

**REPORT**  
**on the Free Movement of Workers**  
**in Cyprus in 2007**

Rapporteur: Nicos Trimikliniotis,  
University of Nicosia

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## Introduction

After some delay, on 9 February 2007, the Republic of Cyprus enacted Law 7(1)/2007, which purported to transpose Directive 2004/38. A number of issues have emerged as a result of the passage of this law. Firstly, even though the law came into effect on the said date, due to problems of adapting the technical computer systems, the law was not implemented until November 2007; until then the authorities continue to operate using the old law. Apparently, the most pressing problem for the current situation is the long delay in the appointments for obtaining the registration certificate, which has replaced the old visa system for Union citizens. Given that the deadline for registration is four months and the requirement contained in the art. 8.3 of the Directive that “a registration certificate shall be issued immediately”, the waiting list for appointments to obtain the certificate for up to one year and more in some cases is contrary to the provisions and the spirit of the Directive, as it: this is apparently due to staff shortages; the regional office of Nicosia for example, which receives more than half the applications from Union citizens to exercise their right under the directive, has scheduled appointments until 2009.

The second development arises from the particular manner of transposition of the Directive into Cypriot law and the interpretation by authorities as regards its implementation. Concerns have been raised by NGOs, trade unions and international/national expert reports as to the effect of the law on the rights of Union citizens working or visiting Cyprus, their partners and family members. Three kinds of issues can be noted: firstly, throughout 2007 a major issue of concern for human rights NGOs was the continuing of the practice deportation/expulsion of European citizens by the immigration authorities. Secondly, questions about worker rights and equal treatment of Union citizens and their partners and families have emerged. Despite official assurances that the system operates smoothly with no problems or complaints of discrimination, trade unions see serious problem as regard the procedures of considering applications, causing many daily problems for workers who are EU citizens: in most cases this procedure takes as long a year and more, and as a consequence it creates various discrepancies, discrimination and disruption in labour relations, as this allows the employers not to comply with collective agreements and standard practices in Cyprus.

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The leeway provided by the law and the actual practice of one year delay in registering workers from EU countries “is causing problems for their smooth enjoyment of working life” in Cyprus. Thirdly, questions of equal treatment of particular groups of Union citizens can be raised: paradoxically Cypriot citizens, who reside in Cyprus, they cannot benefit from the freedom of movement available to all other Union citizens with regard to the right to bring over to Cyprus their partner who is a third country national; instead, as they are obliged to go via the more stringent procedure of the Migration and Aliens Law the outcome of which is entirely discretionary upon the Chief Immigration Officer. Finally, human rights issues arise from the failure to regulate same-sex marriages and registered relations in Cyprus as it results in various forms of discrimination against Union citizen LGBT persons, which are effective obstacles to free movement, when compared with heterosexual couples, contrary to the equality and non-discrimination on the ground of sexual orientation in all the fields provided by Directive 43/2000/EC. The Anti-discrimination Authority (herein referred to as ‘AA’) has found that the failure to regulate the subject results in various forms of discrimination and undermines the Community principle of freedom of movement.

The third development concerns the territorial application of the implementation of the Directive given the de facto division of Cyprus. The references that restrict the force of the law to the territory in which the Republic of Cyprus operates as “the area under the control of the Republic” reflects the status quo, which does not allow for the implementation of the Acquis in the northern territories. However, this provision has resulted in problems in the implementation of the principle of free movement given that after accession to the EU of a divided Cyprus, there was special regulation, referred to as “the Green Line regulation,” which regulates problems deriving from the de facto partition of Cyprus. The reference in Law 7(1) to the issue of effective control of the territory allows the authorities to exercise discretion as to whether to allow EU citizens living in the northern (occupied) territories to exercise their rights under the directive: this may constitute failure to properly transpose the directive and may result in unlawful discrimination against them. References to the territory under the effective control may result in practices that undermine the principle of free movement as “fundamental status” stipulated in the preamble of Directive 2004/58/2004 and creates obstacles to the exercise of this right which is contrary to the Directive.

Finally, the Republic’s failure to transpose Directives 36/2005 and 100/2006 is being resolved with a new bill that is now before Parliament which proposes a unified law that abolishes the old laws that would allow for recognition of professional qualifications. However, the laws covering each of the regulated professions are to be amended in the future. Moreover, a number of obstacles are apparent as regards the stringent language requirements in the public sector, there are administrative and bureaucratic barriers to the exercise of certain rights for European citizens (e.g. obtaining driving licences and other official documents) and benefits (such as subsidies for heating benefits during the winter months).

## Chapter I

### Entry, Residence, Departure

#### A. ENTRY

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 another EU country [Art. (5)(3)(b)].

As explained in the 2006 report, on 9 February 2007, the Republic of Cyprus enacted Law 7(1)/2007, which purported to transpose Directive 2004/38.<sup>1</sup> However, Ministry officials inform us that due to technical problems of adapting the computer systems, there was a significant delay in the actual implementation as the law was not implemented until November 2007; until then the authorities continue to operate using the old law.<sup>2</sup> Even today there are long delays in the appointments for obtaining the registration certificate, which has replaced the old visa system for Union citizens. The deadline for registration is four months<sup>3</sup> as the requirement contained in the art. 8.3 of the Directive that “a registration certificate shall be issued immediately.” Nevertheless, the waiting list for appointments to obtain the certificate is considerably longer, stretching for up to one year and more in some cases, something that is contrary to the provisions and the spirit of the Directive.<sup>4</sup> Ministry officials recognise that this is a serious problem but point out that this is due to staff shortages;<sup>5</sup> the regional office of Nicosia for example, which receives more than half the applications from Union citizens to exercise their right under the directive, has scheduled appointments until 2009.<sup>6</sup>

The official position from the Republic of Cyprus is that the transposition and implementation of Directive 2004/38 in 2007 did not have retrogressive effects for Union citizens and the members of their families. Officials from the Ministry of Labour and the Ministry of Interior<sup>7</sup> claim that the Directive did not result in treatment less favourable than under the previous Community rules on free movement. Jobseekers it is noted can seek jobs via EURES and various private agencies, hence we have “no complaint about such barriers to the authorities” and as a consequence there is a steady increase in the numbers of Union citizens who are working in Cyprus over the recent years: the mean number of EU citizens was

<sup>1</sup> For an introduction the basic provisions of this law see Andreas Kapardis (2007) *Network on the Free Movement of Workers within the European Union, Cyprus Report 2006*, pp.2-4.

<sup>2</sup> Interview with George Georgallis, officer of Ministry of Interior 21.3.2008.

<sup>3</sup> Under of Law 7(1)/2007, art. 10(1). Art. 8(2) of the Directive allows for a minimum of three months for a deadline for registration.

<sup>4</sup> Information given by the head of the Nicosia District Department, Katerina Papachristodoulou, 21.3.2008.

<sup>5</sup> Interview with George Georgallis, officer of Ministry of Interior 21.3.2008.

<sup>6</sup> Information given by the head of the Nicosia District Department, Katerina Papachristodoulou, 21.3.2008. The current capacity of district office is to give only 10 interviews per day. However, we are informed that there is a kind of ‘fast track system’, which operates as a special administrative for dealing with cases where there is pressing need, for example in case where documentation is required for the purpose of hospital treatment, or the land registry office, permits or customs.

<sup>7</sup> Interview with George Georgallis, officer of Ministry of Interior 21.3.2008.

20,542, whereas for 2007 it was 31,345.<sup>8</sup> Trade unions however, have a different view of affairs, as elaborated in Chapter III, further.

However, concerns have been raised by NGOs, trade unions and international/national expert reports as to the effect of the law on the rights of Union citizens working or visiting Cyprus, their partners and family members: a major issue of concern for human rights NGOs throughout 2007 was the continuing of the practice deportation/expulsion of European citizens.<sup>9</sup>

## **B. RESIDENCE**

Since the passage of Law 7(1) of 2007 (9.2.2007), a ‘Residence Permit’ is no longer required but a ‘*Residence Registration Confirmation Document*’ issued when EU citizens or their family members apply to register with the Population Archive. Article 8(1) stipulates that EU citizens have the 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. 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 substantial 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)] have the right to residence over three months.

Since February 2007 a number of changes were introduced:

- 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)].
- The spouse and dependent children of EU citizens in Cyprus pursuing studies or undertaking professional training 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 Registra-

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<sup>8</sup> Interview with by Demetris Michaelides, head of section on migrant workers and of the Cyprus EURES, Ministry of Labour 14.3.2008.

<sup>9</sup> For more details see Cyprus National Data Collection Report, RAXEN, 2007.

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tion Confirmation Document [Art. 24(2)]; failure to do so carries a maximum penalty of 1,000 CY£ (1,724 Euros).

Under the 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.

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.

### ***Text(s) in Force***

Law 7(I)/2007 Law on the ‘Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus’ Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members.

### ***Literature***

Department of Labour (2008) *Ελεύθερη διακίνηση και διαμονή Ευρωπαίων Πολιτών και Μελών των Οικογενειών τους* [Free Movement and Residence of European Citizens and Members of their Family]: Law No. 7 (I)/2007 on the Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus’ Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members [In Greek],

## **C. DEPARTURE**

The legal situation in 2007 as regards departure is regulated by Article 6 and 7 of the Law 7(I)/2007. Expulsion/deportation is regulated by Articles 35, which is part of the restrictions

to the right of entry and stay for reasons of public order, public security and public health (art. 29-35). Article 6 of the law provides that in line with Regulation 562/2006 (15.3.2006) on the Community code regarding the right of free movement of persons under Schengen, the right of departure is from the territories of the Republic of Cyprus to travel to other EU member state. To be allowed departure from Cyprus, a national of a member state need only show his/her passport or identity card. For family members who are not EU nationals a passport is required. Upon leaving Cyprus, all persons under art.6, no visa or anything equivalent can be required (art. 7).

In emergency cases, due to reasons of public order, public security or public health the authorities may impose restrictions to the right of freedom of movement and residence of Union citizens and their family members irrespective of nationality [art.29(1)]. However, this cannot be done for achieving economic goals [art. 29(2)]. Moreover, any such measure must comply with the principle of proportionality and must be based on the personal behaviour of the person concerned, which must be real, current and sufficiently serious threat against the fundamental interest of society [art.29(3)(a)]. It specifically prohibits reference to reasons not connected with the specific individual case or general reasons of precaution and notes that previous criminal convictions per se are not sufficient reasons for taking such measures [art.29(3)(b)].

Before a decision to deport/expel for reason of public order or public security, the competent authority takes into account the period of residence of the person affected in the Republic, the age, the health condition, the family and financial conditions, the social and cultural integration in the Republic and the width of the person's ties with the country of origin [Art. 30(1)]. Of course, a decision to refuse entry or the issuing or renewal of a residence permit or a decision to expel a person is subject to appeal in the courts.

***Text(s) in Force***

Law 7(I)/2007 Law on the 'Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus' Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members.

**D. REMEDIES**

***Text(s) in force***

*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 (herein referred to as Law 7(1)/ 2007). Also the aliens and immigration legislation was amended by the House of Representatives on 1<sup>st</sup> February 2007: the *Aliens and Immigration (Amending) Law 8(1) of 2007* purported to transpose the EU legislation regarding long-term residents from third countries (herein referred to as Law 8(1)/2007).

## **Chapter II**

### **Access to Employment**

#### **1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT (E.G. ASSISTANCE OF EMPLOYMENT AGENCIES)**

Art. 22(1) of the 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 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.

#### *Texts in force*

##### *Facilitating EU worker movement to Cyprus*

Regarding the competent bodies, these are the following:

- 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.

#### **2. LANGUAGE REQUIREMENT**

In the private sector the language requirement is not a major problem as there are no occupational barriers, save for possible bureaucratic barriers in the registration in the register of the regulated professions.

The Anti-Discrimination Authority issued a report regarding the requirement of knowledge of Greek in order for EU nationals to acquire an estate agent’s license, which indicates the kind of barriers to acquiring the right to exercise a profession due to language obstacles.<sup>10</sup> Two complaints on the same issue were submitted to the AA by two EU citizens who alleged that article 11 of the Estate Agents Law which requires good knowledge of Greek or Turkish as a prerequisite for the acquisition of a licence amounts to discrimination on the ground of language and by extension on the ground of ethnic origin in the field of access to the profession of the estate agent. Meanwhile, the European Commission had already warned the Republic of Cyprus that the said law violates articles 43 and 49 of the European Communities

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<sup>10</sup> File No. AKR 70/2005 & 73/2005, dated 23.02.2007.

Treaty as a result of which a bill was prepared for discussion in Parliament. The AA criticised the fact that laws containing the Greek language requirement were still in place, noting that this constitutes discrimination prohibited by the anti-discrimination legislative framework. Since a bill to amend this law was already going through parliament, the AA requested that its views be taken into consideration whilst discussing this bill. The Anti-discrimination Authority did not impose any sanction, as measures were already in process in order to amend the law, following instructions to that effect from the European Commission towards the Cypriot Government. The AA had previously also referred laws and regulations to the office of the Attorney General for revision in order to comply with the new anti-discrimination legislative framework introduced in 2004; however no action was taken towards revising any of these.

Similarly the report of the AA found that the language requirement in the documents required for registration of foreign nationals in the registry of building contractors was discriminatory.<sup>11</sup> A complaint was submitted to the AA by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English. An investigation made by the AA showed that the said Council would readily examine applications by Cypriot citizens whose certificates were in English, but requested non-Cypriots to have their certificates translated into Greek. The AA found that the differential treatment of Cypriots and non-Cypriot applicants, deriving from the fact that the former can submit documents in English whilst the latter cannot, amounts to unlawful discrimination. The Authority also found that requirement for translating into Greek documents composed in a language known to the competent body, English in this case, amounts to a violation of the principle of bona fides and should be reconsidered.

In another case the Anti-Discrimination Authority decided on a complaint submitted by an EU national regarding a requirement by the semi-governmental Cyprus Tourist Organisation, that in order for permits to operate a tourist office to be granted, a Greek-speaking manager must be hired.<sup>12</sup> The decision criticised the practice of requiring knowledge of the national language, which constitutes discrimination on the ground of language amounting at the same time to indirect discrimination on the ground of race/ethnic origin.<sup>13</sup>

These findings show continuity with earlier practices by professional bodies of the Republic which amount to obstacles for free movement of workers (see Chapter IV).

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<sup>11</sup> File No. AKR 36/2006, dated 23.02.2007

<sup>12</sup> Decision dated 01.08.2006. The AA concluded that it cannot make any concrete recommendations, because there are third party rights involved (referring to the person hired for the post in question) and because an appeal is in progress before the Supreme Court, filed by the complainant, seeking to cancel the University's decision to select the other applicant.

<sup>13</sup> Law on Equal Treatment in Employment and Occupation (2004), article 16(1). The decision referred also to Regulation 1612/68/EEC which sets as a target for the EU the elimination of all forms of discrimination as a result of nationality in the field of employment, as well as to the law transposing Directive 2000/78/EC, which prohibits direct or indirect discrimination on the ground of race or ethnic origin in employment, occupation and self-employment. The decision further instructs that this regulation be abolished, in accordance with the law transposing Directive 2000/78/EC which provides that all laws and regulations contravening the said law must be abolished.

### 3. RECOGNITION OF DIPLOMAS (INCLUDING THE ACADEMIC DIPLOMAS), ANY INITIATIVES TO TRANSPOSE THE DIRECTIVE 2005/36/EC

Currently before Parliament there is a new bill purporting to transpose Directives 36/2005 and 100/2006, which provides unified law that abolishes the old laws<sup>14</sup> and allows for recognition of professional qualifications.<sup>15</sup> Cyprus is still operating with an earlier text in force aimed at transposing the Directive on the General System for the Recognition of Professional Qualifications (Directives 89/48/EEC, 92/51/EEC and 99/42/EC),<sup>16</sup> which will be abolished with the passage of the new legislation. However, the legislation covering both the *Sectoral Directives*, which cover one profession each, such as doctors, nurses, dentists, veterinarians, midwives, architects, lawyers and pharmacists, will be amended with subsequent legislation.<sup>17</sup> Government officials are categorical that in spite of the fact that the Directive has not been transposed into Cypriot legislation, its provisions are already in force and there are no barriers in the registration in any of the professions; as for the amendments to the legislation covering both the *Sectoral Directives*, the Government officials speak of minor changes required.<sup>18</sup> The proposed legislation names the Labour Office as the Focal Point on the subject, but these tasks apparently are yet to be taken up in practice by the authorities.

#### *Miscellaneous (administrative practices, etc.)*

The Anti-Discrimination Authority decision (File No. AKR 36/2006)<sup>19</sup> regarding the documents required for registration of foreign nationals in the registry of building contractors illustrates that there are practical administrative obstacles to registering professionals. The complaint was submitted to the AA by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English. An investigation made by the AA showed that the said Council would readily examine applications by Cypriot citizens whose certificates were in English, but requested non-Cypriots to have their certificates translated into Greek. The AA found that the differential treatment of Cypriots and non-Cypriot applicants, deriving from the fact that the former can submit documents in English whilst the latter cannot, amounts to unlawful discrimination. The AA also found that requirement for translating into Greek documents composed in a language known to the competent body, English in this case, amounts to a violation of the principle of bona fides and should be reconsidered.

<sup>14</sup> These are the following laws: Οι περί Γενικού Συστήματος Αναγνώρισης των Επαγγελματικών Προσόντων Νόμοι 179(I)/ 2002 and 129(I)/ 2003 (transposing 89/48/EEC), οι περί του Δευτέρου Γενικού Συστήματος Αναγνώρισης των Επαγγελματικών Προσόντων Νόμοι 121(I)/2003 and 36(I)/2005 (transposing 92/51/EEC); and ο περί του Τρίτου Συστήματος Αναγνώρισης των Επαγγελματικών Προσόντων Νόμος 157(I)/2004 (transposing 99/42/EEC).

<sup>15</sup> The title of the proposed law is «Νόμος που προνοεί για την αναγνώριση των επαγγελματικών διπλωμάτων και για τα συναφή θέματα». The author was assured by the Law Office of the Republic that the Law will be enacted in the next few weeks.

<sup>16</sup> See *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.

<sup>17</sup> Information provided by Giorgos Siekeris from Human Resource Development Authority 29.4.2008.

<sup>18</sup> Information provided by Giorgos Siekeris from Human Resource Development Authority 29.4.2008; and Maria Kyprianou, from the Law Office, 29.4.2008.

<sup>19</sup> Dated 23.02.2007.

## Chapter III

### Equality of Treatment on the Basis of Nationality

#### 1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)

The legal position in 2007 was the same as in the 2006:

*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 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.

*Taxation:* An EU citizen has to contact the department of Inland Revenue 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.

*Social Insurance:* there is a general earnings-related Social Insurance Scheme which covers compulsorily, every person gainfully occupied in Cyprus either as employed or self-employed person. 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 1<sup>st</sup> 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. 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 65<sup>th</sup> 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.

Officials from the Ministry of Labour and the Ministry of Interior<sup>20</sup> claim that free movement of workers did not result in less favourable treatment or any form of discrimination (direct, indirect discrimination) against Union citizens or third country nationals and cited the fact there is no official complaint to the Ministry of Labour on the subject.<sup>21</sup> The same view is shared by the Employers' Association consider that, at least all major employers, who are members of Cyprus Industrialists and Employers Federation (OEB), there is an appreciation of the new provisions for equal treatment of all workers.<sup>22</sup>

Trade unions however, have a different view of affairs: they raise questions about worker rights and equal treatment of Union citizens and their partners and families, which are barriers to free movement. Despite assurances that the system operates smoothly with no problems or complaints of discrimination,<sup>23</sup> trade unions claim that they have to deal serious problems on a daily basis as regard the procedures of considering applications, causing many daily problems for workers who are EU citizens: in most cases this takes about a year and results in various discrepancies, discrimination and disruption in labour relations, as this allows the employers not to comply with collective agreements and standard practices in Cyprus.<sup>24</sup> Trade Unions are critical of the leeway provided by the law and the actual practice of one year delay in registering workers from EU countries "is causing problems for their smooth enjoyment of working life" in Cyprus.<sup>25</sup> The General Secretary of the tourism trade union (SYXKA-PEO), Lefteris Geogriades referred to the appalling conditions of migrant workers, which includes EU and third country nationals and makes up more than 50% of the labour force in the sector.<sup>26</sup> This is Cyprus's most important industry, the tourism sector, which employs over 30,000 employees. The same union official referred to the example of Polish workers working in the Cypriot tourist industry where Polish workers "Cyprus is hell as an employer", as was reported in various featured articles abroad, which "irrevocably expose Cyprus because unfortunately some employers treat these people as second category workers."<sup>27</sup> Similar views are echoed by officials of the other major Cypriot trade union SEK, who referred to numerous cases where the employers refused to implement the provisions of the collective agreements for workers who are union citizens and third country nationals in the tourist industry.<sup>28</sup>

As far as tax advantages are concerned, since accession to the 2004 tax liability is based on the principle of residence and 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.

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<sup>20</sup> Interview with George Georgallis, officer of Ministry of Interior 21.3.2008.

<sup>21</sup> Interview with by Demetris Michaelides, head of section on migrant workers and of the Cyprus EURES, Ministry of Labour 14.3.2008.

<sup>22</sup> Statement by Michalis Antoniou at Diversity Management Training seminar, organised by Symfiliosi and the Cyprus Employers and Industrialists Federation (OEB), 4<sup>th</sup> April 2008, University of Nicosia/Intercollege. During 2007 OEB prepared the handbook for Equal treatment at work and employment, which was funded by the EU.

<sup>23</sup> Interview with Dimitris Michaelides, Officer of the Ministry of Labour, in charge of EURES Cyprus, 14.3.2008.

<sup>24</sup> PEO Memorandum to the Minister of Interior, February 2008; information provided by the executive secretary of PEO (Pancyprian Labour Federation), Christos Tombazos 11.3.2008.

<sup>25</sup> PEO Memorandum to the Minister of Interior, February 2008; information provided by the executive secretary of PEO (Pancyprian Labour Federation), Christos Tombazos 11.3.2008.

<sup>26</sup> Interview of with the Cypriot daily *Haravgi*, 4.5.2008.

<sup>27</sup> Interview with the Cypriot daily *Haravgi*, 4.5.2008.

<sup>28</sup> Interview with Andreas Matsas, Head of the International and European Relations, SEK, 28.3.2008.

## 2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

A number of other obstacles to free movement can be recorded that seem to affect the life in Cyprus.

A number of EU citizens residing in Cyprus complained to the Anti-discrimination Authority that when they applied for a driving license, they were requested to present documents from the immigration authorities showing that they reside in Cyprus for at least six months. The law on granting driving licenses (Law on Driving License 94(1)/2001, art. 5) provides that such licenses are granted to applicants who have their 'habitual residence' in Cyprus, which is according to the same law at least 185 days. Invoking the laws transposing Directive 2000/43/EC, the AA found that the practice of the authorities to request a copy of the applicant's residence permit was not in compliance either the right of EU citizens to move and reside freely within the territory of the member states, or with the law prohibiting discrimination in access to goods and services on the ground of ethnic origin. Pointing out that the law on the granting of driving licenses does not require either lawful or permanent residence, but only 'habitual residence', the Anti-discrimination Authority recommended that the practice of requesting applicants to present immigration authority documents is discontinued and instead that the Department of Road Transport assesses the situation and decides on the documents necessary for the granting of driving licenses to EU citizens.

Another relevant issue relates to questions of equal treatment of particular groups of Union citizens can be raised: paradoxically Cypriot citizens, who reside in Cyprus, cannot benefit from the freedom of movement available to all other Union citizens with regard to the right to bring over to Cyprus their partner who is a third country national; instead, as they are obliged to go via the more stringent procedure of the Migration and Aliens Law the outcome of which is entirely discretionary upon the Chief Immigration Officer.<sup>29</sup>

Moreover, there are human rights questions for workers who are Lesbian Gay Bisexual and Transsexual (LGBT). Issues arise from the failure to regulate same-sex marriages and registered relations in Cyprus as it results in various forms of discrimination against Union citizen LGBT persons, which are effective obstacles to free movement,<sup>30</sup> when compared with heterosexual couples, contrary to the equality and non-discrimination principle as well as the law that mandates the Anti-discrimination Authority to investigate discrimination on the ground of sexual orientation in all the fields provided by Directive 43/2000/EC.<sup>31</sup> The recent decision of the Antidiscrimination Authority that the failure to regulate same-sex marriages and registered relations in Cyprus is discriminatory against Union citizen LGBT persons vindicates the NGOs concerns on the subject: there is unlawful discrimination against LGBT persons on the ground of sexual orientation and it impeded on the principle of freedom of movement.<sup>32</sup> The finding of the Authority is based on the fact that although in the Directive it is left to member states to decide whether and how to recognise same sex marriages and registered relationship, Cyprus is bound by the anti-discrimination Acquis, the international conventions and the fundamental human rights that demands that any discretion be exercised in line with the anti-discrimination principle (p.9) and has given two month to

<sup>29</sup> Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007). This is outlined in more detail further down.

<sup>30</sup> See Nicola Rogers and Rick Scannell (2005) *Free Movement of Persons in an Enlarged Europe*, Sweet & Maxwell, London, 10-49 to 10-53, pp.159-160.

<sup>31</sup> See Nicos Trimikliniotis & Corina Demetriou (2008) *Thematic Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation*, Cyprus, February 2008, FRALEX.

<sup>32</sup> File No AKP 68/2008.

the immigration authorities and the ministry of interior to negotiate with the complainants to resolve the issue. The Authority recognises the complexity of the issue of regulating the issue as it is a multidimensional matter that affects multiple aspects such as inheritance, taxation, insurance, retirements, property and employment issues. However, failure to deal with these complex matters impacts adversely on the daily lives of persons with alternative sexual orientation as it results in “difficulties that unfortunately lead to the social marginalisation and perpetuate the existing inequalities and unacceptable discrimination” (p. 12).

### **3. SPECIFIC ISSUES: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS**

#### *Frontier workers*

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

#### *Sportsmen / sportswomen*

The situation has not changed since the 2006 report: 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 2007 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-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/Regulations*

Cyprus Football Association (2007), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus, info@cfa.com.cy.

#### *The Maritime sector*

According to the Cyprus Shipping Chamber,<sup>33</sup> which is the social partner for the employers in the collective agreement there is minimum standard which fixes the salary and other bene-

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<sup>33</sup> Information provided by Sophocles Constantinou, Executive Officer Cyprus Shipping Chamber, 6.5.2008.

fits.<sup>34</sup> Also the chamber official suggested that Cyprus will soon ratify the ILO Maritime Labour Convention.

### ***Researchers / artists***

There is no literature on the subject, nor has there been any known complaint that foreign EU nationals are not treated equally.

## **4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68**

### ***Text(s) in force***

Since 9 February 2007, Law 7(I) of 2007 replaced all previous legislation, including and Regulations 1612/68.<sup>35</sup>

The Republic of Cyprus retains the three basic 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 occupations 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 of the issue 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). On 17 November 2006, the Republic of Cyprus enacted Law 146(1)/2006 on "The establishment, registration, functioning and supervision of professional pension provident funds" was enacted purporting to transpose Directive 2003/41/EC. This is the text in force since 2007.

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<sup>34</sup> Cyprus Collective Agreement for Seafarers aboard Cyprus Cargo and Tanker Vessels for Cyprus beneficially owned vessels (effective from 1 January 2008 until 31 December 2010).

<sup>35</sup> These include EEC Directives 64/221; 68/360; 72/194; 73/148; 75/34; 75/35; 90/364; 90/365; 93/96 and regulations 1251/70; 312/76; and 2434/92.

## Chapter IV

### Employment in the Public Sector

#### 1. ACCESS TO PUBLIC SECTOR:

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

As reported in the Report of 2006, article 31(a) of Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to the public service. However, Union 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.<sup>36</sup> An issue of concern is general practice in the public sector and civil service which have criteria in job description for public post, which operate as barriers to entry of European citizens. These often amount amounting to unlawful indirect discrimination: an instance of this is the failure of the police to recruit Pontians (i.e. Greek citizens who reside permanently in Cyprus, some of whom have obtained Cypriot nationality and passports) due to the fact that “potential candidates” do not have “the necessary qualifications”, “mostly nationality and fulfilment of their military service for men”.<sup>37</sup>

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 2007 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. Union citizens cannot 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 Union citizen cannot apply to join the Police but he/she could be employed on a fixed-term contract.

There was one case where it was found by the Equality Authority there was a prima facie case of discrimination for a vacancy for a teaching position at the University of Cyprus.

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<sup>36</sup> As reported in the Report for 2006: 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.

<sup>37</sup> Letter to the researcher by the Head of the Police Bureau for Combating Discrimination, TAE/432/1(V), dated 23.9.2008

Even though Cypriot nationality was not one of the selection criteria, one of the applicants, a Greek national, was found by the University Special Committee, to be the most qualified candidate was rejected by the Electorates' Body of the University and decided in favour of another candidate, a Cypriot national.<sup>38</sup>

### ***1.2. Language requirement***

As far the language requirement there have been some important decisions of the Anti-Discrimination Authority as reported in chapter II. In the public sector, 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.

As noted in chapter II, 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.

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<sup>38</sup> File No. AKI 33/2004.

## 2. EQUALITY OF TREATMENT

A number of obstacles to free movement relate to unequal treatment derived from possible administrative and bureaucratic barriers to the exercise of certain rights or there discrimination against Union citizens (and Third Country Nationals) has been found, such as acquiring various official documents;<sup>39</sup> certain rights,<sup>40</sup> benefits including welfare,<sup>41</sup> offered to Cypriots may be denied to Union citizens.<sup>42</sup> Some potentially discriminatory practices have been diagnosed and possibly removed as a result of complaints and investigations by the AA, such as potentially discriminatory features contained in application forms in the public/civil service.<sup>43</sup>

### *2.1 Recognition of professional experience for the purpose of determining the professional advantages (e.g. salary; grade)*

No development can be reported since the Report of 2006, save for the passage of Law 7(1)/2007 which enhances the right of EU Citizens and their family members to move and reside freely in the territory of the Republic of Cyprus. As 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, the usual practices of employers must be scrutinised under Law 7(1)/2007 and the anti-discrimination law in general to find out whether there is different treatment that amounts to unlawful discrimination and the extent to which this is a barrier to free movement. It may well be the case that the failure to properly recognize previous experience amounts to such, but there is now a case before the court or the Equality and Anti-discrimination Authorities. We are informed that there is currently a complaint before the Equality authority on this subject.

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

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<sup>39</sup> Trade unionists referred to hospital certificates for free treatment or other documentation for everyday transactions.

<sup>40</sup> For instance the denial of access to EU citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory on the basis of race or ethnic origin (Files AKP 75/2005 and AKP 78/2005).

<sup>41</sup> The Anti-discrimination Authority found that the denial by the Welfare Office of the Cyprus Ministry of Labour and Social Insurance for welfare benefit and access to the Vocational Training Scheme for Persons with Disabilities to a Greek national of Georgian origin, who suffers from muscular dystrophy amounts to unlawful discrimination.

<sup>42</sup> For instance the Anti-discrimination Authority found that it was unlawful discrimination to deny subsidies for heating benefits during the winter months Union citizens who resided in mountain villages on the basis of race or ethnic background and of national background under Protocol 12 to the ECHR (Files AKP 22/2004, AKP 42/2004, AKP 43/2004, AKP 44/2004, AKP 49/2004, AKP 58/2004); it found that the refusal of the health authorities to subsidise an under-fertile Pontian Greek citizen to do in-vitro fertilisation (IVS) was also held to be discriminatory (File AKP 54/2004).

<sup>43</sup> In this case (File Number AKI 26/2005) an application for employment in a civil service position, regulated under subsidiary legislation, which required the applicants to supply personal information including nationality of spouse at birth; religion and place of birth of applicant and spouse; religion and place of birth of applicant's parents. It was found that, in line with a similar complaint examined during 2005 the information required in the form was not necessary for the purposes of appointment and left open the possibility of indirect discrimination on the ground of, inter alia, religion, national or ethnic origin and recommended the amendment of the regulation concerned (File AKI 26/2005).

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and approved by the House of representatives), and relevant jurisprudence of the Supreme Court and of the European Court of Justice.

### *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.

## Chapter V

### Members of the Family

#### 1. RESIDENCE RIGHTS (INFORMATION ON THE TRANSPOSITION OF DIRECTIVE 2004/38/EC)

As far as third-country family members, amending legislation was introduced amending legislation (Law 7(1) of 2007) in February 2007, which provides for two improvements for family members. 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)*

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 for 2007 has changed since 2006 with the enactment of Law 8(I)/2007 (14.02.2007), which amends *Aliens and Immigration Law*.

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):

- Their valid passport or identity card with which they entered the Republic of Cyprus.
- 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.
- 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.

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).

As far as the right to family reunification is concerned, Council Directive 2003/86/EC was transposed into Cypriot law in 2007 without making use of the provision found in Article 4/3 of the Directive. The effect is that the right to family reunification is not extended to the unmarried partner of the sponsor with whom the sponsor is in a duly attested stable long-term relationship, or to a person who is bound to the sponsor by a registered partnership. The current legal framework (including 2007) essentially excludes homosexual partners of the sponsor, although the question remains whether the right to family reunification may cover the homosexual spouse of the sponsor, lawfully married in accordance with the laws of another jurisdiction remains open, as recognised by the recent AA report on the subject (see Chapter III, File No AKP 68/2008). On 14.02.2007 Council Directive 2003/86/EC (22.09.2003) was purportedly transposed into Cypriot law, after approximately a delay of two years, by amending the existing Aliens and Immigration Law Cap. 105. The scope of the amending law (Law 8(I)/2007, 14.02.2007) covers third country nationals staying lawfully in the areas controlled by the Republic of Cyprus for at least one year, who have reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status (Law 8(I)/2007, art. 18KI (1)). The provisions of the law do not apply where the sponsor is an asylum seeker; has applied for or enjoys temporary protection; has applied for or enjoys subsidiary protection on humanitarian grounds; or is a recognised refugee under the refugee laws (Refugee Law No. 6(I)/2002, 28.01.2000). The law also excludes from its scope the family members of a European Union citizen (Law 8(I)/2007, art. 18KI (3)) and applies without prejudice to more favourable provisions of bilateral and multilateral agreements. Subject to a number of preconditions<sup>44</sup> the entry and residence for family reunification purposes is allowed for the following family members:

- The sponsor's spouse provided that that the marriage took place at least one year before the submission of the application for family reunification. To this effect, a marriage certificate must be produced (Art. 18LA(2)(c)).
- The minor children (i.e. unmarried and under 18 years of age) of the sponsor and of his/her spouse, including the sponsor's or the spouse's adopted children , as well as adopted children of the sponsor who are exclusively dependent on him or her;

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<sup>44</sup> The preconditions are that the sponsor must be lawfully residing in the areas controlled by the Republic of Cyprus for at least two years; must have accommodation sufficient for a comparable family in the same region, which must meet the general health and safety standards and secure a decent life; must have health insurance for himself/herself and the members of his/her family; must have steady and regular financial means to support himself/herself and the members of his/her family without resort to the state social security system: Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18LB.

- The minor children including adopted children of the sponsor and the children of the spouse, where the spouse has custody and the children are exclusively dependent on him or her (art. 18L(1)).

In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the Republic of Cyprus, the family reunification of a further spouse and his/her children that s/he has with the sponsor is not allowed (art. 18L(4)). The Director of Immigration Department may revoke a permit or reject the application of family members for entry and residence for the purpose of family reunification for reasons of public security, public order or public health (art. 18LZ(1)). The Director may also revoke a permit or reject the application where the sponsor and his/her family members no longer live in a real marital or family relationship or where it is found that that the sponsor is married or is in a stable long-term relationship with another person (art. 18LST(1)).

The amending law (Law 8(I)/2007) did not transpose Article 4/3 of Council Directive 2003/86/EC and does not authorise the entry and residence either of the unmarried third country national partner of the sponsor with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Directive Article 5/2. Consequently, where the sponsor is a homosexual having a duly attested stable long-term relationship or a registered partnership with a third country national, s/he will not be entitled to family reunification.

It must be noted that the law recognises stable long-term relationships when it comes to revoking a permit or rejecting an application for family reunification but not when it concerns the granting of the right to family reunification to unmarried couples.

The problem with the way homosexual marriages are treated is highlighted also in this context: where such a marriage lawfully conducted in a country where homosexual marriages are recognised gives rise to the right of family reunification in Cyprus. Since Cypriot law recognises marriages lawfully conducted in other jurisdictions and considers a polygamous marriage valid, (albeit granting the right to family reunification to only one of the spouses of the sponsor), a homosexual marriage which lawfully took place in another country where homosexual marriages are recognised could potentially also give rise to the right for family reunification. This assumption however, has not been tested in practice yet and the Cypriot authorities dispute the fact that the current legal framework forces them to recognise homosexual marriages conducted outside Cyprus.<sup>45</sup> The recent decision of the AA referred to above precisely raises such issues.<sup>46</sup>

## 2. ACCESS TO WORK

The EU directive allowing foreign students from third countries<sup>47</sup> was transposed in Cyprus with an amendment (Law 184(I) of 2007) to the Aliens and Immigration law that entitles students from third countries to work on a part-time basis, up to 20 hours during the term and 40 hours during their holidays.

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<sup>45</sup> Interview to the authors by Interior Ministry officials dated 29.02.2008.

<sup>46</sup> File No AKP 68/2008.

<sup>47</sup> COUNCIL DIRECTIVE 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

A crucial issue for 2007 was the transposition of Council Directive 2003/109/EC. In spring 2007, Directive 2003/109/EC was finally transposed, after more than a year's delay, by amending the existing Aliens and Immigration Law Cap. 105. The scope of the amending law (Law 8(I)/2007) covers third country nationals staying lawfully in the areas controlled by the Republic for at least five uninterrupted years, as per article 18Z(1). Excluded from the scope of the law are the foreign students, persons on a vocational training course, persons residing in the Republic under the Refugee Law, persons staying in the Republic for reasons of a temporary nature and foreign diplomats (art. 18Z(2)). Also, persons who have been granted the status of a long term migrant in another EU member state may nevertheless be refused immigration permit if they constitute a threat to public health (art. 18KB(1)) or to "public security and public order" (art. 18KG(1)). The period of five years of lawful residence, required by the law as a pre-condition for the granting of the status of the long term migrant, is not deemed to have been interrupted if the applicant was absent from Cyprus for a period not longer than six consecutive months or for a total of maximum 10 non-consecutive months (art. 18H(2)). An application may be turned down for reasons of "public order and public security" (art. 18IA(1)). Also, the Interior Minister may decide to deport a person who has been granted the status of a long term migrant if the person constitutes serious threat to "public order or public security" (art. 18IST(1)). The following preconditions must be met in order for the status of the long term migrant to be granted:

- The applicant must have steady and regular financial means at his disposal to support himself and the dependant members of his family without resort to the national social insurance system. The criteria used in order to decide if the means are adequate are: his income, the cost of living including cost of accommodation, having at his disposal accommodation which complies with safety and hygiene standards, and in case he will be self-employed then the feasibility of his intended business,
- The applicant must have a health insurance.
- The applicant must not constitute a threat to public order and security (article 18Θ).

It is notable that the requirement for knowledge of Greek language, history and culture was removed from the earlier draft of the law, following lobbying from the trade unions who insisted that if the language/history/culture requirement was to remain then free classes should be offered by the government. Although the law was passed in early 2007, the application forms for applying for the status of a long term migrant were not made available by the Ministry until recently, when they appeared at the Interior Ministry's website. No application has yet been examined. The Interior Minister had, before his resignation, started disciplinary proceedings against the Chief Immigration Officer for failing to implement this law and for continuing to deport third country nationals entitled to be granted this status.

The situation regarding the issuing of long-term migrant status has been complicated further, if not stalled altogether, as far the vast majority of migrant workers in Cyprus following the Supreme Court of Cyprus, *Cresencia Cabotaje Motilla v. Republic of Cyprus through the Interior Minister and the Chief Immigration Officer* (Case No. 673/2006, 21.01.2008). The applicant, a female migrant who lived and worked lawfully in Cyprus for six years, applied to the Interior Minister for the status of the long term migrant as soon as the deadline for the transposition of Directive 2003/109/EC expired. The Interior Minister rejected the applicant's application, on the ground that the applicant's successive residence permits were limited as to their duration. The Ministry's decision was based on article 18Z(2) of the Aliens and Immigration Law Cap 105, as amended by Law 8(I)/2007 purport-

ing to transpose Directive 2003/109/EC, which excludes from the scope of the law persons, *inter alia* “persons whose residence permit has been officially restricted as regards its duration”. The applicant applied to the Supreme Court to set aside the said decision of the Interior Minister. Arguing that Article 18Z(2) of the Aliens and Immigration Law was intended to transpose Directive article 3(2)(e); however whilst the Directive states “persons whose residence permit has been formally limited”, the Cypriot law states “persons whose residence permit has been formally limited as to its duration.” The Supreme Court by a majority vote rejected the appeal on the ground that the fixed term duration of the applicant’s visas did indeed fall within the exception of article 18Z(2) of the Cypriot Law (Directive article 3(2)(e)); that the addition of the phrase “as to its duration” did not deduct from the effectiveness of the Directive; and that the fixed term nature of the residence visas granted to the applicant did not create a reasonable expectation “that the person has put down root in the country” (Directive Preamble article 6). The impact of the addition of the phrase “as to its duration” which was added to the Cypriot law was at the heart of the disagreement between the majority decision and the dissenting opinion of the Supreme Court judges. The dissenting opinion states that the said phrase fundamentally transforms the essence of the exception provided for in Directive article 3(2)(e), since it is clear that the intention of the Directive is to exclude persons residing in the EU temporarily or on a permit which has been limited for a specific purpose. The dissenting opinion further states that the term “formally limited” used in Directive article 3(2)(e) refers to the temporary nature of a stay not related to its duration but rather to the nature of the status or the profession of the person concerned. Given that in Cyprus the vast majority of migrant workers are, as a matter of policy issued with fixed term visas, this decision essentially abolishes the right to long term residency as provided by Directive 2003/109/EC.

### **3. ACCESS TO EDUCATION AND STUDY GRANTS**

Education is technically open to all. Study grants are limited to those who comply with the habitual residence criterion.<sup>48</sup> The main difficulty is the question of language in the public schools which is Greek, unless there is a concentration of migrants, to introduce reception classes.

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<sup>48</sup> See Mehmet and Meral Birinci v. The Republic of Cyprus (2006), No. 911/2004, issued on 14.02.2006.

## **Chapter VI**

### **Relevance/Influence/Follow-up of Recent Court of Justice Judgments**

#### ***C-212/05 Hartmann, C-213/05 Geven***

Both cases involved the category of ‘frontier workers’ and as such this is unlikely to have any bearing on Cyprus. However, the cases have a bearing in defining the scope of equal treatment and the nature of social advantage as defined in the text of the laws.

#### ***C-287/05 Hendrix***

To the extent that the social benefit issue is sensitive and controversial to Cyprus as it is in the EU law this decision may have some bearing on Cypriot courts. Moreover, the fact that the ECJ stated that the provisions of Regulation 1408/71 must be interpreted in the light of the objective of Article 42 EC, which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers is significant for a potential case in Cyprus on the subject of freedom of movement. Moreover, the ruling that the residence condition can be applied only if it is objectively justified and proportionate to the objective pursued is again a significant authority for future court cases in Cyprus.

#### ***C-291/05 Eind***

The case of *Eind* established the principle that when a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker’s family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national’s right to reside in the latter State. The fact that a third-country national who is a member of a Community worker’s family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national’s right to reside in the latter State. This is important for Cyprus in the way it deals with the right to family reunification, which is in general a restrictive approach and may be conceded to have a deterrent effect to freedom of movement.

#### ***C-208/05 ITC***

This decision is one that is crucial for Cypriot courts dealing with the subject: so far Cypriot courts were reluctant to disapply legislation, save for very exceptional legislation that was contrary to the constitution. This significant for migrant workers and would allow them to invoke rights deriving directly from the EU Acquis, which are enforceable by them and

which the national courts must protect, to disapply any provision of domestic law which is contrary to such provisions.

### ***C-1/05 Jia***

In the *Jia* case the European Court of Justice (ECJ) gave a judgment which has direct relevance to the rights of dependent relatives seeking to join European Economic Area nationals exercising free movement rights within the United Kingdom. The case is clearly significant for Cyprus as it touched upon the earlier ECJ decision of *Akrich* [2003] EUECJ C-109/01; moreover, it sheds some light on how the Cypriot immigration authorities and courts are currently interpreting the obligations of Cyprus under European community law, concerned what a dependent relative would need to show before being granted a permanent residence permit. The non-member state family member of the EU national exercising their free movement rights might have to show that they had been lawfully resident in another part of the European Union before their entry to the member state of the European Union in which the application was being made. However, the finding of the Court found that there was no requirement for Ms Jia to have lawfully resided in another Member State limits the application of the judgment in *Akrich*, but there are differences that distinguish the two situations: Ms Jia was lawfully present in Sweden when she made her application; she had not sought to evade the country's immigration laws and Swedish law did not preclude the possibility that a residence permit would have been granted, provided that she had been able to provide sufficient proof of her dependency. In *Akrich*, by contrast, the applicant had unlawfully entered the United Kingdom on two occasions and been deported. What is most directly important for Cyprus is that the ECJ allowed Ms Jia to switch from one status under national immigration rules (as a visitor) to residency under the terms of European community law. Also, Cyprus is not entitled to implement a blanket requirement for previous lawful residence in another member state as a condition precedent for the grant of a residence permit to a non-member state dependent relative seeking to remain on the basis of their dependency on an EEA national exercising free-movement rights in the UK. This can have an important effect in the immigration law and practices in Cyprus.

### ***C-97/05 Gattoussi***

This a case regarding the proper construction the Euro-Mediterranean Agreement, which establishes an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia. This provision may have effects on the right of a third country national from a country with such an agreement to remain in the territory of the Republic of Cyprus: where such a person has been duly permitted by the Republic of Cyprus to work, this right would seem to extend for a period beyond the period of validity of his permission to remain. This has serious effects on immigration law and routine practice of third country nationals in Cyprus.

## **Chapter VII**

### **Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers**

The conditions of stay of 3<sup>rd</sup> country nationals, their conditions of employment and general treatment by the immigration authorities remained an issue of concern for 2007. The Office of the Commissioner for Administration (Ombudsman) issued a report regarding the right of entry and stay of a third country national who is a spouse or a partner of a Cypriot or an EU citizen. This investigation was in response to an large number of complaints received during the past three years from third country nationals married to Cypriots or other EU citizens, against the immigration authorities, for unjustified delays in the examination of their applications for renewal of their residence permits, for unjustified rejections of their applications, for arrests and deportations, for unjustifiably prohibiting their entry into the country and for declaring their marriages as null and void.<sup>49</sup> The Ombudsman took into consideration the fact that about 32.5 per cent of the marriages in Cyprus are mixed marriages (i.e. between Cypriots and foreigners) and criticised the practice of the immigration authorities and the police of encouraging asylum seekers married to Cypriot or EU citizens to withdraw their asylum applications so as to deport them; the delays in examining applications which sometimes exceed two years; the practice of deporting asylum seekers married to Cypriots or EU nationals as soon as their asylum application is turned down; the declaring of marriages as false and therefore void; the feelings of suspicion and defensiveness towards these relationships that often produce bureaucratic and inflexible procedures, excessively strict decisions and sometimes degrading and humiliating behaviours.

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<sup>49</sup> September 2007

## **Chapter VIII**

### **EU Enlargement**

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. The same applies since 1<sup>st</sup> January 2007 for nationals of Bulgaria and Romania (see report 2006).

## Chapter IX Statistics

We have 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 2007, 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 31,345 compared to 20,542 for 2006; hence compared with migrants from third countries we have similar sort of increases in the numbers: 50,687 for 2007 and 46,671 for 2006. They were employed in the following sectors of the economy: hotels 4,395 (14.2%), in construction 6,074 (19.38%), in wholesale and retail trade 4,064 (12.97%), restaurants 3,790 (12.09%), in manufacturing 3,246 (10.35%), and in transport/communications/storage 1,723 (5.5%).

Figures from the Social Insurance<sup>50</sup> give different numbers as they are based on social insurance contributions showing that the total number of union citizens paying social insurance contributions is 37,470, which is considerable less than the 50,687 referred to above. The discrepancy in the figures is probably due to the fact that the former refers to the numbers of union citizens workers who have paid social insurance contributions, whilst the latter referred to processed applications. It remains as a question mark whether the difference between the two, some 13217 workers. According to the same table the European citizens were working in Cyprus in 2007 from the following countries: Austria 97, Belgium 57, Bulgaria 4479, France 307, Germany 544, Denmark 44, Switzerland 30, Greece 8622, Estonia 71, UK 4880, Ireland 98, Island 3, Italy 91, Low countries 178, Latvia 343, Lithuania 258, Luxemburg 5, Norway 24, Hungary 636, Poland 3573, Portugal 52, Slovakia 1876, Slovenia 46, Sweden 173, Czech Republic 319, Finland 73, non disclosed country 4400. Of course the numbers increase in comparison to 2006 as Bulgaria and Rumania joined the EU on 1.1.2007.

An issue of concern for the authorities for 2007 is the large numbers of illegal entrants from the northern Turkish occupied territories from the "Green line" (i.e. buffer zone, see next section). During 2007 there were 662 persons who entered illegally from the north as oppose to 615 in 2006 and 1264 in 2005. There were 2892 expulsions/deportations in 2007, compared with 2983 for 2006; however we are informed by the police that the numbers of expulsion is very much depended on capacity to detain persons and that they are working in more or less 'full capacity'.

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<sup>50</sup> See <http://www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/40E8F0171DEE0E30C225739B003FD1BC?OpenDocument>

## Chapter X

### Miscellaneous

A number of repercussions on free movement of workers arise from the situation in Cyprus: a cease fire line, which cuts across a de facto divided country. The references in the new law (and other laws) to the territorial application of the implementation of the Directive given the de facto division of Cyprus may be a problematic issue for free movement of workers. At first sight the references the restrict the force of the law to the territory in which the Republic of Cyprus operates as “the area under the control of the Republic”<sup>51</sup> may appear as an innocent manifestation of the de facto status quo that does not allow for the implementation of the Acquis in the northern territories. However, this provision has resulted in problems in the implementation of the principle of free movement. Firstly, the relevant provision in Law 7(1)/2007 seems superfluous given the Treaty of Accession and the Green Line Regulation 866/2004 of 29.04.2004 regulates the peculiar “soft border” of Cyprus under the current situation as long as the de facto partition persists.<sup>52</sup> In fact, immediately after accession to the EU of a divided Cyprus following the failure to agree on a settlement to the “Cyprus problem”, there was special regulation, referred to as “the Green Line regulation,”<sup>53</sup> which regulates problems deriving from “the de facto partition of Cyprus.”<sup>54</sup> The reference in Law 7(1) to the issue of effective control of the territory allows the authorities to exercise discretion as to whether to allow to EU citizens living the northern (occupied) territories to exercise their rights under the directive: this may constitute failure to properly transpose the directive and may result in unlawful discrimination against them. There are allegations that, this is already happening with partners of Union citizens residing in the northern part of Cyprus, living in area that is within the unrecognized Turkish Republic of Northern Cyprus, who are apparently not prevented from travelling or using the legal ports and airports the first time they enter the country but are apparently put on the “stop list” once they have entered the territories of the Republic of Cyprus. It has to be recognized that there may be reasons why authorities would choose to be cautious about granting these rights to Union citizens residing in the northern territories<sup>55</sup> and that there are inherent complications resulting from the operation of the Green line Regulation, which aims to combat illegal immigration of third country nationals and to detect and prevent any threat to public security and public policy.<sup>56</sup> Never-

<sup>51</sup> Articles 2 and 20 of Law 7(1)/ 2007.

<sup>52</sup> This is the division line of Cyprus, which nothing more than a ceasefire line. When Cyprus acceded in the EU as a divided island the EU decided to make this into a ‘soft border’ of the EU. See Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession At OJ L 161, 30.4.2004), [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R(01)

<sup>53</sup> Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004), [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R(01)

<sup>54</sup> See ECRI (2005) Third Report on Cyprus, European Commission against Racism and Intolerance, Council of Europe, Strasbourg, 16 May 2006 and Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004), [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=304R0866R(01)

<sup>55</sup> For instance the reasoning may be to attempt to protect the properties of Greek-Cypriots from being usurped by Union citizens as a result of the de facto partition following the coup, the invasion and occupation since 1974.

<sup>56</sup> See Communication from the Commission COM(2006) 551 final, Brussels, 25.9.2006, [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=506DC0551&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=506DC0551&lg=en)

## CYPRUS

theless, the reference to the territory under the control effective control may result in practices that undermine the principle of free movement as “fundamental status” stipulated in the preamble of Directive 2004/58/2004 and creates obstacles to the exercise of this right which contrary to the Directive.