

**REPORT**  
**on the Free Movement of Workers**  
**in Cyprus in 2011-2012**

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## Introduction

The current economic crisis has seriously crept into the immigration and employment debates in Cyprus; increasingly Union citizens are negatively affected. The economic crisis in the euro zone, particularly the banks' exposure to the Greek bonds and Greece in general that totals 29 billion euro or 160 percent of Cyprus' gross domestic product (GDP), has had a major effect on employment in Cyprus. In July 2012 the Government applied for financial assistance to the EU bailout mechanism (EFSF/ESM). A delegation of the Troika (*European Commission*, the *IMF* and the European Central Bank) visited Cyprus on a fact-finding mission in a bid to assess the capital requirements of the country's public and banking sector: the conditionalities imposed for the bailout will almost certainly include serious austerity measures.

As unemployment rises, anti-immigrant sentiments are being hyped. Unemployment jumped from 7.6% in June 2011 to 10.5% in June 2012; the respective figures for the under 25's were 20.8% and 25.3%, the highest rate recorded since the 1974 war. Moreover, public sector austerity measures to reduce the public debt and deficit have further deepened the slump. The crisis has brought more precarity, insecurity, use and abuse of undeclared work, particularly affecting EU workers. There are numerous types of personal contracts, containing inferior terms as regards basic conditions; there is also evidence of non-compliance with collective agreements. In the first half of 2012 the Department of Industrial Relations carried out 4,397 inspections and by the end of July 2012, a total of 378 cases were filed in court for violations of various laws. During the same period, the Courts awarded penalties of a total of €104.000.

As regard the original warning letter to the Republic of Cyprus by the Commission (19/5/2011), which identified 14 matters alleging violations of free movement *acquis*, the Commission having received a response by the Cypriot Government (25/7/2011) issued a complementary warning letter (26/3/2012) rather than proceeding with a reasoned opinion, the final stage before taking the matter to the European Court. The European Commission considers that 6 matters have been resolved:

- *Conditions of entry* into Cyprus of Union citizens and their family members including same sex couples who have registered a partnership elsewhere in the EU;
- The deadlines for the *issue of registration certificates* to Union citizens and required documents [articles 8(2) and 8(3)]
- Means of attesting *continuity of residence* (article 21 of the Directive)
- *Proportionality of sanctions* regarding non-conformity with the obligation of Union citizens to register [article 8(2) of the Directive]
- *Possession of registration certificate as a requirement for the exercise of rights* under article 25(1) of the Directive.
- Requirement for *sufficient means* in the case of workers, under articles 7(1)(a) in combination with 8(3) of the Directive.

However, another 9 remain unresolved and are marked as pending:

- Sanctions in the event of non-compliance with the obligation of *Union citizens and their family members to report their presence* under article 5(5) of the Directive.
- The **deadline** for the issue of **residence cards to spouses** of Union citizens who are third country nationals and **validity** of such residence cards under article 11(1) of the Directive.

## CYPRUS

- *Cost of issue of residence cards and other documents* under article 25(2) of the Directive.
- *Deportation and no-entry ban* under articles 30 and 31 of the Directive.
- *Dependents of Union citizens* under article 8(5)(d) of the Directive.
- *Compliance with EU regulations for coordination of social security systems*
- *Service providers and self-employed* under article 8(3).
- *Special cases of acquisition of permanent residence* by employees and their family members under articles 17(2) and 17(4)(c) of the Directive.
- Exclusion from the scope of the law transposing the free movement directive of *Cypriot nationals returning to Cyprus* after having exercised their right to free movement in another member state.

On 23/12/2011 Law 181(I)/2011 was enacted, which amended the basic Law 7(1)/2007. The new law purports to transpose Directive 2004/38/EC in a complete manner, to take into account the amendments of Regulation EEC 1612/68 and the abolition of previously applying Regulations.<sup>1</sup> In particular:

- The amendment purports to extend the rights of EU nationals to Cypriots who return to Cyprus after living in other EU countries; however it does not go as far as extending these rights to all Cypriots, including the ones who have always resided in Cyprus.
- The amendment imposes an obligation on Union citizens and members of their families to inform the authorities of their presence in the country within 21 days. However, it remains to be seen whether the authorities have the necessary capacity to properly implement this by promptly processing the applications.
- The amendment purports to secure the issuance of a registration certificate for any Union citizen who demonstrates that (s)he is self-employed by any means and not only via the registration certificate of the Social Welfare Services, as was the case prior to the amendment.
- The amendment purports to secure the issuance of the registration certificate for Union citizens under 21 and family members of other Union citizen, provided these persons can demonstrate inter alia their age; it will no longer be necessary to demonstrate that they are dependents of a Union citizen, as was the case prior to the amendment.
- The amendment provides that Union citizens who are employees or self-employed are entitled to permanent residence in the RoC before completing five years of continuous residence, including cases of spouses who have been deprived of their citizenship due to marriage.
- The amendment provides that where Union citizens who had been employees or self-employed die prior to acquiring the right to permanent residence in the RoC, their family members who stayed with them have the right to permanent residence in the RoC even when the surviving spouses have been deprived of their Union citizenship due to marriage.
- The amendment explicitly states that the cost for the provision of documents such as certificates will not be greater than the cost of equivalent certificates for Cypriots.

There is still concern from NGOs and experts that there is a problem with practice of deportation and placement on the stop list of Union citizens and their families. Also the same applies for the preconditions required for acquiring the right to permanent residence as well as entry and exit to the Republic of Cyprus under article 4(1) of Directive. Despite the more positive climate in the treatment of migrants, NGOs have raised questions about the condi-

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<sup>1</sup> Regulations 64/221/EEC, 68/360/ EEC, 72/194/EEC, 73/148/ EEC, 75/34/ EEC, 75/35/ EEC, 90/364/ EEC, 90/365/ EEC και 93/96/ EEC.

tions of detention and expulsion of foreigners, including EU citizens. The Commission's warning letter to the Cypriot government refers to the administrative practice of requiring far too many documents, contrary to the ECJ ruling in the case of C-68/89. In response, the Cypriot authorities referred to a circular issued by the immigration authorities (dated 18/07/2011) which reiterates the content of the law transposing the Directive as regards the documents needed.

Concerns have been raised as to the protection of the rights of EU citizens working in or visiting Cyprus, as well as the rights of their partners and family members. The concerns relate to the violation of the equality principle in the case of same sex couples where one of the two is a Union citizen exercising his/her right to free movement. This and other problems of discrimination against same sex couples result from the failure of the Cypriot authorities to regulate same-sex relationships. Also there are problems regarding the right of Union citizens to marry persons who are asylum-seekers.

Despite assurances from Labour Ministry officials and from employers that, in general, the system operates smoothly with few problems or complaints of discrimination, trade unionists raise questions about workers' rights and equal treatment of EU citizens and their partners and families, arguing that the delays in registration result in discrimination and disruption of labour relations, non-compliance with collective agreements and labour standards, as well as various other daily problems.

The problem of reverse discrimination between Union citizens on the move who enjoy certain rights not afforded to Cypriots who do not move remains unresolved, despite the decision of the Ministerial Committee for the Employment of Aliens dated 28.8.2009, which declared that Cypriots and Union citizens shall enjoy the same rights. Matters relating to the entry and stay in the Republic of family members of Cypriots (who have not exercised their free movement right) are determined on the basis of the stringent Aliens and Immigration law, a regime inferior in terms of rights when compared to the corresponding conditions of Law 7(1)/2007 as regards family members of other EU citizens. Family members who are third country nationals continue to be discriminated against in different ways, as the national Courts often allow the differential treatment of family members of Cypriots. Recent European Court rulings may provide additional legitimacy to the line followed by the Cypriot Courts, in distinguishing between the rights of Union citizens on the move, to whom the free movement *acquis* applies, as opposed to citizens who do not move and cannot enjoy the rights derived from the free movement *acquis*.

A particular issue relates to the conditions of employment of Union citizens who are trainees in the hotel industry and allegedly face nationality discrimination. In particular, there are complaints that working conditions are especially bad in hotels and restaurant offering 'all inclusive packages', where Union citizens are used for 'social dumping': they are used in hotels in order to displace other workers who are regularly employed, because trainees have no contract and are not bound by collective agreements. The matter is currently being investigated by the Cypriot Equality Body.

Another issue concerns the territorial application of the Directive given the de facto division of Cyprus. Cyprus acceded to the EU as a divided country. The EU *acquis* applies only in 'the area under the control of the Republic'; its application is suspended in the northern Turkish-controlled territories. The question of the free movement *acquis* was a thorny issue during the recent negotiations between the two community leaders to resolve the Cyprus problem.

## Chapter I

### The worker: Entry, residence, departure and remedies

#### 1. TRANSPOSITION OF PROVISIONS SPECIFIC TO WORKERS

Cypriot law 7(I)/2007 transposed verbatim the relevant provisions of the Directive. The corresponding provisions are as follows:

Directive articles	Cypriot law 7(I)/2007
7(1a)	9(1)
7 (3 a-d)	9(4)(a-d)
8(3a)	10(4)
14 (4 a-b)	27 (4a-b)
17	15
24 (2)	22(2)

#### 2. SITUATION OF JOB-SEEKERS

##### 2.1. Residence Rights for Job-seekers

Job-seekers seeking allowance must register first at the district job-seeking bureau and then at the district Social Insurance Office; this obligation extends to all EU citizens. There has been no case law on the status of Union citizens who are job-seekers in Cyprus, or on those requiring public assistance. The practice appears to be in line with the *Antonissen* criteria.<sup>2</sup> There is no report of any complaint about the deportation of EU citizens who are job-seekers in Cyprus: such drastic measures of requiring EU citizens to leave for failing to find employment after six months<sup>3</sup> have not been used in Cyprus so far. The memorandum regarding job-seekers who are EU citizens (issued in late 2009) applies as of the beginning of 2010. Job-seekers who are EU citizens may register, and many do, at the district employment bureaux; many Union citizens often carry their benefits with them.

There are no formalities during the first three months of residence in order to secure/protect the right of residence, as stipulated in section 8 of Law 7(I)/2007, which explicitly provides that registration must take place without any conditions or formalities, other than the applicant's identity card or valid passport.

There are no explicit or implicit formalities which a job-seeker must complete during the second three months of residence in order to secure/protect his or her right of residence. Under article 8 of Law 7(I)/2007, Union citizens have the right to residence without any conditions or formalities for three months, but they are obliged to notify the authorities after 21

2 Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division - United Kingdom, Case C-292/89, Judgment of the Court of 26 February 1991, *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*.

3 Unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged. Such practice is not contrary to the provisions of Community law governing the free movement of workers.

days of stay in the country.<sup>4</sup> Article 9(4)(b) confers the right of residence for three months to Union citizens who are properly registered as involuntarily unemployed, having exercised a professional activity more than a year and as a person seeking employment at the Labour Department. Article 9(4)(b)(c) confers the right to residence for three months to Union citizens who are properly registered as a involuntarily unemployed, provided they have completed a fixed term contract of less than a year or have become involuntarily unemployed during the first twelve months and have been registered with the Labour Department as seeking employment.

There is a requirement under the amended legislation for any Union citizen residing in Cyprus for over 21 days to notify the authorities within 35 days of arrival. For those who stay beyond three months there is an obligation to register within 4 months. There are no different authorities to notify or to register. However, there is still a backlog with the registration process, which exceeds the maximum period of 4 month; therefore the ability of the authorities to implement the new rule at the speed required to avoid backlog remains to be seen.

It seems unlikely that the right of residence can be revoked before the expiry of six months of looking for work in Cyprus, on the ground that the job-seeker has become an ‘unreasonable burden on the social assistance system;’ no such case has been reported. High ranking officials of the Ministry of Labour argue that it is not possible for the law to be construed as allowing the classification of a person as ‘unreasonable burden’ within the first six months of looking for work. The right of residence is retained in the second six-monthly period of stay.<sup>5</sup>

There are no formalities that a job-seeker needs to complete after the end of six months of looking for work in order to secure/protect his or her residence rights for a further period beyond the six months. A job-seeker continues to be considered as registered after the end of the six months. Article 9(4) law 7(I)/2007 stipulates that such person continues to be registered as a job-seeker as if he/she is a worker. Job-seekers must register within four months from their date of entry into Cyprus. However no specific sanction is foreseen for those who do not register.

The only situation where the right to residence can be revoked is when a job-seeker or a member of his/her family becomes an ‘unreasonable burden on the social assistance system’, under article 4.1(b)(5) of Law 7(I)/2007. This provision copies verbatim article 14.1 of 2004/38/EC requiring that Union citizens have ‘sufficient means’ so as not to become an ‘unreasonable burden on the social assistance system’. The issue as to whether a particular Union citizen has sufficient means or not is being monitored by the Social Welfare Service which may make recommendations to the immigration authorities to issue a deportation order.

The issue of the requirement for sufficient means in the case of workers in article 7(1)(a) in combination with 8(3) of the Directive has been one of the issues which the Commission raised with the Cypriot authorities.<sup>6</sup> The European Commission considered that although the Directive had been correctly transposed, it was informed of implementation problems, as

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4 Sections 6(a) of Law 7(I)/2007, which is the amendment with law section (3) of 181(I)/2011.

5 At least this is the view expressed by a senior Ministry of Labour official, 22.6.2012.

6 In a letter dated 22.3.2012, the European Commission (hereinafter ‘the EC’) wrote to the Cypriot Foreign Minister regarding the incorrect transposition and implementation of Directive 2004/37/EC, following previous letters of 22.09.2009 and 20.05.2011, which had been responded to by the Cypriot government on 27.01.2011 and 25.07.2011 respectively.

Cypriot authorities apparently required workers to have a specific amount of income. In response, the Cypriot authorities referred to the circular of 18.07.2011 which clarified that the amount of an employee's income may not be verified in any way. The Commission was satisfied with the circular and considered the matter resolved.

The Labour Department of the Ministry of Labour issues a certificate of registration for job-seekers; however this is not connected to one's residence status. Any kind of documentation can be used as evidence of residence, including the certificate of registration of a job-seeker, but so can other documents such as a utility bill or an official document. There have been occasional complaints that the authorities have refused to register job-seekers but these appear to be the exception rather than the norm and are seen as a violation of the practice and the relevant circular. The only evidence required by the authorities to prove they are genuinely seeking employment is that they are registered as job-seekers with the employment services of the Labour Department

The Authorities claim that they take any coercive action against EU nationals who are job-seekers and who remain for more than six months in the territory of the Republic of Cyprus seeking employment. No reported cases have been found; government officials have assured the researcher that no action is taken, unless it is demonstrated that the claims for public benefits made by union citizens and their family members are such to amount to an 'unreasonable burden'. No figures were made available as to the number of persons classified as 'unreasonable burden' and referred to the immigration authorities in order for their deportation to be arranged. Neither has there been any information as to how exactly the Social Welfare Service defines this ambiguous term.

## ***2.2. Benefits for first time job-seekers***

There are no social benefits in Cyprus specifically designated as facilitating access to the labour market. There are three potential sources of benefits for job-seekers in general:

1. Unemployment benefit, which is based on contributions;
2. Social assistance; and
3. Possibly other benefits made available by the Service of Grants and Allowances of the Ministry of Finance, set out further down.

### **2.2.1 Unemployment benefit**

The Social Insurance Law (N. 41/80)<sup>7</sup> regulates the social insurance system, which is based on contributions and has objective criteria. Therefore, in theory at least, national descent or nationality does not play a role in the determination of entitlements. Unemployment benefit<sup>8</sup> is payable to employed persons and voluntary contributors working abroad in the service of a

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<sup>7</sup> As amended; relevant regulations have also been issued.

<sup>8</sup> 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 benefits 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.

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.<sup>9</sup> The conditions for entitlement to unemployment benefit are: (a) The insured person must have been insured for at least 26 weeks and must have 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 must have paid<sup>10</sup> or been credited<sup>11</sup> with contributions in the previous contribution year<sup>12</sup> 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 a Cypriot employer with insurable earnings not lower than 20 times the weekly amount of the basic insurable earnings. In terms of the procedure to be followed, the insured person is required to visit the nearest Social Insurance Office and sign the register of unemployed and continue to appear in person sign on at regular intervals determined by the Social Insurance Office. However, important changes have occurred with the adoption of EU Regulations 883/2004 and 987/2009, which replaced Regulations 1408/1971 and 574/1972 dealing with the co-ordination of social security systems.<sup>13</sup>

### 2.2.2 Social/public assistance

Public assistance is provided under Law 95(I)/2006<sup>14</sup> 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.<sup>15</sup> 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) the person is temporarily incapacitated due to sickness or accident; (b) the person has been duly registered as involuntarily unemployed, having exercised professional activity for over one year and having registered as a person seeking employment in the appropriate Employment Bureau (according to residence); (c) is duly registered as involuntarily unemployed after the expiry of a fixed-term contract of employment of less than a year's duration or after becoming involuntarily unemployed during the first 12 months from having registered with the appropriate Employment Bureau (according to residence); the duration of employment must not be less than 6 months; (d) the person is attending a vocational course.

9 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/Guide-Unemployment%20Benefit%20Y2008.pdf](http://www.mlsi.gov.cy/mlsi/sid/sid.nsf/All/E89112D31399E626C2256E3900394587/$file/Guide-Unemployment%20Benefit%20Y2008.pdf).

10 Insurable earnings on which contributions have been paid.

11 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.

12 For the first semester of each year is the calendar year before the last and for the second semester is the last calendar year.

13 This came into effect on 1st May 2010.

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

15 The initials stand for the 'Turkish Republic of Northern Cyprus', the breakaway regime in the north of Cyprus which is recognized only by and is under the control of Turkey.

Unless a person is willingly unemployed, then the continuation of his/her 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 purpose of conducting paid or unpaid activity or working as an employee or as self-employed, subject again to residing in the Republic controlled areas and to insufficient income. EU 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.

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.

The question as to how Cypriot authorities handle applications for public assistance by job-seekers and those with limited remuneration and/or short duration of a professional activity, which is insufficient to ensure its holder a livelihood remains an open one. The Cypriot authorities have taken notice that the European Court considers that work which had lasted barely more than one month was sufficient to constitute 'professional activity' within the meaning of the law, following an overall assessment of the employment relationship, which may be considered by the national authorities as real and genuine, thereby allowing its holder to be granted the status of 'worker' within the meaning of Article 39 EC.<sup>16</sup> The issue of access to work and benefits after 3 months for work seekers has not been tested in Cypriot Courts. It is not clear how long job-seekers may stay without complying with formalities; presumably indefinitely so long as they do not seek recourse to public funds. Social security officers claim that the principles do not really have a bearing on contributory unemployment benefit, as these refer to general public benefit provisions to job-seekers.

Recognised refugees residing in the Republic whose income and other means are not sufficient for their basic needs are entitled to public benefit.<sup>17</sup>

The decision of the Anti-discrimination Authority, one of the two bodies comprising the Cypriot Equality body, dealing with public assistance for health reason, is illuminating as to the situation of Union citizens requiring public assistance, including job-seekers allowance.<sup>18</sup>

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16 Joined Cases C-22/08 and C-23/08, *Athanasios Vatsouras and Josif Koupatantze v. Arbeitsgemeinschaft (ARGE) Nürnberg 900*.

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

18 Report of the Equality Body, Ref. AKR 70/2007, issued on 24 March 2008. 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 he was receiving until May 2007. The Union citizen had been resident in Cyprus with his parents since 2002 and had been 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

According to the Cyprus Equality Body report, a circular issued by the social Welfare Services of the Ministry of Labour, which has wider application in similar purposes, distinguished 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 provides that the exemption from the responsibility for the maintenance of a disabled child does not apply in the cases of Union citizens’.<sup>19</sup> The reasoning is based on the logic that the granting of residence is premised on 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 had erroneously suggested that a precondition for granting the free movement rights under section 9(1)(b) of Law 7(I)/2007 is that the applicants are not considered to be an ‘unreasonable burden on the social assistance system of Cyprus’ (p. 4 of the Equality Body report Ref. AKP 70/2007). 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 found 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 adjacent to the exercise of a professional/ economic activity in the EU that has been settled at 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 (page 12 of the Equality Body report Ref. AKP 70/2007).

Central to the finding of the Cypriot Equality Body is the principle of equal treatment under article 22 of Law 7(I)/2007, based on which the differential treatment by the Social Welfare Service was found to be unreasonable. The Equality Body referred to 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 of 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 on 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.

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permit for reasons of employment activity (Letter to the complainant by the Paphos District Social Welfare Service dated 5.6.2007).

<sup>19</sup> The Circular by the Director of the Social Welfare Service 7.3.2007 is quoted AKP 70/2007, p. 3.

- 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. The Equality Body report recommends that the authorities restore public assistance to the complainant and withdraw the relevant circular issued. The Social Welfare Service has complied with the recommendation.<sup>20</sup>

On the basis of the above case, the same principles must apply to job-seekers by analogy. It is not clear how long job-seekers can 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.

There are social assistance and other benefits available by the Service of Grants and Allowances under the Ministry of Finance, analysed further down.

### **2.2.3 Benefits available for those seeking apprenticeships or carrying out unpaid work**

The Social Insurance Law (N. 41/80) considers that those on training courses to be job-seekers; if they have paid contributions, then they are entitled to unemployment benefit. Also some training schemes offered by the Human Resources Development Authority provide certain benefits.

## **3. OTHER ISSUES OF CONCERN**

### ***3.1 Deportation and placement on stop list and preconditions to acquiring the right to permanent residence***

In spite of the generally more positive approach adopted by the Ministry of Interior as regards the treatment of migrants, NGOs have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens relating acquiring right to permanent residence.

The first letter of warning from the European Commission to the Republic of Cyprus alleges that there are problems as regard entry and exit to the Republic of Cyprus under article 4(1) of Directive, which is purportedly transposed by part II, articles 2 and 5 of the Cypriot law [Law N. 7(I)/2007]. The Commission's warning letter refers to the administrative practice of requiring too many documents, for instance requiring from a French citizen, who is a businessman frequent flying to Cyprus, to prove his French citizenship (French passport, identity card and driving licence), contrary to the ECJ ruling in the case of C-68/89. In response to the above concern, the Cypriot authorities referred to a circular issued by the immigration authorities (dated 18/07/2011) which stipulates the content of the law transposing the directive. As for the specific complaint, the Cypriot authorities claimed that they have received no information about it from the airport authorities; also they claim that on 1/7/2011 they contacted the complainant, who informed that that he no longer has a complaint. Only if there should be any complaint that the procedure or the practice departing from those stipulated in the circular, can there be any claim that there is violation of Article 45 TFEU, Regulation 1612/68 or of the free movement directive.

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<sup>20</sup> 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 recommendations of the Cypriot Equality body (AKR 33/2004, dated 10.1.2005).

In its letter dated 22.3.2012, the European Commission considers resolved the issue of the conditions of entry into Cyprus of Union citizens and their family members including same sex couples who have registered a partnerships elsewhere under articles 3(2), 5(2) and 5(4) of the Directive. A circular issued by the Cypriot authorities dated 18.07.2011 entitled 'Passport control of Union citizens and of the members of their families' sets out correctly the impact of the relevant Directive provisions and defines the manner in which these must be implemented.

Not all issues relating to entrance, exist and expulsion are resolved however. The European Commission letter of 22.3.2012 has raised issues regarding the deportation and no-entry ban under articles 30 and 31 of the free movement Directive. The Commission drew the attention of the Cypriot authorities to the complaint of Mrs. Denisenko-Moon who alleged that she had been deported from Cyprus contrary to the procedural guarantees of the Directive. The Commission expressed further concern over the fact that although the circular dated 22 July 2011 sets out correctly the guidelines of article 30(3) of the Directive, the three specimens attached to the said circular do not comply with article 30(2) of the Directive, as they include only standard justifications and do not inform the persons concerned precisely and in full of the grounds on which the decision taken in their case is based.

The response of the Cypriot government explains in great length the facts surrounding the case of Mrs. Denisenko-Moon, pointing out that she had resided with her deceased spouse for less than a year before his demise, which does not entitle her to residence in Cyprus. The response further claims that the Cypriot immigration authorities were unable to inform her fully and precisely of the reasons for her deportation as she had changed address refusing to supply her new address to the immigration authorities. The response added that Mrs. Denisenko-Moon was duly informed of the reasons for her deportation through SOLVIT Cyprus.

As regards the specimens attached to circular 22 July 2011, the Cypriot authorities issued a further circular dated 16.05.2012 to complement and clarify the guidelines in a manner that complies with article 30(2) of the Directive.

### ***3.2 Fees for the issue of residence card***

The European Commission warning letter alleged that article 25 of the Directive and other documents which must be issued free of charge has not been transposed in the Cypriot legislation. In practice this has discriminatory effect regarding the cost of similar documents. The Commission has received complaints with attached governmental official documents indicating the fees required for the issue of various documents. In addition a form called MEU 1 A is required which specifies the fees to be paid as follows: €8,54 for Union citizens and €17,09 for every member of his/her family. In response, the Cypriot government stated that article 25(2) of the Directive is not transposed verbatim in the Law 7(I)/2007 but in compliance with this provision the Cypriot law specified fees<sup>21</sup> which are analogous to those charged for Cypriots. In particular, section 19(4) requires payment of the fee of €8,54 whilst the same fee is required of Cypriots for the issue or replacement of a Cypriot identity card.<sup>22</sup> Also, the fee of €34,17 charged for the temporary residence permit of an alien who is a fam-

<sup>21</sup> Sections 10(4), 10(6) and 17(1) of Law N.7(I)/2007.

<sup>22</sup> Aliens and Immigration Regulations 2004, Table II, KΔΠ 15/99.

ily member of a Cypriot national<sup>23</sup> corresponds to the same fee charged for residence cards of family members of Union citizens who are third country nationals.<sup>24</sup> The Cypriot authorities further argued that in some cases Cypriots are charged more than EU nationals, by making reference to the Law on Citizens regulating the registration of persons of Cypriot origin as citizens, which is in the expert's opinion not analogous or relevant to this case. In any case, a bill has been drafted by the government proposing to amend Law 7(I)/2007 purporting to transpose article 25(2) of the Directive by verbatim copying its content.<sup>25</sup>

The second European Commission letter dated 22.3.2012 raised the issue of the deadline for the issue of residence cards to spouses of Union citizens who are third country nationals and validity of such residence cards, a matter relating to article 11(1) of the free movement Directive. The European Commission was made aware of the practice of the Cypriot authorities to issue residence cards to spouses of Union citizens who are third country nationals with a validity of less than five years and with a delay beyond the six months foreseen by the Directive. In response, the Cypriot authorities referred to two circulars requiring the competent departments to respect the said provisions of the Directive. Although the EC was satisfied that the said circulars may terminate the practice which was in breach of the directive, it notes that the response of the Cypriot authorities does not address the request submitted in the case of Ms Michelle Manning Ornejec which had been the subject of a complaint to the EC and a topic for discussion in the European Parliament. Further, the European Commission requested that the Cypriot authorities clear the backlog of old applications pending so as to reinstate a satisfactory level of service. In response, the Cypriot Government explained that Ms Manning had been issued a residence card of only ten months pursuant to a policy to issue residence cards with duration of up to one month before the expiry of the applicant's passport. This policy is, according to Cypriot authorities, based on the Aliens and Immigration Law (article 9) which renders 'an illegal immigrant' any person who enters the Republic without a passport. Ms Manning's application for a renewal was rejected because her marriage certificate had not been duly certified.<sup>26</sup> In any case, the couple now appears to have departed from Cyprus, which partly resolves the matter as far as the Cypriot authorities are concerned. The legality of the policy of issuing residence cards of shorter validity than the passport to third country nationals based on article 9 of the Alien and Immigration Law was not addressed; this point is likely to lead to further reactions from the EC. As regards the backlog of applications, these have been recorded as 860; their processing started in April 2012 and is expected to be completed soon.

In a letter dated 22.3.2012, the European Commission considers that that there is incorrect transposition and implementation of article 25(2) of the Directive as regards the cost of issue of residence cards and other documents. The Commission had warned the Cypriot authorities that article 25(2) of the Directive had not been correctly transposed, in response to which the Cypriot authorities included, in the 2011 amendment to Law 7(I)/2007, a relevant article purporting to transpose this provision. The Commission also asked the Cypriot authorities to show that article 25(2) was at least practiced and that the cost for the issue of

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23 Aliens and Immigration Regulations 2004, Table V, ΚΔΠ 371/2002.

24 Section 11(2)(a) of Law N. 7(I)/2007.

25 Bill to amend Law N. 7(I)/2007, section 6.

26 The same marriage certificate had been deemed acceptable for the purposes of the initial application for a residence card. Strangely enough, for the purposes of the renewal, the Cypriot authorities rejected the marriage certificate, for having been stamped 'only' by the Foreign Ministry of the Philippines (of which Ms Manning is a national), claiming that that the said certificate ought to have been stamped instead by the Philippine consulate in Nicosia.

residence cards did not exceed the cost of issue of similar cards for nationals. The Cypriot authorities' response, setting out for comparison a number of documents issued to third country nationals, did not satisfy the EC which insisted that the comparison needs to be done with documents issued to *nationals*. In response, the Cypriot authorities indicated that the 2011 amendment to Law 7(I)/2007<sup>27</sup> has correctly transposed article 25(2) of the Directive, adding that a new draft law is currently under way specifying that the charge for the submission of an application for the issue of a residence card to a third country family member of a Union citizen will be €8,54, same as the charge for the issue of an identity card to a Cypriot. The same draft law introduces a further amendment to the cost of issuance of documents, fixing again the charge for issuing a registration certificate to a third country family member of a Union citizen to €8,54, same as the charge for the issue of an identity card to a Cypriot.

Regarding the certificate for permanent residence for Union citizens, the Commission asked the Cypriot authorities to explain why this is equivalent to the registration of minors who are children of Cypriots and of persons born after August 1960 (the charge for which is €60,34 and €43,10 respectively), instead of being equivalent to the issue of identity cards for Cypriot citizens (the charge for which is €8,54). The Cypriot authorities explained that this charge was higher than the charge for the issue of identity cards to Cypriots, because the latter have to pay the cost of issue of an identity card *in addition to* and after the cost for their registration as citizens. Their rights as citizens derive not from their identity card but from their preceding registration as citizens. Thus, the registration of permanent residence for Union citizens has to be seen as equivalent to the Cypriots' registration as citizens and not to their identity card, which precedes the registration as citizens, as it vests Union citizens with rights equivalent to those of citizens.

*The interpretation of 'sufficient means'*

An issue of concern relates to the interpretation of sufficient means so as not to become an 'unreasonable burden' on the welfare system. The Commission's letter claims that although Cypriot law 7(I)/2007 seems to be correctly transposing article 7 in conjunction with article 8(3)<sup>28</sup> of the Directive, administrative practice deviates from that by requiring that the workers demonstrate certain income for themselves and their families to recognise their right to residence under art.7(1). The issue here is the administrative interpretation of 'sufficient resources' and when exactly the 'burden' occurs.<sup>29</sup> Cypriot law has transposed verbatim the relevant provisions of the directive in the various categories of workers.<sup>30</sup> Article 27(1) of the Cypriot law 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 the prerequisites are set out in the circular issued by the immigration authorities<sup>31</sup> which requires a number of formalities to ensure that Union citizen applicants are in possession of 'the appropriate means'. Article 4.1 (5) of law 7(I)/2007 designates the Social Welfare Services as the competent authority to determine what constitutes 'burden on

27 Article 23(2) of law 181(I)/2011 corresponds to Directive article 25(2).

28 This stipulates the documentation each worker has to submit.

29 Art. 7(1)(b) requires that they 'have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State'.

30 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).

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

the social assistance system of Cyprus'. In response to the Commission's concerns, Cypriot authorities produced a circular (no. 15/2006/III, 18/07/2011) which reiterates the content of the law transposing the Directive as follows:

- (1) Registration is granted immediately to Union citizens and their family members, provided they supply the relevant documentation and fill in the relevant application form (MEU1A).
- (2) In the case of a worker who is a Union citizen and his/her family, irrespective of their nationality, the immigration authorities do not check in any way the sufficiency of their means. Registration is granted with the submission of the relevant documents as required by the application guidelines MEU1A and MEU2A.
- (3) Notwithstanding the fact that section 10(4)(a) of law 7(I)/2007 does not comply with art. 8(3) of Directive 2004/38/EC, in the case of any other than worker Union citizens and his/her family, self-employment can be demonstrated by the registration with the Social insurance Services or other proof that they are such, e.g. European documents E101/A1.
- (4) The Certificate of registration/residence is issued to children or spouses of Union citizens who are over 21 irrespective of nationality, provided they submit documentation demonstrating that they are dependants e.g. evidence that they are students, health certificates etc.
- (5) Notwithstanding the fact that section 10(6)(d) of Law 7(I)/2007 does not comply with art. 8(5)(d) of Directive 2004/38/EC, certificate of registration is granted, depending on nationality, to children of Union citizens or spouse who are under 21 years old, only with the submission of evidence demonstrating family relation.
- (6) The Certificate of registration/residence is granted to the direct ascending relatives (parents) of Union citizens and spouses, providing they submit proof that they are dependants.
- (7) With the application form MEU3A<sup>32</sup> the continuity of residence of Union citizens is certified with every document of proof in use in the Republic of Cyprus, including documents not referred to in the relevant appendix of the form.

The European Commission (letter dated 22.3.2012) considers the matter over the means of attesting continuity of residence (article 21 of the Directive) as resolved, following the clarifications provided by the government's circular dated 18.07.2011 as regards correct implementation of this provision.

The questions relating to the interpretation of 'unreasonable burden' in Cyprus by the Welfare Services had been uncertain since 2007;<sup>33</sup> nonetheless, the position of the Ministry of Interior is categorical that the guidelines contained in the circular regarding the minimum income necessary in order to obtain a Certificate of registration was never a condition precedent but a mere guide.<sup>34</sup> The original circular was not withdrawn, but the new circular, no.

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32 Application to obtain certificate of permanent residence.

33 The Civil Registry and Migration Department (File No. 30/2004/IV, 29.9.2008) issued a circular with guidelines regarding the definition of 'sufficient means' for EU nationals who are not employees but who state that they have sufficient means. The circular lists the following as minimum amounts: €600 for himself (language used in the circular); €400 for his wife; €300 for each child over 12 years old; €200 for each child under 12 years old. Pensioners and aged persons must have a bank account and statements proving that their pension is paid to them from abroad and is banked to their bank account in Cyprus (or statements that they withdraw money from their bank account abroad through their cards). They must also submit a certificate of health insurance and a rental agreement or a sales contract evidencing that they have purchased a place to stay in Cyprus. The circular requires that the minimum pension from abroad is at least €600. Union citizens who are students and who are also employed on a part-time basis will not be considered as workers; their application will be processed on the basis of criteria applicable for students.

34 In the relevant communication to the author from the Ministry of Interior (9.9.2009) 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

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15/2006/III, issued on 18.07.2011, clarifies matters and sets the procedure in line with the Directive. The authorities claim that the practice was the same even before the issuing of the circular, but this cannot be verified as there had been no complaints.

In a letter dated 22.3.2012, the European Commission considers as resolved the issue of the requirement for sufficient means in the case of workers under articles 7(1)(a) in combination with 8(3) of the Directive. Although the Directive had been correctly transposed, the EC had been informed of problems in its implementation, as Cypriot authorities apparently required workers to have a specific amount of income. In response, Cypriot authorities referred to the circular of 18.07.2011 which clarified that the amount of an employee's income may not be verified in any way.

#### **4. FREE MOVEMENT OF ROMA WORKERS**

No issue has been recorded as regards the free movement of the non-Cypriot Roma. It is thought that there may be a very small number of Roma who are EU citizens, mainly Romanians and Bulgarians, residing in the southern-eastern part of Cyprus, around the village of Paralimni. No further information is available, nor is there any record on the subject.

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stated means did not meet the indicative amounts then the application was sent to the Central Offices of the 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.'

## Chapter II

### Members of the Family

#### 1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Family members of an EU citizen who are not citizens of an EU member State have the right of residence and permanent residence, irrespective of their nationality (article 5(1), Law 7(1)/2007). 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 (article 4(2) (a), Law 7(1)/2007).

##### *1.1. Reverse discrimination in administration practice and Cypriot case law*

Despite the decision of the Ministerial Committee for the Employment of Aliens dated 28.8.2009, that all matters of entry and stay in the Republic of family members of Cypriots will be decided on the basis of the respective conditions for family members of other EU citizens as provided in Law 7(1)/2007, there is a problem of reverse discrimination against Cypriots. In the Cyprus Report on the Free Movement of Workers of 2009-2010 the author expressed the view that the issue of reverse discrimination seemed to be on its way to resolution following the above Ministerial Committee decision; however, this has not happened. Family members who are third country nationals of Cypriots continue to be discriminated against in different ways. National Courts persistently ignore the above decision of the Ministerial Committee, which results in subjecting the family members of Cypriots to a more stringent regime than the family members of Union citizens. In a report in 2009,<sup>35</sup> the Cypriot Ombudsman aptly pointed out that there is ‘a contradictory and defensive position’ by the immigration authorities. Court decisions have been divided on these matters and there have been numerous complaints to the Ombudsman<sup>36</sup> illustrating the inadequacy in the treatment of Union citizens on the family reunion of Union citizens, including Cypriots. The case law in 2010-2012 illustrates the contradictory approach by Cypriot Courts, failing to afford full recognition to free movement principles.<sup>37</sup>

35 Report of the Commissioner for Administration regarding the implementation in Cyprus of the Community *acquis* in the area of family reunification and unfavorable treatment of Cypriot citizens and the members of their families who are third country nationals (in Greek: Έκθεση Επιτρόπου Διοικήσεως αναφορικά με την εφαρμογή στην Κύπρο του κοινοτικού κεκτημένου στα θέματα της οικογενειακής επανένωσης και τη δυσμενή μεταχείριση Κυπρίων πολιτών και των μελών των οικογενειών τους που είναι υπήκοοι τρίτων χωρών), ref. A/P 1623, A/P 1064, dated 06.05.2009, p. 1.

36 See for instance the section entitled ‘iii. The right of entry and stay of a third country national who is a spouse or a partner of a Union Citizen’ (in Greek: Το δικαίωμα εισόδου και παραμονής πολίτη τρίτης χώρας που είναι σύζυγος ή σύντροφος Κύπριου ή Ευρωπαίου πολίτη) in the *Ombudsman’s Annual Report of 2007*, [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2316716CE693858D882574FA0077E4E6/\\$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7-2007.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2316716CE693858D882574FA0077E4E6/$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7-2007.pdf?OpenElement) (accessed 29.09.2009).

37 *Svetlana Shalaeva v. Republic of Cyprus* (No. 45/2007, dated 27.4.2010); *Republic of Cyprus v. Svetlana Shalaeva* (No. 72/2008, dated 22.12.2010); *Abdulkader Majed v. Republic of Cyprus* No. 1099/2009, 7.2.2011.

This policy line is likely to continue, as the ruling in *McCarthy* is expected to strengthen the position that Union citizens who never exercised their right to move and reside in any other Member States cannot invoke Union law in order to secure the residence of their spouses, as discussed further down (see section on free movement case law, below).

### ***1.2 Deadline for and duration of residence card of spouses of EU citizens who are third country nationals***

Article 10(1) of the Directive provides that the residence card is granted to third country nationals who are family members of Union citizens within 6 months from submission of the application. Article 11(1) of the Directive specifies the duration of this to be 5 years or an equivalent duration corresponding to the duration of the Union Citizen's stay if this is shorter than five years. This provision was transposed via articles 13(1) and 13(2), Part III of Law 7(I)/2007. The European Commission's warning letter to the Republic of Cyprus alleges that the administrative practice differs from the national rules transposing the Directive. The Commission refers to a number of complaints it has received from which it emerges that spouses who are third country nationals are granted residence card of a few months' duration, which forces these persons to travel back fourth between Cyprus and their countries in order to ask for a visa and reapply for certificate. A notable example is the case of Michelle Manning Omejec,<sup>38</sup> a Pilipino spouse of an EU citizen who initially received a certificate for 10 months and upon its expiration was invited to an interview. The Cypriot authorities refused to extend her stay and she was forced to return to the Philippines and apply for a four month visa at the Consulate which was finally granted to her. The Commission considered that this practice violated Directive 2000/38 but also respect to family life as guaranteed by article 8 of the ECHR and article 7 of the Fundamental Rights Charter (mutatis mutandis decision of the ECtHR 17.01.2006 'Mendizabal' no. 51431/1999). The Commission found that this administrative practice was further confirmed by a number of complaints received at its office. Another issue raised was that of non-compliance by the Cypriot authorities with the deadline of six months foreseen in article 10(1) of the Directive, as was the case with Sahid Mehmood, a Pakistani citizen married to a Union citizen. The complainant applied in March 2008 for a certificate but did not receive it within the six months period foreseen in the Directive. In their reply dated 27.01.2011 to the Commission, the Cypriot government explained that Mr. Mehmood had applied for asylum and had been rejected and an investigation was launched in order to determine whether his marriage to an EU national was a bogus one. In the same latter, the authorities addressed the issue of non-compliance with the deadline, as well as the duration of the rights granted, claiming that the practice has changed and was now in compliance with articles 10(1) and 11(1) of the Directive. In turn, the Cypriot authorities were asked to report on the measures taken in order to ensure compliance with articles 10(1) and 11(1) of the Directive.

In their letter responding to the Commission's concerns dated 25.07.2011, the Cypriot authorities claimed to have transposed the Directive correctly and fully and that for the purpose of compliance with and correct implementation of articles 10(1), 11(1), 12(1) and 13(1) of the Directive, two circulars had been issued:

- Circular dated 18.01.2011 which, according to the Cypriot government, proves that the practice in relation to the provision of a residence card of reduced duration was revised and that

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<sup>38</sup> Complaint to the European Parliament Ref. 1862/2009.

such card now has five years' duration except where the Union citizen concerned has a residence card of shorter duration, e.g. EU students.

- Circular dated 18.07.2004 which reiterated the contents of the above circular and pointed out to the obligation to issue the residence card within six months at the latest.

### ***1.3 Special cases of acquisition of permanent residence by employees and their family members under articles 17(2) and 17(4)(c) of the Directive***

In previous warning letters, the European Commission noted that Cypriot legislation does not provide for the right to permanent residence for a worker or a self employed person whose spouse or partner lost Cypriot nationality as a result of his/her marriage to the said worker or self employed or the right to permanent residence of a surviving spouse or partner of a worker of self-employed who lost Cypriot nationality as a result of marriage to the worker of self-employed.

The Cypriot authorities had at the time responded that an amendment to the legislation was under way to correctly transpose articles 17(2) and 17(4)(c) and again referred to circular of 18.07.2011 which contained guidelines for the correct implementation of these provisions, as an interim measure until the amendment of the law. The warning letter from the EC which followed, again rejected the position that the invocation of the direct applicability of directives can rectify incorrect transposition. In addition, it pointed out that the invoked circular contained an error in that, in one case, it referred to 'residence' rather than 'permanent residence'. In response, the Cypriot authorities amended law 7(I)/2007<sup>39</sup> so as to correctly transpose articles 17(2) and 17(4)(c) and issued a new circular correcting the previous reference to 'residence' with 'permanent residence'.

### ***1.4 Expulsion of family members of Union citizens***

The Commission's warning letter to the Republic of Cyprus acknowledges that the procedures foreseen in articles 30 and 31 of the Directive have indeed been formally transposed; however there are problems in terms of administrative practice. Reference is made to the complaint of Dimisenko-Moon, a Ukrainian widow of a British citizen who lived in Cyprus with her husband until his death and who was expelled following his demise and was subsequently refused entry following a waiting period of 16 months. What further transpired was the fact that the relevant documentation handed to the persons affected does not specify the authority to which appeals can be lodged and the deadline for lodging such appeals, as required by the Directive. In response to the Commission's warning, the Cypriot government issued a circular dated 22.07.2011 instructing competent authorities to include in the letter notifying expulsion proceedings information regarding the judicial process for appealing against the expulsion decision and the deadline for this procedure, indicating that where an interim order to suspend execution of the expulsion decision is filed, no expulsion shall take place until this appeal is examined and decided upon.<sup>40</sup>

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<sup>39</sup> Article 5 of Law 181(I)/2011 amends articles 15(3) and 15(4) of Law 7(I)/2007.

<sup>40</sup> The only appeal procedure available under Cypriot law is article 146 of the Cypriot Constitution, for which however no legal aid is available.

### ***1.5 Persons dependent upon a Union citizen***

The Commission's warning letter alleged that article 10(6)(d) of the Law has incorrectly transposed Directive article 2(2)(c) in combination with Directive article 8(5)(d). In compliance with this warning, the Cypriot government has drafted a bill purporting to properly transpose the Directive,<sup>41</sup> so that the direct descendants of the Union citizen and his/her spouse must prove that they are either 21 or that they are dependents of the Union citizen. In addition, a circular dated 18.07.2011 issues instructions for the direct implementation of Directive article 8(5)(d) on the basis of the principle of direct applicability of EU Directives in cases of wrongful transposition, notwithstanding the provisions of section 10(4)(a) of the Law N.7(I)/2007 because the latter does not comply with Directive article 8(3). In general, this circular instructs competent officers to apply the Directive provisions notwithstanding any provisions to the contrary in the Cypriot legislation where the latter is found to be non-compliant with the Directive.<sup>42</sup>

A circular of the Cypriot authorities dated 18.07.2011 contains guidelines for the correct application of article 8(5)(d) on the basis of the principle of direct applicability of Directives in the event of incorrect transposition. The European Commission stresses the obligation of member states to correctly transpose Directives and the significance for the Directive's provisions to be set out in national legislation in a precise, clear and certain way so as to be understandable to private individuals who must know their rights and pursue them before the national courts. The EC adds that this is particularly significant in the case of the provisions of Union law intended to grant rights to citizens of other member states who are often not aware of the interpretation principles applied in national legislation, pointing out that Union citizens must be put in a position to determine and comprehend the precise meaning of a legislative act and understand the full extent of their rights. In response, the Cypriot authorities transposed article 8(5)(d) through the 2011 amendment of Law 7(I)/2007<sup>43</sup> which is now in line with the Directive.

## **2. ENTRY AND RESIDENCE RIGHTS**

### ***2.1 Deadline and required documents for the issue of registration certificate for Union citizens***

The Commission's warning letter to the Republic of Cyprus alleged that according to article 8(2) of the Directive, registration must be issued immediately to Union citizens who intend to stay over three months. The provision in question was formally transposed in Part III, article 3(2) of Law 7(I)/2007. However, the Commission refers to a complaint from Nelson Rivera Carrera who alleged that he was not issued the said registration certificate immediately and that he was required to successively produce a Cypriot identity card, for which he had to pay 5 Cypriot pounds, an alien registration certificate, the sum of 20 Cypriot pounds and a tax registration number issued by the Cypriot authorities for the purposes of the registration certificate, charged at 5 Cypriot pounds. The Commission considers that article 8(3)

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41 The bill proposes to amend the law on seven points which were found to be non-compliant with the Directive.

42 Circular File No. 15/2006/III dated 18.07.2011.

43 Article 4(b) of Law 181(I)/2011 which amends article 10(6)(d) of Law 7(I)/2007.

includes a full list of documents which the Union citizen has to produce (identity card of the state of which s/he is a citizen or a passport etc). This list does not contain an identity card of the reception country, or a tax registration number or an alien registration certificate. In its response the Cypriot government claimed that, in the case under examination, the registration certificate had been issued, without addressing the question of the documents required. The Commission invited the Cypriot government to declare the specific provisions enacted, so as to ensure compliance with the deadline and the documents required. The response of the Cypriot government was that it has fully and correctly transposed the Directive, as article 8(2) of the Directive corresponds to article 10(2) of Law 7(I)/2007 and article 8(3) of the Directive corresponds to article 10(4) of the same law.

At the administrative level the authorities argued that they were implementing the said provisions in full, as proven by the application form MEU1A which contains the relevant guidelines to prospective applicants as well as the clarification circular TAPM dated 17.07.2011 concerning the submission and examination of applications by Union citizens for registration. As regards the case of Nelson Rivera Carrera, the Cypriot authorities state that the registration certificate was issued to him on the same day, without having to pay any amount for the alien registration certificate or a tax registration number. It further alleged that on 18.09.2008, which was subsequent to his registration, the complainant applied on his own initiative for a Cypriot identity card without having any legal obligation to do so.

The response further alleged that the fact that a Union citizen is not obliged to apply for a Cypriot identity card can be inferred from the wording of article 10(1) of Law 7(I)/2007 which imposes an obligation to secure a registration certificate despite, inter alia, the provisions of the Population Archives Law 141(I)/2002, section 61; it follows that the latter law which requires possession of the Cypriot identity card does not apply to Union citizens because of the operation of article 10(I) of Law 7(I)/2007.

## ***2.2 Proportionality of sanctions in case of non-compliance with the registration obligation of Union citizens***

Under article 8(1) of the Directive, the member state may require that Union citizens be registered. Directive article 8(2) specifies that in case of non-compliance there may be sanctions, which however must be proportional and non-discriminatory. If a Union citizen or member of his/her family does not register his/her presence, then according to Cypriot legislation Part III section 10(2) and 10(3) the fine can reach €2,562. The Commission stated that when Cypriot administrative officials were invited to explain if the fine is proportionate and non-discriminatory, they stated that in practice this fine was not imposed; however the promise of a state not to impose a certain fine is not adequate because every provision contrary to the Union laws must be annulled, as provided by ECJ case law.<sup>44</sup> In their response to the Commission dated 27.01.2011 the Cypriot authorities repeated their allegation that they have never imposed such a fine because of difficulties in determining the date of entry into the Republic. The Cypriot authorities also argued that similar sanctions as those foreseen in the law for Union citizens can be imposed on Cypriot citizens. No other clarification was offered; the Commission concluded that the said letter dated 27.01.2011 does not allow an assessment of whether this provision is proportionate and non-discriminatory.

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<sup>44</sup> *Commission v. Italy*, Case 28/69 dated 15.04.1970, p.195.

The Cypriot government responded to the Commission's above conclusion by claiming that the said provision was proportionate and non-discriminatory given that Cypriots and other foreigners permanently residing in Cyprus are obliged to register under article 60 of Law 141(I)/2002<sup>45</sup> which is proportional to the obligation of Union citizens to register under article 10(1) of Law 7(I)/2007. Failure to register in violation of article 60 of Law 141(I)/2002 carries a sentence of imprisonment not exceeding three years and/or a fine not exceeding €5,000, in accordance with article 90(1) of Law 141(I)/2002 as amended by article 17 of Law 81(I)/2010. It follows that the sanction that can be imposed on Union citizens is lighter and more favourable than that foreseen for Cypriots and foreign permanent residents because no prison sentence is foreseen for Union citizen and the fine foreseen in the law is half the amount than that foreseen for Cypriots and foreigners. It is the expert's opinion that a harsh provision applicable to nationals and foreign residents as regards the procedure for registration in their own state cannot be used as a yardstick to assess the proportionality of the sanctions for the failure of Union citizens to register in another member state.

The European Commission, in its letter dated 22.3.2012, considers the issue of proportionality of sanctions regarding non-conformity with the obligation of Union citizens to register under article 8(2) of the Directive, as resolved. However, the European Commission considers the issues of sanctions in the event of non-compliance with the obligation of Union citizens and their family members to report their presence [article 5(5) of the Directive] as 'pending'. The amendment to the law transposing the free movement directive provides that Union citizens residing in Cyprus for over 21 days must within 35 days from arrival report their presence or be fined with €2,500, which the Commission considered to be excessive. In response, the Cypriot Government has prepared a draft law to reduce this fine to €1,000.

### 2.3 *Same sex couples*

The issue of entry to and exit from the Republic of same sex couples under article 3(2) of the Directive, transposed by articles 2 and 5 of Law 7(I)/2007 is one of the matters for which the Republic has received a warning from the European Commission. The Commission warning letter alleges that whilst there is formal transposition of article 3(2) of the Directive by articles 2 and 5 of the Cypriot law, the Commission questioned administrative practices of the Cypriot immigration authorities and required clarification as to the procedures of 'facilitation' of family members. This practice is a potential violation of Regulation 1612/68, given that the principle of freedom of movement 'constitutes a fundamental right of workers and their families',<sup>46</sup> which mandates that 'equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities'.<sup>47</sup> The question here is how the Republic of Cyprus *in practice* 'facilitates the admission of any member of the family',<sup>48</sup> particularly third country family members who are in registered partnerships or same sex marriages with Union citizens exercising their right of free movement.

The response of the Cypriot authorities to this alleged violation is as follows: given that the Republic of Cyprus does not recognise registered partnerships and given that, at least in

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45 This is one of the amendments to the Law on Population Archives, regulating issues relating to the registration of births and deaths, the registration of residents, voters and citizens and the issuance of passports, identity cards and travelling documents.

46 As per (4) of the preamble of Regulation 492/2011.

47 As per (6) of the preamble of Regulation 492/2011.

48 Under art. 10 of regulation 1612/68.

their construction of the free movement directive, the said directive does not clarify whether a third country national needs a visa in the host state, the Cypriot authorities claim that regulation 265/2010 (amending the Schengen Treaty and Regulation 562/2006) comes into play. The Cypriot authorities claim that in the absence of a visa, the authorities facilitate entry, providing this is allowed by article 35 of Regulation 810/2009. To this effect, they cite the circular issued by the immigration authorities dated 18.07.2011.

The complaints mentioned in the Commission's letter occurred *prior* to the date of issuing the above circular; nonetheless if the circular reflects the authorities' established practice, then it is questionable whether they properly discharge their legal obligations under the Treaty, Regulation 1612 and the free movement Directive. The above circular claims that where there is no visa, the unrecognised marriage or registered partnership certificate is nonetheless recognised as evidence of a stable relationship, provided that (a) the certificate is duly apostilled and (b) a visa is acquired via the consular point or at point of entry if this allowed by Regulation 810/2009. The basic argument of the Cypriot authorities is that same sex partners and partners who are of different sex are treated in exactly the same way in cases where neither marriage, nor a registered relationship exist. However, this only addresses to some extent sexual orientation discrimination; it does not touch upon the question of disposing the treaty obligations on free movement irrespective of nationality.

It seems that the current practice is not sufficient to dispose of the treaty and regulations obligation, as the practice of requiring visa and the undue discretion of the immigration authorities at the point of entry may constitute a real barrier to free movement. Whilst the host state is not obliged to introduce legislation recognising same sex marriage or registered partnerships, the regulation of rights relating to families of Union workers who are exercising their right to free movement must be such that does not result in nationality discrimination against family members who fall in these categories. In essence, the procedures and administrative practices utilised to facilitate their entry, as well as their access to employment and social benefits, must be such so that they fully satisfy the general principles of proportionality in EU law. Presumably, such practices must not disproportionately prejudice the family member or give wide margin of discretion to the immigration authorities. The practices referred to by the Cypriot authorities as regards entry of same sex couples confirms the validity of the numerous complaints as regard the outstanding issue of discrimination against LGBT persons in the exercise of free movement, arising from the failure to regulate same-sex marriages and registered partnerships in Cyprus, which in turn creates effective obstacles to free movement, beyond the apparent discrimination on the ground of sexual orientation in the fields covered by Directive 43/2000/EC.

In the past the Cypriot Equality Body has found that the failure to regulate the subject results in various forms of discrimination against LGBT Union citizens, on the ground of sexual orientation and nationality, which in turn creates effective obstacles to free movement and family reunion.<sup>49</sup> Other studies also show that this is the case.<sup>50</sup> The equality body re-

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49 In case Ref. No. A.K.R. 68/2008, dated 23.04.08, the Cypriot equality body issued its report on the first ever complaint submitted to it regarding sexual orientation discrimination. The complaint was directed against the immigration authorities and was submitted by a third country national who had registered a civil partnership in U.K. with a U.K. national. The complainant had applied to the immigration authorities for the rights of movement and residence afforded to partners of EU citizens under Directive 2004/38/EC; his application had been rejected on the ground that national legislation does not recognise same sex marriages. The equality body's report found that an obligation exists to secure enjoyment of legally guaranteed rights without discrimination, in accordance with article 14 of the ECHR and article 28 of the Cypriot Constitution. According to ECtHR case law, the principle of equality is violated when there is differential treatment of similar cases,

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ferred the law transposing Directive 2004/38/EC to the Attorney General for revision. Its recommendations towards policy change have not as yet been taken up. Instead, the immigration authorities may grant a permit on an ad hoc basis allowing the third country national partner to stay in Cyprus as an exception but the legislation governing free movement has not been revised.<sup>51</sup> Another equality body investigation, pursuant to a complaint of sexual orientation discrimination against a family member of an EU citizen claiming rights on the basis of free movement of workers, referred to the proposal for a new Council Directive purporting to extend the principle of non-discrimination beyond the employment field, thus recognising the need for protection of homosexuals outside employment.<sup>52</sup>

Although the immigration authorities claim that homosexual and heterosexual couples are treated in the same way 'in case where neither marriage, nor a registered relationship exists',<sup>53</sup> this is not correct. There are many areas of the law where common law marriages between heterosexual couples are explicitly covered, which impliedly excludes homosexual couples.<sup>54</sup>

The equality body has received two complaints regarding the absence of any legal framework in Cyprus enabling gay couples to marry or to register a partnership. In one of the two cases, the complainant was the third country partner of an EU citizen who was forced to leave the country upon expiration of his visa and who would have acquired residence rights if their relationship was recognised by the state. On 31.03.2010 it issued its report recommending the legal recognition of homosexuals cohabiting as couples. The Ministry of Interior has invited the stakeholders to a meeting to discuss how to reform the law on marriages in order to address the problem of discrimination. These two complaints follow two other complaints in 2008 where the complainants applied to the equality body because their foreign partners had been denied rights which would have been granted had they been a heterosexual couple. In both cases the equality body had found in favour of the complainants.

In its findings, the equality body analysed the relevant case law of the ECHR and acknowledged that the approach followed by the Cypriot authorities is that of reluctance to

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which is not justified objectively and logically, or where the means used are disproportionate to the aim pursued. Based on this reasoning, the immigration authority's decision to exclude homosexual partners of EU citizens from the rights afforded to heterosexual partners was found to amount to unjustified discrimination on the ground of sexual orientation. The report acknowledges that Directive 2004/38/EC allows discretion to member states to decide whether to recognise same sex marriages and registered partnerships. It nevertheless contends that Cyprus is bound by the anti-discrimination *Acquis* and international conventions requiring that any discretion be exercised in line with the anti-discrimination principle.

50 See Trimikliniotis, N. and Demetriou, C. (2008) *Thematic Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation, Cyprus*, [http://www.pedz.uni-mannheim.de/daten/edz-b/ebr/08/FRA-hdgs0-NR\\_CY.pdf](http://www.pedz.uni-mannheim.de/daten/edz-b/ebr/08/FRA-hdgs0-NR_CY.pdf).

51 On 29.07.2008 another complaint was submitted to the equality body complaining of sexual orientation discrimination, this time by a Cypriot national. The complaint was against the decision of the immigration authorities to deny his Canadian homosexual spouse the right to stay in Cyprus, on the ground that national legislation does not recognise same sex marriages. Subsequently, the immigration authorities granted the complainant's spouse a visitor's visa for one year, following which the complainant applied to the equality body again on 21.10.2008 regarding the status of the visa granted, since this does not allow him to work or to open a bank account.

52 Ref. no. A.K.R. 213/2008, dated 10.12.2008.

53 Comments on the Report 'Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation - Cyprus - February 2008', communicated to FRA (undated).

54 To give but one example, the Law on Prevention of Violence in the Family and the Protection of Victims 119(I)/2000 criminalises acts of violence and provides for aggravated sentences where acts of violence are committed by a family member to another. A family member is broadly defined to include inter alia a man and a woman co-habiting as a couple. The definition does not extend to homosexual partners who are not afforded the protection of the law if they suffer violence from their partner.

recognise same sex relationships. In relation to the ECJ ruling in the case of *Maruko*, the equality body stated that it facilitates the enactment of new equality provisions at the national level for the alternative relationships of cohabitation which may differ from the traditional structures but nevertheless express a contemporary reality which no law can ignore. The equality body recommended the introduction of a framework so as to legally recognise the cohabitation of both homosexual and heterosexual couples as a realistic policy response to an existing social need. It adds that in the case of homosexual couples the legal gap in the recognition of cohabitations inevitably leads to inequality that may not be convincingly justified. The report concludes that although the issue falls within the competency of the legislative branch of the state, it believes that the recognition of same sex couples will not jeopardise the traditional form of the family nor will it change its fundamental characteristics; in any case the protection of marriage and the family cannot be achieved at the expenses of the rights of couples living in free cohabitations which exist in society as a matter of fact.<sup>55</sup>

In the previous chapter I have already referred to the fact that the European Commission (letter dated 22.3.2012) considers the issue as resolved via the circular issued by the Cypriot authorities dated 18.07.2011 entitled ‘Passport control of Union citizens and of the members of their families’.

### 3. IMPLICATIONS OF THE *METOCK* JUDGMENT

The Supreme Court in the *Shalaeva* case<sup>56</sup> referred to the *Metock* judgment which 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 state stakeholders and a representative of the Legal Service of the Republic. The meeting had discussed the legal significance of *Metock*, which established that non-European spouses of EU citizens fall within the scope of implementation of the rights of citizens of the Union and their family members to move freely and reside in the EU and therefore have a right to apply for a residence card (MEU2A), irrespective of 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 ruling. The residence card issued to spouses of Union citizens is valid for five years unless the passport of the applicant is due to expire before the five years have elapsed, in which case the residence card issued is valid for up to one month before the expiry of the applicant’s passport. The Ministry of Interior notes that, according to ECJ ruling in case C-206 dated 12.2.2008, the Administration is not obliged to re-examine applications filed prior to the decision of the ECJ concerning the matter.<sup>57</sup> The question of the retroactive application of *Metock* may not be in issue but there is a strong case for correcting situations and reconsidering cases where previous lawful residence was required, as is the case 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 the purpose of correcting current and future status.

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55 AKP 142/2009, AKP 16/2010 dated 31.03.2010.

56 *Svetlana Shalaeva v. Republic of Cyprus* (No. 45/2007, dated 27.4.2010).

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

#### 4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCES AND FRAUD

There has been media attention on this subject, however there is little to report.

#### 5. ACCESS TO WORK

Family members have the right to access to work as EU citizens. This does not apply to same-sex family members. The author is informed that once the visa is granted for one year, the person may apply for a work visa but this will be restricted to the very few areas where TCNs are allowed to work, primarily farming. However, this policy is far from satisfactory and runs contrary to the Directive.

##### *5.1 The Certificate of Registration as a precondition for the exercise of other rights*

Article 8(2) has been correctly transposed by article 10(1) and 10(2) of Law N.7(I)/2007. However, the Commission received a complaint from the British national Ms Grigorova that she and her Bulgarian husband have not been issued with a Certificate of Registration despite the fact that they applied since 2007. The complainants argued that in the absence of such certificate they had no access to the state medical services. As a result, the Commission asked the Cypriot government to clarify its administrative practice in relation to this. In response, the Cypriot government stated that a circular was issued on 30.06.2011<sup>58</sup> following the Commission's warning instructing the competent officials not to require a registration certificate as a precondition for access to health and pharmaceutical services. In the case of Ms Grigorova, the government argued that her first application for a registration certificate in 2007 was not responded to by mistake; however the authorities had issued to her and to her family a residence permit dated 07.12.2004 which was valid until 22.06.2009. The registration certificate was issued to her on 22.06.2009 following her second application.

In its letter of warning to the Cypriot authorities, the European Commission had referred to a complaint for refusal to access health care in Cypriot hospitals in the absence of a registration certificate. In response, the Cypriot authorities stated that health care is provided to all without conditions, discounted for certain categories, e.g. Cypriots and Union citizens who come under the scope of Directive 883/2004 for the coordination of social insurance systems. A circular dated 30.06.2011 provides that the possession of a registration certificate is no longer required for the purpose of access to free or discounted hospital care and that other means of attestation may be presented. According to the Commission, this circular appears to resolve the problem of incorrect transposition of article 25(1). In the end, the Commission found the resolution of the issue of possession of a registration certificate as a requirement for the exercise of rights under article 25(1) of the Directive as satisfactory.<sup>59</sup>

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58 Circular Ref. YY4.2.13.10.22.

59 Letter from the European Commission to the Cypriot authorities dated 22.3.2012.

**6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS**

The situation as regard family members of EU job-seekers is the same as with that of EU citizens: if they are registered and they have contributions to the national social insurance system, they are entitled to job-seekers' allowance/unemployment benefit. Again this provision does not apply to the homosexual partners of EU citizens.

## Chapter III

### Access to Employment

#### 1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

Overall, the Labour Department of the Ministry of Labour considers that the Directive has been fully transposed and there are no barriers to access to employment by Union citizens. Officials from the Department of Labour claim that the system is operating smoothly and job-seekers can seek jobs via EURES and various private agencies and there has been no complaint to the authorities regarding barriers, hence the steady increase in the numbers of Union citizens working in Cyprus over recent years. However, Labour Ministry officials recognise that there may be some minor problems in specific areas, particularly in the private sector but, as far as they are concerned, this is not a matter of transposition; rather, it is for the Courts to determine whether there is any violation of the law transposing the Directive and there has been no such decision by the Courts.

This is however only one dimension as regard full compliance with the Directive. From the results of the investigations carried out by the Cypriot Equality Authority pursuant to complaints dealing with employment-related discrimination, it is apparent that there continue to be some barriers to access the labour market, at least in specific sectors; it is therefore a question of interpretation and implementation of the legislative and policy framework in the spirit of the free movement principles and of the Directive.

The Republic has enacted legislation purporting to transpose the recognition of diplomas, by introducing a unified law: the *Law that provides for the recognition of professional qualifications and related matters* N. 31(I)/2008, purporting to transpose Directives 36/2005 and 100/2006, which unifies existing law and abolishes old ones,<sup>60</sup> allowing for recognition of professional qualifications.<sup>61</sup> The law also amended relevant regulations, including the sectoral changes of membership in the various professional associations and job descriptions. As far as the Labour Department is concerned, the transposition is completed and the current legal and institutional framework is in line with the Directives. Evidence of this is the fact that the Labour Department have received no complaints received, nor has 'SOLVE IT' received any such complaints. Moreover, the Department of Labour points to the communication received by the European Commission which confirms full transposition of the Directive on mutual recognition of diplomas (2005/36/EC), including craft, industry and commerce sectoral coverage.<sup>62</sup>

However, there are still some reports of barriers to access to certain professions and there are complaints before the Cypriot Equality Authority, either in the form of pending matters to be investigated or partial implementation of the recommendations. Examples of such are bureaucratic obstacles and delays to registration with professional associations, membership

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60 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).

61 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.

62 Information provided by an officer of the Labour Department on 5.6.2010.

to which may be a condition precedent to practicing such a profession in the private domain, or on certain occasions also in the public sector.<sup>63</sup> These professions include nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, architects, pharmacists and doctors. An issue raised before the Equality Authority is the bureaucratic obstacles and on some occasions the non-recognition of diplomas of competent institutions from certain other EU member states. For instance it is reputed that there are several bureaucratic barriers to the recognition of Bulgarian diplomas for nurses.<sup>64</sup> The Labour Department claims that there is full transposition of Directive 2005/36/EC as relevant legislation has been amended including legislation on sectoral professions. Moreover it claims that regarding the recognition of diplomas from institutions from other Member States (e.g. Bulgarian diplomas for nurses) Cypriot authorities are more flexible and tolerant compared to the authorities of other Member States.

The national employers association OEB<sup>65</sup> claims that in professions where many EU citizens are employed or seek to be employed (e.g. nursing), the government has amended job descriptions, regulations (e.g. Greek language requirement) and professional associations' membership criteria and maintaining bureaucratic obstacles resulting in delays, especially with regard to the non-accreditation of diplomas from institutions in other EU member states or from third countries. OEB refers to these as 'anachronistic' and 'protective' measures which, in effect, create barriers to access these professions by non-Cypriot workers'. OEB's position is that,

'the "protective" measures and barriers will have to be abolished so that no discrimination is taking place against any worker of any nationality, religion, age, sex etc. Although there are certain professions where objectively certain criteria have to be fulfilled before a person is granted a licence to perform such a work (e.g. doctors) the criteria have to be objective and the granting of the relevant licence has to be done in a timely manner.'

This position is rejected by the Labour Bureau as unsubstantiated.

### ***1.1. Equal treatment in access to employment (e.g. assistance of employment agencies).***

Public employment offices provide services in the Greek, English, Romanian<sup>66</sup> and Bulgarian languages. Knowledge of English language or other main EU language is an essential qualification for access to the post of Labour Officer. In some occasions services are provided in other EU languages also. It should be mentioned that approximately 25% of the customers of the Public Employment Services are EU nationals from other Member States.

### ***1.2. Language requirements***

No drastic changes can be reported since the Report on Free Movement of Workers of 2009-2010. Article 31(a) of the Public Service Law 1990-2006 states that only Cypriot nationals or

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63 For instance to be an architect, a civil and mechanical engineer, it is mandatory to be a member of ETEK; to be a nurse it is mandatory to be a member of the nursing association etc.

64 This matter is still being investigated by the Equality Authority.

65 The initials OEV stand for 'Employers and Industrialists Federation' (in Greek: Ομοσπονδία Εργοδοτών και Βιομηχάνων). The statements were included in a letter from OEV to the author dated 12.09.2011, in response to an enquiry from the author.

66 In 2009 the amount of €1700 was spent to buy the translation services in Romanian.

Union citizens can be appointed to positions in the public service, with the exception referred to in the Report.

During 2010-2011 there was no reported complaint under investigation regarding an issue noted in the 2008 Country Report, as regards membership to the Chamber of Civil Engineers of Cyprus (ETEK), which is a precondition to practising in the private and the public sector.<sup>67</sup> The 2009 Report referred to a complaint lodged with the Cypriot Equality body by a Union citizen who was civil engineer applying for a certain post that required membership to the Chamber of Civil Engineers of Cyprus (ETEK) which presupposes residence in Cyprus.<sup>68</sup> 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.

The response of the Labour Bureau to allegations about language barriers is that, depending on the profession, language requirements are appropriate and not excessive in any way. Nevertheless, there are allegations that in the private sector there language requirements of professional associations that amount to barriers in entry to the profession. A number of complaints have been lodged to the Cypriot Equality body, which decided on the use of language and made recommendations to the authorities about removing them. Many of these recommendations were adopted with, but some remain unaddressed. In 2009, the Equality Body's recommendations regarding the requirement of knowledge of Greek in order for EU nationals to acquire an estate agent's license were only been partially complied with. Further complaints on the same issue were submitted to the Cypriot Equality body.<sup>69</sup> The report of the Cypriot Equality body in the case of a foreign national seeking to be registered as a building contractor established that the language requirement in the documents needed for the registration was discriminatory.<sup>70</sup>

The current status as regards the requirements of the Building Contractors' Association for registering foreign nationals is not clear. The Labour Bureau confirmed that the Building Contractors' Registration Council requests all applications and relevant certificates to be translated in Greek, irrespective of the applicant's nationality. The Equality Body has also considered a complaint submitted 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.<sup>71</sup>

Another profession in which there appears to be non-compliance, is that of insurance brokers, where a requirement for applicants to take an exam in Greek is in place. On 09.10.2005, a repatriated Cypriot who had lived in UK until 2003 and whose mother tongue was English complained to the Equality Body about his problems in accessing the labour market due to regulations which prevent him from taking a written exam in a language other than Greek or Turkish. The same regulation applies not only to repatriated Cypriots but also to Union nationals residing in Cyprus. From the wording of the laws on the Exercise of In-

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67 In 2012 there was a Supreme Court decision on the case of a repatriated Cypriot who applied to ETEK to be registered in its Mechanical Engineering Branch, so as to be able to work as a mechanical engineer in Cyprus. ETEK declined his application for lacked of a university degree in mechanical engineering, ignoring his qualification earned in the UK as a member of the IMechE: *Kyriakos Varnava v. ETEK*. The case is set out in detail below, p. 72.

68 AKI 22/2006, issued 11.12.2006.

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

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

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

insurance and other related Activities 2002-2011(article 133) it emerges that insurance brokers who want to work in Cyprus must know one of the official languages of the Republic (Greek and Turkish). In its decision dated 09.02.2012, the Equality Body found that the said language requirement could be justified only to the extent where the insurance contracts are addressed exclusively to Greek Cypriot or Turkish Cypriot insured persons whose mother tongue is Greek and Turkish respectively; however this is not case following accession to the EU and the entry of large numbers of Union citizens into Cyprus for work. The report concludes that the requirement to take the exam in Greek amounts to indirect discrimination, identifying this requirement as a case of language being used as a justification for excluding suitably qualified professionals from other member states, which is prohibited. The Equality Body recommended that the exam be offered in other official languages of the EU, in addition to the official languages of the Republic, stressing that in order to ensure equality of opportunity to succeed in the exam, Union citizens should also be offered access to exam material in languages beyond Greek.<sup>72</sup>

In the medical profession, some of the previous barriers, such the requirement for excellent use of Greek for medical doctors, have now been removed as the Medical Doctors' Association has complied with the recommendation of the Cypriot Equality body, following a complaint from a general practitioner whose application for registration had been declined.<sup>73</sup> Today doctors can register without the language restrictions.<sup>74</sup> However, there are still allegations about language barriers to the nursing profession, which continue to practice 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 were examined by the Equality body from nurses, who have good knowledge of other official EU languages such as French and German.<sup>75</sup> Obstacles in the form of excessive language requirements in the job descriptions are still practiced. An open question remains whether it is justifiable to retain language requirements for nurses higher than the requirement for doctors. Officers of the Labour Department claim that this is justifiable, as the nurses are more likely to need to communicate with patients; however, this argument is not convincing and the matter is likely to re-surface as there are new complaints before the equality body.

### Judicial practice

There has been no case reported on such issues.

The only legal reference to access to employment was made in the course of an Equality Body investigation into a complaint regarding language requirements, as set out in 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).<sup>76</sup>

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72 Report of the Equality Authority regarding indirect discrimination on the ground of language regarding the exercise of the profession of the insurance mediator, Ref. A.K.I. 9/2006 & A.K.I.A 1/2012, dated 9th February 2012. Available at:

[http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive\\_gr/presentationsArchive\\_gr?OpenDocument](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument).

73 AKI 10/2006.

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

75 Information provided by an officer of the Cypriot Equality body 24/6/2010.

76 AKI 107/2007, issued on 12.12.2008.

### ***1.3 Miscellaneous***

Administrative or bureaucratic barriers persist in the field of licensing for taxi and bus services, as it apparently takes up to six months for a Union citizen to obtain such a licence. This matter is currently under investigation by the Equality body as part of a more general complaint about the use of administrative or bureaucratic barriers to access the free exercise of services in the country.<sup>77</sup>

## **2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR**

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

An issue of concern is the general practice in the public sector and civil service. The criteria in the job description for public posts may operate as barriers to entry of European citizens. These often amount to unlawful indirect discrimination on the ground of nationality and/or ethnic origin: an instance of this is the failure of the police to recruit Greek-Pontics who are Greek citizens residing permanently in Cyprus, some of whom have obtained Cypriot nationality and passports, on the ground that they lack the necessary qualifications, which are ‘mostly nationality and fulfilment of military service for men’.<sup>78</sup> The Equality Body recommendation to recruit Greek-Pontics in the Police force has not been complied with,<sup>79</sup> even though the Police claim to be positively inclined towards such an initiative. In the meantime, the current legal regime governing the recruitment of persons in the Police prevents non-Cypriot nationals from accessing employment in the police, as the nationality requirement is yet to be amended.<sup>80</sup> The situation in 2011 and 2012 remains unchanged.

### ***2.4. Other aspects of access to employment***

There were obstacles in the appointment of teachers in public schools with Greek and other EU national diplomas.<sup>81</sup> The Supreme Court has ruled on matters of recognition of diplomas in other EU member countries in the cases of *Varnava*<sup>82</sup> and *Petrou*<sup>83</sup> (see ‘Other Cypriot Cases on Free Movement’ under 6 below). The problem appears to have been resolved at policy level, as the Commission now accepts applications from Greek teachers who in the last two years apply in large numbers for posts in Cypriot public schools.

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77 Information provided by an officer of the Cypriot Equality body.

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

79 See Report by Equality Body AKP 1/2007, issued 28.010.2008.

80 See Report by Equality Body AKP 1/2007, issued 28.010.2008.

81 Information provided by officer of the Equality Authority.

82 *Kyriakos Varnava v. ETEK (Scientific Technical Chamber of Cyprus)*, Supreme Court of Cyprus, Case No. 1470/2010, delivered on 30.04.2012.

83 *Petros Petrou v. Chief of Police*, Supreme Court (Review Authority) Case No. 847/2010, dated 10.02.2012.

## **2.2. Language requirements**

The problem of the stringent language requirement in the case of access to the nursing profession in the public sector persists. This is currently under investigation by the Equality body.

## **2.3. Recognition of professional experience for access to the public sector**

With the exception of the case of *Theodorou* (discussed under 6 below),<sup>84</sup> there have been any other significant changes in 2011-2012. 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. Recognition of professional experience and seniority is recognised; however, a distinction has to be made between (a) a promotion position, and (b) a first entry position. Promotion positions are open only to internal candidates and require ‘service’ which by law means service in the immediately lower hierarchic position; in other words, existing legislation and public service practice dictate that seniority is a prerequisite for someone to apply for a promotion position within the public service.

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 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 the 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, candidates are required that the 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.

## **3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT**

In a case the Committee of Educational Service initially rejected the diploma of a Greek national, who had a philology degree from a Greek University which would entitle her to teach in Greece (see 2.4 above).<sup>85</sup>

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84 *George Theodorou v. The Republic of Cyprus*, Supreme Court (Review Authority) Case No. 1057/2010, dated 30.01.2012.

85 Information provided by officer of the Equality Authority.

## Chapter IV

### Equality of Treatment on the Basis of Nationality

#### 1. GENERAL ISSUES

Overall, the Labour Bureau considers that there are no barriers to access to employment in any sector of economic activity and that there are only exceptional cases where there are barriers on the basis of nationality. However, trade unions dispute the allegation that EU citizens and their partners and families are treated equally with Cypriots. Despite assurances that absence of any recorded complaints of discrimination by Union citizens exercising their right to free movement, trade unions claim that the everyday problems as regards the procedures for examining applications continue. Additionally, trade unionists refer to multiple discriminatory effects and disruptions in labour relations, as well as routine violations of collective agreements and standard practices, claiming that since the surfacing of the economic crisis there is an intensification of such practices, targeting in many cases those Union citizens who are active in trade unions.<sup>86</sup> In particular, trade unionists claim a sharp increase in complaints by members of trade unions that employers would discriminate against trade union members, so as to avoid the implementation of the collective agreements.<sup>87</sup> The employers' association denies that such practices happen en masse, or that their members embark on such activities, pointing to the fact that there have been no official complaints or any other research or survey that substantiates such allegations.

The employers' association OEV stresses that studies illustrate that the employment of Union citizens as workers in Cyprus has been beneficial for the economy; however they nevertheless be working in discriminatory conditions. This is an issue which must be considered in the context of the alleged violations of employment and equality of treatment of the principle of prohibition of discrimination on the grounds of nationality as provided by the Directive (art. 7(1) and 7(4) of the Reg. 1612/68 and articles 7(1) and 7(4) of the Reg. 492/2011) below.

#### *1.1. The conditions of employment of trainees and nationality discrimination*

A particular issue of concern has been raised regarding the engagement and conditions of employment of trainees in ERASMUS, LEONARDO and other exchange programs at various hotels in tourist resorts. Trade unions complain that there are about 1500-2000 trainees in hotels, particularly hotels and restaurant offering an 'all inclusive package' who are used for social dumping, displacing other workers who are regularly employed in hotels, since trainees have no contract and are not bound by collective agreements, as opposed to regular workers. There are allegations that trainees are not paid any remuneration but are merely provided with accommodation and food and occasionally pocket-money, in return for their work. Trade unions raised this issue at the Advisory Committee on Vocational Training in 15-16 June 2011 in Brussels, as well as at various meetings with the Labour Office of the

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<sup>86</sup> Information provided by Andreas Matsas SEK, 1.6.2011. Nicos Gregoriou from PEO referred to various practices of different treatment 12.6.2011. see also Memorandum to the Minister of Interior, PEO (Pancyprian Labour Federation), February 2008.

<sup>87</sup> Information provided by Andreas Matsas SEK, 1.7.2011.

Ministry of Labour and Social insurance, requiring that action be taken. Trade unions require of EU and national authorities in charge of exchange programs, the Ministry of Education and the Ministry of Labour to closely monitor the conditions of employment of trainees so that minimum labour standards are maintained, proper training and supervision is ensured, unfair competition and unequal treatment on the basis of age, experience and nationality are avoided. They are currently developing proposals for dealing with the problem such as ensuring that there is a ratio on trainees and regular workers, a maximum number of trainees per regular employee in supervisory role, a contract that maintains minimum conditions of employment as trainee to be signed between trainees and employers lodged with Ministry of Labour as well as and a monitoring role by trade unions and labour inspectors.

The position of the employers' federation is that no complaint has been received and thus no problem exists. Their representatives claimed that 'training' is not 'employment' and thus it is not bound to any employment contract obligations; a legally flawed position given that 'training' is a form of employment. They stated that the conditions of employment of trainees at hotels are not inferior, that labour standards are followed and that there is no discrimination against Cypriot workers. Moreover, they claim that prior to the employment of trainees, the trainee has to provide the prospective employer with an official certificate from his/her educational institute/university that states the field of his/her study, the duration of the study etc. Following, the Employer has to submit to the Department of Labour of the Ministry of Labour and Social Insurance the trainee's certificate from his/her educational institute/university along with a contract of employment signed by both parties. The contract of employment is said to be reviewed by the officers of the Department of Labour to ensure that the conditions of employment and labour standards are followed. If these are met, the Department of Labour grants the employer the permission to employ the trainee. Moreover, the inspectors of the Ministry of Labour and Social Insurance are conducting regular inspections at the hotels to make sure that the contractual terms are followed, citing to that effect the relevant policy of the Ministry of Labour on monitoring the employment of trainees.<sup>88</sup>

The matter is currently being examined by the Cypriot Equality Body.

### ***1.2. General violation of the principle of equal treatment between Cypriots and Union citizen workers in the hotel industry***

In 2011 the Equality Body published an opinion on the violation of the principle of equal treatment between Cypriots and Union citizen workers in the hotel industry,<sup>89</sup> following concerns that hoteliers were dismissing Cypriot workers, unionised under a regime of a collective agreement, in order to replace them with non-unionised Union citizens, who instead had personal contracts with inferior working conditions and pay. With references to articles 49 and 45 of the TFUE, article 7 of Regulation 1612/68 (as amended by Regulations 312/76, 2434/92), Directive 2004/38/EC and articles 13, 15, 21 and 34 of the EU Charter of Fundamental Rights, the Opinion concluded that, whilst the adoption of a more modern and flexible practices aiming at improving competitiveness and productivity is a desirable goal, the means for attaining that goal had to be appropriate and necessary. It further noted that the

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88 The matter was put to the Cyprus Employers & Industrialists Federation (OEB) by the current author and received a reply on 24 August 2011; see 'Cyprus Employers & Industrialists Federation (OEB) positions with regards to the queries on EU nationals employment'.

89 A.I.T. 1/2011, 22.6.2011, 'Τοποθέτηση της Αρχής Ισότητας αναφορικά με την παραβίαση της αρχής της ίσης μεταχείρισης μεταξύ Κυπρίων και κοινοτικών εργαζομένων στη ξενοδοχειακή βιομηχανία'.

need to protect worker rights is rendered even more pressing when one considers the dominant position held by the employer in determining the terms of employment. It concluded that the practice of signing personal contracts with terms less favourable to those contained in collective agreements leads to the deregulation of labour relations and the gradual abolition of collective agreements, the failure to implement the laws and regulations and the creation of workers of two or three speeds in the hotel industry. It finally noted that it will not tolerate restricting in rights of global significance, such as the right to equal treatment, as a means of dealing with the economic crisis.

### ***1.3. Specific issue: Working conditions in the public sector***

There is nothing to report on the working conditions of EU citizens in the public sector as, up until now, there have been only few isolated instances of non-Cypriots working in this sector. This may change in the forthcoming years, as the economic crisis in Greece has led several thousands of Greek nationals to seek employment in Cyprus and particularly in the public sector where their good knowledge of the Greek language places them in an advantageous position.

## **2. SOCIAL AND TAX ADVANTAGES**

Since accession to the EU in 2004, tax liability is based on the principle of residence. Tax residents in Cyprus are taxed in respect of their worldwide income, while non-tax residents are taxed in respect of their Cypriot income only. EU citizens must apply to the Inland Revenue to get a Taxpayer's Identification Code, present their passports and also complete Form I.R. 163A. According to the Income Tax Law, a person is considered to be resident in Cyprus for tax purposes if he/she resides for a minimum period which, in aggregate, exceeds 183 days. Non-tax residents having a permanent establishment in Cyprus may elect 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 as employed or self-employed person. Voluntary insurance is allowed to persons who wish to continue their insurance after a prescribed period of compulsory insurance. The scheme is financed by earnings-related contributions payable by the insured person, the employer and the State. As of 1<sup>st</sup> May 2004, Cyprus applies the EC regulation 1408/71 which coordinates the social security systems of the member states of the EU, the European Economic Area and Switzerland. The scheme provides for various benefits, including marriage benefit, maternity allowance, unemployment and sickness benefit. Unemployment benefit is paid for involuntary unemployment and is payable for a period that cannot exceed 156 days for each period of interruption of employment. Where the legislation of the Republic of Cyprus does not provide for a right to a pension on the basis of age for some categories of unpaid workers, the pre-condition of age is considered to be satisfied as long as the EU nationals entitled to the right of permanent residence have completed their 65<sup>th</sup> year. The precondition of more than two years' continuous residence for an EU national who has been providing unpaid service in the Republic of Cyprus to be granted permanent residence does not apply in the following situations: if he/she applicant was rendered incapable of work as a result of an accident or illness occurring in the context of work, or as a result of events that confer a right to a pension payable in total or in part by the Department of Social Security.

### **Compliance with EU regulations for coordination of social security systems**

The European Commission (letter dated 22.3.2012) invited the Cypriot authorities to clarify:

- Whether access to health care, allegedly provided unconditionally to all, requires that patients be subject to a system of health insurance and if so whether the provisions of Chapter I of Title III of Regulation 883/2004 are complied with; and
- Whether any requirements for completion of periods of residence as a precondition for access to health care are compliant with article 6 of EC Regulation 883/2004 which requires that periods of residence completed in accordance with the legislation of another member state be taken into account.

In response, the Cypriot authorities clarified that:

- Free and discounted health care is provided to Cypriots and to Union citizens for whom Cyprus becomes the competent member state in accordance with Title II of EC Regulation 883/04. In order to claim these rights, it is necessary to become subject to the national health system which is voluntary and does not require any contribution on the part of the beneficiary. Union citizens who receive services under Chapter 1 of Title II of EC Regulation 883/04 are entitled to free health care.
- Free health care is provided to Union citizens to whom Regulation 883/2004 applies (Reg. 4(4)). Persons outside the scope of these categories have to pay a fee. The precondition for permanent residence in Cyprus imposed by the aforesaid Regulation 4(4), means that the beneficiary must be a permanent residence of Cyprus at the time of issue of a health card; permanent residence does not require completion of a minimum or fixed period of residence. Thus, Cypriot legislation does not connect the right to health care, free or discounted, with any periods of residence; therefore article 6 of EC Regulation 883/2004 does not apply.

### **General situation as laid down in Art. 7 (2) Regulation 1612/68**

There is nothing further to report on this subject.

#### ***2.1. Specific issue: the situation of job-seekers***

*Case C-258/04 Office national de l'emploi v Ioannis Ioannidis/ Case C-138/02 Brian Francis Collins v Secretary of State for Work and Pensions*

The issues related to the cases of *Ioannides* and *Collins* were addressed in the Cyprus Report on Free Movement of Workers (2010). Cypriot Social Security officers invited to comment on the cases<sup>90</sup> distinguish these cases as concerning the payment of a 'job-seekers' allowance', which is a non-contributory provision. They argued that, in light of the fact that in Cyprus unemployment benefit is based on contributions, the two cannot be compared. However, the general principle has a bearing on the provision of non-contributory benefits. Also relevant are a number of decision of the Cypriot Equality Body that addresses the receipt of public assistance for health reasons, which is illuminating as to the situation of Union citizens requiring public assistance, including job-seekers' allowance.<sup>91</sup> A complaint was filed by an 18-year-old Greek citizen suffering from severe leukaemia against the Social Welfare Service, which had decided to discontinue the claimant's social assistance benefit for treatment received until May 2007. The complainant had been resident in Cyprus with his parents

<sup>90</sup> Invited to comment by the author.

<sup>91</sup> AKP 70/2007, issued on 24 March 2008. The complainant's name is Nicolaos Meziridis.

since 2002 and had been 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, his mother’s residence status as well his own was changed to that of a Union citizen and a family member of a Union citizen respectively, based on the law on free movement of workers. The Social Welfare Service decided to discontinue the public assistance on the ground that 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.<sup>92</sup> The relevant circular which has wider application in similar situations distinguishes between Union and Cypriot citizens based on Law 7(I)/2007 and the law on Public Assistance 95(I)/2006 as follows: ‘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 article 12(1)(a) of the law for exemption from the responsibility for the maintenance of a disabled child is not applied in the cases of Union citizens.’<sup>93</sup> The reasoning is based on the logic that the granting of residence depends on 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 article 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 Equality Body concluded that the Director of the Social Welfare Service had wrongly interpreted and applied the law on the following grounds:

- The Directive and the Cypriot law transposing the Directive do not make the exercise of the primary right of free movement, residence and work dependent upon sufficient means.
- The Directive explicitly sets out the principle of non-discrimination on the grounds 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 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 (AKR 70/2007, p. 12).

Central to the finding of the Cypriot Equality Body is the principle of equal treatment under article 22 of Law 7(I)/2007, as the discriminatory treatment by the Social Welfare Service was found to be unreasonable. The Equality Body referred to 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 also have 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 of 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 on the existence of sufficient means, as is the case with students or pensioners, for instance.

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<sup>92</sup> Letter to the complainant from the Paphos District Social Welfare Service, dated 5.6.2007.

<sup>93</sup> The Circular by the Director of the Social Welfare Service 7.3.2007 is quoted AKP 70/2007, p. 3.

- The competent authority for such issues is the Civil Registry and Migration Department, not the Social Welfare Service. In the case of Union citizens, such as the one above, the granting of the permit provided has but an identification and evidential value.

The Equality Body highlighted the significance of applying the non-discrimination principle to the right of Union citizens to public assistance, the as set out in article 22 of the Law 7(I)/2007 and recommended that the authorities restore the public assistance benefit to the complainant and withdraw the relevant circular issued. The Social Welfare Service complied with the recommendation.<sup>94</sup> On the basis of the above case, by analogy the same principles must apply to job-seekers; however the author has not been given any indication of such a policy or practice on the part of the Social Welfare Service. It is not clear how long job-seekers may remain in the country without complying with formalities; presumably indefinitely so long as they do not seek recourse to public funds. There has been no case law to test whether the *Ioannidis/ Collins* type of social assistance benefits would be allowed.

*Joined Cases C-22/08 and C-23/08 Athanasios Vatsouras and Josif Koupatantze V Arbeitsgemeinschaft (ARGE) Nürnberg 900*

The question of how Cypriot authorities deal with public assistance claims from job-seekers and those with limited remuneration and/or short duration of professional activity, which is insufficient to ensure its holder a livelihood, remains an open one. The *Vatsouras/Koupatantze* cases may be illuminating in clarifying possible confusion in the practices of Cypriot authorities: work which had lasted barely more than one month was considered to be professional activity, following an overall assessment of the employment relationship, which may be considered by the national authorities as real and genuine, thereby allowing its holder to be granted the status of ‘worker’ within the meaning of Article 39 EC. The issue of access to work and benefits after 3 months for work seekers has not been tested in Cypriot courts. Social security officers claim that the principles do not really have a bearing on contributory unemployment benefit, as these refer to general public benefits to job-seekers.

*London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department, case C-310/08*

The basic principle in *Ibrahim*, that children and their parents can claim a right of residence in a member State where the parent has worked, solely on the basis of Article 12 of Regulation No 1612/68 without necessarily having sufficient resources and comprehensive sickness insurance cover in that State, is of relevance to the Cypriot context. However, the benefit system in Cyprus is not as extensive as in the UK. In circumstances such as those of *Ibrahim*, the children of a national of a Member State who works or has worked in the host Member State and the parent who is their primary carer can claim a right of residence in the latter State solely on the basis of Article 12 of Regulation No 1612/68 on freedom of movement for workers within the Community.

The general immigration practice is to take children rights into account when deciding matters; however this consideration is rarely, if ever seen as *independent of the rights derived from their parent or primary carer*. The comparable cases are those of children whose

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94 In other instances of similar cases there was no compliance. For instance, in the past there have been cases regarding the provision of public assistance to Union citizens, where the benefit was not restored as recommended by the Cypriot Equality Body (AKR 33/2004, dated 10.1.2005).

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one parent is a migrant and the other a Cypriot, who are thus entitled to Cypriot citizenship: how do the rights to education etc afforded to children born to a Cypriot and a third country national when divorced compare to the rights of a child of an EU national with a spouse who is a third country national in the same situation? Presumably the right to education is universal, including for children who are third country nationals. The actual practice at the moment, at least as reported, is that of activating the provisions of article 7 of the Directive relating to 'sufficient resources'; hence the Union citizen and/or their spouses and children would be expelled if they lack sufficient resources. The Equality Body is currently examining such complaints at the moment.

## Chapter V

### Other Obstacles to Free Movement of Workers

Difficulties and obstacles to free movement derive from 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 job-seekers) 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’,<sup>95</sup> 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 Turkish Republic of Northern Cyprus (TRNC),<sup>96</sup> a regime that remains unrecognised:<sup>97</sup> 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)<sup>98</sup> to the territorial application of the implementation of the Directive<sup>99</sup> 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,<sup>100</sup> as well as any other

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

96 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’.

97 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.

98 This is also the case in other laws.

99 Such as section 20 of the law.

100 Under sec. 22 (1).

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.’<sup>101</sup> Therefore two questions need to be addressed:

- a) What is the status of the northern territories as regards the exercise of 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 differential 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’<sup>102</sup> and ‘outside the EU’. The ECtHR recognised that the Turkish army ‘exercises effective overall control over that part of the island’ and that ‘such control [...] entails responsibility for the policies and actions of the ‘TRNC’’.<sup>103</sup> 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 officially 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,<sup>104</sup> the outermost regions,<sup>105</sup> 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 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: first, 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 the 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. This can be seen as a process of quasi-harmonisation or *de facto* harmonisation, if Turkey is to be integrated in the European and global economic system.<sup>106</sup>

As far as EU law is concerned, Protocol 10 to the Accession Treaty stipulates that ‘the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in

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

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

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

104 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.

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

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

which the Government of the Republic of Cyprus does not exercise effective control'.<sup>107</sup> 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'.

Accession to the EU of a *de facto* divided Cyprus<sup>108</sup> is regulated by 'the Green Line regulation',<sup>109</sup> a fact that has somehow blurred the status of the 'TRNC': the very existence of the Green Line Regulation substantiates the argument that the 'Green Line' remains a 'quasi-border' or a 'soft border' of the EU.<sup>110</sup> The reference in Law 7(I)/2007 to 'effective control of the territory' has certainly expanded the scope of state discretion to afford to EU citizens living the northern (occupied) territories the right to exercise rights under the Directive; in fact, applications for a registration certificate submitted by Union citizens not residing in the areas under the effective control of the Republic are routinely rejected.<sup>111</sup> Moreover, as reported in 2007, the practice as regards 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 enter 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; the question is whether such discrimination can be justified under the law. The residential requirement inherent in the stipulation regarding '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

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

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

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

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

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

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, creates a chain of multiple discrimination that may undermine fundamental rights guaranteed in the *acquis*:

- It is contrary to the principle of free movement which has ‘fundamental status’<sup>112</sup> because it creates obstacles to the exercise of this right 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 (articles 27-33) regarding the rights of entry and residence on the grounds of ‘public policy, public security or public health.’ However, no such stated policy has been stipulated in the Cypriot law transposing the Directive, nor has there been any other official justification offered for restricting the implementation of the principle of free movement.
- 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. In the supreme Court case of *Tetyana Tomko v. Republic of Cyprus through the Aliens and Immigration Department*<sup>113</sup> 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 that the Government’s arguments regarding her place of residence as justification for rejecting her application, lacked legal basis and granted her the appeal. Even though the applicant in this case 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 Union citizens. The circumstances under which indirect discrimination is lawful are expressly set out in Directives 43/2000 and 78/2000, a provision transposed verbatim by the relevant legislation in Cyprus.<sup>114</sup> Therefore an ‘apparently neutral provision, criterion or practice’ that puts persons of a certain national<sup>115</sup> racial or ethnic origin at a particular disadvantage compared with another person, can only be allowed if ‘it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’. In the case of nationality discrimination no such exceptions apply.
- 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 territories<sup>116</sup> as there are inherent complications resulting from the operation of the Green line Regulation.<sup>117</sup> The suspension of the *acquis* in the north excludes the implementation of the *Acquis* in the northern territories. However, it is unclear how matters relating to public policy and public security, under the general rubric of the ‘law’ or ‘doctrine of necessity’ given the situation in Cyprus are

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

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

114 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, p. 79-116.

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

116 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.

117 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](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc_and numdoc=506DC0551 and lg=en).

dealt with and the implications this has.<sup>118</sup> However, the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*<sup>119</sup> ruled that the ‘doctrine of necessity’ must be exercised in a manner that does not violate the nucleus of rights or the principle of equality. Therefore this provision, which restricts the application of the principle of free movement and non-discrimination *within the territory* under the effective control of the Republic of Cyprus<sup>120</sup> is unlikely to meet the stringent test of being objectively justified by a legitimate aim and through means which are appropriate and necessary.

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 EU Directive (see preamble paragraphs 22, 23 and 24). In fact the general approach of the Directive is to severely restrict state discretion to expel Union citizens as suggested by article 28 of the Directive. 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 Cypriot authorities’ 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 the government.’<sup>121</sup> Not only is it difficult to justify any connection between ‘provisions absolutely necessary for

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118 See Constantinou C.M. (2008) ‘On the Cypriot States of Exception’, *International Political Sociology* (2008) 2, p. 145–164 and 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, p. 79-116.

119 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](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf), accessed on 20.10.2008.

120 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)).

121 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 and 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.

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the functioning of government' and the refusal to grant a registration certificate to Union citizens, but even if there is some connection, the principle established by the ECHR in the case of *Aziz* means that the abnormal situation existing in Cyprus since 1963 cannot be invoked to justify a violation of the right to freedom of movement without discrimination. Any necessity arguments are unlikely to be successfully invoked by the Republic of Cyprus as justification for failure to comply with the Directive.

## Chapter VI

### Specific Issues

#### 1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES),

Issues relating to ‘frontier workers’ are unlikely to have any bearing on Cyprus, given that Cyprus is an island and has no recognized ‘frontiers’ and if there is no ‘frontier’, then it logically flows that there cannot be any ‘frontier workers’. The ‘soft border’ dividing north and south of the island is from a certain perspective generating a question as regards Union citizens who try to cross from north to south. Although the Green Line regulation allows Union citizens to move freely along the green line, those Union citizens who have entered Cyprus through an entry point considered illegal by the Cypriot authorities (i.e. all ports and airports in the north) are as a matter of standard policy compelled to leave Cyprus and re-enter through an entry point in the south.

#### 2. SPORTSMEN / SPORTSWOMEN

Football, basketball, volleyball, handball are popular sports. Rugby is played only in the British Bases Area. There is no ice-hockey played in Cyprus.

The situation has not changed since the 2009 report: the Aliens and Immigration Law imposes no restrictions on professional sports people who are Union citizens. Furthermore, the Cyprus Sports 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 Union citizens are treated equally with Cypriot nationals as far as registration with and transfer from and to teams are concerned. By way of example, according to the Regulations of the Cyprus Football Association, football teams in the first league can have the same unspecified number of non-amateur EU players as Cypriot nationals [(Reg.20(1) (1))]. The same applies to second and third league teams where the players 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 sports have taken into account the *Bosman* ruling of 1995.<sup>122</sup> From a desk top research and interviews with sports officials, it emerges that there are no regulations of national sports federations or sports organisations limiting the access and participation of migrants and ethnic minorities to sports. The 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<sup>123</sup> have not been adopted so far.<sup>124</sup>

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

123 See ‘Οι αριθμοί φοβίζονν. Νοιάζεται η ΚΟΠ’, *Επάγγελμα Ποδοσφαιριστής*, *Journal of the Pancyprian Footballers’ Association*, issue 1, 2008, p. 10.

124 According to the journal of the Pancyprian Footballers’ Association, the association had raised concerns about the fact that Cypriot footballers are being displaced by foreigners (EU nationals and third country na-

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.<sup>125</sup> In any case, this is a major European issue of debate following the *Bosmans* ruling.<sup>126</sup> The Pancyprian Footballers' Association however argues that there is problem of reverse discrimination and calls for the adoption of rules in the spirit of the UEFA 'Home-grown Player rule', which is also discriminatory under EU law but, unlike a quota system, 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 are appropriate and necessary.<sup>127</sup> The Pancyprian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs',<sup>128</sup> are required by the regulations of the Cyprus Football Association to obtain work permits. There is evidence of football clubs engaging in the practice of registering some footballers in jobs unrelated to football and use them in matches as 'amateurs', resulting in instances of non-payment and deportation from the country. Since 2009-2010 the new football league regulations no longer allow third country nationals to be registered as 'amateurs' but can only be professionals.<sup>129</sup>

The authorities insist that 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 social and labour hierarchy.<sup>130</sup> 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-Cypriots in sports are the professional athletes and coaches of the top leagues in football and basketball.

Legislation/Regulations: Cyprus Football Association (2011), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus.<sup>131</sup>

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tionals) and had promoted 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.

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

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

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

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

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

130 See Trimikliniotis, N. (2010) 'Cyprus – Migration and the Labour Markets in the European Union (2000-2009), Part 1', *Independent Network of Labour Migration and Integration Experts (LMIE-INET)*, Report on Cyprus for International Migration Organisation, 2010, at <http://www.labourmigration.eu/research/report/13-migration-employment-and-the-outcomes-of-labour-market-integration-policies-in-the-european-union> and Trimikliniotis, N. (2010) 'Cyprus - Labour Market Integration Policies in the European Union (2000-2009), Part 2', *Independent Network of Labour Migration and Integration Experts (LMIE-INET)*, Report on Cyprus for International Migration Organisation, 2010, at <http://www.labourmigration.eu/research/report/13-migration-employment-and-the-outcomes-of-labour-market-integration-policies-in-the-european-union>.

131 [info@cfa.com.cy](mailto:info@cfa.com.cy).

### 3. THE MARITIME SECTOR

The national framework for Cyprus consists of laws, regulations and the collective agreement for the employment of seafarers. This framework consists of a large body of national instruments on merchant shipping enacted after and post independence (1960), international instruments on merchant shipping such as the multilateral and bilateral treaties and Conventions concluded and ratified by the Republic of Cyprus and the multilateral and bilateral treaties and Conventions adopted by the Process of the Succession of States in respect of Treaties.<sup>132</sup> The Republic of Cyprus has ratified the Maritime Labour Convention, 2006 (MLC, 2006) in 2012: on 20 July 2012, the Republic informed the ILO that it has ratified and was 29<sup>th</sup> country to do so. The convention will enter into force in August 2012.<sup>133</sup>

According to the Cyprus Shipping Chamber, which is the social partner for the employers in the collective agreement, there is a minimum standard which fixes the salary and other benefits as per Chapter 26 of the collective agreement, which is entitled 'Equality' and which stipulates: '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.'<sup>134</sup> A 2008 circular from the Migration Office extends the scope of the decision of the Council of Ministers<sup>135</sup> as regards residence and work permits to members of staff of international companies<sup>136</sup> to cover the staff members of 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, 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.<sup>137</sup> We are informed<sup>138</sup> 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 ac-

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132 Also there are relevant instruments on other related maritime matters, such as the Law of the Sea Instruments, Marine Pollution Instruments, Fisheries Instruments, Pleasure navigation – Recreational marine activities and Instruments on various other maritime related matters.

133 All ships over 500GT in international voyages must be certificated with the Declaration of Maritime Labour Compliance Part I and Part II – DMLC P1&2 + Maritime Labour Certificate – MLC). As soon as the Republic ratifies the convention, the Commercial Shipping Department will post a circular on its' website explaining the procedure for application by shipping companies to the Cyprus Maritime Administration (Department of Merchant Shipping – DMS) for the issue of the DMLC Part1. Based on the DMLC Part1, shipping companies will prepare the DMLC Part 2, implement all the requirements on board the ship and ashore and then, request their Recognized Organization (RO) to approve the DMLC Part 2 and issue the MLC.

134 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).

135 Decision no. 67692, dated 24.9.2008.

136 These are the former off-shore companies.

137 [http://www.mcw.gov.cy/mcw/dms/dms.nsf/intrelations\\_en/intrelations\\_en?OpenDocument](http://www.mcw.gov.cy/mcw/dms/dms.nsf/intrelations_en/intrelations_en?OpenDocument).

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

cess to ports, levying of port dues and taxes, use of ports for loading and unloading cargoes and for embarking and disembarking passengers. This paragraph shall also apply to vessels chartered by shipping companies of the other Contracting Party flying the flag of a third country.<sup>139</sup>

No directly discriminatory rule on the basis of nationality identified in the national rules (legislation and /or collective agreements) as regards seafarer's pay envisage such as a condition of nationality. Nor is there any rule (such as residence condition) which could be indirectly discriminatory.

There are no national rules on seafarer's pay envisage a condition of residence. Cypriot legislation and/or collective agreements (binding at national and /or at sector level) do establish different legal treatment of seafarers from other Member States on the basis of their nationality/residence in relation to working conditions in general.

There are no cases brought before the national jurisdiction challenging the seafarer's pay and working conditions and if so, a summary of the cases should be presented.

#### 4. RESEARCHERS/ARTISTS

There is very little on the status of the Cypriot artist: this was highlighted by the Cyprus Chamber of Fine Arts (E.KA.TE)<sup>140</sup> in the Convention on the Status of the Artist in Cyprus,<sup>141</sup> which has followed the Convention on the Status of the Artist in Europe.<sup>142</sup> Recently however, there is increasing interest status of artists; the only work that exists on the subject about the status of artists in Cyprus was published in 2009.<sup>143</sup> 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.<sup>144</sup>

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 Bridgehead Organisation and Service Centre for Cyprus is the

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139 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'.

140 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](http://www.ekatecy.com/news/news_20081220.htm), accessed 28.7.2012.

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

142 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 states members 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.

143 This was circulated on the 15.3.2009 at the Convention.

144 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.

Research Promotion Foundation;<sup>145</sup> as ‘the Cypriot EURAXESS Service Centre’, it provides information regarding:

- Research in Cyprus
- The R&D Landscape in Cyprus
- Accommodation
- Childcare and Schooling
- 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.<sup>146</sup>

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,<sup>147</sup> non-discrimination,<sup>148</sup> research environment,<sup>149</sup> working

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145 The scientific Officer in charge is Pierantonios Papazoglou ([ppapazoglou@research.org.cy](mailto:ppapazoglou@research.org.cy)).

146 The person in charge is Pavlos Pavlou, at [pavlou.p@unic.ac.cy](mailto:pavlou.p@unic.ac.cy).

147 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, post-graduate 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.’

148 ‘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.’

149 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.

conditions,<sup>150</sup> job security and stability and permanence of employment,<sup>151</sup> funding and salaries,<sup>152</sup> gender balance<sup>153</sup> and career development<sup>154</sup>. 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. The complaint is still pending.

### *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.<sup>155</sup> 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.<sup>156</sup>

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150 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.

151 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*.

152 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.

153 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.

154 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.

155 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.

156 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

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*The European Charter for Researchers*<sup>157</sup> and the *Code of Conduct*.<sup>158</sup>

*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.

## 5. ACCESS TO STUDY GRANTS

Study grants are available to all students who are resident in Cyprus. In principle Union citizens 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’.<sup>159</sup> 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.

### 5.1. Student maintenance grants in Cyprus

The current rules on maintenance grants for study purposes were decided by a decision of the Council of Ministers on ‘targeted measures supporting student welfare’<sup>160</sup> for all EU undergraduate students study in the two public universities (University of Cyprus and Technological University of Cyprus), the two tertiary education establishments (College of Tourism and Forestry College) and the three private universities (University of Nicosia, European University and Frederick University) and all Cypriot undergraduate students studying abroad. The decision of the Council of Ministers also stipulates that there will be socioeconomic criteria upon which such grants would be provided based on a point system as laid down in Appendix 2 of the said decision. The decision of the Council of Ministers empowers the Ministry of Education to approve and distribute the grants.

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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.

157 Available as a link to the Research Promotion Foundation at [http://crpf.metacanvas.com/EN/int\\_cooperation/euraxess/rights.html](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.

158 Available as a link to the Research Promotion Foundation [http://crpf.metacanvas.com/EN/int\\_cooperation/euraxess/rights.html](http://crpf.metacanvas.com/EN/int_cooperation/euraxess/rights.html) 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.

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

160 Proposal 950/2009, decision 68450 dated 26.2.2009.

The measures were extended to cover the academic year 2011-2012 but it is means-tested.

## 5.2. Rules for eligibility

Eligible to apply are the following categories:

- European undergraduate students studying in public and private universities and public tertiary education establishments in Cyprus
- Cypriot undergraduate students studying abroad.

### 5.2.1 The scheme covering students studying in Cyprus

The student package includes:

- I. Rent allowance
- II. Subsidy to purchase book
- III. Subsidy for purchasing a computer to first year students
- IV. Food coupons

### 5.2.2 The scheme covering Cypriot students studying abroad

The following conditions are stipulated:

- I. There is a residence condition as the parents must ‘permanently reside in the territory under the control of the Republic of Cyprus’. Presumably this criterion is to ensure that there are *not* residents residing in the Turkish occupied territories who apply for such grants.<sup>161</sup>
- II. The son/daughter must be in receipt of *regular education* in a recognised educational institution of tertiary education or in an approved area of study.
- III. There is an age requirement i.e. in principle the applicant must have reached the age of 17.

### 5.2.3 Conditions for granting the allowances

- I. The applicant must apply and provide the relevant supporting documentation.
- II. The annual gross per capita family income must not be over 15000 euro per year. This calculated by dividing the gross family income by the numbers of dependants.
- III. There are a number of criteria for the point system which prioritise the needs of student.

### 5.2.4 Criteria for the point system:

*Economic situation of the family of student*

Per capita gross annual income (euro)	Points
12001-15000	4
95001-12000	8
7501-9500	12
3501-5500	20
Less than 3501	24

<sup>161</sup> 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* 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 joined the EU on May 1st 2004. However, this provision may result in problems in the implementation of the principle of free movement, given the accession to the EU of a divided Cyprus.

## CYPRUS

Pensions and Disability allowances are not counted as income.

### *Criteria for the point system: Social situation of the family of student*

<b>Social situation</b>	<b>Points</b>
1. if the applicant is (a) an orphan from one parent; (b) an orphan from both parents (c) child of a missing person or person who has died in the war of 1974	4 10 8
2. If the parents are divorced	1
3. If the parents or the applicant is in receipt of public benefit	1
4. If the applicant belong to a family which was displaced in the 1974 war	1
5. If the applicant is a child whose parents are 'enclaved' (i.e. Greek-Cypriot parents come from and chose to remain the Turkish occupied areas after 1974	10
6. if the parents suffer from a serious disease or serious disability which is proven to affect their ability to work: (a) one parent (b) both parents	5 10
7. If the applicant suffers from a serious health problem (such as thalassemia, blindness, deafness, diabetes, cancer or heart disease) or from a serious disability (tetraplegic, paraplegic, mobility problems)	5

### **5.2.5 Distance of educational institution from family residence**

This criterion affects only the housing allowance provided and provides for points (0-5) for the distance way in km of the education institution to the home (i.e. Family residence).

<b>Distance from the Education institution</b>	<b>Points</b>
0-30	0
31-75	1
76-100	2
More than 100	3
Permanent residence abroad (e.g. Greece)	5

### *Types of financial support*

<b>Type of support</b>	<b>Limit of Annual award</b>
Housing	2100euro (75euro X 12 months)
Food	1092 euro
Purchase of books	500 euro
Purchase of computer	500 euro

## **6. YOUNG WORKERS**

The Cypriot legislation designed to protect young workers consists essentially of the law transposing Directive 94/33/EC i.e. Law 48(I)/2001, which is about to be amended. The operation of the specific law does not contain any elements which may effectively operate as an obstacle to free movement of persons. The law regulates the conditions of employment restricts the employment of young workers in terms of the nature of employment they can be

employed in, the time they are allowed to work etc. There is no residence or nationality-related rules contained in this legislation and no discrimination can be located in the legislation; however there may be residence-related provisions when it comes to claiming certain benefits, which must be located in the specific benefit.

Relevant here are the rules applying to Cypriot sport since the *Bosmans* ruling as explained above.<sup>162</sup> As mentioned we have located no regulations of national sport federations and sport organisations limiting the access of migrants to sport. The calls by the Pancyprian Footballers' Association (PFA) for the Cyprus Football Association to adopt the Scottish football regulations that have a rule compelling each team to include within their 18-squad four to five under twenty-one year olds<sup>163</sup> have not been adopted so far. The association had raised concerns about the fact that Cypriot footballers are being displaced by foreigners (EU nationals and third country nationals) and had promoted 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.<sup>164</sup>

The current rules provides for two lists of players:

- a) the over 21s list allows up to 26 players, out of whom a maximum of 5 can be TCNs and the maximum of non-Cypriot footballers must be 17; this list must be provided to the CFA by the 10<sup>th</sup> September and 10<sup>th</sup> of February and cannot change. There is no rule forcing teams to have any Cypriot players i.e. a team may provide a list 17 non-Cypriot EU nationals.
- b) The under 21s is a more flexible category aiming to encourage the registration of younger players, hence this list can be provided at any time during the season and can change with no restrictions other the overall restrictions which provide that in total (i.e. lists A and B) the maximum of non-Cypriots must be 17 including 5 TCNs.

The Footballers' 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.<sup>165</sup> In any case, this is a major European issue of debate following the *Bosman* ruling in 1995.<sup>166</sup> The Pancyprian Footballers' Association however argues that there is problem of reverse discrimination and argues for the adoptions 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 necessary.<sup>167</sup> The Pancyprian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs'<sup>168</sup> 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. During the

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

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

164 According to the *Journal of the Pancyprian Footballers' Association*.

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

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

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

168 Information provided by Spyros Neofitides President of Pancyprian Footballers' Association.

2009-2010 and the 2010-2011 football leagues new regulations no longer allowed third country nationals to be registered as 'amateurs' but can only be professionals.<sup>169</sup>

## **7. SERVICE PROVIDERS AND SELF-EMPLOYED UNDER ARTICLE 8(3) OF THE DIRECTIVE**

In previous warning letters, the EC had indicated that Cypriot legislation considers registration with the Social Insurance system as the only acceptable proof of a person's identity as self-employed. According to article 8(3) of the Directive, additional means of attestation must be acceptable. The EC rejected the Cypriot authorities' contention that circular dated 18.7.2011 contains guidelines for the immediate correct transposition of article 8(3), pointing out that the incorrect transposition cannot be corrected with the invocation of the direct applicability of the Directive, for the same reasons as set out in paragraph 5 above ('Dependents of Union citizens').

The Cypriot government responded that the 2011 amendment to Law 7(I)/2007 has correctly transposed article 8(3) of the Directive,<sup>170</sup> adding that the reference to the direct applicability of the Directive was only meant to indicate compliance with the Directive until the entry into force of the amending legislation.

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169 Information provided by Spyros Neofitides President of Pancyprian Footballers' Association.

170 Article 4(a) of Law 181(I)/2011 amends article 10(4) of Law 7(I)/2007.

## **Chapter VII**

### **Application of Transitional Measures**

There are no transitional measures for Cyprus.

#### **1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS**

There are no transitional measures for Cyprus.

#### **2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA**

There are no transitional measures for Cyprus.

## **Chapter VIII Miscellaneous**

### **1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68**

[To which extend in some situations Article 45 TFEU and Regulation 1612/68 are applicable, while Regulation 1408/71 cannot apply]

### **2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS**

### **3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

#### ***3.1. Integration measures***

The integration measures adopted only cover third country nationals and not union citizens.

#### ***3.2. Immigration policies for third-country nationals and the Union preference principle***

The National Action Plan for Integration of legally residing migrants 2010-2012 was adopted in October 2010. On 16.10.2010 the Minister of Interior unveiled the national action plan for the integration. The plan has eight priority topics, a timetable for implementation and allocates the different tasks to specific government agencies:

1. Awareness and information.
2. Employment (access to, training and trade unionism, information to migrants on the labour system in Cyprus; anti-discrimination training to employers and employees).
3. Greek language training;
4. Health (access to emergency services, programs aimed at avoiding contagious diseases).
5. Housing (support structures for immediate needs etc).
6. Culture, civics and basic elements of civil, political and social reality in Cyprus (production of material and modules, forums, training for journalists, NGOs, social partners, local authorities and governmental officers).
7. Participation (support to migrants NGOs, encourage participation in sports, promote new law for the participation of migrants in municipal elections).
8. Evaluation and review (including indicators such as employment and participation rates).

The overall coordination of the general policy on integration is in the hands of the Ministry of Interior, which coordinates an inter-departmental policy.<sup>171</sup> On 29.06.2010 the Ministry of Interior called a meeting in order to consult stakeholders on a previously circulated docu-

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<sup>171</sup> For a discussion on the current debates on integration and migration see Trimikliniotis 2009a; 2010a; and Trimikliniotis and Souroulla 2006a; 2006b; 2010.

ment entitled ‘Action Plan for the Integration of Immigrants Residing Lawfully in Cyprus 2010-2012.’ Stakeholders presented written submissions on the document and stakeholders were invited for further consultation before the finalising of the plan. The plan outlines the parameters of the integration policy<sup>172</sup> and consists of a comprehensive plan of support and information to TCNs who are lawfully residing in the country, referring specifically to the rights and obligations of migrants. Also the action plan involves local government and civil society and will heavily draw upon the annual programs of 2007 and 2008 of the European Integration Fund, prepared with the consultation of all stakeholders. The Interior Ministry indicated that it is currently undertaking a study for the participation in public life of migrants with long-term stay so that the conditions are created which will allow migrants with long-term stay to exercise their rights as citizens. One of the aims of the action plan was identified to be the acceptance of migrants by all kinds of associations and organisation in their ranks, from athletic organisations to political parties, as such organisations can contribute to the depiction of an intercultural reality by implementing equal opportunity policies, by electing migrants in all responsible levels of representation and cooperating with migrant organisations. The notion of inclusion/integration was described as a dynamic, permanent, multifaceted and reciprocal process of mutual duties and rights between migrants and the receiving society, largely depending on the adaptability of all stakeholders including the migrants themselves. It was argued that the success of this process requires on the one hand national initiatives and actions and on the other financial support of the actions by the state and the EU. In order to adequately evaluate the migration phenomenon and legislate accordingly to properly include the large numbers of migrants residing and working in the country, the Ministry called for:

- Valid and accurate statistical data;
- The development of indicators (quantitative and qualitative) of inclusion/integration;
- Systematic evaluation and review of such indicators;
- Utilisation of such data for the development of realistic action plans.

The strategy proposed for inclusion/ integration is based on the EU and international standards and norms but consideration is also given to the need to properly reflect the particularities of the Cypriot situation. Beyond the legislative changes, a number of accompanying measures are foreseen:

- Actions for provision of relevant information, awareness-raising and training;
- Language classes;
- Promotion of equal treatment at work;<sup>173</sup>
- Access to justice;
- Seminars for employers and employees on labour relations; vocational training; health provisions at schools and maternal services (all provided free of charge irrespective of nationality);
- Educational measures for the integration of children at schools;
- European Refugee Fund projects and EQUAL Community Programs.

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172 In Greek ‘Εθνική Πολιτική Ένταξης’ i.e. national policy for inclusion, which is the state of art in the Greek language terms, rather than the term ‘*ensomatosi*’ reflecting the current debates on the subject amongst Greek scholars (see Pavlou and Christopoulos for the state of the art Greek debates on the subject).

173 The Ministry of Labour was conspicuously absent from the stakeholders’ meeting. No explanation was provided as to why no representative of the Labour Ministry attended.

### 3.3. *Return of nationals to new EU Member States*

The European Commission ( letter dated 22.3.2012) considers as pending the issue of exclusion from the scope of the law transposing the free movement directive of Cypriot nationals returning to Cyprus after having exercised their right to free movement in another member state. In previous waning letters the EC expressed its concern over the fact that the scope of the transposing legislation excludes Cypriots returning to Cyprus after having exercised their right to move in another member state. The Cypriot authorities promised to change the legislation and, once again, referred to circular 18.07.2011 which provides for the direct applicability of the Directive. The EC letter that followed repeated its position that the invocation of the direct applicability cannot rectify incorrect transposition.

The Cypriot authorities responded that the law had meanwhile been amended to include repatriated Cypriots in its scope,<sup>174</sup> in compliance with the Directive.

## 4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The Commissioner's Office for Administration (Ombudsman), either in its capacity as Equality Body or as Ombudsman.

## 5. SEMINARS, REPORTS AND ARTICLES

Nothing to report.

## 6. EUROPEAN COURT CASES AND CYPRIOT LAW 2011-2012

### *Dias (C-325/09)*

There is no relevant case decided by the Cypriot courts. It must be noted that Cyprus has no income support system equivalent to that of the U.K. Most benefits such as unemployment benefits are based on contributions.<sup>175</sup> Basic subsistence benefits are paid to all persons without income irrespective of nationality;<sup>176</sup> some other benefits are provided to specific categories of the population.<sup>177</sup> Given that the Cypriot constitution (article 28) prohibits discrimination on (inter alia) 'any ground whatsoever', a legislative provision granting rights of public assistance to Cypriots and denying same to non-Cypriots may be hard to justify in law. Having said that, the Courts are known to have interpreted this constitutional provision

174 Article 2 of Law 181(I)/2011 adds a new paragraph (6) to article 4 of Law 7(I)/2007.

175 The law on Social Insurance provides benefit for all those who have contributions of at least 26 weeks from the day of beginning their social insurance contributions and covers the benefits for the unemployed, maternity, sickness, marriage, birth, and funeral. See Third Table of law 59(I)/2010. Art. 31(4)(b) provides that the applicant for such benefit must be unemployed, capable and available for work or that he/she is undertaking a vocational training program approved by the Minister of Labour.

176 On the basis of the Public Assistance and Services Law 95(I)/2006 as amended (Περι Δημόσιων Βοηθημάτων και Υπηρεσιών Νόμος).

177 Student grants for instance or other benefits for disability etc.

very restrictively and in a manner that can potentially negate the very essence of this right. It would thus be difficult to envisage a situation analogous to that of *Dias* occurring in Cyprus, where rights to public benefit depend on the type or status of visa granted.

On the broader issue of pre-transposition status, a Supreme Court case provides insight into the recognition of work performed in a similar position in another country prior to Cyprus transposing the free movement directive. In the case of *Theodorou*,<sup>178</sup> discussed below, the court recognized the pre-transposition years of work in a similar position in Greece, for the purposes of ranking the complainant in terms of job promotion. However, we have to distinguish between employment-related situations such as that of *Theodorou*, from public benefit situations such as that of *Dias*, as the policy implications of each situation are inevitably different. Thus, although in employment situations the Courts will not hesitate to recognise rights deriving from the status of a Union citizen prior to transposition of the free movement directive, this may not necessarily be the conclusion of the Court where an applicant claims public benefit rights deriving from his/her pre-transposition status.

In the case of *Theodorou* the applicant was an Educational Psychologist in the Cypriot Ministry of Education from 2006, prior to which he had worked as temporary employee in the same position for 4 years. Before that, he had worked as school psychologist in Greece, performing similar duties as those performed in the Cypriot Ministry of Education. In November 2009 the applicant requested that his service in Greece be recognized as service for the purpose of a promotion, which required experience and seniority, as well as for calculating leave and other benefits. The Attorney General, whose opinion was requested by the Commission for Public Service, stated that a civil servant's prior service with comparable duties in another member state must be taken into account in order to determine seniority, irrespectively of how long ago the position in the other member state was held, but it is up to the Cypriot authorities to determine whether the previously held position in the other member state is equivalent to the one held in Cyprus. With a subsequent opinion delivered in 2010, the Attorney General's office clarified that the years of employment in another Member State may only be taken into account provided the employment was completed after Cyprus' accession to the EU; any employment which commenced and was completed prior to accession cannot be taken into account. The Public Service Commission adopted the position of the Attorney General that, since the applicant's employment in Greece started and finished before Cyprus' accession to the EU and no right of movement was exercised in the framework of the EU *acquis*, his prior service in Greece could not be taken into account. The applicant argued that the obligation to respect his qualifications and especially the experience and seniority acquired in other member states is absolute and that the justification for rejecting his request, that he had not exercised his right to free movement after Cyprus' accession to the EU, was contrary to the EU *acquis*. The Court noted that given that Cyprus did not reserve any provision in the implementation of the EU *acquis*, all national regulations as to recognizing previous employment service, which is now being invoked by the Commission for Educational Service, must be interpreted in the framework of the principles protected by article 29 of the Treaty and by 1612/68/EEC. The Court found that the ECJ rulings referred to by the applicant's lawyers made no reference to the time of exercise of the right to free movement and allowed the applicant's request for annulling the decision of the Commission for Educational service.

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178 *George Theodorou v. The Republic of Cyprus*, Supreme Court (Review Authority) Case No. 1057/2010, dated 30.01.2012.

**Zambrano (C-43/09)**

*Zambrano* was already discussed in the Cypriot Report 2010-2011. Citizenship of the Union requires a Member State to allow third country nationals who are parents of a child who is a national of that Member State to reside and work there, where a refusal to do so would deprive that child of the genuine enjoyment of the substance of the rights attaching to the status of citizen of the Union. This requirement applies even when the child has never exercised his right to free movement within the territory of the Member States. This principle would have important implications in the Cypriot context, providing citizenship is granted children of foreign nationals. However, the procedure of granting nationality/citizenship is hardly one that can be considered as smooth as it would have been in a normally functioning polity. The fact that the question of granting citizenship is very much entangled with the disputed population issue in the negotiations to resolve the Cyprus problem complicates matters. In any case, the fact that the Cypriot law on citizenship is dominantly based on *ius sanguinis* principles together with the reluctance to grant citizenship.<sup>179</sup> A non-Cypriot who resides lawfully in the Republic may acquire citizenship via discretionary naturalisation if he or she fulfils all of the residence and character conditions relating to lawful stay.<sup>180</sup> The law also provides for acquisition of citizenship via naturalisation for students, visitors, self-employed persons, athletes and coaches, domestic workers, nurses and employees who reside in Cyprus with the sole aim of working there as well as spouses, children or other dependent persons. The prerequisites are that they must have ordinarily resided in the Republic for at least seven years and one year in the period immediately prior to the application their stay must be ‘continuous’.<sup>181</sup> There are also exceptional situations where citizenship may be granted.<sup>182</sup> Children born in Cyprus to non-Cypriot migrants who legally entered and reside in Cyprus and have acquired or would have been entitled to acquire Cypriot citizenship via naturalisation are entitled to citizenship. However, the regime is based on discretionary power of the authorities and in particular the discretion of the Council of Ministers and the Minister of the

In the rare situation where a child is granted citizenship and the parents are not, then the principles of *Zambrano* would presumably apply.

**McCarthy (C-434/09) and Dereci (C-256/11)**

The ruling in *McCarthy* may have some bearing on the rights of family members of Cypriot nationals. The principle that Union citizens, who never exercised their right to move and reside in any other Member States, cannot invoke Union law in order to secure the residence of their spouses, is already applied by the Courts in Cyprus. In fact the initial law transposing the free movement directive (N. 7(I)/2007 did not cover Cypriot nationals in its scope; following the warning letters from the European Commission, the law was amended in December 2011<sup>183</sup> to stipulate exclusively that the law extends to Cypriots repatriated to Cypriots after having exercising their right to free movement in another member state. There is no provision in the law granting to Cypriots, who have not exercised their right to move, the

179 Trimikliniotis, N. (2010) ‘Country Report: Cyprus’, in The European Democracy Observatory on citizenship (EUDO), *National Report on Citizenship in Cyprus*, April 2010, at <http://eudo-citizenship.eu/docs/CountryReports/Cyprus.pdf>

180 Table 3 annexed to the law (Sub-section 111) of Law on the Population Data Archives No. 141(I)/2002.

181 Introduced by amendment 58(1)/1996.

182 Introduced by amendment 70(1)/1996.

183 By article 2 of Law 181(I)/2011, which added a new paragraph (6) to article 4 of the basic law N.7(I)/2007.

right to have their third country spouses reside with them in Cyprus, a situation raising issues of reverse discrimination. This is an issue previously dividing Cypriot case law, as some Court decisions recognised the right of Cypriots who have not moved to be joined in Cyprus by their third country spouses, whilst others did not. No case has been tried by the Supreme Court since the said law was amended in December 2011. It would be interesting to see how the Courts will view requests from Cypriots who have not moved to be joined in Cyprus by their third country spouses, in light of the amendment of the law and of the ECJ ruling in *McCarthy*, which basically go hand in hand.

As discussed in more detail in the Cyprus Report on the Free Movement of Workers 2010-11, the policy and legal framework have resulted in uncertainty and reverse discrimination against Cypriots who have not exercised their right to move. This is the case despite the decision of the Ministerial Committee for the Employment of Aliens on 28.8.2009 that all matters of entry and stay in the Republic of family members of Cypriots will be decided along the lines of the respective conditions for family members of other EU citizens, as provided in Law 7(1)/2007. In practice, third country family members of Cypriots continue to be discriminated in different ways by being subjected to a more stringent regime than the family members of other Union citizens. The resulting situation was described by the Cypriot Equality Authority as ‘a contradictory and defensive position’ of the immigration authorities.<sup>184</sup> Court decisions have been divided on these matters and there have been numerous complaints to the Ombudsman<sup>185</sup> illustrating the inadequacy of the policy and legal framework on the matter.

Case law in 2010-2012 is indicative of the contradictory approach of the courts: two cases in 2010 endorse the logic that leads to reverse discrimination; another case seems to go the other way.<sup>186</sup> Some cases address the issue whether rights afforded to Union citizens exercising free movement also apply to Cypriots or residents in Cyprus who have not moved. In other cases judges reiterated that the rights afforded under the EU free movement law do not cover situations where the citizen has not exercised his/her right to move across the EU.

The ruling in *Dereci* (C-256/11) is particularly important for Cyprus. At first sight, *Dereci* may be interpreted as legitimising the line of Cypriot case law which considers that Union law on Union citizenship allows a Member State to refuse a third country national the right to reside on its territory when that person’s spouse is a Union national who had never exercised the right to free movement. However, the interesting innovation introduced by *Dereci*, which may offer a new twist to Cypriot case law, is the test introduced by the Court, that any refusal of such rights must not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his/her status as a Union citizen. Whereas in other Member States the test was greeted as having ‘the potential to limit *Zambrano’s* impact - effectively raising the bar when applicants facing expulsion are required to prove denial of the genuine enjoyment of the substance of an EU citizen family

184 Έκθεση Επιτρόπου Διοικήσεως αναφορικά με την εφαρμογή στην Κύπρο του κοινοτικού κεκτημένου στα θέματα της οικογενειακής επανένωσης και τη δυσμενή μεταχείριση Κυπρίων πολιτών και των μελών των οικογενειών τους που είναι υπήκοοι τρίτων χωρών, Α/Π 1623, Α/Π 1064, dated 06.05.2009, p. 1.

185 See for instance the section entitled ‘iii. Το δικαίωμα εισόδου και παραμονής πολίτη τρίτης χώρας που είναι σύζυγος ή σύντροφος Κύπριου ή Ευρωπαίου πολίτη’, of the *Ombudsman’s Annual Report of 2007*, [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2316716CE693858D882574FA0077E4E6/\\$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7-2007.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/2316716CE693858D882574FA0077E4E6/$file/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7-2007.pdf?OpenElement) (accessed 29.09.2009).

186 *Svetlana Shalaeva v. Republic of Cyprus* (No. 45/2007, dated 27.4.2010). *Republic of Cyprus v. Svetlana Shalaeva* (No. 72/2008, dated 22.12.2010); *Abdulkader Majed v. Republic of Cyprus* No. 1099/2009, 7.2.2011.

member's rights',<sup>187</sup> this is not may not be so in Cyprus. In the context of the Cypriot case law which, in the overall, does not adequately engage with EU case law on the subject, it could result in forcing the Courts to be more focused on the rights of Union citizens than on national sovereignty. In light of *Dereci*, Cypriot courts are now specifically required to verify, on facts proven before it, whether *a denial of the genuine enjoyment of the substance of EU citizens' rights* will ensue. Moreover, given that the Cypriot legal framework contains strong references in the constitution and protocol 12 on equal treatment on the ground of nationality and national origin, may allow courts to address the question of reverse discrimination, as this results from *McCarthy* and from implementing the 2011 amendment to Law 7(I)/2007.<sup>188</sup>

### ***Tsakouridis* (C-145/09)**

*Tsakouridis* will almost certainly have a significant impact on the Cypriot legal context as it deals with an issue of concern raised repeatedly in previous country reports on Cyprus. The question of expulsion and deportation and placement on stop lists and preconditions to acquiring the right to permanent residence as well as entry to and exit from the Republic were some of the issues raised by the European Commission's warning letter to the Republic of Cyprus,<sup>189</sup> which the Commission considers unresolved<sup>190</sup> despite the clarifications by the Cypriot Government.<sup>191</sup> In particular the issue related to improper transposition and violation of articles 30 and 31 of the Directive. Despite the more positive general climate in the treatment of migrants, concerns about the conditions of detention and expulsion of foreigners, including EU citizens is a matter that NGOs have repeatedly raised.

In 2012 a number of Cypriot cases, discussed further down, dealt with the issue of expulsion of EU citizens. The basic ruling in *Tsakouridis* that very good reasons would have to be put forward to justify the expulsion measure of a Union citizen who has lawfully spent most or even all of his childhood and youth in the host Member State is crucial for the Cypriot context. The standards set by Cypriot courts have not been so high; no similar case was brought before the Courts, although a number of cases of Union citizens deported after several years of stay have been highlighted by the media and the Ombudsman but never reached the Courts.

The cases listed below concern applications to arrest the execution of an order (of expulsion, of detention, of no re-entry etc); they do not concern the actual examination of the request to annul and set aside these orders. At the time of writing, the applications to annul these orders were still pending before the Courts. Thus, although the Courts' decisions in the interim applications may be indicative of what the final ruling on the case might be, the judges do stress that the criteria used to decide on these interim applications are meant *only* for the interim applications. The norms emerging from the Courts' decisions on the interim applications, however, which are in line with previous cases decided, dating back to the decision often cited as authority on the expulsion of non-Cypriots dating back to the pre-

187 See Gary McIndoe (2011) 'Dereci - Narrowing Zambrano?', *Latitude Law*, 23-11-2011, at <http://www.latitudelaw.com/news-dereci-narrowing-zambrano-by-gary-mcindoe-37.html>.

188 See previous paragraph.

189 ref SG-GREFFE(2011)D/F7974, No. 2011/2064, 19/5/2011.

190 European Commission letter dated 22.3.2012. In response to this, a further clarification letter was sent from the Cypriot Government on 25.07.2012.

191 The EU Commission sent letters on 22.09.2009 and 20.05.2011, which had been responded to by the Cypriot government on 27.01.2011 and 25.07.2011 respectively.

accession period suggest a predominance of the sovereignty principle in the exercise of immigration policy: 'Permission to enter was in the discretion of the appropriate authorities of the Republic in accordance with the provisions of the Aliens and Immigration Law, Cap. 105. Power to refuse entry to aliens is an incident of the sovereignty of the country. The discretion to refuse entry to an alien is very wide bordering on absolute discretion.'<sup>192</sup> In 2011 on a number of cases the Supreme Court cited *Moyo* as authority on the sovereignty logic exercised in cases of Union nationals and their family members.<sup>193</sup> Little, if any consideration is given by the Courts to the length of stay of the persons threatened with expulsion or with a no re-entry ban, or to whether or not the crime in which they were allegedly implicated amounted to a threat to public security; the Courts would invariably assume that the length of stay in Cyprus was irrelevant, as was the applicants' age, state of health, family etc, and that the crime they were linked to was a public security issue.<sup>194</sup> A further notable characteristic of the cases below is that the Court was satisfied that confidential information held by the police can justify a deportation decision even in the absence of any formal complaint against the applicants, thus vesting the police with unlimited discretion to collect and assess information that is of determining significance for the case without having to justify its source or its credibility.

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192 In *Moyo and another v. Republic* (1988) 3 CLR 1203, Pikiis Judge (pages 226-227) quoted from the case of *Amanda Marga Ltd v. Republic* (1985) 3 C.L.R. 2583, stating: 'The passage cited below is definitive of the powers of the State and suggestive of the breadth of the discretion to refuse entry to an alien. I adopt and repeat it as an accurate statement of the law (p. 2587): 'By the terms of the Aliens and Immigration Law, Cap. 105, the discretion of the State to exclude aliens is very wide, as broad as it can be in law, consistent with the supremacy and territorial integrity of the State; but not absolute. It is subject to the bona fide exercise of the discretion. So long as the discretion is exercised in good faith, the Court will query the decision no further. An alien, subject to any rights that may be conferred by convention or bilateral treaty, has no right to enter the country. His only right is that an application to enter the country should be considered in good faith. Acknowledgment of any further obligation on the part of the State would be inconsistent with the sovereign right of the State to exclude aliens.'

193 *Abdulkader Majed v. Republic of Cyprus* No. 1099/2009, 7.2.2011. The court expressly referred to the cases *Ηρώα v. Δημοκρατία* (2005) 3 Α.Α.Δ. 307, *Slavova v. Δημοκρατία*, 1272/2000, 18.4.2002, *Moyo and another v. Republic* (1988) 3 CLR 1203 και *Amanda Marga Ltd v. Republic* (1985) 3 C.L.R. 2583). Many other cases in 2011 cited the same authority.

194 In 2010, a complaint was submitted to the Equality Body by AW, a British national permanently residing in Cyprus, for the deportation order issued against his same-sex partner JM, a British national originating from Tanzania, with whom he had a steady relationship for the past nine years. At the time of submission of the complaint, JM was serving a prison sentence for drunk driving. The immigration police decided his deportation because he was an HIV carrier and thus suffering from an infectious disease threatening public health, as per article 6(1)(c) of the Aliens and Immigration Law. His name was also added on the stop list, banning his re-entry into Cyprus for the next 10 years from the date of deportation. The complaint was supported by a medical certificate from a doctor in UK certifying that JM had never had an AIDS event and because his virus is controlled medication, he could not be described as a 'threat to the population of Cyprus'. The immigration department declared JM as an 'unwanted immigrant' who had to be deported due to: the 'seriousness of the offence for which he was sentenced to imprisonment'; his actions which show that he poses 'a genuine, present and sufficiently serious threat affecting the public and legal order and public health'; and because 'he has no bond with Cyprus and his family resides in the UK'. The Equality Body ruled that the measures taken were disproportionate to the conviction of JM (one month's imprisonment for drunk driving). No investigation had been carried out in order to conclude that his behaviour was such so as to constitute a threat to public order. The conclusion that JM was a danger to public health emanated not from a medical source, but from a district immigration officer. The Equality Body criticised the immigration authorities' allegation that JM has no bond with and no family in Cyprus, since it was known to them that JM had a long standing relationship with a permanent resident: Equality Body Report Ref. A.K.P 69/2010, dated 16 June 2010.

[http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/\\$file/AKP69.2010-16062010.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/$file/AKP69.2010-16062010.doc?OpenElement).

Certain conclusions may be drawn from the regular practice of tactical retreats by the immigration authorities when faced with Court actions for unjustified deportations of EU nationals or their family members. Although perhaps the number of cases is still too small in order to legitimately describe this policy as a trend, it is noticeable that the authorities are quick to revoke deportation orders or no-entry bans, where they are likely to face actions in the District Courts for compensation on the basis of Article 146(6) of the Constitution.<sup>195</sup> In the case of *Robert Harvey v. the Republic of Cyprus* discussed below, the applicant's claim to have his unlawful detention deportation order *annulled* rather than *revoked* gave him the right to claim damages against the Republic, which he would not have been entitled to had the immigration authorities managed to revoke the orders prior to annulment by the Court. One cannot dismiss the presumption that the Republic chose not to contest his claim in order not to upset its diplomatic relations with the British High Commission in Cyprus, which was clearly not a concern for Bulgarian or Romanian nationals, since their respective governments' support is not of as crucial significance as that of the UK government.

*Supreme Court approves deportation of a Bulgarian national on suspicion of illegal activities, based upon confidential information held by the police*

In *Krisztian Bekefi v. Republic of Cyprus*,<sup>196</sup> the Supreme Court dealt with a complaint of a Bulgarian national deported on suspicion of illegal activities, based upon confidential information held by the police. An ex parte application on behalf of a deported Hungarian national seeking to annul the decision to deport him until his case is heard in Court. The applicant presented a police document naming the applicant as dangerous person for participating in an illicit group offering 'protection' and beating up Greek Cypriots and foreigners. Information about this group was given to the police but no official complaint was launched since the victims were alleged to have been blackmailed. The applicant argued that the deportation decision is illegal because it did not comply with the principle of proportionality, foreseen in article 29 of the law transposing Directive 2004/38<sup>197</sup> and that it was also in breach of article 30 of the same law which requires that the authorities take into account the applicant's age, state of health, family and economic situation, social and political integration in the Republic and his links with his country of origin. His main line of argumentation was that the decision to deport the applicant was taken on the basis of suspicion and without proof or formal complaint, but rather on information and general assessment of the facts by the police. The Judge ruled that where the information draws on credible sources and cause concern regarding the presence of a migrant in Cyprus, the deportation decision may be justified even if the evidence is merely general indication. Citing previous authorities the judge found that the presence of the applicant when his case is being tried is not necessary since the case can be examined on the basis of written testimony and the applicant will not sustain irreparable damage by the non-cancellation of the deportation order.

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195 Article 146(6) of the Constitution provides that any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared there under that it ought not to have been made, shall be entitled to damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.

196 Supreme Court case N. 293/2012, dated 7 March 2012.

197 Law N. 7(1)/2007.

*Supreme Court suspends the no-entry ban of Romanian national unlawfully deported*

In *Anghel Viorel v. The Republic of Cyprus*<sup>198</sup> the Court ruled in favour of a Romanian national residing in Cyprus from 1991. In 1993 he married another Romanian and in 2001 they had a child. From May 2007 he had a visa to reside in the Republic as a Union citizen, set to expire in May 2012. He continued to reside lawfully as his stay by then exceeded five years. In July 2012, he was deported for reasons of public security upon the instructions of the Attorney General who ordered his deportation before the expiry of three days from his arrest. He had no criminal record, no judgment against him nor was there any criminal procedure pending against him. Following the filing of a recourse challenging the legality of orders issued against him for deportation and prohibition of re-entry, the applicant also filed an *ex parte* application seeking to arrest the execution of the orders until the recourse is tried.

The applicant's lawyer alleged manifest illegality, in view of the fact that the applicant was deported merely upon the instructions of the Attorney General. He further alleged manifest illegality in the procedure followed for the deportation, as the applicant was not given one month from notification of the deportation decision to enable him to appeal against it, in accordance with article 32(3) of the law; he had been deported within a day from the issue of the detention order. He further alleged a breach of the proportionality principle, bearing in mind his bonds with Cyprus, the fact that he had no criminal record and no criminal prosecution against him.

The Court ruled that the deportation did not meet the preconditions set out in article 29 of the law nor did it observe the procedural safeguards set by article 33. Given that the deportation had already been executed, the Court ordered the suspension of the prohibition of entry of the applicant into the Republic.

*Supreme Court denies compensation to a Bulgarian national deported on 'public security' grounds*

In *Stenoslav Stoyanov v. The Republic of Cyprus*<sup>199</sup> the Supreme Court denied compensation to a Bulgarian national deported on 'public security' grounds. The applicant was a Bulgarian national who worked in Cyprus as a Union citizen, until he was declared an unlawful immigrant under article 6(1)(z) of the Aliens and Immigration Law Cap 105, on the basis of confidential information supplied to the police that he was involved in illegal activities as a member of a group that offered private security services. His registration was cancelled and orders of detention and deportation were issued against him. He was subsequently deported and his name was entered on the stop-list. In the course of the investigation for the purposes of the trial, the respondents revoked the challenged administrative decisions because these were based on the wrong article of law 7(I)/2007. The revocation letter added that the applicant, apart from being an illegal immigrant under article 6(1)(z) of the Aliens and Immigration Law, was a threat to public order under article 29 of Law 7(I)/2007 and his re-entry into the Republic was thus forbidden for the next ten years. The respondents argue that in view of the revocation, the present application lacks substance, whilst the applicant contends that even if the revocation is valid (which he disputes) there remains a damaging impact entitling the applicant to claim compensation under article 146(6) of the Constitution.

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198 *Anghel Viorel v. The Republic of Cyprus*, Supreme Court Case No. 1064 /2012, dated 2 August 2012, *ex parte* application dated 17.07.2012.

199 *Stenoslav Stoyanov v. The Republic of Cyprus*, Supreme Court Case No. 1406/2011, dated 31 May 2012.

The Court found that the applicant failed to mention anything specific in order to prove his allegations about damaging impact and failed to produce evidence to substantiate his claims about loss suffered as a result of rentals paid, current accounts, furniture and vehicle. And although the compensation claim would have to be tried by the District Court and not by the Supreme Court, the latter nevertheless had to be convinced that there was some damaging impact. The applicant's claim, that a damaging impact emerged as a result of the violation of his right to freedom from detention and deportation, was also rejected by the Court because the administrative act challenged was erroneous only partly and only technically, since it was based on article 35 of Law 7(I)/2007 whilst there was no previous conviction; the simultaneous decision of declaring the applicant an illegal immigrant under article 6(1)(z) of the Aliens and Immigration Law was still valid and reasonable, in light of information gathered by the police. The applicant was still regarded as a threat to public security under another legal provision than the one initially invoked (article 29 rather than article 35 of Law 7(I)/2007). The Court further found that there remained no damaging impact, nor any deprivation of any of the applicant's rights.

It is questionable whether the test of laid down in *Tsakouridis* about 'serious grounds of public policy or public security' is satisfied in this case. Moreover, this decision essentially strips the applicants of his rights to claim compensation under article 146(6) of the Constitution, to recover from the District Court the losses he has suffered as a result of the administrative acts challenged and lifts the bar to deportation on the ground of public security based merely on police confidential information.

*Supreme Court annuls unlawful detention/deportation decision to enable British citizen to claim compensation*

This is a rare case where the Supreme Court<sup>200</sup> annulled as unlawful the detention/deportation decision to enable a Union citizen to claim compensation. The applicant, a British national residing in Cyprus for the past few years was detained for the purpose of deportation, based on orders of detention and deportation issued against him. His detention lasted for only a few hours and he was then released upon the orders of the Ministry of Interior which revoked the aforesaid orders. In spite of the revocation, the applicant insisted on annulling the decisions so as to seek damages for unlawful detention. The respondents agreed to the annulment of the challenged decision.

The Supreme Court ruled in an uncontested claim by the applicant that the detention for the purpose of deportation/expulsion of a British citizen was unlawful as a violation the EU *acquis* on free movement. In particular, the court decided that it was unlawful to use the provision of Aliens and Immigration law Cap. 105,<sup>201</sup> a provision stipulating the conditions for deporting/excluding foreigners, in combination with article 35 of Law 7(1)/2007, which purports to transpose art. 33 of the Free Movement Directive 38/2004. The Court found that the correct legal framework to use is article 27 of Law 7(1)/2007, which purports to transpose art 33 of the Free Movement Directive given that the expulsion order was not the penalty or legal consequence of a custodial penalty. In light of the fact that the application for annulment was not contested by the respondents, the Court annulled the decision challenged.

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200 *Robert Harvey v. the Republic of Cyprus*, Supreme Court Case No. 1726/2010, dated 17 January 2012.

201 The law dating from colonial times but with tens of amendments: Sec. 6(1)(ζ) and 14 of Cap. 105.

Subsequent attempts by other applicants to rely on this judgment met with the Court's refusal, as the judge would argue that the claim in *Harvey* had been uncontested by the respondents. This particularity of *Harvey* places it in a category of its own; it does not rank as a precedent, and it is unlikely that other Union citizens, particularly from eastern European countries would succeed without consent of the immigration authorities.<sup>202</sup>

*Other Cypriot cases of expulsion of Union citizens or member of their families*

In *Shahbaz-ul-Hassan Shah v. Republic of Cyprus*,<sup>203</sup> the Supreme Court considered and rejected an application to suspend the execution of detention and deportation orders against spouse of Union citizen. The applicant filed a recourse seeking annulment of the detention and deportation orders issued against him and at the same time filed an ex parte application seeking the suspension of the two orders until the final trial. Whilst the recourse is still pending, this is the examination of the ex parte application. The applicant is a Pakistani student who married a Polish woman in a religious Moslem marriage; his wife is expecting a child. In May 2012 he was arrested because his student visa had expired; detention and deportation orders were immediately issued against him. A few days later he filed an asylum application which postponed the execution of the deportation order until the determination of the asylum application. The applicant sought a postponement until the determination of the appeal which he will file in case his asylum application is not successful. He further argued that his detention violates inter alia Law 7(I)/2007 on the right of Union citizens and their families to move freely and reside in the Republic. He had not sought the legalization of his residence in Cyprus on account of his marriage to a Union citizen, claiming that the law grants him an automatic right of residence.

The Court rejected the ex parte application for suspension of the orders because there was no manifest illegality in the orders nor will their non-suspension lead to an irreparable damage. The Court refused to consider whether Law 7(I)/2007 grants an automatic right to reside in the Republic without prior application to the authorities, as this will be examined during the hearing of the substance of the recourse filed by the applicant. In view of this refusal, the Court found that the applicant's arrest and detention did not amount to a manifest violation of Law 7(I)/2007. Besides, added the Court, the applicant chose another way of legalizing his stay in the Republic, that of applying for asylum, therefore no issue of irreparable damage arises.

***Casteels (C-379/09)***

It is difficult to foresee how *Casteels* would impact the Cypriot context. No similar case or issue has been raised in Cyprus. If a Union citizen works for the same company in different member states, he/she becomes entitled to supplementary pension benefits (and other benefits), so that he/she is in a no less favourable position than if he/she had always worked in the country originally employed. However, the average employer in Cyprus is an SME and there are few if any multinational companies able to employ persons in different member states.

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<sup>202</sup> A factor which may be of importance is the fact that we are dealing with a British citizen; in general Cyprus retains very good diplomatic relations with its' former colonial master and the British High Commissioner has a strong standing in Cyprus, particularly of matters relating to the rights of British citizens.

<sup>203</sup> Supreme Court case 884/2012, dated 17 July 2012, Interim application dated 6 June 2012 for suspension of detention and deportation orders.

***Other Cypriot Cases on Free Movement*****Technical qualifications obtained in Greece equivalent ‘university degree’ required by Cypriot law<sup>204</sup>**

The applicant, a police sergeant, filed an application against the Chief of Police regarding his decision not to promote him to the rank of Police Lieutenant. The terms of the promotion required six years of service and a university degree or equivalent; or alternatively, a seven year service and a tertiary education qualification. At the time, the applicant had completed six years of service, but his technical education degree (obtained in Greece) was not recognized as ‘equivalent’ to a university degree, but only as ‘equal’ to a university degree. This is in spite of the fact that in Greece such technical degrees are considered as equivalent to a university degree.

The Court found that the terms ‘equal’ and ‘equivalent’ are identical and thus the applicant was entitled to the promotion, as his six years of service sufficed in light of the fact that he held a qualification that was deemed equivalent to a university degree.

In view of this conclusion, the Court did not examine the applicant’s allegation for breach of Directive 2005/36/EC and allowed the applicant’s request to annul the Chief of Police’s decision not to promote him.

**Professional qualifications in UK sufficient for registration as a professional in Cyprus without having to resubmit documents**

In *Varnava*<sup>205</sup> the applicant was the holder of the degree of Bachelor of Science in Chemical Engineering Imperial College (London University) and is registered in the Members’ Register (Chemical Engineering Branch) of ETEK- the Scientific Technical Chamber of Cyprus (the respondent). He was also a member of the Institution of Mechanical Engineers and of the European Federation of National Engineering Associations (FEANI). He applied to ETEK to be registered in its Mechanical Engineering Branch, so as to be able to work as a mechanical engineer in Cyprus. For the purposes of examining his application, ETEK asked the applicant to submit a number certified copies of his degree and analytical statement of all subjects and grading for all the seven years of his studies. The applicant argued that the documents so requested need not be submitted given that the applicant is in possession of an equivalent U.K. qualification that entitles him to exercise the said profession in U.K. He claimed that this requirement is in breach of articles 36.a and 36.b of Directive 2005/36/EC.

ETEK declined his application for registration as a mechanical engineer because he did not have a university degree in mechanical engineering. ETEK argued that the applicant should submit to it all documentation on the basis of which he earned his registration at the IMechE. The applicant claimed that his qualifications had already been evaluated by the Engineering Council of UK and FEANI, both of which found his qualifications satisfactory in order to grant him the titles of Chartered Engineer and EUR ING respectively; and that ETEK’s requirements for their re-evaluation in order to permit him to practice this profession in Cyprus do not comply with the EU acquis and Council Directive 2005/36/EC.

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204 *Petros Petrou v. Chief of Police*, Supreme Court (Review Authority) Case No. 847/2010, dated 10.02.2012.

205 *Kyriakos Varnava v. ETEK (Scientific Technical Chamber of Cyprus)*, Supreme Court of Cyprus, case No. 1470/2010, delivered on 30.04.2012.

According to the Court, the issue was whether the exercise of the profession of mechanical engineer in Cyprus which requires qualifications in accordance with Article 11d of the Directive was at the same level as that required for the same profession in the United Kingdom. Through his membership to such professional associations as well as the fact that he was a recognized chartered Engineer in the UK, he appears to have held the qualifications at level (e) of the Directive. Consequently, the level of qualifications of the applicant acquired in UK seems to cover the corresponding level required in the Republic according to Article 15 (d).

The Court found that ETEK was not justified in insisting on re-examining the applicant's educational qualification that earned him the membership of the IMech Eng/Eng Council, pointing out that ETEK failed to address the applicant's request that his application be examined on the basis of the fact that he was a member of the Engineering Council (EC). The Court ruled that ETEK's decision to decline the applicant's application is based on insufficient investigation and lacks satisfactory justification. The Court rejected the argument of ETEK's lawyer that the scope of application of Law N.31(I)/2008 which transposed Council Directive 2005/36/EC, excludes the applicant as it is restricted to citizens of other EU members, because the Law itself clearly states that 'it applies to every citizen of a member state.' Thus the Court allowed the applicant's request and annulled ETEK's negative decision.

**Equality Authority finds indirect discrimination on the ground of language regarding the exercise of the profession of the insurance mediator<sup>206</sup>**

On 09.10.2005, a repatriated Cypriot who had lived in UK until 2003 and whose mother tongue was English complained to the Equality Body about his problems in accessing the labour market due to regulations which prevent him from taking a written exam in a language other than Greek or Turkish. The same regulation applies not only to repatriated Cypriots but also to Union nationals residing in Cyprus. From the content of the Regulations on the Exercise of Insurance Work and other Related Matters (Amendment) of 2004 (N. 806/2004) it does indeed emerge that insurance mediators wishing to work in Cyprus must have knowledge of the Greek and/or Turkish language.

The Equality Body found this requirement to be justified only to the extent that insurance contracts were targeting exclusively Greek or Turkish speakers, which is not the case since Cyprus' accession to the EU and the movement of large numbers of Union citizens to Cyprus for work. With references to the legislative framework for the free movement of workers and for non-discrimination in access to the labour market, including ECJ case law on measures prohibiting, impeding or rendering less attractive the exercise of the right to free movement, the report concluded that the conduct of written examination for a professional license only in the Greek language, amounts to indirect language discrimination not only for Union citizens wishing to practice a particular profession but also for those Union citizens residing in Cyprus whose mother tongue is not the official language of the Republic, as they are deprived of services in their native language or in a language they understand. The report added that the right of Member States to require a certain level of knowledge of the national language cannot justify the exclusion of professionals with suitable qualifications from other Member States.

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206 Ref. A.K.I. 9/2006 & A.K.I.A 1/2012, dated 9th February 2012.

## CYPRUS

The report suggested that applicants be allowed to take the examination in (at least) English, recommending to the authorities to introduce a fee payable by the applicants in order to cover the expenses resulting from this (e.g. translation costs).<sup>207</sup>

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207 The report is available in Greek at the Equality Body's website: [http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive\\_gr/presentationsArchive\\_gr?OpenDocument](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument).