

REPORT
on the Free Movement of Workers
in Cyprus in 2008-2009

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Introduction

This report covers the period from 1.1.2008 up to 20.8.2009. One year after the Republic of Cyprus enacted Law 7(1)/2007, which purported to transpose Directive 2004/38, there is a clearer view as to the effects the new legislation and the practices relating to transposition. We have witnessed a steady rise in the number of Union citizens taking up the right of movement of workers to work in Cyprus: there are currently 138,000 non-Cypriots residing in Cyprus,¹ out of whom over 70,000 EU citizens. According to the Ministry of Labour and social Insurance, the number of EU citizens figure in July 2008 was 49,639 and mean figure for 2008 was 42,303 EU citizens,² in comparison to 57,137 and 55,174 respectively from third countries.³ A number of improvements in the system have been identified that would allow the smoother implementation of the principle of free movement. However, we can also locate a number of key issues that derive from the operation of administrative practices that are not compatible with the freedom of movement principles and the spirit of the above directive.

Firstly, despite the implementation of the new law in November 2007, considerable backlogs have been created: in 2008 the Cyprus Anti-Discrimination Body, which examined 74 complaints of long delays in the granting of resident cards to EU citizens the backlog of 27,000 pending applications, something disputed by the Government. The long delay in the appointments for obtaining the registration certificate means that the waiting list for appointments to obtain the certificate for up to one year is contrary to the provisions and the spirit of the Directive, as it: this is apparently due to staff shortages. Union nationals who obtained a permit issued according to the old Law for Free Movement (put in force after the accession of Cyprus to the EU in May 1st 2004), after the 2007 Law was put into force, when referred to state Authorities (hospitals, welfare services etc) they were informed that they can apply under the new Law for obtaining the registration certificate.

The initial information by the Ministry was that union nationals granted permit to stay under the old law have been informed of their right to apply under the new regime via a letter; however the letter is misleading as it does to give the full facts about their rights: it merely gives them the option either to retain their permit under the old law or reapply under the new law without informing them that they are entitled to a refund of the 35 euro they had paid for their application under the old law, due to the inability to use some automatic system place these persons in the register of the new law and refund them accordingly. However, subsequent information by the Ministry gives a different picture: when the 2004 Law was put into force, the fees for applying for residence permit were £5.00. Until the application forms were prepared under this Law, the application forms of the Aliens and Immigration Law were used (M.61) but the fee paid was £5.00 (and not £20.00 as in the Aliens and Immigration Law) and so there was not a need for any money refund. The family Members of EU nationals who had already applied under the Aliens and Migration Law (application

1 Source: Civil Registry and Migration Department and the Population Data Archives, provided on 3.3.2009. I would like to thank Mr. Andros Ktorides for the help in obtaining the data.

2 See Total Aliens and Europeans Data 2008, 13.10.2008 at <http://www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/3609D4C436EE184AC2257465003967B5?OpenDocument> accessed on 23.3.2009.

3 Total Aliens and Europeans Data 2008 13.10.2008/aliens <http://www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/3609D4C436EE184AC2257465003967B5?OpenDocument> accessed on 23.3.2009.

M61) when the 2007 Law was put into force, via a letter sent by the Civil Registry and Migration Department, they were asked whether they wished for the Department to continue with the examination of the M61 application or whether they wished to apply again under the new Law. The fee for both cases is the same and so there was no issue of money refund.

The second issue arises from the implementation of the Directive into Cypriot law. Concerns have been raised as to the effect of the law on the rights of Union citizens working or visiting Cyprus, their partners and family members. Questions about worker rights and equal treatment of Union citizens and their partners and families have emerged. As report in the 2007 Report the situation in 2008 continues to be the same: despite official assurances that the system operates smoothly with no problems or complaints of discrimination, trade unions see flaws with the application procedures which result in many daily problems for workers who are EU citizens. Trade unions argue that such procedural delays create various discrepancies, discrimination and disruption in labour relations, as well as non-compliance with collective agreements and labour standards.

The third issue relates to equal treatment and human rights violation of Lesbian Gay, Bisexual and Transsexual persons in the exercise of free movement 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. This is contrary to the principle of equality and non-discrimination on the ground of sexual orientation in all the fields provided by Directive 43/2000/EC: the Cypriot Equality body 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 fourth issue is discrimination against third country nationals who are family members of Cypriot citizens resident in Cyprus. They cannot benefit from the freedom of movement available to all other Union citizens with regard to their right reside in Cyprus: instead, they are obliged to go via the more stringent procedure of the Aliens and Migration Law the outcome of which is entirely discretionary upon the Immigration Officer. Article 2 of the 2007 Law foresees that EU citizen is every person who is a citizen of the EU other than the Republic of Cyprus; this provision is also included in Article 3 'Beneficiaries' of the Directive. Various Supreme Court decisions deal with the issue of reverse discrimination differently: some stress that it is sine qua non that Cypriots would enjoy every right union citizens have, others take the opposite view. It is noted that the Ministerial Committee for the Employment of Aliens has decided on the 28.8.2009 that for matters of entry and stay in the Republic of family members of Cypriots will be decided on the basis of the respective conditions in for family member in other Union citizens as provided in Law 7(1)/2007.

Another issue that is again of relevance 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. This is due to the fact that the implementation of the Acquis Communautaire in the areas of the Republic which are not under the effective control of the Republic of Cyprus Government has been suspended according to the Accession Treaty under which Cyprus acceded to the EU on May 1st 2004. However, this provision has resulted in problems in the implementation of the principle of free movement, given the accession to the EU of a divided Cyprus. In place we have a special regulation,

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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 to EU citizens living the northern (occupied) territories to exercise their rights under the directive by refusing to grant registration certificate. This is likely to be failure to properly transpose the directive and may result in unlawful discrimination against them. References 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 2004/38/2004 and creates obstacles to the exercise of this right which contrary to the Directive. It may be justified as are regards specific benefits, providing that it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, it is difficult to see how it can be justified for refusal for grant access to any rights under free movement principles.

Finally, the Republic is has enacted legislation purporting to transpose Directives 36/2005 and 100/2006, Law 31(I)/2008, which introduced a unified law abolishing the old laws and allows for recognition of professional qualifications. However, the laws covering each of the regulated professions are yet to be amended. The complaints before the Cypriot Equality body indicate that there are still some obstacles to the free movement of Union citizens who wish to exercise their professions; the professional bodies in charge claim that they are considering amending their regulations to meet the requirements of the EU Directives but this is yet to materialise in many instances (e.g. architects, civil engineers, building constructors, nurses etc) Moreover, a number of obstacles are apparent as regards the language requirements in the private and particularly in the public sector, as well as administrative and bureaucratic barriers to the exercise of certain rights for European citizens (e.g. obtaining driving licences and other official documents) and benefits.

Chapter I

Entry, Residence, Departure

The transposition of Directive 2005/38/EC was covered in the 2006 and 2007 reports. However, there are a number of issues in the instance of Cyprus that are still pending. Last year's report referred the delays, due to problems of adapting the technical computer systems which resulted in non-implementation of the law until November 2007: until then the authorities continued to operate using the old law. However, as was stressed in the Report for 2007, 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,⁴ it was noted that the long waiting list for appointments to obtain the certificate went up to one year and more in some cases is contrary to the provisions and the spirit of the Directive. In July 2008, the Cyprus Anti-Discrimination Body⁵ examined 74 complaints of long delays in the granting of residents cards to EU citizens.⁶ According to the same report of the Anti-Discrimination Body, there was a backlog of 27,000 pending applications. The Anti-Discrimination Body, whilst recognising the difficulties resulting from staff shortages, stated that this is no justification for the delays as these long delays affects many rights and benefits of EU citizens. The Ministry of Interior disputes that there can be such estimation:

‘There cannot be an estimation of the actual backlog as the pending cases include applications of people who filed them according to the old Law and afterwards reapplied under the new Law. Furthermore, due to the fact that EU nationals move frequently from country to country, instructions were given by the Director of Civil Registry Department for these applications not to be processed unless the EU citizen refers again to the Department for acquiring his/her documents.’

Moreover, it contends that ‘since the new Legislation does not allow delays in issuing the registration certificate for EU citizens’ measures have been taken and since the beginning of 2009 all registration certificates are issued to EU nationals on the spot the same day as they submit the application’.⁷

As reported in the 2007, there are human rights questions for workers who are Lesbian Gay Bisexual and Transsexual (LGBT) as a result of the failure to regulate same-sex marriages and registered relations in Cyprus. In 2008 there was exposure of this issue in media

4 The requirement contained in art. 8.3 of the Directive that ‘a registration certificate shall be issued immediately’.

5 The ombudsman was designated as the specialised equality body in relevant legislation that transposes the anti-discrimination acquis, setting up two authorities internally: the Equality Authority and the Anti-discrimination Body.

6 A.K.P.: 65/2007, 86/2007, 107/2007, 108/2007,123/2007, 17/2008, 22/2008, 25/2008, 26/2008, 27/2008, 28/2008, 29/2008, 30/2008, 31/2008, 32/2008, 36/2008, 37/2008, 39/2008, 40/2008, 41/2008, 42/2008, 43/2008, 44/2008, 45/2008, 47/2008, 48/2008, 49/2008, 50/2008, 51/2008, 52/2008, 53/2008, 54/2008, 55/2008, 56/2008, 57/2008, 58/2008, 59/2008, 60/2008, 61/2008, 62/2008, 63/2008, 64/2008, 66/2008, 72/2008,74/2008, 78/2008, 102/2008, 105/2008, 106/2008, 107/2008, 108/2008, 109/2008, 110/1008, 111/1008, 112/2008, 113/2008, 114/2008,115/2008, 116/2008, 117/2008, 118/2008, 119/2008, 120/2008, 121/2008, 122/2008, 123/2008, 124/2008, 125/2008, 126/2008, 127/2008, 128/2008, 129/2008, 130/2008, και 145/2008. These complaints were addressed with one report by the Anti-discrimination Body date 31.7.2009.

7 Communication to the author from the Ministry of Interior, 9.9.2009.

discourses, which have highlighted various forms of discrimination against Union citizen LGBT persons, which are effective obstacles to free movement,⁸ 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 orientation⁹ in all the fields provided by Directive 43/2000/EC.¹⁰ The position of the Ministry of Interior is that ‘the recognition of marriages between same sex persons, these are not recognized under Cypriot legislation, regardless of the nationality of the persons or the place where the marriage has taken place’ and that ‘the same applies for the persons of same sex who have a registered relationship.’ It claims that nonetheless, according to article 4(2) of Law 7(I)/2007 the entry and residence of a partner of an EU national, is facilitated by the Cypriot Authorities, where such relationship is durable and duly attested:

‘Under the aforementioned Law, same sex partners do fall under the definition of ‘partner’. Additionally, the existence of documents issued by the Authorities of another State, stating that these persons have contacted a marriage or have registered their relationship in that State, are valid for the purposes of proving a durable and duly attested relationship. Furthermore, it must be noted that in cases where neither marriage, nor a registered relationship exists, the documents requested by the persons (partners) for proving a durable and duly attested relationship, are the same both for same sex partners and for partners that are of different sex. Under Cypriot Legislation, where such relationship has been proven the entrance and residence of the partner is facilitated using the provisions of the Aliens and Migration Law.’¹¹

The Ministry of Interior positions relies on the opinion of the Legal Services of the Republic which (a) cites relevant ECtHR case law which does make the contracting parties to legislate to enable marriage of the same sex. (b) the ECHR itself safeguards in art. 12 the right to marry between men and women and (c) the 2007 Law provides for the rights of LGBTs partners to EU citizens, despite the fact that s/he is not considered to be a ‘family member’ but facilitates entry and stay in accordance to the Aliens and Migration Law, as long as it is established that there is a permanent and duly proven relationship, as with heterosexual partners of union citizens. However, the Ministry of Interior position misses the point about the discrimination on the basis of sexual orientation: the right of member states not recognize

8 See Nicola Rogers & Rick Scannell (2005) *Free Movement of Persons in an Enlarged Europe*, London: Sweet & Maxwell, 10-49 to 10-53, p. 159-160.

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

10 The 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 (File No AKP 68/2008). 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 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).

11 Communication to the author from the Ministry of Interior, 9.9.2009.

same sex marriage should not result in discrimination against homosexual partners when compared with heterosexual partners of union citizens who are entitled to family reunion.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The Cypriot law 7(I)/2007 transposed verbatim the relevant provisions of the directive in the following categories of workers: art. 7(1a) of the Directive is sect. 9(1) of the said law; art. 7 (3 a-d) is sect. 9(4)(a-d); art. 8(3a) is sect. 10(4); art.14 (4 a-b) is sect. 27 (4a-b), art.17 is sect. 15, art. 24 (2) is sect. 22(2).

The Cypriot law (sect. 27(1)) stipulates that persons exercising their right of residence should not become an ‘unreasonable burden’ on the social assistance system of the country during an initial period of residence. In practical terms what is required is set out in the circular issued by the Civil Registry and Migration Department,¹² which requires that a number of formalities are provided to ensure that the Union citizen applicants is in possession of ‘the appropriate means’. According to section 4.1(b)(5) of law 7(I)/2007, the Social Welfare Services are the designated authority to make determinations of what constitutes ‘unreasonable burden on the social assistance system of Cyprus’.

The documents that must accompany the applications are set out in the 2007 Law.

These include the following:

- If the Union citizen is in employment already, then he has to provide a letter from employer which stipulates the income provided amounts to sufficient means of subsistence. The Civil Registry and Migration Department has the right to ask from the employer a certificate proving the contributions are paid to the Social Insurance Fund for the specific EU national.
- In case of an application of from a third country national married to a Union citizen, then both the Union citizen and the spouse must appear with their travel documents and the following documents are examined: (a) marriage certificate; (b) bank guarantee (only until the end of 2008. From the beginning of 2009 and onwards this is not asked for anymore); (c) statement of harmonious cohabitation; (d) rental agreement; (e) completed form M64 from the employer, if the spouse is working (until the end of 2008; from the beginning of 2009, a declaration of employment is required which is filled from the applicant together with the employer); and (f) if the person was an Asylum seeker, a confirmation by the Asylum Service that (s)he has withdrawn any asylum applications.

In cases where the Union citizen is working in the Republic and the company base is abroad, (s) a copy of the employment contract, bank account and statements for proving that his/her incomes is provided from abroad and is banked to the bank account in Cyprus, a certificate of health insurance and a rental agreement or a contract of sales.

The Civil Registry and Migration Department,¹³ gave the responsible officers guidelines through a letter regarding the issue of sufficient means for the cases of EU nationals, who are not employees but who stated that have sufficient means. The letter contained the following amounts:

12 File No. 30/2004/IV, 29.9.2008.

13 File No. 30/2004/IV, 29.9.2008.

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- 600 euro for himself;¹⁴
- 400 euro for his wife;
- 300 euro for each child over 12 years old;
- 200 euro for each child under 12 years old.

The Ministry of Interior is categorical that the letter is not a condition precedent as a kind of minimum income acceptable to proceed with the application for a certificate of registration. In correspondence with the author of this report,¹⁵ the Ministry stated:

The letter included indicative amounts. The instructions were if the stated means of the EU citizen did meet the indicative amounts then the application was examined at the place of submission. In cases where the stated means did not meet the indicative amounts then the application was sent to the Central Offices of Civil Registry and Migration Department in Nicosia. The issue was then sent to the Social Welfare Services which is the competent Authority. No application was rejected without the approval of the Social Welfare Services.

In cases of pensioners and aged persons, these must have a bank account and statements for proving that the pension is provided from abroad and is banked to the bank account in Cyprus (or statements that they withdraw money from their bank account abroad through their cards), they must submit a certificate of health insurance and a rental agreement or a contract of sales. The letter regarding the issue of sufficient means refers to the minimum pension from abroad must be 600 euro.

In the case of Union citizens who are students and who are also employed on a part-time basis they will not be considered as workers therefore their application will be processed on the basis of criteria for students. The letter regarding the issue of sufficient means refers to an income not less than 600 euro.

The language of the letter is indicative of the policy assumptions about the gender of the applicants and the family structure. This may itself be ground for (a) gender discrimination and (b) discrimination on the ground of sexual orientation in the case of same sex applicants. Moreover, it confirms the concerns raised in the 2007 Report on Cyprus about discrimination against LGBTs.

2. SITUATION OF JOB-SEEKERS

There has been no case law on the status of Union citizens who are jobseekers in Cyprus, as well as those requiring public assistance.

The question is whether as a matter of practice how the Social Welfare Service interprets the various references to the notion of ‘unreasonable burden on the social assistance system of Cyprus’, as it is the Social Welfare Services.¹⁶ The Social Welfare Service is currently in

14 This is the language used in the letter, which is certainly not gender neutral and may be discriminatory on the ground of gender.

15 Communication to the author from the Ministry of Interior, 9.9.2009.

16 According to the law who are in charge to make such determinations according to section 4.1(b)(5) of law 7(I)/2007. I have not received a reply from the Social Welfare Service yet on the issue, where I request that they inform me as a matter of practice what they actually do i.e. how they interpret section 4.1(b)(5) of law 7(I)/2007, verbatim copying art. 14.1 of 2004/38/EC that the union citizens must be ‘unreasonable burden on

a process of trying to define what the term means, seeking advice and guidance from practices and conceptual frames in other EU countries on the subject so that criteria are developed that define this ambiguous term.¹⁷ There are three potential sources of benefits for job-seekers in general: (a) unemployment benefit, which is based on contributions; (b) social assistance and (c) other benefits available by the Service of Grants and Allowances under the Ministry of Finance, analysed further down.

(a) Unemployment benefit

The Social Insurance Law (N. 41/80)¹⁸ has not been amended to cover Union citizens; presumably, due to accession to the EU law as well as the operation of law 7(I)/2007 would convert ‘Cypriot citizens’ to ‘Union citizen’. The social insurance system is based on contributions and has objective criteria, therefore descent or nationality does not play a role in the determination of entitlements.

An unemployment benefit¹⁹ is payable to employed persons and voluntary contributors working abroad in the service of Cypriot employer. Insured persons under the age of 16 or over the age of 63 are not entitled to unemployment benefit. The age of 63 is extended up to the age of 65 if the insured person is not entitled to old age pension.²⁰ The conditions for entitlement to unemployment benefit are: (a) The insured person has been insured for at least 26 weeks and has paid, up to the date of unemployment, contributions on insurable earnings not lower than 26 times the weekly amount of the basic insurable earnings; and (b) The insured person has paid²¹ or been credited²² with contributions in the previous contribution

the social assistance system’ and how many applications they have received. I am hoping to get a reply before the final draft of this report.

17 The author was referred to academic articles on the current debates such as the paper by Koen Lenaerts and Tinne Heremans (2006) ‘Contours of a European Social Union in the Case-Law of the European Court of Justice’ (*European Constitutional Law Review* 2006, 2/1, p. 101-115), which examines the tensions between national welfare systems and the social rights of the citizens of the Union. Information was kindly provided by the officer in charge of public assistance in the Social Welfare Service 22.4.2009.

18 As amended up to 2007 and the relevant regulations.

19 See Social Insurance Law (N. 41/80). Unemployment benefit is composed of the basic and the supplementary benefit. The weekly rate of the basic benefit is equal to 60% of the weekly average of the basic insurable earnings of the beneficiary in the previous year, increased by 1/3 for a dependent spouse and by 1/6 for dependent children or other dependants (maximum two dependants). The increase for the dependant spouse is payable only if his/her earnings from his employment or the rate of the benefit he/she may receive from the Social Insurance Fund, are not higher than the amount of increase for dependants. In the case where both spouses are entitled to a benefit for the same period, the increase for dependants is payable only to the spouse who is entitled to increase of benefit at a higher rate. The weekly rate of 3 supplementary benefit is equal to 50% of the weekly average of insurable earnings of the beneficiary in excess of the basic insurable earnings but in no case the supplementary benefit is higher than the weekly amount of the basic insurable earnings.

20 For a the Ministry of Labour and Social Insurance Guide to unemployment benefit, see [http:// www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/E89112D31399E626C2256E3900394587/\\$file/GuideUnemployment%20Benefit%20Y2008.pdf](http://www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/E89112D31399E626C2256E3900394587/$file/GuideUnemployment%20Benefit%20Y2008.pdf)

21 Insurable earnings on which contributions have been paid.

22 Every insured person can be credited with insurable earnings for any period of full time education after the age of 16 years, for periods of serving in the National Guard, for periods who is in receipt of sickness, unemployment, maternity, injury benefits, or invalidity pension out of the Social Insurance Fund and for the period of parental leave or period of leave on grounds of force majeure.

year²³ on insurable earnings not lower than 20 times the weekly amount of the basic insurable earnings. It is noted that for the purposes of the above conditions the contributions of a self-employed person are not taken into account, whilst the contributions of a voluntarily insured person are taken into account only in the case of work abroad in the service of Cypriot employer insurable earnings not lower than 20 times the weekly amount of the basic insurable earnings. In terms of the procedure to be followed, it is required that the insured person should visit the nearest Social Insurance Office and sign the register of unemployed. The claimant should sign the register at regular intervals determined by the Social Insurance Office.

(b) Social/public assistance

Public assistance is provided under Law 95(I)/2006²⁴ to all those residing in the territories under the effective control of the Republic of Cyprus (i.e. not the territories under the unrecognized TRNC)²⁵ but there are conditions specific to Union citizens. A ‘Union citizen who maintains his/her status of an employee or self-employed person’ is defined as ‘a Union citizen who has exercised his/her right to reside in the Republic for the exercise of employed or self-employed activity and is no longer employed or self-employed in the following situations: (a) temporary incapacitated due to sickness or accident; (b) has been duly registered as involuntary unemployed, having exercised professional activity for over one year and has registered as a person seeking employment in the appropriate Employment Bureau (according to residence); (c) is duly registered as involuntary unemployed after the expiry of a fixed-term contract of employment of duration shorter than a year or after becoming involuntary unemployed during the 12 months has registered with the appropriate Employment Bureau (according to residence); the duration of employment must not be less than 6 months; (d) is attending a vocational course.

Unless a person is willingly unemployed, then the continuation of his identity as a working person presupposes the existence of a relation between his previous professional activity and his vocation.

Public benefit is paid to every Union citizen residing in the Republic controlled territories and having the right of permanent residence there and whose income and other financial means are not sufficient for his basic and special needs. The aforesaid entitlement to public benefit extends also to EU citizens who exercise their right to reside in the Republic for the exercise of paid or unpaid activity or who is an employee or is self-employed, subject again to residing in the Republic controlled areas and to insufficient income. EU citizens who are

23 For the first semester of each year is the calendar year before the last and for the second semester is the last calendar year e.g. for the first semester of 2008, the previous contribution year is the year 2006, whereas for the second semester of 2008 is the year 2007.

24 Ο περί Δημόσιων Βοηθημάτων και Υπηρεσιών Νόμος του 2006, Αρ. 4085, dated 28.4.2006.

25 In the definitions of the law the territorial and residential read as follows: «ελεγχόμενες από την κυβέρνηση της Δημοκρατίας περιοχές» σημαίνει τις περιοχές της Κυπριακής Δημοκρατίας στις οποίες η κυβέρνηση της Δημοκρατίας ασκεί αποτελεσματικό έλεγχο». Moreover, there is reference to the ‘abnormal situation’: «έκρυθμη κατάσταση» σημαίνει την κατάσταση που δημιουργήθηκε ως συνέπεια της τουρκικής εισβολής και η οποία εξακολουθεί να υφίσταται μέχρις ότου το Υπουργικό Συμβούλιο, με γνωστοποίηση που θα δημοσιευθεί στην Επίσημη Εφημερίδα της Δημοκρατίας, ορίσει ημερομηνία λήξης της κατάστασης αυτής»

not employed or self-employed and are residing in Cyprus for the purpose of finding work are not entitled to public benefit.

Public benefit is also paid to EU citizens residing in the Republic for over 3 months who acquired the right of stay in the Republic because of having proved sufficient means for themselves and their families or because of studying or receiving vocational training whilst proving that they have sufficient means, and who subsequently lost the said means and their other financial sources are not sufficient for their needs.

Third country nationals who have the status of a long term migrant in the Republic or in another member state but have an immigration permit for the Republic are entitled to public benefit provided they reside in the Republic and their financial means are not sufficient for their needs and their housing.

Recognised refugees residing in the Republic whose income and other means are not sufficient for their basic needs are entitled to public benefit.²⁶

There is a decision of the Cypriot Equality body (the Anti-discrimination Authority)²⁷ which deals with the receipt of public assistance for health reason, which is illuminating as to the situation of the Union citizens requiring public assistance, including jobseekers allowance.²⁸ The complaint involved an eighteen year old Greek citizen suffering from severe leukaemia against the Social Welfare Service, which decided to discontinue the social assistance benefit for treatment was receiving until May 2007. The Union citizen had been resident in Cyprus with his parents since 2002 and granted a ‘visitor’ indefinite leave to remain and was in receipt of public assistance since 2005 for humanitarian reasons, despite initial rejection due to his ‘visitor’ status. In October 2006, the complainant and his mother residence status was changed to that of a family member of a Union citizen based on the law on free movement of workers. The Social Welfare Service decided to discontinue the public assistance on the ground that he was not allowed assistance as his residence status was that of a dependent of his mother, who is a Union citizen with a residence permit for reasons of employment activity.²⁹ According to the report of the Cyprus Equality body the relevant circular, which has wider application in similar purposes, distinguishes between Union and Cypriot citizens based on Law 7(I)/2007 and the law on Public Assistance 95(I)/2006: ‘the provision of law on Public Assistance 95(I)/2006, makes a distinction between the rights of Union citizens and citizens of the Republic of Cyprus and section 12(1)(a) of the law for exemption from the responsibility for the maintenance of a disable child is not applied in the cases of Union citizens’.³⁰ The reasoning is based on the logic that the granting of residence is premised on the proof that the complainant’s mother is in possession of ‘sufficient means for the maintenance of her family’. The Director of the Social Welfare Service erroneously suggested that a precondition for granting the free movement rights under section 9(1)(b) of Law 7(I)/2007 is that they are not considered to be ‘unreasonable burden on the social assistance system of Cyprus’ (AKP 70/2007, p. 4). Moreover, the Director went on, again erroneously, to comment that the right of residence is dependent on being in possession of sufficient means’. The Cypriot Equality body after analysing the relevant legal framework con-

26 Law 95(I)/2006, sections 4-7.

27 The Cypriot Equality body consists of two authorities: the Anti-discrimination Authority and the Equality Authority.

28 AKP 70/2007, issued on 24 March 2008. The complainant's name is Nicolaos Meziridis.

29 Letter to the complainant by the Paphos District Social Welfare Service dated 5.6.2007.

30 The Circular by the Director of the Social Welfare Service 7.3.2007 is quoted AKP 70/2007, p. 3.

sidered that the Director of the Social Welfare Service had wrongly interpreted and applied the law on the following grounds:

- The Directive and the respective transposing Cypriot law does not make the exercise of the primary right of free movement, residence and work dependent upon sufficient means to avoid burdening the national social welfare system.
- The Directive explicitly set out the principle of non-discrimination on the ground of nationality;
- The right to free movement is a right adjacent to the exercise of a professional/ economic activity in the EU that has been settled at a treaty level. This is done in a manner that is broad in scope, lucid and direct and the exercise of this right is a condition precedent to the exercise of any professional activity in the host country (AKP 70/2007, p. 12).

Central to the finding of the Cypriot Equality body is the principle of equal treatment under sec. 22 of Law 7(I)/2007, considering the discrimination by the Social Welfare Service as unreasonable. The Equality body referred the broad principles of paragraphs 16, 20 and 21 of the Directive preamble as well as to a number of cases before the Court of the European Communities, such as *Martinez Sala C-85/96*, *Rudy Grzelczyk C-184/99* as well as *D' Hoop C-224/98*. The Equality body went further to clarify two legal issues that have also a bearing on the residence rights of job-seekers:

- All administrative formalities for the exercise of free movement and residence of Union citizens and their families for a period more than three months are set out exhaustively in the law and the Directive. It is clear that their primary residence stay is not dependent of the existence of sufficient means, as is the case with students or pensioners for instance.
- It must be clarified that the competent authority for such issues is the Civil Registry and Migration Department and not the Social Welfare Service; however in the case of Union citizens such as the one above the granting of the permit provided has but an identification and evidential value.
- As for the right of Union citizens to public assistance the non-discrimination principle as set out in section 22 of the law is of paramount importance and recommends that the authorities restore the public assistance to the complainant and withdraw the relevant circular issued. The Social Welfare Service has complied with the recommendation.³¹

On the basis of the above case, by analogy the same principles must apply for jobseekers cases; however the author has not been given any indication about the current practices by the Social Welfare Service. It is not clear how long jobseekers stay without formalities; presumably indefinitely so long they do not seek recourse to public funds. There has been no case law to test out whether the *Ioannidis/ Collins* type of social assistance benefits would be allowed.

31 In other instances there is no compliance. For instance in the past there have been cases regarding the provision of public assistance to Union citizens, where there has not been compliance with the recommendations of the Cypriot Equality body (AKR 33/2004, dated 10.1.2005).

(c) Other benefits available by the Service of Grants and Allowances under the Ministry of Finance

These benefits include child benefits under Regulation 1408/71 as well as other social allowances deriving from the public assistance system in Cyprus, such as student grants, grant to families with 3 children or more to buy a car; maternity benefit to mothers of 4 children or more; special provision for the blind; grant to persons with disabilities to buy a car; mobility benefit for persons with severe disabilities; special grant to buy or to build house).³²

A *student grant* is paid to families lawfully residing in the Republic with one child over 17 years who attends full time education of at least one year's duration at a recognised tertiary educational establishment. The grant is paid for the normal time required to complete just one course. The grant amounts to €1708,60 for all students completing one academic year plus 50% of fees if the student's family pays fees of a maximum of €854,30, plus €854,30 to families with three or four children for every child-student.

A *child benefit* is paid to all families irrespective of income who ordinarily reside in the Republic and whose unmarried children cohabit with them and fall under one of the following categories:

- They are aged under 18;
- They are aged between 18-25 and are serving in the army;
- They are aged between 18-23 and are attending full time education/training;
- They are males aged between 23-25 attending full time education/training of same duration as their army service;
- They permanently lack the ability to support themselves, irrespective of age.

Text(s) in Force

- Law 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.
- Law 95(I)/2006 on Public Assistance
- Law 41/80 on Social Insurance

Recent legal literature

Department of Labour (2008) *Ελεύθερη διακίνηση και διαμονή Ευρωπαϊκών Πολιτών και Μελών των Οικογενειών τους*.³³ This is a guide [in Greek] on 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

32 See http://www.mof.gov.cy/mof/mof.nsf/DMLallowance_gr/DMLallowance_gr?OpenDocument.

33 This translates as Free Movement and Residence of European Citizens and Members of their Family.

Chapter II

Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT OUTSIDE THE PUBLIC SECTOR

The Labour Department considers that the overall situation is a positive one and there are no serious barriers to access to employment by Union citizens.

The issue of assistance of employment agencies has not received much attention. An issue of concern is the fact that public employment agencies in Cyprus do not provide services in any language other than Greek which may be a barrier to many Union citizens who are non-Greek speakers. Given that almost all civil servants and the vast majority of people are fluent in English it would not be difficult to make such services available in English.

Officials from the Department of Labour³⁴ claim that the system is operating smoothly and jobseekers can seek jobs via EURES and various private agencies and there has been no complaint about barriers to the authorities, hence there is a steady increase in the numbers of Union citizens who are working in Cyprus over the recent years. However, the officials do recognise that there may be some problems in specific areas, particularly in the private sector. From the number of cases gone before the Cyprus Equality Authority which deals with employment related discrimination, it is apparent that there are some barriers to access in specific sectors. Moreover, trade unions dispute that in practice the worker rights and equal treatment of Union citizens and their partners and families is properly observed. Despite assurances that there have been no problems or complaints of discrimination by Union citizens exercising the right to free movement of workers,³⁵ trade unions claim that the problems on a daily basis as regard the procedures of considering applications continue. These are causing daily problems 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.³⁶

Crucial to access to employment concerns the recognition of diplomas (including the academic diplomas). A new law was enacted, the *Law that provides for the recognition professional qualifications and related matters*, 31(I)/2008, purporting to transpose Directives 36/2005 and 100/2006, which provides unified law that abolishes the old laws³⁷ and allows for recognition of professional qualifications.³⁸ Up until June 2008, Cyprus was 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

34 Interview with officers Department of Labour, Ministry of Labour and Social Insurance 23.2.2009.

35 Interview with officers of Department of Labour, 23.2.2009.

36 Information provided by Andreas Matsas PEO, 13.3.2009. Similar comments by trade unionists from other trade union; also see Memorandum to the Minister of Interior, PEO (Pancyprian Labour Federation), February 2008.

37 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).

38 The title of the law is «Νόμος που προνοεί για την αναγνώριση των επαγγελματικών διπλωμάτων και για συναφή θέματα», enacted on 6.6.2008 with immediate effect on enforcement.

99/42/EC),³⁹ which was 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 and changes of the relevant regulations in the cases of self-governing provisions for the exercise of certain professions.⁴⁰ Government officials are of the view there are only minor barriers in the registration of the professions, which are of transitional nature and will be resolved shortly; as for the amendments to the legislation covering both the *Sectoral Directives*. The law covers extensively the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, as provided in the Directive.

2. LANGUAGE REQUIREMENT

In the private sector there are sectors where the use language by professional associations amounts to barriers and in practice this acts as barriers to entry. A number of complaints have gone before the Cypriot Equality body, which decided on the use of language and has made recommendations to remove these barriers to the ruling authorities; many of these recommendations were complied with, but some have not been.

The Equality Body recommendations regarding the requirement of knowledge of Greek in order for EU nationals to acquire an estate agent's license, which as is an effective barrier to acquire the right to exercise a profession⁴¹ has only been partly complied with. Further complaints on the same issue have been submitted to the Cypriot Equality body. Similarly, the report of the Cypriot Equality body found that the language requirement in the documents required for registration of foreign nationals in the registry of building contractors was discriminatory.⁴² A complaint was submitted to the Equality body 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 Cypriot Equality body 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 Equality body 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. Even though the Equality Body issued its report on 23/2/2007, the Council of Building Contractors has so far failed to comply with the recommendation of the Equality body; the author is informed that the Council of Building Contractors is about to change its regulations to comply with the recommendations.⁴³ Another instance where there seems to be continued non-compliance with a Union citizen who applied to sit the exams in English to become insurance broker: there has been a new complaint in 2008, even though

39 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.

40 Information provided by Marilena Pelekanou.

41 File No. AKR 70/2005 and 73/2005, dated 23.02.2007.

42 File No. AKR 36/2006, dated 23.02.2007.

43 According to the information of the head of the Equality Authority, communicated to the author.

the Equality body ruled on the matter in 2005 in another case that Insurance Institute of Cyprus ought to revise its relevant rules on the matter.⁴⁴

There had been barriers such as requiring excellent use of Greek for professions such as medical doctors but the Medical Doctor's Association has complied with the recommendation of the Cypriot Equality body, following a complaint of a general practitioner who wanted to register.⁴⁵ Today doctors can register without the language restrictions.⁴⁶ However, there are still language barriers to the nursing profession, which continue to require stringent language tests: very good knowledge Greek or English, despite the relevant decision of the Equality body dated 19.3.2007. A number of complaints are currently being examined by the Equality body from nurses, who have good knowledge of other official EU languages such as French and German.⁴⁷

Judicial practice

There has been no case reported on such issues.

The only legal reference to access to employment was made by the investigation into a complaint to the Equality body, which considered in some detail the relevant provisions of the *Law that provides for the recognition professional qualifications and related matters* 31(I)/2008 (for details of the case of this Report see 'Chapter IV, 1.2. Language requirement').⁴⁸

Miscellaneous

The author has been informed that there are still some administrative or bureaucratic barriers to obtain licences for taxi or bus services: apparently it takes up to six months for a Union citizen to obtain such a licence, but this matter is currently under investigation by the Equality body as part of more general complaint about the use of administrative or bureaucratic barriers to access to the free exercise of services in the country.⁴⁹

Text(s) in force

The *Law that provides for the recognition professional qualifications and related matters*, 31(I)/2008.

44 AKI 35/2005, issued on 19.10.2005.

45 AKI 10/2006.

46 The Head of the Equality Authority assured the author of this report that there is compliance 24/3/2009.

47 Information provided by an officer of the Cypriot Equality body 26/3/2009.

48 AKI 107/2007, issued on 12.12.2008.

49 Information provided by officer of the Cypriot Equality body.

Chapter III

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

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. State officials and the Cyprus Industrialists and Employers Federation (OEB) are of the view that equal treatment of all workers⁵⁰ is properly observed and 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.⁵¹ Trade unions however maintain that Union citizens' worker rights are not fully respected and that there is regular violation of the principle of equal treatment against Union citizens and their partners and families. Trade unions in the tourism sector (hotels and restaurants) claim the working conditions for Union citizens and other migrant workers are unacceptable.⁵²

2. SOCIAL AND TAX ADVANTAGES

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. 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. Non-tax residents having a permanent establishment in Cyprus may elect, if it is to their benefit, to be taxed in accordance with the provisions applicable to tax residents.

As far as social insurance is concerned, there is a general earnings-related Social Insurance Scheme which covers compulsorily, every person gainfully occupied in Cyprus either

50 Statement by Michalis Antoniou at Diversity Management Training seminar, organised by Symfiliosi and the Cyprus Employers and Industrialists Federation (OEB), 4th 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.

51 Interview with Demetris Michaelides, head of section on migrant workers and of the Cyprus EURES, Ministry of Labour 14.3.2008.

52 Interview with Andreas Matsas, head of the International and European Relations, SEK, 13.3.2009; also see Lefteris Geogiades (SYXKA-PEO) interviewed by the Cypriot daily *Haravgi*, 4.5.2008;

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 1st May 2004, Cyprus applies the EC regulation 1408/71 which coordinates the social security systems of the member states of the EU, the European Economic Area and Switzerland. The scheme provides for various benefits, including marriage benefit, maternity grant, maternity allowance, unemployment and sickness benefit. Unemployment benefit is paid for involuntary unemployment and is payable for a period that cannot exceed 156 days for each period of interruption of employment. Where the legislation of the Republic of Cyprus does not provide for a right to a pension on the basis of age for some categories of unpaid workers, the pre-condition of age is considered to be satisfied as long as the EU nationals entitled to the right of permanent residence have completed their 65th year of age. The precondition of more than two years' continuous residence for an EU national who has been involved in unpaid providing unpaid service in the Republic of Cyprus to be granted permanence residence does not apply if he/she has suffered incapacity to work as a result of an accident or illness in the context of work, events that confer a right to a pension payable in total or in part by the Department of Social Security.

3. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

In 'Chapter X: Miscellaneous', the Report on Cyprus 2007 referred to the unique political situation in Cyprus, particularly as regard the exercise of the rights of free movement of workers who are Union citizens and reside in the northern territories, where the Republic of Cyprus Government exercises no effective control. The question is how to treat Union citizens and their family members who reside in the northern territories in the areas of the unrecognised TRNC (workers or jobseekers) and seek rights provided by the free movement directive in the southern territories, which are under the effective control of the Republic of Cyprus. The questions to be addressed are: Are they entitled to equal treatment and social advantages Cypriots and other EU citizens? Even if this category of Union citizens do not qualify as 'frontier workers', is their position and thus their corresponding rights *analogous* for all intents and purposes to 'frontier workers'? Or, is their situation so fundamentally different, deriving from the wholly unique situation in Cyprus, as one of 'the Cypriot states of exception',⁵³ requiring that they are treated as a separate category? And if so, are there any legal reasons justifying the denial of their right to equal treatment and access to the rights and social advantages as defined by the directive?

Of particular relevance is the existence of the residence clauses, which have a bearing in defining the scope of equal treatment and the nature of social advantage as defined in the laws (e.g. the cases of C-212/05 *Hartmann* and C-213/05 *Geven*). The Report on Cyprus for 2007 referred to the legal, conceptual and practical difficulties that generate different kinds of repercussions on free movement of workers arising from the situation in Cyprus. A crucial question here is how to construe the ceasefire line, which cuts across a de facto divided country, as this is depended on the way one construes the legal regime of the breakaway

53 Constantinou, C.M. (2008) 'On the Cypriot States of Exception', *International Political Sociology* (2008) 2, p. 145-164.

Turkish Republic of Northern Cyprus (TRNC),⁵⁴ a regime that remains unrecognised:⁵⁵ is it a ‘border’, a ‘soft border’, a ‘frontier line’ or merely a ‘default line’ that acknowledges the status quo and makes arrangements for the failure of the process of finding a settlement by suspending the implementation of the *acquis*, as provided in article 1 of the Treaty of Accession of Cyprus to the EU? The references in Law 7(1) of 2007 (9.2.2007)⁵⁶ to the territorial application of the implementation of the Directive⁵⁷ that derive the *de facto* division of Cyprus are problematic matters for free movement of workers. Section 22 (3) of the said law explicitly confines the implementation of the right to equal treatment,⁵⁸ as well as any other rights beyond the right of residence ‘only in relation to Union citizens and the members of their families who reside in the territory in which the Republic of Cyprus exercises effective control.’⁵⁹ Therefore two questions need to be addressed:

- a) What is the status of the northern territories as regards the exercise rights that derive from the *acquis* in the area under the effective control of the Republic?
- b) Does residence outside the area under the effective control of the Republic justify different treatment, i.e. is the resulting indirect discrimination justifiable under the law?

In answering the first question, it has to be pointed out that in some contexts the northern territories are considered as ‘unrecognised’, ‘militarily occupied territories’⁶⁰ and ‘outside the EU’, as the ECtHR recognised that Turkey’s army ‘exercises effective overall control over that part of the island’ and that ‘such control [...] entails her responsibility for the policies and actions of the ‘TRNC’’.⁶¹ In this construction, we are *not* dealing with a ‘frontier’ between two EU member countries (e.g. Germany and France etc) but a mere ceasefire line whereby the northern territories are under the [illegal] control of a third country. However, matters are far more complicated than that: the territories in the northern part of Cyprus cannot be treated as part of Turkey and have never been treated so by the EU or any other international body; Turkey herself has not even annexed these territories.

The EU has developed constitutional arrangements to deal with territories, which are considered to have a special relationship under European Community law due to their exceptional circumstances. Such examples are overseas countries or territories,⁶² the outermost regions,⁶³ the Channel Islands, the Isle of Man, Gibraltar, the Faroe Islands, the Aland Islands and Ceuta and Melilla. The difference between these regimes, whether underdeveloped

54 The documents of the Republic of Cyprus refer to these areas territories which are illegally occupied by the Turkish military since 1974. The formulation in EU documents and the UN is somehow more neutral referring to ‘areas not under the effective control of the Republic of Cyprus’.

55 For more on the legal questions of recognitions see Crawford, J. (2007) *The Creation of States in International Law*, 2nd edition, Oxford: Oxford University Press, p. 81. Also see Eyal Benvenisti (1993) *The International Law of Occupation*, Princeton University Press, p. 177-181.

56 This is also the case in other laws.

57 Such as section 20 of the law.

58 Under sec. 22 (1).

59 Articles 2 and 20 of Law 7(1)/ 2007.

60 See Benvenisti, E. (1993) *The International Law of Occupation*, Princeton University Press, p. 177-181.

61 *Loizidou v Turkey*, ECHR 18 December 1996, 108 ILR 443, 466-7 (para 56).

62 Annex II of the EC Treaty lists these territories and includes 13 British overseas countries and territories (e.g. Anguilla, Cayman Islands, Falkland Islands etc), 6 French overseas territories and territorial communities (e.g. New Caledonia and Dependencies, French Polynesia etc); 2 Dutch overseas countries (i.e. Aruba and Netherlands Antilles); 1 Danish i.e. Greenland. For more on these see Murray, 2004: 3-18.

63 For more on these see Murray, F. (2004) *EU & Member State Territories, The Special Relationship under Community Law*, Stevenage Herts: Thompson, Sweet & Maxwell, p. 18-35.

regions or financial or other services centres, and the situation in Cyprus is that the former have a regulated constitutional link recognised by all sides, whereas in the case of Cyprus, we are dealing with a regulation of a territory of an unrecognised regime. This does not mean that there is no constitutional relationship; in fact there are at least four dimensions of this relationship: firstly, there is a complicated regime regulated by the Treaty of accession and an EU Regulation as regard the territorial aspects of the accession of Cyprus; secondly, Turkish-Cypriots who reside in the north are automatically Union citizens, as they are automatically citizens of the Republic of Cyprus; thirdly, EU *acquis*-derived rights, which have as Republic of Cyprus as their locus in the *de facto* divided country are likely to be increasingly influencing the legal, socio-economic and political developments in can be sees as a process of quasi-harmonisation or *de facto* harmonisation, if Turkey is to be integrated in the European and global economic system.⁶⁴

As far as EU law in concerned, which is the basis of analysis of this report, we are dealing with territories which are part of the EU, but ‘the application of the *acquis* [is] suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control’.⁶⁵ Protocol 10 to accession treaty stipulates that ‘the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control’ (art. 1). It also referred the matter to the Council, which would, acting unanimously on the basis of a proposal from the Commission, ‘define the terms under which the provisions of EU law shall apply to the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control’ (art. 2). However, Article 3 stipulates that ‘nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1’, but ‘such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus’. Moreover, article 4 provides that in the event of a settlement, ‘the Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot Community’.

Moreover, the accession to the EU of a *de facto* divided Cyprus⁶⁶ is regulated by ‘the Green Line regulation,’⁶⁷ a fact that has somehow blurred the status of the ‘TRNC’: the very existence Green Line Regulation substantiates the argument that the ‘Green Line’ remains a ‘quasi-border’ or a ‘soft border’ of the EU in others.⁶⁸ The reference in Law 7(I)/2007 to

64 For a more detailed analysis on the subject see Trimikliniotis, N. (2009) ‘Exceptions, Soft Borders and Free Movement for Workers’, in Paul Minderhoud & Nicos Trimikliniotis (ed.) *Rethinking the Free Movement of Workers: The European Challenges Ahead*, Nijmegen: Wolf Legal Publishers, p. 135-154.

65 Article 1, EU Accession Treaty - Protocols on Cyprus, see <http://www.cyprus.gov.cy/MOI/pio/pio.nsf/All/DA5EA02B13392A77C2256DC2002B662A?OpenDocument>.

66 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 and lg=en and numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc and lg=en and numdoc=304R0866R(01).

67 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 and lg=en and numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc and lg=en and numdoc=304R0866R(01).

68 See Trimikliniotis, N. (2008) ‘Borders, Migration, Security and Trafficking Dilemmas: Current Debates and Cypriot Challenges’, *The Cyprus Review*, Volume 20: 2, Fall 2008.

‘effective control of the territory’ has certainly expanded considerably the scope for the authorities’ discretion as to whether to allow to EU citizens living in the northern (occupied) territories has the right to exercise their rights under the directive. In fact I am informed that the authorities do not accept applications for obtaining the registration certificate from Union citizens who do not reside in the areas under the effective control of the Republic of Cyprus.⁶⁹ Moreover, as reported in 2007, the practice as regard partners of Union citizens residing in the northern part of Cyprus is to allow them to travel or use the legal ports and airports the first time they enter the country, but to subsequently put them on the ‘stop list’ once they have entered the territories of the Republic of Cyprus.

There is a *prima facie* case of indirect discrimination and the question is whether such discrimination can be justified under the law. The residential stipulation to the territory under the effective control and the current administrative practices flowing from this discriminate against Union citizens, when compared to the Turkish-Cypriots who reside in the north and other Union citizens who reside in the south. Art. 22 of the Directive regarding ‘territorial scope’ explicitly stipulates: ‘The right of residence and the right of permanent residence shall cover the whole territory of the host Member State. Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.’ In fact, the discrimination caused is manifold: by failing to recognise the rights of Union citizens to free movement, whilst recognising the rights of Turkish-Cypriots who reside in the same territories to have access to the rights and benefits of the Republic causes a chain of multiple discrimination that may undermine fundamental rights guaranteed in the *acquis*:

- a) It is contrary to the principle of free movement, which has ‘fundamental status’,⁷⁰ because it creates obstacles to the exercise of this right which is contrary to the Directive. The Directive allows for some restrictions if they can be justified within the categories of the exceptions provided under chapter VI (art. 27-33), which provides for restrictions on the right of entry and the right of residence on the grounds of ‘public policy, public security or public health.’ However, no such stated policy has been stipulated in the law that transposes the said directive, nor has there been any other official justification offered for restricting the implementation of the principle of free movement.
- b) It is contrary to the equal treatment principle as it results in indirect discrimination against Union citizens residing in the north: the same restrictions *do not* apply to Cypriot nationals. Of some relevance here may be the case of *Tetyana Tomko v. Republic of Cyprus through the Aliens and Immigration Department*.⁷¹ a Ukrainian woman married to a Turkish Cypriot and residing in the northern part of Cyprus won an appeal against the Immigration Department who had rejected her application for renewal of her residency permit, on the grounds that she was residing in the Turkish-controlled north rather than in the Republic-controlled south and because her marriage was not recognised by the Republic as it was carried out in the north. The Supreme Court found the government’s arguments as lacking legal basis and granted her the appeal. Even though Tetyana Tomko was a third country national the same logic by analogy applies to the Union citizens who reside in the northern territories and must be afforded equal treatment to other

69 This is the standard practice of the district migration offices as instructed by the Migration officer (the Director of Population Archive).

70 As stipulated in the preamble of Directive 38/2004.

71 Supreme Court case no. 709/2006, dated 20.06.2007.

Union citizens. The test of whether an indirect discrimination is legally justified is provided anti-discrimination acquis under Directives 43/2000 and 78/2000, a provision transposed verbatim by the relevant legislation in Cyprus.⁷² Therefore this ‘apparently neutral provision, criterion or practice’ that puts persons of certain nationality,⁷³ or racial or ethnic origin at a particular disadvantage compared with other person’, can only be justified if ‘it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’.

- c) There may be *good* reasons why the Cypriot authorities would choose to be cautious about granting these rights to Union citizens residing in the northern territories⁷⁴ and that there are inherent complications resulting from the operation of the Green line Regulation.⁷⁵ The likely justification provided for the restriction is that the current status quo creates a situation that does not allow the implementation of the acquis in the northern territories and that the issue is one of public policy and public security, under the general rubric of the ‘law’ or ‘doctrine of necessity’ given the situation in Cyprus.⁷⁶ However, the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*⁷⁷ ruled that the ‘doctrine of necessity’ must be exercised in a manner that does not as a legal justification for the suspension of the constitutional rights and violate the nucleus of rights or the principle of equality. Therefore this provision, which results in problematic implementation of the principle of free movement and indirect discrimination *within the territory* under the effective control of the Republic of Cyprus⁷⁸ is unlikely to meet the stringent test so as to be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

72 The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004); The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31 March 2004); the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19 March 2004). For details on this see Trimikliniotis, N. and Demetriou, C. (2008) ‘Evaluating the Anti-discrimination Law in the Republic of Cyprus: A Critical Reflection’, *The Cyprus Review*, Volume 20: 2, Fall 2008, pp. 79-116.

73 Under the equal treatment provisions of Directive 38/2004 (article 24).

74 For instance the reasoning may be an attempt to protect Greek-Cypriot properties from being usurped by Union citizens as a result of the de facto partition following the coup, the invasion and occupation since 1974.

75 It aims to combat illegal immigration of third country nationals and to detect and prevent any threat to public security and public policy. 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_and_numdoc=506DC0551_and_lg=en.

76 See Constantinou, C.M. (2008) ‘On the Cypriot States of Exception’, *International Political Sociology* (2008) 2, p. 145–164 and Trimikliniotis, N. & Demetriou, C. (2008) ‘Evaluating the Anti-discrimination Law in the Republic of Cyprus: A Critical Reflection’, *The Cyprus Review*, Volume 20: 2, Fall 2008, p. 79-116.

77 ECHR/no. 69949/01 (22 June 2004), Reported at <http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>, accessed on 20.10.2008. The case is discussed in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 8 January 2007) available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf, accessed on 20.10.2008.

78 The 2007 Report considered that 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. 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_and_lg=en_and_numdoc=304R0866R\(01\)](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc_and_lg=en_and_numdoc=304R0866R(01)).

The only exceptional circumstances provided by the directive relate to particular individuals in their specific circumstances and not in a blanket manner to all Union citizens residing in the north are those stipulated in the directive (see preamble paragraphs 22, 23 and 24). In fact the general approach of the Directive is to severely restrict the right of states to expel Union citizens as article 28 of the Directive provides for ‘Protection against expulsion’ provides. The exceptions and derogations relate to serious situations that may justify severe action such as *expulsion* of Union citizens. It is unlikely that these would allow for discriminatory treatment in the granting of a registration certificate, which must be issued immediately, once it is recognised that the person applying is a Union citizen. Given that we are not dealing with expulsion of Union citizens but refusal to grant a registration certificate, a mere ‘administrative formality’ under article 9 of the Directive 38/2004, the question then becomes: are there any other residual powers deriving from the sovereignty of the national state to decide on any other ‘imperative grounds of public security’ or exceptional and serious grounds of public policy, which justify the Republic of Cyprus refusal to grant registration certificates to those Union citizens residing in the north? Here we enter again the territory of the ‘doctrine of necessity’, referred to above, deriving from the abnormal situation in the country invoked by Greek-Cypriot judges in a 1964 Supreme court case and regularly used and expanded ever since and refers to those ‘temporary and minimum provisions absolutely necessary for the functioning of government.’⁷⁹ Not only is it quite difficult to justify any connection between ‘provisions absolutely necessary for the functioning of government’ and the refusal to grant registration certificate to Union citizens, but even if there is some connection, the application of the principle of the case of *Aziz* the invocation of necessity must not violate ‘the very essence of the right’ to freedom of movement without discrimination. Therefore any necessity arguments are unlikely to be successfully invoked by the Republic of Cyprus as justification for failure to comply with the Directive.

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

4.1 Frontier workers:

The 2007 Report on Cyprus reported that issues relating to ‘frontier workers’ are unlikely to have any bearing on Cyprus, given that Cyprus is an island and has no recognized ‘borders’ but a ceasefire line, known as the ‘Green Line’, which de facto divides the country. If there is no ‘frontier’, then it logically flows that there cannot be ‘frontier workers’.

79 For a discussion on the ‘doctrine’ or ‘law’ on necessity see Papaphilippou, L. (1995) *The Law of Necessity and the Constitutional Order in Cyprus* [Το Δίκαιο της Ανάγκης και η Συνταγματική τάξη στην Κύπρο], Nicosia, Cyprus & Nicolaou, I. (2000) *The Control of the Constitutionality of the Laws and the Separation of Powers of the State Institutions of Cyprus- Constitutional Regulation and the Evolution of the Law of Necessity* [Ο Έλεγχος της Συνταγματικότητας των Νόμων και της Κατανομής των Αρμοδιοτήτων, των Οργάνων του Κράτους στην Κύπρο – Η Συνταγματική Ρύθμιση, η Εξέλιξη και το Δίκαιο της Ανάγκης], Εκδόσεις Αντ. Ν. Σάκκουλα, Athina, Greece; and Loizou, A.N. (2001) *The Constitution of the Republic of Cyprus* [Σύνταγμα Κυπριακής Δημοκρατίας], Nicosia, Cyprus.

4.2 Sportsmen / sportswomen

Football, basketball, volleyball, handball are popular sports; rugby is confined to the British Bases Area and there is no ice-hockey in Cyprus.

The situation has not changed since the 2007 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 2008 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)].

The rules applying to Cypriot sport have taken into account the *Bosmans* ruling in 1995.⁸⁰ From the regulations studied and according to sports officials that there are no regulations of national sport federations and sport organisations limiting the access of migrants and ethnic minorities to sport. In the second football division of Cyprus there are 230 Cypriot players and 110 foreigners. There are calls by the Pancyprian Footballers' Association (PFA) for the Cyprus Football Association to adopt the Scottish football regulations since last year that have a rule compelling each team to include within their 18-squad four to five under twenty-one year olds.⁸¹ The association raises concerns about the fact that Cypriot footballers are being displaced by foreigners (EU nationals and third country nationals), is of the view that the adoption of a Scottish-type of rule will work as an indirect quota for Cypriots, who will become the 'core' of the squad, as it is unlikely that foreigners would move to Cyprus before they are 21 years old.⁸² The association considers that Cypriot footballers suffer from discrimination as they are less likely to accept conditions that are unacceptable for locals – but which may be adopted by foreigners.⁸³ In any case this is a major European issue of debate following the *Bosmans* ruling in 1995.⁸⁴ The Pancyprian Footballers' Association however argues that there is problem of reverse discrimination and argues for the adoption a rule in the spirit of the UEFA 'Home-grown Player rule', which is also discriminatory under EU law but unlike a quota system it constitutes indirect, rather than direct discrimination. The argument here is that the system may be justified under EU law if it can be objectively justified by a legitimate aim and the means of achieving that aim is appropriate and

80 Union Royal Belges des Sociétés de Football Association ASBL and others v. Jean-Marc Bosman; Case C-415/93, ECR I-4921.

81 See 'Οι αριθμοί φοβίζουν. Νοιάζεται η ΚΟΠ;', *Επάγγελμα Ποδοσφαιριστής*, Journal of the Pancyprian Footballers' Association, Issue 1, 2008, p. 10.

82 According to the Journal of the Pancyprian Footballers' Association.

83 Interview with Spyros Neofitides, President of Pancyprian Footballers Association, Nicosia, 3.3.2009.

84 Union Royal Belges des Sociétés de Football Association ASBL and others v. Jean-Marc Bosman; Case C-415/93, ECR I-4921.

necessary.⁸⁵ The Pancyprian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs'⁸⁶ are by the practice of some football clubs to obtain work permits and register some footballers in jobs unrelated to football and use them in matches as 'amateurs' resulted in instances of non-payment and deportation from the country. Apparently from 2009-2010 football league new regulations will no longer allow third country nationals to be registered as 'amateurs' but can only be professionals.⁸⁷ The Pancyprian Footballers' Association referred to a discriminatory practice by the CFA regarding the football games scheduled during the Christmas vacations: the scheduled fixity was planned for the 27 and 28 of December 2008, which arranged apparently as the result from pressure on CFA by the football clubs which wanted to avoid their contractual obligations of paying the tickets of foreign footballers, if there was a vacation.⁸⁸ As a result of industrial action by the Pancyprian Footballers Association, there were no matches for the second, third and fourth division, but the first division went ahead as scheduled.⁸⁹

The authorities give assurances that no quota system is operating. However, it is difficult to make any conclusive assessment regarding the issue of structural discrimination as there is hardly any information gathered on statistics of sport participation of migrants, minorities or other potentially discriminated groups in Cyprus. There is no authority keeping track of statistics on the representation of migrants and ethnic minorities in any of the sports, save for professional football and basketball, who employ non-nationals – but these are usually specially recruited and well-paid professionals rather than members of immigrant communities living in Cyprus, who are located in the lowest echelons of the labour hierarchy.⁹⁰ We cannot quantify the extent of the involvement of migrants and ethnic minorities as athletes, coaches, officials and fans in the sports under examination (football, basketball and athletics). In general, the only visible non-natives are the professional athletes and coaches of the top leagues in football and basketball. There is minimum involvement of migrants, who have only arrived en mass after 1990; as for the Turkish-Cypriot ethnic community, the problem of the de facto partition and the ethnic conflict that preceded the de facto partition meant that there is minimum participation of Turkish-Cypriots in sports, although there are some individual cases of Turkish-Cypriot who do participate, despite the political and social problems: we are informed that there are a handful of young Turkish-Cypriot footballers playing with some second division football clubs.⁹¹ Until a couple of years ago, the first division club Nea Salamina had some Turkish-Cypriot footballers playing up.

85 Article 2(b) of the EU Directive 43/2000

86 Information provided by Spyros Neofitides President of Pancyprian Footballers Association.

87 Information provided by Spyros Neofitides President of Pancyprian Footballers Association.

88 Information provided by Spyros Neofitides President of Pancyprian Footballers Association.

89 See 'Δεν θα μας ... σταυρώσουν Χιστουγεννιάτικα;', *Επάγγελμα Ποδοσφαιριστής, Journal of the Pancyprian Footballers' Association*, Issue 1, 2008, p. 14-15.

90 See Trimikliniotis, N. & Pantelides, P. (2003) 'Mapping Discrimination in Cyprus: Ethnic Discrimination in the Labour Market', *The Cyprus Review*, Vol. 15, No. 1, Spring 2003, p. 121-148; Trimikliniotis, N. & Demetriou, C. (2007) 'Cyprus', in: A. Triandafyllidou & R. Gropas (eds), *European Immigration: A sourcebook*, Avebury: Ashgate, p. 45-58.

91 Interview with officer of the Cyprus Football Federation, Nicosia, 11.2.2009.

Legislation/Regulations

Cyprus Football Association (2008), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus, info@cfa.com.cy.

4.3 The maritime sector

The focus should be put on how Member States apply Community rules and similar provisions in agreements with non-EU countries on equal treatment as regards employment and working conditions and in particular pay to seafarers who are EU nationals or non-EU nationals covered by clauses in such agreements.

According to the Cyprus Shipping Chamber,⁹² which is the social partner for the employers in the collective agreement there is minimum standard which fixes the salary and other benefits as per CHAPTER 26 of the collective agreement, which is headed as ‘Equality: ‘Each seafarer shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated. A seafarer to whom this Agreement is applicable shall be covered by the terms and conditions of the Agreement from the date on which the seafarer departs from the port of engagement whether he/she has signed Articles or not, until the date when he/she signs off or returns to his/her port of engagement, or the date when the engagement comes to an end or the date when the employer’s obligation to pay wages ceases whichever is the later.’⁹³ Also the chamber official suggested that Cyprus will soon ratify the ILO Maritime Labour Convention. Moreover, a circular by the Migration officer refers to the decision of the Council of Ministers,⁹⁴ which provides for the granting and renewal of temporary resident and work permits to members of staff of companies and firms of foreign interest.⁹⁵ the circular extends the provision of resident and work permits to cover Cypriot shipping companies.

Cyprus signed a number of bilateral Agreements on Merchant Shipping with a number of countries. These are Algeria, Bulgaria, China, Cuba, Egypt, India, Iran, Latvia, Lithuania, Malta, Philippines, Poland, Romania, Russia, Sri Lanka, and Syria. Agreements with Belgium/Luxembourg, Greece, Italy, Pakistan and Antigua and Barbuda have been signed and will enter into force soon. Agreements with Estonia, Germany, Hungary, Libya, Slovenia, South Korea, Lebanon, Thailand and South Africa have been initialled and their signature is pending.⁹⁶ We are informed⁹⁷ that there is a standard clause providing for the same treatment on all matters relating to transport. An example of such a clause is the following: ‘Each Contracting Party shall grant to vessels of the other Contracting Party the same treatment as it affords to its own vessels engaged in international maritime transport in respect of free access to ports, levying of port dues and taxes, use of ports for loading and unloading cargoes and for embarking and disembarking passengers.

92 Information provided by Sophocles Constantinou, Executive Officer Cyprus Shipping Chamber, 6.5.2008.

93 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).

94 Decision no. 67692, dated 24.9.2008.

95 These are the former off-shore companies.

96 http://www.mcw.gov.cy/mcw/dms/dms.nsf/intrelations_en/intrelations_en?OpenDocument.

97 Information provided by Sophocles Constantinou of the Cyprus Shipping Council 6.8.09.

This paragraph shall also apply to vessels chartered by shipping companies of the other Contracting Party flying the flag of a third country.’⁹⁸

4.4 Researchers/artists

Some literature on the subject is beginning to surface on the subject. However, more promotion is required so that researchers and artists become aware of their rights and the opportunities available for asserting these rights. So far we are not aware of any complaints that EU nationals or other foreign nationals are not treated equally, but this is probably because of the lack of awareness.

There is very little on the status of the Cypriot artist: this was highlighted by the Cyprus Chamber of Fine Arts (E.KA.TE)⁹⁹ in a recent Convention on the Status of the Artist in Cyprus,¹⁰⁰ which has followed the Convention on the Status of the Artist in Europe.¹⁰¹ Recently however, there is an increasing interest status of artists; in fact the only work that exists on the subject about the status of artists in Cyprus was published in 2009.¹⁰² The booklet includes a section on international mobility of artists (pp. 22-24) and specifically refers to the facilities in passport controls and residents permit; oddly enough it only refers to Law 92(I)/2003 as amended by Law 126(I)/2004, a law abolished by the current legal regime, Law 7(I)/2007, and fails to mention the new law.¹⁰³

Also as a result of EU-wide initiatives there have been some developments on the status and situation of researchers in Cyprus. The expanding numbers of academic and research community in Cyprus, including a number of researchers who are Union citizens who are working in the country makes the issue of the status of researchers and their mobility quite important. The EURAXESS Bridghead Organisation and Service Centre for Cyprus is the Research Promotion Foundation;¹⁰⁴ as ‘the Cypriot EURAXESS Service Centre’, it provides information regarding:

- Research in Cyprus
- The R&D Landscape in Cyprus
- Accommodation
- Childcare and Schooling

98 Art. 9 of Agreement on Maritime Transport Between the Government of the Republic of Cyprus and the Government of the Republic of Korea. The Government of the Republic of Cyprus and the Government of the Republic of Korea are referred to as ‘the Contracting Parties’.

99 See the speech by the president of the Cyprus Chamber of Fine Arts (E.KA.TE) at the Chamber’s website at http://www.ekatecy.com/news/news_20081220.htm, accessed 18.4.2009.

100 Held in Nicosia on 15.3.2009 and organized by the Cultural Service

101 Although the convention aim was not directly the harmonisation of social and fiscal systems for artists but to enhance the specificities of each country, the build of a common view, the union in the diversity, inevitably it did consider various social and fiscal systems in the EU member countries. It was held on 15 and 16 of December 2008, at the Centre Georges Pompidou – Beaubourg museum, Paris. It included 27 delegations from the Member States of the European Union, 5 observers from candidate countries to the entry in the European Union, 16 observers from other countries within Europe, 12 guest experts, 5 observers from the cultural area of UNESCO and guests invited by Maison des Artistes.

See <http://www.europeanconventionofvisualarts.eu>, accessed 18.4.2009.

102 This was circulated on the 15.3.2009 at the Convention

103 This is particularly odd given that at footnote 44, on p. 22 it refers to the sources of information as Ministry of Labour and Social Insurance and the Migration office, citing the dates May 2005 and February 2009.

104 The scientific Officer in charge is Pierantonios Papazoglou (ppapazoglou@research.org.cy).

- Intellectual Property Rights
- Language Courses
- Recognition of Qualifications
- Salaries and Taxation
- Social and Cultural Aspects
- Social Security, Pension Rights
- Health & Medical Care
- Visas & Entry Conditions and Work Permits

Moreover, the Research Promotion Foundation is promoting the European Charter for the Rights of Researchers and the Code of Conduct: The Charter sets out the rights and duties of researchers, as well as research and funding institutions and the Code aims at ensuring equal treatment of all researchers in Europe and increases transparency in their recruitment. Three private tertiary education institutions have already undersigned the Code and Charter (Cyprus College, Frederick Institute of Technology and Intercollege), all of which have since 2008 become private universities and are the largest tertiary educational institutions of the country: they have now become European University of Cyprus Frederic University and University of Nicosia respectively. The University of Nicosia is also a ‘promoter’ of the Researchers’ Charter.¹⁰⁵

Moreover, despite the fact that largest universities have undersigned the code, the provisions contained in the Charter and Code as regards the working conditions, worker rights, job security etc of researchers remain underdeveloped. An examination of the situation of the conditions of researchers in Cyprus, will almost certainly find that there is no proper monitoring and wide-spread violations of the ‘General Principles and Requirements applicable to Employers and Funders’, which are provided in Charter. There are serious problems in terms of recognition of the profession,¹⁰⁶ non-discrimination,¹⁰⁷ research environment,¹⁰⁸ working conditions,¹⁰⁹ job security and stability and permanence of employment,¹¹⁰ funding and sala-

105 The person in charge is Pavlos Pavlou, at pavlou.p@unic.ac.cy.

106 This stipulates that ‘All researchers engaged in a research career should be recognised as professionals and be treated accordingly. This should commence at the beginning of their careers, namely at postgraduate level, and should include all levels, regardless of their classification at national level (e.g. employee, postgraduate student, doctoral candidate, postdoctoral fellow, civil servants)’.

‘Employers and/or funders of researchers will not discriminate against researchers in any way on the basis of gender, age, ethnic, national or social origin, religion or belief, sexual orientation, language, disability, political opinion, social or economic condition.’

107 ‘Employers and/or funders of researchers will not discriminate against researchers in any way on the basis of gender, age, ethnic, national or social origin, religion or belief, sexual orientation, language, disability, political opinion, social or economic condition.’

108 Employers and/or funders of researchers should ensure that the most stimulating research or research training environment is created which offers appropriate equipment, facilities and opportunities, including for remote collaboration over research networks, and that the national or sectoral regulations concerning health and safety in research are observed. Funders should ensure that adequate resources are provided in support of the agreed work programme.

109 Employers and/or funders should ensure that the working conditions for researchers, including for disabled researchers, provide where appropriate the flexibility deemed essential for successful research performance in accordance with existing national legislation and with national or sectoral collective-bargaining agreements. They should aim to provide working conditions which allow both women and men researchers to combine family and work, children and career. Particular attention should be paid, *inter alia*, to flexible working hours, part-time working, tele-working and sabbatical leave, as well as to the necessary financial and administrative provisions governing such arrangements.

ries,¹¹¹ gender balance¹¹² and career development¹¹³. It is likely that in most research institutions in Cyprus there is a lack of awareness about the rights of researchers and the status of the ‘researcher’ as such remains outside the ‘normal’ academic professional and academic job promotion structure, even though research and publications are the key to promotions and advancement of academics. Moreover, the position of junior researchers remains by and large precarious, undervalued, underpaid and insecure. It remains rather odd that none of the public universities has undersigned the charter and code, neither have any trade unions or other associations picked up on the importance of promoting the rights of researchers. In any case, the Charter and Code are voluntary and purely ‘soft law’; nonetheless, they can provide a good basis for any action in labour law or discrimination cases as to the level of standards in Cyprus.

Recent legal literature

Researcher’s Guide to Cyprus, which was prepared by the Cyprus Mobility Centre in order to assist foreign researchers, wishing to pursue their next career move in Cyprus, by providing information about Cyprus, its research landscape and various mobility related issues.¹¹⁴ It also involves promotional and raising awareness activities such as various publications aimed at researchers home and abroad, training sessions on mobility issues and Information Days aiming to encourage Cypriot research Organisations to advertise their vacancies and researchers to submit their CVs in pursue of jobs in other European countries.¹¹⁵

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- 110 Employers and/or funders should ensure that the performance of researchers is not undermined by instability of employment contracts, and should therefore commit themselves as far as possible to improving the stability of employment conditions for researchers, thus implementing and abiding by the principles and terms laid down in the *EU Directive on Fixed-Term Work*
- 111 Employers and/or funders of researchers should ensure that researchers enjoy fair and attractive conditions of funding and/or salaries with adequate and equitable social security provisions (including sickness and parental benefits, pension rights and unemployment benefits) in accordance with existing national legislation and with national or sectoral collective bargaining agreements. This must include researchers at all career stages including early-stage researchers, commensurate with their legal status, performance and level of qualifications and/or responsibilities.
- 112 Employers and/or funders should aim for a representative gender balance at all levels of staff, including at supervisory and managerial level. This should be achieved on the basis of an equal opportunity policy at recruitment and at the subsequent career stages without, however, taking precedence over quality and competence criteria. To ensure equal treatment, selection and evaluation committees should have an adequate gender balance.
- 113 Employers and/or funders of researchers should draw up, preferably within the framework of their human resources management, a specific career development strategy for researchers at all stages of their career, regardless of their contractual situation, including for researchers on fixed-term contracts. It should include the availability of mentors involved in providing support and guidance for the personal and professional development of researchers, thus motivating them and contributing to reducing any insecurity in their professional future. All researchers should be made familiar with such provisions and arrangements.
- 114 The Cyprus Mobility Centre has been developed in the frame of a European Commission co-funded project, named ‘Development of the Cyprus Mobility Centre’ (CYMOCEN). The project also involves a number of other activities such as the development and hosting of a Portal that will provide updated information regarding mobility, employment and living in Cyprus.
- 115 The Centre is a member of the European Network of Mobility Centres (ERA-MORE), an initiative of the European Commission aiming to provide personalised assistance to researchers wishing to pursue their next career step abroad. The various national Mobility Centres can provide researchers with customised information on practical matters regarding their move abroad such as entry conditions for them and their families, issues regarding employment, social security and tax issues, medical coverage but also administrative and cultural issues regarding the host country.

*The European Charter for Researchers*¹¹⁶ and *the Code of Conduct*.¹¹⁷

Η Θέση του Καλλιτέχνη στην Κύπρο, by RAI Consultants Public Ltd on behalf of the Cultural Services of the Ministry of Education and Culture, March 2009. It was funded by the UNESCO Participation Programme 2004-2005.

4.5 Access to study grants

Study grants are available to all students who are resident in Cyprus. It is not clear whether the worker and the members of his/her family are equally treated with regard to accessing study grants in Cyprus. Relevant here is a Report by the Cypriot Equality body, which referred to the case of *Martinez Sala v Freistaat Bayern Case C-85/96* (12.5.1998) and deduced that ‘an educational grant or benefit is a matter that falls within the ambit of EU law’.¹¹⁸ Therefore we can assume that the basic principle in this case refusal by the authorities to grant an educational grant or other benefit to a student whose parents are residents in Cyprus because his/her parents do not have a permit of residence is discriminatory on grounds of nationality (violating Article 6 of the EC Treaty). Refusing to grant to a Union citizen a benefit which is granted to all persons lawfully resident in the territory Cyprus on the grounds that the claimant was not in possession of a document, which nationals of Cyprus were not required to have constituted discrimination directly based on nationality.

116 Available as a link to the Research Promotion Foundation at http://crpf.metacanvas.com/EN/int_cooperation/euraxess/rights.html: The European Charter for Researchers is a set of general principles and requirements which specifies the roles, responsibilities and entitlements of researchers as well as of employers and/or funders of researchers.

117 Available at http://crpf.metacanvas.com/EN/int_cooperation/euraxess/rights.html as a link to the Research Promotion Foundation. The Code of Conduct for the recruitment of researchers consists of a set of general principles and requirements that should be followed by employers and/or funders when appointing or recruiting researchers.

118 AKR 33/2004, dated 10.1.2005, p.10-11.

Chapter IV

Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

In particular, emphasis should be given to the applicability of Article 39 and Regulation 1612/68 in cases that application of Regulation 1408/71 is not possible.

Law 7(I) of 2007 (9.2.2007) replaced all previous legislation, including and Regulations 1612/68.¹¹⁹ As stated in the 2007 Report, 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', purporting to transpose Directive 2003/41/EC. This is the text in force since 2007.

¹¹⁹ 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 V

Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

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

No changes can be reported since the Report of 2007, article 31(a) of Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to the public service, with the exception referred to in the Report.

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 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’.¹²⁰ A complaint was lodged to the Cypriot Equality body by a Union citizen civil engineer, who wanted to apply for a certain post that required that the employee be a member of the Chamber of Civil Engineers of Cyprus (ETEK).¹²¹ To be a member of ETEK needs residence in Cyprus. The Equality body ruled that this was a case of access to the public service and that the job description for the post of officer of metal work is discriminatory against Union citizens and contrary to the freedom of movement principle and recommended that the Attorney General proceeds with changing the relevant job description. ETEK has been reluctant to change their practices of excluding non-Cypriot nationals based on a residence provision in their constitution; complaints are before the Equality body, whilst decisions of the Equality body are still to be complied with.

Another decision involved an Italian national, Roberto Pigo, who complained to the Equality body for the refusal of the Educational Service Committee to register him in the register of an Italian teacher to be appointed a public sector teacher.¹²² The case had gone before the Supreme Court, which ruled that the complainant had the necessary professional qualifications and the refusal of the Educational Service Committee to register him was null and void.¹²³ On the 5th November 2007, Mr. Pigo complained to the Equality body that the Educational Service Committee failed to comply with court’s ruling and that this amounts to indirect discrimination on the ground of nationality. The Equality body analysed the legal regime contained Directives 89/48, which was transposed by Law 179(I)2002 as amended by law 129(I)2003 to transpose 2001/19/EC as well as the transposition of 2005/36/EC by law 31(I)2008 (dated 6.6.2008). The Equality body decided that the Educational Service Committee introduced elements about the recognition of diplomas that amount to indirect discrimination on the ground of descent and contravenes article 39 on free movement of workers which necessitate removing discrimination on the ground of nationality. It is one of the

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

121 AKI 22/2006, issued 11.12.2006.

122 AKI 107/2007, issued on 12.12.2008.

123 Case n. 1062/04, decision issued on 24.6.2006.

very few cases where the Cypriot Equality body has decided that to make its decisions binding and impose sanctions should the Educational Service Committee fail to comply with the findings.

A number of complaints against local/municipal authorities have gone to the Cypriot Equality body; other problematic public authorities the educational services and the nursing profession (in the public sector). As these are cases currently under investigation by the Equality body no more details can be provided at this point.

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.

A number of complaints against public sector institutions have been decided by the Cypriot Equality body as using language as a barrier to access. The Report on Cyprus for 2007 referred to the Equality body decision 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.¹²⁴ 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.¹²⁵ Even though the Equality Body issued its report on 1/8/2006, the Cyprus Tourist Organisation has so far failed to comply with the recommendation of the Equality body.

1.3. 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

124 Decision dated 01.08.2006. The Cypriot Equality body concluded that it cannot make any concrete recommendations, because there is 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.

125 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.

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.

Chapter II of law 31(I)2008 (dated 6.6.2008), which purportedly transposes Directive 2005/36/EC sets out the requirements regarding the recognition of past experience on specific types of professions.

According to the Department of Public Administration all positions for the civil service and the public sector at large are open to Union citizens and there is full recognition of qualifications, professional experience and seniority for access to the public sector. The job description of the post advertised stipulates the qualifications and the years of experience required for appointment. The appointment is a task of the Public Service Commission. For senior management posts in the public sector, the job description may require previous experience, which can be in administrative, public or private sector, in any EU country. In term of the language requirement, this depends on the level of the post advertised: for first appointment of officers ‘good knowledge’ of Greek is required and very good command of one of the EU official languages (English, French or German). For most posts, especially more senior posts, it is required that the candidates have ‘very good knowledge’ of Greek, which is certified by the possession of a Greek secondary school certificate or A’ Level in Greek or to be a graduate from a Greek university. For the position of the Permanent secretary, excellent command of Greek is required plus one of the EU official languages.

2. WORKING CONDITIONS

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;¹²⁶ certain rights,¹²⁷ benefits including welfare,¹²⁸ offered to Cypriots may be denied to Union citizens.¹²⁹ Some potentially discriminatory practices have been diagnosed and possibly removed as a result of complaints and investigations by the

126 Trade unionists referred to hospital certificates for free treatment or other documentation for everyday transactions.

127 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).

128 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.

129 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).

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Cypriot Equality body, such as potentially discriminatory features contained in application forms in the public/civil service.¹³⁰

No development can be reported since the Report of 2007, save for the passage of Law 31(I)2008 (dated 6.6.2008), which deals with the recognitions of professional qualifications to enhance the right of EU Citizens and their family members to move and reside freely in the territory of the Republic of Cyprus.

Text(s) in force

Law 31(I)2008 (dated 6.6.2008)

130 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).

Chapter VI

Members of the Worker's Family and Treatment of Third Country Family Members

1. RESIDENCE RIGHTS_ TRANSPOSITION OF DIRECTIVE 2004/38/EC

1.1. Situation of family members of job-seekers

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)).

1.2. Application of Metock judgment

The *Metock* judgment had profound influence in legal and administrative practices in Cyprus. On 14.01.2009 the director of the Civil Registry and Migration Department issued a circular (30/2004/IV), which referred to an inter-departmental meeting between interested governmental parties and a representative of the Legal Service of the Republic, which discussed the legal significance of *Metock* (C-127/08): non-European spouses of EU citizens fall within the scope of implementation of the right of citizens of the Union and their family members to move freely and reside in the area of the Republic laws 7(I)/07 and therefore have a right to apply for a residence card (MEU2A), irrespective whether the marriage took place in Cyprus or abroad. Instructions were given to all officers of the Civil Registry and Migration Department for the immediate implementation of the ECJ decision; however in correspondence with the author the Ministry of Interior stated that 'implementation of the decision did start.'¹³¹ The residence card is valid for five years unless the passport of the applicant has an expiry date before the years are up, in which case the residence card must be valid for up to one month before the expiry of the applicant's passport.

The Ministry of the Interior¹³² notes that according to decision C-206 of the ECJ, dated 12.2.2008, the Administration is not obliged to re-examine applications filed prior to the decision of the ECJ concerning the matter. The question Retrospective application of *Metock* may not be an issue but there is a strong case for correcting situations and reconsidering cases where previous legal residence was considered to be a necessary requirement, as is happening in Ireland. Individuals may well use the *Metock* case for the courts to reopen their cases, not by claiming retrospective application of *Metock* but for correcting the current and future status.

131 Communication to the author from the Ministry of Interior, 9.9.2009.

132 Communication to the author from the Ministry of Interior, 9.9.2009.

1.3. How are the problems of abuse of rights (marriages of convenience) tackled?

Section 1 of Law 7(I)2007 refers to the *Aliens and Immigration Law, cap. 105* (as amended) to define ‘fake, bogus, sham’ marriages¹³³ (sections 2(1) and 7A, 7B, 7Γ, 7Δ). The definition there is a marriage between a legal resident of the Republic with a foreign national ‘with the sole aim the legal entry and residence of the later in the Republic’. The Immigration Officer, if (s)he ascertains according to the indications and after consulting the advisory committee, may (a) forbid the residence of this person and (b) nullify or refuse to renew his/her residence permit and orders deportation/expulsion, when the following elements are present:

- a) the couple does not reside under the same roof;
- b) the couple has never met before the wedding;
- c) absence of any serious contribution in facing the responsibilities that derive from the wedding;
- d) the statements of the spouses as regard their identity (name, residence address, nationality/citizenship and profession), the circumstances of their first meeting or other important information of a personal character that concern them are contradictory;
- e) the spouses do not speak a language they both understand;
- f) a sum of money has been paid (other than money in the form of a dowry where this is common practice in certain countries);
- g) there are indications that one or both spouses have in the past had a fake marriage or have problems as regard their stay in the Republic.¹³⁴

The above information may be derived from (a) statements from the spouses or third persons; (b) investigations and interviews conducted by the Immigration officer; (c) documents which have been put for consideration by the Immigration officer.¹³⁵

The law also sets up an advisory committee to advise the Immigration officer which includes spokespersons from the Ministry of Justice and Public order, the Social Welfare Service, the District Administration where the spouses reside and from the Registration Officer (7B(4)(2)(α-δ)).

Moreover, the law provides for a hierarchical 1 appeal system to Minister of Interior, which must be filed within 20 days of the date of issuing the decision of the immigration officer(7Γ(1)). The decision of the Immigration Officer is not implemented before the expiry of the date for the implementation of the appeal and prior to the implementation of that decision (7Γ(2)). The Minister of Interior must issue his decision within 90 days from the date of appeal (7Γ(3)). In case of appeal the appellant has a right o residence until the issue of the Minister’s decision (7Γ(4)). Over and above this, the spouses have a right to apply to the Supreme Court to challenge the administrative decision of the Immigration officer or the Minister, under article 146 of the Constitution.

A foreign national who had a fake marriage or has in any manner contributed to such a practice is illegal and carries a penalty of up to 3 years imprisonment or a fine of up to 3000 pounds (5000 euro) or both (7Δ).

133 The term used in the Greek text is ‘εικονικός γάμος’.

134 Section 7A(3)(α-ζ) of the Aliens and Immigration Law, Cap. 105.

135 Section 7A(4)(α-γ) of the Aliens and Immigration Law, Cap. 105.

2. ACCESS TO WORK

Family members of Union citizens are entitled to work and have full rights to access to the work as Union or Cypriot citizens.

It is noted that the way Cypriot courts deal with the issue of reverse discrimination faced by family members of Cypriots is not consistent. There is no decision of the full house of the Supreme Court, hence the various Supreme Court judges approach the issue differently.

In the case of *Svetlana Shalaeva* (No. 824/2005, dated 7.4.2008), the judge allowed the appeal of a Russian citizen married to a Cypriot man against the Migration Department. He reiterated his basic reasoning he presided over in previous cases such as *Saiedi v. The Republic of Cyprus* (Case no. 1241/2006, dated 28.7.2006), *Kanthie v. The Republic of Cyprus* (Case no. 1578/2005, dated 21.5.2007) and *Petrosian v. The Republic of Cyprus* (Case no.453/2006, dated 22.10.2007), that the rights derived from the Community on free movement of workers,¹³⁶ that it would be absurd that Cypriots would not enjoy the same rights as other Union citizens: ‘it is self-evident that the same rights enjoyed by citizens of other Member States of the EU would be provided for Cypriots’.¹³⁷ The same judge¹³⁸ had first outlined the argument in the case of *Naasan Saiedi v. The Republic of Cyprus* (Case no. 1241/2006, 28.07.2006): Cypriots must be afforded the same rights as other Union citizens. A similar approach was taken in the case of *Ahmad Houssein Yakhini and Malamo Isaak-Pyrilli Yakhini* (Case no. 136/06, dated 4.4.2007); in this case the judge referred to the fact that the third country national appellant who was married to a Cypriot national had rights derived from the rights of family members of Union citizens and cited a relevant case of *Mahmood Adil v. The Republic of Cyprus* (Case no. 1452/05, dated 13.1.06). However, the issue free movement of Union citizen workers and their families was not an issue that was elaborated upon by the court judge,¹³⁹ as the reasoning of the judgment pivoted around the failure to properly take into account a genuine marriage and thus the exercise of the right to family life.

There are a number of appeal cases where the applicant claimed there had been a violation of the principle of free movement of workers, the court did not rule on this issue, even though it found for the applicant’s right to family life, such as the cases of *Loizos Loizou and Tetyana Tumanova Loizou* (Case no. 1931/2006, dated 27.03.2008) and *Husaen Osman Nawari and Elli Georgiou* (Case no. 867/06, dated 16.10.2007). In the case of *Arofat Salayava and Andreas Charalambous* (Case no. 143/2006, dated 13.06.2007) it was decided that the third country wife of the a Cypriot who was temporarily residing abroad for the purposes of study but was regularly visiting his wife, who was residing with his parents in Cyprus, was entitled to enjoy the free movement of workers rights of spouses of Union citizens.

A very different line of argumentation is followed by judges in other cases, who consider that the right to free movement of workers does not apply to Cypriot citizens, who are residing in Cyprus and have never exercised their right to free movement themselves. In the case of *Sari Tekin* (Case no. 290/2006, 27.07.2007), a third country national and his Cypriot wife

136 He referred to the law that preceded the current law 7(I)/2007, which is Law 92(I)/2003 (Ελεύθερης Διακίνησης και Διαμονής των Υπηκόων των Κρατών Μελών της Ευρωπαϊκής Ένωσης και των Μελών των Οικογενειών τους Νόμος του 2003).

137 Per Nicolaides Judge. He awarded damages of 800 plus costs and VAT.

138 Nicolaides Judge.

139 Per Judge Artemis.

won an appeal against the Immigration authorities against the deportation of the former on the basis of their right to family life.¹⁴⁰ However, the Supreme Court judge¹⁴¹ considered that the law transposing the Directive 38/2004 does not apply to Cypriot citizens who never actually *entered* the Republic: a condition precedent for the application of this law is that the Union citizen *enters the country*, given that it is about the right to settle and move in the EU, which implies that there is a presupposition that the Union citizen has actually ‘moved’ within the EU. The judge explicitly disagreed with the relevant finding in the case of *Naasan Saiedi v. The Republic of Cyprus* (1241/2006, 28.07.2006), which was discussed above. He instead referred to the above and cited the case of *Morson and Jhanjan* [1982] ECR 3723, which referred to a claim of a similar right under *Regulation 1612/98*.¹⁴² He also quoted *Uecker and Jacquet* [1997] ECR I-3171, which decided the community provisions deriving from Regulation 1612/68 cannot be claimed by workers who have never practiced the right to free movement within the Community. In the case of *Kulwant Singh* (Case no.7/2007, dated 9.7.2008), the court judge¹⁴³ followed the reasoning of *Sari Tekin*, a case that was cited as authority to by the court.

Article 2 of the 2007 Law provides that an EU citizen is every person who is a citizen of the EU other than the Republic of Cyprus; this provision is also included in Article 3 ‘Beneficiaries’ of the Directive. It is noted that the Ministerial Committee for the Employment of Aliens has decided on the 28.8.2009 that for matters of entry and stay in the Republic of family members of Cypriots will be decided on the basis of the respective conditions in for family member in other Union citizens as provided in Law 7(1)/2007.

3. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Family members who are job-seekers are entitled to all the allowances that Cypriot and EU citizens are allowed. As explained in the section on job-seekers, unemployment benefit for all depends on contributions to social security, so the question as regards social security is whether the family member has any contributions from previous employment (under regulation 1408/71, implemented since 1.5.2008). He/she can transfer from other EU countries his/her contribution and search for a job for up to three months under the same regulation. The benefits enjoyed by family members are the same as for Union citizens under Law 95(I)/2006,¹⁴⁴ as set out above in the relevant section of this report, ‘Chapter I: Entry, residence, departure 2. Situation of job-seekers’.

4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

No issues to be reported.

140 Art. 8 of the ECHR and art. 15 of the Republic of Cyprus Constitution.

141 Per Constantinides Judge.

142 This is similar to the Cypriot transposition legislation.

143 Erotocritou judge.

144 Ο περί Δημόσιων Βοηθημάτων και Υπηρεσιών Νόμος, dated 28.4.2006.

Text(s) in Force

- Law 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.
- Law 95(I)/2006 on Public Assistance
- Law 41/80 on Social Insurance

Recent legal literature

Department of Labour (2008) *Ελεύθερη διακίνηση και διαμονή Ευρωπαϊκών Πολιτών και Μελών των Οικογενειών τους*.¹⁴⁵ This is a guide [in Greek] on 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

145 This translates as Free Movement and Residence of European Citizens and Members of their Family.

Chapter VII

Relevance/Influence/Follow-up of recent Court of Justice Judgments

C-287/05 Hendrix; 1612/68/EC with Regulation 1408/71/EC

The issue in the *Hendrix* case has an important bearing on the provisions of non-contributory benefits in Cyprus. 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: the current rules on non-contributory benefits have stringent residence tests attached to them, deliberately designed to exclude Union citizens exercising the right to freedom of movement, and in more so resulting in discriminatory effects against those Union citizens and their families resident in other EU countries. Furthermore, the rules are designed to exclude Union citizens who reside in the northern part of the country in ‘the territories where the Republic of Cyprus Government does not exercise effective control’. Related here are the rules deriving from Reg. 1612/68 Regulation 1408/71/EC with their strong emphasis on producing discriminatory effects by comparison with that of national workers by providing for the systematic application of the rule of national treatment, in as far as all conditions of employment and work are concerned has a bearing on the law providing for benefits to Union citizens. For instance, the regime referred to above in ‘Chapter I: Entry, residence, departure’ of this Report, as regard the situation of jobseekers (social/public assistance and other benefits available by the Service of Grants and Allowances under the Ministry of Finance) contains blanket exclusion from the benefit regime of Cyprus of Union Citizens: the stipulation of that provides a general presumption that Union citizens who are not employed or self-employed and are residing in Cyprus for the purpose of finding work are not entitled to public benefit, without properly balancing this with a proviso that provides that access to any benefit shall not be any way discriminatory against Union citizens when compared to access of those who are resident in Cyprus, i.e. overwhelmingly Cypriot nationals. The strict residential conditions may be considered to be indirectly discriminatory against Union citizens residing outside Cyprus (see *C-326/90, Co v Belgium*).

C-527/06 Renneberg

Renneberg will have bearing in Cyprus but so far no case has gone before the court or the Equality body on the subject; nor has this report identified any rule that is contrary to the finding or the broader principle of the *Renneberg* case.

C-94/07 Raccanelli

The *Raccanelli* is relevant to Cypriot law and may well have important implications on Cypriot law as well as administrative practice with regard to the provisions of study grants to Union citizens. The growing academic and research community, the expanding but already large tertiary education sector, the extensive use of English in Cyprus, the relatively good environment for research for a recently acceded EU country (large under-researched areas particularly as regards social and natural sciences coupled with the relatively good infrastructural provisions) are important factors that attract researchers from the EU and their families. Various research grants are offered such as those provided by the Research Promotion Foundation (RPF), which was established at the initiative of the Government of the Republic of Cyprus, to promote the development of scientific and technological research in Cyprus due to the fundamental importance of research in contemporary societies.¹⁴⁶

The well-established rule that the definition of the ‘worker’ within the meaning of Article 39 EC must not be interpreted narrowly is relevant to the grant provisions of the RPF¹⁴⁷ containing elements that are unduly restrictive. The finding of the court in *Raccanelli* that ‘any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a ‘worker’ needs to be further reflected upon in interpreting the various rules governing research grants. The ruling that ‘the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration only if his activities are performed for a certain period of time under the direction of an institute forming part of that association and if, in return for those activities, he receives remuneration’, provides the basis for challenging the following provisions of the latest Call for instance of the RPF, ‘Desmi 2008’.¹⁴⁸

The various Calls of the RPF, including the latest one, provide for cooperation, and indeed not only encourage the substantive involvement in the research by institutions, foundations and individual researchers from other EU countries, but make it a condition precedent in the formation of the network that will be funded in the research. However, the rules contain various discriminatory elements for researchers to be funded as employed researchers of Cypriot institutions or other institutions based in Cyprus, as workers exercising the right to free movement in the EU. For instance in the categories of eligible persons the term ‘researcher’ is defined as ‘academic, scientists who work’s permanently or has a contract of employment/cooperation with an institution’ but the contract of employment/cooperation must be a contract of indefinite duration or a long duration that is not confined to a single task or research program’.¹⁴⁹ Such a provision amounts (a) direct discrimination against workers of fixed term contracts (Directive 1999/70/EC), or even those on part-time contracts (Directive 97/81/EC). (b) This provision is prima facie indirectly discriminatory against Un-

146 The Foundation is an independent organisation governed by a twelve-member Board of Directors, appointed by the Council of Ministers for a five-year period. The Foundation’s core objective is the promotion of scientific and technological research in Cyprus. Several specific objectives and priorities have been defined by the Foundation’s Statute and the decisions of its Board of Directors, for the promotion of this main objective (see http://crpf.metacanvas.com/EN/ipe_info/general_info.html, accessed 19.4.2009).

147 This serves as a model for various grants and allowances for researchers in Cyprus.

148 See for the booklet of rules of the particular Call ‘Δέσμη 2008’ for 2008-210 for applications http://www.research.org.cy/EL/cy_research_fund/desmi_2008/index.html, accessed 19.4.2009.

149 See page 121 of the booklet of rules of the call ‘Δέσμη 2008’.

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ion citizen researchers who would otherwise be allowed to exercise their right to be employed or contracted for services by an institution in Cyprus, when compared to Cypriots. The issue then is if such a measure is 'proportional' to the aim of the particular provision and in line with the general test of anti-discrimination acquis: is it objectively justified by a legitimate aim and are the means of achieving that aim appropriate and necessary? I assume that the goal would be to encourage 'local' research and infrastructural investment in 'developing' the institutions based in Cyprus, but such an aim in such means as provided in the provision is unlikely to be justifiable. Moreover, it is likely to be contrary to the ruling of *Raccanelli*, by both unduly restricting the definition of researcher as 'worker' and restricting free movement of workers. A complaint is pending before the Cypriot Equality body on the basis of this logic.

Chapter VIII

Application of Transitional Measures

Issues relating to the practical problems, individual cases and national case law pertaining to the functioning of transitional arrangements have been outlined in the report, particularly ‘Chapter I: Entry, residence, departure’

Chapter IX

Miscellaneous

Over and above the court system, the only national organisation where citizens can launch complaints for violation of Community law on free movement for workers (apart from SOLVIT centres) is the Cypriot Equality body.

There are no relevant studies, seminars, reports or legal literature.