their peers.²⁶³

Racial/ethnic discrimination in education

Other than the law transposing the Racial Equality Directive and the laws ratifying relevant international conventions, there is no national legislation dealing with racial or ethnic discrimination in education. Since the Directive was transposed 17 years ago, no cases have been filed in court invoking the provisions of this Directive or of the law transposing it because of several obstacles facing migrants in accessing justice, which relate to

²⁶¹ Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 4](#)', commissioned by the Fundamental Rights Agency of the EU, July 2020.

²⁶² Independent Authority for the promotion, protection and monitoring of the CRPD (2020), '[Αυτεπάγγελτη Τοποθέτηση αναφορικά με την υποχρεωτική χρήση προστατευτικών масκών από παιδιά με αναπηρία άνω των έξι ετών κατά τη φοίτηση τους στα σχολεία](#)' Ref. αyt.20/2020, 24 August 2020.

²⁶³ Paideia-news (2020), '[ΚΥ.Σ.Ο.Α.: Η περιθωριοποίηση των μαθητών και των εκπαιδευόμενων με αναπηρίες συνεχώς επιδεινώνεται](#)', press release, 31 December 2020.

awareness, the cost of litigation and the length of time needed for a decision to be issued, which far exceeds school years.

a) Trends and patterns regarding Roma pupils

In Cyprus, there are specific trends and patterns in education regarding Roma pupils, such as segregation.

A high Roma concentration in specific schools in Cyprus appears to be a consequence of the state housing policy and in part reflects discriminatory attitudes, the 'cultural capital' and socioeconomic and family conditions of the Roma in Cyprus. Roma children continue to be treated as pupils with special language requirements, in spite of the fact that Cyprus has ratified a number of international conventions on human rights²⁶⁴ as well as conventions on specific rights in the field of education.²⁶⁵ The Cypriot Ministry of Education does not have an official policy against school segregation. The policy of enrolling children on the basis of their residential address is applied rigorously, even if this results in a concentration of large numbers of Roma pupils in the same school. Given the shortage of resources and personnel, such as interpreters and additional teachers, as a result of austerity, the concentration of Roma in specific schools emerges as the only practical solution to the scarcity of resources had the Roma pupils been dispersed to several schools, the number of interpreters and support teachers would not suffice to service all the different schools.

Most of the Roma pupils attending public schools today are concentrated in one school, the 18th Primary School in Limassol. An old study from 2007 found that Greek Cypriot parents tried to move their children to other schools when there was a high number of migrant or non-Greek Cypriot pupils in their school;²⁶⁶ if they cannot succeed in moving them away, they instruct them to avoid contact with Roma children.²⁶⁷ Many Greek Cypriot children do in fact demonstrate racial prejudice towards the Roma children, whilst educationalists believe that they are incapable of integrating.²⁶⁸ Research conducted with Greek Cypriot teachers illustrates that many teachers would openly admit to being racist.²⁶⁹ Another study,²⁷⁰ which reflects on the experiences gained from a training project, reports that Roma children tend to be marginalised in school, despite supportive measures.

²⁶⁴ Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment (ratified by Law 235/90 and Law 35(111)/93). Cyprus also ratified the European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, together with Protocol Nos. 1 and 2. (Rat. Law No. 24/89 and 8(III)/97).

²⁶⁵ Convention against Discrimination in Education (ratified by Law 18/1970).

²⁶⁶ Their research is based on an empirical study of one primary school in Limassol with a high concentration of non-indigenous pupils. To quote the research: 'the head teacher reported that the observed school used to be a high-profile school and everyone in the area considered it to have high standards where children could acquire the necessary academic skills. More recently, due to the increasing number of registrations from non-indigenous pupils, many Greek Cypriot parents have stopped sending their children to this school.' See Panayiotopoulos, C. and Nicolaidou, M. (2007), 'At a crossroads of civilizations: multicultural educational provision in Cyprus through the lens of a case study', *European Journal of Intercultural Studies*, Volume 18, Issue 1, March 2007, p. 69.

²⁶⁷ Trimikliniotis, N. (2004), 'Institutional Discrimination in Cyprus', Work Package 4, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005.

²⁶⁸ Trimikliniotis, N. (2003), 'Discriminated Voices - Cyprus Report', Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination*, Research Project Xenophobia, EU Fifth Framework Programme 2002-2005; Spyrou, S. (2004), *Educational Needs of Turkish-speaking Children in Limassol*, UNOPS (February-March 2004); Keskenidou, A. and Tsakiri, M. (2003) *Η ετερότητα του πολιτισμικού κεφαλαίου των Αθιγγάνων ως πλαίσιο συμμετοχής στην εκπαίδευση*, University of Cyprus.

²⁶⁹ Zembylas, M. (2010), 'Greek-Cypriot teachers' constructions of Turkish-speaking children's identities: critical race theory and education in a conflict-ridden society', *Ethnic and Racial Studies*.

²⁷⁰ See Symeou, L., Karagiorgi, Y., Roussounidou, E., & Kaloyirou, C. (2009), 'Roma and their education in Cyprus: reflections on INSETRom teacher training for Roma inclusion', *Intercultural Education*, 20(6), 511-521. Available at <http://www.tandfonline.com/doi/abs/10.1080/14675980903448551>.

More recent fieldwork research on the situation of Roma residing in the abandoned Turkish settlement of Limassol, using a sample of 52 % of the Roma population in the particular area, i.e. 31 families (156 persons), found that out of the 87 children in the sample, only 5 were enrolled in kindergarten and only 30 children were attending primary school; the rest of the children had fallen out of the education system.²⁷¹ The study recorded additional issues indirectly affecting the children's smooth integration into school: poor housing conditions; material deprivation; shortages of raw materials and basic household equipment; high tensions amongst the parents attributed to the large size of the families and overcrowding in the household; excessive responsibilities of the women and financial problems; the absence of social networks in the local community; depressive symptomatology in the parents; and more.

An additional study, based on workshops with Roma children and published in 2016 by an NGO, revealed that the terrible state of the Roma housing settlements poses serious health hazards whilst their remote locations have led to the children's marginalisation and isolation from their peers. The children interviewed reported frequent accidents in their homes as a result of falling pieces of walls and furniture, no insulation against heat or cold, no privacy or quietness to study, no water to shower and low aspirations in relation to their education and future employment prospects. The researchers also noted a certain undermining of the Roma cultural identity, as children described themselves as 'Turkish-speaking Cypriots' rather than as Roma, essentially internalising official Government discourse, which deprives them of their Roma identity. The report identified the Roma children's lack of proficiency in Greek as the main problem hampering their school integration and was highly critical of the absence of any policies targeting the Roma, noting that the official policy of flagging existing policies of inclusion targeting the entire population of Cyprus appears to be a cover for a lack of commitment towards Roma integration.²⁷²

In 2017 the Commissioner for the Rights of the Child dealt with a number of complaints regarding the prior residency requirement for welfare eligibility. One of the cases examined was that of a Roma family who, in the course of the past few years, had been moving back and forth between the (Turkish-controlled) north and (Greek Cypriot-controlled) south of Cyprus in order to access healthcare in the north where they spoke the language. As a result of not being eligible for welfare support, the Roma family finally settled in the north and their two older children, who had been regularly attending school in the south, stopped attending school. The Child Commissioner concluded that the prior residence requirement was an apparently neutral provision that negatively affected Roma, resulting in indirect discrimination, and criticised the authorities for failing to prioritise the children's best interests. A new regulation, which entered in effect in 2018, that extended the prior residence requirement for eligibility to child benefit from three to five years²⁷³ is estimated to have a particularly adverse impact on the Roma, who often have to travel between north and south for various reasons.²⁷⁴ In the cases of applicants with an international status, the authorities argued that the three years of 'habitual residence' commenced upon the

²⁷¹ Panagiotopoulos, C. & Zachariades, A. (2016), 'Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice', *European Journal of Social Work*, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773.

²⁷² Hope for Children CRC Policy Centre (2016), *Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation*, produced within the framework of the EU-funded project PEER: Participation, Experiences and Empowerment for Roma Youth. Available at www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf.

²⁷³ Republic of Cyprus, Ministry of Labour, Welfare and Social Insurance, Department of Social Welfare Benefits, 'Information on completing an application for a child benefit'. Available at [http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/\\$file/Information%20Leaflet%20For%20CBAApplication2018.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/8801EBEFE1D44675C22582A5002E5B6D/$file/Information%20Leaflet%20For%20CBAApplication2018.pdf).

²⁷⁴ Commissioner for the Rights of the Child (2017) 'Report on the precondition of residence for a specific time in the areas controlled by the Republic of Cyprus for the provision of social welfare grants', September 2017. Available at www.childcom.org.cy/ccr/ccr.nsf/All/12C85642ECC6B291C22582D3003A7EC6?OpenDocument.

granting of international protection status and not upon arrival in the country. The authorities relied on 'credible information' from unnamed sources that the Roma family had lived in the Republic-controlled area for just a year before applying for welfare. The authorities also disputed the allegation that the applicants were forced to re-settle in the north of Cyprus as a result of being excluded from the welfare system.

As a result of housing segregation, Roma children are concentrated in specific schools; however, no figures are available regarding their number in education, because the Roma are seen by the authorities as inseparable from the Turkish Cypriots and no separate data is maintained.²⁷⁵ In recent years, the segregation in schooling has given rise to a number of school-based projects, based on initiatives undertaken by the school utilising mainly EU funding²⁷⁶ and aiming to promote literacy and inclusion. The Roma children are taught history and religion by a Turkish Cypriot teacher, the content of which is relevant to the Roma history and religion (Islam). An afternoon programme entitled 'History-Language-Culture' was offered to Turkish Cypriot and Roma children by the Training Centres of the Ministry of Education in 2016-2017, which included a weekly class with an emphasis on Turkish Cypriot/Roma cultural heritage. The programme was not repeated in the years that followed for lack of demand.

The mechanism for recording racial incidents in schools introduced in 2014²⁷⁷ has never recorded any incidents affecting Roma children.²⁷⁸ During a visit to Cyprus in September 2017 by a Council of Europe delegation interested in minority languages, the Cypriot Government informed the delegation that the only minority languages it recognises are the Maronite and Armenian languages.²⁷⁹

In December 2020, the Ombudsman's office, in its capacity as NHRI, published a report following a self-initiated investigation into the situation of the Roma, relying on consultations with the NGO CypRom, the competent authorities and an on-site visit to a Roma settlement at the centre of the old city of Limassol. The report identified education as an area where the Roma community encounter most problems. The report recorded the absence of adjustment and assistive measures to facilitate school integration, leading to pupils leaving school early. Measures to encourage school attendance that have been in place for years now, such as extra Greek language classes, financial support for books, transport, uniforms, stationery, free breakfast and lunch etc., have not yielded results, as school enrolment remains low and the numbers leaving school remain quite high. The report noted that the Roma are facing problems of communication with the authorities who do not make any special effort to facilitate communication and service them, noting the marked absence of a comprehensive Roma inclusion strategy in all areas of life.²⁸⁰

Given that the Cypriot Government does not recognise the Roma as a separate entity from the Turkish Cypriot community, the only measures that the Roma can benefit from are the

²⁷⁵ Statistical Service of the Republic, Statistics of Education 2013-2014, p. 83. Available at https://www.mof.gov.cy/mof/cystat/statistics.nsf/index_gr/index_gr?OpenDocument.

²⁷⁶ See, for example: *SEAs4All: Successful education action for all*, project brochure. Available at <https://seas4all.eu/wp-content/uploads/2017/11/SEAs4All-Brochure.pdf>; 18th Elementary School Ayios Antonios, *Participation in the English Teaching Assistant programme -1st Meeting of Partners at the Ministry of Education and Culture*, 15 September 2017. Available at <http://dim-lemesos18-lem.schools.ac.cy/data/uploads/anakoinoseis/2017-09-15-EnglishTeachingAssistant-ETA-MOEC.pdf>.

²⁷⁷ For more details, see the Ministry of Education website at http://www.moec.gov.cy/dme/programmata/scholiki_paravatikitita/protokolla/kodikas_symperiforas_kata_tou_ratsismou_pi.pdf.

²⁷⁸ Letter to the expert from the Social Welfare Services, 28 September 2017.

²⁷⁹ Ministry of Education and Culture (Υπουργείο Παιδείας και Πολιτισμού) (2017), Visit from Council of Europe Experts to Cyprus for minority languages ('Επίσκεψη εμπειρογνομόνων του Συμβουλίου της Ευρώπης για τις μειονοτικές γλώσσες'), 23 September 2017. Available at <http://enimerosi.moec.gov.cy/archeia/1/ypp6347a>.

²⁸⁰ NHRI (2020), '[Position of the Commissioner of Administration and Human Rights as National Independent Human Rights Authority \(NHRI\) regarding the living conditions of the Roma community in Cyprus](#)' (Τοποθέτηση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων (NHRI) σχετικά με τις συνθήκες διαβίωσης της Ρομά κοινότητας στην Κύπρο), Ref. AYT 3/2020, 22 December 2020.

horizontal measures applicable to all vulnerable groups. During the pandemic, no measures were adopted targeting the Roma and their specific characteristics or wishes and no official mapping was carried out as to how the Roma communities were affected by the pandemic. There is no official record as to how many Roma children had access to distance education tools during the lockdowns. Teachers themselves are often unsure as to whether a student is of Roma, Turkish Cypriot, Kurdish or other origin. Following the outbreak of COVID-19 and the lockdown measures, the Ministry of Education implemented a distance learning programme in all secondary schools using a digital platform. Turkish-Cypriot Roma students had the opportunity to participate in distance learning and were provided with tablet devices along with coverage for an internet connection in case they reported that they lacked digital equipment or internet connectivity. There is no reliable record as to how many Roma (or non-Roma) children were able to join the e-learning classes. Teachers made phone calls to map wi-fi connectivity and the availability of hardware, but not all families picked up the phone. There is no definitive count of the number of Roma students who managed to join e-classes.

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

In Cyprus, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive.²⁸¹ Failure to provide access to goods and services available to the public is recognised as a form of discrimination.²⁸² In the case of disability, failure to adapt a product or a service or a facility, rendering its use by persons with disability impossible or unreasonably difficult, amounts to unlawful discrimination. The law also provides a non-exhaustive list of examples of adaptations that are necessary for compliance with the law: the creation of suitable means of access and facilitation for safe and comfortable use of services and facilities; the use of special means, equipment and personal services for communicating with certain categories of persons with disabilities; the use of specialised means, organs and facilities in special spaces where services are provided, such as schools, hospitals, etc.²⁸³ There is no obligation on manufacturers to manufacture products that are easily useable by persons with disabilities although there is an obligation on service providers to make adaptations and to offer facilities in order to make premises or services accessible to persons with disabilities.²⁸⁴ The disability law provides that public transport must be suitably modified for the entry and safe transportation of persons with disabilities, including persons using wheelchairs. However, the application of this provision should be governed by regulations issued by the Council of Ministers; no such regulations have as yet been issued and public transport remains largely inaccessible.²⁸⁵

The disability law also requires that the competent Government departments must, within a short period of time, proceed with the installation of a suitable system of telephone services that assist 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. Under the same provision, there must be public means of telecommunication accessible to persons with disabilities, including persons using wheelchairs; and television stations must make arrangements so that sign language is available for news broadcasts at certain times.²⁸⁶

The law that sets out the mandate of the Equality Body prohibits direct and indirect discrimination on all five grounds foreseen by the directives, plus community, language

²⁸¹ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 4(1)(e).

²⁸² Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 5(1).

²⁸³ Law on Persons with Disabilities No. 127(I)/2000, Article 6(2)(d).

²⁸⁴ Law on Persons with Disabilities No. 127(I)/2000, Article 6(1), Article 6(2)(d).

²⁸⁵ Law on Persons with Disabilities No. 127(I)/2000, Article 7(1).

²⁸⁶ Law on Persons with Disabilities No. 127(I)/2000, Article 8(1).

and colour, in all fields covered by the directives, including the supply of goods and services.²⁸⁷

The Law Ratifying the Convention on the Elimination of All Forms of Racial Discrimination of 1967, Law 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 persons solely due to their racial or ethnic origin or religion is guilty of a criminal offence.²⁸⁸

At the same time, however, there are a number of laws, regulations and policies in place that provide differential treatment for Turkish Cypriots seeking to access state services, such as the procedure for registering their new-born children²⁸⁹ and the restrictions imposed on their acquisition and disposition of their immovable properties.²⁹⁰

a) Distinction between goods and services available publicly or privately

In Cyprus, national laws do not explicitly distinguish between goods and services available publicly or privately, but the prohibition regarding goods and services refers only to those available to the public, without mentioning explicitly those that are offered privately.

In general, the transposing legislation describes the scope of the law to include the public and private sector, including public bodies, local governance and organisations of public and private law.²⁹¹

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

In Cyprus, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive. Discrimination on the ground of race and ethnic origin in housing is prohibited by Article 4(1)(e) of Law 59(I)/2004 (transposing the Racial Equality Directive). The relevant provision refers to 'access to goods and services available to the public and the supply thereof, including housing' as one of the fields of application. The scope of the prohibition includes providers in both the public and the private sector. Housing discrimination forms part of the mandate of the Equality Body on all five grounds foreseen by the directives plus community, language and colour.²⁹² In addition, the wide ambit of the general prohibition of discrimination found in Article 28 of the Constitution may be used to pursue a housing discrimination claim on 'any ground whatsoever', although judicial interpretation of this provision is likely to endorse wide exceptions to the equality rule premised upon the criterion of 'reasonableness'. The law grants to persons with disabilities the right to accessibility in housing, buildings, streets and the environment in general, but without creating any specific duties for any building owner to ensure accessibility.²⁹³ The same law stipulates that this right is implemented through the adoption of measures to ensure reasonable adaptation to the maximum of available resources, which

²⁸⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 6(2)(g).

²⁸⁸ Law Ratifying the Convention on the Elimination of All Forms of Racial Discrimination of 1967, No. 11 of 1992, Law No. 11/1992, Article 2A(4).

²⁸⁹ Commissioner for Administration in its capacity as Anti-discrimination Authority, Report on the complaints submitted by Turkish Cypriots in relation to the handling of their application for the registration of their children by the Famagusta District Office (*Έκθεση της Επιτρόπου Διοικήσεως ως Αρχή κατά των Διακρίσεων αναφορικά με καταγγελίες που υποβλήθηκαν από Τουρκοκύπριους σε σχέση με το χειρισμό αιτημάτων τους για εγγραφή των παιδιών τους στην Επαρχιακή Διοίκηση Αμμοχώστου*), File No. AKR 35/2014, A/P 1902/2016, 13 March 2017. Not available online.

²⁹⁰ Law on Turkish Cypriot Properties (Administration and Other Matters) (Temporary Provisions) of 1991 (*Ο περί Τουρκοκυπριακών Περιουσιών (Διαχείριση και Άλλα Θέματα) (Προσωρινές Διατάξεις) Νόμος του 1991*) N. 139/1991.

²⁹¹ Law on Equal Treatment (Racial or Ethnic Origin) N. 59(I)/2004, Article 4(1)(e).

²⁹² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 6(2)(g).

²⁹³ Law on Persons with Disabilities N. 127/2000, Article 4(2)(c).

essentially falls short of creating a mandatory regime for property owners to render their properties for rent/sale accessible for persons with disabilities.²⁹⁴

Judicial interpretation of Article 28 permits less favourable treatment where this is deemed 'reasonable', without clearly defining objective criteria of the circumstances under which discrimination is permitted.

Apart from the case of the Cypriot Roma, who are granted housing in specific Roma settlements, no social housing is available in Cyprus. The Roma housing is allocated by the Ministry of the Interior upon request and provided the applicants meet the eligibility conditions. The housing offered to Roma applicants is either pre-fabricated, container-like units in remote Roma segregated settlements of extraordinary squalor and poverty, or abandoned houses belonging to Turkish Cypriots who fled hostilities in 1964-1974, which are badly in need of major repair. Other than the Roma, no other category of applicants is offered housing. Non-Roma applicants (subject to eligibility) are granted a small housing benefit that is hardly sufficient to rent accommodation, but the responsibility for finding rented accommodation rests on them. This has led to problems of homelessness for Cypriots, EU nationals, refugees and asylum seekers, who find it hard to locate urban accommodation to rent for a number of reasons, including landlords' prejudice. However, other than repeated public statements from UNHCR and NGOs, there is no proper monitoring of the problem nor any measures to alleviate it.

Although it is generally known that the quality of accommodation units rented to migrants is low and the rents charged are disproportionately high, there are no policies or legislation in place to address this or any other housing problem and no data available to document the extent of the housing issues facing migrants. Accessing justice is another major issue for migrants and there is no case law regarding housing discrimination. This may be attributed again to the lack of legal aid, low level of awareness and the length of time needed for a case to be tried compared to the short-term visas granted to migrants.

Access to one's own property is not deemed by the courts to fall within the meaning of the term 'housing'. A 2007 Supreme Court decision on an application for referral to the CJEU of the question whether Article 2 of the Racial Equality Directive could be interpreted in a manner permitting an EU member state to deny the lawful owner of a property the right to sell it was rejected in a decision where the judge stated that the issue at stake (access to property) was deemed to be outside the scope of the Directive.²⁹⁵

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

a) Trends and patterns regarding housing segregation for Roma

In Cyprus, there are trends and patterns of housing segregation and discrimination against the Roma, dating back to the late 1990s, when a large number of Roma migrated from the Turkish Cypriot-controlled north of Cyprus to the south. Most of them settled in abandoned and derelict properties within the old Turkish quarter of Limassol, which the Turkish Cypriots were forced to vacate several decades ago. Many of these houses were in a bad state of repair, without doors or windows, sanitary system, electricity or water supply. By 2003, approximately 360 Roma people had settled in these properties, without any preceding repair work. The arrival of the Roma families was greeted with fear and suspicion

²⁹⁴ Law on Persons with Disabilities N. 127/2000.

²⁹⁵ Supreme Court, *Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos* (*Perihan Mustafa Korkut ή Eyiam Perihan v. Απόστολου Γεωργίου δια του πληρεξουσίου αντιπροσώπου του Χαράλαμπου Ζόππου*) No. 303/2006, 17 December 2007. The applicant was a Turkish Cypriot property owner who was denied the right to dispose of his property in the Republic of Cyprus. He unsuccessfully tried to convince the court to seek interpretation from the CJEU as to whether the scope of Article 2 of the Racial Equality Directive applies to access to property.

by the local communities as well as by the authorities.²⁹⁶ The then Minister of Justice alleged in a public statement that the Roma families may well be 'Turkish spies'²⁹⁷ whilst the then Minister of the Interior assured Greek Cypriots that the authorities would 'ensure that they will be moved to an area that is far away from any place where there are people living.'²⁹⁸ ECRI's Third Report on Cyprus notes that 'the Cypriot authorities have used language and displayed attitudes vis-à-vis these persons that were not conducive to defusing tensions and promoting acceptance of Roma by the local communities.'²⁹⁹ At the beginning of this influx, some Roma families were detained in the Central Prison; this practice was discontinued when the Attorney General ruled it as illegal.³⁰⁰ In 2003, restrictions in movement between north and south were partially lifted and more Roma people crossed from north to south in order to settle. To address the need for additional housing, the Government set up two more housing settlements made up of prefabricated units in remote villages (Makounda and Polis Chrysochoos), where the housing conditions are also appalling.³⁰¹ In her *Annual Report 2003*, the Ombudsman³⁰² referred to an investigation carried out by her office into these settlements. Most families were residing there in temporary structures set up by themselves made of corrugated iron, wood, carton and plastic and without electricity. She pointed out that for the purpose of harmonisation with the EU *acquis* the authorities must compile an action plan using a holistic approach for eliminating ethnic segregation and for respecting the diversity of the Roma.³⁰³ A subsequent report released by the Ombudsman on 30 June 2003 expressed concerns about the failure of the authorities to implement policies decided in March 2000 and designed to tackle homelessness and unemployment amongst the Roma.³⁰⁴

Over the past few years, there has been an effort to regenerate the old Turkish Cypriot quarter of Limassol and some of the old houses were repaired but the pace of repairs is slow, and the condition of the houses remains substandard and often unfit for human habitation. Two studies published in 2016 relying on fieldwork data revealed severe problems in the quality of housing in the Roma settlements, both as regards their remote locations as well as their appalling state of repair, posing serious health hazards for the members of the overcrowded households.³⁰⁵ An NHRI report published in 2020 identified access to housing as one of the most important problems facing the Roma, who are only afforded accommodation in houses of bad condition of repair in special Roma settlements. Their requests to the authorities for maintenance go unanswered, even where the houses are unliveable in. The small size of residences was further identified as a problem, as large

²⁹⁶ Hadjicosta, M. (2001), 'Fears over gypsy influx', *The Cyprus Weekly*, 13-19 April 2001.

²⁹⁷ Remarks by former Justice Minister Koshis in Matthews, J. (2001), 'More gypsies crossing from north as Koshis warns about spies', *The Cyprus Mail*, 3 April 2001. Available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

²⁹⁸ Editorial (2001), 'Our reaction to Gypsies raises some awkward questions', in *The Cyprus Mail*, 10 April 2001. Available at <http://www.domresearchcenter.com/news/cyprus/index.html>.

²⁹⁹ ECRI (2005), *Third Report on Cyprus*, adopted on 16 December 2005, Strasbourg 16 May 2006, Council of Europe, p. 25.

³⁰⁰ Hadjicosta, M. (2001), 'Gypsies released from remand cells', *The Cyprus Weekly*, 20-26 April 2001.

³⁰¹ Although the Ministry of the Interior claimed that it had successfully carried out a housing plan to set up pre-fabricated units in various communities in Limassol and Paphos with all the necessary facilities, hepatitis incidents in 2005 and incidents of visceral leishmaniasis in 2006 in the Roma settlement of Makounda were attributed to poor hygiene conditions in the settlement: Nanos, C. (2005), 'Se eksetaseis oloi oi athiggnanoi', *Politis* (24 September 2005); Theodoulou, J. (2006), 'Authorities play down rare disease in Gypsy camp', *The Cyprus Mail* (26 May 2006).

³⁰² Although the Ombudsman is also the Equality Body, this particular report was issued in the capacity of the Ombudsman, referring to the Ombudsman's activity for the particular year.

³⁰³ Ombudsman, *Annual Report 2003*, p. 37.

³⁰⁴ The Cyprus Ombudsman's report was quoted in Amnesty International's report on Cyprus, covering events from January to December 2004.

³⁰⁵ Hope for Children CRC Policy Centre (2016) *Policy Paper Cyprus, PART I: Existing Policies & Practices on Roma Children and Youth Participation*, produced within the framework of the EU-funded project PEER: Participation, Experiences and Empowerment for Roma Youth. Available at www.peeryouth.eu/ctrl/Home/Cyprus/Policy_Paper_Cyprus_final_letter.pdf; Panagiotopoulos C. & Zachariades, A. (2016), 'Exploring the unknown aspects of Roma community in Cyprus and the role of social work practice', *European Journal of Social Work*, DOI: 10.1080/13691457.2016.1188773, published online on 19 June 2016. The abstract is available at www.tandfonline.com/doi/full/10.1080/13691457.2016.1188773.

families are often forced to live in a single room, some houses do not have electricity or water and the location of the settlement is isolated from the rest of the community, leading to social exclusion, which affects Roma women in particular. The mapping of the Roma population remains difficult since the answer to the question of ethnicity in a population census is optional and some Roma choose to be identified as Turkish Cypriots instead. The report notes that the Roma are facing problems of communication with the authorities who do not make any special effort to facilitate communication and service them, and further notes the marked absence of a comprehensive Roma inclusion strategy in all areas of life.³⁰⁶

³⁰⁶ NHRI (2020), '[Position of the Commissioner of Administration and Human Rights as National Independent Human Rights Authority \(NHRI\) regarding the living conditions of the Roma community in Cyprus](#)' (Τοποθέτηση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων (NHRI) σχετικά με τις συνθήκες διαβίωσης της Ρομά κοινότητας στην Κύπρο), Ref. ΑΥΤ 3/2020, 22 December 2020.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Cyprus, national legislation provides for an exception for genuine and determining occupational requirements, duplicating the wording of Article 4(1) of Directive 78/2000.³⁰⁷ The disability law excludes from its scope activities where, by virtue of their nature or context, a characteristic or ability which a person with a disability lacks, 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'.³⁰⁸

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Cyprus, national law provides for an exception for employers with an ethos based on religion or belief,³⁰⁹ which complies with Article 4(2) of Directive 2000/78. However, the constitutional provisions described below may potentially lead to situations that are not compliant with Article 4(2) of Directive 2000/78.

Article 7 of Law 58(I)/2004 has transposed the Directive's exception, duplicating more or less the provisions of Article 4(2) of the Directive providing that 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 constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This exception does not cover sexual orientation and the scope of this law does not cover gender. Therefore, any difference in treatment at the workplace on the ground of gender or sexual orientation is unlawful. In the case of religion, difference in treatment is lawful if the test laid down in Article 7 of Law 58(I)/2004 is satisfied. The clash between religion and sexual orientation has not been the subject of any court cases. Nor has it been examined by the equality body; however, the Orthodox Church repeatedly expressed its opposition to the civil cohabitation law. This opposition was not taken on board by the legislators.

Article 110 of the Cypriot Constitution 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'. It is apparent from the above article 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. Pursuant to a law which came into force in July 2006 amending the Constitution to the effect that EU directives and regulations prevail over national legislation (including the Constitution), it can safely be assumed that the provisions of Law 58(I)/2004 will prevail over the Constitution as the former transposes an EU directive. However, and in spite of the constitutional amendment, the courts in Cyprus are not always willing to

³⁰⁷ Law on Equal Treatment in Employment and Occupation (*Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 5(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁰⁸ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 3A(1)(b). Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf.

³⁰⁹ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 7.

prioritise laws transposing the *acquis* over national legislation; there are several examples where, in the case of conflict, the courts chose to apply the national law rather than the law transposing the *acquis*.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Cyprus, national legislation provides for an exception for the armed forces in relation to age and disability discrimination (Article 3(4), Directive 2000/78). The disability 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.³¹⁰ The same exception appears as a reservation by the Republic of Cyprus in the ratification of the UN Convention on the Rights of Persons with Disabilities.

In Cyprus, the scope of the exception is not explicitly limited to safeguarding the combat effectiveness of the armed forces; the relevant provision states that exceptions for the armed forces are permitted to the extent that the nature of the job requires special tasks that cannot be performed by persons with disabilities.³¹¹

In Cyprus, the scope of the exception extends to other non-combat staff, such as civilians employed in administrative positions in the army, to the extent that the reservation noted above applies.³¹²

Law 58(I)/2004, transposing the Employment Equality Directive (minus the disability component), provides that the prohibition of discrimination on the ground of age shall not apply to the armed forces, to the extent that the setting of an age limit is justified by the nature and duties of the occupation.³¹³

A law that came into force in late 2009 introducing a quota system in favour of persons with disability in the wider public sector excludes from its scope those sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent', i.e., the army, the police, the fire department and the prisons.³¹⁴

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Cyprus, national law includes exceptions relating to difference of treatment based on nationality.³¹⁵

In Cyprus, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. Nationality may be deemed to fall under the scope of the Law Ratifying Protocol No. 12 to the ECHR, Article 1 of 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.³¹⁶ A relevant provision is also found in the law

³¹⁰ Law on Persons with Disabilities No. 127(I)/2000, Article 3A(1)(a).

³¹¹ Law on Persons with Disabilities, Article 3A(1)(a).

³¹² Law on Persons with Disabilities, Article 3A(1)(a).

³¹³ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 8(4).

³¹⁴ Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (*Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος*) No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&qstring=146%28I%29%20w/1%202009.

³¹⁵ Law on Persons with Disabilities, Article 3A(3); Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 5(1); Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 4(2). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html.

³¹⁶ Law Ratifying Protocol No. 12 to the European Convention on Human Rights N. 13(III)/2002, 19 April 2002.

setting up the Equality Body. This tasks the Equality Body with the promotion of equality in the enjoyment of rights and freedoms arising under international instruments ratified by Cyprus, irrespective of, inter alia, national or ethnic origin, and the protection of individuals from discrimination by public and private bodies on the grounds provided in the law, which include nationality.³¹⁷

The law governing the granting of nationality precludes the automatic grant of citizenship to applicants whose parent entered Cyprus unlawfully or resides in Cyprus unlawfully, even if the applicant resides lawfully in Cyprus and the other parent is a Cypriot; in such a case, the granting of citizenship is at the discretion of the Council of Ministers.³¹⁸ Although the provision appears neutral, it is clearly aimed at excluding from citizenship those persons born to a parent from Turkey who migrated to and settled in Cyprus in the post-war era.

In 2007 a complaint was submitted to the Equality Body alleging that the law on the acquisition of citizenship by descent is discriminatory. The complaint alleged that the provision infringed the Constitution and the Republic's international law obligations, including the UN Convention on the Rights of the Child. The Equality Body's decision recognised that the examination of applications under this provision is often unnecessarily delayed but, given that the Council of Minister's decision is Government policy, it cannot intervene any further. The allegation of discrimination was not examined, as the report accepted that children may legitimately be discriminated against when one of the two parents entered Cyprus under the status of 'Turkish settler'.³¹⁹

ECRI's Third Report on Cyprus³²⁰ notes that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate', noting that the relevant provisions of the nationality law are contrary to Article 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign, and contrary to the general prohibition of discrimination in Article 1 of Protocol No. 12 to the ECHR.

In 2011 the Equality Body dealt with additional complaints from Turkish Cypriots regarding the granting of Cypriot nationality to their children. Although that report made extensive reference to the ECRI's position on the matter, it fell short of endorsing the ECRI's position that discrimination exists. Instead, the Equality Body adopted the Government's position that the current policy is necessary in order to address Turkey's policy of demographic change, but urged the authorities to speed up the processing of applications and to promptly notify failed applicants in order to avoid claims for maladministration and discrimination.³²¹

Over the years (until 2017), the Equality Body issued a number of decisions applying the two non-discrimination directives to EU citizens.³²² Indeed, until recently,³²³ the interpretation given by the Equality Body to the directives was that their scope does not exclude EU citizens.³²⁴ In 2016 the Equality Body found that the law governing the exercise

³¹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*) No. 42(I)/2004, Article 3(1)(b), Part I. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³¹⁸ Population Archives Law N. 141(I)/2002, Article 109(1). Available at www.cylaw.org/nomoi/enop/ind/2002_1_141/section-sc852d7c40-bca1-5785-16b3-2a04cd997a2c.html. This clause was first introduced by Law 65(I)/1999, which came into force on 11 June 1999.

³¹⁹ Anti-discrimination Authority, Report No. 10/2007, 24 March 2008.

³²⁰ ECRI (2006), *Third Report on Cyprus*, adopted on 16 December 2005, Strasbourg 16 May 2006.

³²¹ Anti-discrimination Authority, Report on the handling of applications for citizenship by Turkish Cypriots, 30 November 2011.

³²² Position of the Commissioner for Administration and Human Rights regarding complaints to the Equality Authority No. A.K.I. 49/2013 and A.K.I. 52/2013 regarding unlawful discrimination on the ground of national origin in the field of access to employment, 10 December 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/\\$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/F6E4BFFCEE948EECC2257F2B003AA5E7/$file/%CE%91%CE%9A%CE%9949_2013_%CE%91%CE%9A%CE%99%2052_2013_10122015.doc?OpenElement).

³²³ In 2017 a new Ombudsman was appointed who ceased all Equality Body activity applying the non-discrimination legal framework. All complaints are handled under the general Ombudsman's mandate.

³²⁴ Letter from Equality Authority to Corina Demetriou, 12 November 2015, Ref. A.I.M.5.7.02.01.

of the profession of estate agents contained indirect discrimination against third country nationals in violation of the Racial Equality Directive, because it requires applicants to submit evidence of 'certified educational attainment', when there is no procedure for such certification of diplomas issued by schools in third countries.³²⁵ The Equality Body interpreted the term 'racial or ethnic origin' as complemented by the terms 'language', 'race', 'colour' and 'national origin', and found there was indirect discrimination on the ground of national origin, in breach of the law transposing the equality *acquis*.³²⁶

In 2013, the Equality Body, the only agency recording discrimination data, identified a drop in employment-related complaints as a result of the economic crisis, rising unemployment and the deregulation of the labour market.³²⁷ When the current Ombudsman took over in 2017, the practice as regards the publication of statistical data changed. As a result, no statistics were published for the period 2015-16; the 2017 annual report of the Ombudsman included a section on discrimination, but the statistical record contained only the number of complaints per ground without disaggregating the data based on the field of application;³²⁸ in 2020, the Equality Body issued a single activity report for three years (2017, 2018, 2019) without any statistical data and without noting any decisions relying on the anti-discrimination legislation.³²⁹

In 2017, a number of complaints from EU nationals and third country nationals were handled by the courts, the Commissioner for the Rights of the Child and the Ombudsman regarding access to welfare, but only the Commissioner for the Rights of the Child invoked the equality *acquis* in order to evaluate the merits of the complaint at hand.³³⁰ No complaint was ever examined in relation to undocumented migrants.

The law transposing the Racial Equality Directive copies verbatim the Directive's exception in Article 3(2) about nationality and immigration status. The status of being an undocumented migrant is not a protected ground, although the racial or ethnic origin of the undocumented migrant is.

b) Relationship between nationality and 'racial or ethnic origin'

The interaction between nationality and racial or ethnic origin is nowhere more apparent than in the case of the Turkish Cypriots who, although Cypriot citizens under the Constitution, appear to have an 'inferior' form of citizenship due to their ethnicity, as

³²⁵ Equality Authority (2016), Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, File number A.K.I.22/2016, 15 April 2016. Available at

[www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

³²⁶ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 3.

³²⁷ Equality Authority (2014), *Annual Report 2013*, p. 5. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/\\$file/%CE%91%CE%81%CE%87%CE%AE%20%CE%99%CE%83%CE%8C%CE%84%CE%B7%CE%84%CE%B1%CE%82-%CE%95%CE%84%CE%AE%CE%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CE%83%CE%B7%202013.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/92610255DE7D7C3BC2257E8300427BDE/$file/%CE%91%CE%81%CE%87%CE%AE%20%CE%99%CE%83%CE%8C%CE%84%CE%B7%CE%84%CE%B1%CE%82-%CE%95%CE%84%CE%AE%CE%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CE%83%CE%B7%202013.pdf).

³²⁸ Ombudsman (2019), *Annual Report 2017*. Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/68EA50DC82D660E3C2258527003C819A/\\$file/%CE%95%CE%84%CE%AE%CE%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CE%83%CE%B7%20%CE%95%CE%80%CE%B9%CE%B9%CE%84%CE%81%CE%8C%CE%80%CE%BF%CE%85%20%CE%94%CE%B9%CE%BF%CE%B9%CE%BA%CE%AE%CE%83%CE%B5%CE%89%CE%82%20%CE%BA%CE%B1%CE%B9%20%CE%A0%CE%81%CE%BF%CE%83%CE%84%CE%B1%CE%83%CE%AF%CE%B1%CE%82%20%CE%91%CE%BD%CE%B8%CE%81%CE%89%CE%80%CE%AF%CE%BD%CE%89%CE%BD%20%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CE%89%CE%BC%CE%AC%CE%84%CE%89%CE%BD%202017.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/68EA50DC82D660E3C2258527003C819A/$file/%CE%95%CE%84%CE%AE%CE%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CE%83%CE%B7%20%CE%95%CE%80%CE%B9%CE%B9%CE%84%CE%81%CE%8C%CE%80%CE%BF%CE%85%20%CE%94%CE%B9%CE%BF%CE%B9%CE%BA%CE%AE%CE%83%CE%B5%CE%89%CE%82%20%CE%BA%CE%B1%CE%B9%20%CE%A0%CE%81%CE%BF%CE%83%CE%84%CE%B1%CE%83%CE%AF%CE%B1%CE%82%20%CE%91%CE%BD%CE%B8%CE%81%CE%89%CE%80%CE%AF%CE%BD%CE%89%CE%BD%20%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CE%89%CE%BC%CE%AC%CE%84%CE%89%CE%BD%202017.pdf?OpenElement).

³²⁹ Ombudsman (2020), '*Annual Report of the office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) acting as Equality Body 2017-2018-2019*', 8 January 2020.

³³⁰ European network of legal experts in gender equality and non-discrimination (2017), Flash report on *Child Commissioner report regarding the 'prior residence' requirement in welfare legislation*. Available at www.equalitylaw.eu/downloads/4487-cyprus-child-commissioner-report-regarding-the-prior-residence-requirement-in-welfare-legislation-pdf-179-kb.

illustrated by the restrictions they face in exercising their voting rights, in the granting of nationality for their children, in accessing their properties in Republic-controlled areas, etc. This is already illustrated extensively in other parts of this report.

In its earlier decisions, the Equality Body made use of its extended mandate, treating nationality discrimination as prohibited by international laws as well as by the Racial Equality Directive; on some occasions, nationality and ethnic origin were used interchangeably in the sense that whilst the case at hand was clearly one of nationality discrimination, the decision would also invoke the provisions of the laws transposing the anti-discrimination directives. The general treatment afforded to the issue by the Equality Body suggests that it endorsed the position that the distinction between, race/ethnicity and nationality is an artificial one. Such was the case decided in 2016, where the Equality Body found that a law restricting access to the profession of assistant estate agent for persons who attended school in a third country amounted to indirect discrimination in violation of the Racial Equality Directive.³³¹ An Equality Body decision established that the exclusion of non-Cypriot EU citizens from a scheme granting a heating allowance amounted to discrimination on the basis of race or ethnic origin as well as of national origin under Protocol No. 12 to the ECHR.³³² Similarly, the exclusion of a Greek national from the list of persons eligible to be awarded honorary artistic pensions was found by the Equality Body to be discriminatory.³³³ The denial of access to EU citizens to the electoral register for the purpose of voting at local elections was also held to be discriminatory on the basis of race or ethnic origin.³³⁴ More recently, the Equality Body found that an employment scheme with a stringent Greek language requirement amounted to a breach of the Law on Combating Racial and Other Forms of Discrimination³³⁵ in combination with the Law on Equal Treatment in Employment and Occupation,³³⁶ as it resulted in discrimination against EU citizens and third country nationals.

The practice changed in 2017 when the current Ombudsman took over. One of her first reports as Ombudsman was in response to three complaints regarding the exclusion of the foreign spouses of Cypriot nationals from the family's public benefit entitlement.³³⁷ The authorities had sought to justify the exclusion of the foreign spouses of Cypriots on the basis of Article 3 of the Public Benefits and Services law, which restricts entitlement to public benefits to those EU nationals of insufficient means who had worked as employees or were self-employed, or who initially acquired the right to residence due to sufficient means, and to third country nationals of insufficient means who were either granted international protection, or were identified as victims of trafficking, or who had a long-term residence visa.³³⁸ In the report, the Ombudsman concluded that the exclusion of foreign spouses of Cypriots from welfare entitlements was unlawful, citing Article 7 of the welfare law which provides that, where an applicant cohabits with a spouse, entitlement is based on the needs of both persons, taking into account their income. The immigration status or nationality of the spouse becomes relevant only if the spouse is the main applicant; it was not the legislator's intention to exclude from the scope of the welfare law the dependents

³³¹ Equality Authority (2016), Report on discrimination prohibited by law on the ground of national origin in the field of access to occupation and specifically in the profession of assistant estate agent, File number A.K.I.22/2016, 15 April 2016. Available at [www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/\\$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/53D3360817C8E5BAC2257FA30030AF25/$file/%CE%91%CE%9A%CE%9922_2016_15042016.doc?OpenElement).

³³² Anti-discrimination Authority, Report Nos. AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004.

³³³ Anti-discrimination Authority, Report No. A.K.P 73/2008, 30 December 2009.

³³⁴ Anti-discrimination Authority, Report Nos. AKP 75/2005 and AKP 78/2005.

³³⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος* (Επίτροπος) Νόμος) No. 42(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

³³⁶ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004.

³³⁷ Commissioner for Administration and Human Rights, Report on the actions of the Social Welfare Services regarding the non-inclusion of foreign spouses of Cypriot citizens as dependent persons for the purposes of public benefit entitlement. Ref. A/P 771/2014, A/P 2419/2014, A/P 1954/2016, 4 July 2017.

³³⁸ Law on Public Benefits and Services of 2006, as amended. Available at http://cylaw.org/nomoi/enop/non-ind/2006_1_95/index.html.

of applicants who had an immigration status other than the one prescribed in the law for the applicants. The decision made no reference to the Racial Equality Directive or to contemporary scholarly interpretations of the Racial Equality Directive,³³⁹ which view nationality as a 'suspect' ground used as a pretext for indirect discrimination on the ground of racial/ethnic origin. Although the outcome of the investigation was to uphold the claim of foreign spouses affected by this policy, the failure to invoke discrimination essentially restricts the argumentation to the realm of the national law and its judicial interpretations.

The shift towards addressing maladministration rather than discrimination also appeared in another Ombudsman report issued in November 2017, in response to a complaint that non-Cypriot prisoners were excluded from parole eligibility. The Ombudsman refused to intervene because it was not clear whether the parole board is an administrative body or a quasi-judicial one.³⁴⁰ The response did not utilise the wide mandate of the Equality Body, which extends beyond the confines of Article 13 of the Racial Equality Directive to include the right to intervene in order to promote equal treatment in line with the ECHR, the FCNM and the ICERD.³⁴¹

One of the few court decisions on nationality discrimination was delivered in 2012 but the claimant was not the discriminated victim but the apparent perpetrator. The case concerned a Cypriot landlord who applied to the Rent Control Court in order to evict his Romanian tenant. The Rent Control Court claimed it had no jurisdiction, because the scope of the Rent Control Act covers only Cypriots. The Supreme Court reversed this decision, stating that the reference in the law to Cypriots should be read as including all EU nationals.³⁴² The exclusion of third country nationals from the scope of the Rent Control Act was the subject of an investigation by the Equality Body, which concluded that it amounted to direct race discrimination and recommended its revision.³⁴³ The rent control legislation was also criticised by the UN Committee on the Elimination of Racial Discrimination for the same reason,³⁴⁴ however the provision remains unchanged to date.

4.5 Health and safety (Article 7(2) Directive 2000/78)

In Cyprus, there are exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive. The disability law excludes from its scope measures for the protection of 'health and the rights and freedoms of others'.³⁴⁵ The same law further provides that the principle of equal treatment does not preclude 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.³⁴⁶

Law 58(I)/2004 transposing the Employment Equality Directive also excludes from its scope measures provided by national legislation which are necessary for, inter alia, the

³³⁹ De Schutter O. (2016), *Links between migration and discrimination*, report for the European network of legal experts in gender equality and non-discrimination. Available at: www.equalitylaw.eu/downloads/3917-links-between-migration-and-discrimination.

³⁴⁰ Commissioner for Administration and Human Rights, letter dated 24 November 2017, File No. AKR 2/2015.

³⁴¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Articles 3-5.

³⁴² Supreme Court, *Diogenis Christophorou Ltd v. Giosa Victoria Mikaela* (Διογένης Χριστοφόρου v. Giosa Victoria Mikaela), No. 161/2009, 5 June 2012.

³⁴³ Anti-discrimination Authority, Report on discrimination on the ground of ethnic origin in the Rent Control Law, 30 January 2012, Ref. AKR 226/2008. Available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/\\$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/920B2D4C97B53FFBC2257EAF00311B3A/$file/%CE%91%CE%9A%CE%A1226.2008-30012012.doc?OpenElement).

³⁴⁴ UN Committee on the Elimination of Racial Discrimination (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus*, adopted by the Committee at its eighty-third session (12-30 August 2013), published on 23 September 2013 (CERD/C/CYP/CO/17-22). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2fCYP%2fCO%2f17-22&Lang=en.

³⁴⁵ Law on Persons with Disabilities No. 127(I)/2000, Article 3A(2).

³⁴⁶ Law on Persons with Disabilities, No. 127(I)/2000, Article 3B(2).

‘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.³⁴⁷

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 there are no such issues or debates in Cyprus for the moment, as there are hardly any ethnic communities using symbols of religion or culture. The vast majority of Muslims in Cyprus, who are basically Turkish Cypriots, Roma and migrant workers from the Middle East, are either secular or simply do not use symbols in their appearance. In recent years, as the number of asylum seekers and refugees from countries in the Middle East is growing, it is more common to see persons using religious symbols in the public sphere, but there is no up-to-date data to connect the use of such symbols with their employment prospects. In any case, the employment prospects of asylum seekers are restricted to specific low-status and low-paid jobs, whilst rising unemployment and the lack of Greek language skills are hampering the employment prospects of all non-Cypriots.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Cyprus, national law provides for specific exceptions for direct discrimination on the ground of age in pension provisions, in disability schemes, in professional social insurance schemes, including the setting of a different age limit for workers or groups of workers, and in the use of such age criteria in actuarial calculations provided that they do not result in gender discrimination.³⁴⁸

b) Justification of direct discrimination on the ground of age

In Cyprus, national law provides for justifications for direct discrimination on the ground of age, subject to the criteria found in Article 6 of the Employment Equality Directive, which are explicitly listed in the national law.³⁴⁹ To date, no case has been presented before the Cypriot courts or the Equality Body raising the issues examined in *Mangold* or *Kucukdeveci*; nor do any national laws provide for the conclusion of fixed-term contracts once an employee reaches a certain age or for ignoring the period of employment completed by an employee before reaching the age of 25 when calculating the notice period for dismissal.

A study of the relevant cases decided by the court and by the Equality Body reveals significant differences between the treatments afforded to this issue by the two bodies. Court decisions in recent years have sought to justify differences in retirement ages for employees of different rank or different age, introducing a rather wide spectrum of exceptions premised upon a doctrine that ‘unequal’ situations must be treated differently and/or that discrimination must be unreasonable in order to be prohibited.³⁵⁰ Up until 2017, the Equality Body decisions were better informed about the relevant provision in the law transposing Directive 2000/78 and about legal developments in the CJEU and used the test provided in the law (objectively and reasonably justified by a legitimate aim and means must be appropriate and necessary); the Equality Body was more likely than the courts to find that prohibited age discrimination has occurred, arising from differential treatment on

³⁴⁷ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 5(3)(b).

³⁴⁸ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 5.

³⁴⁹ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 8.

³⁵⁰ Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order* (Γιώργος Ματθαίου v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Δικαιοσύνης και Δημόσιας Τάξης) No. 1497/2008, 30 April 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=1497%20w/1%202008.

the ground of age.³⁵¹ A Supreme Court decision in late 2014 regarding a claim against reduced benefits for a public sector employee who chose to retire before reaching the age of 45 could have marked a new departure for court decisions in this area, as the court found that the legal provision for reduced pension benefits for younger retiring employees was discriminatory and thus unlawful.³⁵² However, in 2017, the Supreme Court followed the judicial tradition of removing retirement benefits from scrutiny under the equality *acquis*. In this ruling, the court applied a national law, resulting in less favourable treatment on the ground of age. The case concerned a public sector employee retiring at 61, who was paid a reduced retirement lump sum compared to those retiring at 62 or 63. The Court ruling, elaborated under section 2.2 above, concluded that, on the basis of Article 6(2) of Directive 78/2000, the retirement lump sum was outside the scope of the Directive, adding that had the claimant's case been found to fall within the scope of the Directive, it would fall under the exception of Article 6(1).³⁵³

The above Pensions Law provision for the payment of reduced retirement benefits to public sector employees who choose to retire early³⁵⁴ was also the subject of a CJEU ruling against Cyprus, which found that it led to discrimination between different categories of employees.³⁵⁵ At the time of writing, however, the law sanctioning the discriminatory treatment had not been amended and there are no known plans for its revision.

c) Permitted differences of treatment based on age

In Cyprus, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78. Although the exception in Article 6(2) of Directive 2000/78 is not specifically invoked in national legislation, there are provisions in the law governing 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 69(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. This provision was the subject of an application to the Supreme Court, which claimed that it ought to be annulled for non-compliance with the equality principle. This claim was rejected by the Court on the grounds that retirement ages fall outside the scope of the Employment Equality Directive and that the contested lump sum related to the duration of his service and not to his contributions.³⁵⁶ Entitlement to other benefits is linked to the term of service but also, in some cases, to the mandatory pensionable age, which is determined by this law. Article 49(2) of the Public Service Laws 1990-1996 provides that the element of age seniority may be taken into consideration as a criterion for selecting the candidate to be promoted, as a last resort where the candidates are otherwise deemed equal. In 2015 the Supreme Court ruled that, all other things being equal, seniority is a legitimate criterion in deciding promotions in the public service.³⁵⁷ In particular, the Court ruled that taking seniority into account is not just lawful but is in fact required by the public service law,³⁵⁸ which provides that where two employees are equally

³⁵¹ Equality Authority, Report No. AKI 30/2011, 23 May 2012; Cyprus, Equality Authority, Report No. A.K.I. 32/2008, 6 April 2012.

³⁵² Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου v. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E9%E3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%E9%E3*%20and%2058(%E9)#).

³⁵³ Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

³⁵⁴ Law on Pensions (Ο περί συντάξεων νόμος) N. 97(I)/1997, Article 27(1).

³⁵⁵ CJEU, Judgment of 21 January 2016, *European Commission v. Cyprus*, C-515/14, ECLI:EU:C:2016:30.

³⁵⁶ Supreme Court, *Michalakis Raftopoulos v. The Republic of Cyprus via the Accountant General of the Republic* (Μιχαλάκης Ραφτόπουλος v. Κυπριακής Δημοκρατίας μέσω Γενικού Λογιστή της Δημοκρατίας), No. 1223/2007, 22 November 2011.

³⁵⁷ Supreme Court, *Charis Christodoulidou v. Republic of Cyprus through the Public Service Committee*, No. 12/10, 3 April 2015.

³⁵⁸ Law on Public Service No. 1/1990, Article 49.

'senior' because they have the same date of appointment, seniority is to be determined by taking into account the employees' ages.

There is a long list of additional laws governing the payment of benefits under pension schemes to employees in various Government and semi-Government 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. A decision of the Equality Body in 2009 found that the provision of the Pensions Law providing for fewer benefits for employees under 45 wishing to take early retirement, compared with employees over 45, was in violation of the equality principle, which was later confirmed by the Supreme Court. The Equality Body, however, appears willing to accept the criterion of the number of years in service as a determining factor differentiating groups of employees, by recommending the adoption of a condition that pension benefits are payable upon completion of certain years of service, irrespective of age, which is also indirectly related to age.³⁵⁹

d) Fixing of ages for admission to occupational pension schemes

In Cyprus, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2).³⁶⁰ The use of age criteria in actuarial calculations is not prohibited, provided it does not result in gender discrimination.

In the public sector, benefits under pension schemes depend at least partly on age. In the private sector, pension schemes are governed either by collective agreements (where such exist in the particular sector) or by individual employment contracts, where the conditions of eligibility for benefits are impossible to monitor. It is possible that any collective or individual agreement that discriminates on other grounds will be deemed unlawful on the basis of Article 4(c) of Law 58(I)/2004, transposing Article 3(1)(c) of the Employment Equality Directive 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).

4.6.2 Special conditions for younger or older workers

In Cyprus, there are no special conditions set by law for older and/or younger workers, in order to promote their vocational integration. Law 58(I)/2004 transposing the Employment Equality Directive 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, so as to promote their vocational integration or ensure their protection – shall not constitute discrimination.³⁶¹ However, no measures or special conditions are actually provided by this law or by any other law or regulation.

4.6.3 Minimum and maximum age requirements

In Cyprus, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training. The law allows the fixing of minimum age limits, professional experience or seniority. It also permits the setting of maximum limits for access to employment based on the training required for the particular position or the need for a reasonable period of employment prior to retirement, provided the measure is objectively justified by a legitimate aim and the means are necessary and legitimate.³⁶² In addition, the law provides an exception relating to the armed forces, where the principle of non-discrimination on the ground of age is stated to be inapplicable to the

³⁵⁹ Equality Authority, Report No. A.K.I. 63/2008 and A.K.I. 1/2009, 4 June 2009.

³⁶⁰ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 8(3).

³⁶¹ Law on Equal Treatment in Employment and Occupation N. 58(I)/2004, Article 8(2)(a).

³⁶² Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 8(2)(b) and (c).

extent that the fixing of an age limit is justified by the nature and duties of the work.³⁶³ The law does not specify the age limit applicable in this case, which is determined by the armed forces' service schemes.

In 2008 a Labour Tribunal found that the fixing of an upper age limit by a credit institution in a job advertisement was unlawful, but awarded the claimant only a small fraction of the compensation sought (EUR 1 500 as opposed to her claim of EUR 555 754).³⁶⁴ Upon appeal,³⁶⁵ the Supreme Court confirmed the trial court's finding on this point, because the claimant would not have been hired anyway, since the other candidates were better qualified, based on the principle expounded by the European Court of Justice (ECJ) in the case of *Draehmpaehl*.³⁶⁶ In 2012 the Equality Body found that the age limit of 55 for recruitment to the position of cultural attaché at the House of Cyprus in Athens was unlawful.³⁶⁷

4.6.4 Retirement

a) State pension age

In Cyprus, there is a state pension age, at which individuals must begin to collect their state pensions. The current state pension age is 65,³⁶⁸ although people who meet a list of criteria as regards their social insurance contributions may receive their state pension at 63.³⁶⁹ These age limits are adjusted every five years on the basis of life expectancy at retirement age. The first adjustment took place in 2018. The adjustment consists of an upward increase of six months every five years until 2023.

If an individual wishes to work beyond the state pension age, the pension cannot be deferred. Employees who retire from work may, however, choose to defer payment of their pension until they reach the age of 68, in which case the amount of the pension is increased by 0.5 % for every month of deferral.³⁷⁰

In the private sector, an individual can collect a pension and still work, but other conditions apply in the public sector. However, upon reaching pensionable age, private sector employees lose their right to compensation for unlawful dismissal.³⁷¹

Contributions to the state social insurance scheme can only be paid until the person reaches 'pensionable age'.³⁷² Contrary to what applies in the public sector, an individual can collect a pension and still work in the private sector; this is a matter governed by the individual employment contract.

Public sector employees may not work past their retirement limit, so their pensionable age coincides with their retirement age.³⁷³ However, it is possible for public servants past their

³⁶³ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 8(4).

³⁶⁴ Labour Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), No. 258/05.

³⁶⁵ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

³⁶⁶ ECJ, Judgment of 22 April 1997, *Nils Draehmpaehl v. Urania Immobilienservice OHG*, C-180/95, ECR I-2195.

³⁶⁷ Equality Authority, Report No. AKI 30/2011, 23 May 2012.

³⁶⁸ Law on Social Insurance (Ο περί κοινωνικών ασφαλίσεων νόμος του 2010) N. 59(I)/2010, Article 2. Available at http://cylaw.org/nomoi/enop/non-ind/2010_1_59/index.html.

³⁶⁹ Law on Social Insurance, N. 59(I)/2010, Article 35.

³⁷⁰ Law on Social Insurance, N. 59(I)/2010, Article 39.

³⁷¹ Law on Termination of Employment N. 24/1967, Article 4. Available at www.cylaw.org/nomoi/enop/ind/1967_1_24/section-scb33211bb-b41a-31a4-2730-a0aca956b784.html.

³⁷² Law on Social Insurance, N. 59(I)/2010, Articles 2 and 35.

³⁷³ Law on Pensions (Ο περί συντάξεως νόμος) N.97(I)/1997, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/1997_1_97/full.html.

pensionable age to be appointed to another paid public post without losing their state pension. Although a law introduced in 2011 sought to reduce the state pension of public sector employees who take up another paid public position after retirement,³⁷⁴ a Supreme Court decision in 2014 found this law unconstitutional and restored state pensions for this category of pensioners.³⁷⁵ Legislators are reported to be in search of a solution to this issue since then, amidst public discontent over a legal vacuum that allows a small group of privileged individuals to receive double pay from the public payroll at a time of economic crisis and austerity.

b) Occupational pension schemes

In Cyprus, there is no standard age when private sector employees can begin to receive payments from occupational pension schemes or from other employer-funded pension arrangements. Up until now, the private sector has generally considered the age of 65 as pensionable age, although this is not mandatory and deviations are not prohibited. The content of private pension schemes is governed by private agreements and no generalisations can be made as to the terms customarily used. If an individual wishes to work longer, payments from such occupational pension schemes can be deferred, if this is foreseen in the terms of the employee's pension scheme. Different private pension schemes provide different terms as regards the deferral of payments where a person wishes to work beyond pensionable age. There is no law governing these schemes and no generalisations can be made as regards common practice.

c) State-imposed mandatory retirement ages

In Cyprus, there are mandatory retirement ages set by law only for public sector employees. Different mandatory retirement ages apply for different employees in the public sector, depending on their profession, rank and year of joining the service.³⁷⁶

A number of Supreme Court decisions since 2007³⁷⁷ have found that the different retirement ages for employees of different ages do not amount to age discrimination.

In the public sector, retirement ages are mandatory, and employees may not work past their retirement limit.³⁷⁸ Late retirement is prohibited by law for public sector employees, semi-Government organisation employees and employees of public education institutions.

d) Retirement ages imposed by employers

In Cyprus, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining. There is no statutory retirement age in Cyprus for employees in the private sector; employer and employee are free to agree on a retirement age of their choice. Up until now, the majority of private sector workers retired during their 65th year, which is the pensionable age prescribed by the Law on Social Insurance.³⁷⁹

³⁷⁴ Law on Pensions of State Officials (General Principles) (Ο περί συντάξεων κρατικών αξιωματούχων (Γενικές Αρχές) Νόμος) N. 88(I)/2011. Available at http://www.cylaw.org/nomoi/indexes/2011_1_88.html.

³⁷⁵ Supreme Court, *Maria Koutselini-Ioannidou et al v. The Republic of Cyprus*, Ref. 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12, 587/12, 7 October 2014. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2014/3-201410-740-11etc_major1.htm&qstring=%EA%EF%F5%F4%F3%E5%EB%E9%ED*.

³⁷⁶ Law on Pensions, N. 97(I)/1997 as amended, Article 12.

³⁷⁷ Supreme Court, *Vassos Constantinou v. Republic of Cyprus and Androulla Stavrou v. The Republic of Cyprus (Βάσος Κωνσταντίνου v. Κυπριακής Δημοκρατίας και Ανδρούλα Σταύρου v. Κυπριακής Δημοκρατίας)* (joined cases) Case Nos. 1795/2006 and 1705/2006, 1 June 2007.

³⁷⁸ Law on Pensions, N. 97(I)/1997, Article 9.

³⁷⁹ Law on Social Insurance, N. 59(I)/2010, Article 2(1).

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do not apply to workers past pensionable age. The Law on Termination of Employment provides that the right to protection from unfair dismissal is lost upon reaching pensionable age.³⁸⁰ This effectively means that the employer is free to dismiss employees or force them to retire at any time after they have reached pensionable age without having to pay any compensation. In 2007 the Equality Body found the said provision discriminatory and referred it to the Attorney General for revision. However, no measures were taken, and the said provision continues to remain in force. Under the current conditions of deep recession and rising youth unemployment, it is unlikely that this provision will be revised now.

f) Compliance of national law with CJEU case law

In Cyprus, national legislation is not in line with the CJEU case law on age regarding mandatory retirement.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Cyprus, national law does not permit or prohibit seniority or age to be taken into account in selecting workers for redundancy. The Law on Termination of Employment, which governs redundancies, does not provide for seniority or age to be taken into account in selecting workers for redundancy. Instead, 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 explicitly providing 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 hired, considering significant differences in the ability and efficiency of the work of the employees who are about to be dismissed.³⁸¹ All other things being equal, the court will apply the principle of 'first in, last out'.³⁸² In some instances the court has ruled that seniority alone cannot prevent the selection of a worker for redundancy.³⁸³

b) Age taken into account for redundancy compensation

In Cyprus, national law provides for compensation for redundancy. This, however, is not directly affected by the age of the worker. The general rule 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 with the same employer;³⁸⁴ whether the period of employment started before 1 January 1964, as no compensation is payable for work before that date;³⁸⁵ whether employment was continuous;³⁸⁶ and the amount of weekly salary earned.³⁸⁷ It may be argued that some of these criteria may, by inference, be indirectly related to age.

³⁸⁰ Law on Termination of Employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Article 4.

³⁸¹ Labour Court, *Andreas Hadjidemetriou v. 1. Publishing company 'To Vima' Ltd, 2. Redundancy Fund (Ανδρέας Χατζηδημητρίου v. 1. Εκδοτικής Εταιρείας 'Το Βήμα', 2. Ταμείο Πλεονάζοντος Προσωπικού)*, Case No. 107/85.

³⁸² Labour Court, *Chrysostomos Stavrou v. Redundancy Fund (Χρυσόστομος Σταύρου v. Ταμείο Πλεονάζοντος Προσωπικού)*, Case No. 328/92.

³⁸³ *Charalambous v. Famagusta General Agency Ltd (Χαραλάμπους v. Famagusta General Agency Ltd)* Case No. 490/95, 31 July 1998.

³⁸⁴ Law on Termination of Employment (*Ο περί τερματισμού της απασχόλησης νόμος*) N. 24/1967, Table IV, Section 1. Available at www.cylaw.org/nomoi/enop/non-ind/1967_1_24/full.html.

³⁸⁵ Law on Termination of Employment, N. 24/1967, Table IV, Article 2.

³⁸⁶ Law on Termination of Employment, N. 24/1967, Table IV, Article 3.

³⁸⁷ Law on Termination of Employment, N. 24/1967, Table IV, Article 4.

Article 19(1) of the Law on Termination of Employment provides that in the private sector, redundancy does not generate the right to compensation if the worker so dismissed was of pensionable age on the date of termination of their employment. Moreover, in accordance with Article 19(2) of the same law, when a worker's employment is terminated within 12 months prior to their pensionable age, the amount of compensation payable is reduced by one-twelfth for every completed month during this 12-month period.³⁸⁸

A number of cases have been 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 when there was an offer by the employer of an alternative position. In the case of a 58-year-old stockkeeper who was made redundant but was offered an alternative position as a door-to-door salesman by the same employer, the courts held that, due to his advanced age, he was justified in declining that offer and was therefore entitled to compensation.³⁸⁹ Similarly, a middle-aged woman who was offered an alternative position by her employer at another location 30 minutes' walk from her place of residence, was held by the courts to be justified in rejecting it and was therefore entitled to compensation.³⁹⁰ By contrast, a young woman who rejected her employer's offer of an alternative position that involved a 30-minute walk from her place of residence to the workplace was held to have acted unreasonably because of her young age and good health, and her application for redundancy compensation was rejected.³⁹¹

The same principle is applied when 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, their refusal to adapt to the new technology is held to be unreasonable and therefore redundancy compensation is not paid; if, however, the employee is old, the court will afford more understanding to their inability or refusal to adapt, and redundancy compensation is paid.³⁹² 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 the case 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 anti-discrimination laws transposing the EU *acquis* and it is not clear whether or not these rules would withstand such scrutiny.

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

In Cyprus, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. Law 58(I)/2004, which roughly transposes the Employment Equality Directive, transposed the provision in Article 2(5) of the Directive verbatim.³⁹³ The same provision is also to be found in the disability law.³⁹⁴ There are no other provisions in Cypriot legislation relying on the exception in Article 2(5) of the Employment Equality Directive.

³⁸⁸ Law on Termination of Employment, N. 24/1967, Article 19.

³⁸⁹ Labour Court, *Andreas Charalambous v. 1. Zako Ltd and 2. Redundancy Fund* (Ανδρέας Χαραλάμπους v. 1. ΖΑΚΟ Λτδ και 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 295/96.

³⁹⁰ Labour Court, *Kyriakoula Demetriou v. 1. Sotos Loizides and 2. Redundancy Fund* (Κυριακούλα Δημητρίου v. 1. Σώτου Λοιζίδη και 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 634/96.

³⁹¹ Labour Court, *Frosia Hadjigeorgiou v. 1. Lizonic Fashion Center Ltd and 2. Redundancy Fund* (Φρόσια Χατζηγεωργίου v. 1. Lizonic Fashion Center, 2. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 1164/97.

³⁹² Labour Court, *Fotis Mikellides v. Redundancy Fund* (Φώτης Μικελλίδης v. Ταμείου Πλεονάζοντος Προσωπικού), Case No. 577/90.

³⁹³ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 5(3)(b).

³⁹⁴ Law on Persons with Disabilities, No. 127(I)/2000, Article 3A(2).

4.8 Any other exceptions

In Cyprus, other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law concern the positive action provisions, which are discussed below. In addition, a number of laws and regulations provide for the differential treatment of Turkish Cypriots in various fields.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**a) Scope for positive action measures**

In Cyprus, positive action is permitted in national law in respect of all five grounds.³⁹⁵ The provisions render differential treatment lawful under conditions but fall short of creating a mandatory duty to adopt positive action measures. Law 59(I)/2004, which more or less transposes the Racial Equality Directive, renders non-discriminatory and therefore lawful any differential treatment or the introduction or maintaining of special measures, which, although initially appearing to be discriminatory, aim at preventing or compensating for disadvantages linked to ethnic or racial origin.³⁹⁶ Along the same lines, Law 58(I)/2004, which more or less transposes the Employment Equality Directive, renders non-discriminatory and therefore lawful any preferential treatment in employment, which, although prima facie discriminatory, aims at preventing or compensating for disadvantages linked to racial or ethnic origin, religion or belief, age or sexual orientation.³⁹⁷ No requirements must be met in order for the positive action to be lawful.

The disability law renders non-discriminatory and therefore lawful any preferential treatment for an occupation, which, although prima facie discriminatory, aims at preventing or compensating for disadvantages linked 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 work or any measures aimed at promoting the labour market integration of persons with disability.³⁹⁸

On 26 September 2002, the Supreme Court of Cyprus decided that all legal provisions granting priority to employment in the public sector to persons for any reason (including a quota) were unconstitutional for violating the equality principle in Article 28 of the Constitution.³⁹⁹ The Court's reasoning was based on an interpretation of Article 28 that any type of priority discriminates against other candidates eligible for appointment in the public service. Subsequently, the Supreme Court again ruled that Law 87(I)/2004 (granting priority to war-disabled persons) was also unconstitutional, on the grounds that it introduced a class of beneficiaries (e.g., war-related disabled persons) that is favoured over others, thus reversing the principle of equality of all applicants before the law and violating Article 28 of the Constitution.⁴⁰⁰

When the Employment Equality Directive was transposed, the Government and the Parliament were initially reluctant to introduce quotas in employment for persons with disabilities for fear that these would be deemed to violate the non-discrimination principle set out in Article 28 of the Constitution, based on the CJEU decision in the *Kalanke* case.⁴⁰¹ In response to these concerns, the Constitution was amended in 2006 to give priority to EU regulations and directives over all domestic legislation (including the Constitution). However, several subsequent court decisions took little notice of this development and

³⁹⁵ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

³⁹⁶ Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 6.

³⁹⁷ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 9.

³⁹⁸ Law on Persons with Disabilities, No. 127(I)/2000, Articles 3B(1) and 3B(2).

³⁹⁹ Supreme Court, *Republic of Cyprus v. Eleni Constantinou*, (2002) 3 A.A.Δ. 534, 26 September 2002.

Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2002/rep/2002_3_0534.htm&qstring=26%20and%20%F3%E5%F0%F4%E5%EC%E2%F1%2A%20and%202002.

⁴⁰⁰ Supreme Court, *Charalambos Kittis et al v. Republic of Cyprus through the Commission for Public Service (Χαράλαμπος Κιττής κ.α. v. Επιτροπής Δημόσιας Υπηρεσίας)*, No. 56/06, 8 December 2006. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2006/3-200612-56-06artemides.htm&qstring=56 w/1 06.

⁴⁰¹ CJEU, Judgment of 17 October 1995, *Kalanke v. Freie Hansestadt Bremen*, C-450/93, ECLI:EU:C:1995:322.

continued to apply the Constitution as if it were the supreme law of the country. The culture of positive action to offer opportunities to historically disadvantaged groups had hardly begun to develop, when Cyprus sank into an economic crisis and a freeze on recruitment in the public service was imposed as a measure to contain public expenditure.

In 2009 an Equality Body decision once again raised the issue of the compatibility of positive action measures with the equality principle. The decision found that a law introducing quotas in employment for blind telephonists discriminates against persons with other disabilities and asked for its revision. In February 2011 a new law came into force providing for an annual grant of EUR 3 675.48 to every family with a blind child.⁴⁰² This measure has not as yet been contested as incompatible with the equality principle, partly because different grants apply to different types of disability, and partly, and more importantly, because grants, especially grants as small as these, are not seen as paramount as quotas in employment, a key issue for the disability movement.

b) Quotas in employment for people with disabilities

In Cyprus, national law provides for a quota for the employment of people with disabilities, who are assessed and certified as having a disability by a special committee, set up under the quota law adopted in 2009. The law provides for the employment of persons with disabilities in the wider public sector: 10 % of the number of vacancies to be filled at any given time must be filled by persons with disabilities, provided that this does not exceed 7 % of the aggregate of employees per department. The quota applies to first appointment positions (i.e. excluding promotions) at the introductory scale (i.e. low in hierarchy) and is specifically drafted to exclude areas where special provisions in favour of persons with disabilities are already in place (more specifically, the quota in favour of blind telephonists – see below) and sections of the public service where 'all physical, mental or intellectual restrictions must necessarily be absent' (the army, the police, the fire department and the prisons). Non-compliance with this quota is a criminal offence, punishable by a fine of up to EUR 5 000 and/or imprisonment of up to two years.⁴⁰³

Before the quota law had a chance of being implemented, the austerity measures adopted in response to the economic crisis led to a freeze on all new recruitment in the public sector for several years.⁴⁰⁴ The disability movement reported that disabled job applicants who applied for jobs invoking the provisions of this law were met with reluctance by public officials, who openly told them that the law is unconstitutional and will not remain in force for long.⁴⁰⁵ In spite of these predictions, the quotas law was not declared unconstitutional, and in 2015 the court rejected an application from two non-disabled claimants who had sought to challenge the decision to appoint two persons with disability as teachers under the quotas law. The court rejected the claimants' argument that the quotas were unconstitutional or that they violated the equality principle and disagreed with the claimants' submission that previous Supreme Court judgments had established that laws providing for quotas were unconstitutional. The court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable differentiations, which are allowed as a result of the essential nature of the circumstances. In such cases, the court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but

⁴⁰² Law on Special Grant to Blind Persons of 2011 (Ο περί παροχής ειδικής χορηγίας σε τυφλούς νόμος του 2011), 25 February 2011. Available at http://www.cylaw.org/nomoi/arith/2011_1_011.pdf.

⁴⁰³ Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) (Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος) No. 146(I)/2009, Article 2. Available at www.cylaw.org/cgi-bin/open.pl?file=nomoi/enop/ind/2009_1_146/preamble-pr5e5a5a44-4dbb-cd45-1dc3-7d194767d5c2.html&gstring=146%28I%29%20w/1%202009.

⁴⁰⁴ Law Providing for the Prohibition of Fulfilment of Vacant Posts in the Public and in the Wider Public Sector and in Public Law Legal Entities (Ο Περί της Απαγόρευσης Πλήρωσης Κενών Θέσεων στο Δημόσιο και στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος) N. 21(I)/2013, 18 April 2013. Available at http://www.cylaw.org/nomoi/enop/non-ind/2013_1_21/full.html.

⁴⁰⁵ Consultation with the President of KYSOA, the Cypriot Confederation of Disability Organisations.

rather to a practical implementation of, the equality principle; in this case, the priority given to persons with disabilities was seen as falling within the boundaries of reasonable differentiation precisely for implementing equality.⁴⁰⁶ This decision may be seen as landmark; following this precedent, the quotas in favour of persons with disabilities were not challenged again.

An older measure preceding the above quota law continues to be in place and targets a specific category of disabled workers – blind telephone operators,⁴⁰⁷ despite concerns expressed by the Equality Body in 2009 that it led to discrimination against persons with other types of disabilities. The law provides that blind candidates who have all the qualifications required by the scheme of service and who are trained telephone operators⁴⁰⁸ are given priority in appointments. The same law also provides that, in order to appoint a non-blind person to the post of telephone operator, the national organisation for the blind must give its prior written confirmation that none of the candidates for the specific post are blind telephone operators. Article 3 of the same law also provides that other candidates with disability will be preferred if none of the candidates for the said position are blind telephone operators. No sanction is provided in the law for non-compliance with its provisions. This quota system has worked fairly well and has contributed significantly to the vocational rehabilitation and labour integration of blind persons, as the job of telephone operator continues to be the job of the majority of blind persons in Cyprus. Recent technological developments in telephone services may present a risk to this institution and could mean that training may have to be channelled in other directions.⁴⁰⁹

Pandemic measures

The COVID-19 pandemic had a devastating effect on people with disabilities at work. As a result of the quota for persons with disabilities in the public sector, people with disabilities take up jobs servicing the public on the front line and thus faced increased COVID-19 risks. The Ministry of Labour failed to include disabled workers in the category of vulnerable groups entitled to abstain from work on a paid leave; instead, they were forced to continue working without any targeted measures to protect them against COVID-19 infection. Given the fact that people with disabilities have a greater reliance on others in order to access their workplace, without targeted protection measures, they are at increased risk of contracting COVID-19 and falling severely ill, due to pre-existing, aggravating health issues. The exact number of people with disabilities infected with COVID-19 is not known, but the Confederation of Disability Organisations is aware that all six blind telephonists working at public children's hospitals were infected. The Confederation stated that the increased exposure of workers with disabilities, combined with increased vulnerabilities, necessitates the adoption of accommodation measures at the workplace and beyond. However, the Government took no actions to inform, guide or otherwise protect workers with disabilities, many of whom continue to work and to be transferred daily to their place of work, risking their own health and the health of their families and colleagues.⁴¹⁰

⁴⁰⁶ Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos. 1519/2010 and 1520/10, 3 September 2015. Available at http://www.cylaw.org/cqi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

⁴⁰⁷ Appointment of Trained Blind Telephone Operators to the Post of Telephone Operator in the Public Sector (Special Provisions) Law of 1988 (*Ο περί Προσλήψεως Εκπαιδευμένων Τυφλών Τηλεφωνητών στη θέση Τηλεφωνητή στη Δημόσια και Εκπαιδευτική Υπηρεσία και στα Νομικά Πρόσωπα Δημοσίου Δικαίου (Ειδικά Διατάξεις) Νόμος του 1988*), available at http://www.cylaw.org/nomoi/enop/non-ind/1988_1_17/full.html.

⁴⁰⁸ Training in telephone operation is provided free of charge to all blind persons by the state School for the Blind. The Pancyprian Organisation for the Blind, an NGO, also offers further training, free of charge.

⁴⁰⁹ 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.

⁴¹⁰ KYSOA (2020), Open letter to the President of the Republic from the President of the Cyprus Confederation of Disability Organisations KYSOA, 2 April 2020.

6 REMEDIES AND ENFORCEMENT

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

a) Available procedures for enforcing the principle of equal treatment

In Cyprus, the following three procedures exist for enforcing the principle of equal treatment:

The Equality Body: Individuals and organisations may submit complaints via the 'extrajudicial' process before the Equality Body. The Equality Body has a duty to investigate these complaints and issue decisions or recommendations.⁴¹¹ Complaints may be submitted by natural or legal persons alleging discrimination on any of the prohibited grounds (EU directives, Protocol No. 12 to the ECHR, the Cypriot Constitution) in any of the fields within the scope of the laws. As of 2017, when the current Ombudsman took over the Equality Body, it appears that this institution no longer examines complaints submitted by persons other than the victims themselves.⁴¹² The Equality Body is empowered to issue binding decisions and/or make recommendations and impose small fines. The Equality Body also has a duty to monitor the enforcement of the orders it issues,⁴¹³ which are published in the Official Gazette.⁴¹⁴ The Equality Body is further empowered to impose fines for failure to comply with its recommendations,⁴¹⁵ which are, however, so low that they can hardly be seen as a deterrent. For this reason, it nearly always chooses to mediate or issue recommendations and to date has never imposed a fine, apart from once in a gender discrimination case concerning a temporary worker who was dismissed from the public service whilst pregnant.⁴¹⁶ After more than 16 years of not imposing sanctions, one may presume that the Equality Body has a policy of avoiding sanctions, possibly as a result of the fact that the sanctions foreseen in the law are so weak that they cannot serve as a deterrent.

The decisions of the Equality Body may only be challenged in court by way of judicial review of administrative action at the Administrative Court under Article 146 of the Cypriot Constitution; however, this procedure is open to those with a 'legitimate interest' and it is

⁴¹¹ Law on Persons with Disabilities (*Ο Περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, Article 9G. Available at www.cylaw.org/nomoi/arith/2000_1_127.pdf; Law on Equal Treatment (Racial or Ethnic Origin) (*Ο περί Ισής μεταχείρισης (Φυλετική Εθνοτική Καταγωγή) Νόμος*) N. 59(I)/2004, Article 9. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html; Law on Equal Treatment in Employment and Occupation (*Ο Περί Ισής Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος*) 2004 N. 58(I)/2004, Article 13. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴¹² See notably a news article containing an exchange of letters between the Commissioner and a (then) Member of the Parliament, dated 26 April 2018, available at: <https://www.philenews.com/eidiseis/politiki/article/517554>.

⁴¹³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)*) Νόμος No. 42(I)/ 2004, Article 24(1). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴¹⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 15.

⁴¹⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 26(1). The Equality Body may impose a fine up to EUR 600 (CYP 350) for failure to comply with recommendations and/or up to about EUR 85 (CYP 50) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

⁴¹⁶ Equality Authority, Report regrading a complaint for the dismissal of a pregnant temporary employee in the public sector (*Εκθεση της Αρχής Ισότητας αναφορικά με την καταγγελία για την απόλυση εγγύου έκτατης υπαλλήλου από τη δημόσια υπηρεσία*), Ref.A.K.I.4/07, 17 August 2007. Reported in Equality Authority (2008), *Annual Report 2007*, p. 57. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/\\$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/AD7497CA2D0E1BA8C2257E8F003F56F1/$file/%CE%91%CF%81%CF%87%CE%AE%20%CE%99%CF%83%CF%8C%CF%84%CE%B7%CF%84%CE%B1%CF%82-%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%95%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%202007-2008.pdf).

doubtful whether organisations representing victims meet this criterion.⁴¹⁷ If, after investigation, the Equality Body finds that a certain law or regulation contravenes the anti-discrimination laws, the Equality Body will refer the discriminatory law or regulation to the Attorney General to draft an amendment. This procedure does not always bear fruit. The discriminatory law remains in force and continues to be applied unless and until the Attorney General proceeds with the preparation of a new draft to be eventually tabled in Parliament for adoption, a procedure that raises issues of compliance with the Directives (Article 16 of the Employment Equality Directive and Article 14 of the Racial Equality Directive). Courts examining discrimination complaints resulting from the application of a legal provision will not take the initiative to disapply the discriminatory law as that would, in their view, amount to an infringement of the doctrine of separation of powers.⁴¹⁸

Whilst the Equality Body's powers and mandate are exactly the same for claims against the public and the private sector, it receives very few complaints against the private sector. This could arguably be attributed to the fact that the public appears to be largely unaware of the existence and the powers of the Equality Body, often confusing it with the institution of the Ombudsman (whose competences are restricted to the public sector), which has so far overshadowed the Equality Body.

Although there are formalities in applying to the Equality Body, which is a rather flexible, informal and user-friendly procedure, the current Ombudsman appointed in 2017 appears to have stopped examining complaints from parties other than victims and applying the anti-discrimination laws in examining complaints. Statistical data for the years 2015 and 2016, pending at the time of the appointment of the current Ombudsman, were not published and the 2017 complaints data, published in 2019, is very basic and lacks the previous analysis and disaggregation.

The judicial process:

- Labour law and issues relating to employment matters are dealt with by the Labour Tribunal.⁴¹⁹ The Labour Tribunal consists of three persons: a judge, who chairs the hearing; and two wing members, who come from the side of the trade unions and the employers' organisations. The procedure in the tribunal is similar to a district court, but less formal. However, the Labour Tribunal decision of 2008 in the case of *Hadjiavraam*⁴²⁰ rejected a claim for discrimination in the hiring procedure and found that it has no jurisdiction to try cases where no employment relationship exists. The legal vacuum which resulted from this decision was remedied in 2009 by an amendment of the Law on Equal Treatment in Employment and Occupation (58(I)/2004), which transposes the Employment Equality Directive, minus the disability component of the Directive, to the effect that all disputes arising under this law must be deemed labour disputes. The disability law was not amended in the same manner. As a result, the legal gap created by the *Hadjiavraam* case remains in the case of disability: persons with disability have no competent court to apply to for employment-related claims where no employment relationship exists. Upon appeal, the Supreme Court reversed the finding of the trial court regarding jurisdiction but did not provide a specific finding as to the Labour Court's jurisdiction regarding the Law on Persons with Disabilities.⁴²¹

⁴¹⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 23.

⁴¹⁸ Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

⁴¹⁹ For any of the employment directive grounds: Law on Equal Treatment in Employment and N. 58(I)/2004, Article 12(1). For disability discrimination: Law on Persons with Disabilities No. 127(I)/2000, Article 9B(1).

⁴²⁰ Labour Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Case No. 258/05, 30 July 2008.

⁴²¹ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

- Criminal law procedures are available in relation to discrimination-related offences under the Penal Code. These procedures must be instigated by the police, although there is also the possibility of conducting a private criminal law case in some cases.
- Article 8(1) of Law 59(I)/2004 (which more or less transposes the Racial Equality Directive) provides for resort to the district court for violation of the law's provisions. This is a civil procedure for the adjudication of compensation claims.
- According to legal precedent,⁴²² rights guaranteed by the Constitution, such as the anti-discrimination provision in Article 28, are actionable in court per se against, inter alia, individuals.
- All administrative acts can be challenged before the Administrative Court via Article 146 of the Constitution.⁴²³ Persons alleging discriminatory behaviour by public authorities may, under Article 146 of the Cypriot Constitution,⁴²⁴ apply to the Administrative Court to set aside the act complained of, provided they have a 'legitimate interest'. In practice, this is the procedure most often used by complainants, presumably because it is the one that most lawyers are familiar with. The person in whose favour a decision has been made under Article 146 may institute legal proceedings in a civil court for the recovery of damages or for the granting of another remedy and to recover just and equitable damages to be assessed by the court.

The inspectorate process: The Minister of Labour is empowered to appoint inspectors for the purpose of the better implementation of the law in terms of addressing employment discrimination issues. However, this process is yet to be implemented, as the regulations regarding the powers vested in the chief inspector and inspectors are yet to be issued. It would seem reasonable to assume that the Department of Labour Relations in the Ministry of Labour, Welfare and Social Insurance (hereinafter Ministry of Labour) would be the department in charge of implementing this provision,⁴²⁵ 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.⁴²⁶ Nevertheless, the department responsible for Law 57(I)/2004 and Law 58(I)/2004 is the Department of Labour in the Ministry of Labour. The minister has not yet utilised her powers to appoint inspectors.

The Labour Inspection Unit in the Ministry of Labour, which deals with issues relating to health and safety at work, has no mandate to investigate discrimination.⁴²⁷ A special department within the Ministry of Labour, the Promotion of Equality at the Workplace, has a mandate to address gender discrimination. This body is nevertheless mandated also with the implementation of Law 58(I)/2004, which roughly transposes the Employment Equality Directive,⁴²⁸ and can receive and investigate discrimination complaints on all six grounds minus disability. However, no procedure or rules have been set as regards such investigation. Regulations that are almost identical to the regulations concerning gender discrimination are currently under preparation to get this unit up and running to examine discrimination complaints.⁴²⁹ The department is, however, understaffed and under-

⁴²² Supreme Court, *Yiallourou v. Evgenios Nicolaou* (Τάκη Γιάλλουρου v. Ευγένιου Νικολάου) No. 9331, 8 May 2001. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2001/1-200105-9931.htm&qstring=%E3%E9%E1%EB%EB%EF%F5%F1%EF%*%20and%20%E5%F5%E3%E5%ED%*%20and%20%ED%E9%EA%EF%EB%E1%EF%*.

⁴²³ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 12(1); Law on Persons with Disabilities, No. 127(I)/2000, Article 9B; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 8(1).

⁴²⁴ The right to recourse to Article 146 of the Cypriot Constitution is restricted to governmental administrative acts or omissions.

⁴²⁵ 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 is also responsible for submitting a report on the implementation of the said law.

⁴²⁶ Letter from the Ministry of Labour to the national expert, dated 20 January 2006.

⁴²⁷ www.mlsi.gov.cy/mlsi/dli/dliup.nsf/index_en/index_en?OpenDocument.

⁴²⁸ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004.

⁴²⁹ Consultation with officer from the Department for the Promotion of Equality at the Workplace.

resourced and, in light of the economic crisis, the budgetary situation is likely to deteriorate rather than improve. The inspectors currently appointed and working in the field (albeit now only for gender discrimination) are also tasked with other duties and do not have adequate time or resources to properly address the issue of gender discrimination, a problem likely to accentuate when their mandate is extended to cover four additional grounds.

The judicial as well as the inspectorate process lead to binding decisions.

b) Barriers and other deterrents faced by litigants seeking redress

Procedures before the court are highly technical, complex, costly and lengthy. The inadequate provision of legal aid,⁴³⁰ the low level of awareness of the anti-discrimination laws among legal and judicial circles and the length of time required for litigation to be completed render the use of the judicial process very rare and accessible only to a privileged group amongst the vulnerable, usually civil servants alleging age discrimination in promotion or retirement.

The legal aid law does not go into much detail as regards the procedure to be followed in order to apply for legal aid or how the court's discretion to grant legal aid is to be exercised. In practice, litigants apply for legal aid to the Courts Registrar, following which the application is examined by the court. The court will invite the Social Welfare Services to submit a report on the applicant's socioeconomic situation and confirm that the applicants' financial situation or the financial situation of the applicants' families (if the applicants are dependents of their families) does not allow for the payment of legal costs, taking into consideration the applicants' real and expected income from work or any other sources compared to the applicants' expenses for basic needs and other obligations and needs. The applicant to whom a legal aid certificate is issued by the court must select a lawyer from the list kept at the Court Registry, which is compiled following voluntary submissions made by lawyers and does not necessarily include specialised discrimination lawyers.

Although, in theory, it is possible for litigants to litigate the case themselves and not engage the services of a lawyer, in practice there are very few persons able and willing to represent themselves in court, given the complexity of the procedure. Even for those who can afford a lawyer, one major obstacle is that there is hardly any specialisation in discrimination law in the market; it is a new field that is not offered by any university and does not attract many clients. In those few cases examined by the courts, counsel for the claimants hardly ever invoke the anti-discrimination laws, preferring to use the more familiar procedure of judicial review foreseen in the Constitution.

Migrants and the Roma community have little or no information regarding legal aid and no access to justice, hence they have never pursued a non-discrimination case in court.

Court buildings are not accessible to persons with disability (visual, kinetic, hearing impairment, etc.), nor are any court documents made available in Braille.

⁴³⁰ The Law on Provision of Legal Aid (2002) N. 165(I)/2002 provides for legal aid only for criminal and civil law cases: subject to a couple of exceptions, administrative recourse is excluded, except in cases concerning deportations or challenges to asylum decisions. However, an ECtHR decision found that 'a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention' and that 'there is *a priori* no reason why it should not be made available in spheres other than criminal law' (*Marangos* Application No. 12846/05, 4 December 2008). The legal aid law extends to human rights violations covered by the Constitution and by a number of international conventions including the Convention for the Elimination of All Forms of Discrimination, but not to the laws transposing the two anti-discrimination directives.

Different time bars apply for different types of actions.⁴³¹ For civil offences and contracts, the time bar is six years. The court has discretion not to apply the statute of limitations of two years where the claim is for bodily injury or death and the claimant was late in filing an action as a result of a delay in securing the necessary data or due to their incapacity to handle the case. However, the time frame applicable to complainants who want to file a case in court is not suspended while their complaint is being examined by the Equality Body. This is to enable a complainant to first apply to the Equality Body and then, if necessary, to court to claim compensation without being time-barred. The time limits for lodging an appeal are strictly adhered to 42 days from the date of the judgment for an appeal from the final determination; 14 days for interlocutory injunctions; 75 days for an application to set aside an administrative decision under Article 146 of the Constitution.

The Laws on the Commissioner for Administration, which set out the Ombudsman's mandate, state that the complaint must be submitted to the Ombudsman's office within 12 months of the date on which the complainant received notice of the activities or omissions for which he or she is applying to the Ombudsman.⁴³² There is no express provision on limitations as regards complaints to the Equality Body.

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 and whether the complainant has acted reasonably in respect of the timing of lodging his or her complaint.⁴³³ The court, on the other hand, is less likely to take the liberal approach which was used by the Equality Body at the time and more likely to adopt a conservative approach; this was the case in the decision of the Labour Tribunal in the case of *Hadjiavraam*, where the Labour Tribunal rejected the claim because the Labour Tribunal's mandate covers only employment relations and not access to employment, as was the case with *Hadjiavraam*.⁴³⁴ Upon appeal, the Supreme Court reversed the trial court's findings as regards jurisdiction by stating that the trial court failed to attribute due weight to the fact that the court is mentioned in Law 58(I)/2004 as the competent court to try the case. No mention was made of the fact that Law 58(I)/2004 ranks more highly than national laws because it transposes the *acquis*.⁴³⁵

c) Number of discrimination cases brought to justice

In Cyprus, no statistics are maintained on the number of discrimination-related cases brought to justice. There are no estimates of the number of discrimination cases brought to justice in any journals or textbooks.

d) Registration of national court decisions on discrimination

In Cyprus, court decisions on discrimination are not registered as such by national courts. Courts maintain registers of cases tried, which are partly accessible to the public through a rather bureaucratic and discretionary procedure that involves writing letters to the Courts Registrar. The court's archive is not organised by subject but only by reference number or names of the parties, which makes a search impossible unless one already has the references for the judgment. In recent years, two electronic databases have been

⁴³¹ Law on the Limitation Period for Actionable Rights (*Ο περί Παραγραφής Αγωγίμων Δικαιωμάτων Νόμος*) Ν. 66(I)/2012. Available at www.cylaw.org/nomoi/enop/non-ind/2012_1_66/full.html.

⁴³² Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) Ν. 3/1991, Article 5(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴³³ Interview with Elisa Savvides, former Head of Equality Commission at the Ombudsman's office, dated 18 January 2006 and now Ombudsman and Head of the Equality Body.

⁴³⁴ Labour Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατικής Πιστωτικής Εταιρείας Μόρφου*), No. 258/05, 30 July 2008.

⁴³⁵ Appeal Court, *Avgoustina Hadjiavraam v. The Cooperative Credit Company of Morphou* (*Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου*), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

compiled, containing most court decisions, which can be searched using keywords. One of these databases is subscription-based (www.leginet.com) and the other is completely open (www.cylaw.org). Some decisions are not recorded in either database, when the Court Registry does not make the text of the judgement available.

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

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Cyprus, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination under certain conditions. The law does not distinguish between standing to act on behalf of and standing to act in support of victims and in fact there is no procedure in the Cypriot legal system for supporting victims in court. The provision made in the law is that organisations may exercise, on behalf of a victim and in the victim's name, the right of the victim to apply to the court or to the Equality Body

Organisations with a legitimate interest in the implementation of the anti-discrimination laws may exercise the rights of a claimant in civil court proceedings.⁴³⁶ Article 9D of Law 127(I)/2000 on disability, as amended by Law 57(I)/2004, provides that workers' organisations or other organisations with a legitimate interest can, with their members' permission, exercise on their behalf the right to recourse to the courts or to the Equality Body. No other 'legitimate interest' is required under this law. For actions on the ground of race/ethnic origin, the law roughly transposing the Racial Equality Directive (59(I)/2004), Article 12, requires that organisations must have both the victim's permission and a provision in their memorandum and articles of association that the elimination of discrimination on the ground of racial or ethnic origin is part of their aims. There are no membership, permanency or other requirements in the law.

The above provisions contrast with the constitutional principle that only individuals who have been *personally* aggrieved have a legitimate interest in engaging in proceedings. This is of crucial significance, since the anti-discrimination laws themselves provide for the use of the judicial review procedure in order to pursue discrimination claims where the respondent is the state. Under Article 146(2) of the Constitution, judicial review applications '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 court has restricted the right of recourse to natural and legal persons who have been adversely and directly affected and have a legitimate interest. Representatives were not considered to have a legitimate interest and the term 'community' is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the Constitution. The original test used to determine whether an association had 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.⁴³⁷ In three different cases, the court rejected the applicants' claim for, *inter alia*, lack of legitimate interest: in two cases, the claim concerned an athletic award for disabled athletes, which was lower than that of other athletes, where the claimant had not become entitled to it at the time

⁴³⁶ Law on Persons with Disabilities, No. 127(I)/2000, Article 9D; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 12; Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 14. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html.

⁴³⁷ *The Police Association v. The Republic*. (1991) 3 A.A.D. 146, 14 February 1991. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/1991/rep/1991_3_0146.htm&qstring=%F3%F5%ED%E4%E5%F3%EC%2A%20and%20%E1%F3%F4%F5%ED%EF%EC%E9%2A.

of filing the application;⁴³⁸ in the third case, the applicant was deemed to lack a legitimate interest since there was no positive legislative provision entitling her to claim the right of extending a regulation on the age of retirement so as to include her age group.⁴³⁹ The term 'legitimate interest' is potentially wider and more far-reaching than direct/individual interest or 'victim status' as it can include persons who are not the victims themselves and have no direct or individual interest but have nevertheless been adversely affected by the act or omission complained of.

NGOs representing victims are not seen by the court as having sufficient 'legitimate interest' in order to pursue the judicial review procedure for annulling a discriminatory administrative decision. The paradox of this is that often NGO lawyers are the only ones with expertise in a specific field and yet they are excluded for the benefit of legal practitioners without their expertise. In 2017 a new law governing the operation of NGOs was adopted. However, it did not address the question as to whether NGOs can pursue cases in court on behalf of victims.⁴⁴⁰

In practice, associations have made little use of this opportunity so far, with only a handful of NGOs filing complaints with the Equality Body on behalf of victims whom they formally or informally represent. Up until April 2017, the Equality Body followed a flexible approach and did not demand to see permission from the victim or copies of articles of association in order to ensure that the law's requirements were being met before launching an investigation. This changed when the current Ombudsman took office in 2017. Now, it appears that only the victims themselves may apply to the Equality Body/Ombudsman.

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Cyprus, organisations are not entitled to act in support of victims of discrimination, in the sense of joining victims as a separate entity in existing proceedings.⁴⁴¹

The anti-discrimination laws do not mention standing in support of victims in any way; the Cypriot legal system does not provide any legal basis for organisations supporting victims in a role other than acting in their name, as their representative.

c) *Actio popularis*

In Cyprus, national law does not explicitly allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent.

⁴³⁸ Supreme Court, *Antonis Aresti v. Cyprus Athletics Organisation* (Αντώνης Αρέστη ν. Κυπριακού Οργανισμού Αθλητισμού), No. 1406/2008, 10 February 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201002-1406-2008.htm&qstring=1406%20w/1%202008;

Supreme Court, *Andreas Potamitis et al v. Cyprus Sports Organisation* (Ανδρέας Ποταμίτης κ.α. ν. Κυπριακού Οργανισμού Αθλητισμού), No. 1377/2008, 30 January 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201201-1377-08.htm&qstring=1377%20w/1%202008.

⁴³⁹ Supreme Court, *Eleni Kyriakidou v. Cyprus Broadcasting Corporation* (Ελένη Κυριακίδου ν. Ρ.Ι.Κ.), No. 18/2008, 3 December 2010. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2010/rep/2010_3_0547.htm&qstring=%E5%EB%E5%ED*%20and%20%EA%F5%F1%E9%E1%EA%E9%E4%E4%EF*.

⁴⁴⁰ Law Revising the Laws on Associations and Foundations and Annulling the Law on Registration of Clubs N. 104(I)/2017 (Νόμος που αναθεωρεί τους περί Σωματείων και Ιδρυμάτων Νόμους του 1972 και 1997 και καταργεί τον Περί εγγραφής Λεσχών νόμο). Available at http://www.cylaw.org/nomoi/arith/2017_1_104.pdf.

⁴⁴¹ Law on Persons with Disabilities, No. 127(I)/2000, Article 9D; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 12; Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 14.

In the absence of an express provision, it is unlikely that the courts will accept such an action, given that, in the past, they rejected claims because the law did not expressly provide for the right sought by the applicant.⁴⁴²

Until 2017, the Equality Body accepted and investigated complaints from associations (e.g., NGOs acting in support of asylum seekers, the representation of UNHCR in Cyprus, the confederation of disability organisations (KYSOA), anti-racist NGOs,) acting in the public interest on their own behalf without a specific victim to support (e.g., 'Roma pupils' in general or 'female migrant workers' in general, 'persons with disability', 'migrants', 'drivers aged over 70', etc.). This is attributed to the liberal approach which was followed by the Equality Body at the time rather than an interpretation of the law allowing *actio popularis*.

d) Class action

In Cyprus, national law does not explicitly allow organisations to act in the interest of more than one individual victim (class action) for claims arising from the same event. The Courts of Justice Law, which governs the mandate of all courts in Cyprus, governs the powers of the court to adjudicate claims, award compensation or other remedy, issue orders and recognise rights, whether a remedy is being requested or not.⁴⁴³ There is no legal precedent for class actions, and it is therefore impossible to conclude whether, in the absence of a special legislative provision, such would be accepted by the courts.

The laws transposing the anti-discrimination directives are silent on the possibility of organisations representing more than one complainant at the same time but do not expressly prohibit this either. Law No. 58(I)/2004, which roughly transposes the Employment Equality 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 by organisations in their members' names. The equivalent provision in Law 59(I)/2004 uses the singular when referring to the member to be represented (Article 12). The Civil Procedure Rules make provision for joinder of actions but only when these refer to the same subject matter. In particular, the rules provide that all persons may be joined in a single action as claimants for remedies arising out of the same transaction or series of transactions, whether jointly, severally or in the alternative, unless such joinder would embarrass or delay the trial. In addition, where there are numerous persons having the same interest in one cause, one or more of such persons may be authorised by the court to sue or defend on behalf of or for the benefit of all persons so interested; organisations that are unincorporated or operating for profit are excluded.⁴⁴⁴ As of 2017, the Equality Body no longer accepts complaints from associations acting in the interest of victims.

Cyprus did not take any measures to transpose the European Commission's Recommendation on common principles for collective redress mechanisms and has no plans to do so. In 2016 a MP invited the Cypriot Government to inform the Parliament as to whether it intends to proceed with the enactment of legislation that would allow class actions, in line with the Commission Recommendation. In response, the justice minister stated that the Recommendation is not binding and that, in any case, he did not see how infringement of EU law could be addressed through class actions.⁴⁴⁵ The Minister of Finance

⁴⁴² In *Eleni Kyriakidou v. Cyprus Broadcasting Corporation* (Supreme Court Case No. 18/2008, dated 3 December 2010), the Supreme Court found the applicant lacked legitimate interest because there was no express legislative provision giving her the right she was seeking to enforce through the courts. A summary of the case in English is available in the Legal Network's Cyprus Country Report for 2010.

⁴⁴³ Courts of Justice Law (*Ο περί Δικαστηρίων Νόμος*) N. 14/1960, Articles 31-41. Available at www.cylaw.org/nomoi/enop/non-ind/1960_1_14/index.html.

⁴⁴⁴ Civil Procedure Rules (*Θεσμοί Πολιτικής Δικονομίας*), Article 9. Available at www.cylaw.org/cpr.html.

⁴⁴⁵ Cyprus Parliament, Response dated 4 May 2016 of the Minister of Justice and Public Order Mr Ionas Nicolaou to question no. 23.06.010.05.408 of 23 March 2016 of Nicosia MP Mr Giorgos Perdakis. Available at www2.parliament.cy/parliamentqr/008_3q/23_06_010_05_408.htm.

responded that there is no prohibition in the law against group action and there is no need for special legislation governing class actions.⁴⁴⁶

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

In Cyprus, national law permits a shift of the burden of proof from the complainant to the respondent.⁴⁴⁷ However, the courts have never been faced with a claim for the reversal of the burden of proof as regards the five grounds of discrimination and there is no judicial precedent for how this would be applied. The burden of proof is not reversed in judicial review proceedings, which is the legal route prescribed by the national legal framework for discrimination claims against the state.

In 2017 the Labour Disputes Court examined a case of sexual harassment of a woman employee at her workplace. In its reasoning, the Court referred to Article 19 of Directive 2006/54/EC and to the CJEU ruling in *Firma Feryn*, concluding that the applicant had failed to establish the primary facts that would raise the presumption of discrimination and reverse the burden of proof. It found that a tribunal should not conduct the trial in two stages and that instead it should consider all the facts and thereafter decide which conclusions could be drawn as regards the reversal of the burden of proof. It added that, irrespective of the provision on the reversal of the burden of proof, it is for the claimant to prove, in the 'established' manner, the economic or physical damage suffered and the causal link of such damage to the act of discrimination complained of. In the end, the Court awarded the applicant EUR 1,000 in compensation for moral damage for sexual harassment. It concluded that the discrimination suffered was 'less serious', as the act she was able to prove (exposure to pornographic material) was an isolated incident that only happened once. The Court found that the applicant had not proved she sustained any material damage and was therefore not entitled to special damages.⁴⁴⁸

The Equality Body does not reverse the burden of proof; however, since it has the power to carry out its own investigations to establish the facts of a case, the procedure may be said to fall within the exception of Article 8(5) of the Racial Equality Directive and therefore reversal of the burden of proof is not required.

Provisions for shifting the burden of proof to the employer once a *prima facie* case of dismissal is established can also be found in Cypriot labour law. The Law on Termination of Employment 1967, as amended, is phrased in such a way that it imposes the burden of proof on the employer, i.e., the employer has to prove that an employee had been dismissed for one of the reasons that permit summary dismissal. If the alleged unreasonableness, resulting in dismissal, is based on discrimination, the burden of proof is on the employer to prove, on the balance of probabilities, that he or she acted reasonably.

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

In Cyprus, there are legal measures for protection against victimisation.

Identical provisions against victimisation are to be found in all three laws enacted to transpose the directives.⁴⁴⁹ The victimisation provisions are not restricted to the

⁴⁴⁶ Cyprus Parliament, Response dated 19 May 2016 of the Minister of Finance Mr Haris Georgiades to question no. 23.06.010.05.408 of 23 March 2016 of Nicosia MP Mr Giorgos Perdakis. Available at www2.parliament.cy/parliamentgr/008_3q/23_06_010_05_408.htm.

⁴⁴⁷ Law on Persons with Disabilities, No. 127(I)/2000, Article 9A; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 7; Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 11.

⁴⁴⁸ Limassol Labour Disputes Court, *Nektaria Michael v. Michali Michael et al*, Case No. 556/11, 20 December 2017. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseised/erg/2017/2420170852.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.

⁴⁴⁹ Law on Persons with Disabilities, No. 127(I)/2000, Article 9E; Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 11; Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 10.

employment field. The Law on Equal Treatment (Racial or Ethnic Origin) 58(I)/2004, which includes protection against victimisation,⁴⁵⁰ covers the fields of social protection, healthcare, education, social provision and access to goods and services. The protection against victimisation in the disability law is not restricted to the employment field,⁴⁵¹ and by implication extends to the entire scope of this law. The said provisions prohibit any adverse treatment or consequence as a reaction to any person who files a complaint or is involved in a procedure aimed at implementing the principle of equal treatment. 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 (Ombudsman) 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 on any other person because such person has (i) submitted or intends to submit a complaint to be investigated by the Ombudsman; (ii) has supplied or presented or intends to supply or submit any information or documents to the Ombudsman; (iii) has testified or intends to testify before the Ombudsman, is guilty of an offence and is subject to imprisonment not exceeding six months or to a fine not exceeding CYP 300 (EUR 520) or to both penalties.'⁴⁵²

The Code of Conduct on Disability Discrimination at the Workplace issued by the Equality Body in September 2010 defines victimisation as the unfavourable treatment of a person (who may or may not have a disability) owing to the fact that: he or she gave evidence or testified against an employer in judicial or other procedures for investigation of discrimination complaints by persons with disabilities; he or she alleged that an employer is in breach of the law against a person with a disability; he or she encouraged or supported a person with a disability to submit a complaint or bring a legal action for discrimination. It is not necessary for the victim to have actually assisted in the investigation of a complaint against the employer; it is sufficient to prove that the employer treated him or her unfairly believing or suspecting that he or she did so or was intending to do so.⁴⁵³ A decision of the Equality Body in 2015 extended the principle of discrimination against a primary carer by association with a person with a disability to include situations of victimisation.⁴⁵⁴

The legal framework against victimisation is not being utilised to put an end to the authorities' practice of arresting and deporting migrant female domestic workers who file complaints against their employers.⁴⁵⁵

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

a) Applicable sanctions in cases of discrimination – in law and in practice

⁴⁵⁰ Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 11.

⁴⁵¹ Law on Persons with Disabilities, No. 127(I)/2000, Article 9E.

⁴⁵² Law on the Commissioner for Administration (Οι περί Επιτρόπου Διοικήσεως Νόμοι) N. 3/1991, Article 11(f). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html.

⁴⁵³ Equality Authority (2010), *Code of good practice on discrimination on the ground of disability in employment and occupation* (Κώδικας καλής πρακτικής για τις διακρίσεις λόγω αναπηρίας στην εργασία και την απασχόληση). Available at [www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/\\$file/Codepracticedisabilityemployment.pdf](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/669E5CF7773B0F07C2257E7E003EB897/$file/Codepracticedisabilityemployment.pdf).

⁴⁵⁴ Equality Authority, Report on the proposed transfer of an Administrative Officer from the district of her permanent residence while she is the primary caretaker of a person with psychosocial disability, Ref. A.K.I. 38/2015, 16 October 2015. Available at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/\\$file/AKI_38_2015_16102015.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/3CC4BBB75B9F6404C2257EF5002290BF/$file/AKI_38_2015_16102015.doc?OpenElement).

⁴⁵⁵ Ombudsman (2012), *Arrest and detention of migrant worker for bringing complaint against her employer*, Report No. A.P. 588/2012, 5 June 2012.

Strictly speaking, the court may award all types of damages available in civil procedures, e.g., pecuniary, nominal or punitive damages; however, very few discrimination claims have been tried by the courts in Cyprus and damages were awarded in only one of these cases,⁴⁵⁶ which does not allow for any conclusions to be drawn with regard to judicial practice. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cypriot courts tend to be rather low compared to the damages awarded in other countries.

In addition to or in lieu of damages, victims of discrimination may, subject to certain conditions, apply to the court for reinstatement, but this is a remedy rarely sought or granted. Employers who employ more than 19 employees may be required by the court to reinstate an employee whose dismissal was either (i) manifestly unlawful or (ii) unlawful and made in bad faith, if so required by the dismissed employee. In 2012 the Appeal Court ruled that a dismissal, which had been held by the Labour Tribunal to be unlawful because the employers did not act promptly upon the incidence of inappropriate conduct by the employee, did not give rise to the right of reinstatement because it was not manifestly unlawful nor was there bad faith from the employers.⁴⁵⁷ Similarly, in 2018 the Court rejected a dismissed employee's request for reinstatement to his previous position as a prison guard, on the grounds that the employer evidently no longer trusted him, despite the fact that the dismissal was held to be unlawful.⁴⁵⁸ The issue as to whether the prison board was justified in not trusting him did not arise and this reasoning essentially paves the way for virtually all requests for reinstatement to be turned down on the same grounds.

Law 42(I)/2004 vests the Equality Body 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 limit not exceeding 90 days from the date of publication in the Official Gazette⁴⁵⁹ and in a specified way, of the situation that directly produced discrimination, although such right is somewhat limited by a number of exceptions:

- where the act complained of is pursuant to another law or regulation, in which case the Equality Body advises the Attorney General, who will advise the competent ministry and/or the Council of Ministers about measures to be taken to remedy the situation;⁴⁶⁰
- 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

⁴⁵⁶ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED*.

⁴⁵⁷ Cyprus Supreme Court, *Patsalides v. Cyprus Airways* (2012), N. 406/2008, 21 February 2012. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2012/rep/2012_1_0194.htm&qstring=%F0%E1%F4%F3%E1%EB%E9%E4%2A%20and%20%EA%F5%F0%F1%E9%E1%EA%2A%20and%20%E1%E5%F1%EF%E3%F1%E1%EC%EC%2A.

⁴⁵⁸ Cyprus Supreme Court, *Republic of Cyprus through the Prison Director et al v. Costas Psara*, Civil Appeal No. 197/2011, 13 February 2018. Available at www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_1/2018/1-201802-197-11PolEf.htm.

⁴⁵⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 28.

⁴⁶⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/ 2004, Articles 39(3) and 39(4).

– where the situation complained of no longer exists.⁴⁶¹

The Equality Body is further empowered to impose small fines. These cannot exceed EUR 598 (CYP 350) for discriminatory behaviour, treatment or practice; EUR 427 (CYP 250) for racial discrimination in the enjoyment of a right or freedom; EUR 598 (CYP 350) for non-compliance with the recommendation within the specified time limit; and EUR 85.44 (CYP 50) per day for continuing non-compliance after the deadline set by the Equality Body.⁴⁶² Generally speaking, the fines are very low; they offer little deterrence to potential perpetrators and they are never imposed by the Equality Body.

The Equality Body may also issue recommendations to the person against whom a complaint has been lodged and supervise compliance in the case of orders issued against persons found guilty of discrimination.⁴⁶³ 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 generally do not propose measures as drastic as that and there is a clear tendency towards 'diplomacy' and mediation, evidenced by the fact that no binding decisions have been issued so far and no fines have been imposed.

All orders, fines and recommendations issued or imposed under this law are subject to annulment⁴⁶⁴ by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest'.⁴⁶⁵ There is no requirement for special measures to be adopted in order to ensure that persons with disabilities have access to the Equality Body.

In addition to the right to investigate complaints submitted by individuals or organisations, the Equality Body may also investigate issues in its own right, where it deems that any particular case that came to its attention may constitute a violation of the law.⁴⁶⁶ 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 until now have led to *recommendations* as opposed to binding *decisions*. The recommendations have often taken the form of suggestions to the authorities or the private sector that they revise their practices regarding specific issues. Reports issued by the Equality Body 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 jobs; to the public nursing school to revise its 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 a trade union; to insurance companies to revise their policy of not insuring persons over 70 to drive cars or of charging a higher premium for it, etc. The recommendations of the Equality Body tend to be complied with by both the private and the public sector, even though in many cases they are made three or four years later, by which time compliance is impossible because third party rights have been established or because compliance would no longer make sense. The immigration authorities are a notable exception to the rule: although many of the recommendations of the Equality Body/Ombudsman are directed against this body, compliance is very rare whilst letters, warnings and notices are ignored, as often noted by the Equality Body.

⁴⁶¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Articles 14(2) and 14(3).

⁴⁶² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Articles 18 and 26(1).

⁴⁶³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 24(1).

⁴⁶⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 23.

⁴⁶⁵ Term used in Section 146 of the Cypriot Constitution, which sets out the procedure for judicial review of an administrative act.

⁴⁶⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 33.

The findings and reports of the Equality Body must be communicated to the Attorney General, who will in turn advise on the adoption or not of appropriate legislative or administrative measures, taking into account the state's international law obligations. The Attorney General 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 Representatives.

Under Law 59(I)/2004 (transposing the Racial Equality Directive minus the employment component), the penalty to be imposed by the court against a natural person found to be guilty is a maximum of EUR 6 915.78 (CYP 4 000) and/or imprisonment of up to six months. For legal persons, the maximum penalty is EUR 12 102.61 (CYP 7 000). If the offence has been committed by gross negligence, the fine for natural persons can be up to EUR 3 457.89 (CYP 2 000); for legal persons, there is a fine of up to EUR 3 457.89 (CYP 2 000) for the managing director, chairperson, director, secretary or other officer if it can be proven that the offence was committed with his or her consent, plus an additional fine of up to EUR 6 915.78 (CYP 4 000) for the company or organisation.⁴⁶⁷

Under Law 58(I)/2004 (transposing the Employment Equality Directive), the penalties are identical to those provided for by the law transposing the Racial Equality Directive.⁴⁶⁸ The same applies to procedures and penalties under the disability law.⁴⁶⁹ No such fines have been imposed by the courts so far.

There are also penal remedies against discrimination. With the adoption of the ICERD, as well as with the subsequent amendments (Law 11(III)/92 and Law 28(III)/99), Cyprus established, in conformity with a recommendation of the Committee on the Elimination of Racial Discrimination, a number of offences relevant to combating racism and intolerance, e.g. 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 provision⁴⁷⁰ is stated to extend to goods or services supplied by a person in the course of his or 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 for the incitement to racial hatred to be intentional for the corresponding offence to be committed; in addition, for the refusal to provide goods and services to constitute an offence, it is no longer necessary that race be the sole ground of discrimination.⁴⁷¹ Article 51A of the Criminal Code (Cap. 154) provides that whoever publicly and in any way 'procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine.'⁴⁷²

The Law Ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer

⁴⁶⁷ Law on Equal Treatment (Racial or Ethnic Origin), N. 59(I)/2004, Article 13.

⁴⁶⁸ Law on Equal Treatment in Employment and Occupation, N. 58(I)/2004, Article 15.

⁴⁶⁹ Law on Persons with Disabilities, No. 127(I)/2000, Articles 5(3), 5(4) and 5(5).

⁴⁷⁰ Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 2A(4).

⁴⁷¹ Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination N. 28(III)1999, Article 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 EUR 6 700).

⁴⁷² Criminal Code (Ποινικός Κώδικας) Cap. 154, Article 51A. Available at http://www.cylaw.org/nomoi/enop/ind/0_154/section-sc53450b99-ae78-4921-a120-4fdd2ae92654.html. The fines are up to EUR 1 708 (CYP 1 000) for individuals and EUR 5 126 (CYP 3 000) for legal persons.

Systems⁴⁷³ 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 EUR 34 176.35 (CYP 20 000):

- Article 4 criminalises the dissemination of racist and xenophobic material through a computer system;
- Article 5 criminalises racially and xenophobically motivated threats disseminated through a computer system;
- Article 6 criminalises racist and xenophobically motivated insults;
- Article 7 criminalises the denial, gross minimisation, approval or justification of genocide or crimes against humanity;
- 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 sanctions in the private and the public domain, at least in the legislation; nor does the law make any differentiation as to the sanctions within and beyond employment.

Under Law 134(I)/2011, which transposes the Framework Decision on Combating Hate Crimes through Criminal Law, a person who wilfully and publicly disseminates and publicly incites violence or hatred directed against a group of persons or a member of a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin, in a manner that disturbs public order or which is of a threatening, abusive or insulting character, is guilty of an offence and, if convicted, is subject to a penalty of imprisonment not exceeding five (5) years or to a fine not exceeding ten thousand euro (EUR 10 000) or to both such sentences. The same sanctions apply to other offences created by this law, such as the approval or denial or gross minimisation of crimes of genocide, crimes against humanity and war crimes.⁴⁷⁴

In April 2017 a new law was adopted introducing the motivation of prejudice as an aggravating factor in measuring the sentence to be imposed.⁴⁷⁵ The new provision vests the court with the power (but falls short of imposing a duty) to take into account as an aggravating factor when measuring a sentence, the motivation of prejudice against persons discriminated against on the basis of race, colour, national or ethnic origin, religious or other beliefs, genetic origin, sexual orientation or gender identity. The Attorney General's officer who attended the parliamentary sessions preceding the adoption of the bill insisted that the imposition of a legal duty on the judge to take any factor into account was an unlawful interference by the legislature in the work of the judiciary and amounted to an infringement of the principle of separation of powers. The doctrine of separation of powers is strictly adhered to by the judicial system, with judges often invoking it in order to implement laws that contain discrimination.⁴⁷⁶ Following the Equality Body's intervention during the deliberations,⁴⁷⁷ the grounds of religion or other belief, genetic origin, sexual orientation and gender identity were added to race, colour, national and ethnic origin.⁴⁷⁸

⁴⁷³ Law Ratifying the Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems N. 26(III)/2004.

⁴⁷⁴ Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia through Criminal Law (Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος) N. 134(I)/2011. Available at www.cylaw.org/nomoi/enop/non-ind/2011_1_134/index.html.

⁴⁷⁵ Criminal Code, Cap. 154, Article 35A. Available at http://cylaw.org/nomoi/enop/ind/0_154/section-scde3d14ed-0504-9514-76e1-fe915820bc72.html.

⁴⁷⁶ Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

⁴⁷⁷ Commissioner for Administration and Human Rights, Note submitted to the meeting of the Parliamentary Legal Committee on 15 February 2017 on 'Hate Crimes' (Υπόμνημα που υποβλήθηκε σε συνεδρίαση της Κοινοβουλευτικής Επιτροπής Νομικών, στις 15/2/2017, με θέμα «Αδίκημα Μίσους»). Available at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/00C52AB1AD771083C22580DB00322DE6?OpenDocument.

⁴⁷⁸ Parliamentary Legal Committee (2017), *Complementary report of the Parliamentary Legal Committee on the bills Law Amending the Criminal Code (No. 4) of 2016 and Law on combating certain forms and expressions*

The ground of disability was not added and is conspicuously missing from the list. The national confederation of disability organisations was not invited to the consultation nor was it asked to present its views.

Oddly enough, since the above amendment was adopted, the only case examined by a court in which an offence was committed against vulnerable persons concerned the ground of disability. The case was initiated by the police, who prosecuted three women working at a special education unit as teacher, speech therapist and escort, for physically abusing children with learning difficulties. Two out of the three accused persons were convicted only of common assault and the third was acquitted. The judgment made no mention of the perpetrators' motive.⁴⁷⁹

b) Compensation – maximum and average amounts

In Cyprus, there is no ceiling on the maximum amount of compensation that can be awarded. In general, however, compensation awarded by Cypriot courts tends to be very low compared to compensation awarded by other national courts. With just one court decision awarding damages in over 16 years⁴⁸⁰ since the directives were transposed, it is not possible to draw conclusions on judicial trends as regards the compensation amounts awarded. The most widely used procedure in Cyprus to contest discriminatory acts of the public administration is the judicial review under Article 146 of the Constitution, which leads only to the annulment of the act and not to the awarding of compensation.

c) Assessment of the sanctions

The Equality Body is not entitled to award compensation. Since the anti-discrimination directives were transposed, the court has awarded compensation for discrimination in only one case, that of *Avgoustina Hadjiavraam v. Cooperative Credit Corporation of Morphou*. The claimant, whose job application at the respondent bank was declined due to her age, was not awarded compensation at first instance, as the Labour Disputes Tribunal claimed lack of jurisdiction. The tribunal nevertheless proceeded to give its reasoning on the merits of the case. On the issue of measurement of compensation, the tribunal found that the sum of EUR 1 500 would be appropriate as this represents three months' salary that would have been paid to the applicant had she been hired. In order to arrive at this conclusion, the tribunal relied on the CJEU decision in *Draehmpaehl* [1997], C-180/95, ECR I-2195. This decision established that three months' salary is sufficient to satisfy the three preconditions that the amount of compensation awarded must satisfy (essential protection, deterrent and proportional to the damage) in those cases where the candidate would not have been hired even in the absence of age discrimination. Upon appeal, the Supreme Court endorsed the tribunal's measurement of compensation and awarded the appellant the equivalent of three months' salary, amounting to a total of EUR 1 500, because, as it had established, the applicant would not have been hired for this post even in the absence of the age discrimination in the advertisement.⁴⁸¹

of racism and xenophobia through Criminal Law (Amendment)(No. 2) of 2016, 20 March 2017. Available at www2.parliament.cy/parliamentgr/008_5h/008_05_4951.htm.

⁴⁷⁹ District Court of Paphos, *Paphos Police Director v. Chrystalla Heracleous, Sophia Savvidou and Ioanna Nicolaou*, Case No. 9214/13, 31 October 2017. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/2017/4220170380.htm&qstring=%EA%E9%ED%E7%F4%F1%2A%20and%20%F0%F1%EF%EA%E1%F4%E1%EB%E7%F8%2A.

⁴⁸⁰ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED%.

⁴⁸¹ Appeal Court, *Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou* (Αυγουστίνα Χατζηαβραάμ v. Συνεργατική Πιστωτική Εταιρεία Μόρφου), Appeal No. 287/2008, 11 July 2011. Available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2011/1-201107-287-08.htm&qstring=%E1%F5%E3%EF%F5%F3%F4%E9%ED%.

In the absence of a body of case law on discrimination and awards of damages where discrimination was the operative factor, it is not possible to make a final assessment as to whether or not the sanctions are adequate, effective, proportionate and dissuasive. The law does not provide for 'punitive damages' to be paid by the perpetrator to the victim to act as (a) a disincentive for offenders and (b) an incentive for victims to complain (and in particular as an incentive for lawyers to specialise). It is safe to state, however, that the sanctions that the Equality Body is allowed to levy are too low to have any dissuasive effect; the main incentive for compliance with Equality Body decisions remains public image.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

When the equality *acquis* was transposed in 2004, the legislator appointed the office of the Commissioner for Administration (commonly referred to as 'the Ombudsman') as the national Equality Body, purportedly in compliance with Article 13 of the Racial Equality Directive.⁴⁸² According to the Ombudsman law, the only requirements needed for a person to be appointed as Ombudsman are to be aged 35+, to be of 'recognised education and experience' and of 'highest moral standard'.⁴⁸³ The law setting up the Equality Body did not set any additional eligibility conditions as regards the expertise or independence of the person who would serve as head of the Equality Body. According to the legal framework, there is no need for the head of the Equality Body to have any equality-related expertise or experience.

- b) Political, economic and social context of the designated body

Since its inception in 2004, the Equality Body has invariably been understaffed and underfunded. Its multiple mandates (NHRI, Independent Authority for the Prevention of Torture, monitoring body for the implementation of the Return Directive, monitoring body for the implementation of the CRPD) and insufficient resources have led to long delays in examining complaints, often leaving victims without an effective redress because third party rights are established in the meantime and the statute of limitations has expired. The allocated budget concerns all the authorities operating from within the Ombudsman's office and not only the Equality Body and not only non-discrimination issues; there are no members of staff allocated exclusively to the Equality Body or exclusively to non-discrimination. During the period 2004-2017, other than the limited resources allocated to this body, there was never any reason to suspect political hostility or interference in the work of this body.

In March 2017, the President of Cyprus proposed the appointment of a junior state prosecutor as the new Ombudsman. The information available at the time did not indicate that she had any prior experience or involvement in human rights or anti-discrimination. The selection raised objections from NGOs, journalists and political parties because of her lack of prior engagement with equality and fundamental rights in general and due to her family links with a group of large media outlets.. They described her appointment as highly political and the result of nepotism on the part of the President of the Republic, who, through this appointment, appeared to be seeking to secure the support of the media group to which the appointee is related, in the upcoming presidential election in 2018.⁴⁸⁴ The President's nominee for the post was approved by Parliament by a narrow majority. Since she took office, the Equality Body appears to have minimised its activity relating to the legal non-discrimination framework and important statistical data and reports were removed from the institutions's website.

⁴⁸² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος)* Νόμος) No. 42(I)/ 2004. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁴⁸³ Laws on the Commissioner for Administration (*Οι περί Επιτρόπου Διοικήσεως Νόμοι*) Ν. 3/1991, Article 3(1). Available at www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html. Section 3(1).

⁴⁸⁴ Cyprus Mail (2017) 'Our View: Irony of ombudsperson's appointment for no other reason than close family ties to president', in *Cyprus Mail*, 22 March 2017. Available at <http://cyprus-mail.com/2017/03/22/view-irony-ombudspersons-appointment-no-reason-close-family-ties-president/>; 'Opposition parties remain tight lipped over approval for new Ombudsman', in *Cyprus Mail*, 21 March 2017. Available at <http://cyprus-mail.com/2017/03/21/opposition-parties-remain-tight-lipped-approval-new-ombudsman/>.

In June 2019, ECRI published its conclusions on the implementation by the Cypriot Government of the recommendations issued by ECRI in June 2016.⁴⁸⁵ ECRI's conclusions expressed concern over the fact that the Ombudsman had not carried out any activities aimed at supporting vulnerable groups or communication activities and has not issued any publications or reports, including annual reports, or recommendations on discrimination issues since 2016.⁴⁸⁶ ECRI stated that it will follow up on these matters in its sixth monitoring cycle. In response, the Ombudsman rejected ECRI's criticisms, arguing that it had carried out an information campaign targeting the police regarding human rights violations and that it participates in a project regarding awareness of homophobia at schools.⁴⁸⁷ She added that the annual report for her office for the year 2017 had been published and that the preparation for the 2018 report was under way.⁴⁸⁸ However, by the end of 2019, it had not yet been published.

ECRI relied solely on data available on the website of Equinet and missed the fact that the annual reports for the years 2015-2016 have also not been issued. The statistical data that used to be included in the annual reports are no longer published and the last comprehensive statistical record available is for the year 2014. The annual reports of the Ombudsman for the years 2017, 2018 and 2019 include equality statistics for those years that are very poor compared to previous years. The reports set out summaries of cases (on transphobic conduct, ethnic discrimination, racial profiling, gender and sexual harassment) without specifying whether the list is exhaustive. For all the cases listed, there is no legal analysis based on laws transposing the equality *acquis* and no clear position is taken. The activity reports for the years 2017-2019 issued by the Equality Body do not contain any statistical data.

In 2019, the Ombudsman issued a press statement in response to criticisms from a member of Parliament for her refusal to examine a complaint about an incident of racial harassment. The Ombudsman's response clarified that there is no longer an Anti-discrimination Authority or Equality Authority, 'as wrongly believed by some people', but merely an extension of the mandate of the Ombudsman to cover 'discrimination and human rights violations'. She indicated that the reference to these two Authorities on the website of the Ombudsman's office was merely indicative of the scope of the subject and her responsibilities.⁴⁸⁹

c) Institutional architecture

In Cyprus, the designated body forms part of a body with multiple mandates.

The designated body shares an office, budget and staff with the Ombudsman, the NHRI, the independent authority against torture, the independent mechanism for compliance with the CRPD, the Gender Equality Directives and the Return Directive. None of these tasks involves reporting to an independent organisation; its only reporting duties are to the President of the Republic and to Parliament.

There is no specific structure in the Ombudsman's office as regards the organisation and execution of its various functions. Most of the staff members perform functions for many different mandates. Between 2004 and 2016, the equality mandate was shared between two departments: The Anti-discrimination Authority and the Equality Authority. The former

⁴⁸⁵ Council of Europe, European Commission against Racism and Intolerance (ECRI) (2009), [*ECRI Conclusions on the implementation of the recommendations in respect of Cyprus subject to interim follow up*](#), Strasbourg, Council of Europe, 6 June 2018.

⁴⁸⁶ The footnote to the ECRI report contained the following broken link from the website of Equinet: http://equineteurope.org/author/cyprus_ombudsman/.

⁴⁸⁷ The project is 'HOMBAT'. The partner for Cyprus is the NGO 'Accept LGBT Cyprus'.

⁴⁸⁸ Omegalive (2019), 'The Commissioner for Administration rejects the ECRI references to her office' ([*Η Επιτρόπος Διοικήσεως απορρίπτει τις αναφορές ECRI για το Γραφείο της*](#)), 6 June 2019.

⁴⁸⁹ Ombudsman (2019), 'Statement by the Commissioner for Administration and Human Rights' ([*Ανακοίνωση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων*](#)), press release 25 April 2019.

would deal with all grounds in the non-employment field and the latter would deal with all grounds in the employment field plus gender. Since much of the activity involved handling complaints, the setting of priorities was essentially driven by the grounds on which the complaints were submitted. Most of the officers staffing these two departments would also perform work related to other mandates. As mentioned above, under the current Ombudsman, the two separate departments seem to have been abolished,⁴⁹⁰ and the equality and non-discrimination legal work appears to have ceased.

There is no fixed amount allocated to the equality mandate of the Ombudsman's office and no fixed personnel assigned exclusively to the equality mandate.

The organisation of the various authorities operating from the Ombudsman's office and the priorities of the office varied from period to period. From the number of decisions issued and the activities and interventions undertaken over the years, it is possible to assume that the equality mandate was a dominant feature on the agenda of the Ombudsman's office between 2004 and 2016. From 2013 onwards, disability-related complaints were handled in its capacity as monitoring body for the CRPD. Since April 2017, apart from a couple of reports where the reasonable accommodation provisions of the disability law are cited in combination with the CRPD, no equality-related decisions applying the anti-discrimination legal framework have been issued nor have any other such interventions or activities taken place.⁴⁹¹

Although the Ombudsman as an institution was visible and well known, its mandate as Equality Body was lesser known and often subsumed under the institution of the Ombudsman. Very few awareness campaigns have been carried out since its inception. In its capacity as monitoring body for the CRPD, it carried out an awareness campaign in November 2016 about accessibility for persons with disability to voting in elections;⁴⁹² in January 2017 it joined a public event about the functions and mandate of independent public bodies; up until 2016 the opening statement in various press releases might state that the Ombudsman was intervening in her capacity as national anti-discrimination body, without explaining the mandate of this body.⁴⁹³ The fact that the Equality Body is not sufficiently known to vulnerable groups was flagged as an issue of concern by both the ECRI⁴⁹⁴ and the Advisory Committee on the FCNM.⁴⁹⁵

d) Status of the designated body – general independence

i) Status of the body

The Equality Body is one of the mandates of the Ombudsman but does not have a distinct legal personality. In order to comply with Article 13 of the Racial Equality Directive, the Ombudsman was afforded a mandate to combat discrimination. This mandate goes well beyond the minimum required by Article 13 and includes all grounds in all fields.

⁴⁹⁰ Ombudsman (2019), 'Statement by the Commissioner for Administration and Human Rights' ([Ανακοίνωση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων](#)), press release 25 April 2019.

⁴⁹¹ For details, see the list of reports published on the Ombudsman's website at www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/index_new/index_new?OpenForm.

⁴⁹² More details about this campaign can be found on the Ombudsman's website at www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2389075348778297C225807B004A7443?OpenDocument.

⁴⁹³ See, for instance, media article from 2015 at [www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7AB70C2CF9C1C96842257EA60028554D/\\$FILE/alitheia_5_8_15.jpg](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/7AB70C2CF9C1C96842257EA60028554D/$FILE/alitheia_5_8_15.jpg).

⁴⁹⁴ ECRI, Council of Europe (2016), *Report on Cyprus, Fifth monitoring cycle*, 7 June 2016. Available at www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-CbC-V-2016-018-ENG.pdf.

⁴⁹⁵ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

The Equality Body does not have a governing body. It is headed by whoever acts as Ombudsman, appointed by the President of the Republic and approved by a parliamentary majority for a term of six years.⁴⁹⁶ During the term of their service, the Ombudsman can only be dismissed in the same way as Supreme Court judges are dismissed.⁴⁹⁷ According to the Cypriot Constitution, a Supreme Court judge is appointed as a permanent member of the judicial service until they reach the age of 68⁴⁹⁸ and may only 'be retired'⁴⁹⁹ as a result of a mental or physical incapacity or infirmity that would render them incapable of discharging their duties. They may also be dismissed on the ground of misconduct.⁵⁰⁰

The Equality Body does not have its own budget; its expenses form part of the Ombudsman's budget. The budget for the Ombudsman's office comes from the state national budget. The Equality Body shares office premises, personnel and the person at the top of the hierarchy, which is the same for both bodies. Occasionally, the Ombudsman (in its capacity as Equality Body) applies for and is awarded EU funds for particular projects, such as the two opinion surveys it carried out in 2007, the Code of Conduct on Disability Discrimination and the media guidelines it published in 2010.

The Equality Body lacks the power to appoint its own staff; its staff members are civil servants recruited through the procedure followed for all civil servants. ECRI has repeatedly expressed concern over the fact that the Equality Body/Ombudsman lacks sufficient human and financial resources, does not enjoy the freedom to appoint its own staff and is not well known to vulnerable groups.⁵⁰¹ Due to its serious understaffing problem, which is highlighted in several national and international reports,⁵⁰² discrimination complaints can take three or more years to be examined, essentially leaving the complainant without a remedy, as third party rights are often established in the meantime, whilst the complainant will be time-barred from seeking redress through the courts.

The Ombudsman is in theory an independent officer and is not answerable to any other body, although it is required to submit an annual activity report to the President of the Republic and the House of Representatives. However, in spite of the nominal framing of independence, the Ombudsman is appointed by the executive with a majority vetted by Parliament, the required qualifications are vague, there is no provision precluding politically exposed persons or conflicts of interest and no accountability procedures.

ii) Independence of the body

The law setting up the Equality Body (42(I)/2004) does not expressly provide for the independence of this body; however, this is implied from several provisions that essentially give the power and obligation to the body to apply and implement the obligations undertaken by the Republic under the EU *acquis* as well as under international law. The law governing the duties and powers of the Ombudsman⁵⁰³ provides that the Ombudsman

⁴⁹⁶ Law on the Commissioner for Administration N. 3/1991, Article 3(1).

⁴⁹⁷ Law on the Commissioner for N. 3/1991, Article 3(7).

⁴⁹⁸ The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Article 7(1). Available at www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html.

⁴⁹⁹ This is the term used in the official translation of the Cypriot Constitution. Presumably, it means 'be obliged to retire'.

⁵⁰⁰ The Constitution of the Republic of Cyprus, Articles 7(3) and 7(4).

⁵⁰¹ ECRI (2011), *Report on Cyprus, Fourth Monitoring Cycle*, Strasbourg, 31 May 2011. Available at www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf; ECRI (2016), *Report on Cyprus, Fifth Monitoring Cycle*, Strasbourg, 17 March 2016 (published on 7 June 2016). Available at <https://rm.coe.int/fifth-report-on-cyprus/16808b563b>.

⁵⁰² In 2015, the Advisory Committee on the FCNM expressed its deep concern over the 'continued lack of adequate resources of the Equality Body [which] raises serious concerns regarding the ability of the institution to effectively and independently perform its important tasks': Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵⁰³ Although the Ombudsman is also the Equality Body, the reference here is to the Ombudsman only.

is not allowed to hold any other office or carry out any other work for remuneration.⁵⁰⁴ Article 4(2) of the same law provides that the members of staff of the Ombudsman's office are civil servants, to be appointed in accordance with the Law on Civil Service. The fact that the body lacks the power to choose its own members of staff has attracted criticism from the ECRI⁵⁰⁵ and the Advisory Committee on the FCNM.⁵⁰⁶ Another issue potentially affecting its independence is the fact that its entire budget is provided by and dependent upon the Government. But perhaps the most crucial weakness as regards the institution's independence is the fact that the Ombudsman (and head of the Equality Body) is appointed by the President of the Republic and only approved by a parliamentary majority. The current Ombudsman no longer appears to be implementing the mandate granted by the equality *acquis*, makes no public interventions on important issues in the public sphere and does not issue reports, decisions or statistics with regard to the anti-discrimination framework.

e) Grounds covered by the designated body

The grounds which the Equality Body has a mandate to deal with are: racial/ethnic origin, religion or belief, age, sexual orientation, disability, colour, political or other beliefs, national origin, social descent, birth, wealth, social class, any ground whatsoever, all rights guaranteed in ECHR and all its protocols, in the International Convention for the Elimination of all forms of Racial Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities. The priorities as regards grounds are largely driven by the complaints submitted. In most years, almost half of the complaints received were about gender discrimination, followed by race/ethnicity/national origin. No up-to-date statistical records are available for the years 2015, 2016, 2018 and 2019. A very basic statistical record for 2017 was included in the annual report of the Ombudsman for that year (published in 2019).

f) Competences of the designated body – and their independent exercise

i) Independent assistance to victims

In Cyprus, the designated body does not have the competence to provide court representation or offer any advice to victims in relation to litigation, to their rights, guidance about support structures or about any other matter. The only assistance it is empowered to provide is the issuance of a report with recommendations.

ii) Independent surveys and reports

In Cyprus, the designated body does have the competence to conduct independent surveys and publish independent reports. Surveys are hardly ever commissioned by the Equality Body, the last one being several years ago. However, in previous years, up until the current Ombudsman took office in 2017, the body used to carry out a number of self-initiated investigations and publish reports on specific themes. This was not always performed in its capacity as Equality Body but the subject was always relevant to equality or had an equality angle, e.g. the rights of intersex persons; the transfer of a deceased Turkish Cypriot from police checkpoints; the programme of teaching Greek as a second language to migrant pupils; the broadcasting of a TV interview with racist content; detention for the purpose of deportation; the handling of racist name-calling by the police; the police response to

⁵⁰⁴ Laws on the Commissioner for Administration, N. 3/1991, Article 3(3).

⁵⁰⁵ The fourth ECRI report on Cyprus, published in 2011, states on p. 7: 'The Office of the Commissioner for Administration (Ombudsman) lacks sufficient human and financial resources and does not enjoy the freedom to appoint its own staff.'

⁵⁰⁶ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

trafficking; asylum reception conditions; and the situation of migrant domestic workers. Although there has been no legislative change in the Equality Body's mandate, the institution's manner of operation has changed since the current Ombudsman took office in April 2017. The Equality Body no longer examines complaints applying the anti-discrimination framework, or issues reports or publishes data with regard to this framework, as in previous years. All complaints received appear to be examined within the mandate of the Ombudsman, which includes discrimination but without the specificities of the anti-discrimination directives.

iii) Recommendations

In Cyprus, the designated body does have the competence to issue independent recommendations on discrimination issues.

The Equality Body also has a duty to make recommendations to the competent minister, the Parliament and affected groups of persons regarding, inter alia, the amendment of any legal provision or regulation that constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right⁵⁰⁷ or following a specific complaint that has been referred to the Equality Body. It also has the power to conduct independent surveys and compile reports on any matter within its competence concerning any activity or practice in the public or private domain.⁵⁰⁸

The issuing of recommendations is a standard part of the procedure of investigating complaints. As a matter of policy, successive Ombudspersons have chosen to issue recommendations rather than take more drastic measures, such as issue an order or impose a fine. Whenever a complaint is deemed to be well-founded and within the body's jurisdiction, recommendations are invariably included at the end of the report. As a result, it is not possible to assess the independence of the recommendations separately from the independence of the investigation and the entire report process. Prior to issuing recommendations, the body usually holds a consultation meeting with the persons involved in order to get their positions.

Issues pertaining to the Cyprus problem, such as discrimination against Turkish Cypriots in various areas, have generally been treated with caution by successive Ombudspersons. They have avoided addressing highly politicised issues, such as the access of Turkish Cypriots to their properties, the issuing of passports or their access to welfare. In some cases, the Ombudsman has failed to publish a report following the investigation of a complaint from a Turkish Cypriot that would have had political repercussions. However, this should not be seen as a lack of independence but rather an effort to steer clear of controversy in the political arena.

The procedure foreseen in the law for revising discriminatory laws is for the Ombudsman (in his or her capacity as Equality Body) to refer the issue to the Attorney General with a request to draft and promote amending legislation. This procedure has not been followed consistently and, when it has, the Attorney General has not necessarily complied with the Ombudsman's request. The Ombudsman participates in parliamentary hearings and in consultations preceding the adoption of laws with a human rights angle, even though its proposals are not always adopted by the legislature.

⁵⁰⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*) No. 42(I)/2004, Article 35(1)(d). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

⁵⁰⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, No. 42(I)/2004, Article 44.

iv) Other competences

The Equality Body is vested with the power to (i) combat direct and indirect racist discrimination as well as unlawful discrimination and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin;⁵⁰⁹ (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cypriot Constitution (Part II) or by one or more of the conventions ratified by Cyprus and referred to explicitly in the law,⁵¹⁰ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin;⁵¹¹ and (iii) promote equality of opportunity, irrespective of grounds listed in the preceding section (to which the grounds of special needs⁵¹² and sexual orientation are added) 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.

The Equality Body may carry out independent investigations into various issues⁵¹³ in its own right where it deems that any particular case may constitute a violation of the law.⁵¹⁴ 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.⁵¹⁵

The law imposes an obligation on the Equality Body to communicate its findings and reports to the Attorney General. The Attorney General 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 that is contrary to the anti-discrimination law.⁵¹⁶ However, as it is currently phrased, the law allows the discriminatory law to remain in force until officially amended by the House of Parliament. This is a discrepancy in the law that renders compliance with the directives questionable, because it allows for the law to remain in force even if the Attorney General delays or omits to take steps for its amendment. In December 2014 the Supreme Court ruled that this provision can only be interpreted to mean that the Attorney General is under a duty to inform the executive regarding changes in the legislation deemed necessary by the Equality Body and that, had the legislator intended to give power to the Attorney General to reject the Equality Body's recommendations, the wording of the law would have explicitly provided that the Attorney General may adopt, amend or reject the recommendation.⁵¹⁷

⁵⁰⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 3(1)(a).

⁵¹⁰ These Conventions are Protocol No. 12 to the European Convention for Human Rights and Fundamental Freedoms; the International Convention on 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 other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵¹¹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19 March 2004), Section 3(1)(b), Part I.

⁵¹² 'Special needs' is a term commonly used in Cyprus to encompass all types of disabilities including psycho-social disabilities. In Cyprus, the term 'disability' is not understood to include psycho-social disability, which is considered to be a special category requiring more sensitive treatment.

⁵¹³ For example, Investigation regarding the detention of mental patients in prisons and the medical care of prisoners, Report No. 1/2000, 31 May 2000; Investigation into the prison system in Cyprus and the conditions of detention in central prisons, Report No. 1/2004, 26 May 2004; Investigation into the conditions of detention of foreigners in central prisons and police detention centres, Report No. 1/2005, 2 February 2005.

⁵¹⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004 (19 March 2004), Section 33.

⁵¹⁵ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Articles 40, 41 and 42, Part VI.

⁵¹⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 39.

⁵¹⁷ *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General*, Case No. 1695/2009, 17 December 2014. Available at www.cylaw.org/cgi-

This development has not led to the amendment of any laws containing discrimination; the law ruled by the court to contain discrimination continues to remain in force.

The Equality Body has no power to impose criminal sanctions; all criminal cases are referred to the Attorney General's office for action. In addition, 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 public servant, the Equality Body must refer the case to the minister in charge to take action.

g) Legal standing of the designated body

In Cyprus, the designated body does not have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints *ex officio* to court;
- intervene in legal cases concerning discrimination, for example as an *amicus curiae*.

h) Quasi-judicial competences

In Cyprus, the body is a quasi-judicial institution.

- The body has the power to issue binding orders to stop a service/goods provider from denying services/goods to a person or a group of persons. It has never issued such an order. This power presupposes that the Equality Body has both the ability and the will to act swiftly upon receiving a complaint, which is not always the case.
- The body has the power to impose small fines, although it has never exercised this power. The fines foreseen in the law are far too small to constitute a deterrent: EUR 598 (CYP 350) for discriminatory behaviour, treatment or practice; EUR 427 (CYP 250) for racial discrimination in the enjoyment of a right or freedom; EUR 598 (CYP 350) for non-compliance with the recommendation within the specified time limit; and EUR 85.44 (CYP 50) per day for continuing non-compliance after the deadline set by the Equality Body.⁵¹⁸ All successive Ombudspersons have chosen to resort to mediation for the resolution of a complaint rather than to impose sanctions or to issue orders. This policy must be seen and assessed in light of the fact that the fines are so low that many perpetrators might choose to pay them and continue discriminating, which would lead to a climate of impunity and eventually undermine the institution of the Ombudsman itself.
- Persons against whom the Equality Body has issued an order, imposed a fine or published recommendations may apply to the Supreme Court under Article 146 of the Constitution for a judicial review of that decision.⁵¹⁹ There is no special procedure foreseen for a complainant to appeal a decision of the Equality Body that they are not happy with. The judicial review process has a rather restricted scope and is applied in order to check the decision-making process rather than the merits of an administrative act; a decision that was properly investigated and fully justified is very likely to pass the judicial review test, irrespective of its content.
- Equality Body officers follow up compliance with their decisions by contacting the affected body or person. Compliance with Equality Body decisions is not published, and it is not clear whether or not it is systematically monitored. In any case, no information about compliance is available in the public domain.

[bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

⁵¹⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Articles 18 and 26(1).

⁵¹⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 23.

- Generally speaking, the institution of the Ombudsman is well respected and so are its decisions. This does not necessarily translate into a high level of compliance. Based on various public statements made by successive Ombudspersons over the years, a number of Government departments consistently fail to comply with its recommendations or cooperate with the body in the course of its investigations. No information is available about compliance from the private sector. However, very few decisions have been issued against the private sector since the body's inception in 2004.

i) Registration by the body of complaints and decisions

In Cyprus, the body does register the number of inquiries received, complaints of discrimination made, and decisions by ground, by the ethnic origin of the complainant and by field of application. In previous years, such data would appear in the annual reports published every year. In 2017, when the current Ombudsman took office, the process of publishing statistics changed, as did the way in which the office operated. The statistical data collected by her predecessor for the years 2015 and 2016 was not published. In 2019 the Ombudsman published an annual report for 2017. It covered all the mandates handled by her office, including the equality mandate. The complaints figures published are as follows:

Figures for the year 2017

National origin	Disability	Gender	Harassment	Ethnic origin	Sexual orientation	Age	Religion
10	8	8	7	6	5	4	3

No explanation is offered as to whether the above represent complaints received, handled or the outcome of the investigation. The figures show a sharp drop in the number of complaints received and handled compared to previously published statistics (2014).

In 2020, the Ombudsman issued three reports.

1. A report for all its mandates for 2019. The data concerning discrimination was as follows:

Figures for the year 2019

National origin	Disability	Gender	Harassment	Ethnic origin	Sexual orientation	Age	Religion
6	5	21	8	6	6	2	1

The chapter of the annual report dedicated to discrimination provides summaries of the Ombudsman's position on matters that were in the public spotlight, statements on the occasion of 'international days', and decisions on a sexual harassment complaint, two gender discrimination complaints and a few disability complaints examined on the basis of the CRPD. It offers no description of the cases listed in the statistical record.⁵²⁰

2. A report for all its mandates for 2018. The data concerning discrimination was as follows:

Figures for the year 2018

⁵²⁰ Ombudsman (2020), '[Annual Report 2019](#)', 24 July 2020.

National origin	Disability	Gender	Harassment	Ethnic origin	Sexual orientation	Age	Religion
4	6	18	7	3	4	7	1

The chapter of this report dedicated to discrimination provides summaries of decisions on gender discrimination complaints and statements on the publication of its code on sexual harassment in the workplace and participation in various seminars but describes no activity related to the implementation of the two equality directives. It offers no description of the cases listed in the statistical record.⁵²¹

3. In 2020, the Ombudsman in its capacity as Equality Body issued a single annual report for the years 2017, 2018 and 2019. The report contains summaries of old reports that do not invoke either of the two equality directives or their transposing legislation and does not offer any statistics whatsoever.⁵²²

What emerges from all the three reports is that, although some discrimination-related complaints may have been filed, as shown in the statistical data, these were not investigated through the lens of anti-discrimination legislation. Even in the annual report which purports to record only the Equality Body activity for three years (2017, 2018 and 2019), there is no single legal reasoning relying on the anti-discrimination legislation, which raises questions on the degree to which the current Equality Body applies the non-discrimination *acquis*.

At the time of writing, there was still a big gap in equality statistics as all activity reports published by previous ombudspersons were removed from the institution's website and the activity reports published do not contain statistics.

There is no comprehensive record of the number of discrimination-related cases brought to justice.

j) Roma and Travellers

Since it was established in 2004, the Equality Body has received hardly any complaints regarding discrimination against the Roma.⁵²³ Although there is a historical Cypriot Roma community, there is very little debate about the situation of the Roma, who lead an impoverished and marginalised existence, or measures to specifically target them. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded by the EU Structural Funds for the period 2014 to 2020. Cyprus has no specific Roma integration strategy and no policies vis-à-vis the Roma community, the general approach of Government policy being to 'promote' Roma integration through horizontal measures targeting vulnerable groups in general. Successive Governments have failed to recognise the Roma as a separate and distinct community and consider them instead to form part of the constitutionally recognised Turkish Cypriot community. In this politically charged climate, the Equality Body made three attempts over the years to address the situation of the Roma. In 2003, it conducted self-initiated investigations into their housing conditions; and in 2011, in response to a complaint submitted in 2008, it published a report on discrimination against Roma children in education. In December 2020, the Ombudsman's office, in its capacity as NHRI, published a report following a self-initiated investigation into the situation of the Roma, relying on consultation with the NGO CypRom,

⁵²¹ Ombudsman (2020), *Annual Report of the office of the Commissioner for Administration and the Protection of Human Rights 2018*.

⁵²² Ombudsman (2020), [Annual Report of the office of the Commissioner for Administration and the Protection of Human Rights \(Ombudsman\) acting as Equality Body 2017-2018-2019](#), 8 January 2020.

⁵²³ Cyprus does not have a community of Travellers.

the competent governmental authorities and an on-site visit to a Roma settlement at the centre of the old city of Limassol.⁵²⁴

No efforts have been made to launch a structured dialogue and consultation with the Roma community, which is a measure that has been strongly recommended both by the ECRI and the Advisory Committee on the FCNM.

⁵²⁴ Cyprus NHRI (2020), '[Position of the Commissioner of Administration and Human Rights as National Independent Human Rights Authority \(NHRI\) regarding the living conditions of the Roma community in Cyprus](#)' (Τοποθέτηση Επιτρόπου Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων ως Εθνική Ανεξάρτητη Αρχή Ανθρωπίνων Δικαιωμάτων (NHRI) σχετικά με τις συνθήκες διαβίωσης της Ρομά κοινότητας στην Κύπρο), Ref. ΑΥΤ 3/2020, 22 December 2020.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

In line with previous years, there have not been any Government activities during 2020 to disseminate information on non-discrimination.

- b) Measures 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)

There are no guidelines or policies to regulate or promote a structured dialogue between the Government and NGOs in the equality field. A formal process of consultation exists at the parliamentary level when there are discussions of bills in areas of interest to some NGOs, but this is invariably a superficial tick-box exercise, where the views and expertise of NGOs are rarely taken on board. Consultation at parliamentary level takes place when it is too late to bring about any change of course. There is no fertile ground for watchdog or advocacy organisations to operate in Cyprus because there is no funding for watchdog or advocacy activities and the Government environment can at times be hostile. The Government funding available for NGOs is non-transparent and is exclusively granted for the provision of service to the Government, such as running shelters for victims, which raises issues of Government control of civil society.

In 2020, civil society space shrunk considerably when a new law governing the operation of NGOs entered into force. Based on this law, the Ministry of the Interior struck from the NGO register more than 2,000 NGOs, including NGOs active in the field of non-discrimination, notably KISA, which was active in defending migrants' rights, and CypRom, which was active in defending the rights of the Roma community. The NGOs deleted from the registry were those that did not meet the deadline announced by the ministry for submitting documentation to prove that their structure had not been altered since the previous submission of documents. The deletion from the ministry's registry means the dissolution of the legal personality of the NGO, which can no longer receive funding, maintain a bank account or represent victims of discrimination before the Equality Body or before the courts.

The closure of the checkpoints separating the Turkish Cypriot north and the Greek Cypriot south of the country, using COVID-19 as a justification, significantly hampered the activities of NGOs combating ethnic discrimination. In December 2020, a law on access to information entered into force, with no provision for access to information sought by NGOs. Applications for access to information must be submitted by individuals who must also pay a fee, which differs from one governmental authority to another and there are categories of exempted information, to which access will not be provided.⁵²⁵ The law contains far too many exemptions, the procedure for gaining access will be time consuming and the applicant has no way of knowing whether or not some data has been removed from the file by the time permission to access is granted.⁵²⁶

The current Ombudsman, who took office in 2017, appears to have halted all interaction with CSOs and to refuse examining complaints that are not filed by the victims themselves.

⁵²⁵ Law on the right of access to public sector information of 2017 ([Ο περί του Δικαιώματος Πρόσβασης σε Πληροφορίες του Δημόσιου Τομέα Νόμος του 2017](#)), 184(I)/2017.

⁵²⁶ Theopemptou, C. (2020), [`Ο περί του Δικαιώματος Πρόσβασης σε Πληροφορίες του Δημόσιου Τομέα Νόμος του 184\(I\)/2017'](#), 22 December 2020.

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

Dialogue with social partners on issues of discrimination at the workplace is lacking; no code of conduct has been agreed upon nor is there any system for workforce monitoring. The tripartite collaboration between social partners and the Government over working conditions is not utilised to address discrimination against migrants in the labour market, as competence for this area falls under the Ministry of the Interior, whilst the tripartite process involves the Ministry of Labour.

- d) Addressing the situation of Roma and Travellers

The governmental body with competence for Roma issues is the Social Welfare Office of the Ministry of Labour. However, its Roma-related activities over the years have been restricted to the EU-funded project Roma Platform; no measures were taken to specifically target the Roma in terms of dissemination of information or dialogue. The thematic priority of Roma integration was not selected for inclusion in the programmes to be funded by the EU Structural Funds for the period 2014 to 2020 and there is no allocation of funds for this priority.⁵²⁷ Cyprus has no specific Roma integration strategy and no policies vis-à-vis the Roma community. The general approach of Government policy is to promote Roma integration through horizontal measures targeting vulnerable groups in general within the framework of existing wider policies and structures for social inclusion. These include general integration policies, the National Reform Programme and the National Strategy for Social Policy 2014-2020, which are aimed at increasing employment and reducing poverty and social exclusion. It is questionable whether any of these measures have any actual impact on the Roma, who continue to live in extreme poverty and exclusion, with no efforts made by the authorities towards the preservation of their cultural identity or towards raising awareness of and respect for their distinct identity and culture amongst society.⁵²⁸ Given that there are no policies targeting the Roma, there are no separate mechanisms monitoring the implementation of policies vis-à-vis the Roma. The Social Welfare Services, which acts as the national contact point for the implementation of the national Roma integration, estimated in 2014 that, out of a total of 1 250 Roma in the whole of Cyprus, there are between 650 and 700 Roma who are Cypriot citizens in the area controlled by the Republic of Cyprus. There is no updated data and no estimates as regards the number of migrant Roma or Sinti residing in Cyprus. Overall, the Social Welfare Services consider that the number of Roma residing in Cyprus is too small to deserve a separate and distinct approach from other vulnerable groups.⁵²⁹

Cyprus has been repeatedly criticised by ECRI and the Advisory Committee on the FCNM for failing to take measures to promote the participation and integration of the Roma. The Third Opinion on Cyprus of the Advisory Committee on the FCNM states that the Roma continue to face serious prejudice and difficulties in many fields, such as employment, housing, education and access to health services, whilst the establishment of a dialogue between the Government and the Roma remains problematic. The Committee urged the Government to identify ways to establish a structured dialogue with the Roma and to obtain up-to-date information regarding their ethnic, linguistic and religious affiliation. The Government responded by stating that 'issues regarding the Cyprus Roma are part of the overall policy planning of the Government' without indicating any specific policies to

⁵²⁷ Letter from the General Directorate of European Programmes, Coordination and Development, 1 December 2014.

⁵²⁸ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵²⁹ Oral and written exchange of communication with the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance, 27-28 November 2014.

address the problems highlighted.⁵³⁰ ECRI's fourth report on Cyprus, published in 2011, also urged the authorities to engage in consultation with the Roma community in order to address problems of housing, employment and education.⁵³¹ In 2016 the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance set up a National Roma Platform on the basis of funding received from the EU which covered 95 % of the Platform's operational costs for 12 months. The Platform aimed to create the framework for the strengthening of dialogue on issues affecting the Roma, such as housing, education, social services, health and employment. It brought together governmental bodies, independent authorities, local government, NGOs, academics and members of the Roma community and planned to hold four meetings during 2016-2017. The first meeting of the Platform was attended by 33 persons; only three of them were members of the Roma community. At the following Platform meeting in October 2016, the number of Roma persons participating rose to 17.⁵³² The relevant press release noted that the participation of members of the Roma community was low despite efforts made to encourage their attendance. It emerged from the discussions at the Platform meetings that the Roma in Cyprus need additional mobilisation and incentives in order to become more actively involved in matters affecting them. However, the press release which followed the first Platform meeting took the opportunity to reiterate the official position that the Roma do not constitute a distinct ethnic community in its own right but form part of the Turkish Cypriot community, citing the Cypriot Constitution as a source.⁵³³ However, the Constitution does not state this; in fact, it does not refer to the Roma at all. The decision regarding the community affiliations of the Roma, which was taken without consulting the Roma themselves, remains an open issue of concern and has been repeatedly criticised by the Advisory Committee on the FCNM.⁵³⁴ Indeed, to date, there has been no formal or informal consultation with the Roma as to their choice of affiliation. For decades, the Roma community in Cyprus has been viewed by policy makers as an inseparable part of the Turkish Cypriot community. It is only in recent years and through EU funding that projects involving the Roma in their own right have started developing. Yet the issue of affiliation is still not on the table. The 2015 report of the Advisory Committee on the FCNM was highly critical of the fact that the latest population and housing census contained a question related to 'ethnic/religious group' where interviewees had to choose from a closed list of five possible responses. These did not include the option of being Roma, nor was it possible to respond 'other' or 'do not wish to respond', or to opt for multiple affiliations, reflecting the realities of contemporary society.

⁵³⁰ The Third Opinion of the Advisory Committee on the FCNM is available at www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Cyprus_en.pdf. The comments of the Government of Cyprus on the Third Opinion are available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Cyprus_en.pdf.

⁵³¹ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

⁵³² Social Welfare Services, press release, Cyprus Roma Platform, 13 July 2016. Available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%BF%20%CE%B7%CF%82%20%CF%83%CF%85%CE%BD%CE%AC%CE%BD%CF%84%CE%B7%CF%83%CE%B7%CF%82%2017.10.2017.pdf).

⁵³³ Social Welfare Services, press release, Cyprus Roma Platform, 8 December 2016. Available at [www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/\\$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE%AE%20%CE%94%CE%B9%CE%AC%CF%83%CE%BA%CE%B5%CF%88%CE%B7%20%CE%A0%CE%B%CE%B1%CF%84%CF%86%CF%8C%CF%81%CE%BC%CE%B1%20%CE%A1%CE%BF%CE%BC%CE%AC%2013.7.16.pdf](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/C1AFABBCD79188BEC2257FEF003BC41D/$file/%CE%94%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%BF%CE%B3%CF%81%CE%B1%CF%86%CE%B9%CE%BA%CE%AE%20%CE%94%CE%B9%CE%AC%CF%83%CE%BA%CE%B5%CF%88%CE%B7%20%CE%A0%CE%B%CE%B1%CF%84%CF%86%CF%8C%CF%81%CE%BC%CE%B1%20%CE%A1%CE%BF%CE%BC%CE%AC%2013.7.16.pdf).

⁵³⁴ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2015), *Fourth Opinion on Cyprus*, 2 November 2015. Available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

The Government has not taken specific measures to ensure discriminatory laws regulations and administrative provisions are abolished. There is no procedure for regular monitoring or screening of old or new laws, collective agreements, contracts or rules, etc., in order to ensure their compliance with the anti-discrimination laws. Practice shows that the procedure for assessing compliance of a particular law, contract, practice, etc. with the anti-discrimination laws is triggered only when a specific complaint is submitted on this matter.

Laws that contravene the Constitution, including the equality provision found in Article 28 of the Constitution, can be declared unconstitutional by the Court, whereupon it automatically becomes null and void. In order to trigger this process, an application must be filed in court by a person who has been wronged as a result of the implementation of a law that runs contrary to the Constitution. So far, no law has been declared unconstitutional by reason of non-compliance with the equality provision of the Constitution (Article 28), except laws providing for positive action measures in favour of persons with disabilities.

The 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. Moreover, by virtue of a 2006 amendment of the Constitution, all EU directives and regulations are deemed to take precedence over all domestic legislation, including the Constitution itself. A law which is found to be contrary to EU law, however, will continue to be applied by the courts until it is amended by Parliament, in spite of the CJEU ruling in *Vera Egenberger*.⁵³⁵ There is no judicial tradition in Cyprus of disapplying laws that contravene EU law.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Cyprus has not taken any measures to ensure compliance with Article 14(b) of Directive 2000/43 and Article 16(b) of Directive 2000/78 - ensuring that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations that are contrary to the principle of equal treatment are or may be, declared null and void or are amended. Contracts and collective agreements have never been exhaustively scanned to assess their consistency with the anti-discrimination directives or their compliance with the equality principle in general. A problem of non-compliance usually surfaces when a complaint is filed with the Equality Body, but even in such cases there is no system for recording the non-compliant provisions in a single database.

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 contained in the law setting out the mandate of the Equality Body.⁵³⁶ This procedure requires the Equality Body to refer these to the Attorney General who is then obliged to advise the minister concerned and prepare the necessary amendment in the discriminatory practice.

The Equality Body's referrals to the Attorney General under Article 39 have not always been addressed, and laws and regulations containing discriminatory provisions often remain unaffected as a result. This continued to be the case even after the Supreme Court

⁵³⁵ CJEU, judgment of 17 April 2018, *Egenberger*, C-414/16, ECLI:EU:C:2018:257.

⁵³⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law (*Ο Περί Καταπολέμησης Φυλετικών και άλλων μορφών Διακρίσεων Νόμος (Επίτροπος) Νόμος*) No. 42(I)/2004, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

ruled that the Attorney General is obliged to promote the change in legislation in accordance with the Equality Body's recommendation.⁵³⁷ The cases of non-compliance highlighted by the Equality Body include public service job advertisements that contain an age limit; job descriptions that require an 'excellent knowledge of Greek' as a prerequisite or where the criterion to test knowledge of Greek can only be met by graduates of Cypriot schools; restrictions in the retirement benefits paid to public sector employees aged under 45 who take early retirement in order to join EU institutions. No doubt there are many other cases in respect of which no complaint was submitted and thus no decision was issued by the Equality Body to highlight the need for repeal.

⁵³⁷ Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Minister of Finance and the Attorney General* (Νικολέτα Χαραλαμπίδου ν. Κυπριακής Δημοκρατίας, Υπουργού Οικονομικών και Γενικού Εισαγγελέα), No. 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#).

9 COORDINATION AT NATIONAL LEVEL

There is no single authority or Government department responsible for the overall coordination of the implementation measures under the anti-discrimination laws. 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 relating to the drafting and interpretation of legislation; the Ministry of Education and the Ministry of the Interior deal with their respective competences. The latest annual report published by the Ministry of Justice and Public Order, which records activities for 2013, sums up the ministry's activities in this field. It provides information that feeds into various European-level reports, such as those issued by the European Union Agency for Fundamental Rights (FRA) and FCNM.⁵³⁸ The ministry has not published an annual report since then (2014). An action plan on combating discrimination on the grounds of sexual orientation, age, disability, ethnicity and religion, which had started to be discussed at the beginning of 2020, was abandoned upon the outbreak of the pandemic before being finalised.

⁵³⁸ Ministry of Justice (2014), *Annual Report 2013*. Available at <http://www.mjpo.gov.cy/mjpo/MJPO.nsf/All/42EB85AE2EFF6C3FC2257F9A00311D97?OpenDocument>.

10 CURRENT BEST PRACTICES

There were no measures in 2020 in the field of combating discrimination, no awareness raising or other relevant practices implemented by the Equality Body or any other public authority. There was no best practice in relation to artificial intelligence.

Code of conduct at schools

The Code of Conduct against Racism and Guide for Handling and Recording Racist Incidents,⁵³⁹ which was first implemented in 2015, continued through 2020. For the school year 2019-2020, reports were received from 129 schools, 88 of which reported zero racist incidents and 41 schools reported a total of 245 incidents. These were based on various aspects of diversity: appearance 64 incidents; language 32; ethnicity 30; age 29; abilities 26; skin colour 21; 'other' 19; gender 14; sexual orientation 12; religion 11; gender identity 6; political or other beliefs 6; community 4; disability 3; citizenship status 3. The victims and perpetrators were mostly students and, in fewer cases, teachers or other school community members: out of a total of 251 victims, 220 were students, 19 were teachers and 12 were other school community members; out of a total of 301 perpetrators, 274 were students, 10 were teachers and 17 were other school community members. Most racist incidents were recorded to have taken place in the school yard and in the classroom, some took place in the football court and the school corridors and a few were recorded as having taken place in other spaces, such as locker rooms, buses, toilets and online: 114 took place in the school yard, 74 in the classroom, 47 in the football court, 40 in the school corridors, 8 online and 7 outside the school. Most racist incidents were reported by the victims to the teachers responsible for recording: 117 incidents were reported by the victims themselves, 89 by the teachers who heard them, 76 by student witnesses, 67 by students who heard about them, 64 by teachers who were witnesses and 12 by other individuals. The schools that recorded racist incidents reported the following measures taken against students involved in racist behaviours: in 208 cases comments were made to the perpetrators, in 172 cases the school communicated with the perpetrators' home, in 150 cases there were discussions with the perpetrators, the reflection sheet was used in 149 cases, written remarks were issued in 61 cases, deprivation of participation in activities was imposed in 61 cases, community service was sanctioned in 15 cases, 'other' consequences were imposed in 7 cases and compensation was ordered in one case.

The evaluation of the policy implementation revealed that creation of a school network appears to be the most effective support strategy for schools implementing the policy. School teams created in the various districts had the opportunity to exchange experiences and views on policy implementation processes and reflect on their role and ways of managing the behaviours of colleagues, children and parents. According to the feedback from the network participants, despite the improvements in numbers of recordings of incidents compared to previous years, challenges remain in the following areas: insufficient reporting on racist incidents; lack of schools' accountability for the policy implementation; insufficient reporting leads to failure to develop contextually appropriate pedagogical interventions based on the racism operating; further support is needed for schools to deal with racist behaviours by teachers themselves.

De-institutionalisation and COVID-19

Most of the on-going projects carried over from previous years were halted in March 2020 with the outbreak of the COVID-19 pandemic. The long-term project of de-institutionalisation and the creation of independent homes in the community that started in 2015 continued through to March 2020. At that point, 7 new homes of supported residence for people with intellectual disability had been set up, which now accommodate

⁵³⁹ For more details, see the website of the Ministry of Education at http://www.moec.gov.cy/dme/programmata/scholiki_paravatikotita/protokolla/kodikas_symperiforas_kata_tou_ratsismou_pi.pdf.

30 people from all over the country who used to reside either in old people's homes or did not have an adequately supportive family environment. The homes offer specialised professional services and a daily routine in conditions of safety and dignity, with creative time involving entertainment, skills development and socialisation.⁵⁴⁰ The Department of Social Integration of People with Disabilities regularly updates the homes where persons with disabilities reside or visit for day care with information about COVID-19 and the changing protection measures. On 3 August, the Department notified all residences that the use of masks is obligatory for staff and visitors, visits must be reduced to the minimum and be allowed only on appointment and subject to taking temperatures, and the residents should be allowed to leave the residence only when absolutely necessary. All residences were supplied with gloves and antiseptics and COVID-19 tests were budgeted for both for residents and staff members.⁵⁴¹

The impact of COVID-19

The Department of Social Integration of People with Disabilities urged people with disabilities to avail themselves of information on the COVID-19 developments and measures from the Government website.⁵⁴² The content uploaded on this website was in a format that could easily be converted into Braille and into a sound format. The Committee on the Protection of Persons with Mental Disability took the initiative of monitoring announcements, converting texts into an easy-to-read format and uploading them. The Confederation of Disability Organisations KYSOA circulated a weekly newsletter with information on matters pertaining to the pandemic that were of interest to people with disabilities. The escorts of people with disabilities in the supported employment scheme were instructed to inform and update all people with disabilities in their team of all developments. Escorts were also instructed to call and visit people with disabilities regularly to support them and accompany them whilst exercising in the neighbourhood. On 26 March 2020, all organisations running programmes of supported employment were instructed to suspend the employment of people with intellectual disabilities for their own protection. The people who stopped working in these schemes were eligible for a special sickness benefit.⁵⁴³

⁵⁴⁰ Communication from the Department of Social Integration of People with Disabilities, 6 October 2020.

⁵⁴¹ Communication from the Department of Social Integration of People with Disabilities, 6 October 2020.

⁵⁴² www.pio.gov.cy/coronavirus.

⁵⁴³ Communication from the Department of Social Integration of People with Disabilities, 6 October 2020.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

1. The Equality Body's mandate is no longer exercised as such, and no reports or other activities are carried out in this capacity, applying the national anti-discrimination legal framework. The complaints received are handled as Ombudsman or as monitoring body for the CRPD, which means that, with few exceptions, the complaints are no longer examined through the lens of the anti-discrimination directives.
2. Courts tend to invoke the doctrine of separation of powers in order to continue applying discriminatory laws, contrary to the CJEU ruling in *Egenberger*.⁵⁴⁴
3. In recent years, the Government has completely abandoned efforts to raise awareness about the directives, to promote equality initiatives or to consult with civil society. This is the case even with KYSOA, which in 2006 was afforded the status of a social partner, contrary to Articles 12 and 13 of Directive 2000/78 and Articles 10, 11 and 12 of Directive 2000/43.
4. There is no procedure in place for a regular review or revision of discriminatory laws/regulations, contrary to Article 16 of Directive 2000/78 and Article 14 of Directive 2000/43. In practice, a review is only triggered once a complaint is submitted to the Equality Body. In such a case, the law requires the Equality Body to refer discriminatory laws/regulations to the Attorney General, who is then under a duty to prepare the amending legislation. Despite several referrals to the Attorney General, few of the laws found by the Equality Body to be discriminatory have been amended. This procedure, however, is very rarely followed, with the result that several discriminatory laws remain in place. The failure of the Attorney General to proceed with amending the laws flagged by the Equality Body, when viewed through the lens of the wide powers granted to the Attorney General by the Constitution, raise concerns as to whether the Cypriot justice system is capable of responding to the needs and requirements of the EU *acquis*.
5. National laws provide for the judicial review procedure to be used by claimants who are challenging administrative acts or omissions affecting them. In the judicial review procedure, however, a claimant cannot be represented by an organisation because the organisation is not deemed to have the legitimate interest required.
6. The burden of proof is not reversed in judicial review proceedings, which is the legal route prescribed by the national legal framework for discrimination claims against the state. The national laws transposing the equality directives provide for the reversal of the burden of proof in judicial proceedings. At the same time, however, the laws provide that in order to challenge an administrative act, the procedure to be used is that of judicial review under Article 146 of the Constitution, where the burden of proof is not reversed.

11.2 Other issues of concern

1. The COVID-19 restrictions included measures that went significantly beyond what was absolutely necessary and reasonable, disproportionately impacting the groups most vulnerable to discrimination, especially migrants, ethnic communities, the elderly and people with disabilities, as well as NGOs defending their rights. The measures included: (i) the closure of the checkpoints, prohibiting Turkish Cypriots from accessing the Republic-controlled areas, depriving them of access to hospitals, schools, universities, Government services and their right to free movement; (ii) the conversion of open refugee camps into closed detention centres, depriving asylum seekers of the right to free movement, (iii) vulnerable asylum seekers were deprived of access to social services, unaccompanied children mixed with adults unknown to them, leading to complaints of sexual abuse, and children inside both camps were deprived of their right to education; (iv) the courts closed for long periods, hearing

⁵⁴⁴ CJEU, judgment of 17 April 2018, *Egenberger*, C-414/16, ECLI:EU:C:2018:257.

- only cases classified by the judges as important, leading to delays and backlogs; (v) the right to public assembly and protest was suspended for an entire year, with the police violently dispersing demonstrations only selectively, embedding a general feeling of injustice and despair, as the rule of law was being gradually undermined and replaced by a state of emergency. The discretion afforded to the police to impose fines on people not complying with the measures and to conduct arrests in some cases was exercised unevenly and disproportionately, often targeting people due to their race or ethnicity and their political beliefs. People with intellectual disabilities were deemed by the Government as being incapable of complying with measures, so they were effectively banned from the public sphere, leading them to lose their jobs and be excluded from education. The pandemic measures exacerbated and accentuated inequalities as vulnerable groups were excluded from education and from the labour market and fell through the cracks of the support measures that failed to target them by addressing their specific characteristics.⁵⁴⁵
2. The pandemic set the frame for a new immigration policy that included repeated pushbacks at land and at sea, the mass detention of asylum seekers in closed camps, the shortening of the timeline afforded for appealing against negative asylum decisions and other measures intended to curb asylum and immigration. Government officials repeatedly made xenophobic statements framing third country nationals as a risk to 'our' culture and security and exaggerated the number of asylum applications. Racial hate speech became common in the mainstream media and was adopted as the main political discourse by most political parties.
 3. The Pancyprian Confederation of Disability Organisations KYSOA raised concerns that the austerity agenda, as a means of addressing the economic crisis resulting from the pandemic, is impacting negatively on de-institutionalisation and independent living. The Confederation stated that the need for independent living became more obvious during the lockdown, when half of the victims of the pandemic in Europe were people living in closed institutions and homes. In Cyprus, people with disabilities and chronic illnesses were the first to have to lock themselves in the house in order to preserve their health and that of their family members and were more negatively affected by the impact of isolation, the rise in domestic violence, the degradation of healthcare, the lowering of their income, the suspension of operation of essential services to them, educational inequalities and increasing poverty and unemployment. In order to address those issues, the Confederation is submitting a comprehensive proposal for the implementation of the right of persons with disabilities to independent living. The recommendations put forward include calculations and comparisons of costs of institutionalisation versus de-institutionalisation and a comprehensive legislative framework for the implementation of an adequately funded de-institutionalisation strategy through the reallocation of funds currently expended on institutionalisation.⁵⁴⁶
 4. The Confederation of Organisations for Persons with Disabilities KYSOA reported that people with intellectual disabilities who participated in the supported employment schemes and were instructed to stay at home during the lockdown received the humiliating compensation of EUR 30 to EUR 50 for two months. Most people with intellectual disabilities employed under the programme of supported employment were forced to stay at home during the COVID-19 lockdown; during this period, no salary was paid to them. The Confederation reported that the Ministry of Labour, Welfare and Social Insurance had issued a circular encouraging people with disabilities who were forced to refrain from work, to apply for the loss of wages benefit, without explaining that that would lead to a reduction in their minimum

⁵⁴⁵ Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 4](#)', commissioned by the Fundamental Rights Agency of the EU, June 2020; Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 3](#)', commissioned by the Fundamental Rights Agency of the EU, May 2020.

⁵⁴⁶ Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 4](#)', commissioned by the Fundamental Rights Agency of the EU, July 2020.

guaranteed income. Those who applied received benefits that were often equal to one third of the amount subsequently deducted from their minimum guaranteed income. Other people with disabilities reported to the Confederation that their minimum guaranteed income was suspended during lockdown without any warning or explanation given. Many persons employed under the supported employment scheme were informed by their escorts that the application for a benefit for loss of wages during lockdown was a trap and would lead to deductions of amounts much higher than the benefit or even indefinite suspension of their minimum guaranteed income. As a result, they refrained from applying for this benefit. Many of the people with intellectual disabilities who returned to work after the lockdown received only 50 % of their salaries, whilst others had their employment terminated on the justification that the workspace is limited or that the circumstances that had arisen in the post-COVID-19 period led to a reduction in their volume of work and there was no longer any work for them to perform.⁵⁴⁷

5. The appointment of a new Ombudsman in 2017 revealed several systemic problems with the correct transposition of Article 13 of the Racial Equality Directive. The qualifications required for a person to be appointed Ombudsman, and automatically head of the Equality Body, provide no guarantee that the specialised body will perform its functions effectively or independently. There is no requirement for the Ombudsman to possess any qualifications or experience, no obstacles to politically exposed persons being appointed and no duty to exclude conflicts of interest, thus paving the way for the Executive to appoint a person that serves the political agenda of the President at the time. There is no legal requirement for the specialised body to publish its reports or to publish data about complaints received, allowing the institution to keep its activities away from the public eye. There is currently no information about the number of complaints received or handled in 2015 and 2016; the statistical data for 2017, 2018 and 2019 is rather basic in comparison with the previous years and unclear, as it covers the entire spectrum of the Ombudsman's mandate rather than the Equality Body mandate.
6. It is not clear whether the Equality Body continues to face budgetary issues as it did in previous years. The current Ombudsman no longer supplies information about its budget or personnel, annual activity reports containing detailed statistical data are no longer published and there does not appear to be any equality-related activities. Considering this new situation, it is no longer possible to evaluate the extent of this problem.
7. The current Ombudsman does not appear to accept complaints from organisations representing victims or from other persons on behalf of victims.
8. In the absence of statistics from the Equality Body, which are no longer published, there is no equality data whatsoever at national level. The courts do not maintain statistical records of decisions issued.
9. Since its inception in 2004, the Equality Body has not issued a single binding decision or imposed any fine, resorting only to mediation or non-binding recommendations. In the case of fines, this may be partly attributed to the fact that the fines foreseen in the legislation are too low to be seen by the perpetrator as a deterrent.
10. A new law came into force in December 2017 governing the operation of NGOs, imposing several new prerequisites, formalities and demands on NGOs.⁵⁴⁸ The operation of NGOs has now become more demanding, bureaucratically onerous and expensive. Moreover, the law did not grant NGOs the necessary 'legitimate interest' in order to bring to court applications for judicial review on behalf of victims. It also failed to reverse the current practice of prohibiting NGO lawyers from appearing in court to represent victims. Organisations can only act on behalf of victims in claims

⁵⁴⁷ Trimikliniotis, N. and Demetriou, C. (2020), '[Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications, Cyprus Country Report 4](#)', commissioned by the Fundamental Rights Agency of the EU, July 2020.

⁵⁴⁸ Law Revising the Laws on Associations and Foundations and Annulling the Law on Registration of Clubs (Νόμος που αναθεωρεί τους περί Σωματείων και Ιδρυμάτων Νόμους του 1972 και 1997 και καταργεί τον Περί εγγραφής λεσχών νόμο) N. 104(I)/2017. Available at http://www.cylaw.org/nomoi/arith/2017_1_104.pdf.

for compensation before a district court. An amendment to this law introduced in the summer of 2020 led to more than 2,000 NGOs, including NGOs active in the non-discrimination field, being struck off the register of NGOs. This was an added impediment to the space of NGOs, which shrunk considerably during 2020 due to COVID-19 restrictions.

11. Litigation is not sufficiently used, owing to the cost and length of time involved; the fact that legal aid is made available only subject to insufficient means; and to the lack of awareness of the anti-discrimination laws amongst the legal profession. The sanctions foreseen in the law for discrimination are neither dissuasive nor effective. Moreover, given the fact that the Equality Body's decisions in the past were mere recommendations, victims of discrimination were, in practice, not afforded the mandatory legal protection foreseen in the directives. There is little coordination between NGOs and lawyers for effective handling of cases.
12. As a concept, positive action continues to be viewed with suspicion by the courts and policy makers alike. They appear willing to apply it only to persons wronged by the Turkish invasion (war veterans, persons with disabilities resulting from the war) as part of the national project of promoting their sense of 'victimhood', but otherwise find that it violates the equality principle enshrined in the Constitution. Under the current austerity agenda, however, positive action becomes less of a possibility in any field. Following the Labour Tribunal decision in 2008 establishing that it has no jurisdiction to hear claims of discrimination in the selection process for a job placement, the law transposing Directive 78/2000 (minus the disability component) was amended. However, the authorities failed to amend the disability law. In considering an appeal against the first instance decision of the tribunal, the Supreme Court disagreed with the tribunal's findings as regards its jurisdiction, but did not explicitly rule that the Labour Court has jurisdiction to try all discrimination cases, irrespective of whether an employment relationship exists or not.
13. There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination. Nor is there any law that imposes a general public duty of anti-discrimination on authorities. Many complaints directed against various Government departments are simply not addressed or dealt with, without any consequences for the departments concerned, and serious instances of discrimination go unpunished.
14. In 2018, with regard to the implementation of the mechanism foreseen in Article 33 of the CRPD, the Department of Social Integration of Persons with Disability reported that the eight thematic technical committees, which were set up in 2012 and operated until 2016, were no longer in operation because the representatives of KYSOA had withdrawn. This casts doubts as to whether Article 33 of the CRPD is being implemented in Cyprus. Different working groups operated in each ministry for the purpose of coordinating and monitoring the implementation of the national action plan. An open consultation procedure was held, as the drafts of the action plan and the strategy were posted on the department's website. However, KYSOA reports that its comments on the texts were not taken into consideration.⁵⁴⁹ The department plans to promote an amendment to the legislative framework to enable the direct participation of more representatives of disability organisations in the coordination and monitoring structure. KYSOA has criticised this intended measure, which it interprets as an attempt to sidestep KYSOA and to reduce its representation, pointing to the legal provisions that render consultation with KYSOA mandatory. KYSOA also alludes to the fact that five out of their eight member organisations have over 1 000 members, rendering KYSOA the largest representative body of persons with disability in Cyprus.⁵⁵⁰
15. In 2017, the latest collapse of the peace talks aimed at resolving the Cyprus problem gave fresh impetus to demands by Turkish Cypriots to restore their constitutional

⁵⁴⁹ Letter from KYSOA to the Minister of Labour, Welfare and Social Insurance, President of the Pancyprian Council of Persons with Disabilities, 31 August 2017.

⁵⁵⁰ Letters to the FRANET contractor from the Department of Social Integration of Persons with Disabilities and KYSOA.

rights, which they were deprived of as a result of the 'doctrine of necessity'. Faced with a problem that increasingly looks 'unresolvable', Turkish Cypriots are now more inclined to resort to litigation at national and European level to claim their rights. The tension generated by the protracted conflict between the Greek Cypriot and Turkish Cypriot communities and the underlining human rights issues which ensue as a result were also flagged by the UN Committee on the Elimination of Racial Discrimination in its 2017 country report on Cyprus.⁵⁵¹

16. In the 2016 parliamentary elections, the neo-Nazi party ELAM⁵⁵² entered Parliament for the first time, having won 3.71 % of the votes and securing two parliamentary seats. This result marked an increase of 2.6 % in the number of votes it won in the previous elections. The negative impact of ELAM's entry into Parliament became apparent a few months after the elections, when it proposed that the Cypriot referendum of 1950, which had decided overwhelmingly in favour of union with Greece, be celebrated in schools. ELAM's proposal was accepted and adopted, with only the communist party voting against it. This development prompted the Turkish Cypriot leader Mustafa Akinci to withdraw from the negotiations for the resolution of the Cyprus problem, causing the peace process to collapse. This series of events has since topped the political agenda and discourse, with one side blaming the other for the collapse of the peace talks and for allowing ELAM to 'score points'. There are also concerns about the heightened tensions resulting from increased far-right activity. Since it gained seats in Parliament in 2016, ELAM is afforded ample time by the mainstream media to disseminate xenophobic and Islamophobic views. During the 2017 electoral campaign for the presidential election, which took place in January 2018, ELAM's views against migrants, Muslims and homosexuals were paraded in all the major media outlets as part of the race for the presidential election, which ELAM contested with its own candidate. Complaints submitted to media monitoring bodies about TV channels disseminating ELAM's racist views were all rejected on the grounds that the TV channels are obliged by law to equally present the views of all candidates. ELAM's candidate got 5 % of the votes in the presidential election in January 2018.
17. There has never been any Roma inclusion strategy, nor has there been an action plan to combat discrimination on any ground.
18. No equality training is offered to state bodies, local governance officials, law enforcement officers, judges or lawyers. A proposal for setting up a judicial training academy was adopted in July 2020, but it had not been set up by the end of 2020.
19. Judicial practice on discrimination claims often deviates from the letter and the spirit of the directives, rejecting discrimination claims by using the 'reasonableness' test. The use of this test has led the courts to reject direct discrimination claims that were thought to be 'reasonable', in breach of the equality directives, which allow only a limited range of exceptions.
20. Regarding discrimination at the workplace, the inequality of power between the employers' lobby and workers' unions, despite the apparent strength of the latter, is accentuated by the fact that Cyprus has a very large SME sector, whose individual members generally lack professionalism and awareness on issues of labour rights and discrimination. This sector is one of the worst hit by the economic crisis and the violation of workers' rights has become commonplace. The pandemic exacerbated this problem, as unemployment hit record levels and labour rights were further eroded.
21. The national specificities of Cyprus are the result of what can be termed country-specific structural problems. These consist mostly of issues deriving from the unresolved Cyprus problem, which creates problems of discrimination resulting from the de facto division of the country e.g. the failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish Cypriots in access to property and in the exercise of various constitutional rights; the violation of Greek

⁵⁵¹ UN Committee on the Elimination of Racial Discrimination (2017), *Concluding observations on the twenty-third and twenty-fourth periodic reports of Cyprus*, 12 May 2017. Available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CYP/INT_CERD_COC_CYP_27472_E.pdf.

⁵⁵² The initials stand for 'National Popular Front', in Greek: Εθνικό Λαϊκό Μέτωπο.

Cypriot rights by Turkey; and a certain tendency of the authorities and the courts to 'seek revenge' for the Turkish invasion of Cyprus. The Cyprus problem can also be blamed, at least partly, for a general lack of tradition in equality issues deriving from the 40-year-old persistent predominance of the Cyprus problem in the public sphere. Greek Cypriot resentment of the constitutional quota system for Turkish Cypriots in the public sector, the history of ethnic conflict and the continuous application and expansion of the 'doctrine of necessity' by the authorities and the courts subordinate equality issues to political expediencies and place a disproportionately strong emphasis on state sovereignty.

22. The Law on Presidential Elections does not safeguard the right of persons with disabilities to vote with the assistance of a person of their choice. Instead, it provides that persons who cannot vote by themselves may ask for the assistance of the person presiding over the particular voting centre but does not provide for the right of persons in need of assistance to vote with the help of persons of their choice. This provision, which has been in place since 1959 without any amendments,⁵⁵³ is not in line with the right to a secret ballot protected by Article 29(a)(ii) of the CRPD. During the presidential election of January 2018, KYSOA received complaints that blind persons were not allowed to enter the booth with the person of their choice. On one occasion, a person with visual impairment reported to KYSOA that the chairperson of the voting centre, who was assisting her with voting, in fact voted on her behalf for a candidate who was not the candidate of her choice. As regards the second round of elections on 4 February 2018, KYSOA received reports that some blind people did not show up because of the problems they had encountered when exercising their voting rights during the first round. Other blind persons who tried to vote with an escort of their choice were turned away. KYSOA points out that there are hundreds, if not thousands, of persons with disability who never voted in any elections and did not vote this time either due to problems of accessibility, including accessibility to information, this being particularly the case of persons residing in institutions and persons with intellectual disabilities.
23. There is no labour inspectorate to monitor the working conditions of employees in order to identify discrimination on grounds other than gender.

⁵⁵³ Law on Elections (President and Vice President of the Republic) of 1959 (*Ο περί Εκλογής (Πρόεδρος και Αντιπρόεδρος της Δημοκρατίας) Νόμος του 1959*) N. 37/1959, Article 29(6). Available at www.cylaw.org/nomoi/enop/non-ind/1959_1_37/index.html.

12 LATEST DEVELOPMENTS IN 2020

12.1 Legislative amendments

There were no relevant legislative amendments in 2020.

12.2 Case law

Relevant discrimination ground: Age

Name of the court: Administrative Court

Date of decision: 25 November 2020

Name of the parties: Kyriakou et al v. Republic of Cyprus through the Ministry of Justice and Public Order and the Chief of Police

Reference number: 650/2018

Link: <http://cylaw.org/cgi-bin/open.pl?file=administrative/2020/202011-650-18.html&qstring=%E7%EB%E9%EA%2A%20and%20%E9%F3%EF%F4%E7%F4%2A>

Brief summary: On 25 November the Administrative Court rejected a recourse filed by four police officers against the rejection of their application to return to work following pre-retirement leave on the basis of a new law that came into force whilst they were on pre-retirement leave that extended retirement to 61 years and six months of age for high-ranking police officers, instead of retirement at 61, which had been the applicable legal provision until then. The extended service would result in additional retirement benefits. The applicants applied to the court in 2013 to rule against this rejection and in 2017 the administrative court annulled the rejection, ruling that there was no definitive decision by the competent body, namely the Chief of Police, rejecting their application to return to work. Following this decision, their application to return to work was re-examined and rejected again, this time by a decision of the Chief of Police. The police officers applied to the court again, seeking to reverse the decision that prohibited their return to work. Counsel for the applicants cited a number of arguments in favour of annulling the rejection decision of the Chief of Police, namely that the rejection was inadequately justified and that it infringed the court decision of 2017 in favour of the applicants. Counsel for the applicants additionally raised the issue of equal treatment, as guaranteed in the Constitution, Article 28 of which prohibits discrimination in all fields and on all grounds, arguing that the law should apply to all, irrespective of whether they were serving pre-retirement leave or were still in the service. Counsel for the Republic argued that the differential treatment was legitimate because it was applied to essentially different circumstances, since the posts of persons serving a pre-retirement leave are considered vacant. The court rejected all arguments of the applicants and validated the decision of the Chief of Police to prohibit the applicants from returning to service to serve an extra six-month period. The argument of the applicants regarding unequal treatment on the ground of age in the law was rejected because, although discussed in the final address of counsel for the applicants, it was not listed in the application as a reason for annulling the decision. According to judicial precedent, the court will not examine issues that are not explicitly set out and fully justified in the recourse and the mere invocation of a constitutional violation will not suffice. Given that all the other reasons were found to be insufficient to annul the rejection of the applicants' claim, the rejection was confirmed.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Cyprus
Date: 31 December 2020

Title of the law: Law on Persons with Disabilities N. 127(I)/2000 as amended by: Law N. 57(I)/2004; 72(I)/2007; 102(I)/2007; 63(I)/2014; 22(I)/2015

Abbreviation: Law N. 127(I)/2000 as amended

Date of adoption: 2000

Latest amendments: 2015

Entry into force: 2000

Web link: www.cylaw.org/nomoi/enop/non-ind/2000_1_127/full.html

Grounds covered: Disability

Civil law

Material scope: Public and private employment

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, duty to provide reasonable accommodation in employment and beyond

Title of the law: The Constitution of the Republic of Cyprus

Abbreviation: Constitution

Date of adoption: 16 June 1960

Latest amendments: 2013

Entry into force: 16 August 1960

Web link: www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html

Grounds covered: Community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever

Civil and administrative law

Material scope: Mostly the public sector, although there is legal authority establishing that constitutional rights can be actionable per se against individuals [*Yiallourou v. Evgenios Nicolaou* (2001), Supreme Court case, Appeal No. 9331, 8 May 2001]

Principal content: General prohibition of discrimination on several grounds and in unspecified fields; declaration of rights along the lines of the ECHR

Title of the law: The Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004, as amended by Law N. 147(I)/2006

Abbreviation: Law 59(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2006

Entry into force: 1 May 2004

Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_59/full.html

Grounds covered: Racial/ethnic origin

Civil law

Material scope: Social protection; medical and medicinal care; social provisions; education; access to goods and services, including housing

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Title of the law: The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004, as amended by Law Nos. 50(I)/2007 and 86(I)/2009

Abbreviation: Law 58(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2009

Entry into force: 1 May 2004

Weblink: http://www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html

Grounds: Racial and ethnic origin, religion or belief, age, sexual orientation

Civil law

Material scope: Conditions of access to employment; access to vocational orientation and training; working conditions and terms of employment; membership of trade unions
Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Title of the law: The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004

Abbreviation: Law 42(I)/2004

Date of adoption: 31 March 2004

Latest amendments: 2006

Entry into force: 1 May 2004

Weblink: www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html

Grounds covered: Race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation

Civil law

Material scope: Combating of racist discrimination and 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; promotion of equality of opportunity 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; access to goods and services, including housing

Principal content: Creation of specialised body

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Cyprus
Date: 31 December 2020

Instrument	Date of signature	Date of ratification	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 on Human Rights (ECHR)	16.12.1961	06.10.1962	None	Yes	Yes
Protocol 12, ECHR	04.11.2000	30.04.2002	None	Yes	Yes
Revised European Social Charter	03.05.1996	27.09.2000	None	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	19.12.1966	02.04.1969	None	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	04.06.1996	None	N/a	Yes
International Covenant on Economic, Social and Cultural Rights	09.01.1967	02.04.1969	None	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	12.12.1966	21.04.1967	None	Yes	Yes
ILO Convention No. 111 on Discrimination	02.02.1968	02.02.1968	None	Yes	Yes

Instrument	Date of signature	Date of ratification	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?
Convention on the Rights of the Child	05.10.1990	07.02.1991	None	Yes	Yes
Convention on the Rights of Persons with Disabilities	03.03.2007	17.02.2011	Yes	Yes	Yes

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