

# **REPORT**

## **on the Free Movement of Workers in Cyprus in 2012-2013**

Rapporteur: Nicos Trimikliniotis  
University of ...

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## **Contents**

Introduction

Chapter I The Worker: Entry, residence, departure and remedies

Chapter II Members of the family

Chapter III Access to employment

Chapter IV Equality of treatment on the basis of nationality

Chapter V Other obstacles to free movement of workers

Chapter VI Specific issues

Chapter VII Application of transitional measures

Chapter VIII Miscellaneous

## Introduction

The current economic crisis, particularly with the financial/banking crisis in March 2013, has produced a serious deterioration of the terms of the public debate over the employment of migrants and Union Citizens in Cyprus. As a result xenophobic and racist discourses are regular in the immigration and employment debates, directed against migrants, including Union citizens. As unemployment rises, anti-immigrant sentiments are being hyped by the media and certain politicians. As the economy is expected to contract around 7 percent in 2013, unemployment in Cyprus was recorded in September 2013 at 17.1% or 76,000 persons compared to 16.9% or 75,000 persons in August. Cyprus recorded the highest increase among EU member states since September 2012, from 12.7% or 56,000 persons to 17.1% or 76,000, which is the third highest percentage in EU following Greece's 27.6% (July 2013) and Spain's 26.6%. In Cyprus unemployment has been steadily increasing from 10.5% in June to its current levels. Moreover, public sector austerity measures to reduce the public debt and deficit have further deepened the slump. Also the crisis has brought more precarity, insecurity, use and abuse of undeclared work, particularly affecting EU workers.

Since taking office in March 2013, the newly elected conservative Government announced a change the policy and has already suspended for a period of two years as regard the free movement for Croat workers, following the EU accession of Croatia.

Government restrictive immigration policies, which also affect Union citizens, are depicted as measures to reduce unemployment of Greek-Cypriot workers. Politicians, officials, representatives of the Employers Association and trade unionists supported more stringent controls on the employment of migrants, including EU citizens, and are almost unanimously calling for 'priority for employing Cypriots'. The Government package announced stressed that the country would cease to be a 'migrants' paradise' and announced that it has a 'gentlemen's agreement' with social partners about imposing a quota on 'foreign workers' at 70-30 ratio, i.e. 70% Cypriots and 30% foreigners. It is unclear how such a 'gentlemen's agreement' would operate in practice, i.e. whether this will be a 'target' of 70%-30% to hire over the next two years and how the implementation of the 70% of the staff to be Cypriots and the rest will from other nationalities, as announced. This may well be nationality discrimination forbidden the free movement of workers *acquis*.

The policy of requiring Greek language in vocational in job descriptions especially in the hotel and tourism sector has been offered as such a policy. This has already been implemented in the form of Greek language requirement as qualification for holding certain posts in the private sector for the jobs in the Hotel/Catering industry for eight vocations relating to the sector at the different required levels: Reception, Presentation of foods and drinks, Food Preparation and Cooking, Housekeeping, Travel Agency Operations, Bakery, Confectionery, Preparation and presentation of drinks. Officials from the Ministry of Labour and the Ministry of Interior consider that there is no binding policy as such for the private sector to impose restrictions on Union citizen workers, as the prototypes/models for jobs in hotels/catering. Trade unions nonetheless consider the Government measures as inadequate and one trade union, proposes the immediate revocation of the work permits for third country nationals and the suspension of free movement of workers from EU member states. However, human rights and migrant support organizations speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals.

As regards 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. It seems that from the above subjects three issues are still problematic:

- *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.*

Cyprus has deported a total of 1795 Union citizens since 2004: 208 in 2011, 288 in 2012 and 114 only for the first five months of 2013, mostly from Romania (697), Bulgaria (338) and Poland (222) and Greece (175). The numbers are very high given that the grounds for expelling Union citizens are narrowly defined by the EU *acquis*. The grounds for expulsion are often alleged fake marriage, which is highly questionable whether this ground is legally justified as ‘imperative threat to public security’, as required by the standard set by the Directive. The national courts seem unwilling to properly check on the immigration authorities, at least this can be deduced from the case law gone before the Supreme Court. Relevant here is the recent ECtHR case, *M.A. v. Cyprus* (application no. 41872/10), which held that there was violation of Article 5 § 4 of the Convention (effective remedy to challenge lawfulness of detention) as domestic remedies must be certain and speedy.

NGOs and human rights lawyers have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens. In fact, they complain that since March 2013, the authorities have further intensified and make increasing use of deportation and placement on stop list of migrants, including Union citizens. Recent studies show a number of aspects of non-conformity with the Return Directive (20085/115/EC) both in terms of transposition and implementation, despite the fact that the latest amendments to the legislation were implemented over the last couple of months. A major issue concern is the current practice is not line with the above Directive and the landmark case of *El Dridi* C-329/11 the continued practice of criminalising of migrant related offence, detention and imprisoning migrants as common penal convicts. The Commission warning letter refers to the administrative practice of requiring too many documents, contrary to ECJ case law C-68/89. In response the Cypriot authorities refer to circular issued by the Archive of Population (18/07/2011) which stipulates the content of the law transposing the directive.

Moreover, two recent deportations of migrant women, a third country national who was a recognized victim of trafficking and an Union citizen, a woman from Romania in violation of a Supreme Court order has become major controversies in the public debate. Currently, the Minister of Interior and the Civil Registry and Migration Department are facing proceedings before the Supreme Court for contempt and violation of a court order to for the deportation of the Romanian woman, who resided in Cyprus from 2006, who had been arrested for deportation because she was suspected of having committed a ‘marriage of convenience’. The Supreme Court, however, prevented her deportation by decree. The Civil Registry and Migration Department, with the agreement of the Minister of Interior, issued a warrant for her arrest, in violation of the Supreme Court order, and subsequently deported her.

Concerns have been raised as to the implementation of the rights of EU citizens working or visiting Cyprus, their partners and family members. Questions relating to equal treatment and human rights violations of Lesbian/ Gay, Bisexual and Transsexual persons in the exer-

## CYPRUS

cise of free movement, arising from the failure to regulate same-sex marriages and registered relations in Cyprus. Also there are issues regarding the right of Union citizens to marry persons who are asylum-seekers.

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

The issue of reverse discrimination has not been resolved despite the Ministerial Committee for the Employment of Aliens decision on 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. Family members who are third country nationals continue to be discriminated in different ways. Courts ignore this and often treat family members of Cypriots differently.

A particular issue relates to the conditions of employment of union citizens who are trainees in the hotel industry and allegedly face nationality discrimination, particularly hotels and restaurant offering 'all inclusive package' who are used for social dumping, displacing other workers who are regularly employed in hotels, as trainees have no contract and are not bound by collective agreements. The matter is still being examined by the Cyprus Equality Authority.

The official position is that over the last years there has been an upward trend of 'Marriages of Convenience' from 2003 to 2011: 9 sham marriages in 2003 and 132 in 2011.

## Chapter I

### The Worker: Entry, Residence, Departure and Remedies

The figures in the table below are provided by the Archive of Population and Migration which show the overall picture as regards the valid permits and certifications for EUNs and TCNs. However, these may not reflect the actual numbers as there is no obligation for EUNs to declare that they have left the country, nor they account for the number of irregular or undocumented migrants in the country.

Statistical Data from the Archive of Population and Migration from 01/01/2013 - 30/09/2013				
		Valid Permits	Pending applications for extension of permits	Total
Number of Immigrants (from 2001)	9871	881		881
Long Term residency permits		284	36	320
<b>Family members</b>				
General employment		2988	583	3571
Visitors		2900	777	3677
Members of Family of EU nationals		5712	338	6050
International companies		2197	152	2349
General employment		7373	2088	9461
Domestic workers		28654	4052	32706
Visitors		5031	1827	6858
Family reunification permits		1464	134	1598
Artist		73	28	101
Students		2052	516	2568
Refugees and persons with subsidiary protection and humanitarian status		3421	210	3631
Asylum applicants (until 31/08/2013)		3899	1273	5172
Pending applications before the Refugee Review Authority (no permit granted – until 31/08/2013)	714 cases/1195 persons		1195	1195

CYPRUS

Total of legally resident TCNs				<b>80138</b>
EU nationals with valid registration certificate		121657	269	<b>121926</b>
EU nationals with certification of permanent residence MEU3		860	85	<b>945</b>
<b>Total of registered EU nationals</b>				<b>122871</b>

**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 JOBSEEKERS**

**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 jobseekers in Cyprus, or on those requiring public assistance. The practice appears to be in line with the *Antonissen* criteria.<sup>1</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>2</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 explic-

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1 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*.

2 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.

itly 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 days of stay in the country.<sup>3</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 jobseeker has become an 'unreasonable burden on the social assistance system;' no such case in the court has been reported. Ministry of Labour officials maintain 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.

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

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

raised with the Cypriot authorities.<sup>4</sup> The European Commission considered that although the Directive had been correctly transposed, it was informed of implementation problems, as 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 jobseekers 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>5</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>6</sup>

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4 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.

5 As amended; relevant regulations have also been issued.

6 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 de-

is payable to employed persons and voluntary contributors working abroad in the service of a 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>7</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>8</sup> or been credited<sup>9</sup> with contributions in the previous contribution year<sup>10</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>11</sup>

### 2.2.2 Social/public assistance

Public assistance is provided under Law 95(I)/2006<sup>12</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>13</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

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pendent 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.

7 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).

8 Insurable earnings on which contributions have been paid.

9 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.

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

11 This came into effect on 1st May 2010.

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

13 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.

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.

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>14</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 jobseekers 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 jobseekers.

Refugees residing in the Republic whose income and other means are not sufficient for their basic needs are entitled to public benefit.<sup>15</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

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

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

the situation of Union citizens requiring public assistance, including jobseekers allowance.<sup>16</sup> 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>17</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’.<sup>18</sup> 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:

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16 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 a family member of a Union citizen based on the law on free movement of workers. The Social Welfare Service decided to discontinue the public assistance on the ground that he was not allowed assistance as his residence status was that of a dependent of his mother, who is a Union citizen with a residence permit for reasons of employment activity (Letter to the complainant by the Paphos District Social Welfare Service dated 5.6.2007).

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

18 See p.4, Equality Body report Ref. AKP 70/2007.

- 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.
- 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>19</sup>

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

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 various laws.<sup>20</sup> There are important legal, conceptual and practical difficulties that generate different kinds of repercussions on free movement of workers arising from the situation in Cyprus. 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>21</sup> a regime that remains unrecognised; it is an area where the implementation of the *acquis* has been suspended 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>22</sup> to the territorial application of the implementation of the Directive<sup>23</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>24</sup> as well as any other rights beyond the right of residence ‘only in relation to Union citizens and the members of their families who reside in the territory in which the Republic of Cyprus exercises effective control.’<sup>25</sup>

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

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19 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 e recommendations of the Cypriot Equality body (AKR 33/2004, dated 10.1.2005).

20 For instance the kind of rights and benefits discussed in the cases of C-212/05 *Hartmann* and C-213/05 *Geven*.

21 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’.

22 This is also the case in other laws.

23 Such as section 20 of the law.

24 Under sec. 22 (1).

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

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.

### ***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.

### ***2.3 Implementing Article 7(3) (b) of Directive 2004/38***

The national legal provision implementing Article 7(3) (b) of Directive 2004/38 is provided in Article 9(4) of Law 7(I)/2007 transposes verbatim art.7(3)(b) of the Directive.

The Labour Department maintains that there are no differences between the implementing national measure and the measure that implemented Article 7 of Directive 68/360, as the practice of the Public Employment Service (PES). The PES operates according to the ILO 'Employment Services Convention' (No. 88). According to article one (1) of the Convention each member state has the obligation to maintain a free Public Employment Service. The above Convention has been ratified by the Republic of Cyprus in 1960 and has become an integral part of the country's legislation. The above Convention provides the major legal framework for the operation of the Cyprus Public Employment Service.

The Labour Department of the Ministry of Labour and Social Insurance also maintains that there is no difference in the treatment and rights of a national worker in the situation regulated by 7(3)(b) and an EU worker. There are no recorded official complaints; however NGOs claim that there is a sustained general campaign to make it uncomfortable for EU migrant workers to claim their rights; nonetheless, no specific discrimination or other complaints have been made publically available against the PES.

On 1.7.2013 there was a memorandum to all officers in the Public Employment Service (PES) by the deputy Director of the Labour Department on the handling of registered unemployed persons who reject offer from the PES. The memorandum stipulated that on the ground that there is a high unemployment and on basis of the declared Government policy on further enhancing the efficiency of the PES it is decided that a stricter criteria as to the rejection of an employment offer from the PES, analogous to their qualifications. Therefore a registered unemployed person who rejects an employment offer twice and the PES considers that the rejection is not objectively acceptable or justified, this person is struck off the list of the PES and consequently loses of benefits and social advantages as a result of this. This memorandum codified what were oral instructions given in the past to PES officers but it is impossible to say how and whether it was actually practiced.

The conditions that must be met in order to be considered that a person is duly recorded involuntary unemployment are the following:

- a) The registered unemployed person is no longer resident in the country, or

## CYPRUS

- b) The registered unemployed person rejects an employment offer twice and the PES considers that the rejection is not objectively acceptable or justified.

National legislation imposes no additional conditions; there are no time limits concerning the period of time someone to retain worker status. The retention of the worker status in relation to benefits is limited once the person is struck off the registered unemployed list. However, it is doubtful whether it is possible to deny someone benefits or social advantages, such as training courses available for the unemployed.

### 3. OTHER ISSUES OF CONCERN

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

The practice of not properly recognising the rights of EU citizens and their families by the immigration authorities continues: NGOs have long complained about the detention and deportation of foreigners, including EU citizens relating acquiring right to permanent residence; since the March 2013 it is alleged that this practice has intensified. Particularly in deportation cases, the authorities are directly invoking security and public order justifications. It must be noted that EU citizens are also divided along similar class lines, for the vast majority of EUNs, who fall in the category of subaltern migrants; they also face the danger of detention, deportation and entry ban, albeit not at the same levels. A number of violations of rights of EU citizens have been reported, the most serious of which relates to their detention, expulsion, and entry bans. Whilst some restrictions to be placed on the right of free movement and residence on grounds of public policy, public security, or public health, in the RoC they are routinely detained and expelled .

#### *Deportations of Union Citizens 2004-2013 (01/01 - 31/05)*

Country	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013 (01/013- 1/05)	Total
Austria	0	0	0	0	1	0	0	0	0	0	1
Belgium	1	0	1	1	1	0	0	0	1	1	6
Bulgaria	64	39	42	9	11	13	28	45	59	28	338
Czech Republic	0	1	0	0	2	2	1	0	0	0	6
Denmark	0	0	0	1	0	1	1	1	0	0	4
Estonia	0	0	2	0	0	0	3	1	0	0	6
Finland	0	0	0	1	0	0	0	0	0	0	1
France	2	0	1	0	6	0	3	0	2	4	18
Germany	0	2	3	2	1	0	0	3	1	1	13
Greece	18	25	41	24	16	9	7	12	13	10	175
Hungary	0	0	0	0	2	0	0	7	0	0	9
Ireland	0	9	1	0	3	0	0	3	0	0	16
Spain	0	0	0	0	0	0	0	0	1	0	1
Italy	0	0	1	1	1	2	0	0	0	0	5
Latvia	0	3	1	5	7	2	9	4	5	2	38
Lithuania	0	2	1	1	5	1	0	2	8	0	20
Netherlands	1	1	0	2	0	1	0	1	0	0	6
Poland	11	26	45	28	28	34	15	19	12	4	222
Romania	15	28	79	20	52	79	90	103	175	56	697
Slovakia	0	2	12	19	13	6	4	1	2	1	60
Slovenia	2	0	0	0	1	0	0	0	0	0	3
Sweden	0	0	0	1	6	2	0	0	0	1	10
UK	14	15	26	25	20	12	7	6	9	6	140
<b>Total</b>	<b>128</b>	<b>153</b>	<b>256</b>	<b>140</b>	<b>176</b>	<b>164</b>	<b>168</b>	<b>208</b>	<b>288</b>	<b>114</b>	<b>1795</b>

As the table above shows, the RoC has deported a total of 1795 Union citizens since 2004: 208 in 2011, 288 in 2012, and 114 only for the first five months of 2013. Since 2004, the deported were 697 Romanians, 338 Bulgarians, 222 Polish, 175 Greeks, and 140 British. The numbers are only a fraction of the numbers of TCNs deported, who are over 10,000 persons only for 2010–2012. EU citizenship has not prevented the Cypriot immigration authorities from deporting EU nationals. The numbers of deportation for security grounds are excessively high given that the grounds for expelling Union citizens are narrowly defined by the EU acquis and the size of Cyprus. The grounds for expulsion are often alleged fake marriage, which is highly questionable whether this ground is legally justified as ‘imperative threat to public security’, as required by the standard set by the Directive. The official position is that over last few years, there has been an upward trend of ‘Marriages of Convenience’ from 2003 to 2011: nine sham marriages in 2003, and 132 in 2011. The table above shows the numbers of deportations of EU citizens since Cyprus joined the EU April 2004.

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.

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, exit 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.

### ***3.1.1 Analysis Cyprus Deportations of EU nationals***

EU law provides for very limited power to remove Union citizens from a member state as specified under Article 83(1) TFEU and Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

A number of Cyprus Supreme Court cases are analysed in Chapter VIII section 7.

The case of *P. I. v Oberbürgermeisterin der Stadt Remscheid*, Case C348/09 ( 22 May 2012), ruled on Article 28(3)(a) of Directive 2004/38/EC on the issues of the extent of the powers of member states to use Expulsion decisions for criminal conviction; particularly on the kind of offence and the factors to be taken into account that would make the matter ‘imperative grounds of public security’. The following question to the Court of Justice was asked for a preliminary ruling:

‘Does the term ‘imperative grounds of public security’ contained in Article 28(3) of Directive [2004/38] cover only threats posed to the internal and external security of the State in terms of the continued existence of the State with its institutions and important public services, the survival of the population, foreign relations and the peaceful co-existence of nations?’

Mr I. was an Italian national, who lived in Germany from 1987, on 2006 was convicted to a term of imprisonment of seven years and six months for the sexual assault, sexual coercion and rape of a minor. From 1992, Mr I. compelled his victim to have sexual intercourse with him or perform other sexual acts on an almost weekly basis by using force and threatening to kill her mother or brother. The victim of the criminal offences was his former partner’s daughter, who was 8 years old when the offences commenced. Mr I. has been in custody since 10 January 2006 and is due to complete his sentence on 9 July 2013. An issue the court considered was the fact that the defendant:

- a) had been relentless in his criminal conduct and caused his victim ‘endless suffering’ through abuse lasting many years
- b) the possibility that cannot be ruled out that, in similar circumstances, he will re-offend, committing acts of the same or similar nature to those he engaged in before his arrest, on account in particular of the extended period during which the offences were perpetrated and
- c) The continuing lack of remorse on Mr I.’s part.
- d) The interests of Mr I. which merit protection have nevertheless been taken into consideration and there has been no particular economic or social integration into German society.

The Verwaltungsgericht Düsseldorf (Administrative court, Düsseldorf) dismissed that action, considering in particular that the acts which warranted the conviction revealed personal conduct which gave rise to fears of a present, genuine and sufficiently serious threat to one of the fundamental interests of society, namely the protection of girls and women from sexual assault and rape. It justified its decision on the grounds that ‘Mr I. had been relentless in his criminal conduct, having regard in particular to the lengthy period during which the offences were committed, the age of the victim and the measures he took to prevent the offences being discovered, by continually threatening his victim and isolating her’. The CJEU (Grand Chamber ruled that the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States must be interpreted as meaning that it is open to the Member States to regard criminal offences such as those referred to in the second subparagraph of Article 83(1) TFEU as,

‘constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of ‘imperative grounds of public security’, capable of justifying an expulsion measure under Article 28(3), as long as the manner in which such offences were committed discloses particularly serious characteristics, which is a matter for the referring court to determine on the basis of an individual examination of the specific case before it.’

The Court further ruled that

The issue of any expulsion measure is conditional on the requirement that the personal conduct of the individual concerned must represent a genuine, present threat affecting one of the fundamental interests of society or of the host Member State, which implies, in general, the existence in the individual concerned of a propensity to act in the same way in the future. Before taking an expulsion decision, the host Member State must take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into that State and the extent of his/her links with the country of origin.

The way the immigration authorities deal with the rights of EU nationals and their family members is highly problematic on a number of accounts. As the case law on the subject reveals (see Chapter VIII.7 below), the following issues seem to violate the directive:

*(1) As a result of the routine practice of the immigration authorities, it is apparent their interpretation of Article 83(1) TFEU and Article 27 and 28 of Directive 2004/38/EC is problematic as they interpret any criminal conviction as warranting ‘a danger for public policy or public security’ and what personal conduct actually ‘represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’. In a number of cases before the Supreme court, the decision to deport and place on the stop list of convicted EU nationals were annulled for failing to take into account ‘of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin’, as provided in the safeguards protecting against expulsion under art.28 of the Directive.*

In *Tsilikides V Republic of Cyprus*,<sup>26</sup> the Court quashing the order for detention and deportation of a twenty-eight year old Greek national suffering from Hepatitis B, who was convicted to 18 months imprisonment for burglary, ruled that the immigration authorities failed to take into account the fact that the applicant had no family connections in Greece and no one could support him financially. In *Scott Graham Brierley V Republic of Cyprus*<sup>27</sup> the court examined the much more serious and regular offender, a twenty-three year old British national who has been living in Cyprus from the age of eight, convicted of rape for two and half years imprisonment. The Immigration decision was based on the fact that the applicant had multiple previous convictions and the offence of rape was serious. The Applicant contested the decision on the ground that it violates the administrative law principles of being apparently illegal (i.e. constitution a ‘flagrant illegality’) and that deportation to the UK would cause irreparable damage, as he has no family ties there. As far the violation of the free movement acquis it was claimed that the decision was not properly communicated to the applicant of the reasons for decision. The Court decided that the decision did not examine why the applicant is considered to pose a ‘genuine, present and sufficiently serious threat’, nor as there sufficient consideration as regards his the length of stay, the age, family and financial situation and the ties with the country of origin of the applicant. The judge ruled that it is apparent that the immigration authorities practice is to consider that deportation flows from the conviction to imprisonment.

(2) *Instead of issuing family members of EU nationals with a certificate of registration as an EU citizen, what is known as ‘the yellow slip’, the provide them with the normal visa for third country nationals known as ‘the pink slip’, which result in them being treated essentially as third country nationals.* This practice results in denial of the protection afforded the EU free movement of workers acquis and subjecting them to the stringent regime and wide discretionary powers granted to the immigration authorities under the colonial Aliens and Immigration law (Cap.105). This is standard practice and it based on the misconstruction of the EU law regarding which fails to recognise full rights of family members under art. 13 of the Directive 2004/38, as transposed by art.26 of the Law no. 7(I)/2007.<sup>28</sup> A complaint is currently being examined by the Cypriot Ombudsman. This is apparent in cases of family members of EU nationals, who despite having completed the three years; they are treated essentially as TCNs and often deported.

(3) *It is standard immigration practice that a marriage of convenience is considered valid reason for deportation of EU national.*<sup>29</sup>

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26 *Tsilikides v Republic of Cyprus* (no. 5944/2013) dated 26.9.2013.

27 *Scott Graham Brierley v Republic of Cyprus* (no. 5637/2013) dated 17.7.2013 before Clerides, J.

28 In the preamble of the Directive, it is stipulated: ‘(15) Family members should be legally safeguarded in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. With due regard for family life and human dignity, and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.’

29 See *Mohammad Tajul Islam*, Supreme Court Case No. 997/2013, before Nathanael J., in chapter VIII.7 below.

### 3.2 *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>30</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>31</sup> Cypriot law has transposed verbatim the relevant provisions of the directive in the various categories of workers.<sup>32</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>33</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 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 dependents.

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30 This stipulates the documentation each worker has to submit.

31 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’.

32 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).

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

- 7) With the application form MEU3A<sup>34</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>35</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>36</sup> The original circular was not withdrawn, but the new circular, no. 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.

There were two court cases regarding the same matter before the Supreme Court which annulled the decision of the Welfare Services to reject an application for public assistance on the ground of 'insufficient means' and 'unreasonable burden'<sup>37</sup> and the decision rejecting his application the decision of the Archive of Population and Immigration to reject the application to obtain a certificate of registration as an EU citizen on those same grounds.<sup>38</sup> Unfortunately, the Court in neither case discussed the substantive meaning of the terms as construed

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34 Application to obtain certificate of permanent residence.

35 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.

36 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 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.'

37 *Constantinos Glykos v Republic of Cyprus via the Welfare Services*, no. 798/2011, dated 16.9.2013, before Papadopoulou, J.

38 *Constantinos Glykos v Republic of Cyprus via the Archive of Population and Immigration*, case no. 1243/2011, dated 18 January 2013, per Pampallis, J.

in EU law and as understood in the Cypriot context. The case involved a Greek national who had been in Cyprus in 2000 and applied for certificate for registration as an EU national and public assistance in 2009. The Court quashed the decision of the immigration authorities as the applicant had uninterrupted stay for 12 years in Cyprus, which entitled him to stay are not subject to the restrictions allows as regards ‘sufficient means’.<sup>39</sup> The Immigration authorities instead of advising on the correct application,<sup>40</sup> they took two years to reject his application resulting in what the judge called an ‘inequitable and unjust solution’, which violated the principles of good administration. .

In the second case, the court quashed the decision rejecting the application of the applicant to receive public assistance,<sup>41</sup> ruling that once the Court had already decided to quash the decision of the Archive of Population and Immigration to reject the application to obtain a certificate of registration as an EU citizen, the decision of the Welfare Services to reject his claim for insufficient means remains groundless and is thus quashed. The Court however proceeded, obiter, to make some interesting observations regarding the practices of the Archive of Population and Immigration. The Welfare Services had rejected his application for public assistance on the ground that he did not fulfil the preconditions to retain his stay permit i.e. had he obtained the benefit he would be an ‘unreasonable burden’ on the Social Security system. The applicants claim was that the way the authorities had behaved violated EU law, however without specifying how, but primarily they had failed in meeting the principles of good administration as stipulated by the principles of administrative law. The Court accepted that the actions of the administration to advice the applicant to first resolve his status as regards to stay, something he did by immediately applying to for certificate for registration, which in turn they rejected before they even examine his application on the ground that he would he would be an ‘unreasonable burden’ on the Social Security system. The Court did not address the substantial question on the meaning of ‘sufficient means’ and unreasonable burden’ as such.

### ***3.3 Commission refers Cyprus to Court for discriminating against former Cypriot civil servants working in other Member States***

The European Commission has decided to refer Cyprus to the EU's Court of Justice for applying discriminatory conditions to the pension rights and unpaid leave rights of former Cypriot civil servants working in another Member State.<sup>42</sup> The view of the Commission is that these amount to discriminatory conditions breach EU rules on the free movement of workers. According to announcement there are two issues:

1. *The way in which an age criteria is applied* to determine pension rights is problematic: Under the current law in Cyprus, civil servants with at least five years of service and over the age of 45 receive a lump sum payment on departure as well as a consolidated pension when they reach 55. However, for those who leave the public service before the age of 45, the situation depends on where they work after their resignation. While former

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39 This is explicitly provided by art. 14 of the free movement of workers Law, which verbatim transposes art. 16 of the Free Movement Directive.

40 I.e. Form MEU3A instead of the wrong one, MEU1A.

41 *Constantinos Glykos v Republic of Cyprus via the Welfare Services*, no. 798/2011, dated 16.9.2013, before Papadopoulou, J.

42 See official European Commission website, at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1976&furtherNews=yes>.

civil servants working in Cyprus are entitled to receive the lump sum payment and a consolidated pension at 55, those who leave the public administration to work in another Member State receive only the lump sum, and lose their pension entitlement, even if they have completed the minimum of five years of service.

2. Cypriot civil servants moving to work to another Member State are *only allowed nine months of unpaid leave* until they are forced to resign or face disciplinary measures. However, those who wish to change jobs in Cyprus are usually entitled to several years of unpaid leave before being forced to resign. Both the age criteria and the risk of facing disciplinary measures linked to moving to another Member State **dissuade civil servants from** exercising their right to *free movement* and therefore breach EU law.

The Republic of Cyprus, after receiving the Commission 'reasoned opinion', under EU infringement procedures in March 2012, proceeded to amend the law in question. However, the commission considers that change was only partial and the age criteria and disciplinary measures still apply.

The officer of Law Service in charge informed us that the Republic considers that there is no violation of the EU acquis but refused to provide with any details as to the position of the Republic.<sup>43</sup>

The problem relates to the provision contained in Article 27 of the Pensions Law 97(I)/97. The Commission considers that this provision is discriminatory as it violates Article 4 of the TEU,<sup>44</sup> Article 45 of the TFEU<sup>45</sup> and the Staff Regulations of Officials of the European Communities (Annex VIII). As a result of this provision, if a public sector employee who is over 45 years old with 5 years experience decide to resign voluntarily in order to exercise his right to free movement to join EU institutions is entitled to a lump sum (i.e. a bonus) and a pension frozen that becomes payable when the employee reaches the pensionable age. However, the if the employee is under 45, even if (s)he has over 5 years experience, then if he resigns for the same (s)he is not entitled to receive this pension. However, this provision does not apply to a civil servant who resigns in order to work for a Public Organisation under Art. 25) or (s)he resigns for reasons of public interest under Article 24, or due to reasons of service incapacity under Article 23.

In 2005, the Republic adopted Law 68 (I)/2005 and Law 69 (I)/2005, which made the 45 age limit to 48 years for those employed after 30 June. Also, in 2011, the Law 11(I)/2011 was adopted which provides that all newcomers i.e. employees appointed after the entry into force of this Law in 1.10.2011 are subject to another pension scheme, which does not contain this Age limit.

A number of former public sector employees, including some working for EU institutions complained to the Cypriot Equality Body (EB), which is under the office of the Ombudsman. The EB found that the Pension Law provision, under art. 27<sup>46</sup> requiring that only those who are over the age of 45 can receive a pension, no matter how many years one has worked as a civil servant or in any case in the public sector amounts to age discrimination

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43 When asked for the official response of the Republic, the officer in charge responded by E-mail 9.10.2013 to the author of the current report.

44 As interpreted in C-137/80 and C-293/03.

45 See relevant ECJ cases in C-310/91 *Schmidt*, C-415/93 *Bosmans*, 379/98 *Casteels v British Airways plc.*, C-443/93 *Vouyioukas*, C-190/98 *Graf*.

46 27(1)(α) και (β), περί Συντάξεων Νόμων του 1997 έως 2005.

and is contrary to the principles of free movement.<sup>47</sup> In particular, the EB found that the said provision is contrary to the law transposing the Employment Directive 2000/78/EC,<sup>48</sup> as the discriminatory provision cannot be justified as legitimate and proportional and that it is contrary to the free movement of workers *acquis*.

The official position of the Government was summarised in the EB Report. This was articulated by the Department of Public Administration and Personnel, which referred to the reasoning behind the setting of the age of 45 law as the age limit in the 1981 amendment to the, as derived from the Minutes of meeting of the Council of Ministers 28 June 1973. The authorities' intention was to deter employees from leaving the public service and this was justified on the following grounds:

- The need to retain university graduates in public service;
- The need to deter experienced civil servants with 10 or 20 years of service from leaving;
- It was feared that the granting of frozen pension benefits would increase the trend of university graduates leaving their public posts.

The Department of Public Administration and Personnel concedes that the staffing made from graduates is no longer a problem but it argues that the last two reasons are still valid on the basis of three arguments:

- The European Employment Strategy (12.7.2005) favours the adoption of policies to stay in employment;
- The Employment Directive 2000/78/EC allows for exceptions as regard age, including the terms 'remuneration' as interpreted under art. 141 of the Treaty of The European Union (by extension the pension benefits).
- The authorities invoke article 8 of the Law on Equal Treatment in work and employment<sup>49</sup>, which corresponds to art. 6 of the Employment Directive which allows for justification of differences of treatment on grounds of age, providing that these are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives. They claim that such justification of differences of treatment may include inter alia the fixing of an age for the inclusion or acceptance in pension benefits or disability in professional systems of social insurance, as provided in art. 6(2) of the said Directive.<sup>50</sup>

The EB has ruled that the arguments fail on the following counts:

- First, the matter under examination not related to the exception relating to the fixing of the age of retirement, but the minimum age fixed for an employee in civil service to be allowed to secure his/her pension rights as the 'means of achieving that aim are appropriate and necessary, as the securing of the pension rights could have been secured simply by requiring a minimum number of years in service irrespective of age of resignation rather than fixing an age limit. It cited the ECJ cases of Mangold and the Palacios.

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47 Έκθεση της Αρχής Ισότητας αναφορικά με καταγγελίες για διάκριση λόγω ηλικίας στις διατάξεις του περί Συντάξεων Νόμου, Α.Κ.Ι. 63/2008 και Α.Κ.Ι. 1/20094.6.2009.

48 περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμου του 2004, Ν.58(Ι)/2004.

49 περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμου του 2004, Ν.58(Ι)/2004.

50 'Member states may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.'

- It questions the proportionality of the measure in the first place, as only 1/3 of the employees are university graduates and the specific measure in blanket and as such it applies to all.

The second aspect of the violation relates to the unlawful barriers to the exercise of free movement as provided in the free movement acquis. The EB ruled that art. 27 is a barrier to the free movement of civil servants and those working the public sector at large, as they are faced with the prospect of loss of their pension rights.

The EB required that the relevant article of the law be amended accordingly, but the Government refused to follow the recommendation of the EB. Another case went before the Supreme Court but it was settled.

The authorities refused to change the law; following a complaint, the Commission sent a formal notice and a reasoned opinion) requesting from Cyprus to abolish this discrimination retrospectively (as of 1 May 2004). In response the Republic of Cyprus proposed that it had amended the Pensions Law i.e. the Pensions (amendment) Law 2010). However, the amending law failed abolish the age discrimination contained in Article 27 of the Pensions Act; it merely established a system of transfer of pension rights, as required by the Staff Regulations. In the consolidated text of the Pensions Act, these new provisions were incorporated as Articles 26A and 26B and it is visible and clear that they do not relate with the problematic provision contained in Article 27, thus leaving intact Art. 27. As a result a public sector employee who decides to exercise the option of not transferring his pension rights before reaching the age of 45, such as those who resign to join EU institutions, he/she will lose his pension rights. Relevant here is the case of C-293/03 My, who withdrew his application for transfer and asked from the national authorities of Belgium to receive pension for the years he worked in Belgium.

Subsequently the authorities proceed to amend the law again via the Pensions (Amending) Law 2012. However, this amendment deals only with the transfer of pension rights and not with the abolition of the discriminatory provision.<sup>51</sup>

#### **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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<sup>51</sup> The reasoning for the amendment is contained in the Circular issued and published by the relevant Ministry which explains in detail the scope and purpose of the Pensions (Amending) Act of 2012: [http://www.mof.gov.cy/mof/papd/papd.nsf/All/E84BA0E62B421418C2257A6F002B867C/\\$file/004208601.pdf?OpenElement](http://www.mof.gov.cy/mof/papd/papd.nsf/All/E84BA0E62B421418C2257A6F002B867C/$file/004208601.pdf?OpenElement).

## 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 27.8.2009,<sup>52</sup> 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. However, 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>53</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>54</sup> illustrating the inadequacy in the treatment of Union citizens on the family reunion of Union citizens, including Cypriots. The

52 See Appendix for the decision and the letter sent to the Director of the Archive of Population and Immigration and copied to the Ombudsman.

53 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 δύσμενη 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.

54 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).

case law in 2010-2012 illustrates the contradictory approach by Cypriot Courts, failing to afford full recognition to free movement principles.<sup>55</sup>

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>56</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.

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55 *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.

56 Complaint to the European Parliament Ref. 1862/2009.

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 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 or self-employed who lost Cypriot nationality as a result of marriage to the worker or 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>57</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

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<sup>57</sup> Article 5 of Law 181(I)/2011 amends articles 15(3) and 15(4) of Law 7(I)/2007.

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>58</sup>

The cases analysed in Chapter VIII.7 reveal that immigration authorities regularly expel spouses of EU nationals, often in violation of the free movement acquis.

### ***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>59</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>60</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>61</sup> which is now in line with the Directive.

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58 The only appeal procedure available under Cypriot law is article 146 of the Cypriot Constitution, for which however no legal aid is available.

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

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

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

## 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) 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>62</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.

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>63</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.

However the law has not been amended so far: under art. 10(3) of Law 7(I)/2007 non-compliance of the requirement to apply for certificate of registration as an EU citizen or a family member is a criminal offence and if convicted it carries a fine of £1500, which is 2563.84 euros.

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62 *Commission v Italy*, Case 28/69 dated 15.04.1970, p. 195.

63 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.

### 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>64</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>65</sup> The question here is how the Republic of Cyprus *in practice* ‘facilitates the admission of any member of the family’,<sup>66</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 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 proportional-

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

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

66 Under art. 10 of regulation 1612/68.

ity 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>67</sup> Other studies also show that this is the case.<sup>68</sup> The equality body referred 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>69</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>70</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>71</sup> this is not correct. There are many areas of the law where common law marriages

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67 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, 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.

68 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/ebf/08/FRA-hdgs0-NR\\_CY.pdf](http://www.pedz.uni-mannheim.de/daten/edz-b/ebf/08/FRA-hdgs0-NR_CY.pdf).

69 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.

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

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

between heterosexual couples are explicitly covered, which impliedly excludes homosexual couples.<sup>72</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 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>73</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>74</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 *Me-*

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72 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.

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

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

*tock*, 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>75</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.

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

There has been media attention on this subject. The official position<sup>76</sup> is as follows:

'In 1997 a Council Resolution (97C 382/01) was published, indicating factors providing grounds for believing a marriage is one of convenience. The Republic of Cyprus has adopted in the National Immigration Law, all the provisions of the Council Resolution since 2001 and relevant provisions in the Free Movement and Residence of Nationals of the European Union Member States and their Family Members, Law 2007-2013. When there are strong indications that the couple may have married with the sole purpose of contravening national immigration laws, then the case is examined by an Advisory Committee. The Advisory Committee advises the Director of the Civil Registry and Migration Department during the examination, of cases of marriages of convenience. An alien or citizen of the Republic who has conducted a marriage of convenience or in any way has contributed<sup>3</sup> to the celebration of such marriage, is guilty of an offence and upon conviction is liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand pounds or both such imprisonment and fine. All the measures taken according to Article 37 of L.7(I)/2007-2013, transferring the 38/2004/EC, are non-discriminatory and proportionate (i.e. termination of validity of a residence card). Attention is given to all the circumstances of each individual case.

The last years there has been an upward trend of 'Marriages of Convenience' from 2003 to 2011. The Republic of Cyprus had established 9 sham marriages in 2003 and 132 in 2011. On 2011 the highest number of marriages of convenience is with European Citizens (86 compared to 46 with Cypriot Citizens). In 2012 27% of sham marriages were conducted with Cypriots (20) and 73% with EU Citizens (54) The highest rate of marriage of convenience with EU citizens in 2011 according to our statistics are with Romanian Citizens (43%), following with Bulgarian citizens (30%). In 2012 the majority of marriages of convenience were again with Romanian Citizens (20) following with Bulgarian citizens (17).'

<sup>75</sup> Communication to the author from the Ministry of Interior, 9.9.2009.

<sup>76</sup> Comments by CYPRUS on the Draft 'EUROPEAN REPORT on the Free Movement of Workers in Europe in 2011-2012', Prepared by the Network of experts on free movement of workers, 30th April 2013.

## 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>77</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>78</sup>

## 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.

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<sup>77</sup> Circular Ref. YY4.2.13.10.22

<sup>78</sup> Letter from the European Commission to the Cypriot authorities dated 22.3.2012.

## 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 jobseekers 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>79</sup> allowing for recognition of professional qualifications.<sup>80</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>81</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 to which may be a condition precedent to practicing such a profession in the private domain,

79 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).

80 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.

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

or on certain occasions also in the public sector.<sup>82</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>83</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>84</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>85</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.

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82 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.

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

84 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.

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

## 1.2. *Language requirements*

Article 31(a) of the Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to positions in the public service, with the exception referred to in the Report.

Public employment offices provide services in the Greek, English, Romanian<sup>86</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.

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>87</sup> The Equality Body recommendation to recruit Greek-Pontics in the Police force has not been complied with,<sup>88</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>89</sup> The situation in 2012-2013 remains unchanged.

### ***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>90</sup>

## **II) PUBLIC SECTOR: LANGUAGE REQUIREMENTS IN ACCESS TO ACCESS TO EMPLOYMENT, WORKING CONDITIONS, PROMOTION AND SALARY**

II.I) Workers are required to have a certain level of linguistic ability or to be a mother-tongue speaker when accessing employment. Article 31(a) of the Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to positions in the public service, with the exception referred to in the Report. 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 ap-

<sup>86</sup> In 2009 the amount of €1700 was spent to buy the translation services in Romanian.

<sup>87</sup> Letter to the researcher by the Head of the Police Bureau for Combating Discrimination, TAE/432/1(V), dated 23.9.2008.

<sup>88</sup> See Report by Equality Body AKP 1/2007, issued 28.010.2008.

<sup>89</sup> See Report by Equality Body AKP 1/2007, issued 28.010.2008.

<sup>90</sup> AKI 107/2007, issued on 12.12.2008.

pointment. The appointment is a task of the Public Service Commission. For senior management posts in the public sector, the job description may require previous experience, which can be in administrative, public or private sector, in any EU country. In term of the language requirement, this depends on the level of the post advertised: for first appointment of officers 'good knowledge' of Greek is required and very good command of one of the EU official languages (English, French or German). For most posts, especially more senior posts, it is required that the candidates have 'very good knowledge' of Greek, which is certified by the possession of a Greek secondary school certificate or A' Level in Greek or to be a graduate from a Greek university. For the position of the Permanent secretary excellent command of Greek is required plus one of the EU official languages.

In one 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. However, she was eventually allowed to apply for the post of teacher following a complaint and an intervention by the Cypriot Equality Authority.<sup>91</sup>

In the public sector, if the job description for a job vacancy in the public sector requires 'excellent', or 'very good' or 'good knowledge' of the Greek language, both the meaning of each of the aforementioned terms as well as what constitutes evidence to that effect has been defined by the Public Service Board. Consequently, if a citizen of an EU member State wishes to apply for a job in the Public Service for which knowledge of Greek is required, he/she has to provide the necessary documentary evidence that they possess the knowledge required, in the same way as a Cypriot national applying for a position in the public sector has to do by law.

A number of complaints against public sector institutions have been decided by the Cypriot Equality body as using language as a barrier to access. The Equality Authority decided on a complaint submitted by an EU national regarding a requirement by the semi-governmental Cyprus Tourist Organisation, that in order for permits to operate a tourist office to be granted, a Greek-speaking manager must be hired.<sup>92</sup> The decision criticised the practice of requiring knowledge of the national language, which constitutes discrimination on the ground of language amounting at the same time to indirect discrimination on the ground of race/ethnic origin.<sup>93</sup>

Anti-Discrimination Authority decided on a complaint submitted by an EU national regarding a requirement by the semi-governmental Cyprus Tourist Organization, that in order for permits to operate a tourist office to be granted, a Greek-speaking manager must be hired.<sup>94</sup> The decision criticized the practice of requiring knowledge of the national language,

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91 Information provided by officer of the Equality Authority.

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

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

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

which constitutes discrimination on the ground of language amounting at the same time to indirect discrimination on the ground of race/ethnic origin.<sup>95</sup>

Complaints were examined by the Equality body from *nurses*, who have good knowledge of other official EU languages such as French and German.<sup>96</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.

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.<sup>97</sup>

### **III) SOCIAL ADVANTAGES/BENEFITS: LANGUAGE REQUIREMENTS IN ACCESS TO SOCIAL ADVANTAGES/SOCIAL BENEFITS AT THE NATIONAL OR SUB NATIONAL/ LOCAL LEVEL**

III.I) Workers are not required to have a certain level of linguistic ability or to be a mother-tongue speaker when accessing certain social benefits/ social advantages in Cyprus.

#### **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>98</sup>

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

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

97 AKI 107/2007, issued on 12.12.2008.

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

## 2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

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

#### *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>99</sup> The Supreme Court has ruled on matters of recognition of diplomas in other EU member countries in the cases of *Varnava*<sup>100</sup> and *Petrou*<sup>101</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.

### 2.2. Language requirements

Legally, Art. III.1 of Law ratifying the UNESCO Convention on Professional qualifications 2001 prohibits language discrimination. Also, Art. 28 of the Constitution of the Republic of Cyprus prohibit language discrimination.

In the private sector, apart from the regulated professions, most of which do have language requirements, workers are not required to prove a certain level of linguistic ability or to be a mother-tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary. However, during 2012 when the economic crisis really begun to hit Cyprus, and particularly with the financial and banking crisis in March 2013, there has been a change of approach, in the political discourses over the policies. Since taking office in March 2013, the newly elected conservative Government has actively sought to change the policy debate but this has largely remains at declaratory level for internal public consumption rather than being a real change of policy.

The Chair of the Parliamentary Committee of Employment, Andreas Fakondis, referred to a study conducted by the Human Resources Development Authority (HRDA), which has clarified that the requirement of Greek is possible for the Hotel / Catering Industry.<sup>102</sup> However, no such study was made available; nonetheless the Greek language requirement was included as a necessary qualification in the relevant vocation guidelines.<sup>103</sup> Instead, officials from Ministry of Labour and Social Insurance referred to an opinion by the Attorney General whose advice was sought as to the possibility of imposing Greek language as an essential qualification for the hotel and catering industry, which gave the clearance that the *Acquis Communautaire* allows for this.<sup>104</sup>

99 Information provided by officer of the Equality Authority.

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

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

102 ‘Στο 15,6% η ανεργία το Μάιο, ενθαρρυντικά τα στοιχεία από τα σχέδια του Υπ. Εργασίας, σύμφωνα με Ζέτα και Φακοντή’, *Kathimerini*, 03.06.2013,

<http://www.kathimerini.com.cy/index.php?pageaction=kat&modid=1&artid=135828>.

103 I enquired about this with the HRDA official in charge of the vocational qualifications who referred me to the Ministry of Labour.

104 The existence of this opinion by the Attorney General’s office was confirmed by the Ministry of Labour official interviewed for this paper (27.6.2013) as well as the official from the Equality authority (27.6.2013),

The economic sectors and vocations which the HRDA certifies vocational qualifications as covered by the EU co-funded project are following:<sup>105</sup>

- Hotel / Catering Industry
- Manufacturing industries
- Construction Industry
- Wholesale and retail trade
- Vehicle repair
- Provision of Vocational training
- Communication Systems and Networks / Electronic Computers
- Hairdressing

So far, from the above Greek language is made an essential qualification for the jobs in the Hotel/Catering industry for eight vocations relating to the sector at the different required levels: Reception, Presentation of foods and drinks, Food Preparation and Cooking, House-keeping, Travel Agency Operations, Bakery, Confectionery, Preparation and presentation of drinks.<sup>106</sup>

Officials from the Ministry of Labour and the Ministry of Interior consider that *there is no binding policy as such* for the private sector to impose restrictions on Union citizen workers, nor are there any language barriers; therefore there is no discrimination, they claim. The new prototypes/models for jobs in hotels/catering are said not to be binding but act as guiding job description models for a number of vocations in the hotel industry. However, human rights and migrant support organizations speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals.<sup>107</sup>

Official or unofficial policy, or mere rhetoric, mostly for Greek-Cypriot public consumption, such rhetoric panders xenophobia by claiming to assure ‘priority for Cypriots’ is contributing to a xenophobic climate. What is rather odd with the policy is that the vast majority of the two million or so tourists who visit every year the Republic of Cyprus are not Greek speakers as they come primarily from the EU, Russia and other parts of the world: English is and has been the primary linguistic medium used in the hotel and catering industry. If there was concern raised today about the use of Greek in these sectors, nothing has changed about this ‘concern’ in the specific industry over the last five, ten and twenty years ago. It seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue however is the fact that the policy for ‘priority for Cypriots policy’, in part using Greek language as a policy instrument, not only fails to properly take account of the free movement *acquis*, but also fails to take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991.

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however this was not made available to the author to examine the legal basis and the reasoning of the said Opinion.

105 See <http://www.hrdauth.com/easyconsole.cfm/id/221#221>.

106 In Greek: [Υποδοχή, Παράθεση Φαγητών και Ποτών, Προετοιμασία και Μαγείρεμα Τροφίμων, Οροφοκομία, Λειτουργίες Τουριστικού Γραφείου, Αρτοποιία, Ζαχαροπλαστική, Παρασκευή και Παράθεση Ποτών](#), see <http://www.hrdauth.com/images/media/assetfile/ksenodoxiaki.pdf>.

107 The executive director of KISA, Doros Polycarou has repeated this on many occasions; in fact he claims that there is a consistent policy directions by the current Government, Doros Polycapou, ‘Overview of the migrants’ rights condition in Cyprus’, at the conference organised 12.7.2013, prior to the presentation of the documentary ‘An interview with the ‘invisible’ other’.

So far, no information is available to establish whether workers are *in practice* required to have a certain level of linguistic ability or to be a mother-tongue speaker when accessing employment or in order to secure or earn certain working conditions. Officials from the Ministry of Labour claim the following as far as the unregulated professions:

- There are no specific requirements to have a certain level of linguistic ability or to be a mother-tongue speaker imposed on EU workers with regard to employment in the private sector, except for the recent insertion of in the hotel/catering jobs but this is not binding.
- The language requirements are not imposed on a case-by-case basis per job in question or imposed on a general basis (per sector or the like).
- Any language requirements imposed, such as those provided for in the hotel/catering industry are imposed on all workers, regardless of nationality.
- There is no evidence or complaints before the Ministry of Labour and social Insurance that the language requirements are having the effect of excluding EU migrant workers from accessing certain employment or from achieving or earning certain working conditions, promotion or salary in the private sector.

The above are disputed by the human rights and migrant support organizations. It is not possible to be more specific

### ***2.2.1 Regulated Professions***

It is difficult to ascertain how matters are currently operating in general in the regulated professions. What we can do is provide the relevant cases that have been investigated by courts and the Equality Authority.

There have been issues relating to language to practice as a *Mechanical Engineering*. There have been complaints about membership to the Chamber of Civil Engineers of Cyprus (ETEK), which is a precondition to practicing in the private and the public sector. Language may be relevant, albeit indirectly. 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 *Kyriakos Varnava v. ETEK*. 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.

The Equality Authority issued a report in 2006 about a complaint by a Union citizen who was civil engineer applying for a certain post that required membership to ETEK which presupposes residence in Cyprus.<sup>108</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 are language requirements of professional associations amounting to barriers in entering the profession.

A number of complaints have been lodged to the Cypriot Equality authority, which decided on the use of language and made recommendations to the authorities about removing them. Many of these recommendations were adopted, but some remain unaddressed. In

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108 AKI 22/2006, issued 11.12.2006.

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>109</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>110</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>111</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 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 Authority 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 Authority 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>112</sup>

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,

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

110 File No. AKR 36/2006, dated 23.02.2007

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

112 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).

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. 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>113</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>114</sup> Today doctors can register without the language restrictions.<sup>115</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, both in public and private sector (see Chapter III, 1.2 for the public sector).

### 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>116</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

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113 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).

114 AKI 10/2006.

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

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

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 they 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>117</sup>

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117 Information provided by officer of the Equality Authority.

## Chapter IV

### Equality of Treatment on the Basis of Nationality

#### 1. GENERAL ISSUES

President Anastasiades has unveiled a package of measures aimed at keeping Cypriots in employment as the massive costs of a Eurozone bailout deliver a huge blow to the island's economy.<sup>118</sup> In a televised address to nation the President stressed that the country would cease to be a 'migrants' paradise' and that benefits to asylum seekers would be 'significantly reduced,' with cash payments for food and clothing replaced by a coupon system. He said state benefits would also be withdrawn from those who do not actively look for work. President Anastasiades said the state would rehire 800 contract workers while investing 21 million Euros to subsidize salaries by 40% for 6,000 registered jobless who would be given work in the key tourism industry. Also, the President announced that it has a 'gentlemen's agreement' with social partners about imposing a quota on 'foreign workers' at 70-30 ratio, i.e. 70% Cypriots and 30% foreigners. Since March 2013,<sup>119</sup> the reference to this 'gentlemen's agreement' has been repeated several times by Minister of Labour and the Tourism Employers Association PASYXE. The Chair of PASYXE, Loizides stated: 'The 70%-30% is our own commitment and a target which is set, a gentlemen's agreement, that will hire over the next 1-2 years in such a way that in a hotel 70% of the staff will be Cypriot and the rest will from other nationality.'<sup>120</sup>

It is not clear how this would operate in practice; however it seems that an important instrument to achieve this ratio is to require Greek language in vocational in job descriptions especially in the hotel and tourism sector. There seems to be a prima facie case of nationality discrimination, something officials deny.

The President, Government Ministers and MPs have been vocal about changing the policy, alleging that imposing a Greek language requirement can be an effective measure that would reduce unemployment of Greek-Cypriot workers. It is not clear how this would operate in practice; however it seems that an important instrument to achieve this ratio is to require Greek language in vocational in job descriptions especially in the hotel and tourism sector. There seems to be a prima facie case of nationality discrimination, something officials deny.

There is a near consensus amongst policy-makers that Language can be an effective measure to increase the percentages of Cypriots in employment,<sup>121</sup> but some trade unions nonetheless consider the Government measures as inadequate. One small trade union,

118 'Cyprus unveils workfare measures to ease bailout shock', 19 April 2013, <http://www.eubusiness.com/news-eu/cyprus-economy.o44>.

119 'Εργοδότηση Κυπρίων κατά προτεραιότητα', *Phileleftheros* 6.3.2013.

120 'ΠΑΣΥΞΕ: Δέσμευση για εργοδότηση Κυπρίων κατά 70%', *Phileleftheros*, 1.7.2013, <http://www.philenews.com/Publications/ArticleModule/ArticleViewers/SingleArticleViewerPrint.aspx?av=946&aid=151719>.

121 As the Chair of the Parliamentary Committee on Employment and the executive Director of the Cyprus Tourism Board point out, see 'Η κυβέρνηση κλείνει την πόρτα στους Κροάτες. Πάνω από 150 χιλιάδες οι ξένοι στην Κύπρο', *Phileleftheros* 21.5.2013, <http://www.philenews.com/el-gr/oikonomia-kypros/146/145878/pano-apo-150-chiliades-oi-xenoi-stin-kypro>.

DEOK, has proposed instead the immediate revocation of the work permits for third country nationals and the suspension of free movement of workers from EU member states.<sup>122</sup>

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>123</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>124</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).

As pointed out earlier, whether declaring that there is a policy 'priority for Cypriots', whether official or unofficial policy, or mere rhetoric, mostly for internal public consumption is contributing to generating xenophobia and racism.

## 2. ACCESS TO SOCIAL BENEFITS AND SOCIAL ADVANTAGES

### 2.1 *Social Benefits and Advantages*

The definitions in the Cypriot legislation are copied verbatim from the Greek translation of Article 24(2) Directive 2004/38 as article 22 of Law 7(I)/2004. No definition problem has surfaced so far in the case law or decisions of the Ombudsman (or Equality Body) which is focused on Article 7(2) Regulation 492/2011<sup>125</sup> and Article 24(2) Directive 2004/38.<sup>126</sup>

122 The smallest of trade unions affiliated to Social Democratic EDEK is calling for this openly, see 'Μείωση ξένων εργατών για αντιμετώπιση ανεργίας, προτείνει η ΔΕΟΚ', *Phileleftheros*, 4.6.2013.

123 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.

124 Information provided by Andreas Matsas SEK, 1.7.2011.

125 Access to social and tax benefits and advantages is defined in Art. 7 para. 2 of the Regulation 492/2011 on freedom of movement for workers within the Union: EU migrant workers have the right to the same tax and social advantages as nationals of the host Member State.

126 According to Article 24 of Directive 2004/38 subject to specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the

However, the distinction has been discussed in the context of Article 3(1)(f) Directive 2000/43, which discusses ‘social advantages’ in the context of that Directive.

So far no definition problem has surfaced so far in the case law or decisions of the Ombudsman (or Equality Body) specifically dealing with Article 7(2) Regulation 492/2011 and Article 24(2) Directive 2004/38. The issue has not been discussed in the case law.

The Cypriot Anti-discrimination Body has dealt with various aspects relating to rights of Union citizens. Since it was set up in 2004, the Anti-discrimination Body issued more than 100 reports were issued, out of which about 25 involved the rights of Union citizens. Only a dozen or so involved issues which potentially can be defined as broadly connected to or falling under the ambit of ‘social and tax advantages’ and ‘social provisions’; however the issue of definition of these provisions or advantages were never discussed in the reports. The Cypriot Equality Body, mostly the Anti-discrimination Authority which deals with matters relating to discrimination beyond work-related matters has ruled on a number of social provisions, advantages and benefits including those relating to welfare, offered to Cypriots were unlawfully denied to Union citizens. These include the following categories of rights and benefits:

- Denial of public assistance to homeless Union citizen;<sup>127</sup>
- Denial of jobseekers allowance for reasons of health to a Union citizen;<sup>128</sup>
- Denial of subsidies for heating benefits during the winter months Union citizens who resided in mountain villages;<sup>129</sup>
- Discriminatory exclusion from agricultural plan for electrification of a Union citizens home;<sup>130</sup>
- The health authorities denial to subsidize a Union citizen to undergo in-vitro fertilization (IVS);<sup>131</sup>
- The procedure for granting a driving licence to Union citizens was discriminatory;<sup>132</sup>
- Discriminatory treatment by insurance premiums against non-Cypriots EU nationals;<sup>133</sup>

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host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right is also extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence. However, by way of derogation from paragraph 2 the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

127 Έκθεση Αρχής κατά των Διακρίσεων αναφορικά με την καταγγελία με αρ. ΑΚ 33/2004 κατά των Υπηρεσιών Κοινωνικής Ευημερίας, Θέμα: Παραχώρηση δημοσίου βοηθήματος σε ευρωπαϊό πολίτη που στην Κύπρο, Α.Κ.Ρ 33/2004, 10.1.2005.

128 ΑΚΡ 70/2007, issued on 24 March 2008.

129 The Anti-discrimination Authority found that it was unlawful discrimination to deny subsidies for heating benefits during the winter months Union citizens who resided in mountain villages on the basis of race or ethnic background and of national background under Protocol 12 to the ECHR, see ΑΚΡ 22/2004, ΑΚΡ 42/2004, ΑΚΡ 43/2004, ΑΚΡ 44/2004, ΑΚΡ 49/2004, ΑΚΡ 58/2004.

130 Έκθεση Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με διακριτική μεταχείριση ευρωπαϊών πολιτών σε θέματα παροχής ηλεκτρικού ρεύματος στα πλαίσια του Σχεδίου Πολιτικής της Αρχής Ηλεκτρισμού Κύπρου, Α.Κ.Ρ. 17/2004.

131 The Anti-discrimination Authority found that the refusal of the health authorities to subsidise an under-fertile Pontiac Greek citizen to do in-vitro fertilisation (IVS) was also held to be discriminatory, ΑΚΡ 54/2004.

132 Έκθεση Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με καταγγελίες κατά του Τμήματος Οδικών Μεταφορών Χορήγηση άδειας οδήγησης σε πολίτες χωρών της Ευρωπαϊκής Ένωσης, Α.Κ.Ρ. 47/2005, Α.Κ.Ρ. 101/2005, Α.Κ.Ρ. 107/2005, 6.4.2006

133 Έκθεση Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με διακριτική μεταχείριση Ελληνοπόντιων και άλλων προσώπων που δεν είναι Κύπριοι πολίτες από ασφαλιστικές εταιρείες, Α/Κ 5/2004, Α/Κ 50/2005.

- Denial of access to Union citizens to the electoral register for the purpose of voting at local elections was held to be discriminatory;<sup>134</sup>
- Access to a vocational Training Scheme for Persons with Disabilities to a Union citizen who suffers from muscular dystrophy amounts to unlawful discrimination Disability benefit welfare;<sup>135</sup>
- Possible administrative and bureaucratic barriers to the exercise of certain rights against Union citizens (and Third Country Nationals) were found to be discriminatory practices were contained in application forms in the public/civil service were removed as a result of complaints and investigations by the Equality Body;<sup>136</sup>
- Interpretation services for a Union citizens who is an elected local councillor;<sup>137</sup>
- Monetary Deposit for non-permanent residents to get telephone connection.<sup>138</sup>

The Equality Body deals with the term ‘social advantages’ with under Article 3(1)(f) Directive 2000/43, where the term ‘social advantage’ was in issue.<sup>139</sup> The term is translated by the official translation unit of the European Commission in Luxemburg as ‘social provisions’ and finds its way in the national legislation in this form. Social provision may however be implied into the mandate of the Equality Body as this covers, by virtue of article 6(2) of Law 42(I)/2004, ‘any field whatsoever’. Additionally, to the extent that ‘social advantage’ is *state provided*, the Ombudsman (which is also the national equality body under the Directive 2000/43) is empowered to deal with it, as part of its mandate to investigate allegations for maladministration in the public sector.<sup>140</sup> National legislation explicitly refers to the category of ‘social advantages’ but does not provide any definition or list, which makes it even more difficult to monitor. Some groups do have such benefits (pensioners, other vulnerable groups), but given the relative underdevelopment of public utilities and poor public transport system, this is not a major issue in Cyprus.

There are cases where persons become entitled to a type of benefit as a result of his/her employment status. In sheltered workshops for instance, where persons with disabilities

134 AKP 75/2005 and AKP 78/2005.

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

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

137 Έκθεση Αρχής κατά των Διακρίσεων αναφορικά με την άρνηση του Κοινοτικού Συμβουλίου Τάλας να επιτρέψει σε ευρωπαϊό πολίτη που είναι εκλεγμένο μέλος του, να συνοδεύεται από διερμηνέα, κατά τη διάρκεια των συνεδριών του Κοινοτικού Συμβουλίου, AKP 60/2012 29.7.2013.

138 Έκθεση της Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με την πολιτική της Αρχής Τηλεπικοινωνιών Κύπρου να αξιώνει την καταβολή χρηματικής εγγύησης από μη μόνιμους κάτοικους Κύπρου, για σύνδεσή τους με το τηλεφωνικό δίκτυο Α.Κ.Ρ.: 14/2004, 21/2004, 27/2004, 26/2005, 69/2005.

139 The term is not referred to in Law 42(I)/2004, which sets out the equality body’s mandate, but in the Equal Treatment (Racial or Ethnic Origin) Law 59(I)/2004, s.4(c) and the Law concerning Persons with Disabilities (Law 127(I)/ 2000), s.6. The equality body’s mandate explicitly covers all areas within the scope of Article 3 of the Racial Equality Directive save for ‘social advantage’.

140 The Ombudsman’s powers are narrower than those of the Equality Body as its decisions are not binding and it has no power to impose fines. It should be stated, however, that in the case of the Equality Body the fines foreseen by law are so low that the Equality Body invariably chooses to use its mediation function rather than impose fines which would act as no deterrent.

working in these workshops receive higher payment if they are married than if they are single. A number of benefits are available to certain persons with disabilities,<sup>141</sup> such as the exemption from fees for medical services in public medical institutions; also persons who are unemployed or of low income are also entitled to free medical and pharmaceutical care in state hospitals. By a decision of the Council of Ministers,<sup>142</sup> a scheme of public assistance was created for the housing of single persons or families having a low income with special criteria for persons with disability. Also, persons with disability are exempted from certain charges concerning telecommunications and telephone services.<sup>143</sup> The issue for the purposes of the free movement principle is the extent which the same provisions are applied for Union citizens, subject to the derogation allowed. Art. 22 of Law 7(I)/2004, which purports to transpose Directive 2004/38 contains verbatim Art.24 of the said Directive which provides for equal treatment.

Other than a set of benefits which may be regarded as positive measures, discrimination on the ground of race and ethnic origin in the provision of social advantage is prohibited, as per s.4(c) of Law 59(I)/2004. In the case of the Roma population of Cyprus, since most, if not all of them,<sup>144</sup> are deemed to be part of the Turkish community of Cyprus and thus Cypriot citizens, they are entitled to all benefits that Cypriot citizens have and any differential treatment afforded to them would amount to discrimination on the ground of race/ethnic origin, as is the case with discrimination against Turkish-Cypriots. Having said that, it should be noted that many members of the Roma community and particularly the older ones are uneducated, do not speak the language and live in destitution, so their ability to access public benefits may be limited. Although there has been no case to test this, it is certain that Roma people residing in the Turkish controlled north of Cyprus will not be entitled to any state benefit from the government of the Republic of Cyprus, given that Turkish Cypriots residing in the north are, as a matter of state policy, not granted any state benefits. No case has gone before the Courts of the Equality Body dealing with Roma who is a Union citizen.

Problems of access to social advantages may arise for EU nationals who reside in the Turkish occupied territories in the northern part of Cyprus are not allowed to access social benefits. Despite the Supreme Court decision in *Tetyana Tomko v. Republic of Cyprus* which established that differential treatment based on the place of residence (i.e. north or south of Cyprus) is unlawful, the approach followed both by the Courts<sup>145</sup> and the equality body is that persons residing in the north of Cyprus are not entitled to state benefits, even if they work in the south and pay their social insurance contributions to the state.<sup>146</sup> In the 2011 case

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141 These are the war disabled, the pupils of the School for the Blind, the pupils of the School for the Deaf, the students of the Centre of Training and Vocational Rehabilitation of Persons with disability and persons who receive public assistance under the provisions of the Public Assistance Law.

142 No. 53.863 of 19.06.2001.

143 Regulations 311/2001, 382/2002, 473/2002, 525/2002 and a number of decisions of the Cyprus Telecommunications Authority.

144 Generally speaking, the Roma of Cyprus are seen as indistinguishable from the Turkish Cypriots because of their religion (Muslim) and their language (Turkish), although one cannot exclude the possibility that today amongst the Roma population of Cyprus there may be persons who came from other countries, in which case they are not entitled to Cypriot citizenship.

145 *Mehmet and Meral Birinci v. The Republic of Cyprus* (2006), No. 911/2004, 14.02.2006.

146 Decision dated 19.04.2006, File No. A.K.R. 27/2005, where the equality body found that the Finance Ministry's rejection of the complainant's application for a child benefit was justified and that no discrimination existed, because it was not possible for the authorities to carry out the checks necessary to verify whether the information supplied by the applicant is true or not, adding that those Turkish-Cypriots residing in the areas under the control of the government are not subjected to discriminatory treatment in the field of state benefits.

of *Gonul Ertalu & Imge Ertalu v. Ministry of Finance*, the applicant's application for a student grant was thus rejected because in order to be eligible for the grant, one would have to be resident in the south of the country and the applicant was a Turkish Cypriot residing in the north.<sup>147</sup> The Court followed the same approach in 2012 in the case of *Nebil Yilmaz Aziz Guvenler & Ahmet Guvenler v. Ministry of Finance*<sup>148</sup> where the Courts rejected the argument of the applicants that the law was unconstitutional for violating the equality principle, pointing out that, in the absence of a positive legislative provision entitling them to a student grant, the applicants will derive no benefit if the law is declared unconstitutional. These cases are relevant to Union citizens who reside in the northern part of the country, who may seek to exercise rights and claim benefits or advantages in the area under the control of the Republic of Cyprus.

The decision of the Cypriot Equality body (the Anti-discrimination Authority), which deals with the receipt of public assistance for health reason, is illuminating as to the situation of the Union citizens requiring public assistance, including jobseekers allowance.<sup>149</sup> According to the Cyprus Equality body report the relevant circular, which has wider application in similar purposes, distinguishes between Union and Cypriot citizens based on Law 7(I)/2007 and the law on Public Assistance 95(I)/2006: 'the provision of law on Public Assistance 95(I)/2006, makes a distinction between the rights of Union citizens and citizens of the Republic of Cyprus and section 12(1)(a) of the law for exemption from the responsibility for the maintenance of a disable child is not applied in the cases of Union citizens'.<sup>150</sup> The reasoning is based on the logic that the granting of residence is premised on the proof that the complainant's mother is in possession of 'sufficient means for the maintenance of her family'. The Director of the Social Welfare Service erroneously suggested that a precondition for granting the free movement rights under section 9(1)(b) of Law 7(I)/2007 is that they are not considered to be 'unreasonable burden on the social assistance system of Cyprus' (AKP 70/2007, p. 4). Moreover, the Director went on, again erroneously, to comment that the right of residence is dependent on being in possession of sufficient means'. The Cypriot Equality body after analysing the relevant legal framework considered that the Director of the Social Welfare Service had wrongly interpreted and applied the law on the following grounds:

- The Directive and the respective transposing Cypriot law does not make the exercise of the primary right of free movement, residence and work dependent upon sufficient means to avoid burdening the national social welfare system.
- The Directive explicitly set out the principle of non-discrimination on the ground of nationality;
- The right to free movement is a right adjacent to the exercise of a professional/ economic activity in the EU that has been settled at a treaty level. This is done in a manner that is

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147 Review Appeal no. 104/2008, dated 17.11.2011, covered in Annex III at the end of this report.

148 Case No. 2411/2006, Appeal No. 73/2009, dated 02.02.2012.

149 AKP 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 was receiving until May 2007. The Union citizen had been resident in Cyprus with his parents since 2002 and granted a 'visitor' indefinite leave to remain and was in receipt of public assistance since 2005 for humanitarian reasons, despite initial rejection due to his 'visitor' status. In October 2006, the complainant and his mother residence status was changed to that of a family member of a Union citizen based on the law on free movement of workers. The Social Welfare Service decided to discontinue the public assistance on the ground that he was not allowed assistance as his residence status was that of a dependent of his mother, who is a Union citizen with a residence permit for reasons of employment activity (Letter to the complainant by the Paphos District Social Welfare Service dated 5.6.2007).

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

broad in scope, lucid and direct and the exercise of this right is a condition precedent to the exercise of any professional activity in the host country (AKP 70/2007, p. 12).

Following the investigation of a number of complaints,<sup>151</sup> the Equality Body (Anti-discrimination Authority)<sup>152</sup> established that on the basis of a circular issued by the Social Welfare Services dated 21.10.2011, no state grant is being paid to applicants who are:

- Minors; and
- Cypriot nationals; and
- reside in Cyprus; and
- are members of a single family where one of the parents is a Cypriot and the other is a third country national.

For the circular in question, the Social Welfare Services had relied on their own interpretation of the ruling of the CJEU in the case of Zambrano.<sup>153</sup> This ruling, which essentially prohibits national measures resulting in preventing Union citizens from enjoying rights arising from their identity as Union citizens, was specified by the CJEU to apply to residence visas and work permits for third country nationals whose under aged children reside in the member state. The Welfare Services however interpreted this ruling as entitling third country nationals who are parents of a Union citizen to a residence and a work permit, provided they maintain the minor concerned, and as exclusive of any other social right.

The Equality Body concluded that the above interpretation of the CJEU ruling by the Social Welfare Services is incorrect and that the said ruling did not exclude access to other social rights; this issue was not even considered by the Court. The Equality Body further pointed out that ensuring access to social welfare by under-aged Cypriots irrespective of their parents' racial or ethnic origin would be more in line with the spirit of the decision of the Court. The Equality Body also invoked a recent decision of the national Supreme Court of *Liuba Frecatel v. Ministry of Labour and Social Insurance*<sup>154</sup> which confirmed that the decision in Zambrano does not exclude access to public provision by third country nationals who are parents of European citizens.

The Equality Body referred to the Supreme Court case of *Liuba Frecatel v. Ministry of Labour and Social Insurance*.<sup>155</sup> In this court case, the application of a Ukrainian national residing in Cyprus, who was the single mother of a Cypriot national and whose grant paid by the Social Welfare Services was discontinued on the basis of a circular of the Social Welfare

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151 Ref. A.K.R 125/2011, A.K.R 126/2011, A.K.R 127/2011, A.K.R 128/2011, A.K.R 42/2012, A/P 2044/2011, A/P 589/2012, A/P 858/2012, A/P 894/2012, A/P 972/2012, A/P 1317/2012, A/P 1523/2012, A/P 1577/2012.

152 The Report is available in Greek at the Equality Body's website at <http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/B1B5189FA5761C95C2257B2E003B9ED1?OpenDocument>

153 Case No. C-34/09.

154 *Liuba Frecatel v. Ministry of Labour and Social Insurance* dated 27.12.2012, Case No. 1622/2011, available at [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201212-1622-11.htm&qstring=liuba AND frecatel](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201212-1622-11.htm&qstring=liuba AND frecatel). The case concerned the application of a Ukrainian national residing in Cyprus, who was the single mother of a Cypriot national and whose grant paid by the Social Welfare Services was discontinued on the basis of the aforesaid circular of the Social Welfare Services dated 21.10.2011. The Court granted the applicant's request and cancelled the decision to discontinue her grant, mainly on technical grounds, but it did conclude that the Zambrano case did not exclude access to social provision.

155 Dated 27.12.2012, Case No. 1622/2011.

Services.<sup>156</sup> The Court granted the applicant's request and cancelled the decision to discontinue her grant, mainly on technical grounds, but it did conclude that the Zambrano case did not exclude access to social provision. The Equality Body found that the said policy of the Social Welfare Services amounted to direct discrimination against Cypriot citizens whose one parent is of foreign origin, when compared to those Cypriot citizens whose both parents are Cypriots. The Equality Body also found that the said policy amounts to direct discrimination against the parents themselves due to their racial/ethnic origin, who are allowed to continue residing in Cyprus, given the special link which their child has with the country, but without support and protection. The policy also ignores the circumstances of the parent, who may be unable to find employment with sufficient income, pointing out that the prejudicial treatment of the foreign mothers of Cypriot children also amounts to indirect discrimination on the ground of gender.

The Equality Body report was submitted to the Minister of Labour and social Insurance and to the Director of Social Welfare Services with the recommendation that the policy be revised in light of the principles of equal treatment and non-discrimination, asking that the possibility of enacting specific legislation to cover this matter be examined.

With the exception of the above, the general principle is that EU workers and their family members in theory have the same access to social benefits and advantages as defined in Article 7(2) Regulation 492/2011 as national workers. This is the official position of the authorities. No case law or other known complaint has been filed to the Equality Body claiming violation of the said Regulation.

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, under article 5(1), Law 7(1)/2007; all rights granted to Union citizens are equally said to be granted to the members of their families. 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 under article 4(2) (a), Law 7(1)/2007.

Cyprus makes use of the derogation available on the basis of Article 24 (2) Directive 2004/38 as this is verbatim transposed as art.22(1) of Law 7(I)/2007.

The kind of financial and non-financial social benefits and advantages as defined in Article 7(2) Regulation 492/2011 applicable for EU citizens and members of their families have been discussed in question 2 of the General issues above.

## ***2.2 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

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<sup>156</sup> Dated 21.10.2011.

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 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>157</sup>

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

### ***2.3 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>158</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 Funda-

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<sup>157</sup> 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'.

<sup>158</sup> 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'.

mental 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 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.

#### ***2.4 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.

#### ***2.5 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 permanence 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.

No cross-border taxation problems have been recorded. However, there are issues relating to the division of Cyprus.

Questions arise as regards the rights of Union citizens who reside in the northern part of the country and whether they are entitled to equal treatment and social advantages Cypriots and other Union citizens. Even if this category of Union citizens may not qualify as 'frontier workers', in the strict sense of the term, their position and thus their corresponding rights may be seen as *analogous* for all intents and purposes to 'frontier workers'.

## **2.6 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.

## 2.6 *Specific issue: the situation of jobseekers*

*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 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 jobseekers' allowance.<sup>159</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 (see Chapter I.2.2 above).

*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, is 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 jobseekers.

*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 one parent is a migrant and the other a Cypriot, who are thus entitled to Cypriot citizenship:

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<sup>159</sup> AKP 70/2007, issued on 24 March 2008. The complainant's name is Nicolaos Meziridis.

## CYPRUS

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 jobseekers) and seek rights provided by the free movement directive in the southern territories, which are under the effective control of the Republic of Cyprus. The questions to be addressed are:

- Are they entitled to equal treatment and social advantages Cypriots and other EU citizens? Even if this category of Union citizens do not qualify as ‘frontier workers’, is their position and thus their corresponding rights *analogous* for all intents and purposes to ‘frontier workers’?
- Or, is their situation so fundamentally different, deriving from the wholly unique situation in Cyprus, as one of ‘the Cypriot states of exception’,<sup>160</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>161</sup> a regime that remains unrecognised.<sup>162</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>163</sup> to the territorial application of the implementation of the Directive<sup>164</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>165</sup> as well as any other

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160 Constantinou C. M. (2008) ‘On the Cypriot States of Exception’, *International Political Sociology* (2008) 2, pp. 145–164.

161 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’.

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

163 This is also the case in other laws.

164 Such as section 20 of the law.

165 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>166</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>167</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>168</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>169</sup> the outermost regions,<sup>170</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>171</sup>

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

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

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

169 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.

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

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

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 which the Government of the Republic of Cyprus does not exercise effective control’.<sup>172</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>173</sup> is regulated by ‘the Green Line regulation,’<sup>174</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>175</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>176</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

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

173 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)).

174 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)).

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

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

permanent residence only where the same restrictions apply to their own nationals.’ In fact, the discrimination caused is manifold: by failing to recognise the rights of Union citizens to free movement, whilst recognising the rights of Turkish-Cypriots who reside in the same territories to have access to the rights and benefits of the Republic, 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>177</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>178</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>179</sup> Therefore an ‘apparently neutral provision, criterion or practice’ that puts persons of a certain national<sup>180</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>181</sup> as there are inherent complications resulting from the operation of the Green line Regulation.<sup>182</sup>

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

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

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

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

181 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.

182 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,

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 dealt with and the implications this has.<sup>183</sup> However, the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*<sup>184</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>185</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>186</sup>

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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).

183 See Constantinou, C.M. (2008) ‘On the Cypriot States of Exception’, *International Political Sociology* (2008) 2, pp. 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, pp. 79-116.

184 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.

185 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)).

186 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], Nico-

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## CYPRUS

Not only is it difficult to justify any connection between ‘provisions absolutely necessary for 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.

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sia, 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.

## 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.

Some changes have to be recorded since 2012.

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 *Bosmans* ruling of 1995.<sup>187</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 Pancyprrian 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>188</sup> have not been adopted so far.<sup>189</sup>

<sup>187</sup> *Union Royal Belges des Sociétés de Football Association ASBL and others v. Jean-Marc Bosman*, Case C-415/93, ECR I-4921.

<sup>188</sup> See ‘Οι αριθμοί φοβίζον. Νοιάζεται η ΚΟΠ; Επάγγελμα Ποδοσφαιριστής’, *Journal of the Pancyprrian Footballers’ Association*, issue 1, 2008, p. 10.

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>190</sup> In any case, this is a major European issue of debate following the *Bosmans* ruling.<sup>191</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>192</sup>

The Pancyprian Footballers' Association has for some years now complained that foreign footballers who play in second division teams as 'amateurs'<sup>193</sup> are required by the regulations of the Cyprus Football Association to obtain work permits. They claim that 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>194</sup> Moreover there have been some changes in 2013. It used to be a requirement that for amateur EU football players obtain a Certificate of Registration. However the rules have been amended and this is no longer required.

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>195</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.

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189 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 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.

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

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

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

193 Information provided by Spyros Neofitides, President of Pancyprian Footballers Association.

194 Information provided by Spyros Neofitides, President of Pancyprian Footballers Association.

195 See N. Trimikliniotis (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 N. Trimikliniotis (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>.

Legislation/Regulations: Cyprus Football Association (2011), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus.<sup>196</sup>

### 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>197</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 entered into force on 20 August 2012.<sup>198</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>199</sup> A 2008 circular from the Migration Office extends the scope of the decision of the Council of Ministers<sup>200</sup> as regards residence and work permits to members of staff of international companies<sup>201</sup> to cover the staff members of Cypriot shipping companies.

The new collective agreement was signed on 29 October 2013 and will enter into force on 1<sup>st</sup> January 2014.

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

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

197 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.

198 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 Part2, 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.

199 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).

200 Decision no. 67692, dated 24.9.2008.

201 These are the former off-shore companies.

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>202</sup> We are informed<sup>203</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 access 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>204</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>205</sup> in the Convention on the Status of the Artist in Cyprus,<sup>206</sup> which has followed the Convention on the Status of the Artist in Europe.<sup>207</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>208</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

202 [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).

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

204 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'.

205 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.

206 Held in Nicosia on 15.3.2009 and organized by the Cultural Service.

207 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.

208 This was circulated on the 15.3.2009 at the Convention

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>209</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 Research Promotion Foundation;<sup>210</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>211</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>212</sup> non-discrimination,<sup>213</sup> research environment,<sup>214</sup>

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209 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.

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

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

212 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)’.

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working conditions,<sup>215</sup> job security and stability and permanence of employment,<sup>216</sup> funding and salaries,<sup>217</sup> gender balance<sup>218</sup> and career development<sup>219</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 contains was prepared by the Cyprus Mobility Centre in order to assist foreign researchers, wishing to pursue their next career move in Cyprus,

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- ‘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.’
- 213 ‘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.’
- 214 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.
- 215 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.
- 216 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*.
- 217 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.
- 218 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.
- 219 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.

by providing information about Cyprus, its research landscape and various mobility related issues.<sup>220</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>221</sup>

*The European Charter for Researchers*<sup>222</sup> and the *Code of Conduct*<sup>223</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>224</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.

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220 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.

221 The Centre is a member of the European Network of Mobility Centres (ERA-MORE), an initiative of the European Commission aiming to provide personalised assistance to researchers wishing to pursue their next career step abroad. The various national Mobility Centres can provide researchers with customised information on practical matters regarding their move abroad such as entry conditions for them and their families, issues regarding employment, social security and tax issues, medical coverage but also administrative and cultural issues regarding the host country.

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

223 [http://crpf.metacanvas.com/EN/int\\_cooperation/euraxess/rights.html](http://crpf.metacanvas.com/EN/int_cooperation/euraxess/rights.html), available as a link to the Research Promotion Foundation. The Code of Conduct for the recruitment of researchers consists of a set of general principles and requirements that should be followed by employers and/or funders when appointing or recruiting researchers.

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

### **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>225</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.

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 that there are not residents residing in the Turkish occupied territories who apply for such grants.<sup>226</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.

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<sup>225</sup> Proposal 950/2009, decision 68450 dated 26.2.2009.

<sup>226</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.

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 students

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

Pensions and Disability allowances are not counted as income.

### Criteria for the point system: Social situation of the family of students

Social situation	Points
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).

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

### Types of financial support

Type of support	Limit of Annual award
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>227</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>228</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>229</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>230</sup> In any case, this is a major European issue of debate following the *Bosmans* ruling in 1995.<sup>231</sup> The Pancyprian Footballers' Association however argues that

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

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

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

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

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

there is problem of reverse discrimination and argues for the adoption of 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>232</sup> The Pancyprian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs'<sup>233</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 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>234</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>235</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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<sup>232</sup> Article 2(b) of the EU Directive 43/2000

<sup>233</sup> Information provided by Spyros Neofitides, President of Pancyprian Footballers Association.

<sup>234</sup> Information provided by Spyros Neofitides, President of Pancyprian Footballers Association.

<sup>235</sup> Article 4(a) of Law 181(I)/2011 amends article 10(4) of Law 7(I)/2007.

## **Chapter VII**

### **Application of Transitional Measures**

The Government has already activated the transitional provisions for suspension of articles 1-6 of Regulation 492/2011 for a period of two years as regard the free movement for Croat workers following the accession of Croatia to the EU on 1.7.2013.<sup>236</sup>

There are no other transitional measures for Cyprus.

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

The Government has activated the transitional provisions for suspension of articles 1-6 of Regulation 492/2011 for a period of two years as regard the free movement for Croat workers following the accession of Croatia to the EU on 1.7.2013.<sup>237</sup>

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

There are no transitional measures for Cyprus. In May 2013 the Minister of Labour sought to change this policy giving instructions to officials to impose measures at least until the end of 2013. The plans were eventually abandoned as such measures were thought to be untenable.

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236 It has informed the permanent representative of the of the EU (letter 10.6.2013) of the decision of the Council of Ministers 8.5.2013.

237 It has informed the permanent representative of the of the EU (letter 10.6.2013) of the decision of the Council of Ministers 8.5.2013.

## **Chapter VIII Miscellaneous**

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

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

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### **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>238</sup> On 29.06.2010 the Ministry of Interior called a meeting in order to consult stakeholders on a previously circulated document 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>239</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>240</sup>
- Access to justice;

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238 For a discussion on the current debates on integration and migration see Trimikliniotis 2009a; 2010a and Trimikliniotis and Souroulla 2006a; 2006b; 2010.

239 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).

240 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.

- 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.

### **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>241</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.

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