

REPORT
on the Free Movement of Workers
in Cyprus in 2010-2011

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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 most important trends, major achievements and developments in the Republic of Cyprus can be summarised as follows:

Economic crisis hits employment and rise in anti-immigrant sentiments

The current economic crisis is beginning to creep into the immigration and employment debates in Cyprus. Unemployment is climbing upward, even though it remains low according to EU standards; it has doubled over the last years and stands at 7%. There have been significant job cuts and down-sizing in the tourist (hotel and restaurants) and construction sectors, the most important economic sectors. Some trade unions are calling for restrictions in the employment of TCNs; some have even called for restrictions against EU citizens. Some fringe extreme right groups and initiatives have emerged connecting unemployment to the employment of migrant workers. Media report that many EU citizens are leaving Cyprus to improve their livelihoods.

The Government responds to the warning letter by the Commission identifying 14 matters over alleged violations of free movement acquis

The Commission has sent a warning letter to the Republic of Cyprus (ref SG-GREFFE(2011)D/F7974, No. 2011/2064, 19/5/2011), which warns the Republic of Cyprus of bad implementation of certain provisions of Directive 2004/38 as regards free movement of union citizens and the members of their family. It makes a number of allegations regarding the transposition of directive 2004/38/EC via the law 7(1)/2007 as well as identifying a number of alleged violations of the free movement law as matter of administrative practice or implementation. There are fourteen matters in which the commission considers that the free movement directive is not properly transposed. The Republic of Cyprus responded with a letter dated 25.7.2011 by providing explanations, which either rebut the allegations or attempts to address the concerns by giving clarifications about the issues raised by the Commission. The breaches refer to the following subjects: entry and exit to the Cypriot territory; entry and exit of same-sex couples; delays and required documentation in order to obtain registration for EU citizens; proportionality in cases of non-compliance for of union citizens failure to register; timeline and duration of residence permit for third country spouses married to union citizens; costs for issuing registration documentation and other documentation; deportation and placement on stop list; matters relating to persons maintained by union citizens; proof of registration as condition for the exercise of other rights; preconditions to acquiring the right to permanent residence; the condition of sufficient means for employees; provision of services as self-employed; transposition of art. 17(2) and (4)(c) of directive; return of Cypriot citizens to Cyprus. Having reviewed the exchange together with the appendices, each of the issues will be dealt with in detail in the relevant section by examining the extent to which the responses satisfactorily address the alleged violations.

The government has responded to the EU Commission alleged bureaucratic obstacles to free movement by the immigration authorities.

Issues raised include backlogs causing delays; proof of registration as condition for the exercise of other rights; and alleged high costs for issuing registration documentation and other documentation. The complaints about the high costs of registration are disputed by the Government.

Deportation and placement on stop list and preconditions to acquiring the right to permanent residence as well as entry and exit to the Republic of Cyprus under article 4(1) of Directive. Despite the more positive general climate in the treatment of migrants, NGOs have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens. 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.

Entry and exit to the Cypriot territory and entry and exit of same-sex couples: 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 exercise of free movement, arising from the failure to regulate same-sex marriages and registered relations in Cyprus. This was highlighted by a recent decision of the Cypriot Equality Body, which 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 with third country nationals.

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. However, employers and Ministry of Labour officials point out that in general the system operates smoothly with few problems or complaints of discrimination.

Equal treatment and worker rights: Nationality discrimination

A particular issue relates to the conditions of employment of union citizens who are trainees in the hotel industry and allegedly face nationality discrimination, as trade unions complain that there are an estimated 1500-2000 trainees in hotels, 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 warrants further investigation; it is currently being examined by the Cyprus Equality Authority. Another issue of concern is the finding by the Equality Authority there is violation of the principle of equal treatment between Cypriots and Union citizen workers in the hotel industry.

The issue of *reverse discrimination* seems to be on its way to resolution following 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

CYPRUS

7(1)/2007. Nevertheless, family members who are third country nationals continue to be discriminated in different ways. Courts persistently ignore this and treat family members of Cypriots

The issue concerns the *territorial application* of the Directive given the de facto division of Cyprus, which restricts the force of the law to the application to 'the area under the control of the Republic', refers to the suspension of the Acquis in the northern occupied territories. However, this provision has resulted in problems in the implementation of the principle of free movement, given the accession to the EU of a divided Cyprus. It is noted that the question of free movement *acquis* was a thorny issue during the negotiations to resolve the Cyprus problem between the two community leaders in the recent intensified negotiations.

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

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

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

2. SITUATION OF JOBSEEKERS

Job-seekers seeking allowance must first register at the district job-seeking bureau and then register at the district social security office; this includes EU citizens. There has been no case law on the status of Union citizens who are jobseekers in Cyprus, as well as those requiring public assistance. The practices seem to be in line with the *Antonissen* criteria.¹ So far we have no information, or any report or complaint about the deportation of EU citizen who is a job-seeker in Cyprus: such rather drastic measures of requiring from an EU citizen to leave the territory of that Cyprus (subject to appeal) for failing to find employment there after six months² has not been used in Cyprus. The policy paper/ memorandum regarding job-seekers who are EU citizens in Cyprus (issued in late 2009) is in operation since the beginning of 2010.³

The Social Welfare Service interprets the various references to the notion of unreasonable burden on the social assistance system of Cyprus.⁴ The Social Welfare Service examines each individual case and submits a report to immigration authorities.⁵ However, the question of interpretation of the notion of ‘unreasonable burden’⁶ remains rather nebulous despite the information provided to the author that the Social Welfare Service was in the process of defining the term means by seeking advice and guidance from practices and conceptual frames

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.

3 Information provided by officer of the Social Welfare Office 1.7.2010. For 2009 there was no official or unofficial policy as to how long EU citizens job-seekers could stay in Cyprus without formalities.

4 According the law who are in charge to make such determinations according to section 4.1(b)(5) of law 7(I)/2007. No details were given to the author to illuminate further as a matter of practice what they actually do i.e. how they interpret section 4.1(b)(5) of law 7(I)/2007, verbatim copying art. 14.1 of 2004/38/EC that the union citizens must be ‘unreasonable burden on the social assistance system’ and how many applications they have received.

5 Information provided by a Social Welfare Services officer, 26.9.2011.

6 According the law who are in charge to make such determinations according to section 4.1(b)(5) of law 7(I)/2007. I have not received a reply from the Social Welfare Service yet on the issue, where I request that they inform me as a matter of practice what they actually do i.e. how they interpret section 4.1(b)(5) of law 7(I)/2007, verbatim copying art. 14.1 of 2004/38/EC that the union citizens must be ‘unreasonable burden on the social assistance system’ and how many applications they have received. I am hoping to get a reply before the final draft of this report.

in other EU countries on the subject.⁷ No figures as to how many persons were proposed to be deported deemed as ‘unreasonable burden’; neither has there been any information as to how exactly the Social Welfare Service defines this ambiguous term.⁸

There are three potential sources of benefits for jobseekers in general: (a) unemployment benefit, which is based on contributions; (b) social assistance and (c) other benefits available by the Service of Grants and Allowances under the Ministry of Finance, analysed further down.

2.1 Unemployment benefit

The Social Insurance Law (N. 41/80)⁹ 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 benefit¹⁰ is payable to employed persons and voluntary contributors working abroad in the service of Cypriot employer. Insured persons under the age of 16 or over the age of 63 are not entitled to unemployment benefit. The age of 63 is extended up to the age of 65 if the insured person is not entitled to old age pension.¹¹ The conditions for entitlement to unemployment benefit are: (a) The insured person has been insured for at least 26 weeks and has paid, up to the date of unemployment, contributions on insurable earnings not lower than 26 times the weekly amount of the basic insurable earnings; and (b) The insured person has paid¹² or been credited¹³ with contributions in the previous contribution year¹⁴ 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

7 This was the response given to the author during the writing of this report.

8 This was one of the subjects of the debate of the national seminar of Cyprus in November 2009. The National Seminar on Free Movement of Workers took place on 8 November 2009, Limassol. At the Seminar one of the officers in charge referred to the referred to academic articles on the current debates, such as the paper by Koen Lenaerts and Tinne Heremans (2006) ‘Contours of a European Social Union in the Case-Law of the European Court of Justice’ (*European Constitutional Law Review* 2006, 2:1:101-115), which examines the tensions between national welfare systems and the social rights of the citizens of the Union.

9 As amended; relevant regulations have also been issued.

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

11 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)

12 Insurable earnings on which contributions have been paid.

13 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.

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

account, whilst the contributions of a voluntarily insured person are taken into account only in the case of work abroad in the service of Cypriot employer insurable earnings not lower than 20 times the weekly amount of the basic insurable earnings. In terms of the procedure to be followed, it is required that the insured person should visit the nearest Social Insurance Office and sign the register of unemployed. The claimant should sign the register at regular intervals determined by the Social Insurance Office. 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.¹⁵

2.2 Social/public assistance

The term 'sufficient means' for employees

The Commission's warning letter to the Cyprus government stated that although Directive article 7(1)(a) in combination with directive article 8(3) were correctly transposed into Cypriot law, complaints had been received that, as a matter of policy, the authorities required of employees to have a certain income for him/herself and his/her family in order for the right of residence for more than 3 months to be recognized to him/her. The Cypriot government agreed that employees should not be asked to present proof of sufficient resources and therefore issued a circular¹⁶ clarifying that the sufficiency of means of Union citizens who are in employment shall not be attested. The Commission also had information that Union citizens applying to register as employees faced administrative difficulties equivalent to the ones referred to above as regards proportionality of sanctions. The Cypriot government rejected this allegation arguing that the administrative practices are proportionate and non-discriminatory.

During 2009 and until 1.5.2010, public assistance was provided under Law 95(I)/2006¹⁷ to all those residing in the territories under the effective control of the Republic of Cyprus i.e. not the territories under the unrecognized/illegal TRNC.¹⁸ There are conditions specific to Union citizens: A 'Union citizen who maintains his/her status of an employee or self-employed person' is defined as 'a Union citizen who has exercised his/her right to reside in the Republic for the exercise of employed or self-employed activity and is no longer employed or self-employed in the following situations: (a) temporary incapacitated due to sickness or accident; (b) has been duly registered as involuntary unemployed, having exercised professional activity for over one year and has registered as a person seeking employment in the appropriate Employment Bureau (according to residence); (c) is duly registered as involuntary unemployed after the expiry of a fixed-term contract of employment of duration shorter than a year or after becoming involuntary unemployed during the 12 months has

15 This came into effect on 1st May 2010.

16 Dated 18.07.2011.

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

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

registered with the appropriate Employment Bureau (according to residence); the duration of employment must not be less than 6 months; (d) is attending a vocational course.

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

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

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

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

Recognised refugees residing in the Republic whose income and other means are not sufficient for their basic needs are entitled to public benefit.¹⁹

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.²⁰ 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'.²¹ 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

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

20 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).

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

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

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

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

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

²² In other instances there is no compliance. For instance in the past there have been cases regarding the provision of public assistance to Union citizens, where there has not been compliance with the recommendations of the Cypriot Equality body (AKR 33/2004, dated 10.1.2005).

3. OTHER ISSUES OF CONCERN

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

In spite of the generally more positive approach adopted by the Ministry of Interior who has created a more positive climate in the treatment of migrants, NGOs have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens. Matters relating to persons maintained by union citizens and the condition of sufficient means for employees; provision of services as self-employed; transposition of art. 17(2) and (4)(c) of directive; return of Cypriot citizens to Cyprus.

The Commission's warning letter 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, art. 2 and 5 of the Cypriot law. The Commission 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 ECJ case law C-68/89. In response to the above complain 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. As for the specific complaint, the Cypriot authorities claim that they have not reference to the case form the information received from the airport; also they claim that having contacted the complainant on 1/7/2011, he no longer has a complaint. Under these circumstances it seems that there is no longer an issue. 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 the free movement directive.

3.2 Fees for the issue of residence card

The Commission warning letter alleged that article 25 of the Directive and other documents which must be issued free of charge has not been transposed in the Cypriot legislation. In practice this has discriminatory effect regarding the cost of similar documents. The Commission has received complaints with attached governmental official documents indicating the fees required for the issue of various documents. In addition a form called MEU 1 A is required which specifies the fees to be paid as follows: €8,54 for Union citizens and €17,09 for every member of his/her family. In response, the Cypriot government stated that article 25(2) of the Directive is not transposed verbatim in the Law 7(I)/2007 but in compliance with this provision the Cypriot law specified fees²³ which are analogous to those charged for Cypriots. In particular, section 19(4) requires payment of the fee of €8,54 whilst the same fee is required of Cypriots for the issue or replacement of a Cypriot identity card.²⁴ Also, the fee of €34,17 charged for the temporary residence permit of an alien who is a family member of a Cypriot national²⁵ corresponds to the same fee charged for residence cards of family mem-

²³ Sections 10(4), 10(6) and 17(1) of Law N.7(I)/2007.

²⁴ Aliens and Immigration Regulations 2004, Table II, ΚΔΠ 15/99.

²⁵ Aliens and Immigration Regulations 2004, Table V, ΚΔΠ 371/2002.

bers of Union citizens who are third country nationals.²⁶ The Cypriot authorities further argued that in some cases Cypriots are charged more than EU nationals, by making reference to the Law on Citizens regulating the registration of persons of Cypriot origin as citizens, which is in the expert's opinion not analogous or relevant to this case. In any case, a bill has been drafted by the government proposing to amend Law 7(I)/2007 purporting to transpose article 25(2) of the Directive by verbatim copying its content.²⁷

3.3 *The interpretation of 'sufficient resources'*

An issue of concern relates to the interpretation of 'reasonable burden'. The Commission letter alleges that although the Cypriot law 7(I)/2007 seems to be correctly transposed art.7 in conjunction with art.8(3)²⁸ of the directive, in substance, on the basis of administrative practice directions, Cypriot authorities require that the worker demonstrates certain income for him/herself 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 'burden' occurs.²⁹ The Cypriot law has transposed verbatim the relevant provisions of the directive in the various categories of workers.³⁰ The Cypriot law (sect. 27(1)) stipulates that persons exercising their right of residence should not become a 'unreasonable burden' on the social assistance system of the country during an initial period of residence.

In practical terms what is required is set out in the circular issued by the Civil Registry and Migration Department,³¹ which requires that a number of formalities are provided to ensure that the Union citizen applicants is in possession of 'the appropriate means'. According to section 4.1 (5) of law 7(I)/2007, the Social Welfare Services are the designated authority to make determinations of what constitutes 'burden on the social assistance system of Cyprus'. The Cypriot authorities in response to the commission allegations have produced circular issued by the Archive of Population (no. 15/2006/III, 18/07/2011) which stipulates the content of the law transposing the directive. The relevant circular notes the following:

- 1) The Registration is granted immediately to union citizens and member of their families, provided they provide the relevant documentation once they fill in the relevant application (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. The 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, the self-employment can be demonstrated by the registration with the

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

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

28 This stipulates the documentation each worker has to submit.

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

30 Art. 7(1a) of the Directive is sect. 9(1) of the said law; art. 7 (3 a-d) is sect. 9(4)(a-d); art. 8(3a) is sect. 10(4); art.14 (4 a-b) is sect. 27 (4a-b), art.17 is sect. 15, art. 24 (2) is sect. 22(2).

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

Social insurance Services or other proof that they are such , e.g. European documents E101/A1.

- Certificate of registration/residence documentation is granted 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. documentation that they are students, health certificates etc.
- 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.
- Certificate of registration/residence documentation is granted to the directly ascending relatives (parents) of Union citizens or his/her spouse, providing they submit proof that they are dependents.
- With the application form MEU3A³² 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 questions relating to the interpretation of ‘unreasonable burden’ in Cyprus by the Welfare Services had been uncertain since 2007;³³ nonetheless, the position of the Ministry of Interior is categorical that the guidelines contained in the circular sent to responsible officers as the minimum income acceptable to proceed with the application for a certificate of registration was never a condition precedent but a mere guide.³⁴ 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 complaints.

³² Application to obtain certificate of permanent residence.

³³ The Civil Registry and Migration Department (File No. 30/2004/IV, 29.9.2008) gave the responsible officers guidelines through a letter regarding the issue of sufficient means for the cases of EU nationals, who are not employees but who stated that have sufficient means. The letter contained the following amounts: 600 euro for himself (language used in the letter); 400 euro for his wife; 300 euro for each child over 12 years old; 200 euro for each child under 12 years old. In cases of pensioners and aged persons, these must have a bank account and statements for proving that the pension is provided from abroad and is banked to the bank account in Cyprus (or statements that they withdraw money from their bank account abroad through their cards), they must submit a certificate of health insurance and a rental agreement or a contract of sales. The letter regarding the issue of sufficient means refers to the minimum pension from abroad must be 600 euro. In the case of Union citizens who are students and who are also employed on a part-time basis they will not be considered as workers therefore their application will be processed on the basis of criteria for students. The letter regarding the issue of sufficient means refers to an income not less than 600 euro.

³⁴ In the relevant communication to the author from the Ministry of Interior (9.9.2009) the Ministry stated: ‘The letter included indicative amounts. The instructions were if the stated means of the EU citizen did meet the indicative amounts then the application was examined at the place of submission. In cases where the stated means did not meet the indicative amounts then the application was sent to the Central Offices of Civil Registry and Migration Department in Nicosia. The issue was then sent to the Social Welfare Services which is the competent Authority. No application was rejected without the approval of the Social Welfare Services.’

4. FREE MOVEMENT OF ROMA WORKERS

No issue has been recorded as regards free movement of Roma in Cyprus. 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 Paralimni. No further information is available, nor is there any other record on the subject.

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 a right of residence and permanent residence, irrespective of their nationality (section 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 (section 4(2) (a), Law 7(1)/2007).

1.1 Reverse discrimination in administration practice and Cypriot case law

There is a problem of reverse discrimination against Cypriots 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. In the national report of 2009-2010 I expressed the view that the issue of reverse discrimination seemed to be on its way to resolution following the above Ministerial Committee decision, but this has not happened. Family members who are third country nationals of Cypriots continue to be discriminated in different ways and courts persistently ignore the above decision, something which results in subjecting family members of Cypriots to a more stringent regime than the family members of Union citizens. The Cyprus Equality Authority Report noted³⁵ 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 Ombudsman³⁶ illustrating the inadequacy in the treatment of Union citizens on the family reunion of Union citizens, including Cypriots.

In 2010-2011 three cases referred to reverse discrimination in the exercise of the right to free movement of workers. The contradictory approach by the courts failing to afford full recognition of free movement principles has not been ‘resolved’: two cases in 2010 endorse the logic that leads to reverse discrimination as the correct interpretation of free movement directive as transposed; another seems to go the other way. Two cases dealt with the same parties and had five judges of the Supreme Court in its’ appellate function sitting: *Svetlana Shalaeva v. Republic of Cyprus*³⁷ and *Republic of Cyprus v. Svetlana Shalaeva*.³⁸ The third

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

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

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

38 *Republic of Cyprus v. Svetlana Shalaeva* (No. 72/2008, dated 22.12.2010).

was a more recent appeal decision by the Supreme Court, with a single judge sitting, *Abdulkader Majed*.³⁹ The comments by the judges go to the heart of cases as they address whether rights afforded to Union citizens exercising free movement also apply to Cypriots or residents in Cyprus who have not moved. These comments appear to form part of the *ratio decidendi* of the cases but the same time they are only part of a reasoning which is essentially formalistic and procedural, something which may relegate them into mere *obiter dicta*.

In *Svetlana Shalaeva v. Republic of Cyprus*⁴⁰ the judge handing down a unanimous judgment,⁴¹ expressly rejects the line of argumentation of *Saiedi v. The Republic of Cyprus*,⁴² which considers it absurd that Cypriots enjoy less rights than Union citizens derived from Community law on free movement of workers apply,⁴³ as it would be absurd that Cypriots would not enjoy the same rights as other Union citizens. It is rather odd that in this decision the Court refers to the decision of the Ministerial Committee on the Employment of aliens dated 31.05.2005, but fail to refer to the Ministerial Committee for the Employment of Aliens decision on 28.8.2009. The judge instead expressly endorses the case of *Sari Tekin*,⁴⁴ which confines the rights to Union Citizens, who come to Cyprus to exercise their right to free movement as it is ‘pre-condition of such a citizens to enter Cyprus’ and ‘does not concern Cypriots and their right to stay in Cyprus’. In fact the judge goes one to quote the *Metock* case:⁴⁵

’73. On this point, the answer must be, first, that it is not all nationals of non-member countries who derive rights of entry into and residence in a Member State from Directive 2004/38, but only those who are family members, within the meaning of point 2 of Article 2 of that directive, of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national.

74. Second, Directive 2004/38 does not deprive the Member States of all possibility of controlling the entry into their territory of family members of Union citizens. Under Chapter VI of that directive, Member States may, where this is justified, refuse entry and residence on grounds of public policy, public security or public health. Such a refusal will be based on an individual examination of the particular case.’

A few months later, on 22 December 2010, the Supreme Court with five judges sitting, the judge handing down another unanimous decision,⁴⁶ without reference to the Supreme court case of *Svetlana Shalaeva v. Republic of Cyprus* (No. 45/2007) or the *Metock* case, expressly endorsed the line of cases following the opposite logic, which considers reverse discrimination as an absurd results contrary to the general equality principle:⁴⁷

39 *Abdulkader Majed v. Republic of Cyprus* No. 1099/2009, 7.2.2011.

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

41 As per judge Padadopoulos.

42 Case no. 1241/2006, 28.07.2006. Per Judge Nicolaides, who stated: ‘it is self-evident that the same rights enjoyed by citizens of other member state of the EU would be provided for Cypriots’. He awarded damages of EUR 800 plus costs and VAT.

43 He referred to the law that preceded the current law 7(I)/2007, which is Law on Freedom of Movement and Residence of Nationals of Member States of the European Union and their Family Members N. 92(I)/2003.

44 Case no. 290/2006, 27.07.2007.

45 *Blaise Baheten Metock v. Minister for Justice, Equality and Law Reform*, C-127/08, 25.7.08.

46 *Republic of Cyprus v. Svetlana Shalaeva* (No. 72/2008, dated 22.12.2010), as per judge Erotokritou.

47 My translation of the Greek excerpt of the decision reads as follows: ‘Όπως είχα και στο παρελθόν αναφέρει (*Saiedi v. Δημοκρατίας, Υποθ. Αρ. 1241/2006, ημερ. 28.7.2006, Kanthie κ.α. v. Δημοκρατίας, Υποθ. Αρ. 1587/2005, ημερ. 21.5.2007 και Petrosian κ.α. v. Δημοκρατίας, Υποθ. Αρ. 453/2006, ημερ. 22.10.2007*) είναι

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‘As I have noted in the past (*Saiedi v. Republic of Cyprus*, case no. 1241/2006, date 28.7.2006, *Kanthie and others v. Republic of Cyprus*, case no. 1587/2005, date 21.5.2007 and *Petrosian and others v. Republic of Cyprus*, case no. 453/2006, date 22.10.2007) it is self-evident that the same rights enjoyed by nationals of other member states of the European Union are also granted for Cypriots. We would end up with absurd results if the Greek-Cypriot husband of the claimant could live in any other country of the European Union but could not do the same in his own country. Despite the application for divorce or even the separation of the couple, up until the final granting of divorce, they remain spouses.’

In the third case *Abdulkader Majed*,⁴⁸ the judge failed to refer to either of the *Svetlana Shalaeva* cases. The judge considers that the conflicting case law as regard the construction of directive 2004/38 (i.e. *Saiedi v. Republic of Cyprus* and *Sari Tekin v. Republic of Cyprus*) has been resolved with the passage of Law 7(I)/2007, where section 2 defines Union citizens as every citizen who has citizenship of a member state of the EU, other than the Republic. The judge concludes that the applicant cannot enjoy the same ‘privileges’ afforded to family members of union citizens.⁴⁹ The use of the term ‘privileges’ is rather odd, whilst the result is even more problematic: in his construction, members of the family of Cypriot citizens moving from another EU country to Cyprus cannot enjoy rights afforded to all other non-Cypriot nationals under EU free movement law. He assumes that freedom of movement law operates somehow in a vacuum and general equality and anti-discrimination principles, which are constitutional enshrined. Moreover, the judge fails to consider the Ministerial Committee for the Employment of Aliens decision on 28.8.2009; nor does he refer to the prohibition of nationality discrimination, ignoring that the Republic of Cyprus has ratified and has incorporated the Twelfth Protocol to the ECHR.

In other cases judges reiterated similar obiter dicta that the rights afforded under EU free movement law do not cover situations where the citizen wishes to remain in the territory where he is a citizen.⁵⁰

αυτονόητο πως τα ίδια δικαιώματα που υπήκοοι άλλων κρατών μελών της Ευρωπαϊκής Ένωσης έχουν, προνοούνται και για τους Κυπρίους. Θα καταλήγαμε σε παράλογα αποτελέσματα αν ο Ελληνοκύπριος σύζυγος της αιτήτριας θα μπορούσε να ζήσει μαζί της σε οιαδήποτε άλλη χώρα της Ευρωπαϊκής Ένωσης, αλλά να μην μπορεί να το πράξει στην ίδια του την πατρίδα. Παρά την καταχώρηση αίτησης διαζυγίου ή ακόμα και τη διάσταση του ζεύγους, μέχρι την τελεσίδικη έκδοση διαζυγίου, παραμένουν σύζυγοι.»

48 As per judge Nicolaides, in *Abdulkader Majed v. Republic of Cyprus* No. 1099/2009, 7.2.2011, p. 4. The relevant Greek excerpt reads: ‘Στο παρελθόν υπήρξε συγκρουόμενη νομολογία για την ερμηνεία της Οδηγίας 2004/38/ΕΕ, η οποία, θα πρέπει να σημειωθεί, εν τω μεταξύ, ενσωματώθηκε στο εθνικό μας δίκαιο (βλέπε *Saiedi v. Δημοκρατίας, Υποθ. Αρ. 1241/06, ημερ. 28.7.2006* αλλά και *Tekin v. Δημοκρατίας, Υποθ. Αρ. 290/06, ημερ. 27.7.2007*). Το θέμα, όμως, έχει λυθεί με τη ψήφιση του περί Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμου του 2007, Ν.7(Ι)/2007. Στο άρθρο 2, προβλέπεται ότι «πολίτης της Ένωσης» σημαίνει κάθε πρόσωπο που έχει την ιθαγένεια κράτους μέλους της Ευρωπαϊκής Ένωσης, άλλο από τη Δημοκρατία. Ο ορισμός αυτός εξαιρεί βέβαια τον αιτητή ο οποίος δεν μπορεί να έχει τα προνόμια που παρέχονται στα μέλη των οικογενειών υπηκόων τρίτων χωρών, που είναι συγγενείς με πολίτες κράτους μέλους της Ευρωπαϊκής Ένωσης.’

49 This may well be obiter as the judge had already decided that he applicant could not benefit from any legislation as a family member as his marriage to a Greek-Cypriot was null and void, given his previous marriage in Syria.

50 In *Thadd Correia, Savvas Savva v. Republic of Cyprus* (case no.1582/2008, 22.7.2010), the judge stated: ‘Ο Νόμος αυτός περαιτέρω, ο οποίος έχει μεταφέρει στην Κυπριακή έννομη τάξη τα προνοούμενα από την Ευρωπαϊκή Οδηγία 2004/38/ΕΚ, δεν εφαρμόζεται στην περίπτωση όπου ο πολίτης της Ευρωπαϊκής Ένωσης επιθυμεί να διαμείνει στο κράτος μέλος του οποίου είναι εν πάση περιπτώσει υπήκοος.’

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 within 6 months from submission of application to third country nationals who are family members of Union citizens. 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 5 years. This provision was transposed via section 13(1) and (2), Part III of Law 7(I)/2007, however the Commission's warning letter to the Republic of Cyprus, alleges that the administrative practice differs from the national rules transposing the Directive and this does not allow for the effective harmonization of the EU acquis. 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 was that of Michelle Manning Omejec,⁵¹ 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 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 Commissions considers that this practice violates 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 considers that this administrative practice was confirmed by a number of complaints received by the European Commission. Another issue raised was that of non-compliance of the Cypriot authorities with the deadline of 6 months foreseen by article 10(1) of the Directive, as was the case with Sahid Mehmood, a Pakistani citizen spouse of a Union citizen. The complainant applied in March 2008 but did not receive certificate within the 6 months period foreseen in the Directive. In their reply dated 27.01.2011, 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 marriage of convenience. In the same latter, the authorities addressed the issue of non-compliance with the deadline, as well as their duration, had been modified and that it was now in compliance with articles 10(1) and 11(1) of the Directive. In turn, the Cypriot authorities were asked to report on the measures taken in order to ensure compliance with articles 10(1) and 11(1) of the Directive.

In its letter responding to the Commission allegation (25.07.2011) the Cypriot authorities stated that it considers that it has 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, eg. 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 6 months at the latest.

⁵¹ Complaint to the European Parliament Ref. 1862/2009.

1.3 Expulsion of family members of Union citizens

The Commission's warning letter to the Republic of Cyprus acknowledges that the procedures foreseen in articles 30 and 31 of the Directive have indeed been formally transposed; however there are problems in terms of administrative practice. Reference is made to the complaint of Dimisenko Moon, a Ukrainian widow of a British citizen who lived in Cyprus with her husband until his death and who was expelled following his demise and was subsequently refused entry following a waiting period of 16 months. What further transpired was the fact that the relevant documentation handed to the persons affected does not specify the authority to which appeals can be lodged and the deadline for lodging such appeals, as required by the Directive. In response to the Commission's warning, the Cypriot government issued a circular dated 22.07.2011 instructing competent authorities to include in the letter notifying expulsion proceedings information regarding the judicial process for appealing against the expulsion decision and the deadline for this procedure, indicating that where an interim order to suspend execution of the expulsion decision is filed, no expulsion shall take place until this appeal is examined and decided upon.⁵²

1.4 Persons dependent upon a Union citizen

The Commission alleged that section 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,⁵³ so that the direct descendants of the Union citizen and his/her spouse must prove that they are either 21 or 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.⁵⁴

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

⁵² The only appeal procedure available under Cypriot law is article 146 of the Cypriot Constitution, for which however no legal aid is available.

⁵³ The bill proposes to amend the law on seven points which were found to be non-compliant with the Directive.

⁵⁴ Circular File No. 15/2006/III dated 18.07.2011.

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 by 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 government that the registration certificate in the case under examination 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 government was that it has fully and correctly transposed the Directive, as article 8(2) of the Directive corresponds to section 10(2) of Law 7(I)/2007 and article 8(3) of the Directive corresponds to section 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 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 the obligation to do so.

The response further alleged that the fact that the Union citizen is not obliged to apply for a Cypriot identity card can be seen from the wording of section 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 and that 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 alleges that when Cypriot representatives 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 in ECJ decision dated 15.04.1970 *Commission v. Italy* Case 28/69, 1970 p.195. In their response to the Commission dated 27.01.2011 the

Cypriot authorities alleged that they have never imposed such a fine because there are difficulties involved in determining the date of entry into the Republic. The Cypriot authorities also argued that Cypriot citizens can be imposed similar sanctions as those foreseen in the law for Union 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 response of the Cypriot government to the Commission's allegation above was that the said provision is proportionate and non-discrimination given that Cypriots and other aliens are obliged to register under article 60 of Law 141(I)/2002 which is proportional to the obligation to register Union citizens 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 aliens because on the one hand the Union Citizen is not subject to imprisonment as the other groups and on the other hand the Union Citizen is subject to half the fine than the other two groups. It is the expert's opinion that a harsh provision applicable to nationals as regards the procedure for registrations as nationals in their own state cannot be compared with the provision as regards the registration of Union citizens in another member state.

2.3 Preconditions for the right of permanent residence

The Commission stated that, although Directive articles 16 and 19 were correctly transposed into Part IV of the Cypriot law, administrative practice appears to differ from the law, as the Commission received complaints that persons interested in the status of permanent residents are required, by virtue of the specimen form 'MEU3', to present extracts from bank accounts and utility bills for the five years which preceded their application for permanent residence. This means that Directive article 21 which provides that 'continuity of residence may be attested by any means of proof' was not correctly transposed, because the Directive provision for 'any means' cannot be reduced by Cypriot officials to exclusively specific documents. Following the Commission's warning, the Cypriot government issued a circular⁵⁵ clarifying that the list of documents referred to in the specimen form MEU3 is indicative and does not exclude other documents not mentioned therein.

The payment of a fee of €34,17 was also required for the granting of the certificate and for any document evidencing the applicant's right to permanent residence. This charge was found by the Commission to violate Directive article 25(2), particularly in view of the fact that the charge to Cypriot citizens for Cypriot identity cards was 5 Cypriot pounds. The Cypriot government rejected this allegation saying that this charge was in compliance with the Directive as not exceeding the charge imposed on nationals for the issuing of similar documents.

The Commission also referred to the complaint of a British national who had been asked to submit proof of a deposit in a Cypriot bank of the sum of €12,000 which, in the Commission's opinion, was in breach of Directive article 16; the said complainant was not issued

⁵⁵ Dated 18.06.2011.

with the document certifying permanent residence foreseen in Directive article 19. In its response dated 27.02.2011 the Cypriot government stated that a bank deposit of any amount is not obligatory but did not dispute the complainant's allegations. The Cypriot government responded that the said complainant never applied for permanent residence and was never required to present evidence of a deposit in relation to that; the deposit of €12,000 was required as evidence of having sufficient means to support himself for the purposes of his application for a residence permit dated 14.06.2006.⁵⁶ In any case, his application for a residence permit was never examined and the complainant was issued a registration certificate on the same day he applied (16.03.2011).

2.4 *Same sex couples*

The issue of entry and exit the Republic of Cyprus of same sex couple under article 3(2) of Directive, which is transposed by part II, art. 2 and 5 of the Cypriot law is one of the matters the Republic has received a warning from the European Commission. The Commission warning letter alleges that whilst there is formal transposition of art. 3(2) of the Directive by part II, art. 2 and 5 of the Cypriot law, however the Commission has its' doubts as to the administrative practices of the Cypriot immigration officials and required clarification as to the procedures of 'facilitation' of family members. This matter is also a possible violation of Regulation 1612/68, given that freedom of movement 'constitutes a fundamental right of workers and their families',⁵⁷ 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'.⁵⁸ The question here is how does the Republic of Cyprus *in practice* 'facilitate the admission of any member of the family',⁵⁹ particularly third country nationals partners who in registered partnerships or same sex marriages with Union citizens exercising the right of free movement and willing to move to Cyprus.

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 it is allowed by art. 35 of regulation 810/2009. They cite the circular issued by the Archive of Population (18/07/2011).

The complaints mentioned in the Commission letter occurred *prior* to the date of issuing the above circular; nonetheless if the circular reflects the authorities established practice, then it can be said that it is open to debate whether they properly dispose of their legal obligations derived from the treaty, the 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, provid-

⁵⁶ I.e. prior to the enactment of Law 7(I)/2007. When this law came into force, the residence permit was replaced with the registration certificate.

⁵⁷ As per (4) of the preamble of Regulation 492/2011.

⁵⁸ As per (6) of the preamble of Regulation 492/2011.

⁵⁹ Under art. 10 of regulation 1612/68.

ed that (a) the certificate is duly apostiled and (b) 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 that are of different sex are treated in exactly the same way in cases where neither marriage, or 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 this constitutes a real barrier to free movement by requiring visa and it provides undue discretion to the immigration authorities at the point of entry. Whilst the host state is not obliged to have legislation to recognise 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 category. In essence, the procedures and administrative practices utilised to facilitate their entry, as well as their access to employment and social benefits, must be such so that they fully satisfy the general principles of proportionality in EU law. Presumably, such practices must not disproportionately prejudice the family member or give wide margin of discretion to the immigration authorities. The practices referred by the Cypriot authorities as regards entry of same sex couples confirms the validity of the numerous complaints as regard the outstanding issue about violations of equal treatment and human rights of lesbian/ gay, bisexual and transsexual persons in the exercise of free movement, arising from the failure to regulate same-sex marriages and registered relations in Cyprus, which in turn creates effective obstacles to free movement, beyond the apparent discrimination on the ground of sexual orientation in all the fields provided 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 with third country nationals. No action has so been taken in response to the decision of the Cypriot Equality Body referred. Other studies also show that this is the case.⁶⁰

The current legal situation in Cyprus amounts to indirect discrimination against LGBTs on the ground of sexual orientation and nationality and is contrary to the free movement of workers principles. The practice of the immigration authorities merely to facilitate the entry and stay of same-sex partners by granting them annual visas, which do not entitle them to work or seek any benefits.⁶¹ In its' first decision on the subject, the equality body referred the

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

61 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; the application was 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

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law transposing Directive 2004/38/EC to the Attorney General for revision. The immigration authorities have granted 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.⁶² The equality body's report in one complaint regarding discrimination on the ground of sexual orientation against a family member of an EU citizen claiming rights on the basis of free movement of workers⁶³ 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.

Although the immigration authorities claim that same sex partners and partners that are of different sex are treated in the same way 'in case where neither marriage, nor a registered relationship exists',⁶⁴ this is not correct. There are many areas of the law where common law marriages between heterosexual couples are explicitly covered, which impliedly excludes homosexual couples. 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 cohabiting 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.

The equality body has received complaints regarding the absence of any legal framework in Cyprus enabling gay couples to marry or to register a partnership. 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. Another decision of the Equality Body, issued in 2010, dealt with the legal recognition of same sex couple. The equality body received two complaints for the non-recognition by the Cypriot government of homosexual marriages and of registered partnerships between homosexuals, respectively. In one of the two cases, the partner of the complainant, an EU citizen, is a third country national who will be forced to leave the country once his visa expires and who would have acquired residence rights if their relationship was recognised by the state. 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.

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.

62 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.

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

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

The equality body report⁶⁵ analysed the relevant case law of the ECHR on the issue and acknowledged that the approach followed 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.

2.5 Transposition of Directive articles 17(2) and (4)(c)

The Commission warning letter to the Cypriot Government pointed out that Directive article 17(4)(c) was not correctly transposed since it does not foresee for the case where the spouses lost the nationality of that Member State following marriage to the worker or self-employed person of another member state. In their letter dated 27.02.2011, the Cypriot government responded that a Cypriot national is not deprived of Cypriot nationality as a result of his/her marriage to a national of another member state. The Commission replied however that there may be cases where Cypriot nationals may give up their Cypriot nationality as a result of their marriage to a national of another member state and therefore this eventuality needs to be covered by Cypriot legislation. The Cypriot government agreed with the Commission's position and drafted a bill to amend the relevant Cypriot law so as to comply with the Directive. In addition a circular was issued dated 18.07.2011 requiring compliance with the said Directive article with immediate effect, in accordance with the rule of direct applicability of Directives in the case of inadequate transposition.

2.6 Repatriation of Cypriot nationals

The Commission stated that the exclusion from the scope of the Law 7(I)/2007 of Cypriot nationals repatriating from another member state is in breach of Directive 2004/38, in combination with article 20 of the Treaty on the Functioning of the EU and article 4(3) of the European Union Treaty.

The Cypriot government agreed with the Commission and drafted a bill to amend Law 7(I)/2007 by extending the scope of the law to include Cypriot citizens and their family members returning to Cyprus from another member state, with the exception of those Di-

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

rective provisions which cannot be implemented because the Cypriot Constitution or other national legislation provide for wide rights than the Directive provisions.

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

As mentioned above, there was one Supreme Court case, *Svetlana Shalaeva*,⁶⁶ which referred to the *Metock* case. The *Metock* judgment had profound influence in legal and administrative practices in Cyprus. On the 14.01.2009 the director of the Civil Registry and Migration Department issued a circular (30/2004/IV), which referred to a inter-departmental meeting between interested governmental parties and a representative of the Legal Service of the Republic, which discussed the legal significance of *Metock*: non-European spouses of EU citizens fall within the scope of implementation of the right of citizens of the Union and their family members to move freely and reside in the area of the Republic laws 7(I)/07 and therefore have a right to apply for a residence card (MEU2A), irrespective whether the marriage took place in Cyprus or abroad. Instructions were given to all officers of the Civil Registry and Migration Department for the immediate implementation of the ECJ decision; however in correspondence with the author the Ministry of Interior stated that ‘implementation of the decision did start.’⁶⁷ The residence card is valid for five years unless the passport of the applicant has an expiry date before the years are up, in which case the residence card must be valid for up to one month before the expiry of the applicant’s passport. The Ministry of Interior⁶⁸ notes that according to the decision C-206 of ECJ, dated 12.2.2008, the Administration is not obliged to re-examine applications filed prior to the decision of the ECJ concerning the matter. The question Retrospective application of *Metock* may not be in issue but there is a strong case for correcting situations and reconsidering cases where previous legal residence was considered to be a necessary requirement, as is happening in Ireland. Individuals may well use the *Metock* case for the courts to reopen their cases, not by claiming retrospective application of *Metock* but for correcting the current and future status.

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

5. ACCESS TO WORK

Family members have the right to access to work as with 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 his will be restricted to the very few areas where TCNs are allowed to work, primarily in farming. However, this is far from satisfactory. This is contrary to the directive.

⁶⁶ *Svetlana Shalaeva v. Republic of Cyprus* (No. 45/2007, dated 27.4.2010).

⁶⁷ Communication to the author from the Ministry of Interior, 9.9.2009.

⁶⁸ Communication to the author from the Ministry of Interior, 9.9.2009.

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

Although Directive article 8(2) was correctly transposed by article 10(1) and 10(2) of Law N.7(I)/2007, administrative practice appears to differ from the law, as the Commission received a complaint from the British national Grigorova that she and her Bulgarian husband were not issued with a Certificate of Registration despite the fact that they applied since 2007.⁶⁹ 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 30.06.2011⁷⁰ 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 and instead to allow the submission of other certificates in proof of the applicants' identity as permanent residents of Cyprus.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

The situation as regard family members of EU job-seekers is the same as with EU citizens: if they are registered and they have contributions to the national security they are entitled to job-seekers allowance/unemployment benefit. Again this provision does not apply to same-sex family members.

69 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 health card valid from April 2007 until April 2009 which was renewed and its validity was extended until November 2011. Ms Grigorova's first application for a registration certificate (on 06.07.2007) was not responded to by mistake; however the authorities had issued to her a residence permit valid from December 2004 until June 2009. When Ms Grigorova applied for a second time in June 2009 the registration certificate was issued to her on the following day.

70 Circular Ref. YY4.2.13.10.22

Chapter III: Access to employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

Overall, the Labour Department considers that there is full transposition of the Directive 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 about barriers to the authorities, hence there is a steady increase in the numbers of Union citizens who are working in Cyprus over the recent years. However, Labour Ministry officials recognise that there may be some minor problems in specific areas, particularly in the private sector, but this is not a matter of transposition, as far as they are concerned; it is for the courts to find that there is any violation of the law and 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 number of cases gone before the Cyprus Equality Authority which deals with employment related discrimination, it is apparent that there are still some barriers to access, at least in specific sectors; it is therefore a question of implementation of the provision in the spirit of the free movement principles and directive.

The Republic has enacted legislation purporting to transpose the recognition of diplomas Directives, by introducing a unified law: the *Law that provides for the recognition professional qualifications and related matters* 31(I)/2008, purporting to transpose Directives 36/2005 and 100/2006, which provides unified law that abolishes the old laws⁷¹ and allows for recognition of professional qualifications.⁷² Also it amended the relevant regulations were amended, including the sectoral changes of membership in the various professional associations and the 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 EU commission which confirms full transposition of the mutual recognition of diplomas directive (2005/36/EC), including craft, industry and commerce sectoral coverage.⁷³

However, there are still some reports of barriers to access to certain professions, and there are complaints of this sort 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 to professional associations, whose registration and membership may be a condition precedent to practicing such a

71 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).

72 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.

73 Information provided by Officer of the Labour Department 5.6.2010.

profession in the private domain, or on certain occasions also in the public sector.⁷⁴ These professions include nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor. 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 often bureaucratic barriers to the recognition of Bulgarian diplomas for nurses.⁷⁵ The Labour Department claims that there is full transposition of Directive 2005/36/EC relevant legislation has been amended including legislation on sectoral professions. Moreover it claims that regarding the recognition of diplomas of other Member States institutions (e.g. Bulgarian diplomas for nurses) Cypriot authorities are more flexible and tolerant compared to the authorities of other Member States.

The Employers association (OEB)⁷⁶ claims that in certain professions, where many EU citizens are employed or wish to be employed (e.g. nursing), the government authorities have amended job descriptions, regulations (e.g. Greek language requirement), professional associations membership criteria and maintain bureaucratic obstacles and delays, especially with regards to the non-accreditation of diplomas from EU or third-country institutions. It refers this these as ‘anachronistic ‘protective’ measures, 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 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 both Greek and English language, Romanian⁷⁷ and Bulgarian. 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 language also. It should be mentioned that approximately 25% of Public Employment Services clients are EU nationals from other Member States.

1.2 Language requirements

No drastic changes can be reported since the Report of 2009-2010: article 31(a) of Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to the public service, with the exception referred to in the Report.

74 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.

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

76 Response to the author 12.09.2011.

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

There is no reported complaint under investigation during 2010-2011 regarding an issue noted in the 2008 Country Report, as regards to becoming a member of the Chamber of Civil Engineers of Cyprus (ETEK), which is a precondition to practising in the private and the public sector. The 2009 Report referred to a complaint lodged to the Cypriot Equality body by a Union citizen civil engineer, who wanted to apply for a certain post that required that the employee be a member of the Chamber of Civil Engineers of Cyprus (ETEK), but to be a member of ETEK needs residence in Cyprus.⁷⁸ 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 allegation that in the private sector there are sectors where the use language by professional associations amounts to barriers and in practice this acts as barriers to entry. A number of complaints have gone before the Cypriot Equality body, which decided on the use of language and has made recommendations to remove these barriers to the ruling authorities; many of these recommendations were complied with, but some have not been.

In 2009, the Equality Body recommendations regarding the requirement of knowledge of Greek in order for EU nationals to acquire an estate agent's license, which as is an effective barrier to acquire the right to exercise a profession has only been partly complied with. Further complaints on the same issue have been submitted to the Cypriot Equality body.⁷⁹ Similarly, the report of the Cypriot Equality body found that the language requirement in the documents required for registration of foreign nationals in the registry of building contractors was discriminatory.⁸⁰

What Building contractors are practicing at the moment is not very clear; there is no pending complaint at the moment. The Labour Bureau's response is that Building Contractors' Registration Council requests all applications and relevant certificates to be translated in Greek language, irrespective of the applicant's nationality. In the past the Equality Body considered complaints body by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English.⁸¹ Another instance where there seems to be continued non-compliance is a case concerning a Union citizen who applied to sit the exams in English to become insurance broker.⁸² The Equality Body is yet to issue a decision on the matter until the submission of this report.⁸³

There had been barriers such as requiring excellent use of Greek for professions such as medical doctors but the Medical Doctor's Association has complied with the recommendation of the Cypriot Equality body, following a complaint of a general practitioner who want-

78 AKI 22/2006, issued 11.12.2006.

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

80 File No. AKR 36/2006, dated 23.02.2007

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

82 AKI 35/2005, issued on 19.10.2005. There has been a new complaint in 2008, even though the Equality body ruled on the matter in 2005 in another case that Insurance Institute of Cyprus ought to revise its relevant rules on the matter.

83 4.07.2010.

ed to register.⁸⁴ Today doctors can register without the language restrictions.⁸⁵ However, there are still allegations about language barriers to the nursing profession, which continue to require stringent language tests: very good knowledge Greek or English, despite the relevant decision of the Equality body dated 19.3.2007. A number of complaints were examined by the Equality body from nurses, who have good knowledge of other official EU languages such as French and German.⁸⁶ Obstacles in the form of excessive language requirements in the in job descriptions are still practiced. For instance, it remains an open question whether it is justifiable to retain language requirements for nurses (e.g. job description for nurses) are 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. Also, there are effective barriers in the forms of an examination to attain the relevant professional diploma available only in Greek, when there is no language requirement in the job (e.g. insurance brokers); there are complaints currently before the Equality Authority by a an EU citizen, in fact a British Cypriot who does speak Greek but does not have the proficiency to pass exams and is seeking to be allowed to take the exam in English.

Judicial practice

There has been no case reported on such issues.

The only legal reference to access to employment was made by the investigation into a complaint to the Equality body, which considered in some detail the relevant provisions of the Law that provides for the recognition professional qualifications and related matters 31(I)/2008.⁸⁷

Miscellaneous

The author has been informed that there are still some administrative or bureaucratic barriers to obtain licences for taxi or bus services: apparently it takes up to six months for a Union citizen to obtain such a licence, but this matter is currently under investigation by the Equality body as part of more general complaint about the use of administrative or bureaucratic barriers to access to the free exercise of services in the country.⁸⁸

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 Nationality condition for access to positions in the public sector

An issue of concern is general practice in the public sector and civil service. The criteria in 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

84 AKI 10/2006.

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

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

87 AKI 107/2007, issued on 12.12.2008.

88 Information provided by officer of the Cypriot Equality body.

origin: an instance of this is the failure of the police to recruit Greek-Pontians (i.e. Greek citizens who reside permanently in Cyprus, some of whom have obtained Cypriot nationality and passports) due to the fact that ‘potential candidates’ do not have ‘the necessary qualifications’, ‘mostly nationality and fulfilment of their military service for men’.⁸⁹ The Equality Body recommendation to recruit Greek-Pontians in the Police has not been complied with,⁹⁰ even though the Police is said to be favourable to such a possibility. 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 has a nationality requirement and needs to be amended.⁹¹ The situation in 2009 and the beginning in 2010 remain unchanged.

2.2 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. However, she was eventually allowed to apply for the post of teacher following a complaint and an intervention by the Cypriot Equality Authority.⁹²

2.3 Language requirements

The complaints against public authorities as regards the nursing profession in the public sector are still under investigation by the Equality body no more details can be provided at this point.

2.4 Recognition of professional experience for access to the public sector

The situation in 2010-2011 has no significant changes to report since the report of 2009. 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 is 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

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

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

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

92 Information provided by officer of the Equality Authority.

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

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. However, she was eventually allowed to apply for the post of teacher following a complaint and an intervention by the Cypriot Equality Authority.⁹³

93 Information provided by officer of the Equality Authority.

Chapter IV: Equality of treatment on the basis of nationality

1. GENERAL ISSUES

Overall, the Labour Bureau considers that there are no barriers to access to employment in any sector of economic activity and that there are only exceptional cases where there are barriers on the basis of nationality. However, trade unions dispute that in practice the worker rights and equal treatment of EU citizens and their partners and families is properly observed. Despite assurances that there have been no problems or complaints of discrimination by Union citizens exercising the right to free movement of workers, trade unions claim that the problems on a daily basis as regard the procedures of considering applications continue. Trade unionists referred to continuing daily problems, multiple discriminatory effects and disruptions in labour relations, as well as routine violations of collective agreements and standard practices: in fact they claim that since the beginning of the economic crisis there is an intensification of such practices, in most cases of which there is a targeting of trade unionists.⁹⁴ In particular, trade unionists claim that since the beginning of the crisis there has been a sharp increase in complaints by members of trade unions that that employers would discriminate against trade union members, so as to avoid the implementation of the collective agreements.⁹⁵ The employers' association denies that such practices happen en masse, or that their members embark on such activities; they point to the fact that there have been no official complaints or any other research or survey that substantiates such allegations.

The employers association stresses that studies illustrate that the employment of union citizen workers in Cyprus has been beneficial for the economy. This is an issue that refers to alleged violations over employment and equality of treatment of the principle of prohibition of discrimination on the grounds of nationality as provided by the Directive and articles 7(1) and 7(4) of the Reg. 1612/68 and articles 7(1) and 7(4) of the Reg. 492/2011.

1.1 The conditions of employment of trainees and nationality discrimination

A particular issue of concern has been raised regarding the engagement and conditions of employment of trainees in ERASMUS, LEONARDO and other exchange programs at various hotel in tourist resorts: trade unions complain that there are an estimated 1500-2000 trainees in hotels, 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. Trainees are allegedly merely provided with accommodation and food, and occasionally pocket-money, in return for working as trainees. Trade unions raised this issue at the Advisory Committee on Vocational Training in 15-16 June 2011 in Brussels, as well as various meeting with the Labour Office of Ministry of Labour and Social insurance, requiring that action be taken. Trade unions require that the EU and national authorities in charge of exchange programs, the Minis-

94 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.

95 Information provided by Andreas Matsas SEK, 1.7.2011.

try of Education and Ministry of Labour to closely monitor the conditions of employment 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 to be placed with Ministry of Labour as well as and a monitoring role by trade unions and labour inspectors. However, the officer from the employers' federation disagreed claiming that no complaint has been received. At some point representatives of employers 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.

The employers association has responded⁹⁶ claiming that as regards the conditions of employment of trainees at various hotels in tourist resorts it is noted that the working conditions and labour standards are followed and there is no discrimination against Cypriot workers at hotels. 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 contracts' terms are followed. They have cited the policy of Ministry of Labour and conditions for employing a trainee and the terms provided in the contract of employment.

The matter warrants further investigation; it is currently being examined by the Cyprus Equality Authority.

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

The Equality Authority issued a Report on the violation of the principle of equal treatment between Cypriots and Union citizen workers in the hotel industry.⁹⁷ In issue here was the alleged practice of hoteliers to dismiss Cypriot workers, unionised under a regime of a collective agreement, in order to replace them by nonunionised Union citizens, who instead had personal contracts under inferior working conditions and pay. The Report referred to the violations of articles 49 and 45 of the TFUE, art. 7 of Regulation 1612/68 (as amended by

96 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'.

97 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'.

Regulations 312/76, 2434/92) as well as Directive 2004/38/EC and art. 13, 15, 21, 34 of the Charter of Fundamental Rights of the EU. It 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 goals had to be appropriate and necessary, considering the dominant position held by the employer in determining the terms of employment. Moreover, the need to protect worker rights is rendered even more pressing. Hence the Equality Authority considers that the practice of signing personal contracts with unfavourable terms from those contained in collective agreements leads 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. The Equality Authority stated that it will not tolerate the restricting or withdrawing rights of global significance, such as the right to equal treatment, as a means of dealing with the economic crisis.

This may be a violation of the 45 of the TFUE and Reg. 1612/68.

1.3 Specific issue: Working conditions in the public sector

There is nothing to report on the question working conditions of EU citizens in the public sector as there are no non-Cypriots working in this sector.

2. SOCIAL AND TAX ADVANTAGES

Since accession to the 2004 tax liability is based on the principle of residence and tax residents in Cyprus are taxed in respect of their worldwide income, while non-tax residents are taxed in respect of Cyprus source income only. An EU citizen has to contact the department of Inland Revenue to get a Taxpayer's Identification Code and must present his passport and also complete Form I.R. 163A. Tax liability is based on the principle of residence. According to the Income Tax Law, a person is considered to be resident in Cyprus for tax purposes if he/she resides for a period or more which, in aggregate, exceeds 183 days. Non-tax residents having a permanent establishment in Cyprus may elect, if it is to their benefit, to be taxed in accordance with the provisions applicable to tax residents.

As far as social insurance is concerned, there is a general earnings-related Social Insurance Scheme which covers compulsorily, every person gainfully occupied in Cyprus either as employed or self-employed person. Voluntary insurance is allowed to persons who wish to continue their insurance after a prescribed period of compulsory insurance. The scheme is financed by earnings-related contributions payable by the insured person, the employer and the State. As of 1st May 2004, Cyprus applies the EC regulation 1408/71 which coordinates the social security systems of the member states of the EU, the European Economic Area and Switzerland. The scheme provides for various benefits, including marriage benefit, maternity grant, maternity allowance, unemployment and sickness benefit. Unemployment benefit is paid for involuntary unemployment and is payable for a period that cannot exceed 156 days for each period of interruption of employment. Where the legislation of the Republic of Cyprus does not provide for a right to a pension on the basis of age for some categories of unpaid workers, the pre-condition of age is considered to be satisfied as long as the EU nationals entitled to the right of permanent residence have completed their 65th year of age. The

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

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

Nothing further to report on this subject.

2.2 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, who were invited to comment on the cases,⁹⁸ distinguish these cases on the basis that the cases concerns the provision of 'job seekers allowance', which is a non-contributory provision; in Cyprus unemployment benefit is based on contributions, therefore they argue that 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 (the Anti-Racism and Anti-Discrimination Authority) that addresses the receipt of public assistance for health reasons, which is illuminating as to the situation of the Union citizens requiring public assistance, including jobseekers' allowance.⁹⁹ A complaint was registered by an 18-year-old Greek citizen suffering from severe leukaemia against the Social Welfare Service, which had decided to discontinue the claimant's social assistance benefit for treatment received until May 2007. The 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's 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 grounds 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.¹⁰⁰ According the report of the Cyprus Equality Body the relevant circular, which has wider application in similar purposes, distinguishes between Union and Cypriot citizens based on Law 7(I)/2007 and the law on Public Assistance 95(I)/2006: 'the provision of law on Public Assistance 95(I)/2006, makes a distinction between the rights of Union citizens and citizens of the Republic of Cyprus and article 12(1)(a) of the law for exemption from the responsibility for the maintenance of a disabled child in not applied in the cases of Union citizens.'¹⁰¹ The reason-

⁹⁸ Invited to comment by the author.

⁹⁹ AKP 70/2007, issued on 24 March 2008. The complainant's name is Nicolaos Meziridis.

¹⁰⁰ Letter to the complainant from the Paphos District Social Welfare Service, dated 5.6.2007.

¹⁰¹ The Circular by the Director of the Social Welfare Service 7.3.2007 is quoted AKP 70/2007, p.3.

ing 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 article 9(1)(b) of Law 7(I)/2007 is that they are not considered to be 'unreasonable burden on the social assistance system of Cyprus' (AKP 70/2007, p. 4). Moreover, the Director went on, again erroneously, to comment that the right of residence is dependent on being in possession of sufficient means.' The Cypriot Equality Body, after analysing the relevant legal framework, determined that the Director of the Social Welfare Service had wrongly interpreted and applied the law on the following grounds:

- The Directive and the respective Cypriot law transposing the Directive do 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 sets out the principle of non-discrimination on the grounds of nationality;
- The right to free movement is a right adjacent to the exercise of a professional/ economic activity in the EU that has been settled at treaty level. This is done in a manner that is broad in scope, lucid and direct and the exercise of this right is a condition precedent to the exercise of any professional activity in the host country (AKP 70/2007, p. 12).

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

- All administrative formalities for the exercise of free movement and residence of Union citizens and their families for a period more than three months are set out exhaustively in the law and the Directive. It is clear that their primary residence stay is not dependent on the existence of sufficient means, as is the case with students or pensioners, for instance.
- It must be clarified that the competent authority for such issues is the Civil Registry and Migration Department and not the Social Welfare Service; however in the case of Union citizens, such as the one above, the granting of the permit provided has but an identification and evidential value.

As for the right of Union citizens to public assistance, the non-discrimination principle as set out in article 22 of the law is of paramount importance and recommends that the authorities restore the public assistance benefit to the complainant and withdraw the relevant circular issued. The Social Welfare Service has complied with the recommendation.¹⁰² On the basis of the above case, by analogy the same principles must apply to jobseekers; however the author has not been given any indication of the current practice of the Social Welfare Service. 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. There has been no

¹⁰² In other instances there is no compliance. For instance, in the past there have been cases regarding the provision of public assistance to Union citizens, where there has not been compliance with recommendations of the Cypriot Equality Body (AKR 33/2004, dated 10.1.2005).

case law to test whether the *Ioannidis/ Collins* type of social assistance benefits would be allowed.

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

The question of how Cypriot authorities claims to public assistance by job-seekers and those who have limited amount of the remuneration and/or the short duration of a 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 by 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. 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 bearing on contributory unemployment benefit, as these refer to general public benefits provisions 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 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 on the sole basis of Article 12 of Regulation No 1612/68, without such a right being conditional on their having sufficient resources and comprehensive sickness insurance cover in that State being required 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 on the sole 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 from migrants married to Cypriots, who are thus entitled to Cypriot citizenship: how do the rights to education etc afforded to children of a Cypriot parent and their third country parent when divorced to the instances of a child of an EU national with a spouse who is a third country national in the same situation? The actual practice at the moment, at least as reported, is that of activating the provisions of art 7 of the Directive relating to ‘sufficient resources’; hence the Union citizen and/or their spouses and children would be expelled accordingly if they lack sufficient resources. The Cyprus equality is examining such complaints at the moment.

Chapter V: Other obstacles to free movement of workers

Difficulties and obstacle 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’,¹⁰³ 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),¹⁰⁴ a regime that remains unrecognised:¹⁰⁵ 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)¹⁰⁶ to the territorial application of the implementation of the Directive¹⁰⁷ 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,¹⁰⁸ as well as any other rights beyond the right of residence ‘only in relation to Union citizens and the members of

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

104 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’.

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

106 This is also the case in other laws.

107 Such as section 20 of the law.

108 Under sec. 22 (1).

their families who reside in the territory in which the Republic of Cyprus exercises effective control.’¹⁰⁹ Therefore two questions need to be addressed:

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

In answering the first question, it has to be pointed out that in some contexts the northern territories are considered as ‘unrecognised’, ‘militarily occupied territories’¹¹⁰ and ‘outside the EU’, as the ECtHR recognised that Turkey’s army ‘exercises effective overall control over that part of the island’ and that ‘such control [...] entails her responsibility for the policies and actions of the ‘TRNC’’.¹¹¹ In this construction, we are *not* dealing with a ‘frontier’ between two EU member countries (e.g. Germany and France etc) but a mere ceasefire line whereby the northern territories are under the [illegal] control of a third country. However, matters are far more complicated than that: the territories in the northern part of Cyprus cannot be treated as part of Turkey and have never been treated so by the EU or any other international body; Turkey herself has not even annexed these territories.

The EU has developed constitutional arrangements to deal with territories, which are considered to have a special relationship under European Community law due to their exceptional circumstances. Such examples are overseas countries or territories,¹¹² the outermost regions,¹¹³ 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: firstly, there is a complicated regime regulated by the Treaty of accession and an EU Regulation as regard the territorial aspects of the accession of Cyprus; secondly, Turkish-Cypriots who reside in the north are automatically Union citizens, as they are automatically citizens of the Republic of Cyprus; thirdly, EU *acquis*-derived rights, which have as Republic of Cyprus as their locus in the *de facto* divided country are likely to be increasingly influencing the legal, socio-economic and political developments in can be sees as a process of quasi-harmonisation or *de facto* harmonisation, if Turkey is to be integrated in the European and global economic system.¹¹⁴

As far as EU law is concerned, which is the basis of analysis of this report, we are dealing with territories which are part of the EU, but ‘the application of the *acquis* [is] suspended

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

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

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

112 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.

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

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

in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.¹¹⁵ Protocol 10 to accession treaty stipulates that ‘the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control’ (art. 1). It also referred the matter to the Council, which would, acting unanimously on the basis of a proposal from the Commission, ‘define the terms under which the provisions of EU law shall apply to the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control’ (art. 2). However, Article 3 stipulates that ‘nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1’, but ‘such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus’. Moreover, article 4 provides that in the event of a settlement, ‘the Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot Community’.

Moreover, the accession to the EU of a *de facto* divided Cyprus¹¹⁶ is regulated by ‘the Green Line regulation,’¹¹⁷ a fact that has somehow blurred the status of the ‘TRNC’: the very existence Green Line Regulation substantiates the argument that the ‘Green Line’ remains a ‘quasi-border’ or a ‘soft border’ of the EU in others.¹¹⁸ The reference in Law 7(I)/2007 to ‘effective control of the territory’ has certainly expanded considerably the scope for the authorities’ discretion as to whether to allow to EU citizens living the northern (occupied) territories has the right to exercise their rights under the directive. In fact I am informed that the authorities do not accept applications for obtaining the registration certificate from Union citizens who do not reside in the areas under the effective control of the Republic of Cyprus.¹¹⁹ Moreover, as reported in 2007, the practice as regard partners of Union citizens residing in the northern part of Cyprus is to allow them to travel or use the legal ports and airports the first time they enter the country, but to subsequently put them on the ‘stop list’ once they have entered the territories of the Republic of Cyprus.

There is a *prima facie* case of indirect discrimination and the question is whether such discrimination can justified under the law. The residential stipulation to the territory under the control 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 im-

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

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

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

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

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

pose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.’ In fact, the discrimination caused is manifold: by failing to recognise the rights of Union citizens to free movement, whilst recognising the rights Turkish-Cypriots who reside in the same territories to have access to the rights and benefits of the Republic causes a chain of multiple discrimination that may undermine fundamental rights guaranteed in the *acquis*:

- a) it is contrary to the principle of free movement, which has ‘fundamental status’,¹²⁰ because it creates obstacles to the exercise of this right which contrary to the Directive. The Directive allows for some restrictions if they can be justified within the categories of the exceptions provided under chapter VI (art. 27-33), which provides for restrictions on the right of entry and the right of residence on the grounds of ‘public policy, public security or public health.’ However, no such stated policy has been stipulated in the law that transposes the said directive, nor has there been any other official justification offered for restricting the implementation of the principle of free movement.
- b) It is contrary to the equal treatment principle as it results in indirect discrimination against Union citizens residing in the north: the same restrictions *do not* apply to Cypriot nationals. Of some relevance here may be the case of *Tetyana Tomko v. Republic of Cyprus through the Aliens and Immigration Department*.¹²¹ a Ukrainian woman married to a Turkish Cypriot and residing in the northern part of Cyprus won an appeal against the Immigration Department who had rejected her application for renewal of her residency permit, on the grounds that she was residing in the Turkish-controlled north rather than in the Republic-controlled south and because her marriage was not recognised by the Republic as it was carried out in the north. The Supreme Court found the government’s arguments as lacking legal basis and granted her the appeal. Even though Tetyana Tomko was a third country national the same logic by analogy applies to the Union citizens who reside in the northern territories and must be afforded equal treatment to other Union citizens. The test of whether an indirect discrimination is legally justified is provided anti-discrimination *acquis* under Directives 43/2000 and 78/2000, a provision transposed verbatim by the relevant legislation in Cyprus.¹²² Therefore this ‘apparently neutral provision, criterion or practice’ that puts persons of certain nationality,¹²³ or racial or ethnic origin at a particular disadvantage compared with other person’, can only be justified if ‘it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’.
- c) There may be good reasons why the Cypriot authorities would choose to be cautious about granting these rights to Union citizens residing in the northern territories¹²⁴ and that there are inherent complications resulting from the operation of the Green line

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

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

122 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.

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

124 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.

Regulation.¹²⁵ The likely justification provided for the restriction is that the current status quo creates a situation that does not allow the implementation of the Acquis in the northern territories and that the issue is one of public policy and public security, under the general rubric of the ‘law’ or ‘doctrine of necessity’ given the situation in Cyprus.¹²⁶ However, the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*¹²⁷ ruled that the ‘doctrine of necessity’ must be exercised in a manner that does not as a legal justification for the suspension of the constitutional rights and violate the nucleus of rights or the principle of equality. Therefore this provision, which results in problematic implementation of the principle of free movement and indirect discrimination *within the territory* under the effective control of the Republic of Cyprus¹²⁸ is unlikely to meet the stringent test so as to be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The only exceptional circumstances provided by the directive relate to particular individuals in their specific circumstances and not in a blanket manner to all Union citizens residing in the north are those stipulated in the directive (see preamble paragraphs 22,23 and 24). In fact the general approach of the Directive is to severely restrict the right of states to expel Union citizens as article 28 of the Directive provides for ‘Protection against expulsion’ provides. The exceptions and derogations relate to serious situations that may justify severe action such as *expulsion* of Union citizens. It is unlikely that these would allow for discriminatory treatment in the granting of a registration certificate, which must be issued immediately, once it is recognised that the person applying is a Union citizen. Given that we are not dealing with expulsion of Union citizens but refusal to grant a registration certificate, a mere ‘administrative formality’ under article 9 of the Directive 38/2004, the question then becomes: are there any other residual powers deriving from the sovereignty of the national state to decide on any other ‘imperative grounds of public security’ or exceptional and serious grounds of public policy, which justify the Republic of Cyprus refusal to grant registration certificates to those Union citizens residing in the north? Here we enter again the territory of the ‘doctrine of necessity’, referred to above, deriving from the abnormal situation in the country invoked by Greek-Cypriot judges in a 1964 Supreme court case and regularly

125 It aims to combat illegal immigration of third country nationals and to detect and prevent any threat to public security and public policy. See Communication from the Commission COM(2006) 551 final, Brussels, 25.9.2006, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=506DC0551&lg=en.

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

127 ECHR/no. 69949/01 (22 June 2004), Reported at [<http://www.echr.coe.int/eng/Press/2004/June/Chamber-JudgmentAzizvCyprus220604.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/cy-rep07_en.pdf], accessed on 20.10.2008.

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

used and expanded ever since and refers to those ‘temporary and minimum provisions absolutely necessary for the functioning of government.’¹²⁹ Not only is it quite difficult to justify any connection between ‘provisions absolutely necessary for the functioning of government’ and the refusal to grant registration certificate to Union citizens, but even if there is some connection, the application of the principle of the case of *Aziz* the invocation of necessity must not violate ‘the very essence of the right’ to freedom of movement without discrimination. Therefore any necessity arguments are unlikely to be successfully invoked by the Republic of Cyprus as justification for failure to comply with the Directive.

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

Chapter VI: Specific Issues

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

This issue was dealt with in the previous section as it relates to political situation deriving from the division of the country, where the existence of residence clauses as in the cases of C-212/05 *Hartmann* and C-213/05 *Geven*. Issues relating to ‘frontier workers’ are unlikely to have any bearing on Cyprus, given that Cyprus is an island and has no recognized ‘borders’ but a ceasefire line, known as the ‘Green Line’, which de facto divides the country: if there is no ‘frontier’, then it logically flows that there cannot be ‘frontier workers’.

2. SPORTSMEN/SPORTSWOMEN

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

The situation has not changed since the 2009 report: the Aliens and Immigration Law imposes no restrictions on professional sport people who are citizens of EU member States. Furthermore, the Cyprus Sport Organization applies the ruling of the Court of Justice on 12 April 2004 in the *Igor Simutenkov* case (C-265-03). Since 2004, free movement legislation applies in the sports sector. Sports people who are citizens of EU member States are treated exactly the same way as Cypriot nationals as far as registration with and transfer from and to teams are concerned. Using the example of football players to illustrate, according to the Regulations of the Cyprus Football Association, teams in the first league could have the same unspecified number of non-amateur EU players as Cypriot nationals [(Reg.20(1) (1))] and the same applies for second-and third-league teams but the players in the second and third leagues can be either amateurs or non-amateurs (Reg.20(2)(1) and 20.3(1) respectively); during the first transfer period(i.e. 1/6/-31/8) EU non-amateur footballers can transfer (Reg. 1.4), during the second transfer period (1/1/-31/1) the same number (up to two) of Cypriot nationals and EU players can transfer in the case of the second and third football league [Reg.1.4(6c)].

The rules applying to Cypriot sport have taken into account the *Bosmans* ruling in 1995.¹³⁰ From the regulations studied and according to sports officials that there are no regulations of national sport federations and sport organisations limiting the access of migrants and ethnic minorities to sport. The calls by the Pancyprian Footballers’ Association (PFA) for the Cyprus Football Association to adopt the Scottish football regulations since last year that have a rule compelling each team to include within their 18-squad four to five under twenty-one year olds¹³¹ have not been adopted so far.¹³² The association considers that Cyp-

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

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

132 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, →

riot footballers suffer from discrimination as they are less likely to accept conditions that are unacceptable for locals – but which may be adopted by foreigners.¹³³ In any case, this is a major European issue of debate following the Bosmans ruling in 1995.¹³⁴ The Pancyprian Footballers' Association however argues that there is problem of reverse discrimination and argues for the adoptions a rule in the spirit of the UEFA 'Home-grown Player rule', which is also discriminatory under EU law but unlike a quota system it constitutes *indirect*, rather than *direct* discrimination. The argument here is that the system may be justified under EU law if it can be objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary.¹³⁵ The Pancyprian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs'¹³⁶ 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 football league new regulations no longer allowed third country nationals to be registered as 'amateurs' but can only be professionals.¹³⁷

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 labour hierarchy.¹³⁸ We cannot quantify the extent of the involvement of migrants and ethnic minorities as athletes, coaches, officials and fans in the sports under examination (football, basketball and athletics). In general, the only visible non-natives are the professional athletes and coaches of the top leagues in football and basketball.

Legislation/Regulations

Cyprus Football Association (2010), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus, info@cfa.com.cy.

who will become the 'core' of the squad, as it is unlikely that foreigners would move to Cyprus before they are 21 years old.

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

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

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

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

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

138 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>.

3. THE MARITIME SECTOR

The national framework for Cyprus consists of laws, regulations and the collective agreement for 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 Conventions ratified by the Republic of Cyprus, Multilateral Conventions adopted by the Process of the Succession of States in respect of Treaties, Bilateral Conventions concluded by the Republic of Cyprus, Bilateral Conventions adopted by the Process of the Succession of States in respect of Treaties.¹³⁹ We are informed that the Republic of Cyprus intends to ratify the Maritime Labour Convention, 2006 (MLC, 2006) before the end of 2011.¹⁴⁰

According to the Cyprus Shipping Chamber, which is the social partner for the employers in the collective agreement there is minimum standard which fixes the salary and other benefits as per CHAPTER 26 of the collective agreement, which is headed as 'Equality: 'Each seafarer shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated. A seafarer to whom this Agreement is applicable shall be covered by the terms and conditions of the Agreement from the date on which the seafarer departs from the port of engagement whether he/she has signed Articles or not, until the date when he/she signs off or returns to his/her port of engagement, or the date when the engagement comes to an end or the date when the employer's obligation to pay wages ceases whichever is the later.'¹⁴¹ A circular by the Migration officer refers to the decision of the Council of Ministers,¹⁴² which provides for the granting and renewal of temporary resident and work permits to members of staff of companies and firms of foreign interest:¹⁴³ the circular extends the provision of resident and work permits to cover Cypriot shipping companies.

Cyprus signed a number of bilateral Agreements on Merchant Shipping with a number of countries. These are Algeria, Bulgaria, China, Cuba, Egypt, India, Iran, Latvia, Lithuania, Malta, Philippines, Poland, Romania, Russia, Sri Lanka, and Syria. Agreements with Belgium/Luxembourg, Greece, Italy, Pakistan and Antigua and Barbuda have been signed and will enter into force soon. Agreements with Estonia, Germany, Hungary, Libya, Slovenia, South Korea, Lebanon, Thailand and South Africa have been initialled and their signature is pending.¹⁴⁴ We are informed¹⁴⁵ that there is a standard clause providing for the same treat-

139 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 Instruments and Instruments on various other maritime related matters.

140 As the same is expected by other countries, Cypriot authorities anticipate that the number of 30 ratifications be reached by the end of 2011. The Convention will be put into force one year later i.e. by the end of 2012. During this one year period, 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 Part2 and issue the MLC.

141 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).

142 Decision no. 67692, dated 24.9.2008.

143 These are the former off-shore companies.

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

ment 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.’¹⁴⁶

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)¹⁴⁷ in the Convention on the Status of the Artist in Cyprus,¹⁴⁸ which has followed the Convention on the Status of the Artist in Europe.¹⁴⁹ Recently however, there is an increasing interest status of artists; the only work that exists on the subject about the status of artists in Cyprus was published in 2009.¹⁵⁰ The booklet includes a section on international mobility of artists (pp. 22-24) and specifically refers to the facilities in passport controls and residents permit; oddly enough it only refers to Law 92(I)/ 2003 as amended by Law 126(I)/2004, a law abolished by the current legal regime, Law 7(I)/2007, and fails to mention the new law.¹⁵¹

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

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

146 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’.

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

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

149 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.

150 This was circulated on the 15.3.2009 at the Convention

151 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.

community in Cyprus, including a number of researchers who are Union citizens who are working in the country makes the issue of the status of researchers and their mobility quite important. The EURAXESS Bridghead Organisation and Service Centre for Cyprus is the Research Promotion Foundation,¹⁵² 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.¹⁵³

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,¹⁵⁴ non-discrimination,¹⁵⁵ research environment,¹⁵⁶ working

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

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

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

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

155 ‘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.’

156 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

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conditions,¹⁵⁷ job security and stability and permanence of employment,¹⁵⁸ funding and salaries,¹⁵⁹ gender balance¹⁶⁰ and career development.¹⁶¹ 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, by providing information about Cyprus, its research landscape and various mobility related issues.¹⁶² It also involves promotional and raising awareness activities such as various publications aimed at researchers home and abroad, training sessions on mobility

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.

- 157 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.
- 158 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*
- 159 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.
- 160 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.
- 161 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.
- 162 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.

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.¹⁶³

*The European Charter for Researchers*¹⁶⁴ and *the Code of Conduct*¹⁶⁵

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’.¹⁶⁶ 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.

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’,¹⁶⁷ which approved funding to cover academic year 2009-2010 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 Univer-

163 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.

164 Available at http://crpf.metacanvas.com/EN/int_cooperation/euraxess/rights.html, as a link to the Research Promotion Foundation. 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.

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

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

167 Proposal 950/2009, decision 68450 dated 26.2.2009.

sity) 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 2010-211.

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.

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

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.¹⁶⁸
- II. The son/daughter must be in receipt of regular education in a recognised educational institution of tertiary education or in an approved area of study.
- III. There is an age requirement i.e. in principle the applicant must have reached the age of 17.

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.

¹⁶⁸ The references that restrict the force of the law to the territory in which the Republic of Cyprus operates as 'the area under the control of the Republic' reflects the status quo, which does not allow for the implementation of the Acquis in the northern territories. This is due to the fact that the implementation of the Acquis in the areas of the Republic which are not under the effective control of the Republic of Cyprus Government has been suspended according to the Accession Treaty under which Cyprus joined the EU on May 1st 2004. However, this provision may result in problems in the implementation of the principle of free movement, given the accession to the EU of a divided Cyprus.

CYPRUS

Criteria for the point system: Economic situation of the family of student

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

Pensions and Disability allowances are not counted as income.

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

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

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.¹⁶⁹ 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 olds¹⁷⁰ 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.¹⁷¹

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 10th September and 10th 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.¹⁷² In any case, this is a major European issue of debate following the *Bosmans* ruling in 1995.¹⁷³ The Pancyprian Footballers' Association however argues that there is problem of reverse discrimination and argues for the adoptions a rule in the spirit of the UEFA 'Home-grown Player rule', which is also discriminatory under EU law but unlike a quota system it constitutes *indirect*, rather than *direct* discrimination. The argument here is

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

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

171 According to the journal of the Pancyprian Footballers' Association.

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

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

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.¹⁷⁴ The Pancyprrian Footballers' Association complains that foreign footballers who play in second division teams as 'amateurs'¹⁷⁵ 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 2010-2011 football league new regulations no longer allowed third country nationals to be registered as 'amateurs' but can only be professionals.¹⁷⁶

7. SERVICE PROVIDERS AND SELF-EMPLOYED PERSONS

The Commission warning letter stated that Cypriot law (section 10(4) of Law 7(I)/2007) imposes only one means of attesting the status of a self-employed person, that of registration with social insurance; this is in breach of Directive article 8(3) which is not so restrictive in its requirements of proof. The Commission also referred to ECJ decisions which found that host countries cannot impose as a precondition for the provision of services the inclusion in their social insurance system or their pension scheme.¹⁷⁷

The Cypriot government agreed that the Cypriot law was more restrictive than the Directive and drafted a bill intended to amend Section 10(4) of Law 7(I)/2007 to the effect that self-employed persons will be required to present any proof of their working status instead of registration with the Social Insurance Services. At the administrative level, the Cypriot government issued a circular dated 18.07.2011 instructing that any proof of a Union citizen's working status shall become accepted with immediate effect notwithstanding the current section 10(4) of Law 7(I)/2007.

The Commission also referred to Council Regulation 883/2004 which includes provisions determining the applicable legislation, creating a set of rules regarding conflict of laws which removes from the ambit of national legislators the power to determine the extent and terms of application of national legislation; thus a national social insurance legislation which is different from that applicable in the member state of residence may apply where a person carries out a transnational activity, e.g. where a person was transferred from one member state to another or where a person carries out an activity in two member states, one of which is Cyprus, and therefore Cypriot legislation is not necessarily the applicable law. The government responded that one of the documents evidencing the status of self-employed is specimen form E101 or A1 which confirms that an employee is subject to the legislation of the member state issuing these and the rest of the member states have to accept this and not require that the said person be included in their own jurisdiction.

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

175 Information provided by Spyros Neofitides President of Pancyprrian Footballers Association.

176 Information provided by Spyros Neofitides President of Pancyprrian Footballers Association.

177 Case 'Rush Portuguesa', C-113/89; Case 'Bruno Schnitzer', C-215/01.

Chapter VII: Application of transitional measures

There are no transitional measures for Cyprus.

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

There are no transitional measures for Cyprus.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

There are no transitional measures for Cyprus.

Chapter VIII: Miscellaneous

1. **RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68**
2. **RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS**
3. **EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

3.1 Integration measures

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

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

The National Action Plan for Integration of legally residing migrants 2010-2012 was adopted in October 2010. On 16.10.2010 the Minister of Interior unveiled the national action plan for the integration. The plan has eight priority topics, a timetable for implementation and allocates the different tasks to specific government agencies: 1. Awareness and information. 2. Employment (access to, training and trade unionism, information to migrants on the labour system in Cyprus; anti-discrimination training to employers and employees). 3. Greek language training; 4. Health (access to emergency services, programs aimed at avoiding contagious diseases). 5. Housing (support structures for immediate needs etc). 6. Culture, civics and basic elements of civil, political and social reality in Cyprus (production of material and modules, forums, training for journalists, NGOs, social partners, local authorities and governmental officers). 7. Participation (support to migrants NGOs, encourage participation in sports, promote new law for the participation of migrants in municipal elections). 8. Evaluation and review (including indicators such as employment and participation rates).

The overall coordination of the general policy on integration is in the hands of the Ministry of Interior, which coordinates an inter-departmental policy.¹⁷⁸ 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 out-

¹⁷⁸ For a discussion on the current debates on integration and migration see Trimikliniotis 2009a; 2010a and Trimikliniotis and Souroulla 2006a; 2006b; 2010.

lines the parameters of the integration policy¹⁷⁹ 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;¹⁸⁰
- Access to justice;
- Seminars for employers and employees on labour relations; vocational training; health provisions at schools and maternal services (all provided free of charge irrespective of nationality);
- Educational measures for the integration of children at schools;
- European Refugee Fund projects and EQUAL Community Programs.

179 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).

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

3.3 Return of nationals to new EU Member States

Nothing to report.

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 in its general functions as Ombudsman.

5. SEMINARS, REPORTS AND ARTICLES

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 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 on the sole basis of Article 12 of Regulation No 1612/68, without such a right being conditional on their having sufficient resources and comprehensive sickness insurance cover in that State being required 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 on the sole 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 from migrants married to Cypriots, who are thus entitled to Cypriot citizenship: how do the rights to education etc afforded to children of a Cypriot parent and their third country parent when divorced to the instances of a child of an EU national with a spouse who is a third country national in the same situation? The actual practice at the moment, at least as reported, is that of activating the provisions of art 7 of the Directive relating to 'sufficient resources'; hence the Union citizen and/or their spouses and children would be expelled accordingly if they lack sufficient resources. The Cyprus equality is examining such complaints at the moment.

Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department, case C-480/08

Like the case of *Ibrahim*, the case of *Teixeira* is particularly relevant to Cyprus. The immigration authorities would need to change current practice in cases where a national of a Member State who was employed in another Member State in which his or her child is in education can, in circumstances such as those of the main proceedings, claim, in the capacity of primary carer for that child, a right of residence in the host Member State on the sole basis of Article 12 of Regulation 1612/68, without being required to satisfy the conditions laid down in Directive 2004/38/EC. The right of residence in the host Member State of the parent who is

CYPRUS

the primary carer of a child exercising the right to pursue his or her education in accordance with Article 12 of Regulation No 1612/68

- a) is not conditional on that parent having sufficient resources not to become a burden on the social assistance system of that Member State during the period of residence and having comprehensive sickness insurance cover there.
- b) is not conditional on one of the child's parents having worked as a migrant worker in that Member State on the date on which the child started in education.
- c) ends when the child reaches the age of majority, unless the child continues to need the presence and care of that parent in order to be able to pursue and complete his or her education..

The current practice of the immigration authorities does not appear to be in line with the above principles. It seems that a new circular by the authorities would be warranted; the Cyprus equality is examining such complaints at the moment.