

**Network on the Free Movement of Workers
within the European Union**

Cyprus

Report 2006

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INTRODUCTION

Since Cyprus became a full member of the EU on 1st May 2004, the most important legislation pertinent to the free movement and residence of EU citizens in Republic of Cyprus is: Law 92(1)/2003 on the *Free Movement and Residence of EU Nationals and their Families*; Administrative Directive 460/2004 pertaining to the free movement and stay of citizens of EU member States and their family members. It came into force on 30.4.2004 and introduced the forms to be completed by residence applicants; Law 126(1)/2004 for the *Free Movement and Residence of Citizens of Member States and their Family Members (Amendments)* that amended some provisions of Law 92 (1)/2003; Aliens and Immigration Laws 1972-2002 and the Regulations passed by Parliament to implement those laws; and Directives 2004/38 and 2003/109.

By the end of 2006 there was still a need for the transposition of Directive 38/2004 of the European Parliament and Council of 29.4.2004 in order to remedy some remaining weaknesses in the existing legislation. To illustrate, the said Directive provides that “family members” should include the “declared partner if the legislation in the member State receiving the EU citizen, recognizes the relationship of a declared cohabitation as enjoying the same rights and privileges as marriage” (para.5). As far as it has been possible to ascertain, until Law 7 (1)/2007 (see below) was enacted in February 2007, a relationship of declared cohabitation in Cyprus was not equivalent to marriage as far as fatherhood is concerned but it was as far as property is concerned. In other words, if a cohabiting couple had a child of their own it was considered to have been born out of wedlock. Consequently, an EU worker who applied for residence permit for his third-country cohabitee would not have been granted one even if they had a child together. Two other legislative provisions that needed to be abolished at the end of 2006 were (a) the whole notion of a residence ‘permit’ one had to apply for and be issued with, and (b) the requirement of an Employer Confirmation Certificate that had to be officially stamped by the Department of Labour of the Ministry of Labour and Social Insurance in support of an application for a residence permit. The weaknesses mentioned have been corrected by Law 7(1) of 2007 (see below).

At the end of 2006, two relevant Bills were pending in Parliament that were passed by Parliament in January and February of 2007 respectively. The first, *Law 7(1) of 2007 Concerning the Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus* has transposed Directive 2004/38/EC – henceforth to be referred to as Law 7(1)/ 2007. The second Bill pending at the end of 2006, revamped the aliens and immigration legislation and was approved by the House of Representatives on 1st February 2007. The *Aliens and Immigration (Amending) Law 8(1) of 2007* has brought Cyprus legislation into line with existing EU legislation regarding long-term residents from third countries. Henceforth, it will be referred to as Law 8(1)/2007.

Of course, Laws 7(1)/2007 and 8(1)/2007 were long overdue. During the period October-December 2006, the parliamentary Internal Affairs Committee dealt with the Bill transposing Directive 38/2004 on EU citizens’ rights to move freely and reside in Cyprus, taking note of petitions by the Ministry of Interior, the Ministry of Labour and Social Insurance, as well as the Office of the Attorney General, the Harmonisation Co-ordinator, the Movement for Equality, Support and Anti-racism, and the U.N High Commissioner for Refugees.

The members of the Parliamentary Internal Affairs Committee who belong to the Rally Party tried unsuccessfully to include provision in the pending legislation that would make it possible for EU citizens and their families to appeal to another authority against a decision of the Proper Authority to grant them a work and residence permit, for example. The position of the Attorney General to that suggestion was that in order to comply with current practice in the EU, a review of the decisions of the proper Authority (The Minister of the Interior (Art. 2 of Law 7(1)/2007)) ought to be carried out by another organ that is completely independent of the Proper Authority. The Ministry of Interior undertook to prepare and table in Parliament the necessary legislation that would create such an appeal body within three months and, in view of that undertaking, the Parliamentary Internal Affairs Committee

withdrew its decision to amend the legislation proposed by the government. The main changes and important provisions introduced for EU citizens and long-term residents from third countries introduced by Laws 7(1)/2007 and 8(1)/2007 respectively are considered next.

Law 7(1)/ 2007, transposing Directive 2004/38

On 9 February 2007, Law 7(1) of 2007 was published in the Government Gazette and replaced all previous legislation (i.e. EEC Directives 64/221; 68/360; 72/194; 73/148; 75/34; 75/35; 90/364; 90/365; 93/96 and Regulations 1612/68; 1251/70; 312/76; and 2434/92). Drawing on the supplementary report to Parliament of the Parliamentary Internal Affairs Committee that was responsible for presenting the Bill in Parliament, *the law aimed to:*

- Simplify and strengthen the right of EU citizens to move and reside freely in Cyprus.
- It makes it easier for family members of such EU citizens to exercise their own right of movement and settlement in Cyprus, thus contributing to the family bond.
- The requirements and procedures for exercising the above-mentioned right are simplified. However, it should be noted in this context that an EU citizen's right to move and reside freely over three months is subject to certain conditions to ensure that those entitled to the right will not be an unreasonable burden on the social welfare system of the Republic of Cyprus.
- It establishes the right to permanent residence for EU citizens after continuous and uninterrupted residence which, once granted, is no subject to any conditions.
- Restrictions that can be imposed on the exercising of the right of free movement and residence for reasons of public order, safety and health are further clarified and delineated, thus protecting the right from unfettered discretion to limit the exercise of the said right.

Furthermore, *inter alia*, five major changes (and improvements) to the previous legislation regarding the right of EU citizens and their family members to move and reside freely in the territory of the Republic of Cyprus:

- a) EU citizens are no longer required to apply for and be granted a work and residence permit but are required to register their presence in the country with the Population Archive Office, to apply for and be issued with a *Residence Confirmation Document* if they stay in Cyprus for more than three months, something they ought to do by the end of the fourth month.
- b) EU citizens no longer need to apply for and be issued with an '*Alien Registration Certificate*' at the local immigration branch of the police or to have an '*Employer's Confirmation Certificate*', stamped by the Department of Labour for monitoring purposes (Department of Labour, Ministry of Labour and Social Insurance, EURES, 2005, p. 2) but simply to provide details of their employer in completing the form MEU1A.
- c) Family members of an EU citizen who are not citizens of an EU member State have a right of residence and permanent residence, irrespective of their nationality.
- d) A partner, whether male or female, of an EU citizen who has a continuous relationship with him/her which adequately documented enjoys the same right of entry and free movement and residence as family members.

It should also be noted in this context that Article 33(1) of Law 7(1) of 2007 provides that EU citizens who are the subject of an expulsion order can appeal to the Supreme Court, as provided by Article 146 of the Constitution of Cyprus. Law 7 (1) of 2007 that has transposed Directive 38/2004, is also more specific than the earlier legislation regarding the reasons and safeguards for restrictions on the right of a citizen of an EU member State to enter and reside in Cyprus on public order, safety and health. For example, it states that any measures taken for public safety must comply with the principle of proportionality and to be based solely on the behaviour of the individual's which must constitute a real, current and continuous serious threat against a fundamental public interest (Art. 29 (3) (a)) and cannot be based

on general prevention grounds or on grounds unconnected with the case in question (para.3(b)). Furthermore, one's prior convictions do not of themselves justify the adoption of measures that limit an EU citizen's right to entry and residence in the Republic of Cyprus (Art. 29(3)(b)).

In addition, if deemed necessary, the competent authority can request from the government of the country from which the person concerned comes to provide details of his/her criminal record but such information cannot be requested on a systematic basis (Art. 29(4)). Before a decision is made by the appropriate authority to expel an EU citizen or family member, it should take into consideration the following about them: how long they have resided in the Republic of Cyprus, their age, state of health, family and financial situation, social and cultural integration into the republic and the strength of their bond with their own country of origin (Art. 30(1)).

As far as protection against expulsion is concerned, Article 30 states that a decision to expel an EU citizen is not made unless such a decision is based on serious reasons concerning public safety and as long as the persons concerned have been resident for the previous ten years or are under-aged (except where the expulsion is in the best interest of the child, as provided in the U.N Treaty for the Rights of Children that was ratified on 20th November 1989 with Law Regarding the Rights of Children (Ratifying) [Laws 243/1990 and 5(iii)/2000].

The diseases that constitute serious threat to public health are detailed in Article 31(1) and it is further made clear that if such diseases cease to apply three months after entering the Republic, they cannot be reasons for an expulsion order (31(2)) but the Appropriate Authority can, if there are serious indications justifying it, ask an EU citizen or a family member within three months of entering the Republic to undergo a medical examination (but not on a systematic basis) by the medical Services of the Ministry of Health in order to ascertain if they suffer from any of the diseases mentioned at no financial cost to themselves (31(3)).

The persons concerned are informed: fully in writing about the decision to expel them and in a way that enables them to understand the content of the decision and its consequences for them (Art. 32(1)); about the public order, safety or health grounds on which the decision is based (32(2)); the authority to which they can appeal to the Supreme Court under Article 146 of the Constitution and the time limit within which they need to do so (32(3)). No one can be expelled less than one month after they have been notified. However, in adequately documented urgent cases, the appropriate authority can order the immediate expulsion of the person concerned (32(3)). If the appeal to the Supreme Court is accompanied by an interim order for a stay of execution of the expulsion order, a person cannot be physically removed from the republic until their interim application has been decided (33(2)).

An EU citizen or a family member who has been expelled can be prohibited from their entry into the Republic during their appeal process unless the person concerned wishes to defend him/herself in court during the trial or their presence is deemed necessary in the best interests of justice (Art. 33(3)). The same article also provides that a person who has been expelled can be prohibited from entering the Republic if their presence will be a serious threat to public order and safety or if the appeal concerns an entry prohibition decision (Art. 34(1)). The appropriate authority ought to decide an appeal against expulsion within six months (34(2)) and can, also, issue an expulsion order as a measure consequent upon and in relation to a term of imprisonment but only if the conditions provided in Articles 29, 30 and 31 are satisfied (Art. 35). Finally, during the enforcement of an expulsion order the Appropriate Authority should check whether the person involved continues to constitute a real threat to public order or public safety (35(2)).

Part VIII of Law 7(1)/2007 provides that the appropriate authority publicises through the local and national media information about EU citizens' rights and obligations (Art. 36). Interestingly enough, Article 37 states that the appropriate authority can deny, terminate or recall any of the rights recognised in cases where there is abuse of a right or deception, including a fictitious marriage as long as such decisions are based on the proportionality principle and comply with the procedures provided in Articles 32 and 33. Finally, the Council of Ministers can issue Regulations for the better implementation of the Law (Art. 39).

The structure and contents of Law 7(1) of 2007

Briefly, the structure and content of Law 7(1) of 2007 are as follows:

- Part I General provisions (Art. 1-4).
- Part II Entry and departure rights (Art. 5-7).
- Part III The right to residence (Art. 8-13)
- Part IV The right to permanent residence (Art. 14-19).
- Part V Common provisions for the residence and permanent residence rights (Art.20-24).
- Part VI The retention of the right to residence and permanent residence (Art. 25-28).
- Part VII Restrictions on the right to entry and the residence right on grounds of public order, public safety or public health (Art. 29-35).
- Part VIII Final Provision (Art. 36-39). (Law 7(1)/2007 also includes five appendices.)

CHAPTER I. ENTRY, RESIDENCE AND DEPARTURE**A. Entry***Texts in Force*

In implementing Directive 2004/38/EC, Article 5(1)/ of Law 7(1)/2007 states that, applying the provisions regarding travel documents of Regulation 562/2006, every national of a member State has a right to move freely and to reside in the Republic of Cyprus upon the presentation of a passport or identity card. The passport/identity card requirement does not apply if the EU citizen is in possession of a Residence Form issued in a other EU country (Art.(5)(3)(b))

B. Residence*Texts in force*

At the end of 2006, the legal situation was the same as for 2005. However, by virtue of Law 7(1) of 2007, a 'Residence Permit' is no longer required but a '*Residence Registration Confirmation Document*' that is issued when EU citizens or their family members apply to register with the Population Archive. Focusing on the provisions of the recent law, Article 8(1) states that every EU citizen has a right to reside in the Republic of Cyprus for no more than three months without having to satisfy any condition other than to be in possession of a valid passport or identity card. The right to residence over three months applies to EU citizens in paid or unpaid employment (Art. 9 (1) (a)) or who have taken out health insurance in the Republic of Cyprus and during their residence have enough financial means for themselves and their family members so as not to be a burden on the State social welfare system (Art. 9(1)(b)).

For the purposes of the present report, however, regarding residence, the main changes introduced very early in 2007 by the aforementioned law are:

- The right to residence also applies for family members who are third-country nationals (Art. 8(2) and who are, also, entitled to permanent residence for a period of ten years that is automatically renewable (Art. 18(1)).
- In the case of EU citizens who are in Cyprus to pursue studies or to undertake professional training, only their spouse and dependent children have residence rights (Art. 9(3)).
- EU citizens are only required to register themselves with the Population Archive Office within four months of their arrival (Art. 10(1)).
- An Employer's Confirmation Certificate is no longer required in order to register with the Population Archive Office.
- Article 11(2)(b) provides that failure to apply for residence within four months and to obtain Residence Authorisation carries a maximum penalty of 1,500 Cyprus pounds (i.e. approx. 2,550 euros). This is half of the penalty that applied before Law 7(1) of 2007 was enacted.
- Family members of an EU citizen are entitled to permanent residence if they have resided in the Republic of Cyprus for a continuous and uninterrupted period of five years (Art. 14(2)). The term "continuous and uninterrupted residence" is defined in Article 14(3).
- Certain categories of persons described in Article 15 can be granted permanent residence in less than five years of continuous and uninterrupted residence.
- The right to residence and permanent residence provisions of Law 7(1) of 2007 apply for the free areas of Cyprus that are under the control of the Republic of Cyprus (Art. 20).

- A police person on duty or the Proper Authority can demand of an EU citizen or their family members to produce his/her passport or identity card or the Residence Registration Confirmation Document (Art. 24(2)). Failure to do so carries a maximum penalty of 1,000 CY£ (1,724 euros).

Under the new law, EU citizens wishing to stay in Cyprus for over three months must: either be in paid or unpaid employment (Art. 9 (1)); or have sufficient financial means so as not to become a burden on the social security system of the country (9 (1) (a)); have a comprehensive medical insurance cover in the Republic of Cyprus (9) (1) (b) or are enrolled in a private or education institution approved by or registered with the government to undertake studies or specialist training courses and full medical insurance and sufficient financial means so that they themselves and their family members will not become a burden on the social security system of the country (Art. 9 (1) (c)); or, finally, are family members accompanying or who arrive to join an EU citizen who satisfies the above-mentioned criteria (ibid.).

Article 9(4)) of Law 7/2007 provides that a national of a Member State cannot be deprived of his/her status as a worker in paid or unpaid employment simply because he/she is no longer being employed because: he/she is temporarily unable to be in employment as a result of illness or accident (para. (a)); or has been registered as involuntarily unemployed after being employed for more than twelve months and is a person in search of employment with the Department of Labour (para. b)); If a worker has been registered as involuntarily unemployed on the basis of a contract for less than one year or became unemployed within the first twelve months (on the basis of testimony to that effect by the Department of Labour) he/she retains the status of a worker for less than six months. The status of a worker in paid or unpaid employment is retained if a worker has become involuntarily unemployed and is pursuing a professional education course of study that is relevant to his/her previous employment (Art. 9(4)(d)). The law provides that it is the Department of Labour that will decide whether a worker has been made “involuntarily unemployed” and is “in search of employment” (Art. 9(5)). However, it should be noted here that it is by no means clear how the phrase “involuntarily unemployed” is to be interpreted.

It should be noted that *the legal situation regarding ‘residence’ at the end of 2006 was the same as detailed in the 2005 report* and is not reproduced in this report except where it is deemed necessary and then only briefly. Suffice it here to say that the issuing of a residence permit and relevant provisions are to be found in Article 7 of Law 92(1)/2003.

Regarding the requirements in 2006 for the issuing of a residence permit or a residence document, these are stated in Article 8. This is in accordance with Article 14 of Directive 38/2004, thus avoiding the possibility of different interpretations or practices by government officials that could unjustifiably hinder EU citizens and their family members from exercising their right to reside and work freely in Cyprus. It should also be noted that the Employer’s Confirmation Statement Certified by the Department of Labour (Abolished by Law 7(1)/2007) is not a requirement in conformity with either former Regulation 1612/68 or Directive 2004/38/EC. It is a simple procedure, copied from relevant legislation in the United Kingdom, the aim of which is to safeguard the rights of EU workers in Cyprus by ensuring that the person names as ‘employer’ is indeed an employer. Article 9 (1) provides for a temporary residence permit but its reference to “services” is not clear and needs to be clarified. Of course, an EU Member State can exercise his/her right to residence without the need to obtain a permit (Art. 10).in the case of,

An employer providing employment to a national of an EU Member State who does not have the required residence permit is committing an offence punishable with a financial penalty not exceeding 500 pounds (Art. 13 (1)). Similarly, a national of an EU Member State who is gainfully employed but has not obtained a residence permit or does not possess an employer statement of intention to employ him that has been officially certified by the Department of Labour is guilty of an offence punishable with a maximum fine of 500 pounds (Art. 13 (2)). It should be noted in this context that the authorities in Cyprus are reluctant to prosecute EU citizens or their dependents found to be working without a permit and, instead, advise them to obtain the permit required as soon as possible. For comparison pur-

poses, the Population Archives Law of 2002 provides that Cypriot nationals who fail to register with the population archive or to apply for an identity card, commit an offence punishable with a fine of up to 1,500 Cyprus pounds (2,586 euros) or imprisonment of three years or both. Incidentally, EU citizens need to register with the Population Archives and to obtain a residence permit. Thus, the sanction imposed on Cypriots who violate the Population Archives Law is stricter than in the case of EU citizens who work in Cyprus without a resident permit or an officially-approved Employer's Confirmation Certificate.

Article 14 of Law 92(1)/2003 provides the Minister of the Interior¹ with the discretion to deviate from the provisions of Part II of Law 92 (1)/2003 mentioned above if, in his/her reasonable judgment, such a deviation is warranted by reasons of public security, public safety or public health.

Article 15 (Part III of Law 92 (1)/2003) provides for the right of free movement and residence in order to provide or receive unpaid services to nationals of an EU Member State (para.1), along the same lines as for other categories of workers. A right to settle in the Republic of Cyprus is provided in Article 15 (2) (a-b) to the same categories of persons, irrespective of their citizenship, as for those related to or maintained by or who had been living with in the country of previous residence of workers mentioned above. Furthermore, again, an effort should be made to facilitate the entry of such persons to Cyprus (Art. 15 (3)). Finally, as in the case of workers and their dependents, those who exercise their right to provide or to receive unpaid services and their dependents enter and exit the Republic of Cyprus by producing their valid passport or identity card (Art. 16). Persons who settle in Cyprus in order to provide or to receive unpaid services and their dependents, are entitled to permanent residence (Art. 17).

Nationals of EU Member States who provide or receive paid services have a right to a residence permit for the duration of the services concerned (Art. 19) and so do their dependents (Art. 19). No residence permit is issued if the duration of the services concerned is up to three months, the EU national involved remains on the basis of his valid passport or identity card with which he/she entered Cyprus but has to report his/her presence in the country to the competent authority of the Republic within eight days of his/her arrival (Art. 20 (2)).

The same residence conditions apply for the issuing and renewal of a residence permit to take up unpaid activity (Provided in articles 21 and 22) as for the issuing and renewal of a residence permit to a worker from an EU Member State to undertake paid employment as provided in Part II of the law (see above). If a person whose residence in Cyprus is under the provisions of Part II of the 92(1)/2003 Law, remains on the territory of the Republic for more than three months since he/she entered the country without having submitted the necessary documents in order to be issued with a residence permit or after the residence permit issued him/her under articles 20 and 21 of the Law has expired, is guilty of an offence punishable with a fine of up to 3,000 pounds. Finally, the Minister of Interior has discretion under Article 24 to deviate from the provisions in Part II if, in his reasonable judgement, such deviation is warranted by reasons of public order, public security or public health.

At the end of 2006, twenty-eight months after Cyprus joined the EU, there was no case law in Cyprus in the wake of the jurisprudence of the European Court of Justice in *Boucherau* and later judgements implementing serious restrictions on the public order exception. As far as it has been possible to ascertain, an EU citizen will be deported from Cyprus if, under the Schengen Convention he/she is a health to public safety, public security or public health. Finally, Law 126 (1) of 2004 that amended the 2003 Law on the Free Movement and Residence of Workers and their Dependents, *inter alia*, reduced the fine provided for being employed without a residence permit from 3,000 to 500 Cyprus pounds.

Part IV of Law 92(1)/2003 provides for the right to permanent residence after being involved in unpaid service in the Republic of Cyprus.

1 "Minister" means the Minister of the Interior in his capacity a First Immigration Officer under the Aliens and Immigration Laws of 1972 until 2002 and the regulations issued under the same laws, and includes whoever else has been so authorised to act for the same purpose (Law 92 (1)/2003, Part I, Introductory Provisions, art.2).

A written residence permit is issued to those entitled after they have applied for one, is valid for at least five years in all the territory of the Republic, it can be interrupted for up to six continuous months or for longer if one is discharging one's obligation for military service (Art. 30 (1)-(3)) and can be renewed upon payment of the fees stated in Article 12 (Art. 31). The category of persons mentioned in Part IV are committing an offence punishable with a maximum fine of 500 pounds if they remain in the territory of the Republic after two years have lapsed since being granted the right to permanent residence or if the permit issued them under Article 30 has expired (Art. 32). Part III of Law 92 (1)/2003 gives the Minister of Interior discretion to deviate from the provisions of Part IV.

Part V of Law 92 (1)/2003 concerns the right to residence both of paid and unpaid workers who have ceased their professional activity (Form MEU 4). As in Parts II-IV, the issuing of a written residence to this category of workers, their family members and dependents, its duration, documentation required, renewal, fees to be paid, are detailed in Articles 37-40.

Article 41 makes it clear that the provisions of Part V of the Law do not affect the existing legal provisions pertaining to the purchasing of a second house, Article 42. states the circumstances under which the person concerned is in breach of the law, is committing an offence and the 500 pounds financial penalty provided for the offence concerned while Article 43 refers to the discretion of the Minister of the Interior to deviate from the provisions of Part V.

Part VII (Art. 54) of Law 92 (1)/2003 provides for a right to residence by citizens of EU Member States who do not have a right to residence under other provisions of Community Law as well as their spouses and their own or their spouse's dependents.

Article 56 provides that EU nationals persons who have exercised their right to residence are subject to the same requirements [Provided in Art. 5 and 6 of the Law] when entering or exiting the Republic as the previous categories of workers already discussed, can apply for residence on the basis of Article 37 and can take up paid or unpaid activity (Art. 55). The provisions of Part VII of the Law do not affect the legal provisions pertaining to the purchase of a second house in Cyprus (Art. 61).

Regarding the provisions of *job-seekers* in the Republic of Cyprus, a 2006 survey of a representative sample of 200 EU workers in Cyprus by the Research center of Cyprus College for EURES found that prospective employees and employers are ignorant about the existence and services offered by services like EURES (p.79). It is recommended that EURES in Cyprus be strengthened to enable it to provide any assistance to incoming citizens of EU Member States wishing to work in Cyprus. In addition to lack of information, the same survey also found that EU job-seekers in Cyprus face a number of serious obstacles, namely discrimination, racism and social isolation (p. 38).

Text(s) in Force

Law 92(1)/2003 Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members; Law 121(1)/2004 Amending Law 92(1)/2003 Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members

Draft legislation

- a) Bill pending in Parliament entitled 'Law on the 'Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus';
- b) Bill pending in Parliament entitled 'Aliens and immigration (Amending Law), 2006.

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C. Departure

Texts in force

The legal situation applicable in 2006 to departure (see Articles 6, 16, 36, 55, 56) and expulsion (see Articles 68-71) remained the same as that stated in the 2005 report and is not reproduced here.

- Law 92(1)/2003 Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members; Law 121(1)/2004 Amending the Law on the Free Movement and Residence of Citizens of EU Member States and their Family Members.

Draft legislation

Bill on the "Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus" Bill; "Aliens and Immigration (Amending)".

CHAPTER II. ACCESS TO EMPLOYMENT

1. *Equal treatment in access to employment*

At the end of 2006, the same legal position applied as detailed in the 2005 and the said material is provided below with some updating drawing on a survey of EU workers in Cyprus. Interestingly enough, however, Art. 22(1) of the Bill pending in Parliament at the end of 2006 and passed into law in February 2007 states that all citizens of EU members States, their family members who are also EU citizens, as well as their family members who are third-country nationals, residing in the Republic of Cyprus and have a right to residence and permanent residence are treated the same way as Cypriot citizens in all the areas covered by the Treaty. However, the same article also states that during the first three months of their residence in Cyprus such EU citizens and their family members are not entitled to unemployment benefit any social security allowances. This apparent contradiction, however, does not constitute discrimination because Cypriot citizens are not entitled to unemployment benefit unless they have worked first for a specified period of time prior to becoming unemployed.

Texts in force

Facilitating EU worker movement to Cyprus

Regarding the competent bodies, these are:

- the *National Coordinator* who is designated by the Council of Ministers and coordinates the administrative authorities in order to promote the better application of the legislation. In addition, the National Coordinator inter alia, communicates to the Commission every two years, a report on the application of the provisions of the Laws, which contains a table of the decisions taken and a description of the main problems arising from the application of the Laws.
- the *National Focal Point* for the application of the relevant laws has been designated to be the Labour Department of the Ministry of Labour and Social Insurance. It provides information regarding the regulated professions and the “competent body” to nationals of Member States who wish to pursue a regulated profession in the Republic of Cyprus.

In order to facilitate EU worker movement to Cyprus, EURESS was set up in March 2005 by the Department of Labour within the Ministry of Labour and Social Insurance and, since August 2005, employment vacancies have been inserted electronically to the EU central EURESS database. In addition, in 2006 as in 2005, it was possible for the Employer’s Confirmation Statement (ECS), necessary for the issue of a residence permit (until January 2007 when both were abolished by legislation), to be approved and stamped locally in District Employment Offices rather than only centrally in the Department of Labour in Nicosia, the capital.

To deal with problems arising in the internal market, the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism has a SOLVIT centre in Nicosia.

A Booklet issued by the department of Labour, Ministry of Labour and Social Insurance in 2005 (at p. 8) advises EU citizens wishing to pursue a profession or an occupation which is regulated to find out, before coming to Cyprus, which are these regulated occupations/professions. The Labour Department acts as a National Focal Point for providing information on legislation and procedures with regard to pursuing regulated professions in Cyprus, as well as information on the “competent body” responsible for examining applications submitted for the exercise of a regulated profession.

Regarding the procedure, every applicant who wishes to pursue a regulated profession in the Republic submits an application to the competent body together with all the necessary certificates and other evidence; the competent body examines the application and decides in

accordance with the Laws and the legislation regulating the profession in consideration and it informs the applicant of its decision, duly reasoned, within four months from the date of presentation of the application together with all the necessary documents. In case of doubt concerning the academic recognition of qualifications, the competent body may refer to the Cyprus Council for the recognition of Higher Education Qualifications for its opinion. Finally, the applicant has the right to appeal against an act or omission of the competent body, including its failure to consider the application within the specified time limits. The appeal should be made to the Supreme Court in accordance with Article 146 of the Constitution.

A likely problem as far the procedure for pursuing a regulated profession in Cyprus is concerned is that, as far as it has been possible to ascertain, the Cyprus Council for the Recognition of Higher Education Qualifications normally takes 3-6 months to reach a decision on the academic recognition of qualifications. Consequently, the four-month limit within which the competent body has to inform the applicant of its decision may well be violated and applicants appeal to the Supreme Court.

The financial cost incurred by a worker who is a national of an EU Member State for obtaining a residence permit and for obtaining and/or having documents officially certified by the Department of Labour in order to be issued with or to have renewed a residence permit or residence document in 2006 was the same as the financial cost incurred by a Cypriot national in obtaining an identity card (Art. 12).

In 2006, a health certificate issued by a government hospital in Cyprus was required for employment in the food industry. Requiring a health certificate by such applicants is not incompatible with EC law and it has been reiterated in a number of decisions by the European Court of Justice. The issue of 'equality of treatment' of EU nationals is discussed in Chapter III below. Suffice it here to note that EU citizens are entitled to medical care, the child allowance and unemployment benefit (If, as in the case of Cypriot nationals, they have previously worked in Cyprus for at least six months). At the time of writing, The Cyprus Medical Association's campaign for the right to medical treatment for EU citizens to be extended to the private and not only to the public medical sector (*Fileleftheros* newspaper, 11.9.2005, p.12) referred to in the 2005 report bore no fruits in 2006.

2. Language requirement

Unlike the situation in the public sector (see chapter IV below), since Cyprus joined the EU in 2004, there has been no language requirement for employment in the private sector. However, the survey of EU workers in Cyprus carried out in 2006 by the Research Center of Cyprus College for EURES reported that companies are wary of recruiting staff from other EU Member States.

3. Recognition of Professional Qualifications

A precondition for the free movement of workers within the EU is the ability of EU citizens to obtain jobs on the basis of the professional qualifications in countries other than the one in which they reside. For the harmonization with the Directive on the General System for the Recognition of Professional Qualifications (Directives 89/48/EEC, 92/51/EEC and 99/42/EC), the Parliament of the Republic of Cyprus has introduced relevant legislation in order to apply the General System on the principle of reciprocity². The legislation covers both the *Sectoral Directives*, which cover one profession each, such as doctors, nurses, dentists, veterinarians, midwives, architects, lawyers and pharmacists, and the three Directives of the *General System* that cover all the other professions. Thus, by addressing both the Sectoral as well as the general System, the Republic of Cyprus has facilitated labour mobility. However, the survey of EU workers in Cyprus carried out in 2006 by the Research Center of Cyprus College for EURES found that, as in other EU countries (see *Eurobarometer* 2005),

2 *Guide for the General System for the General Recognition of Professional Qualifications*, Ministry of Labour and Social Insurance, Department of Labour, Republic of Cyprus, Nicosia, Cyprus.

the qualifications of EU citizens wishing to work are not recognized and are used as possible grounds for discrimination against them

4. Nationality condition for captains of ships

In the case of *Captains or First Officers of ships* having access to such posts in Cyprus, the only requirement for all applicants, irrespective of their nationality, is that they hold Certificates of Competency for the respective post that is recognized by the Republic of Cyprus

Finally, to facilitate labour mobility within the context of the free movement of workers from EU Member States in Cyprus, the Department of Labour of the Ministry of Labour and Social Insurance is partner of EURES. To deal with problems arising in the internal market, the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism has a SOLVIT center in Nicosia.

In researching the material for this report, the present author was, once again, informed in the course of 2006 by members of the poorly-funded local NGO 'Action for Equality, Support and Anti-Racism' that the three-month period within which an EU worker has to apply for a residence permit has in practice led to some such workers, especially seasonal ones, being exploited by their employer, including not being paid and being dismissed. In such a case a worker should report the employer in writing (in English or in Greek) to the Department of Labour Relations of the Ministry of Labour and Social Insurance which will then investigate the complaint. However, as far as it has been possible to ascertain, EU workers are not informed by the authorities where they should address complaints concerning their employer. One practical way of remedying this problem is for such information to be provided in various European languages to EU workers when they put in their application for residence and work permit at the Aliens and Immigration Department of the Police. It should be noted in this context that in cases where an employer has not paid an EU worker his wages, the Labour Department will advise the worker to seek recourse in the Labour Dispute Tribunal, a move that would require employing a lawyer. In such cases, the Action for Equality, Support and Anti-discrimination sometimes is in a position to help financially and otherwise, albeit to a limited degree.

Draft legislation

- a) "Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus" Bill;
- b) "Aliens and Immigration (Amending)" Bill.

Literature

Memorandum Concerning the Treatment of European Citizens, by Katerina Papachristodoulou, Administrative Officer A', Civil Registry and Immigration Department, Ministry of Interior, Republic of Cyprus, Nicosia, Cyprus.

CHAPTER III. EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

The legal position in 2006 was the same as detailed in the 2005 report, namely:

Wages

Workers from an EU member State are entitled to the same wages which are either agreed with the employer or are based on collective agreements applying in various sectors of economic activity. In order to protect vulnerable groups of employees due, for example, to their weak bargaining power, an Order is issued annually by the Ministry of Labour providing for a minimum wage for certain occupations (e.g., shop assistants, clerks, child-care workers, and personal care workers).

On the basis of relevant legislation, the employer is obliged, within a period of one month from the date of commencement of the job, to communicate to the newly-recruited employee in writing, the terms of his/her employment. In cases of non-compliance, complaints can be submitted to the Director of the Department of Labour Relations. However, it is a cause for serious concern that, according to the survey of EU workers and members of the Association of Registered Private Recruiting Officers carried out in Cyprus in 2006 for EURES by the Research Center of Cyprus College, 58% of them are paid less than the minimum wage. This is despite the fact that Cyprus is well-known in Europe for its high standard of living and high wages (p. 39). Discriminating against EU workers in paying them less than native local workers, goes a long way in explaining the wish of many EU workers in the survey to leave Cyprus and look for work in another country as soon as the right opportunity arises. Such discrimination is unacceptable and ought to be eradicated. Furthermore, the relevant authorities in Cyprus appear to overlook the fact that a major obstacle in facilitating the free movement of EU workers, namely the lack of any meaningful assistance with job opportunities for employees' partners, sadly a situation also identified in other countries (see Van der Boon, 2006). To remedy the problem identified, it is recommended that the ministry of Labour and the Cyprus Chamber of Commerce and Industry provide meaningful assistance to accompanying partners in finding employment, thus promoting both occupational and geographical worker mobility.

Taxation

An EU citizen has to contact the Inland Revenue Department to get a Taxpayer's Identification Code. He must present his passport and also complete Form I.R. 163A. Tax liability is based on the principle of residence. According to the Income Tax Law, a person is considered to be resident in Cyprus for tax purposes if he/she resides for a period or more which, in aggregate, exceeds 183 days. Tax residents in Cyprus are taxed in respect of their worldwide income, while non-tax residents are taxed in respect of Cyprus source income only. Non-tax residents having a permanent establishment in Cyprus may elect, if it is to their benefit, to be taxed in accordance with the provisions applicable to tax residents. As far as the minimum taxable amount is concerned, this is the same for workers from EU member States as for Cypriots, namely 10,000 Cyprus pounds (i.e. 17,086 euros). In addition, if an EU worker in Cyprus receives additional income from his own country, this is taxed at 5%.

Finally, regarding *frontier workers*, due to Cyprus being an island and some distance by air from continental Europe, the issue of frontier workers does not arise.

Literature

Van der Boon, M., "Dual careers in the 21st century: don't leave career behind when you move", *Woman Abroad* (2006).

CHAPTER IV. EMPLOYMENT IN THE PUBLIC SECTOR

The legal situation in 2006 was the same as detailed in the 2005 report.

1. Access to public sector

1.1. Nationality condition for access to positions in the public sector

Article 31(a) of Public Service Law 1990-2006 states that only Cypriot nationals or citizens of a Member State can be appointed to the public service. However, EU citizens cannot be appointed to a post in the public service that involves the exercise of public authority and the responsibility for the safeguarding of the general interests of the Republic of Cyprus. Such posts are, for example, in the Ministry of Foreign Affairs, posts of Director general in the Ministries, VAT Service, the Inland revenue Department and, finally, the Customs Department.

According to Public Service Law of 1990-2006, the term “civil/public service” is used to refer mainly to employees in Ministries, Departments, Services and Independent Authorities. More specifically, the term excludes: the Armed Forces, the police, the Judicial service, the office of the Attorney General, the Auditor General or the Accountant General or his deputies, or any service in any office in respect of which other provision is made by law. Ministerial Decrees, issued by the Council of Ministers, set out a list of posts reserved for Cypriot nationals in each Ministry/Department/Service. As far as it has been possible to ascertain, the following three Ministerial Decrees have been issued covering most public posts but the procedure concerned is ongoing:

- No. 199, 14.5.2004.
- No. 782, 29.10.2004.
- No. 560, 15.4.2005.

Consequently, all vacant posts in the public service advertised in the Official gazette after the issuing of the above-mentioned Ministerial Decrees make it clear whether they are also open to other EU citizens. Thus, in 2006 an EU national could apply for the post of a teacher in a public school. It should, also, be noted in this context that even though the judicial service is not considered by the Public Service Law of 1990-2005 to be part of the Public Service, some posts within it such as Bailiffs, Legal Officers, and the Registrar in the Supreme Court are considered to be in the Public service. Interestingly enough, EU citizens cannot, for example, apply for the position of Judge or Supreme Court President or Court Registrar (which are reserved for Cypriot nationals) but can do so for the post of Legal Officer in the Judicial Service. Similarly, even though a citizen of a Member State cannot apply to join the Police but he/she could be employed on a fixed-term contract.

1.2. Language requirement

Regarding the language requirement issue, if the job description for a job vacancy in the public sector requires ‘excellent’, or ‘very good’ or ‘good knowledge’ of the Greek language, both the meaning of each of the aforementioned terms as well as what constitutes evidence to that effect has been defined by the Public Service Board. Consequently, if a citizen of an EU member State wishes to apply for a job in the Public Service for which knowledge of Greek is required, he/she has to provide the necessary documentary evidence that they possess the knowledge required, in the same way as a Cypriot national applying for a position in the public sector has to do by law. Of course, the situation is often different in the private sector where many companies in Cyprus conduct their business in English.

1.3. Recruitment procedures

Vacancies in the public service are advertised in the Government Gazette and electronically. The procedure for the evaluation of applications received and the conduct of written examinations and interviews for short-listed applicants by the Public Service Commission, are strictly regulated by the Public Service Law and such decisions are subject to appeal to the Supreme Court by interested parties.

1.4. Recognition of diplomas

The recognition of tertiary qualifications in order to practice a profession (e.g., architects, doctors, lawyers) is the responsibility of the designated national professional bodies. The recognition of tertiary qualifications obtained overseas for the purpose of official acknowledgement of their equivalence is the responsibility of the Cyprus Council for the Evaluation of Overseas Educational Qualifications. The Bologna treaty is yet fully implemented, however.

1.5. Recognition of professional experience for access to the public sector

As far as recognition of professional experience and seniority are concerned, a distinction has to be made between (a) a promotion position, and (b) a first entry position. Promotion positions are open only to internal candidates and require “service” which by law means service in the immediately lower hierarchic position; in other words, existing legislation and public service practice dictate that seniority is a prerequisite for someone to apply for a promotion position within the public service.

2. Equality of treatment

2.1. Recognition of professional experience for the purpose of determining the professional advantage

First entry posts are open to applicants inside and outside the public service and may require “previous experience”. It is the Public Service Commission that is the competent authority with the statutory responsibility for determining whether an applicant’s “previous experience” acquired in the public or the private sector or those of a Member State satisfies the requirements as stated in the relevant Job Description. There is no specific legislation at present as to the treatment of comparable “previous experience” of EU nationals, but the Public Service Commission will apply the same principles and equal treatment when evaluating qualifications of candidates, including previous professional experience. Finally, the legal basis for the recognition of professional experience and seniority is the Public Service Law 1990-2006, Job Descriptions (i.e. regulations issued by the Council of Ministers and approved by the House of representatives), and relevant jurisprudence of the Supreme Court and of the European Court of Justice.

Draft legislation

- a) “Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus” Bill; (
- b) “Aliens and Immigration (Amending)” Bill.

Literature

Ministry of Labour and Social Insurance, Department of Labour (2004) *Guide for the General System for the Mutual Recognition of Professional Qualifications*, Republic of Cyprus, Press and Information Office, Nicosia, Cyprus.

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CHAPTER V. MEMBERS OF THE FAMILY

Residence rights

Third-country family members: The Bill pending in Parliament the end of 2006 and enacted into law in February 2007 introduces two major improvements as far as family members are concerned. Firstly, family members of an EU citizen who are not citizens of an EU member State have a right of residence and permanent residence, irrespective of their nationality (Art. 5(1)). Secondly, the definition of a ‘family member’ is broadened so that a partner, whether male or female, of an EU citizen who is cohabiting/has a continuous relationship with him/her which is adequately documented, enjoys the same right of entry and free movement and residence as family members (Art. 4(2) (a)).

Application of Akrich (condition of previous legal residence)

Also, under the new legislation, family members who are not citizens of an EU member State can enter Cyprus upon producing a valid passport. However, the passport requirement does not apply *if the family member/s are in possession of a Residence Form issued in another EU country* (Art. (5)(3)(b)); in such cases their passport is not stamped (Art. 5(4)). In the event of family members who do not possess the required travel documents, or visa, the proper authority allows them reasonable time to acquire the documents needed to verify or otherwise prove they are entitled to the right to move freely and reside in the Republic of Cyprus (Art. 5).

The family members who are not citizens of an EU member State and accompany or arrive to meet an EU citizen have the same residence right if they are in possession of a valid passport (Art. 8(2)). It should be noted in this context that the right to residence over three months applies both to family members who are (Art. 9(1)(d)) as well as those who are not EU citizens (Art. 9(2)) and who accompany or arrive to meet an EU citizen who satisfies the requirements for residence over three months. Finally, another change introduced by Law 7(1) of 2007 is that the right to residence also applies for family members who are third-country nationals (Art. 8(2) and who are, also, entitled to permanent residence for a period of ten years that is automatically renewable (Art. 18(1)). Those family members who are entitled to enter Cyprus can also depart in order to travel to another EU member State by showing the same travel documents as those needed to enter (Art. 6).

According to Article 11(1) of Law 7(1) of 2007, family members who are not citizens of an EU member State and intend to stay for more than three months must apply (Form MEU2A) to be issued with a “Residence Form”, no later than four months after their arrival and upon payment of 20 Cyprus pounds (approximately 34 Euros) (Art. 11(2)(a) and are issued with a document (Residence Registration Confirmation Document, a ‘Residence Form’) certifying they have registered their presence. Family members who are EU citizens apply to be issued with an “EU Citizen Confirmation of Registration” document on form MEU1A and pay a fee of 10 Cyprus (approx. 19 euros). Failure to apply for a Residence Form, carries a penalty of up to 1,500 Cyprus pounds (approx. 2,586 euros) (Art. 11(2) (b)). The Residence Form is valid for up to five years. Finally, if a family member who is not citizen of an EU member State is in possession of a “Residence Form” issued in another member State, he/she will not have their passport stamped upon entry (Art. 13(1)).

Texts in force

The legal position concerning family members was the same in 2006 as described in the 2005 report. The family members of an EU member worker have a right of free movement and residence to provide unpaid services. A ‘family member’ is defined in Part II (Art. 4(1) of Law 92(1)/2003 as amended by law 121(1)/2004, to refer to the spouse and children under the age of twenty-one of an EU citizen as well as their dependent children, parents and

grandparents and those of their spouse. Upon entering Cyprus, the national is not required to obtain a visa or anything equivalent, except in the case of *family members* who are not EU citizens. Thus, the German spouse of a French worker would not require a residence permit. As far as it has been possible to ascertain from the immigration branch of the Cyprus Police, third country nationals who are family members of a worker who is a citizen of an member State are treated in the in the same way as if they were EU citizens and their file is designated as “European citizen or dependent”. Thus, while family members who are not EU citizens are required to obtain a visa or something equivalent (Art. 5 (2)), every effort is be made to facilitate the obtaining of a visa free of charge by such persons and no fee is required.

According to Article 8 (3), in order to be issued with a residence permit, the following documents are required by *family members* of nationals of EU Member States (form MEU 7):

1. Their valid passport or identity card with which they entered the Republic of Cyprus.
2. A document issued by the appropriate authority in their own country of origin or from which they have come which proves that they are members of the EU national applying for a residence permit.
3. Where applicable, as provided in Article 4 (2) and (4), document issued by the appropriate authority in their own country of origin or from which they have come which certifies that the persons concerned are maintained by the worker or that they lived with him/her under the same roof in the country concerned.

It should be noted in this context, that the provision of the documents and the procedure for examining an application for residence permit is not to be an obstacle in the immediate implementation of the employment agreement reached by the applicants (Art. 8 (4)).

A right to permanent residence in the Republic of Cyprus is provided in Article 15 (2) (a-b) to those related to or maintained by or who had been living with in the country of previous residence of workers who exercise their right permanent residence in order to provide paid or unpaid services. Furthermore, again, an effort should be made to facilitate the entry of such persons to Cyprus (Art. 15 (3)). The dependents of persons who settle in Cyprus in order to provide or to receive unpaid services, are entitled to permanent residence (Art. 17), such permanent residence is granted in writing (Art. 18 (2)), is for at least five years and is valid in all the territory of the Republic of Cyprus and is renewed automatically with the interested worker applying (Art. 18 (2)).

The dependents of nationals of EU Member States who provide or receive paid services have a right to a residence permit for the duration of the services concerned (Art. 19). No residence permit is issued if the duration of the services concerned is up to three months.

Family members of persons who have settled in Cyprus in order to provide or to receive unpaid services have a right in the existing legislation to take up paid or other activity (Art. 17). Family members who are not citizens of an EU Member State are issued with a residence document that has the same validity as the residence issued to the EU citizen whose dependents they are (Art. 17 (5)).

In order for (a) the spouses, (b) the dependents of a citizen of an EU Member State who does not have a right to residence under other provisions of Community Law and (c) the dependents of the spouse of such a citizen to obtain a residence permit, the citizen concerned is required not only to produce the valid passport or identity card with which they entered Cyprus and a health certificate but, also, documentary evidence proving that (a) the applicant him/herself and his/her family members have medical insurance that covers them for all the risks in Cyprus and (b) they adequate financial means so as not become a burden on the social welfare system of the republic during the period of their residence (Art. 58 (2) (b)). The same conditions apply for the renewal of a residence permit (Art. 12) and breach of the provisions of Part VII, including a maximum fine of 500 pounds is provided in Part VII (Art. 54) of Law 92 (1)/2003 as amended. In order to obtain a residence permit (Form MEU 6), those citizens' or their spouse's dependents of such persons and, finally, the discretion of the Minister of the Interior to deviate from the provisions of Part VII as for other categories of workers (Art. 60, 62 and 63).

The provisions of Part VII of the Law do not affect the legal provisions pertaining to the purchase of a second house in Cyprus (Art. 61).

The family members of a national (As defined in Art; 15 (2) and (3)- see above) of an EU Member State who is entitled to permanent residence on the basis of having exercised unpaid activity under Article 25 are also entitled to permanent residence if they have been living in Cyprus (Art. 26 (1)). The requirements concerning residence, continuous residence (Defined in Art. 28), and activity stated in 28 (a) and (b(1)) do not apply if the spouse of the applicant exercising the unpaid activity is a Cypriot national (Art. 25(2)).

Article 34 of Part V of Law 92 (1)/2003 concerns the right to residence of family members and dependents both of paid and unpaid workers who have ceased their professional activity (Form MEU 4). Furthermore, the spouses and dependents of such a worker take up paid or unpaid activity in the Republic (Art. 35).

If the EU national exercising unpaid activity dies while offering such activity and before obtaining permanent residence, his/her family members are entitled to permanent residence (Art. 26 (1)) if one of three criteria stated in Article 21 (2)) is satisfied.

In order to obtain a residence permit (Form MEU 6), citizens of EU Member States who do not have a right to residence under other provisions of Community Law but have a right to residence (Art. 54) and can take up paid or unpaid activity (Art. 55) require, inter alia, documentary evidence proving that their family members have medical insurance that covers them for all the risks in Cyprus and that they themselves have adequate financial means so as not become a burden on the social welfare system of the Republic during the period of their residence (Art. 58 (2) (b)). The same conditions apply for the renewal of a residence permit (Art. 12)

The spouse and dependent children of students can take up paid or unpaid activity (Art. 45) and are subject to the same provisions when entering and exiting the Republic (Stated in Art. 5 and 6- see above) as the categories of workers dealt with in Parts II-V. Family members of students who are not citizens of an EU Member State are issued with a residence document for the same duration as the residence permit issued to the student whose dependents they are ((Art. 47 (3)).

Family members of the student must provide: the valid passport or identity card with which they entered the Republic; a document issued by the appropriate authority in the country from which they have come that they are related to the student; a health certificate , issued or verified by the Medical Services or the Services of Public Health of the Ministry of Health of the republic that the applicant does not suffer from any of the disease/illnesses listed in Attachment 2 of Law 92 (1)/2003 (Art. 48 (2) (e).

Draft legislation

- a) “Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus” Bill;
- b) “Aliens and Immigration (Amending)” Bill.

CHAPTER VI. RELEVANCE/INFLUENCE/FOLLOW-UP OF RECENT COURT OF JUSTICE JUDGMENTS

The jurisprudence in Cyprus regarding the European Court of Justice cases mentioned below and the sports sector was the same in 2006 as it was detailed in the 2005 report.

Trojani

According to the judgment in the *Trojani* case, an EU citizen legally residing in another member State but not being employed is entitled to social assistance. Current legislation and practice in Cyprus complies with the aforementioned decision with one limitation- social assistance is not provided during the first three months of residence of an EU national when no residence permit is required and such a person is deemed to be a visitor.

Collins (C-138/02)

As far as the entitlement of job-seekers to social advantages is concerned on the basis of the decisions in the *Collins* and *Ioannidis* cases, such assistance is not foreseen for Cypriot nationals and, consequently, it is not available to EU citizens. It should be noted here that, as in the case of Cypriot nationals, citizens of an EU Member State is entitled to unemployment benefit for up to six months if they have previously been gainfully employed in Cyprus.

Ioannidis (C-258/04)

There is no case law on the issue decided in *Ioannidis*. However, as far as the entitlement of job-seekers to a tide-over allowance concerned on the basis of the decision in the case of *Ioannidis* is concerned, such assistance is not available to Cypriot nationals and, consequently, is not available to EU citizens.

Hans van Lent (C-232/01)

The issue raised and decided in *Van Lent* has not yet arisen in Cyprus. As far as it has been possible to ascertain, the official position of the Ministry of Transport is that the *van Lent* decision will be applied if such a case arises. However, since Cyprus is an island and the nearest neighbouring EU Member State is Greece and is more than the 200 km away, the distance mentioned in the court's decision, such a case is most unlikely to arise in Cyprus.

Commission of the European Union v. Kingdom of Denmark (C-464/02)

By virtue of the fact that Cyprus is an island and some fair distance from the nearest EU member State, the issue dealt in the relevant decision of the Court of Justice has not arisen in Cyprus.

Application of free movement legislation in the sport sector

The Aliens and Immigration Law imposes no restrictions on professional sport people who are citizens of EU member States. Furthermore, the Cyprus Sport Organization applies the ruling of the Court of Justice on 12 April 2004 in the *Igor Simutenkov* case (C-265-03). Since 2004, free movement legislation applies in the sports sector. Sports people who are citizens of EU member States are treated exactly the same way as Cypriot nationals as far as registration with and transfer from and to teams are concerned. Using the example of football players to illustrate, according to the Regulations of the Cyprus Football Association, in 2006 teams in the first league could have the same unspecified number of non-amateur EU players as Cypriot nationals ((Reg.20(1) (1)) and the same applies for second-and third-

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league teams but the players in the second and third leagues can be either amateurs or non-amateurs (Reg.20(2)(1) and 20.3(1) respectively); during the first transfer period(i.e. 1/6/-31/8) EU non-amateur footballers can transfer (Reg. 1.4), during the second transfer period (1/1/-31/1) the same number (up to two) of Cypriot nationals and EU players can transfer in the case of the second and third football league (Reg.1.4(6c)).

Legislation

Cyprus Football Association (2006), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus, info@cfa.com.cy.

CHAPTER VII. POLICIES, TEXTS AND/OR PRACTICES OF A GENERAL NATURE WITH REPERCUSSIONS ON THE FREE MOVEMENT OF WORKERS

Regarding the treatment of long-term resident third-country nationals, the position in Cyprus in 2006 remained the same as in 2005, namely that the Directive concerned was not incorporated by means of legislation by the end of 2006 but by Law 8(1) of 2007 enacted in January 2007 which was aimed to harmonise Cyprus legislation with the following Directives:

- 2003/109/EU of the Council on 25.1.2003 regarding the status of third-country nationals who are long-term residents;
- 2003/86/EC of the Council on 22.9.2003 regarding the right to family reunion.
- 2003/110/EC of the Council on 25.11.2003 regarding the assistance for transit cases when someone is being deported by air.
- 2002/90/EC of the Council on 28.9.2002 regarding the definition of assisting one's illegal entry, passage and stay.
- Framework Decision of the Council on 28.9.2002 to strengthen the legal framework for the prevention of assisting illegal entry, passage and stay.

Law 8(1) of 2007 does not contain any language or Cyprus history knowledge requirement for third-country nationals in order to be granted the status of long-term residents, as had been stated in the Bill pending in Parliament at the end of 2006. The law also provides that the "immigration Control Committee" will grant the status of long-term resident to citizens of third countries with a continuous and uninterrupted residence in the areas controlled by the Republic of Cyprus for five years prior to filing their application. The said residency status is permanent (Art. 18IB) and enjoys the same rights as a Cypriot citizen (Art. 18IZ(1)). The same legislation: lists a number of preconditions to be satisfied for a third-country national to be able to acquire the status of a long-term resident; provides details of how the five year continuous and uninterrupted stay in the Republic of Cyprus is to be calculated; spells out the circumstances under which a third-country national who has been granted the status of long-term resident can be deprived of it and how it can be regained; and, finally, lists the factors to be taken into account by the Minister of Interior when considering the expulsion of such a resident and provides for legal aid in cases where the plaintiff does not have sufficient financial means.

As far as the Family Reunification Directive 2003/86 is concerned, the majority of third-country nationals will not benefit from the provisions of Law 8(1) of 2007 because, as a general rule (Decision by Ministerial Committee on Employment, May 2005), third-country nationals are only entitled to work up to four years maximum, except those working in the sector of the so-called international companies, directors/shareholders of Cypriot companies with foreign investments, as well as, in exceptional circumstances and for humanitarian reasons, domestic workers who work with old age people or in houses with children with special needs or health problems and, finally, those with a permanent migration permit (generally granted to pensioners or to people with secure income, mainly EU citizens who are not allowed to work). Thus, the only third-country nationals entitled to rights of family reunification are those who hold a residence permit of five years or more; in other words, only those third-country nationals who are granted the long term resident status are entitled to family reunification rights and this is not without restrictions. To illustrate, Article 18(L) provides that the spouse has to be 21 years of age or older and Article 18(2) and (3) state that under-aged children have to be under the age of 18. Finally, Law 8(1) of 2007 does not regulate the family reunification of refugees, partly as a result of the UNHCR who in 2006 insisted before the Parliamentary Internal Affairs Committee that this issue be regulated in the refugee law instead.

A decision by the Supreme Court (Appeal 55/2006) quashing an appeal by third-country nationals Vera Joudine and her husband Jaroslav Joudine against expulsion gave rise to a great deal of public debate about the rights of long-term residents and highlights the

problems the kind of difficulties that can arise for both third-country nationals as well as the local authorities. The husband had been granted a residence and work permit in 1993 to work for an offshore company and her wife had been granted a residence permit as a visitor to be with her husband. Two of their three children were subsequently born in Cyprus. The offshore company ceased operations in January 2000 and the husband left Cyprus but his wife and children stayed. In June 2000 the wife's application for residence renewal was rejected. In July 2000 the husband entered Cyprus on a month's visitor's permit. He did not apply for renewal, was expelled 2nd March 2003, and was placed on the 'Stoplist'. On 20/3/2001 the wife applied for political asylum and herself, her husband and children were granted temporary permit to stay in Cyprus on humanitarian grounds while her application was being considered. On 15/4/2001 the husband entered Cyprus unnoticed on a different passport. The wife's political asylum application was rejected on 4/12/2003 and were instructed to leave within two weeks. Subsequently, the wife was granted an extension on the date to leave Cyprus on humanitarian grounds. On 13/2/2004 she applied unsuccessfully for citizenship. She appealed against it, and was granted an extension on humanitarian grounds until 30/6/2005 on condition that she applied for an extension at the local immigration office for an extension. She did not do that and stayed on illegally. The husband was detained by the police on 31/12/2005 to be returned to his country but he appealed to the Supreme Court claiming his detention was illegal. His appeal failed and was expelled on 3/8/2006 and his wife was also instructed to leave the country soon afterwards. She did not leave of her own accord and a few months later she was arrested and returned to her country with her under-aged children who followed their mother. At the time of writing, the *Joudine* saga is being reconsidered by the Minister of Interior.

Foreign workers in Cyprus

The Cyprus economy continues to be largely dependent on foreign workers. However, the proportionately large number of illegal workers impacts adversely on job opportunities for EU workers. According to the Statistics section of the Social Insurance Services, Ministry of Labour, in 2006 there was a total of 63,145 of non-EU workers and workers from EU member States who had been granted a work and residence permit. EU workers comprised 27% of the foreign workers. The officially registered number of foreign workers generally made up 8.6% of the population in the Republic of Cyprus. Most of the non-EU workers were employed as domestic aides, in restaurants, wholesale and retail, agriculture and animal husbandry, manufacturing, construction, and hotels. The number of illegal workers in 2006 (see also "Asylum seekers" below) was estimated to be between 30-35 thousands. Together, legal and illegal workers in 2006 were thus estimated to comprise approximately 13% of the population, not including asylum applicants who work illegally.

According to an article by Antonia Lambrakis in the newspaper "*Fileleftheros*" (5.2.2006, p. A6), the prevailing view seems to be that the government's immigration policy has failed and the ever-increasing number of illegal foreign workers is getting out of control and threatening the local workforce as they are employed on much lower wages than would normally be paid to Cypriots or EU workers doing the same jobs.(*ibid.*). It is beyond the scope of the present report to provide a detailed picture of either asylum applicants or illegal immigrants in Cyprus. Suffice it here to draw attention to the fact that such persons often work illegally and tend to be exploited by employers who pay them rather low wages and, consequently, are preferred to workers from EU Member States.

Regarding priority of access to employment for foreign workers in Cyprus, according to a circular from the Officer of the Civil Registry and Migration Mrs. Katerina Christodoulou to the Chief of Police, first priority is given to Cypriot nationals and citizens of EU Member States and their dependents together with Greek nationals who possess a special identity card. They are followed by nationals from the accession countries (Rumania and Bulgaria until the end of 2006), then third-country nationals who are already in Cyprus (including asylum seekers) and, finally, new arrivals from third countries.

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Memorandum Concerning the Treatment of EU Citizens by Katerina Papachristodoulou, Administrative Officer A', Civil registry and Migration department, Ministry of Interior, Republic of Cyprus, Nicosia, Cyprus.

CHAPTER VIII. EU ENLARGEMENT***1. Transitional arrangements***

Unlike some other countries which joined the EU in 2004, Cyprus did not opt to apply for a two-years' transitional period for access to the Cypriot labour market to citizens of EU Member States and, consequently, since 1/5/2004 nationals from all the EU Member States have a right to free movement, residence and paid employment in Cyprus as do their spouses and children under the age of 21 years as well as their dependents as long as they provide the documentation required (see below). The same applies since 1st January 2007 for nationals of Bulgaria and Romania. Furthermore, the right to free movement and residence applies not only to citizens of the 27 EU member States but, also, workers from the countries which signed the Agreement for a European Economic Region, namely Norway, Island, Liechtenstein and Switzerland. Thus, the Community law regime of full free movement of EU workers has applied since 1st May 2004. Thus, the issue of the Republic of Cyprus changing its position with regard to the second phase of transitional arrangements does not arise.

2. Workers from Bulgaria and Romania

At the end of 2006 there were approximately 6,000 workers from Bulgaria and Romania working in Cyprus on fixed-term yearly work permits, mainly in the hotel and catering industries, in bakeries, in agriculture and in animal husbandry. Interestingly enough, therefore, at its meeting of 13.12.2006 the Council of Ministers decreed that no restrictions whatsoever, including transitional measures, regarding freedom of movement and settlement in Cyprus would be imposed on workers who are citizens of Bulgaria and Romania upon their country becoming a member of the European Union on 1st January 2007 (Antonia Lambraki in *Filelefteros* newspaper, 13.12.2006, p.48).

CHAPTER IX. STATISTICS

Workers from EU Member States

It should be noted at the outset that there are no detailed data regarding the duration of EU workers' mobility or their repatriation or as far as trends of EU workers versus third-country nationals are concerned. In 2006, the third year of Cyprus' membership of the European Union, there was a very significant increase in the number of EU workers. More precisely, according to the Statistical Section of the Social Insurance Services, Ministry of Labour, the average monthly number of EU citizens who were working and paying social insurance was 17,278. Of those, 440 had a second job and were thus double-counted. Therefore, the real number was 16,838. They were employed in the following sectors of the economy: hotels (20.5%), in construction (15.6%), in wholesale and retail trade (12.5%), restaurants (11.5%), in other wise in trade and commerce (10.6%), in manufacturing (10%), and in transport/communications/storage (7%). Regarding the nationalities of the EU citizens in employment in Cyprus at the end of 2006, for 8% it was not known and, of the rest, the most represented countries were: Greece (32.7%), Poland (17.5%), United Kingdom (17%), Slovakia (10%), Germany (2.9%), Hungary (2%), Czech Republic (1.1%), and Latvia (1.4%). The remaining countries comprise less than 1%. Workers from the nine new member States who joined the EU in 2004 (i.e. Estonia, Latvia, Lithuania, Malta, Hungary, Poland, Slovakia, Slovenia and the Czech Republic) comprised 33.8% of the EU workers, with the Poles (17.5%) and the Slovaks (10%) having the lion's share. The high proportion of workers from Greece is due to two factors: (a) the fact that, with the start of the second phase of the transitional agreements on 1st may 2006, Greece opened its labour market to EU citizens, and (b) the significant cultural similarity between Greece and the free areas of the Republic of Cyprus.

Two issues that are becoming causes for concern in Cyprus are: (a) the apparent unwillingness of EU citizens seeking employment in Cyprus to work in certain sectors of the economy (e.g., in animal husbandry, or as domestic aides) where demand for foreign workers is highest because locals avoid such menial jobs and employ Asians on much lower wages than would normally be paid to Cypriots or EU workers³ and, (b) the presence on the streets in small cities like Paphos on the west coast of wondering groups of male EU citizens without work under the influence of alcohol who commit assault offences⁴ while others, also without employment, commit spates of burglary offences,⁵ thus stigmatizing their compatriots and encouraging xenophobia among the local population.

In 2006, a total of 2,983 persons from a total of 66 different countries were expelled from Cyprus. Of those, 135 (4.5%) were citizens of EU member States. The majority of those 135 were made up by nationals of the following countries: Poland (33%), Greece (30%), United Kingdom (19%), and Slovakia (9%). Unfortunately, it has not been possible to obtain details regarding the grounds on which the EU citizens were expelled.

3 *Phileleftheros* newspaper, 17.1.2006, p.12.

4 *Phileleftheros* newspaper, 23.8.2006, p.18.

5 *Phileleftheros* newspaper, 9.8.2006, p.20.

CHAPTER X. SOCIAL SECURITY

Texts in Force

By the end of 2006 1408/71 had not been replaced by 883/2004. Briefly stated, in the Republic of Cyprus there are basically three categories of pension schemes that are available to both Cypriots and citizens of EU member States: (a) for State employees, including, also, employees of semi-governmental organisations and local authorities, for example; (b) occupational pension schemes, catering for the members of the various trade unions; and (c) pension schemes offered by private insurance companies which, in effect, are no more than life-insurance policies. The vast majority of workers in Cyprus subscribe to (a) and (b). Supplementary pension schemes that are meant to facilitate worker mobility in the EU are, of course, voluntary and EU workers who have been paying towards such schemes can take their contributions with them when they leave Cyprus if the conditions spelled out in a scheme are fulfilled. One difficulty that has been identified in discussions with officials from the Ministry of Labour and Social Insurance is that all information concerning pension schemes is in Greek, thus placing EU workers at a great disadvantage. Otherwise, for all intents and purposes, a worker from an EU member State is in exactly the same position as far as supplementary pension schemes are concerned.

The current pension system in Cyprus comprises the General Social Insurance Scheme, the Social Pension Scheme, the Special Allowance to pensioners, the Public Assistance Scheme, the Occupational Pension Schemes for the Employees of the broader Public Sector and the Voluntary Provident Funds and other similar collective arrangements. Both the government and the semi-government employees' pension schemes provide *supplementary pension schemes* (see below). It should be noted in this context that although Article 22 (1) of Directive 2003/41/EC provides that the deadline for the transposition by member States is 23 September 2005, it was not until 17 November 2006 that Law 146(1)/2006 on "The establishment, registration, functioning and supervision of professional pension provident funds" was enacted. However, the said law has not yet been implemented due to a delay in the necessary regulations for it being approved by Parliament.

General Social Insurance Scheme

The General Social Insurance Scheme is financed by contributions from the insured persons, the employers and the State. This is a general earnings-related scheme which covers compulsorily, every person gainfully occupied in Cyprus either as employed or self-employed person. All EU citizens who are legally employed in the Republic of Cyprus are covered by this scheme. Voluntary insurance is allowed to persons who wish to continue their insurance after a prescribed period of compulsory insurance. The scheme is financed by earnings-related contributions payable by the insured person, the employer and the State. As of 1st May 2004, Cyprus applies the EC regulation 1408/71 which coordinates the social security systems of the Member States of the EU, the European Economic Area and Switzerland. The scheme provides for various benefits, including marriage benefit, maternity grant, maternity allowance, unemployment and sickness benefit. Unemployment benefit is paid for involuntary unemployment and is payable for a period that cannot exceed 156 days for each period of interruption of employment. The same unemployment benefit is paid to Cypriot and EU citizens.

The Social Pension Scheme

The Social Pension Scheme ensures the universality of the pension system by providing non-means tested pensions, to residents, who for any reason did not participate in the labour market and as a consequence they do not have a pension income from any source.

The Special Allowance to Pensioners

The special allowance is payable to every pensioner with an annual pension income not exceeding CYP6500, without any test of income from employment or other sources.

The Public Assistance Scheme

Every person legally residing in Cyprus has the right to a decent standard of living. This right is ensured through the provision of financial assistance and/or social services to persons whose means are not sufficient to meet their basic and special needs.

The Government Employees Pension Scheme

The Government Employees Pension Scheme provides supplementary retirement and survivors' pensions for permanent civil servants and members of the educational service, the police and the armed forces. EU citizens who are permanent civil servants are covered by this scheme.

The Semi-government Employees Pension Schemes

The Semi-governmental Employees Pension Schemes provide supplementary pensions to the permanent employees of the publicly utility corporations of local authorities and of other public law authorities. EU citizens who are semi-government employees are covered by this scheme.

The Voluntary Provident Fund

The Provident Funds are arrangements that are agreed within the framework of the system of free collective bargaining. They provide defined contribution lump-sum benefits. For certain categories of employees, the Provident Fund is combined with a defined benefit lump-sum. The fund is available to EU citizens.

Where the legislation of the Republic of Cyprus does not provide for a right to a pension on the basis of age for some categories of unpaid workers, the pre-condition of age is considered to be satisfied as long as the EU nationals entitled to the right of permanent residence have completed their 65th year of age.

The precondition of more than two years' continuous residence for an EU national who has been involved in unpaid providing unpaid service in the Republic of Cyprus to be granted permanence residence does not apply if he /she has suffered incapacity to work as a result of an accident or illness in the context of work, events that confer a right to a pension payable in total or in part by the Department of Social Security.

Draft legislation

- a) "Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus" Bill;
- b) "Aliens and Immigration (Amending)" Bill.

Literature

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CHAPTER XI. ESTABLISHMENT, PROVISION OF SERVICES, STUDENTS

At the end of 2006, the legal position was the same as detailed in the 2005. The Bill pending in Parliament at the end of 2006 and enacted into law in February 2007 introduced some changes, including extending the right to residence over three months to those who are enrolled in courses of study in state or private educational institutions approved or funded by the Republic, including professional courses, have comprehensive insurance cover in the Republic of Cyprus and are in a position to assure the appropriate authority by means of a statement or by some other equivalent manner that they have sufficient financial means so as not to be a burden on the welfare system of the government (Art. 9(1)(c)). However, Article 22 (2) of the new law transposing Directive 38/2004 as from February 2007 excludes the payment of any grant or student loan and so forth prior to their acquiring permanent residence to an EU citizen to pursue studies, including the undertaking of professional specialization courses. Such assistance, however, is available to EU citizens in paid or unpaid employment (*ibid*).

Texts in force

On the basis of the legal position in 2006, the right to residence in the Republic of every student (Form MEU 5) who is a citizen of a Member State, their spouse and dependent children (Irrespective of their citizenship) is provided in Part VI (Art. 44 (1) and (2)). Students, are issued with a written residence permit for the same duration as the period of their professional training (Art. 47 (1) and (2)).

Article 48 (1) states that the procedure for the issuing of a residence permit or residence document is the same as that detailed in Article 38 (1) and (2). The documentation required for a residence permit or residence document in the case of students is:

- a. The valid passport or identity card with which they entered the Republic.
- b. A letter from a recognized educational institution that the person concerned is enrolled in that institution in order to attend a course of professional training.
- c. A statement by the applicant or another type of document that proves the spouse or dependent child has sufficient financial means so that the student and the spouse and dependent children during their stay in the Republic will not burden its social security system, that he/she has health insurance that provides cover for all the risks in the Republic.

The right to residence exists for so long as the student is enrolled for a course of professional training at a recognized educational institution (Art. 49), the residence permit and residence document issued can be renewed at the payment of the same fee provided for other categories of workers (Art. 49 and 50).

Article 51 states that the provisions of Part VI do not form the basis of a right by a student who has a right of residence to receive from the republic any maintenance allowance for their studies. However, legislation pending before Parliament will provide for educational grants for EU citizens as is currently the case with Cypriot nationals. *Thus, since Cyprus joined the EU on 1st may 2004, EU citizens wishing to pursue tertiary studies in Cyprus have not been treated the same as Cypriot nationals who are entitled to educational grants.* This inconsistency, however, is to be abolished by the Bill pending in Parliament at the end of 2005 and which adopts Directive 38/2004 in its totality. Finally, it should be noted that if a person dealt with in Part VI does not apply for residence within three months of entering the Republic is committing an offence punishable with a maximum fine of 500 pounds (Art. 52). Finally, Article 53 affords the Minister of Interior discretion to deviate from the provisions of Part VI of the Law.

CHAPTER XII. MISCELLANEOUS

A situation that is unique to Cyprus as one of the relatively new members of the EU is the anomalous political situation that has existed since 1974 and as a result of which the northern part of the island remains occupied by the Turkish army. Early in April 2004, the administration in the occupied part of Cyprus lifted many of the restrictions pertaining to the movement of persons across the 'Green Line'. However, despite the fact that the Republic of Cyprus and the entirety of its territory joined the EU, the government cannot exercise its jurisdiction in the occupied areas. Consequently, Greek-Cypriots nationals and EU nationals, wishing to travel to the northern part can only do so by showing their passports and obtaining a 'visa' at any of the few designated crossing points along the 'Green Line' (see below) while those entering the area controlled by the Republic of Cyprus from the occupied areas are, *inter alia*, subject to border controls to establish their identity (see Chapter-VII below for details). Finally, Law 7(1)/2007 enacted in February 2007 that has transposed Directive 2004/38, makes it clear in Article 20 that the right of EU citizens to residence and to permanent residence applies only to the areas of the island under the control of the Republic of Cyprus.