

**REPORT**  
**on the Free Movement of Workers**  
**in Cyprus in 2009-2010**

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## Executive Summary

Firstly, the implementation of the new law in November 2007 seems to be proceeding in a more functional manner, following the considerable backlogs noted in the 2008-2009 Report. The backlog which was investigated by the Cyprus Anti-Discrimination Body with thousands applications pending is still causing delays in the registration, but the Ministry of Interior officers claim that this is steadily being reduced. One of the effects of the economic crisis is the reduction of demand for labour as unemployment has risen to over 7% - still low for EU standards, nonetheless creeping upwards, more than doubling over the last two years. Some recent media reports have indicated that a number of Union citizens are leaving the country as unemployment is affecting their livelihoods.<sup>1</sup> The long delay in securing an appointment to obtain the registration certificate—currently the wait can be as long as a year is contrary to the provisions and the spirit of the Directive.

The second issue arises from the legal implementation of the Directive. Concerns have been raised as to the effect of the law on the rights of Union citizens working or visiting Cyprus, their partners and family members. Questions about worker rights and equal treatment of Union citizens and their partners and families continue to be 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 for EU workers. However, employers and Ministry of Labour officials point out that in general the system operates smoothly with few problems or complaints of discrimination, trade unions.

The third issue relates 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 further decision of the Cypriot Ombudsman which called for the regulation of the regime governing the same sex partnership, as the absence of regulation results in various forms of discrimination against EU, LGBT citizens, 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. The Cypriot Equality Body has found that the failure to regulate the subject results in various forms of discrimination and undermines the Community principle of freedom of movement.

In principle, the issue of reverse discrimination against third country nationals who are family members of Cypriot citizens resident in Cyprus 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 7(1)/2007. Up to that time spouses of Cypriots residing in Cyprus could not benefit from the freedom of movement available to all other Union citizens with regard to their resident rights in Cyprus; instead, they were subject to the more stringent procedures of the Aliens and Immigration Law, the outcome of which rests entirely upon the discretion of the Immigration Officer. Article 2 of the 2007 Law stipulates that an EU citizen is every person who is a citizen of the EU other than the Republic of Cyprus; this provision is also included in Article 3 'Beneficiaries' of the Directive. Various

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<sup>1</sup> See Nanos, C. 'Φεύγουν από την Πάφο οι Ελληνοπόντιοι', *Politis* 23/02/2010.

Supreme Court decisions deal with the issue of reverse discrimination differently: some stressed that it is *sine qua non* that Cypriots would enjoy every right that EU citizens do, while others take the opposite view. It has to be borne in mind that despite the Council of Ministers' decision, it is still possible further down the hierarchy of the various ministries regards to the rights of family members there may be practices that contradict this decision, but need to be identified and dealt with. However, this does not cover those family members who are part of a same sex marriage/registered partnership, who are not recognised by Cypriot law.

Another relevant issue concerns the territorial application of the implementation of the Directive given the *de facto* division of Cyprus. The references that restrict the force of the law to the territory in which the Republic of Cyprus operates as 'the area under the control of the Republic' reflects the status quo, which does not allow for the implementation of the Acquis in the northern territories. This is due to the fact that the implementation of the Acquis Communautaire in the areas of the Republic which are not under the effective control of the Republic of Cyprus Government has been suspended according to the Accession Treaty under which Cyprus joined the EU on May 1<sup>st</sup> 2004. However, this provision has resulted in problems in the implementation of the principle of free movement, given the accession to the EU of a divided Cyprus. In place we have a special regulation, referred to as the 'Green Line Regulation,' which regulates problems deriving from the *de facto* partition of Cyprus. The reference in Law 7(1) to the issue of effective control of the territory, allows the authorities to exercise discretion as to whether EU citizens living the northern (occupied) territories may exercise their rights under the Directive. They may exercise this discretion by refusing to grant registration certificates. In my view this is likely to be improper transposition of the Directive and may result in unlawful discrimination. References to the territory under the Government's effective control may result in practices that undermine the principle of free movement as 'fundamental status' stipulated in the preamble of Directive 2004/38/2004 and may create obstacles to the exercise of this right contrary to the Directive. It may be justified as regards specific benefits, providing that it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; however, it is difficult to see how it can be justified for refusal to grant access to any rights under the principles of free movement. 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.<sup>2</sup> The Turkish-Cypriot leader, Mr. Talat, had included in his non-paper submitted before the talks a provision claiming that the settlement must accord Turkey and Greece equal treatment, including enjoyment of the four freedoms (i.e. the free movement of goods; capital; services; persons) until Turkey becomes an EU member. However, this provision, amongst others, was immediately rejected by the Greek-Cypriot political leadership as being contrary to the Acquis.

The Republic has enacted legislation purporting to transpose Directives 36/2005 and 100/2006, Law 31(I)/2008, which introduced a unified law abolishing the old laws and allows for recognition of professional qualifications. Also the relevant regulations were amended, including the sectoral regulations regarding access and membership in various professional associations. However, there are allegations that there are still barriers to access to certain professions, which either maintain bureaucratic obstacles and delays to registration via the non-recognition of diplomas of other EU member state institutions (e.g. recognition of Bulgarian diplomas for nurses), or excessive language requirements in the in job descriptions (e.g. job description for nurses), or

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2 In March 2010.

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 before the Equality Authority; however, authorities claim that they have received no complaints, nor have they seen any complaints via the ‘SOLVE IT’ mechanism. The ‘SOLVE IT’ annual Report for 2009 refers to 3% of all complaints regarding handling in 2009 regard recognition of professional qualifications as coming from Cyprus. Finally, third country national spouses encounter problems on account of documentation issues. Also, the interpretation of the nebulous concept of ‘unreasonable burden’ by the Welfare Services, as with many other EU countries, remains unclear. Nor can I comment on the actual practice of deciding when a particular applicant who applies for registration under the free movement procedures is considered to be such an ‘unreasonable burden’ by the Welfare Services.

Finally, it has to be noted that despite the amendment of the legislation on aliens and migration law, the vast majority of third country migrant workers are excluded from enjoying access the long-term migrant status following a decision of the full house of the Supreme Court,<sup>3</sup> stalling the process contrary to the aim of the Directive.<sup>4</sup> The applicant was a female migrant who arrived in Cyprus in 2000 and was since lawfully working as a domestic worker. On 25 Jan 2006, i.e. as soon as the deadline for the transposition of Directive 2003/109/EC expired, the applicant applied to the Interior Minister for the status of a long term migrant, as provided by the Directive. *The applicant applied to the Supreme Court appealing against the refusal of the Interior Minister to allow third country migrants on short-term contracts to benefit from the long-term residence directive. The Supreme Court, by a majority decision of nine judges against four, rejected the appeal and confirmed the Interior Minister’s decision, on the ground that the fixed term duration of the applicant’s visas did indeed fall within the exception of article 18Z(2) of the Cypriot Law Directive article 3(2)(e). The decision noted that the transposition of the Directive and the addition of the phrase ‘as to its duration’ did not deduct from the effectiveness of the Directive and that the fixed term nature of the residence visas granted to the applicant did not create a reasonable expectation ‘that the person has put down root in the country’, as provided by Recital 6 to the Directive. The additional phrase ‘as to its duration’ was deleted by an amendment by the legislation in November 2009, but the immigration authorities still consider that the decision of the court remains in force and thus continue to reject applications from TCNs who have fixed visas.*<sup>5</sup>

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3 *Cresencia Cabotaje Motilla v. Republic of Cyprus through the Interior Minister and the Chief Immigration Officer*, Supreme Court Case No. 673/2006 (21 Jan 2008). Although the said Directive was not transposed into Cypriot law until 14 Feb 2007 (Law 8(I)/2007), the Court accepted that, based on the ECJ decision on the case of *Pubblico Ministero v. Tullio Tatti*, the application had to be examined in light of the said Directive and the law which subsequently transposed it.

4 The Ministry’s rejection of the application was based on article 18Z(2) of the Aliens and Immigration Law Cap 105, as amended by Law 8(I)/2007 purporting to transpose Directive 2003/109/EC, which excludes from the scope of the law inter alia ‘persons whose residence permit has been officially restricted as regards its duration’. The aforesaid provision was intended to transpose Directive article 3(2)(e); however whilst the Directive states ‘persons whose residence permit has been formally limited’, the Cypriot law states ‘persons whose residence permit has been formally limited as to its duration’.

5 Law 2 /143 of 2009, November 2009.

## GENERAL SITUATION

The implementation of the principle of free movement of workers since Cyprus became a member of the EU on 1<sup>st</sup> May 2004 has led to the numbers of Union citizen permits to citizens taking up the right of movement of workers to work in Cyprus has risen to 83,387 for 2009,<sup>6</sup> in comparison to just over 70,000 for 2008. By the end of June 2010 the number of total numbers of EU citizens registered is around 90,000.<sup>7</sup> These figures refer to the valid registrations at each time. Overall one can see the numbers of Union citizens registering per year changing in an uneven manner since the year prior to accession: 21553 in 2003, 18,202, 12676 in 2005, 17599 in 2006, 10656 in 2007, 26315 in 2008 and 25501 in 2009 (see tables 1 and 2 in the appendix). However, the actual number of EU nationals must be somewhat lower: according to the Ministry of Labour and Social Insurance, the number of Union citizens making social insurance contributions 50,013 for 2009 in comparison to 49,060 for 2008.<sup>8</sup> Even if there is a portion of EU citizens who are registered but are working in the hidden economy performing undeclared work, Ministry of Labour officials believe that the numbers of Union citizens are significantly less than the numbers who register, as there is no obligation to inform the authorities when leaving the country.

The overall picture of migration to Cyprus must also take into account the stocks and flows of TCNs. We have witnessed a steady rise in the number of EU citizens taking up the right of movement of workers to work in Cyprus: according to the migration office there are currently 138,000 non-Cypriots legally residing in Cyprus,<sup>9</sup> out of whom about half are EU citizens.<sup>10</sup> Out of the 109,747 non-Cypriots, 57,000 third country nationals (TCN) are registered as working in the Republic of Cyprus. In addition, at the moment there are 7,803 valid student permits,<sup>11</sup> 2,300 persons recognised as refugees or granted humanitarian protection, around 2,000 asylum-seekers<sup>12</sup> and an estimated 25,000-35,000 irregular migrants,<sup>13</sup> consisting mainly of ‘overstayers’, the vast majority of whom are also part of the labour force, by and large in the hidden economy performing undeclared work. The total number of EU nationals and TCN persons paying social insurance in 2009 was 109,747 (see Table 2), which represents approximately 20% of the working population residing in the southern part of the island under the control of the republic of Cyprus. Most immigrants are employed in domestic work, the service industry (tourism, trade), the manufacturing industry, agriculture and construction, in low-paid and low-status jobs. Most of

6 The data was provided by the Ministry of Interior, 23.03.2010.

7 Information provided by the officer in charge of free movement of workers from the Ministry of Interior, 2 July 2010.

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

9 Source: Civil Registry Migration Department and the Population Data Archives.

10 There are discrepancies in the figures provided by different Government departments as the data is collected by different methods and for different purposes.

11 Information provided by the Ministry of Interior, 22.04.2010

12 A total 1,312 applications for 2011 persons were pending in 2009; a total of 257 persons have been recognized as refugees and another 2,013 were granted humanitarian protection (source: Asylum Unit).

13 This number is quoted by many officials and studies but we do have any verified method of calculation of this number. In various interviews with officials I have been quoted different figures. In 2005 the Migration Department is said to have estimated the number to be at 25000 based on figures of arrivals, deportations and the estimations of the overstayers in the country (see Michael et. al. 2005: 13).

## CYPRUS

these are migrant workers whose main areas of employment are: domestic workers, service industry (tourism, trade), manufacturing industry, agriculture and construction.

## **Introduction**

As far as the institutional framework for free movement of workers in the EU, we can refer to a mixed picture. On the one hand we can detect a number of improvements in the system that allow for smoother implementation of the principle of free movement. Of course, we can still identify a number of important issues related to administrative practices that are problematic and are causing obstacle to freedom of movement, including the continued delays in obtaining registration documents, a somehow unclear interpretation of ‘unreasonable burden’, which renders the implementation of the benefit system available to EU citizens who are job-seekers problematic.



## 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).

The Cypriot law (sect. 27(1)) stipulates that persons exercising their right of residence should not become an ‘unreasonable burden’ on the social assistance system of the country during an initial period of residence. In practical terms what is required is set out in the circular issued by the Civil Registry and Migration Department,<sup>14</sup> which requires that a number of formalities are provided to ensure that the Union citizen applicants is in possession of ‘the appropriate means’. According to section 4.1(b)(5) of law 7(I)/2007, the Social Welfare Services are the designated authority to make determinations of what constitutes ‘unreasonable burden on the social assistance system of Cyprus’.

The documents that must accompany the applications are set out in the 2007 Law. These include the following:

If the Union citizen is in employment already, then he has to provide a letter from employer which stipulates the income provided amounts to sufficient means of subsistence. The Civil Registry and Migration Department has the right to ask from the employer a certificate proving the contributions are paid to the Social Insurance Fund for the specific EU national.

In case of an application of from a third country national married to a Union citizen, then both the Union citizen and the spouse must appear with their travel documents and the following documents are examined: (a) marriage certificate; (b) bank guarantee (only until the end of 2008. From the beginning of 2009 and onwards this is not asked for anymore); (c) statement of harmonious cohabitation; (d) rental agreement; (e) completed form M64 from the employer, if the spouse is working (until the end of 2008; from the beginning of 2009, a declaration of employment is required which is filled from the applicant together with the employer); and (f) if the person was an Asylum seeker, a confirmation by the Asylum Service that (s)he has withdrawn any asylum applications.

In cases where the Union citizen is working in the Republic and the company base is abroad, a copy of the employment contract, bank account and statements for proving that his/her incomes is provided from abroad and is banked to the bank account in Cyprus, a certificate of health insurance and a rental agreement or a contract of sales. The questions relating to the interpretation of ‘unreasonable burden’ in Cyprus by the Welfare Services remains uncertain,<sup>15</sup> despite the fact that the position of the Ministry of Interior is categorical that the guidelines contained in the cir-

<sup>14</sup> File No. 30/2004/IV, 29.9.2008.

<sup>15</sup> 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.

cular sent to responsible officers as the minimum income acceptable to proceed with the application for a certificate of registration is not a condition precedent but a mere guide.<sup>16</sup> The original circular was not withdrawn, nor is it clear to the author how the Immigration authorities and Social Welfare Services deal with the question unreasonable burden in processing the applications for registration, which is a mere technicality.

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.

## 2. SITUATION OF JOBSEEKERS

All those seeking job-seekers 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.<sup>17</sup> However, there been no 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 months<sup>18</sup> has not been used in Cyprus. A policy paper, in the form of memorandum regarding EU citizens job-seekers in Cyprus was issued in November 2009 and has in operation since then, particularly from the beginning of 2010. For 2009 there was no official or unofficial policy as to how long EU citizens job-seekers could stay in Cyprus without formalities.<sup>19</sup>

The question of how, the Social Welfare Service interprets the various references to the notion of ‘unreasonable burden on the social assistance system of Cyprus’<sup>20</sup> will be particularly

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16 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.’

17 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*.

18 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.

19 Information provided by officer of the Social Welfare Office 1.7.2010.

20 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

relevant to the 2010 report, as the Social Welfare Service has proceeded to define what the term means and sought advice and guidance from practices and conceptual frames in other EU countries on the subject to define this ambiguous term: This was one of the subjects of the debate of the national seminar of Cyprus in November 2009.<sup>21</sup>

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.

*(a) Unemployment benefit*

For 2009, the Social Insurance Law (N. 41/80)<sup>22</sup> has not been amended to cover Union citizens; presumably, due to accession to the EU law as well as the operation of law 7(I)/2007 would convert ‘Cypriot citizens’ to ‘Union citizen’. The social insurance system is based on contributions and has objective criteria, therefore descent or nationality does not play a role in the determination of entitlements. Unemployment benefit<sup>23</sup> 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.<sup>24</sup> 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 paid<sup>25</sup> or been credited<sup>26</sup> with contributions in the previous contribution year<sup>27</sup> on insurable earnings not lower than 20 times the weekly amount of the basic insurable earnings. It is noted that for the

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

- 21 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.
- 22 As amended up to 2007 and the relevant regulations.
- 23 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.
- 24 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)
- 25 Insurable earnings on which contributions have been paid.
- 26 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.
- 27 For the first semester of each year is the calendar year before the last and for the second semester is the last calendar year e.g. for the first semester of 2008, the previous contribution year is the year 2006, whereas for the second semester of 2008 is the year 2007.

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

However, radical changes have occurred with the adoption of EU Regulations 883/2004 and 987/2009, which replaced Regulations 1408/1971 and 574/1972 dealing with the co-ordination of social security systems.<sup>28</sup>

*(b) Social/public assistance*

During 2009 and until 1.5.2010, public assistance was provided under Law 95(I)/2006<sup>29</sup> to all those residing in the territories under the effective control of the Republic of Cyprus (i.e. not the territories under the unrecognized TRNC).<sup>30</sup> There are conditions specific to Union citizens: A 'Union citizen who maintains his/her status of an employee or self-employed person' is defined as 'a Union citizen who has exercised his/her right to reside in the Republic for the exercise of employed or self-employed activity and is no longer employed or self-employed in the following situations: (a) temporary incapacitated due to sickness or accident; (b) has been duly registered as involuntary unemployed, having exercised professional activity for over one year and has registered as a person seeking employment in the appropriate Employment Bureau (according to residence); (c) is duly registered as involuntary unemployed after the expiry of a fixed-term contract of employment of duration shorter than a year or after becoming involuntary unemployed during the 12 months has registered with the appropriate Employment Bureau (according to residence); the duration of employment must not be less than 6 months; (d) is attending a vocational course.

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

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

28 This came into effect on 1st May 2010.

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

30 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.

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.<sup>31</sup>

The decision of the Cypriot Equality body (the Anti-discrimination Authority),<sup>32</sup> which deals with the receipt of public assistance for health reason, is illuminating as to the situation of the Union citizens requiring public assistance, including jobseekers allowance.<sup>33</sup> According 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 in not applied in the cases of Union citizens’.<sup>34</sup> The reasoning is based on the logic that the granting of residence is premised on the proof that the complainant’s mother is in possession of ‘sufficient means for the maintenance of her family’. The Director of the Social Welfare Service erroneously suggested that a precondition for granting the free movement rights under section 9(1)(b) of Law 7(I)/2007 is that they are not considered to be ‘unreasonable burden on the social assistance system of Cyprus’ (AKP 70/2007, p. 4). Moreover, the Director went on, again erroneously, to comment that the right of residence is dependent on being in possession of sufficient means’. The Cypriot Equality body after analysing the relevant legal framework considered that the Director of the Social Welfare Service had wrongly interpreted and applied the law on the following grounds:

- The Directive and the respective transposing Cypriot law does not make the exercise of the primary right of free movement, residence and work dependent upon sufficient means to avoid burdening the national social welfare system.
- The Directive explicitly set out the principle of non-discrimination on the ground of nationality;

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

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

33 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 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).

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

- 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.<sup>35</sup>

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. The table below lists the numbers of families in receipt of public assistance for 2008 and 2009, provided by the social welfare services.<sup>36</sup>

<b>Citizenship/ status</b>	<b>2008</b>	<b>2009</b>
EU Citizens	59	233
Third country [long-term residence]	64	146
Refugees	25	45
Subsidiary protection		282
Humanitarian grounds	2	9
	13	45
Asylum-seekers	1183	1002
Turkish-Cypriots	157	203
<b>Total</b>	<b>2300</b>	<b>25000</b>

35 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).

36 The Social Welfare Service 5.7.2010.

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

These benefits include child benefits under Regulation 1408/71 as well as other social allowances deriving from the public assistance system in Cyprus, such as student grants, grant to families with 3 children or more to buy a car; maternity benefit to mothers of 4 children or more; special provision for the blind; grant to persons with disabilities to buy a car; mobility benefit for persons with severe disabilities; special grant to buy or to build house).<sup>37</sup>

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

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

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

New rules proposed in 2010 will make student grants and child benefit means-tested.

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

- Law 7(I)/2007 on the 'Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus' Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members.
- Law 95(I)/2006 on Public Assistance
- Law 41/80 on Social Insurance

#### *Recent legal literature:*

Department of Labour (2008) *Ελεύθερη διακίνηση και διαμονή Ευρωπαίων Πολιτών και Μελών των Οικογενειών τους*.<sup>38</sup> This is a guide [in Greek] on Law No. 7 (I)/2007 on the Right of EU Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic of Cyprus' Concerning the Free Movement and Residence of Citizens of EU Member States and their Family Members

37 See [http://www.mof.gov.cy/mof/mof.nsf/DMLallowance\\_gr/DMLallowance\\_gr?OpenDocument](http://www.mof.gov.cy/mof/mof.nsf/DMLallowance_gr/DMLallowance_gr?OpenDocument).

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

## Chapter II: Members of the Worker's 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 (Art. 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 (Art. 4(2) (a), Law 7(1)/2007).

A number of complaints of family members of EU Citizens, including Cypriot citizens have been raised in the free movement website.<sup>39</sup>

### 2. ENTRY AND RESIDENCE RIGHTS

The only issues regarding the implementation of the free movement rights to family members that received public attention are the rights of partners in same sex marriages or registered relationships. 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.<sup>40</sup> In its' first decision on the subject, the equality body referred the 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.<sup>41</sup> The equality

<sup>39</sup> See <http://eumovement.wordpress.com/information-cyprus/>.

<sup>40</sup> 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 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.

<sup>41</sup> 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



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 workers<sup>42</sup> 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. The report cites a number of ECtHR cases which established that the term 'family life' is not restricted to relationships within a marriage but includes also de facto family relations where the parties live together outside marriage. The report recognised a trend in ECtHR decisions towards the increasing recognition of the rights of gay couples, even in the absence of recognition of gay marriages per se. The report recommends that residence visas and a work permits must be disconnected from the legal recognition of marriages, adding that the denial of the right to work in this case amounts to unjustified discrimination on the ground of sexual orientation. The case is now before the Supreme Court.

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',<sup>43</sup> this is not correct. There are many areas of the law where common law marriages between heterosexual couples are explicitly covered, which impliedly excludes homosexual couples. To give but one example, the Law on Prevention of Violence in the Family and the Protection of Victims N.119(I)/2000 criminalises acts of violence and provides for aggravated sentences where acts of violence are committed by a family member to another. A family member is broadly defined to include inter alia a man and a woman co-habiting as a couple. The definition does not extend to homosexual partners who are not afforded the protection of the law if they suffer violence from their partner.

The equality body has in recent months received two additional 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 co-habiting 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.<sup>44</sup> The Cyprus Equality Body is currently examining a number of complaints some involving LGBTs who are EU or Cypriot citizens who want to exercise their right to family reunification. The claim by authorities that 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 exist is one of the complaints under investigation.

Another decision of the Equality Body, issued in 2010, dealt with the the legal recognition of same sex couplee. 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 com-

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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.

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

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

44 The meeting is scheduled for 10.03.2010.

plaints 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.

The equality body report<sup>45</sup> 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 our society as a matter of fact. Besides, concludes the report, the progressive recognition of the rights of minorities, including sexual minorities, is a feature of many democratic states where morals are constantly adjusted on the basis of social processes and where there is a constant interaction between law and society. The report has touched a sensitive chord within Cypriot society which is highly homophobic and conservative; it ought to be recalled that homosexuality was only decriminalised in 1998, after an ECHR decision against Cyprus in 1993<sup>46</sup> and following five years of stalling.

### 3. 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.

### 4. 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.

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

46 *Modinos v. Cyprus*, Judgment 22.04.1993, 16 EHRR 485 available at [http://ius.info/EUII/EUCHR/dokumenti/1993/04/CASE\\_OF\\_MODINOS\\_v.\\_CYPRUS\\_22\\_04\\_1993.html](http://ius.info/EUII/EUCHR/dokumenti/1993/04/CASE_OF_MODINOS_v._CYPRUS_22_04_1993.html)

This is contrary to the directive.

## Chapter III

### Access to Employment: a) Private sector and b) public sector

#### A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

##### *General*

Overall, the Labour Department considers that there is full transposition of the Directive and there are no serious barriers to access to employment by Union citizens.

Officials from the Department of Labour claim that the system is operating smoothly and job-seekers can seek jobs via EURES and various private agencies and there has been no complaint 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.

As with 2008, the issue of assistance of employment agencies has not received much attention in 2009. An issue of concern is the fact that public employment agencies in Cyprus do not provide services in any language other than Greek which may be a barrier to many Union citizens who are non-Greek speakers. Given that almost all civil servants and the vast majority of people are fluent in English it would not be difficult to make such services available in English.

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 laws<sup>47</sup> and allows for recognition of professional qualifications.<sup>48</sup> 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

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47 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).

48 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.

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.<sup>49</sup>

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 profession in the private domain, or on certain occasions also in the public sector.<sup>50</sup> 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.<sup>51</sup>

#### *Language requirement*

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

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<sup>52</sup> has only been partly complied with. Further complaints on the same issue have been submitted to the Cypriot Equality body. Similarly, the report of the Cypriot Equality body found that the language requirement in the documents required for registration of foreign nationals in the registry of building contractors was discriminatory.<sup>53</sup> The question remained open throughout 2009 as to what Building contractors are practicing; there is no pending complaint at the moment. A complaint was submitted to the Equality body by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English. An investigation made by the Cypriot Equality body showed that the said Council would readily examine applications by Cypriot citizens whose certificates were in English, but requested non-Cypriots to have their certificates translated into Greek. The Equality body found that the differential treatment of Cypriots and non-Cypriot applicants, deriving from the fact that the former can submit documents in English whilst the latter cannot, amounts to unlawful discrimination. Even though the Equality Body issued its report on 23/2/2007, the Council of Building Contractors has so far failed to comply with the recommendation of the Equality body; the author is informed that the Council of Building Contractors is about to change its regulations to comply

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49 Information provided by Officer of the Labour Department 5.6.2010.

50 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.

51 This matter is currently being investigated by the Equality Authority.

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

53 File No. AKR 36/2006, dated 23.02.2007

with the recommendations.<sup>54</sup> Another instance where there seems to be continued non-compliance with a Union citizen who applied to sit the exams in English to become insurance broker: there has been a new complaint in 2008, even though 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.<sup>55</sup> The Equality Body is yet to issue a decision on the matter until the submission of this report.<sup>56</sup>

There had been barriers such as requiring excellent use of Greek for professions such as medical doctors but the Medical Doctor's Association has complied with the recommendation of the Cypriot Equality body, following a complaint of a general practitioner who wanted to register.<sup>57</sup> Today doctors can register without the language restrictions.<sup>58</sup> However, there are still language barriers to the nursing profession, which continue to require stringent language tests: very good knowledge Greek or English, despite the relevant decision of the Equality body dated 19.3.2007. A number of complaints were examined by the Equality body from nurses, who have good knowledge of other official EU languages such as French and German.<sup>59</sup> 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*

The only legal reference to access to employment was made by the investigation into a complaint to the Equality body, which considered in some detail the relevant provisions of the *Law that provides for the recognition professional qualifications and related matters* 31(I)/2008 (for details of the case of this Report see 'Chapter IV, 1.2. Language requirement').<sup>60</sup>

#### *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.<sup>61</sup>

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

55 AKI 35/2005, issued on 19.10.2005.

56 4.07.2010.

57 AKI 10/2006.

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

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

60 AKI 107/2007, issued on 12.12.2008.

61 Information provided by officer of the Cypriot Equality body.

*Text(s) in force*

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

***a.1 Equal treatment in access to employment (e.g. assistance of employment agencies).***

There is no information provided on this subject.

***a.2. Language requirements***

No drastic changes can be reported since the Report of 2008: 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.

There is no reported complaint under investigation during 2009 and the beginning of 2010 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 2008 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.<sup>62</sup> The Equality body ruled that this was a case of access to the public service and that the job description for the post of officer of metal work is discriminatory against Union citizens and contrary to the freedom of movement principle and recommended that the Attorney General proceeds with changing the relevant job description. ETEK had been reluctant to change their practices of excluding non-Cypriot nationals based on a residence provision in their constitution, but this has now changed.

The language requirement in the public sector operates as a barrier to entry. Essentially only Greek nationals from Greece and Greek speakers (i.e. of Greek-Cypriot and Greek extraction) are able to apply for the Government posts.

**B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR*****b.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 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 obtain Cypriot nationality and passports) due to the fact that ‘potential candidates’ do not have ‘the necessary qualifications’, ‘mostly nationality

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62 AKI 22/2006, issued 11.12.2006.

and fulfilment of their military service for men'.<sup>63</sup> The Equality Body recommendation to recruit Greek-Pontians in the Police has not been complied with,<sup>64</sup> 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.<sup>65</sup> The situation in 2009 and the beginning in 2010 remain unchanged.

### ***b.2. 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.

### ***b.3. Recognition of professional experience for access to the public sector***

The situation in 2009 remains as described in the 2008 Report. 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.

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

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

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

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

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



***b.4. 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.<sup>66</sup>

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<sup>66</sup> Information provided by officer of the Equality Authority.

## Chapter IV

### Equality of Treatment on the Basis of Nationality

#### 1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Overall, 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.<sup>67</sup> 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.<sup>68</sup> 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.

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

We have 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.

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<sup>67</sup> Information provided by Andreas Matsas SEK, 1.7.2010. Similar comments by trade unionists from other trade unions: Sotiris Fellas from PEO has also spoken about similar practices 28.6.201. Also see Memorandum to the Minister of Interior, PEO (Pancyprian Labour Federation), February 2008.

<sup>68</sup> Information provided by Andreas Matsas SEK, 1.7.2010.

## CYPRUS

As far as social insurance is concerned, there is a general earnings-related Social Insurance Scheme which covers compulsorily, every person gainfully occupied in Cyprus either as employed or self-employed person. Voluntary insurance is allowed to persons who wish to continue their insurance after a prescribed period of compulsory insurance. The scheme is financed by earnings-related contributions payable by the insured person, the employer and the State. As of 1<sup>st</sup> May 2004, Cyprus applies the EC regulation 1408/71 which coordinates the social security systems of the member states of the EU, the European Economic Area and Switzerland. The scheme provides for various benefits, including marriage benefit, maternity grant, maternity allowance, unemployment and sickness benefit. Unemployment benefit is paid for involuntary unemployment and is payable for a period that cannot exceed 156 days for each period of interruption of employment. Where the legislation of the Republic of Cyprus does not provide for a right to a pension on the basis of age for some categories of unpaid workers, the pre-condition of age is considered to be satisfied as long as the EU nationals entitled to the right of permanent residence have completed their 65<sup>th</sup> year of age. The precondition of more than two years' continuous residence for an EU national who has been involved in unpaid providing unpaid service in the Republic of Cyprus to be granted permanence residence does not apply if he/she has suffered incapacity to work as a result of an accident or illness in the context of work, events that confer a right to a pension payable in total or in part by the Department of Social Security.

## Chapter V

### Other Obstacles to Free Movement

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 intends and purposes to ‘frontier workers’?

Or, is their situation so fundamentally different, deriving from the wholly unique situation in Cyprus, as one of ‘the Cypriot states of exception’,<sup>69</sup> requiring that they are treated as a separate category? And if so, are there any legal reasons justifying the denial of their right to equal treatment and access to the rights and social advantages as defined by the directive?

Of particular relevance is the existence of the residence clauses, which have a bearing in defining the scope of equal treatment and the nature of social advantage as defined in the laws (e.g. the cases of C-212/05 *Hartmann* and C-213/05 *Geven*). The Report on Cyprus for 2007 referred to the legal, conceptual and practical difficulties that generate different kinds of repercussions on free movement of workers arising from the situation in Cyprus. A crucial question here is how to construe the ceasefire line, which cuts across a de facto divided country, as this is depended on the way one construes the legal regime of the breakaway Turkish Republic of Northern Cyprus (TRNC),<sup>70</sup> a regime that remains unrecognised.<sup>71</sup> is it a ‘border’, a ‘soft border’, a ‘frontier line’ or merely a ‘default line’ that acknowledges the status quo and makes arrangements for the failure of the process of finding a settlement by suspending the implementation of the *acquis*, as provided in article 1 of the Treaty of Accession of Cyprus to the EU. The references in Law 7(1) of 2007 (9.2.2007)<sup>72</sup> to the territorial application of the implementation of the Directive<sup>73</sup> that derive the de facto division of Cyprus are problematic matters for free movement of workers. Section 22 (3) of the said law explicitly confines the implementation of the right to equal treatment,<sup>74</sup> as well as any other rights beyond the right of residence ‘only in relation to Union citizens and the mem-

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

70 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’.

71 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.

72 This is also the case in other laws.

73 Such as section 20 of the law.

74 Under sec. 22 (1).

bers of their families who reside in the territory in which the Republic of Cyprus exercises effective control.<sup>75</sup> Therefore two questions need to be addressed:

- 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?
- 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?

a) In answering the first question, it has to be pointed out that in some contexts the northern territories are considered as ‘unrecognised’, ‘militarily occupied territories’<sup>76</sup> 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’’.<sup>77</sup> In this construction, we are *not* dealing with a ‘frontier’ between two EU member countries (e.g. Germany and France etc) but a mere ceasefire line whereby the northern territories are under the [illegal] control of a third country. However, matters are far more complicated than that: the territories in the northern part of Cyprus cannot be treated as part of Turkey and have never been treated so by the EU or any other international body; Turkey herself has not 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,<sup>78</sup> the outermost regions,<sup>79</sup> the Channel Islands, the Isle of Man, Gibraltar, the Faroe Islands, the Aland Islands and Ceuta and Melilla. The difference between these regimes, whether underdeveloped regions or financial or other services centres, and the situation in Cyprus is that the former have a regulated constitutional link recognised by all sides, whereas in the case of Cyprus, we are dealing with a regulation of a territory of an unrecognised regime. This does not mean that there is no constitutional relationship; in fact there are at least four dimensions of this relationship: 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.<sup>80</sup>

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

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

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

78 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.

79 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.

80 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.

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 in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.’<sup>81</sup> 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 Cyprus<sup>82</sup> is regulated by ‘the Green Line regulation,’<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> Moreover, as reported in 2007, the practice as regard partners of Union citizens residing in the northern part of Cyprus is to allow them to travel or use the legal ports and airports the first time they enter the country, but to subsequently put them on the ‘stop list’ once they have entered the territories of the Republic of Cyprus.

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

81 Article 1, EU Accession Treaty - Protocols on Cyprus, see <http://www.cyprus.gov.cy/MOI/pio/pio.nsf/All/DASEA02B13392A77C2256DC2002B662A?OpenDocument>.

82 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)).

83 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)).

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

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

stipulates: ‘The right of residence and the right of permanent residence shall cover the whole territory of the host Member State. Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.’ In fact, the discrimination caused is manifold: by failing to recognise the rights of Union citizens to free movement, whilst recognising the rights 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,’<sup>86</sup> 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*:<sup>87</sup> a Ukrainian woman married to a Turkish Cypriot and residing in the northern part of Cyprus won an appeal against the Immigration Department who had rejected her application for renewal of her residency permit, on the grounds that she was residing in the Turkish-controlled north rather than in the Republic-controlled south and because her marriage was not recognised by the Republic as it was carried out in the north. The Supreme Court found 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.<sup>88</sup> Therefore this ‘apparently neutral provision, criterion or practice’ that puts persons of certain nationality,<sup>89</sup> 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 territories<sup>90</sup> and that there are inherent complications resulting from the operation of the Green line Regulation.<sup>91</sup> The likely justi-

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

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

88 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.

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

90 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.

91 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,

fiction provided for the restriction in 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.<sup>92</sup> However, the European Court of Human Rights (ECtHR) in the case of *Aziz vs. The Republic of Cyprus*<sup>93</sup> 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 Cyprus<sup>94</sup> 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 used and expanded ever since and refers to those ‘temporary and minimum provisions absolutely necessary for the functioning of government.’<sup>95</sup> Not only is it quite difficult to

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[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc and numdoc=506DC0551 and lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc and numdoc=506DC0551 and lg=en)

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

93 ECHR/no. 69949/01 (22 June 2004), Reported at [\[http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm\]](http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm), accessed on 20.10.2008. The case is discussed in the Cyprus Country Report of the European Network of Legal Experts in the non-discrimination field (state of affairs up to 8 January 2007) available at [\[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/cyrep07\\_en.pdf\]](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf), accessed on 20.10.2008.

94 The 2007 Report considered that the relevant provision in Law 7(1)/2007 seems superfluous given the Treaty of Accession and the Green Line Regulation 866/2004 of 29.04.2004 regulates the peculiar ‘soft border’ of Cyprus under the current situation as long as the de facto partition persists. This is the division line of Cyprus, which nothing more than a ceasefire line. When Cyprus acceded in the EU as a divided island the EU decided to make this into a ‘soft border’ of the EU. See Corrigendum to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession At OJ L 161, 30.4.2004), [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc and lg=en and numdoc=304R0866R\(01](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc and lg=en and numdoc=304R0866R(01)

95 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 →



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.

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and Nicolaou, I (2000) *The Control of the Constitutionality of the Laws and the Separation of Powers of the State Institutions of Cyprus- Constitutional Regulation and the Evolution of the Law of Necessity* [Ο Έλεγχος της Συνταγματικότητας των Νόμων και της Κατανομής των Αρμοδιοτήτων, των Οργάνων του Κράτους στην Κύπρο – Η Συνταγματική Ρύθμιση, η Εξέλιξη και το Δίκαιο της Ανάγκης], Εκδόσεις Αντ. Ν. Σάκκουλα, Athina, Greece; and Loizou, A. N. (2001) *The Constitution of the Republic of Cyprus* [Σύνταγμα Κυπριακής Δημοκρατίας] , Nicosia, Cyprus.

## Chapter VI Specific Issues

### 1. FRONTIER WORKERS

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 2008 report: the Aliens and Immigration Law imposes no restrictions on professional sport people who are citizens of EU member States. Furthermore, the Cyprus Sport Organization applies the ruling of the Court of Justice on 12 April 2004 in the *Igor Simutenkov* case (C-265-03). Since 2004, free movement legislation applies in the sports sector. Sports people who are citizens of EU member States are treated exactly the same way as Cypriot nationals as far as registration with and transfer from and to teams are concerned. Using the example of football players to illustrate, according to the Regulations of the Cyprus Football Association, in 2008 teams in the first league could have the same unspecified number of non-amateur EU players as Cypriot nationals [(Reg.20(1) (1))] and the same applies for second- and third-league teams but the players in the second and third leagues can be either amateurs or non-amateurs (Reg.20(2)(1) and 20.3(1) respectively); during the first transfer period (i.e. 1/6/-31/8) EU non-amateur footballers can transfer (Reg. 1.4), during the second transfer period (1/1/-31/1) the same number (up to two) of Cypriot nationals and EU players can transfer in the case of the second and third football league [Reg.1.4(6c)].

The rules applying to Cypriot sport have taken into account the *Bosmans* ruling in 1995.<sup>96</sup> 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 olds<sup>97</sup> have not been adopted so far. The association had raised concerns about the fact that Cypriot footballers are being displaced by foreigners (EU nationals and third country nationals) and had

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

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

promoted the adoption of a Scottish-type of rule will work as an indirect quota for Cypriots, who will become the ‘core’ of the squad, as it is unlikely that foreigners would move to Cyprus before they are 21 years old.<sup>98</sup> The association considers that Cypriot footballers suffer from discrimination as they are less likely to accept conditions that are unacceptable for locals – but which may be adopted by foreigners.<sup>99</sup> In any case, this is a major European issue of debate following the Bosmans ruling in 1995.<sup>100</sup> The Pancyprian Footballers’ Association however argues that there is problem of reverse discrimination and argues for the adoption of a rule in the spirit of the UEFA ‘Home-grown Player rule’, which is also discriminatory under EU law but unlike a quota system it constitutes *indirect*, rather than *direct* discrimination. The argument here is that the system may be justified under EU law if it can be objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary.<sup>101</sup> The Pancyprian Footballers’ Association complains that foreign footballers who play in second division teams as ‘amateurs’<sup>102</sup> are by the practice of some football clubs to obtain work permits and register some footballers in jobs unrelated to football and use them in matches as ‘amateurs’ resulted in instances of non-payment and deportation from the country. During the 2009-2010 football league new regulations no longer allowed third country nationals to be registered as ‘amateurs’ but can only be professionals.<sup>103</sup>

The authorities insist that that no quota system is operating. However, it is difficult to make any conclusive assessment regarding the issue of structural discrimination as there is hardly any information gathered on statistics of sport participation of migrants, minorities or other potentially discriminated groups in Cyprus. There is no authority keeping track of statistics on the representation of migrants and ethnic minorities in any of the sports, save for professional football and basketball, who employ non-nationals – but these are usually specially recruited and well-paid professionals rather than members of immigrant communities living in Cyprus, who are located in the lowest echelons of the labour hierarchy.<sup>104</sup> We cannot quantify the extent of the involvement of migrants and ethnic minorities as athletes, coaches, officials and fans in the sports under examination (football, basketball and athletics). In general, the only visible non-natives are the professional athletes and coaches of the top leagues in football and basketball.

#### *Legislation/Regulations*

Cyprus Football Association (2009), *Regulations for the Registration and Transfer of Football Players*, P.O Box 25071, 1306 Nicosia, Cyprus, info@cfa.com.cy.

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98 According to the journal of the Pancyprian Footballers’ Association.

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

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

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

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

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

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

### 3. THE MARITIME SECTOR

According to the Cyprus Shipping Chamber,<sup>105</sup> 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.’<sup>106</sup> Although the intention to ratify the ILO Maritime Labour Convention has been officially issued since 2008,<sup>107</sup> in 2009, Cyprus had not ratified the said convention. Moreover, a circular by the Migration officer refers to the decision of the Council of Ministers,<sup>108</sup> which provides for the granting and renewal of temporary resident and work permits to members of staff of companies and firms of foreign interest:<sup>109</sup> 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.<sup>110</sup> We are informed<sup>111</sup> that there is a standard clause providing for the same treatment on all matters relating to transport. An example of such a clause is the following: ‘Each Contracting Party shall grant to vessels of the other Contracting Party the same treatment as it affords to its own vessels engaged in international maritime transport in respect of free access to ports, levying of port dues and taxes, use of ports for loading and unloading cargoes and for embarking and disembarking passengers. This paragraph shall also apply to vessels chartered by shipping companies of the other Contracting Party flying the flag of a third country.’<sup>112</sup>

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105 Information provided by Sophocles Constantinou, Executive Officer Cyprus Shipping Chamber, 6.5.2010.

106 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).

107 See circular 21/2008, issued by the Ministry of Transport and Public works on 10 November 2008, [http://www.mcw.gov.cy/mcw/dms/dms.nsf/0/862E2A6D385727BAC225751B003A26F8/\\$file/21-2008%2810.11.2008%29.pdf](http://www.mcw.gov.cy/mcw/dms/dms.nsf/0/862E2A6D385727BAC225751B003A26F8/$file/21-2008%2810.11.2008%29.pdf).

108 Decision no. 67692, dated 24.9.2008.

109 These are the former off-shore companies.

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

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

112 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’.

#### 4. RESEARCHERS/ARTISTS

There is very little on the status of the Cypriot artist: this was highlighted by the Cyprus Chamber of Fine Arts (E.KA.TE)<sup>113</sup> in a recent Convention on the Status of the Artist in Cyprus,<sup>114</sup> which has followed the Convention on the Status of the Artist in Europe.<sup>115</sup> Recently however, there is an increasing interest status of artists; in fact the only work that exists on the subject about the status of artists in Cyprus was published in 2009.<sup>116</sup> The booklet includes a section on international mobility of artists (pp. 22-24) and specifically refers to the facilities in passport controls and residents permit; oddly enough it only refers to Law 92(I)/ 2003 as amended by Law 126(I)/2004, a law abolished by the current legal regime, Law 7(I)/2007, and fails to mention the new law.<sup>117</sup>

Also as a result of EU-wide initiatives there have been some developments on the status and situation of researchers in Cyprus. The expanding numbers of academic and research community in Cyprus, including a number of researchers who are Union citizens who are working in the country makes the issue of the status of researchers and their mobility quite important. The EURAXESS Bridghead Organisation and Service Centre for Cyprus is the Research Promotion Foundation;<sup>118</sup> as ‘the Cypriot EURAXESS Service Centre’, it provides information regarding:

- Research in Cyprus
- The R&D Landscape in Cyprus
- Accommodation
- Childcare and Schooling
- Intellectual Property Rights
- Language Courses
- Recognition of Qualifications
- Salaries and Taxation
- Social and Cultural Aspects
- Social Security, Pension Rights
- Health & Medical Care
- Visas & Entry Conditions and Work Permits

Moreover, the Research Promotion Foundation is promoting the European Charter for the Rights of Researchers and the Code of Conduct: The Charter sets out the rights and duties of researchers, as well as research and funding institutions and the Code aims at ensuring equal treatment of all researchers in Europe and increases transparency in their recruitment. Three private tertiary edu-

113 See the speech by the president of the Cyprus Chamber of Fine Arts (E.KA.TE) at the Chamber’s website at [http://www.ekatecy.com/news/news\\_20081220.htm](http://www.ekatecy.com/news/news_20081220.htm), accessed 18.4.2009.

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

115 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.

116 This was circulated on the 15.3.2009 at the Convention

117 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.

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

cation institutions have already undersigned the Code and Charter (Cyprus College, Frederick Institute of Technology and Intercollege), all of which have since 2008 become private universities and are the largest tertiary educational institutions of the country: they have now become European University of Cyprus Frederic University and University of Nicosia respectively. The University of Nicosia is also a ‘promoter’ of the Researchers’ Charter.<sup>119</sup>

Moreover, despite the fact that largest universities have undersigned the code, the provisions contained in the Charter and Code as regards the working conditions, worker rights, job security etc of researchers remain underdeveloped. An examination of the situation of the conditions of researchers in Cyprus, will almost certainly find that there is no proper monitoring and widespread violations of the ‘General Principles and Requirements applicable to Employers and Funders’, which are provided in Charter. There are serious problems in terms of recognition of the profession,<sup>120</sup> non-discrimination,<sup>121</sup> research environment,<sup>122</sup> working conditions,<sup>123</sup> job security and stability and permanence of employment,<sup>124</sup> funding and salaries,<sup>125</sup> gender balance<sup>126</sup> and career development<sup>127</sup>. It is likely that in most research institutions in Cyprus there is a lack of

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

120 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.’

121 ‘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.’

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

123 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.

124 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*

125 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.

126 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.

127 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

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.<sup>128</sup> It also involves promotional and raising awareness activities such as various publications aimed at researchers home and abroad, training sessions on mobility issues and Information Days aiming to encourage Cypriot research Organisations to advertise their vacancies and researchers to submit their CVs in pursue of jobs in other European countries.<sup>129</sup>
- *The European Charter for Researchers*<sup>130</sup> and *the Code of Conduct*<sup>131</sup>
- *Η Θέση του Καλλιτέχνη στην Κύπρο*, by RAI Consultants Public Ltd on behalf of the Cultural Services of the Ministry of Education and Culture, March 2009. It was funded by the UNESCO Participation Programme 2004-2005.

## 5. ACCESS TO STUDY GRANTS

Study grants are available to all students who are resident in Cyprus. It is not clear whether the worker and the members of his/her family are equally treated with regard to accessing study

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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.

128 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.

129 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.

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

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

grants in Cyprus. Relevant here is a Report by the Cypriot Equality body, which referred to the case of *Martinez Sala v Freistaat Bayern Case C-85/96* (12.5. 1998) and deduced that ‘an educational grant or benefit is a matter that falls within the ambit of EU law’.<sup>132</sup> Therefore we can assume that the basic principle in this case refusal by the authorities to grant an educational grant or other benefit to a student whose parents are residents in Cyprus because his/her parents do not have a permit of residence is discriminatory on grounds of nationality (violating Article 6 of the EC Treaty). Refusing to grant to a Union citizen a benefit which is granted to all persons lawfully resident in the territory Cyprus on the grounds that the claimant was not in possession of a document, which nationals of Cyprus were not required to have constituted discrimination directly based on nationality.

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



## **Chapter VII**

### **Application of Transitional Measures**

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

No transitional measures for Cyprus.

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

No transitional measures for Cyprus.

## **Chapter VIII**

### **Miscellaneous**

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

Law 7(I) of 2007 (9.2.2007) replaced all previous legislation, including and Regulations 1612/68.<sup>133</sup> As stated in the 2007 Report, the Republic of Cyprus retains the three basic categories of pension schemes that are available to both Cypriots and citizens of EU member States: (a) for State employees, including, also, employees of semi-governmental organisations and local authorities, for example; (b) occupational occupations pension schemes, catering for the members of the various trade unions; and (c) pension schemes offered by private insurance companies which, in effect, are no more than life-insurance policies. The vast majority of workers in Cyprus subscribe to (a) and (b). Supplementary pension schemes that are meant to facilitate worker mobility in the EU are, of course, voluntary and EU workers who have been paying towards such schemes can take their contributions with them when they leave Cyprus if the conditions spelled out in a scheme are fulfilled. One difficulty that has been identified in discussions with officials from the Ministry of Labour and Social Insurance is that all information concerning pension schemes is in Greek, thus placing EU workers at a great disadvantage. Otherwise, for all intents and purposes, a worker from an EU member State is in exactly the same position as far as supplementary pension schemes are concerned.

The current pension system in Cyprus comprises the General Social Insurance Scheme, the Social Pension Scheme, the Special Allowance to pensioners, the Public Assistance Scheme, the Occupational Pension Schemes for the Employees of the broader Public Sector and the Voluntary Provident Funds and other similar collective arrangements. Both the government and the semi-government employees' pension schemes provide supplementary pension schemes (see below). On the 17 November 2006, the Republic of Cyprus enacted Law 146(1)/2006 on 'The establishment, registration, functioning and supervision of professional pension provident funds' was enacted purporting to transpose Directive 2003/41/EC. This is the text in force since 2007.

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

Not relevant to Cyprus

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<sup>133</sup> These include EEC Directives 64/221; 68/360; 72/194; 73/148; 75/34; 75/35; 90/364; 90/365; 93/96 and regulations 1251/70; 312/76; and 2434/92.

### **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***

Not relevant to Cyprus

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

There have been allegations by KISA that the Ministry of Labour and Social Insurance issued a circular to employers of TCNs, particularly asylum-seekers and students, that they would be subsidised if they agreed to dismiss their TCNs and replace them with EU citizens.<sup>134</sup> Research eNo information on the application

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

The Cypriot Equality Body (Ombudsman)  
The Office of the EU Commission in Cyprus

### **5. SEMINARS, REPORTS AND ARTICLES**

On 9 and 10 October 2009 the Conference 'Free Movement of Workers in time of Economic Crisis: Common Challenges and Possible Common Responses' was organised in Cyprus by the Centre for Migration Law of the Radboud University Nijmegen, The Netherlands coordinates under the supervision of the European Commission a European Network on Free Movement within the European Union, aiming at achieving a wider and more comprehensive understanding of the right of free movement of workers. This was opened by the Minister of Interior, who also launched a collective volume containing a state of art debates on the subject was launched at the conference, edited by Paul Minderhoud and Nicos Trimikliniotis *Rethinking the Free Movement of Workers: The European Challenges Ahead*, University of Nijmegen, 2009.

On 8 October 2009, there was the national seminar on free movement of workers, which was opened by the Minister of Labour. The National seminar dealt with a number of important issues on the subject.<sup>135</sup>

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134 Information provided by the executive director of the NGO KISA at Seminar on 27.6.2010 organised to discuss the project on the integration of TNCs in Cyprus PRIMTS.

135 These included: the situation in Cyprus as a post-accession challenge; its' implications for EU members (Prof. Kees Groenendijk, University of Nijmegen); key challenges for 2008-2010 (Nicos Trimikliniotis, University of Nicosia/PRIO Cyprus Centre); Free Movement of Workers Equality measures and free movement of workers – some thoughts from recent complaints to the Equality Authority (officer of the Equality Authority); Job-seekers, →

In April 2010, a new series entitled *Critical Studies on Fundamental Rights in Cyprus, the EU and Beyond* was published. The issue is partially funded by the Network of Experts on Free Movement of Workers is entitled: *Free Movement of Workers in Cyprus and the EU* and contains three studies on the free movement of workers, drawing on the work of the Network of Experts on Free Movement of Workers which is coordinated by the Centre for Migration Law of Radboud University Nijmegen (The Netherlands). It contains studies first presented and discussed during the Network's annual conference and workshop, which were held in Cyprus in October 2009.<sup>136</sup> The first study examines the current state of affairs regarding the free movement of workers in Cyprus. It draws on the Cyprus Reports on Free Movement of Workers for 2007 and 2008-2009,<sup>137</sup> conducted by the author as a national expert for the Network of Experts on Free Movement of Workers.<sup>138</sup> It covers the period from 1.1.2007 up to 20.8.2009.

The second report is the transcription and modified version of a lecture given by Prof. Kees Groenendijk,<sup>139</sup> a leading expert of the Network on Free Movement of Workers, on *Equal treatment of workers under EC law and remedies against violations by employers*.

The third study is the *European Report on the Free Movement of Workers in Europe in 2007*, authored by the rapporteurs of the Network of Experts on Free Movement of Workers, Prof. Kees Groenendijk, Prof. Roel Fernhout, Prof. Elspeth Guild, Prof. Pieter Boeles, Dr. Ryszard Cholewinski and Dr. Paul Minderhoud. The Report examines how the Member States have implemented this right in 2007 and offers a comparative perspective across the EU. This is particularly useful for scholars and practitioners studying workers' rights in Cyprus as it enables us to contextualize the Cypriot situation.

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Language barriers and Recognition of Qualifications (Ministry of Labour official); Job seekers and free movement of workers: what is unreasonable burden in the EU? (Paul Minderhoud University of Nijmegen and Eftyhios Hadjichristodoulou, Welfare Services of Cyprus; Public and private Language barriers free movement of workers in Europe (Eeva Nykänen University of Turku, Finland).

136 Earlier versions of these studies were presented at the conference and workshop.

137 See Nicos Trimikliniotis (2008) *Report on Cyprus2007*, Network on the Free Movement of Workers within the European Union, University of Nijmegen Network on the Free Movement of Workers within the European Union, <http://ec.europa.eu/social/keyDocuments.jsp?policyArea=24&subCategory=475&mode=advancedSubmit&langId=en>; and N. Trimikliniotis (2009) *Report on Cyprus2008-2009*, Network on the Free Movement of Workers within the European Union, organized by the Centre for Migration Law, University of Nijmegen Network on the Free Movement of Workers within the European Union.

138 Moreover, it also builds on the Cyprus reports (2004-2006) conducted by Prof. Andreas Kapardis, who was the (Cyprus) national expert for the three previous years.

139 Centre for Migration Law, Radboud University, Nijmegen, The Netherlands.

## Appendix 1

Table 1. Union Citizens in Cyprus: Annual estimations/ Percentage difference 2003 - 2009

	2003	2004	2005	2006	2007	2008	2009
ITALY	80	50	58	29	50	80	102
% difference compared to previous year	N/A	-37,50	16,00	-50,00	72,41	60,00	27,50
HUNGARY	52	38	35	108	44	190	166
% difference compared to previous year	N/A	-26,92	-7,89	208,57	-59,26	331,82	-12,63
BULGARIA	6375	4766	2957	3462	1341	5653	6142
% difference compared to previous year	N/A	-25,24	-37,96	17,08	-61,27	321,55	8,65
DENMARK	38	28	14	24	8	29	30
% difference compared to previous year	N/A	-26,32	-50,00	71,43	-66,67	262,50	3,45
AUSTRIA	49	35	48	43	29	49	40
% difference compared to previous year	N/A	-28,57	37,14	-10,42	-32,56	68,97	-18,37
UNITED KINGDOM	4410	3624	3142	3272	1687	5089	3857
% difference compared to previous year	N/A	-17,82	-13,30	4,14	-48,44	201,66	-24,21
LITHUANIA	47	68	55	131	65	163	160
% difference compared to previous year	N/A	44,68	-19,12	138,18	-50,38	150,77	-1,84
CZECH REPUBLIC	49	25	28	73	30	104	103
% difference compared to previous year	N/A	-48,98	12,00	160,71	-58,90	246,67	-0,96
POLAND	151	667	690	1540	570	1310	1095
% difference compared to previous year	N/A	341,72	3,45	123,19	-62,99	129,82	-16,41
FRANCE	135	102	53	100	145	169	159
% difference compared to previous year	N/A	-24,44	-48,04	88,68	45,00	16,55	-5,92
NETHERLANDS	103	75	49	67	47	159	98
% difference compared to previous year	N/A	-27,18	-34,67	36,73	-29,85	238,30	-38,36

CYPRUS

	SPAIN	22	18	6	11	18	20	32
	SLOVENIA	11	12	9	9	308	18	7
	% difference compared to previous year	N/A	-18,18	-66,67	83,33	63,64	11,11	60,00
	% difference compared to previous year	N/A	9,09	-25,00	0,00	3322,22	-94,16	-61,11
	<b>TOTAL</b>	<b>21553</b>	<b>18202</b>	<b>12676</b>	<b>17599</b>	<b>10656</b>	<b>26315</b>	<b>25501</b>
	% difference compared to previous year	N/A	-15,55	-30,36	38,84	-39,45	146,95	-3,09
	% difference compared to previous year							
	GERMANY	365	272	214	226	139	355	322
	% difference compared to previous year	N/A	-25,48	-21,32	5,61	-38,50	155,40	-9,30
	BELGIUM	55	27	13	14	25	25	31
	% difference compared to previous year	N/A	-50,91	-51,85	7,69	78,57	0,00	24,00
	SWEDEN	133	86	59	58	25	181	153
	% difference compared to previous year	N/A	-35,34	-31,40	-1,69	-56,90	624,00	-15,47
	SLOVAKIA	55	432	309	710	308	365	337
	% difference compared to previous year	N/A	685,45	-28,47	129,77	-56,62	18,51	-7,67
30000						26315	25501	
25000	GREECE	5596	4677	2677	4205	4343	6073	5914
20000	% difference compared to previous year	N/A	-16,42	-42,76	57,08	3,28	39,83	-2,62
15000				17599				
10000	FINLAND	50	33	19	32	24	34	57
	% difference compared to previous year	N/A	-34,00	-42,42	60,63	-25,00	41,67	67,65
5000	LATVIA	119	98	150	225	144	250	308
	% difference compared to previous year	N/A	-17,65	53,06	50,00	-36,00	73,61	23,20
0	IRELAND	92	47	42	52	25	88	78
	% difference compared to previous year	N/A	-48,91	-10,64	23,81	-51,92	252,00	-11,36
	MALTA	3	2	2	12	1	14	5
	% difference compared to previous year	N/A	-33,33	0,00	500,00	-91,67	1300,00	-64,29
	ESTONIA	30	33	23	37	18	66	48
	% difference compared to previous year	N/A	10,00	-30,30	60,87	-51,35	266,67	-27,27
	PORTUGAL	9	8	4	8	8	47	31
	% difference compared to previous year	N/A	-11,11	-50,00	100,00	0,00	487,50	-34,04

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Total-  
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