ANTI-DISCRIMINATION BODY

ANNUAL REPORT 2010

Scientific word processing:
Aristos Tsiartas - George Kakotas - Kalia Kampanella
Anti-Discrimination Body

Statistics editing:
George Kakotas - Elisavet Christou
Anti-Discrimination Body

Editing:
Vasiliki Kokoti
Press and Information Office

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Anti-Discrimination Body
Office of the Commissioner for Administration (Ombudsman)

Era House, 2 Diagorou Str.,
1097 Nicosia
Tel.: **(+357) 22405500**
Fax: **(+357) 22672881**
Email address: anti-discrimination@ombudsman.gov.cy
Website: www.no-discrimination.gov.cy

Anti-Discrimination Body
Annual Report 2010

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Introductory Note by the Commissioner for Administration

Introductory Note by the Commissioner for Administration

The submission of the Annual Report of the Anti-Discrimination Body for 2010 comes at a time of a strong debate taking place in Cyprus on the phenomenon of immigration and the social integration of immigrants.

The unprecedented dimensions and characteristics of the currently developing animated dialogue impose the need to redefine our attitude towards the phenomenon of immigration.

Twenty years after the phenomenon was first observed, a new approach is needed. In the current global conditions, our response to the issue of immigration cannot be our entrenchment exclusively behind practices of deterring the arrival of immigrants, the inadequate consolidation of their rights, border control and the combating of illegal immigration.

New social realities shaped by the arrival and stay of immigrants who now reside, contribute and create in Cyprus, bring us face to face with a challenge, an opportunity and a historic occasion for our society to rise with self-confidence to the challenges of an ever changing world.

Despite the fact that immigration has had a beneficial effect on our country's economy and has enriched our culture with new creative elements, our society's relationship with the immigrant population has been and continues to be ambiguous, with the manifestation of mostly negative rather than positive images and behaviours.

The action of the Anti-Discrimination Body in 2010 demonstrates that today, racism, intolerance and discrimination affect not only immigrants but also other vulnerable population groups and expressions of diversity. Amidst the economic crisis, the phenomena of racism and discrimination share a number of common underlying causes – poverty, social exclusion, exploitation and disdain or the inadequate consolidation and respect of rights.

In these conditions, it is important to stress that the challenge of dealing with racism and discrimination is a field which determines the values of our society. It is, first and foremost, a field of collective action and joint effort. We must oppose the phenomena of racism and discrimination by advancing the values of humanism and the principles of solidarity. But most importantly, we must convince citizens on the necessity to maintain an open and democratic society of solidarity.

Elisa Savvidou
Commissioner for Administration


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Competences of the Anti-Discrimination Body

Competences of the Anti-Discrimination Body

We have already completed the first period of operation of the Anti-Discrimination Body, during which the new statutory regulations and the possibilities to prevent and combat racism and discrimination have been consolidated.

The Body's main field of action, as defined by European and national law, is to combat discrimination on the grounds of race, community, language, colour, age, disability, sexual orientation, religion, political or other beliefs, national or ethnic origin.

In accordance with the legislation in force, this field of action extends to cover the areas of social protection, social insurance, social benefits, healthcare, education, participation in associations and professional organisations and access to goods and services, including housing.

The main statutory competence and occupation of the Body consists in the investigation of individual complaints and the provision of independent aid to victims of discrimination. In addition to this competence, other possibilities for action established by statutory provisions extend to a broad range of activities in the ambit of prevention, information and education, the most important of which are:

- **To develop actions for promoting the principles of equal treatment for all individuals and to provide equal opportunities irrespective of racial, national or ethnic origin, community, language, age, disability, sexual orientation, colour, religion, political or other beliefs;**
- **To take measures aimed at the practical implementation of the legislative provisions which govern or prohibit discriminatory treatment in both the public and the private sectors;**
- **To enforce sanctions;**
- **To draw up Codes of Good Practice;**
- **To conduct investigations and statistical surveys on issues of discrimination;**
- **To examine issues related to discrimination either on an ex officio basis or upon the request of individuals or organizations.**
- **To coordinate the action of State authorities and to raise awareness in general amongst the administration and civil society on issues of discrimination;**

This report attempts to provide a general overview of the action of the Anti-Discrimination Body in 2010. During the previous year, a very large number of individual complaints was submitted and investigated by the Body, whilst its more general interventions and activities in the context of its competences for preventive, mediatory and educational action to combat racism and discrimination, were extended.

The Body's action in 2010 indicates that the problems of racism and discrimination are not limited to the immigrant population but also affect, with the same intensity, European citizens in the context of the principle of free movement as well as all Cypriot citizens – Greek Cypriots, Turkish Cypriots, Armenians, Maronites and Latins. They also affect individuals of different national or ethnic origin, of different sexual orientation, persons subject to discrimination on the grounds of age or disability as well as other vulnerable population groups.

This situation is illustrated in the Body's current report, which clearly indicates that the contemporary Cypriot society is characterised by extensive cultural diversity, by traditional and new forms of otherness which need to be respected, dealt with from a legal point of view and efficiently protected.

Unfortunately, recent manifestations of violent phenomena and incidents of racism have assumed alarming dimensions, testing the principles of our democratic civilisation on a daily basis. These issues are dealt with through a consistent and efficient anti-racist action in order to create the conditions for the elimination of discrimination. But most importantly, they are dealt with in a calm way and through dialogue rather than extreme reactions, which would lead to the exacerbation of racist and xenophobic incidents, thus undermining social cohesion in an irreparable manner.

Aristos Tsiartas
Head of the Anti-Discrimination Body

Actions of the Anti-Discrimination Body in 2010

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Nationality. Colour. Religion.
Belief. Gender. Age. Sexuality.
Disability. Race. Nationality.
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Actions of the Anti-Discrimination Body in 2010

1. Investigation of individual complaints and submission of Reports

In 2010, the Anti-Discrimination Body once again focused its action on the investigation of individual complaints related to racism and discrimination and the provision of independent aid to victims of discrimination.

From its establishment on 1 May 2004 until the end of 2010, the Body has received a total of 1014 complaints. In 2010, the number of complaints rose to 158 and the majority concerned discrimination on the grounds of racial, national or ethnic origin.

During 2010, the investigation of 154 individual complaints was completed. A total of 16 reports with specific suggestions and recommendations to combat phenomena of discrimination at a more general level were submitted in relation to 25 of these complaints, which concerned broader issues of racism and discrimination affecting larger groups of individuals. The Body also submitted a report with recommendations and suggestions on an issue which it examined on an ex officio basis.

More specifically, reports were made in relation to the following:

1. **Police operations aimed at the control, arrest, detention and deportation of immigrants with summary proceedings.**
2. **Access of undocumented immigrants to public health services.**
3. **Support of the education of students of Maronite, Armenian and Latin origin attending private secondary education schools.**
4. **The legislative framework which governs the transfer of property to and from Turkish Cypriots residing in the Government controlled area.**
5. **Issue of a detention and deportation order for an HIV-positive EU citizen.**
6. **Amount of community duties and taxes imposed on European citizens residing in communities in Cyprus.**
7. **Legal consolidation of same-sex couple relationships.**
8. **Unequal treatment of women prisoners on issues relating to their admission into the Open Prison and into the Centre for Non-Institutional Occupation.**
9. **Handling by the Prisons Department of a complaint lodged by a foreign detainee for (alleged) maltreatment by a prison guard on the grounds of his religious beliefs.**
10. **Minimum age limit for appointment to the position of Certifying Officer.**
11. **The age criterion of the Subsidy Scheme for infertile couples for IVF treatment.**
12. **Discriminatory treatment, on the grounds of age, in the provision of financial aid to cover the cost of robotic radical prostatectomy abroad.**

13. **The issue of exemption from the right to Public Benefit of Cypriot citizens working in diplomatic missions abroad.**
14. **Combating draft evasion with the obligation for alternative service and the effects of this measure on individuals with mental health problems.**
15. **Implementation of the principle of equal treatment during the students' admission procedure to the halls of residence of the University of Cyprus.**
16. **The process of exemption from Religious Instruction class in primary and secondary education schools.**
17. **Non-participation of a paraplegic student in the charitable flight: "joy and life" (ex-officio investigation).**

All the reports of the Anti-Discrimination Body submitted in 2010 are presented in summary in the last part of the Annual Report.

2. Mediatory Action

Pursuing the practice of previous years and in line with its statutory competences, in 2010 the Body undertook, for yet another year, strong mediatory action. This was the case when the Body established prima facie that the complaint was founded and acted in mediation – in writing and/or orally – towards the public Authority concerned, achieving the settlement of pending issues and/or the satisfaction of specific requests of the complainants.

The second-to-last part of the Annual Report presents in summary characteristic cases where the mediation/intervention of the Body had a positive outcome.

3. 2010 Public Awareness Campaign on Discrimination Issues, funded by the EU "Progress" Programme

Within the framework of its competence as Anti-Discrimination Body and Equality Authority in occupation and employment, the Office of the Commissioner for Administration secured funding through the "PROGRESS" Community Programme - under the European Commission's "Directorate General for Employment, Social Affairs and Equal Opportunities" - in view of organising, in 2010, a series of events/activities aiming at combating discrimination.

The following events were organised in this context:

i. **Media campaign aiming at raising public awareness in Cyprus on discrimination issues.** The public awareness campaign included TV, radio and printed messages in the media

during June and July 2010. The messages promoted respect for diversity, demonstrating that romance, death, joy, pain, love or time make no discrimination since they affect everybody without exception and ending with the strong central message: "Who are you to make discriminations?". The messages are available on the following site: http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-eisagogi

ii. **Issue of Guidelines for the Media against, racism, xenophobia and discrimination.** Apart from codifying general principles and suggestions for the positive contribution of the media towards combating phenomena of racism and xenophobia, the publication presents a general overview of both the European and national institutional frameworks against discrimination including specific references to the operation of the media. (The Guidelines for the media are set out in the Annex to the Report).

iii. **Publication of a Code of good practices against discrimination on the grounds of disability in employment and occupation.** The Code explains how the legislation protects persons with disabilities in the working environment, informs employers and employees of their obligations and rights respectively and sets out specific good practices for eliminating discrimination.

iv. **Publication of informative brochures/leaflets with information on the competences of the Anti-Discrimination Body and the Equality Authority.**

v. **Grant to a Theatre Group for a theatrical performance on discrimination.** The script revolved around a young woman who immigrated to Cyprus to work as a housemaid and the difficulties she encountered because of the xenophobic and racist attitudes of the members and friends of the family that employed her. A total of six performances were given in February and March 2010.

vi. **Funding of the "Research Centre for Gender Equality" to carry out and present a survey on the profile of female immigrants in Cyprus and their needs in terms of further education and vocational training.** The survey was presented on 1 June 2010.

vii. **Funding of the "Mediterranean Institute of Gender Studies" (MIGS) in view of the organisation, on 21 June 2010, of a seminar titled: "Gender Mainstreaming in Immigration Policies and Practices".**

viii. **Creation of a website containing information specifically related to the competences of the Anti-Discrimination Body and the Equality Authority.**

ix. **Organisation of a one-day seminar on matters relating to the Maronite, Armenian and Latin religious groups.** The event was held on 11 October 2010 in two parts. In the first part, a conference dealt with the rights and protection of minorities with speakers from Cyprus and abroad whilst the second part consisted of an artistic/cultural event from organised religious minority groups with the aim of promoting their culture and history.

x. **Organisation, in cooperation with the INEK-PEO Labour Institute, of a training seminar for trade union executives on anti-discrimination laws.** The seminar was held at the PEO Conference Room on 29 September 2010.

xi. Funding of the INEK-PEO Labour Institute in order to:

a) upgrade its anti-discrimination website (www.stop-dicrimination.gov.cy), and,

b) carry out a survey on the extent and the forms of discrimination against immigrants working in the hotel and catering industry and as housemaids.

4. Creation of a website containing information specifically related to the competences and actions of the Anti-Discrimination Body and the Equality Authority

As stated in the aforementioned paragraph, the Anti-Discrimination Body and the Equality Authority included in their EU-funded programme of actions for combating discrimination in 2010, the creation of a website providing information specifically related to the two Bodies. The website was designed and developed in such as way as to facilitate access to persons with disabilities, in compliance with the international standard WAI/WCAG 2.0 level AA. The website is hosted at the following address:

www.no-discrimination.ombudsman.gov.cy

Through the website, citizens can obtain information on the background to the establishment of the two Bodies, their competence framework, their major findings/reports in relation to investigated complaints, their actions as well as how victims of discrimination can seek help and protection from these Bodies.

The website also provides the possibility for online communication and filing of complaints and contains copies of the Annual Reports of the Bodies and other publications as well as links to other websites with discrimination-related content.

It is important to underline that apart from informing citizens, the aim and ambition of the website is to serve as an open channel of communication with the broader society, so that the views, judgments and suggestions of active citizens on the activities of the two Bodies and their further development can be heard and taken into consideration.

5. Actions aimed at raising awareness and providing information on discrimination issues

In 2010, the Body pursued its broader action of informing specific individuals, organisations or institutions on matters related to its competences.

The following actions are mentioned, for indicative purposes:

- Organisation of an event on 4 November 2010, to present the Annual Reports of the Anti-Discrimination Body and the Equality Authority for the year 2009. The presentation was made by the Rector of the University of Cyprus. The event was attended by the Minister of Justice and Public Order, competent government officers and representatives of anti-discrimination NGOs.
- Presentation of a paper by the Commissioner for Administration on the topic of discrimination at the Pancyprian Conference organised by the Pancyprian School of Parents on 16 January 2010, in the framework of its participation in the EU PROGRESS Project titled "Creativity and Innovation against Discrimination" for the year 2009-2010.
- Meeting of the Commissioner for Administration with the District Inspector of Nicosia on 16 February 2010, following an invitation by the Secondary Education Directorate, to discuss the issue of equal treatment and the combating of discrimination in schools.
- Participation and speech by the Head of the Body, Mr. Aristos Tsiartas, titled "Racism and Social Discrimination in Cyprus" at a school conference organised by the Apeition Secondary School of Agros on 26 February 2010 on "Social Exclusion and Racism".
- Meeting of Officer Ms. Thekla Demetriadou with a representative of the PICUM (Platform for International Cooperation on Undocumented Migrants) on 9 March 2010, in view of discussing the situation of undocumented immigrants in Cyprus and in particular their access to health and education services.
- Participation and speech by officer Ms. Zenaida Onoufriou titled "Migrant children in the educational system of Cyprus - discrimination, racism and integration", at a two-day conference organised in March 2010 on "Famine and slavery in developing countries: Focusing on children's and women's rights".
- Participation and speech by officers Ms. Zenaida Onoufriou and Ms Melina Tringidou at the deliberations of a conference organised by the Cyprus Police Force on 17 March 2010, in the context of its actions under the project "Cyprus Police against Discrimination for Diversity".
- Contribution of the Body to the 4th round of assessment of Cyprus on matters of discrimination by experts of the European Committee Against Racism and Intolerance (ECRI), with the dispatch of a relevant memo in April 2010.
- Participation and speech by the officer of the Body Ms. Zenaida Onoufriou at a seminar titled "Management of Diversity", organised by the Cyprus Police Academy in the framework of its cooperation with the European Police Academy on 19-22 April 2010.
- Participation and address by the officer of the Body Mr. George Kakotas at the conference titled "The other, the partner and myself, reflections on the educational realities of 2010", organised by the A Kykkos Lyceum on 25 April 2010.

- **Participation and speech by the Head of the Body, Mr. Aristos Tsiartas, titled "Homosexuality and social racism", in the context of a conference organised by the Makarios C' Technical School on "Racism and Violence – two wounds in our education" on 30 April 2010.**
- **Attendance of officer Ms. Zenaida Onoufriou at a meeting held at the Ministry of Interior on 4 May 2010, chaired by the Ministry's Permanent Secretary, to discuss the legal status of cohabiting homosexual couples and its repercussions in relation to any legal arrangements.**
- **Participation and speech by officer Mr. George Kakotas at a meeting of the Cyprus group of the European Network Against Racism, held on 18 June 2010, during which he presented the positions of the Body on the implementation of positive actions to combat discrimination.**
- **Meeting of the Commissioner for Administration, the Head of the Body Mr. Aristos Tsiartas and Officer Ms. Zenaida Onoufriou on 15 September 2010, with experts of the European Committee Against Racism and Intolerance (ECRI) during their visit to Cyprus (13-17 September 2010) and participation of Officer Ms. Zenaidou Onoufriou at the debriefing meeting of 17 September 2010.**
- **Participation and speech by Officer Ms. Thekla Demetriadou at an event on Female Immigration held by a women's organisation in Limassol on 18 September 2010. The various aspects of female immigration were analysed at the event, with special reference to the double discrimination suffered by immigrant women, on the grounds of both their origin and gender.**
- **Presence of Officer Ms. Kalia Kampanella at the Equal Opportunities Committee of the House of Representatives on 29 September 2010, during the discussion of the topic "treatment of women prisoners in relation to their admission into the Open Prison and into the Centre for Guidance and Non-institutional Occupation" based on the relevant report of the Anti-Discrimination Body.**
- **Meeting of Officer Ms. Thekla Demetriadou with a representative of the** Medecins du Monde **organisation on 8 October 2010, in view of discussing the issue of access of undocumented immigrants to health services in Cyprus.**
- **Participation of Officer Ms. Zenaida Onoufriou at the National Workshop on Discrimination, organised on 13 October 2010, by the Action for Equality, Support, Antiracism (KISA), in the context of the EU Progress Programme.**
- **Participation and speeches/presentations by Officer Ms. Kalia Kampanella at a series of seminars organised at the Cyprus Police Academy by the Office of Human Rights of the Cyprus Police Force from November 2010 to the present day, on the topic of "handling detainees with respect to their human rights".**

In addition to taking part in events or meetings on racism and discrimination, it should be noted that the Body also provides, on a regular basis, direct information and data on relevant matters

to a number of stakeholders, upon request. These include: research centres, public and private organisations, interested citizens, students as well as international and European organisations. The information is often provided through the completion of questionnaires and the drafting of letters containing statistical evidence on the action of the Body and information on investigated cases and reports submitted.

6. Participation in the National Working Group against Discrimination

Officers of the Body participated once again in 2010 at meetings and activities of the National Working Group for Combating Discrimination. The Group consists of representatives of various stakeholders and organisations whose work is related to discrimination such as: Non Governmental Organisations representing vulnerable groups, specific public services, trade unions, youth organisations, etc.

Moreover, following an invitation by the members of the National Working Group, the Commissioner for Administration was a member of the jury which assessed the entries of Cyprus to the Paneuropean Journalism Competition announced by the EU for 2010 titled: "Together against Discrimination", in the framework of its campaign "For Diversity. Against Discrimination".

7. Participation in the European Network EQUINET

Since its establishment, the Cyprus Anti-Discrimination Body has been participating in EQUINET, a European network that brings together and promotes the cooperation and coordination of all independent bodies responsible for the implementation of the European Directives against discrimination in the EU countries. In this context, views are exchanged for the better implementation of these anti-discrimination Directives and information on specific cases/complaints and the practices applied in dealing with these is sent to the network's information bank. Specialised training seminars for the staff of the Member bodies of the Network are also organised.

In 2010, the Body participated in the Equinet's Working Group on the Dynamic Interpretation of European anti-discrimination legislation and contributed to the legal analysis of case studies.

8. Participation in European Conferences/Seminars

The Commissioner for Administration and Officers of the Body participated in 2010 in European conferences and seminars on the combating of discrimination. More specifically:

- The Commissioner for Administration and the Head of the Body Mr. Aristos Tsiartas attended a Symposium organised by the Fundamental Rights Agency (FRA) of the EU in

Vienna on 7 May 2010, titled: "Strengthening the fundamental rights architecture in the EU - A Symposium on the institutional mechanisms to protect, promote and monitor fundamental rights in the EU".

- The Head of the Body Mr. Aristos Tsiartas participated in a Seminar organised in the Hague on 18 and 19 March 2010 titled: "Good Practice Exchange Seminar on Public Policies combating discrimination against and promoting equality for LGBT people".
- The Officer of the Body Ms. Katerina Haritou attended the 4th EU Equality Summit / Equality & Diversity in Employment held in Brussels on 15 and 16 November 2010.

In 2010, the Commissioner for Administration and the Officers of the Body also took part in international conferences/seminars, in the context of the Body's membership to the Equinet Network. More specifically:

- The Commissioner for Administration and the Head of the Body Mr. Aristos Tsiartas attended the "2nd Cooperation and Coordination meeting between the FRA and Equinet, the European Network of Equality Bodies", held in Vienna on 14 April 2010.
- The Commissioner for Administration and the Head of the Body Mr. Aristos Tsiartas attended a legal seminar in Brussels on 1 and 2 July 2010 for the heads of the Member bodies of the Network ("Equinet High-level Legal Seminar: Legal developments and concepts in the field of equality and non-discrimination in Europe").
- The Commissioner for Administration and the Head of the Body Mr. Aristos Tsiartas took part in a meeting of Equinet's Working Group on the Dynamic Interpretation of the European anti-discrimination legislation held in Athens on 21 September 2010.
- The Officer of the Body Ms. Thekla Demetriadou took part in a meeting of the members of Equinet with representatives of the EU campaign "For Diversity. Against Discrimination", held on 25 February 2010.
- Lastly, the Officer of the Body Ms. Katerina Haritou took part in the Annual General Meeting of the Network's members held in Brussels on 16 and 17 November 2010.

9. Participation in the Special Committee of Experts for the inclusion of immigrants

Following the submission, in 2009, of a memo for the elaboration of a policy aimed at the inclusion of immigrants, the Anti-Discrimination Body had an active role in the preparation of the relevant national action plan. Apart from the Office of the Commissioner for Administration, the expert committee comprised representatives of the Ministries of Health, Labour and Social Insurance, Education and Culture, under the coordination of the Ministry of Interior. NGOs and other stakeholders also contributed to the elaboration of the plan with comments and suggestions.

The National Action Plan was approved by the Council of Ministers on 13 October 2010 and covers the period from 2010 to 2012. It consists of eight priority axes with specific objectives and actions to be implemented by the competent services. These priority axes are:

1. **Information – service – transparency**
2. **Employment – training – trade unionism**
3. **Language education and learning**
4. **Health**
5. **Housing – improvement of quality of life, social protection and interaction**
6. **Civilisation, civic education, basic elements of political and social realities**
7. **Participation**
8. **Assessment – Annual and Overall**

10. Staffing of the Anti-Discrimination Body

The Head of the Anti-Discrimination Body is Mr. Aristos Tsiartas, Senior Officer at the Office of the Commissioner for Administration. The Body is staffed by Mr. George Kakotas, Officer A' at the Office of the Commissioner for Administration and Officers Melina Tringidou, Thekla Demetriadou, Kalia Kampanella, Katerina Haritou, Zenaida Onoufriou and Assistant Secretarial Officer Elisavet Christou. All the employees of the Body also carry out duties at the Office of the Commissioner for Administration.

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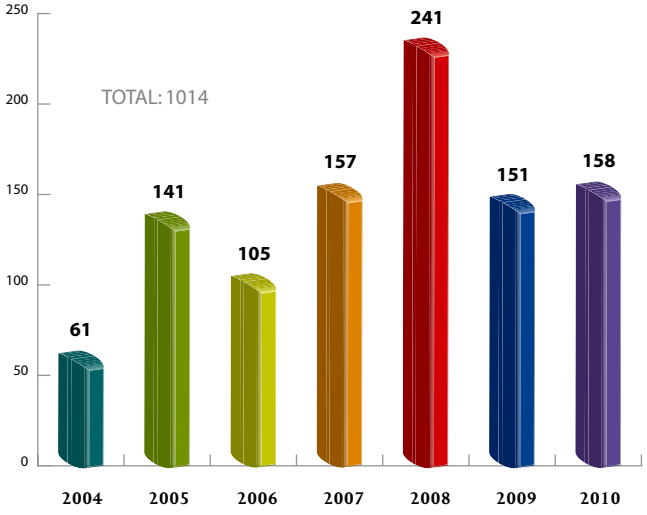
Statistical Analysis

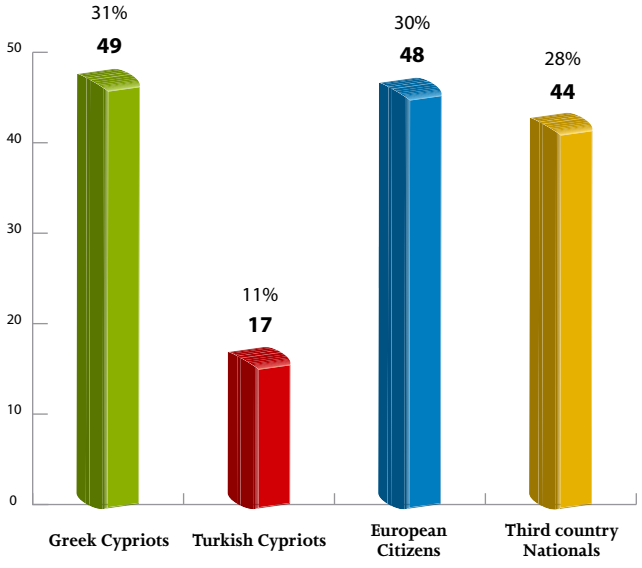
Since its establishment in May 2004 until the end of 2010, the Anti-Discrimination Body has received a total of 1014 complaints.

The complaints submitted in 2010 amounted to 158, a number similar to that of 2009 (151) (Graph 1).



Graph 1

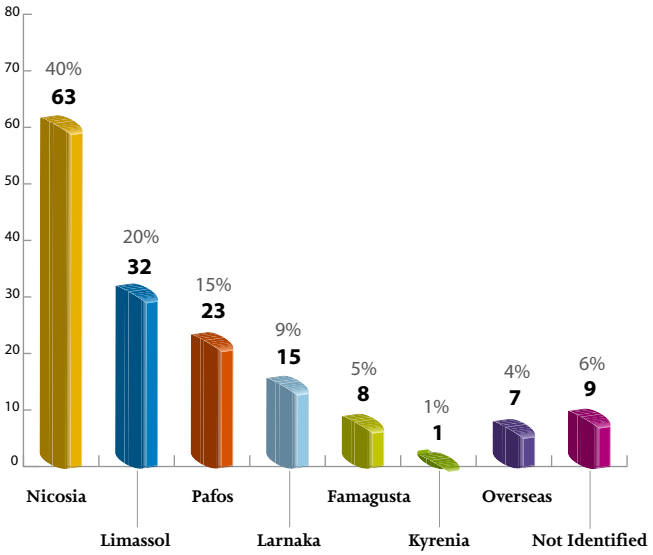
In respect of their place of origin, complainants were classified as follows (Graph 2):



Graph 2

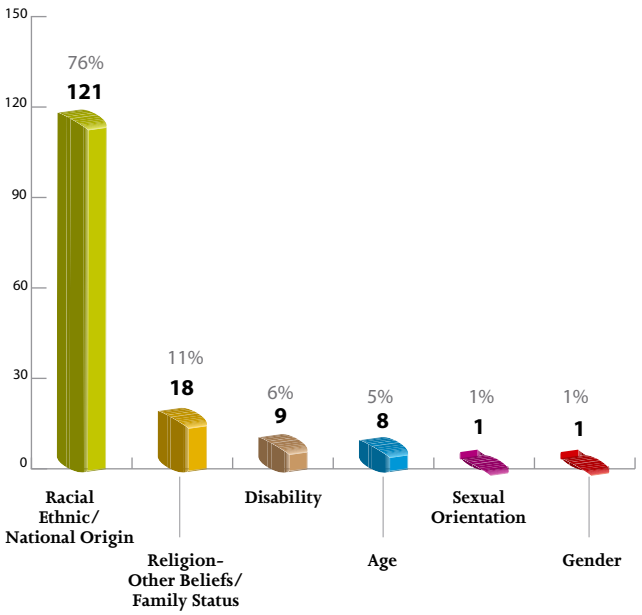
As far as the geographical origin of the complaints is concerned, 63 complaints came from the District of Nicosia, 32 from the District of Limassol, 23 from the District of Pafos, 15 from the District of Larnaka, 8 from the District of Famagusta and 7 from abroad. It is also worth noting that 9 complaints submitted through the internet did not provide any geographical reference and therefore the geographical origin of the complainants could not be identified (Graph 3).

Graph 3

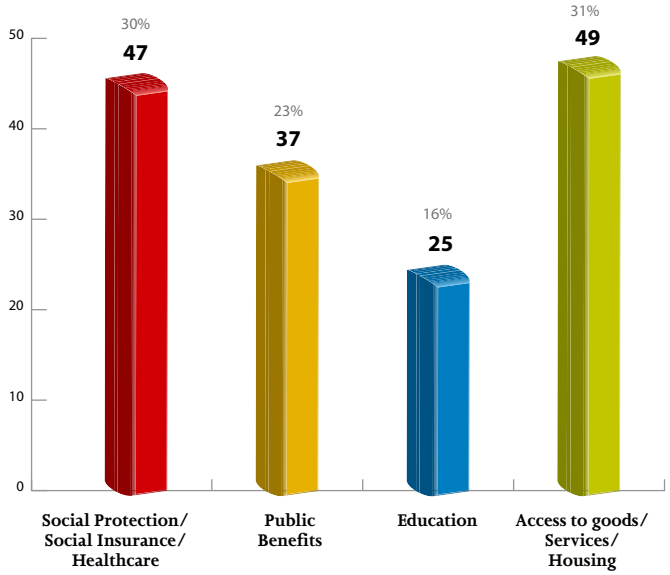


Like in previous years, the large majority of complaints received by the Body in 2010 – 121 out of a total of 158 – concerned (alleged) discrimination on the grounds of racial, ethnic or national origin of a person or group of persons. Overall, on the basis of the grounds of discrimination, complaints were classified as follows (Graph 4):

Graph 4

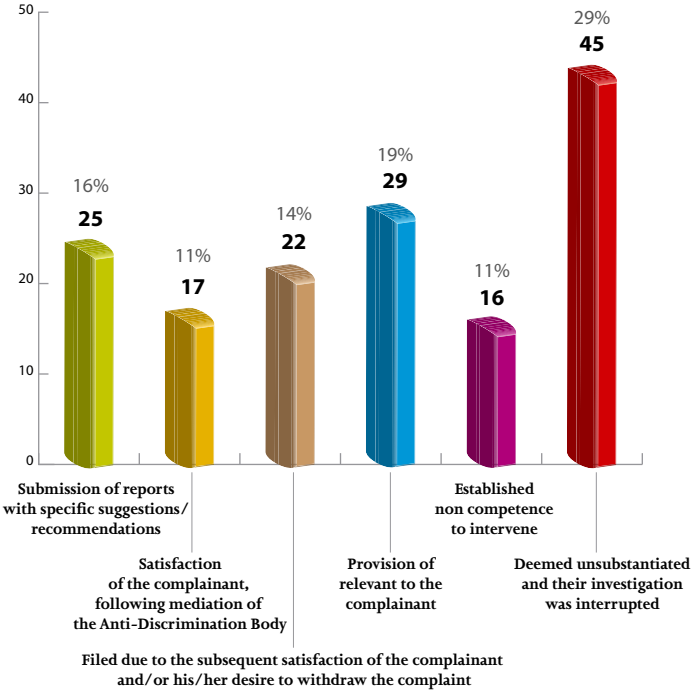


Most of the complaints submitted in 2010 concerned, firstly, discrimination in relation to access to goods and services including housing (49) and, secondly, discrimination in the broader area of social protection, including social insurance and healthcare (47). Overall, complaints were classified as follows as regards the areas/sectors of discrimination (Graph 5):



Graph 5

In 2010, a total of 154 complaints were investigated, with the following results (Graph 6):



Graph 6

Race. Nationality. Colour. R
Sexuality. Disability. Race. Nation
Gender. Age. Sexuality. Disabili
Religion. Belief. Gender. Ag
Nationality. Colour. Religion.
Disability. Race. Nationality.
Race. Nationality. Colour. R
Sexuality. Disability. Race. N
Belief. Gender. Age. Sexuality. D
Colour. Religion. Belief. Ge
Race. Nationality. Colour. R
Sexuality. Disability. Race. N
Belief. Gender. Age. Sexuality
Colour. Religion. Belief. Ge
Race. Nationality. Colour. R
Sexuality. Disability. Race. Na

Summary Presentation of Mediatory Actions

Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender.

Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality.

Summary Presentation of Mediatory Actions

Here follow a number of characteristic cases in which the Anti-Discrimination Body acted as a mediator/ intervened towards the public authorities concerned and achieved the settlement of pending issues and/or the satisfaction of specific requests of the complainants:

- **A third country national appealed to the Anti-Discrimination Body against the Ministry of Interior in relation to a request for the removal of her husband's name from the stop-list, in view of allowing him to enter Cyprus and be reunified with his family. It was found that suggestions regarding the procedures for the inclusion and removal of aliens from the aforementioned list had already been made in the context of a previous report by the Body in the investigation of another complaint. The Ministry of Interior was therefore asked to review the possibility of removing the complainant's name based on these previous suggestions. Following this intervention by the Anti-Discrimination Body, the Ministry of Interior reviewed the specific case and instructed the Civil Registry and Migration Department to remove the complainant's name from the stop-list.**
- **Complaint lodged by a European citizen against the Civil Registry and Migration Department regarding the removal of his name from the stop-list after his deportation in 2004. Following the Body's intervention, the Minister of Interior approved the removal of the complainant's name on condition that he would produce a clean criminal record from his country of origin and pay the expenses relating to his detention and deportation.**
- **Complaint lodged to the Body against the Civil Registry and Migration Department in relation to a delay in reviewing/processing an application for obtaining Cypriot citizenship. Following the Body's intervention, the competent Department completed the procedure of reviewing the application and the complainant was granted Cypriot citizenship.**
- **Complaint lodged by a European citizen against the Civil Registry and Migration Department in respect of the delay in the issue of a necessary residence document. Following the Body's intervention, the relevant document was issued.**
- **Complaint lodged by a European citizen against the Civil Registry and Migration Department in respect of a delay in the issue of a residence document. The preliminary investigation established that the delay was due to the fact that not all necessary documents for the completion of the review of the application had been produced. The Body informed the complainant accordingly and she produced the necessary information, as a result of which her request was satisfied by the competent Department.**
- **A European citizen appealed to the Body against the Civil Registry and Migration Department in relation to the rejection of his request for the provision of a necessary residence document on the grounds of the lack of health insurance evidence. The**

Body addressed a letter to both the Director of the competent Department and the Minister of Interior, noting the provisions of the legislative framework on the free movement and residence of European citizens in the Member States and a suggestion was made to grant the complainant the necessary residence document. Following the above intervention, the complainant's request was reconsidered, approved and both the residence document in question and the medical care card were issued.

- A Cypriot citizen appealed to the Body in respect of the coverage of the expenses for the transfer of the dead body of a Vietnamese citizen to her country of origin. Following the Body's intervention and written remarks addressed to the Minister of Interior, the exceptional grant of financial aid amounting to €1,500 for the dispatch of the dead body to Vietnam was approved.
- Two European citizens residing in mountainous regions submitted separate complaints in relation to their non inclusion in the beneficiaries for income support granted to the inhabitants of mountainous regions of an altitude of 600 metres or higher, for the period 2008-2009, claiming that this consisted in discriminatory treatment on the grounds of national origin. It was established during the preliminary investigation that the specific cases were handled upon instructions of the Ministry of Interior, which required European citizens to be permanent residents of mountainous regions in order to be entitled to this income support. Following the Body's intervention, the Ministry of Interior issued new instructions according to which European citizens residing permanently and continuously in mountainous communities during the last two consecutive years are entitled to the grant. The cases of the two complainants were consequently reexamined and their requests were approved.
- A European citizen appealed to the Body in respect of the procedures for the review of his request to be granted public benefit by the Social Welfare Services (SWS). Following the Body's intervention, the review of the complainant's application by the SWS was completed and he was granted both a public benefit and a disability allowance with retroactive effect.
- A European citizen lodged a complaint against the Social Insurance Services for the delay in the review of her application to be granted a widow's pension. Following the Body's intervention and communication with the competent Service, the review process was completed and the application was approved with retroactive effect from the date it was submitted.
- A Cypriot citizen appealed to the Body in respect of the delay of the Social Insurance Services to review her application for a widow's pension. The preliminary investigation revealed that the complainant's deceased husband had not paid the required total amount of contributions in Cyprus in order to be entitled to a pension, but had also paid contributions to the Social Insurance Foundation of Greece, from which relevant information was expected to complete the review of the complainant's application. Following the Body's intervention, a reminder was

sent by the Social Insurance Services to the Social Insurance Foundation of Greece and after receiving the relevant reply, the complainant's application was approved and the widow's pension was granted with retroactive effect.

- The RAXEN National Focal Point appealed to the Body against the Ministry of Defence in relation to the use of racist and chauvinistic slogans by National Guard trainers. The preliminary investigation established that racist slogans had indeed been used in two Military Training Camps in violation of a relevant directive by the General Staff of the National Guard. Following the Body's intervention, the Ministry of Defence terminated the secondment of the trainers involved and ordered an investigation for disciplinary, administrative or penal sanctions in relation to the incident. Moreover, the Ministry of Defence issued a new, stricter and clearer directive on the content of the slogans used, in view of avoiding similar incidents in the future.
- A European citizen detained in the Central Prisons lodged a complaint against the Prisons Department for the delay in the review of his application for admission into the Open Prison, alleging that he had suffered discriminatory treatment on the grounds of his origin. Following the Body's intervention, the Prisons Department reviewed the request and the complainant was moved to the Open Prison.

Race. Nationality. Colour. R
Sexuality. Disability. Race. Nation
Gender. Age. Sexuality. Disabili
Religion. Belief. Gender. Ag
Nationality. Colour. Religion.
Disability. Race. Nationality.
Race. Nationality. Colour. R
Sexuality. Disability. Race. N
Belief. Gender. Age. Sexuality. D
Colour. Religion. Belief. Ge
Race. Nationality. Colour. R
Sexuality. Disability. Race. N
Belief. Gender. Age. Sexuality
Colour. Religion. Belief. Ge
Race. Nationality. Colour. R
Sexuality. Disability. Race. Na

Summary Presentation of Reports

Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender.

Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Colour. Religion. Belief. Gender. Age. Sexuality. Disability. Race. Nationality. Religion. Belief. Gender. Age. Sexuality. Disability. Race.

Summary Presentation of Reports

Police operations aimed at the control, arrest, detention and deportation of immigrants with summary proceedings (AKP 127/2007, AKP 128/2007, AKP 123/2009).

The issue of mass police operations aimed at the control, arrest, detention and deportation of aliens was investigated by the Anti-Discrimination Body after the filing of relevant complaints. In the first case, the chairman of the Administrative Council of the European Committee of Human Rights and the lawyer of the complainants, filed complaints in relation to the arrest of a number of foreign women accused of prostitution. In both cases, the complainants referred to the operation conducted by the Aliens and Immigration Unit in Nicosia and Larnaka on 28 October 2007, aimed at locating and arresting foreign women who – based on Police information – were engaged in prostitution. However, according to the complainants, the women were incriminated after being trapped by under cover policemen. They further claimed that after their arrest, the charges against them were not duly investigated and, therefore, the issue and enforcement of the deportation orders was hasty and problematic.

The second case concerned a complaint filed by the Director of the Observatory for Racism and Xenophobia (RAXEN) against the Police Force and the Ministry of Justice, claiming that the mass arrests, detentions and deportations of aliens during the organised police operation of 25 September 2009 at the centre of Nicosia, were not in line with human rights principles.

Following the investigation of the complaints and the relevant information obtained by the Police Force, a thorough analysis of the legal framework was carried out with direct references to the national and European legislation and case-law governing the right to personal freedom and security, to privacy and family life, to the prohibition of mass deportations and the guarantees that need to be observed in every deportation procedure. Special reference was made to the practice of ethnic profiling, which constitutes a new form of discrimination, as well as to undercover police operations.

Firstly, the Commissioner acknowledged that the exercise of immigration control by the Police Force, within the broader context of its mission to safeguard public order, is a complex and difficult task. The difficulties in carrying out these controls are directly linked with the fact that police action in this field entails the exercise of coercion and intervention in the personal freedoms of individuals as well as the self-evident obligations of carrying out these controls in line with fundamental fair guarantees for the respect of individual rights. But in any case, immigration control practices must not be carried out on the basis of a generalised presumption of guilt against aliens or on the basis of controls whenever the opportunity arises.

From all the evidence deriving from the investigation of the specific complaints, the Commissioner established that extensive and mass operations for the control, arrest and deportation of immigrants always entail, by their nature, the risk of human rights violation. This is so because the specific method, which inevitably restricts opportunities for a detailed, individualised and extensive

review of the cases and the observance of the minimum formal and substantial fair guarantees, is extremely precarious and risky.

In the case of deportations of women of Chinese origin with summary proceedings, none of the complainants admitted to having committed the offence and no court proceedings were carried out prior to their deportation. On the contrary, their removal from the country seems to have been based solely on evidence given by policemen. It is therefore evident, as the Commissioner has noted, that in the complaint under review, material conditions of the legal deportation procedure were not observed. Furthermore, the manner in which the complainants were trapped, raises the issue of undercover police operations having exceeded their desirable limits since in this case, no action would have been taken by the women if not preceded by the actions of policemen whilst there does not appear to be reasonable suspicion or assessment that an offence was actually committed. In addition, the Commissioner expressed great concern over the fact that some of the women who were deported were asylum seekers whose asylum applications were still pending.

In the case of the organised Police operation of September 2009, the way mass controls and prosecutions of aliens were made is contrary to the "targeted" nature of the operation. It appears that there has been a presumption of guilt of the prosecuted persons as suspects of an undefined crime, in violation of the right to personal freedom and security, which is safeguarded by the Constitution. It has not been established that the prosecution of individuals for whom no warrant of arrest had been issued was based on some individualised indication of commitment of an offence, but rather solely on the fact that these individuals were present at the specific location and, in particular, based on their ethnic origin.

Furthermore, the Commissioner noted that the blocking of a large area of the centre of Nicosia, where a significant number of immigrants live and work, in order to conduct the specific operation, at an hour when many people were moving towards the city centre, and the coverage of the operation by the media, raise strong doubts on both the adequacy of the planning and the targeted nature of the specific police operation. Indeed, the use of handcuffs on prosecuted individuals and the reproduction of these images in the media constitute a disdainful behaviour which is contrary to the fundamental obligation to respect human dignity.

Finally, based on the findings of the investigation and considering that police action must be governed by the principle of proportionality and the full respect of human rights of all individuals, irrespective of racial or ethnic origin, the Commissioner submitted the following suggestions:

1. **Police controls and the prosecutions of individuals must be made within the context of legal provisions and be in full line with the spectrum of fair guarantees of the individual rights and the aforementioned principle of proportionality. The foreign origin of an individual must in no case render such individual a suspect in advance nor should it create the impression that the Police is affected by prejudice and stereotypes, associating individuals with the possibility of committing an offence solely on the grounds of their colour, ethnic origin or religion.**
2. **There must be an objective reason for which an individual is subject to be stopped and searched, consisting in the existence of reasonable and individualised suspicion.**

3. **During the process of deportation, adequate guarantees must be given to ensure that the personal circumstances of each individual under deportation proceedings were taken into consideration in a genuine and individualised manner whilst the opportunity for efficient means of redress against the decision of deportation must also be provided.**
4. **The production of legal documents must, as a matter of principle, release the individuals who are subject to control from being prosecuted to police departments for additional verification of their identity, unless their behaviour raises suspicion which would justify such prosecution.**
5. **In case individuals under deportation proceedings are asylum seekers, the asylum procedure must first be completed, since deportation to their country of origin whilst the examination of their application is still pending, constitutes a violation of the principle of non-refoulement.**
6. **The issue by the Police of a relevant circular which would define in an unambiguous manner the conditions of prosecutions to Police departments, in such a way as to limit the risk of discrimination in the form of ethnic profiling, would be an extremely useful measure.**
7. **At the same time, the Commissioner stressed that the clear legal wording of the definition of racial or ethnic profiling and its prohibition by law would be of vital importance.**
8. **Finally, she reiterated the suggestion of recruiting immigrants as members of the Police Force, considering that such a measure would contribute, to a great extent, to the integration of immigrants into the Cypriot society and the establishment of relations of trust between immigrants and the Police Force, as they will share the common objective of maintaining social peace and combating crime.**

In October 2010, the Chief of Police sent his comments in the context of compliance with the suggestions of the Commissioner. In his letter he notes, amongst others, that the Police acted "in the framework of legality, specific information and justified court warrants" while he agreed on the risk entailed by the practice of "ethnic profiling". Generally, the Police force appears to agree with the suggestions of the Report.

Finally, on 15 December 2010, a meeting was held at the Ministry of Interior to discuss the findings of the Report. The meeting was chaired by the Minister of Interior and was attended by the Minister of Justice and Public Order, the Chief of Police, the Director of the Civil Registry and Migration Department and the Commander of the Aliens and Immigration Union. After hearing the views of all persons present at the meeting, the Minister of Interior stressed that, in the future, similar operations which raise any suspicion of "ethnic profiling" must not be repeated.

Access of Undocumented Immigrants to Public Health Services (AKP 218/2008).

A complaint was filed to the Anti-Discrimination Body by the Scientific Director of the RAXEN National Focal Point on Racism and Xenophobia on the issue of access of undocumented immigrants to public health services.

During the investigation of the complaint, the comments and views of the Permanent Secretary of the Ministry of Health were requested and obtained and meetings were held with the Executive Director and the Director of the Accidents and Emergency Department of the Nicosia General Hospital, the Officer for Patients' Rights of the same Hospital and the Director of Archbishop Makarios C' Hospital. The matters arising from the arrival and healthcare of undocumented immigrants in these hospitals and the practices followed in handling their cases were discussed at the meetings. The matter was also discussed on the phone with a competent advisor of the Non Governmental Organisation Action for Equality Support and Anti-Racism. European and international texts and surveys on the specific matter were also studied.

Before presenting her findings on the specific topic of the Report, the Commissioner thought it would be appropriate to set out her positions – as well as the definitions of international organisations dealing with immigration issues – on what is undocumented immigration, the estimated numbers of undocumented immigrants, their main problems and the reasons for which their health is at risk at many levels. Firstly, the Commissioner noted that the term "undocumented immigrant" includes different categories of immigrants, the diversity and complexity of which is ever increasing if we consider that the phenomenon of immigration is assuming greater dimensions. Therefore, tackling and considering the issues related to the protection of the human rights of this vulnerable group can no longer be postponed. The protection of the health of undocumented immigrants is one of the issues at the core of the discussion on safeguarding human dignity and the fundamental human rights of these individuals.

According to the legislative and statutory framework which governs the access of patients to public health services in Cyprus, undocumented immigrants – just like the other categories of non beneficiaries of free access – may, in the case of emergency, resort to the Accidents and Emergency Departments of public hospitals free of charge, be vaccinated and obtain certain other services explicitly specified in the relevant regulations, such as for example the treatment and prevention of contagious diseases, sexually transmitted diseases and the treatment of certain other chronic and/or serious illnesses.

However, as established during the investigation, in practice the free access of undocumented immigrants to the above services has inherent difficulties and limitations. As regards the services offered to resident patients, i.e. those admitted in the hospital in view of receiving treatment, these are normally charged for all non beneficiaries, including undocumented immigrants.

Because of the absence of a specific regulation on the access of undocumented immigrants to public hospitals, the provision of service to them is problematic. Amongst others, immigrants admitted for treatment have difficulty to pay the hospital charges, there is a communication gap between patients and hospital staff because of the language barrier, immigrants are unaware of their rights and

the procedures followed by public health services and Accidents and Emergency Departments are overloaded with incidents that are not real emergencies.

The disclosure of the practice followed by the Nicosia General Hospital during the admission of immigrants for treatment is indeed enlightening. It has been established that the management of the hospital contacts the Civil Registry and Migration Department for the purpose of verifying the alien's identity and in the case of undocumented immigrants it informs the competent Police services, which intervene as soon as the treatment is over. In an attempt to facilitate and speed up this practice, following a relevant request permission was granted to link the hospital's automated filing systems with those of the competent Department.

The Commissioner noted that the protection of health is a fundamental human right which must be safeguarded by the institutions, without discrimination. One of the main issues arising from discussions at European and international fora with regard to the particular subject of the protection of the health of immigrants, is the disassociation of their access to health services from the verification of their identity and the status of their stay. Research has shown that the fear of prosecution, the financial cost, ignorance of their rights and language and cultural differences are significant prohibitive factors for the real, timely and efficient access of this vulnerable population group to health services. It has also been demonstrated that the need to lift the obstacles to the access of immigrants to public health services is not related solely to the protection of their health but also to the challenges posed on the public health system in the host county. Given the significant – and largely undefined – number of undocumented immigrants residing in Cyprus, the specific issue becomes of major importance.

In order to deal with the issue of the medical care of undocumented immigrants in a systematic and efficient manner, the Commissioner made the following suggestions:

- **To establish regulations specifying the issue of access of immigrants to public health services, based on the respect of their fundamental human rights, which will not exclude the provision of the necessary health services to immigrants for emergency and serious incidents until their health condition has stabilised.**
- **To define the categories of immigrants as well as for which diseases, diagnostic examinations and treatments access is free of charge and without formalities, in order to avoid arbitrary actions and subjective judgments on the part of the management of public medical establishments.**
- **To include in the regulations practical protective measures for pregnancy and motherhood, allowing the follow-up of pregnancy, labour and the treatment of the infant if necessary.**
- **Unobstructed treatment for children under 18, irrespective of whether the incident is urgent or not, in view of protecting this vulnerable group of under age undocumented immigrants.**
- **To study the experiences and views of other competent State authorities and Non Governmental Organisations which come in direct contact with immigrants, and to use the experience and know-how of other States.**
- **To restrict the use of the linking of the files of the Nicosia General Hospital with**

those of the Civil Registry and Migration Department to the purposes for which it was allowed (verification of identity and speedier services) and not to the purpose of exercising migratory control, so that this does not deter individuals with health problems from resorting to State medical establishments, risking in this way the life of patients themselves and public health.

- **To provide comprehensive information to immigrants on the efficient use of the health system, with the publication of an informative bulletin which will clarify their rights, the registration procedures and, in general, the services they may obtain from public hospitals, as well as the possibility to file complaints or seek guidance from the Officers for Patients' Rights. The bulletin must be translated in the languages understood by the largest ethnic groups visiting the hospitals and be posted at a conspicuous place at the entrances of all State medical establishments, in all Districts and local health centres, as well as at the Department in charge of the issue of Treatment Cards of the Ministry of Health.**
- **To provide further training to the staff of State medical establishments on issues of discrimination on the grounds on ethnic origin, language, religion, cultural values and gender, so that they may treat patients from a different cultural background with professionalism and understanding. The assistance of academics dealing with intercultural issues and health, from the public[1] and/or private sector could be sought in view of implementing this measure.**
- **To purchase translation services and/or enter into cooperation agreements with Embassies and Consulates of the countries of origin of these immigrants, on a more regular basis, with emphasis placed on serious incidents.**
- **To collect reliable and comparable statistical evidence in relation to the health of immigrants in Cyprus, as a useful tool for a more rational assessment of the situation and the design and adoption of efficient measures to solve the problems and dilemmas arising in relation to the access of immigrants – and in particular undocumented immigrants – to public health services.**

The Report was submitted to the Minister of Health who is competent for implementing the suggestions of the Commissioner on the specific matter. In view of providing information and raising concern on the issue of dealing with the phenomenon of undocumented immigrants, the Report was also notified to the Minister of Interior.

1. The teaching material of the Health Sciences Department of the Technological University of Cyprus and in particular the content of the course titled Intercultural Education which is taught at the Nursing Department could, for example, be used.

Support of the education of Maronite, Armenian and Latin students attending private secondary education schools (AKP 114/2005).

The representative of the Maronite community at the House of Representatives addressed in October 2005 a complaint to the Ministry of Education and Culture in respect of the rejection of the request of the Maronite religious group for an increase in the State grants for tuition fees to Maronite students attending private schools and the English School. As mentioned in the complaint, up until 2005, the amount of the grant remained the same since 1996, despite significant increases in the tuition fees of private schools in the meantime.

The Constitution of the Republic of Cyprus safeguards the right of the members of the Maronite, Armenian and Latin religious groups to provide their children with education which is in line with their religious beliefs.

During the investigation of the complaint, it was established that in March 1999, the Maronite, Armenian and Latin religious groups were recognised by the Republic of Cyprus itself as "ethnic minorities" for the purpose of implementing the provisions of the Council of Europe's "Framework Convention on the Protection of Ethnic Minorities". The Convention binds the Contracting States, including Cyprus, to adopt "appropriate measures for the promotion of full and real equality", amongst the individuals who belong to an ethnic minority and those who belong to the majority, in all areas of economic, social, political and cultural life. Measures adopted for this purpose are "not considered acts of discrimination". Especially in the field of education, the Convention binds Contracting States "to promote equality of opportunities at all levels of education for individuals belonging to ethnic minorities".

The following was also established from the evidence put before the Commissioner:

a) At the level of elementary education, there are two public elementary schools which provide free education adapted to the needs of students of Armenian or Maronite origin. However, at secondary education level, there are no public schools providing education which is appropriate for the different religious groups. Taking this into consideration, the private catholic schools of "Terra Santa" in Nicosia and "Santa Maria" in Limassol, though open to all religions, are considered by the State, for the purpose of implementing the policy of tuition fee grants, as "ethnic schools" for the Latin and Maronite religious groups of Cyprus. These schools provide education both at elementary and secondary level whilst the fees of their students who belong to the religious groups are covered by the State. As regards Armenian students, there is a public secondary school in Nicosia covering the first three classes (gymnasium) but no school which can offer them appropriate education at the level of the lyceum.

b) Grants relating to the tuition fees for Maronite and Latin students were first given in 1980 with a decision of the Council of Ministers. Specifically, a yearly grant of up to 200 Cyprus pounds per student attending the first three classes of private secondary education was approved. It was deemed that this amount covered the annual cost per student in public schools and it was therefore considered that this grant secured "free education" for Maronite and Armenian students attending these classes. The same grants were approved for Latin students the following year.

c) With subsequent decisions, the Council of Ministers approved increases of the grants, which were gradually extended to cover all classes of secondary education. In May 1996, the Council of Ministers fixed the amount of the tuition fee grant for every Armenian, Maronite and Latin student attending an approved private secondary education school and the English School to CYP450 per year. This amount represented, at the time, approximately 30% of the average yearly tuition fees of private schools, and remains the same since then.

d) The distinction of private schools into "national" and "non national" and the approval of increased grants in particular for the "national" schools was made in October 1999. Grants for national schools remained the same until June 2006, when the Council of Ministers approved significant increases, therefore satisfying one aspect of the relevant complaint. It did not, however, approve a parallel increase in tuition fee grants for "non national" private secondary education schools and the English School.

e) In June 2008, the Ministry of Education and Culture raised once again the issue of grants for "non national" private secondary education schools, submitting to the Council of Ministers a proposal for their increase in order to cover 30% of the average annual tuition fees and, specifically, from CYP450/student to CYP1,550/student. It calculated that, based on the 2006-2007 school year, the additional cost of the proposed increase would be €234.339. In reaching this proposal, the Ministry of Education and Culture took into consideration the fact that the increase of the grant for non national schools has been, for years, a joint request of the representatives of the minorities, in addition to the fact that students who belong to minorities prefer attending private secondary education schools – where they consider that they receive "secular" education. The Ministry also took into account the obligations undertaken, in the meantime, by Cyprus as these arise from the implementation of the "Framework Convention on the Protection of Ethnic Minorities".

f) However, in September 2008, this proposal was rejected by the Ministry of Finance, which upheld that tuition fee grants for students of the minority groups attending private secondary education schools "are already unfair for the rest of the students who do not receive any grant because they don't belong to a religious minority". The Ministry of Finance also supported that private schools do not contribute to the preservation of the national identity of the specific minorities any more than public schools and the argument that in private schools learning is based on secular education and not on national-religious education may also be a reason for other Cypriot citizens to prefer these schools as well.

Based on all of the above evidence, the Commissioner noted first of all the many efforts made in recent years by the Cypriot State in the field of education, in order to support Maronites, Armenians and Latins in their effort to preserve and develop their culture and the main elements of their identity. She also made special reference to the measure of providing, free of charge, in a number of specific public schools, afternoon classes to students belonging to minorities so that they may learn their religion, language and culture. However, the Commissioner expressed the view that it is crucial to establish whether the measures taken have managed to counterbalance the disadvantageous position of the minority groups in the field of education over the years, which the State itself has acknowledged since 1980.

The Commissioner disagreed with the position of the Ministry of Finance that providing tuition fee grants to minority students attending private secondary education schools is unfair to the other students, mainly because this is based on the reasoning that the citizens who belong to the religious groups and those who belong to the Greek Cypriot majority are in the same or similar situation in respect of their possibility to access free secondary education. The Commissioner stated that Greek Cypriot secondary education students are given the possibility to receive free education, appropriate for their ethnic origin, in a broad network of public schools across Cyprus. On the contrary, Maronite and Latin students of secondary education only have the possibility to attend two private schools, one in Nicosia and one in Limassol, whilst for the Armenian students there is no school able to provide appropriate education at the level of the lyceum. Furthermore, the Commissioner noted that despite the fact that the offer of afternoon classes on the culture and civilisation of the minorities is a very positive measure, its adoption actually demonstrates the lack of equality vis-a-vis Greek Cypriot students.

In approaching the matter from a broader perspective, the Commissioner set out the general position that the efficient protection of the educational rights of any minority requires, in addition to the equal legal treatment of its members compared to those of the majority from a formal point of view, the recognition and promotion of rights of a collective nature, and in that sense there cannot be substantial protection of minority rights without recognising at the same time their collective existence. In that respect, the Commissioner indicated that both the Convention for the rights of the minorities and the national legal framework, allow the special treatment of the members of a minority group in the form of deviation from the principle of equality, usually through the adoption of positive measures or special rights.

The Commissioner also noted that the fact that over time public schools have not been, in practice, a choice for minority students, in addition to the fact that the majority continues to choose not to attend "national schools", despite free tuition, should also be taken into consideration. In view of the above, the Commissioner was not convinced that the reasons for which the tuition fee grants were approved in 1980 have ceased to exist. On the contrary, as she further indicated, what has changed in the meantime is the strengthening and expansion of the educational rights of the Maronites, Armenians and Latins, in the framework of the Convention for the protection of ethnic minorities. Given that tuition fees for private schools are bound to increase further in the future, the Commissioner noted that a non increase in the grant in question would essentially mean the gradual elimination of a right granted to the Maronites, Armenians and Latins of Cyprus even before they were granted protection as minority groups.

Finally, the Commissioner noted that the Ministry of Education and Culture, which is the competent authority on this matter, is positive to the request of the representatives of the minorities, since the cost of satisfying such a request is not extremely high.

Based on all of the above, the Commissioner concluded that the request of the Maronites, Armenians and Latins for an increase in the tuition fee grants for their students attending "non national" private secondary education schools and the English School, should be viewed positively, upon considering the current economic conditions and possibilities. Therefore, the Commissioner suggested that the competent Ministries of Education and Culture and Finance reexamine the matter, taking into account the relevant suggestions contained in the Report, as well as the obligations for

Cyprus deriving from the provisions of the "Framework Convention on the Protection of Ethnic Minorities".

Implementation of the legislation framework which governs the transfer of property to and from Turkish Cypriots residing in the free areas (AKP 6/2009 and AKP 23/2010).

Two complaints were submitted to the Anti-Discrimination Body in respect of the implementation of the provisions of Law 49/1970 by the Department of Lands and Surveys in the cases of transfer of immovable property in the free areas from and/or to Turkish Cypriots, claiming that this raises an issue of unequal and discriminatory treatment on the grounds of ethnic origin.

More specifically, Ms A.M.A, a Turkish Cypriot residing in the United Kingdom, with a letter addressed to the Observatory for Racism and Xenophobia and Mr.T.X., a Turkish Cypriot residing in the Municipality of Idalion, denounced that they suffered unfair and discriminatory treatment at the time of declaring the transfer of immovable property in the free areas, since the competent District Land Office of Nicosia informed them that the approval of the Minister of Interior is required in order to complete the transfer, a process which would cause a delay of several months.

Article 23 of the Constitution of the Republic of Cyprus specifies that the exercise of the recognised right to property, which includes the ownership, possession, enjoyment, acquisition and disposal of immovable property, may, by law, be subject to conditions, restrictions or commitments which are absolutely necessary in view of serving public security or public health or public morals or town planning or the development and use of any property in order to promote public benefit or protect the rights of third parties.

Within this framework, Articles 3 and 4 of Law 49/1970 provide as follows:

"3. Irrespective of the provisions of the Transfer and Mortgage of Immovable Property Law of 1965, if upon the production to the District Land Office or a branch thereof, of a statement on an intended transfer of immovable property, the Director deems, based on facts provided to him by the Minister, that the intended acquisition of the said immovable property by the intended beneficiary may put at risk or in any way affect public security, the Director shall not allow the acceptance of the said statement by the competent officer of the aforementioned Office or branch thereof, unless and after the Minister to whom the matter is referred by the Director, consents to the same.

4. Irrespective of the provisions of the Sale of Land (Special Enforcement) Law, if upon the production of a copy of a contract for the sale of immovable property to the competent District Land Office to be submitted in accordance with the provisions of paragraph (b) of Article 2 of the aforesaid Law, the Director deems, based on facts provided to him by the Minister, that the acquisition of such immovable property by the buyer set forth in the contract may put at risk or in any way affect public security, the Director shall not allow the submission of such copy of the contract, unless and after the Minister to whom the matter is referred by the Director, consents to the same.

It is understood that if the Minister consents as above the time period from the date of the aforesaid

production of the said contract until the Minister's consent is obtained by the Director, shall not be taken into account in calculating the deadline fixed in the aforesaid paragraph (b) of Article 2 of the said Law."

According to the evidence provided to the Commissioner for Administration by the competent authority, in all cases without exception of Turkish Cypriots who did not abandon the free areas and wish to transfer and/or acquire property in the free areas, the procedure provided for in Articles 3 and 4 of Law 49/1970 is applied. Specifically, the competent authority has supported that the statement of transfer or the sale and purchase contract are forwarded and reviewed by the Minister of Interior mainly for the purpose of verifying the identity of the applicants and to check whether any displaced persons are affected. The Minster of Interior then grants his approval in his capacity as Minister and not as Guardian, since these properties are not considered to be abandoned and the Law on the Administration of Turkish Cypriot Properties[2] does not apply.

It has been established that this procedure is followed only in the cases where the contracting parties are Turkish Cypriots, despite the fact that they are permanent residents in the free areas and have never abandoned their properties. On the other hand, the specific procedure does not apply to similar cases of transfer where the contracting parties are solely Greek Cypriots. In this sense, the implementation of the said procedure constitutes, as a matter of principle, discriminatory treatment since similar cases are dealt with in a different way depending on the origin of the parties involved.

Consequently, the Commissioner for Administration examined whether the requirements for admitting the aforementioned discrimination as not being contrary to the principle of equal treatment are met. These are: a) the objective and reasonable justification, i.e. to serve a legitimate aim with which it has a causative relationship and b) to be necessary and proportional in serving the intended aim (necessity - proportionality).

Upon reviewing the aforementioned requirements, the Commissioner concluded that, despite the fact that ensuring public security is an entirely legitimate aim, it cannot be considered that every transfer from and/or to Turkish Cypriots residing in the free areas and who never abandoned their properties would a priori pose a risk to public security, in such a way as to justify the need for the act to be approved by the Minister of Interior. It was therefore found that the application of this measure, based on the Articles of Law 49/1970 in all cases of transfer cannot have a causative relationship with serving the aim of ensuring public security.

Furthermore, the Commissioner for Administration was not convinced that in the cases of Turkish Cypriots residing permanently in the free areas and who never abandoned their properties, verification is not adequate compared to any other case dealt with by the Department of Lands and the District Land Offices. Specifically, it was found that in every case, whether it regards Greek Cypriots or Turkish Cypriots, the verification of the owners' identity information, of their place of residence and whether displaced persons are affected, may be made in an adequately sufficient manner by the competent Land Office which has all the necessary information at its disposal.

Based on the above, the Commissioner for Administration concluded that Articles 3 and 4 of Law 49/1970, as they are currently applied by the competent authorities, constitute unfair and discriminatory treatment. Specifically, the process of obtaining the approval by the Minister of

2. Law 139/1991

Interior for every transfer in which the contracting parties are Turkish Cypriots residing in the free areas and who never abandoned their properties, is discrimination which cannot be considered acceptable since, based on everything that has been analysed, it is not sufficiently justified and not necessary to ensure public security. Furthermore, under the current conditions, the real substratum for the enactment of the aforementioned Law does not apply and therefore, the continued application of the provisions to Turkish Cypriots residing in the free areas and who never abandoned their properties is aimless.

For the above reasons, the Commissioner for Administration suggested that the competent authority reexamines the issue of the application of the provisions of Law 49/1970 in relation to all transfers from and/or to Turkish Cypriots in the light of everything which is mentioned above. More specifically, she suggested that, up until the abolition of the said Law, its application be restricted to exceptional cases where special issues of public security arise and the approval of the Minister of Interior is entirely necessary. In these cases, the application of the provisions of this law should be specifically justified, with reference to the special conditions of the transfer in question.

Following the submission of the aforementioned Report to the Minister of Interior, the Permanent Secretary of the Ministry of Interior stated that a relevant circular had already been issued giving instructions for the cases of transfers involving Turkish Cypriots to be examined on a priority basis. Furthermore, the Permanent Secretary states that the suggestions of the Anti-Discrimination Body on the non application of the relevant provisions of the said Law will be further studied with the Attorney General's Office of the Republic.

Issue of a Detention and Deportation Order for an HIV-positive EU citizen (AKP 69/2010).

A complaint was lodged with the Anti-Discrimination Body from Mr. J.M., an HIV-positive British citizen with an origin from Tanzania, in relation to on order for his deportation issued by the Director-General of the Ministry of Interior, the legality of which was disputed.

During the investigation of the complaint, it was found that Mr. J.M was convicted to a one-month imprisonment for the offence of driving under the influence of alcohol. His deportation was decided, on the basis of this court order, as a legal consequence of his conviction to imprisonment, after being judged that his personal conduct constituted a real, existing and adequately serious threat to the public order of the Republic. In addition, Mr. J.M, was considered to be a banned immigrant in view of both his conviction to imprisonment [article 6(1)(d), Cap. 105], and his certification by a doctor that he is an HIV-positive (HIV-AIDS) [article 6(1)(c), Cap. 105].

From all evidence presented, it was found that the decision for the deportation of Mr. J.M was taken automatically and was based only on his previous conviction to a one-month imprisonment without any evidence documenting that his personal conduct constitutes a real, existing and adequately serious threat to the fundamental interest of society, in violation of the guarantees of the community Directive and the national Law on the right of movement of European citizens. The relevant legislative framework expressly provides that prior convictions do not constitute by

themselves grounds for taking restrictive measures against the right of free movement. Moreover, the competent authority involved did not rely on special public order grounds but, on the contrary, the invocation of public order was presented in a general manner and, in any case, the reason for which the personal conduct of this specific interested person constituted a serious and existing threat to public order as well as the kind of this threat have not been specified.

Furthermore, it appeared that before reaching the decision of deportation for public order grounds, the competent authority took into account the fact that Mr. J.M «…has no ties with the Republic and his family lives in Britain». The evidence, however, in his file did not show the conducting of any investigation whose findings would justify the above conclusion. In any case, the competent authority did not seem to have taken into account the fact that the person involved maintains a long-term relationship with a European citizen whose permanent residence is in Cyprus. The failure to consider this parameter was judged by the Commissioner that it renders the conclusion of the competent authority according to which Mr. J. M. «has no ties with the Republic» unsubstantiated.

Furthermore, the Commissioner noted that the evidence in the file of the competent authority leaves doubts as to whether the procedure which has been followed by the service was essentially consistent with the regulations of both the community and the national laws, which provide for the need for the adequate and precise updating of the decisions restricting the right of free movement as well as with the guarantees provided for contesting the decision for deportation by the interested person.

Further to the generally and not individually formulated public order grounds, it was established that the deportation of Mr. J.M was also based on public health grounds, in the context of article 6(1)(c) of the Aliens and Immigration Law (Cap. 105). In particular, it seems that the health condition of Mr. J. M., as certified by the doctor of the Central Prisons where he served his one-month sentence, was considered to constitute a risk to public health to a degree justifying his deportation. According to a relevant doctor's note, Mr. J.M «suffers from the acquired immunodeficiency syndrome HIV-AIDS.»

The Commissioner established that the above medical certification does not include any reference to the positions of the doctor as regards the risks that the health condition of Mr. J.M. poses to public health. The conclusion about the risk to public health was not from the doctor who had certified the health condition of Mr. J.M. but from the competent officer of the Aliens and Immigration Service of Famagusta. This fact renders problematic the implementation of the referenced provision of the Aliens and Immigration Law since this requires the opinion of the doctor making the certification as to the dangerousness which, in his opinion, this specific disease poses to public health. The Commissioner noted also the paradox of the fact that the medical opinion of a doctor at a Hospital in London who attended Mr. J.M. according to which Mr. J.M never had any symptom of the AIDS disease and since the disease is monitored with medication, he is in no case considered a «threat to the population of Cyprus», does not seem to have been taken into account by the competent authority despite the fact that it was set before it by the lawyers of Mr. J.M.

In any case, the Commissioner pointed out that the above provision is included in the legislation applied to third country citizens. Given the fact that the interested person is an EU citizen, the provision relevant to public health included in the relevant law on the free movement of EU

citizens is crucial. Article 31(1) of this law allows for the taking of measures restricting the right of free movement in the cases of infectious and contagious diseases «once they form, in the Republic, an object of protection provisions applied to the citizens of the Republic». According, that is, to community law, the taking of measures restricting the right of free movement in the case of an EU citizen suffering from a contagious disease, is justified for purposes of protecting public health, only in the case where nationals are subject to specific measures for protection from this specific disease. As the Commissioner pointed out, the absence of internal measures applicable to nationals in respect to HIV virus and AIDS renders any restriction of the right of free movement of an EU citizen a violation of community law.

On the basis of the above, the Commissioner concluded that the handlings of the competent authority in the case of the complainant did not meet the community and national regulations in respect to the right of EU citizens to freely move and reside in EU Member States. Therefore, the Commissioner recommended to the Director-General of the Ministry of Interior to examine forthwith the possibility of revocation of the complainant's deportation order and the removal of his name from the stop list. A more general recommendation of the Commissioner was to ensure the future handling of cases concerning the taking of measures restricting the right of free movement of EU citizens in the light and spirit of all the provisions of community law as a whole.

In compliance with the above recommendations of the Commissioner, the Director-General of the Ministry of Interior proceeded to the revocation of the deportation order and the removal of the complainant's name from the stop list.

The amount of community duties and taxes imposed on European citizens residing in communities in Cyprus (AKP 68/2006, AKP 94/2006, AKP 236/2008, AKP 1/2009, AKP 29/2009).

The Anti-Discrimination Body received many complaints about the amount of community duties and taxes paid by European citizens. In particular, in their letters, the complainants state that the community duties and community taxes imposed upon them are higher than the ones imposed upon Cypriot citizens and there is, therefore, an issue of unfavourable discrimination against them.

From the evidence set before the Body, it was established that the national legislation governing local self-government issues grants local authorities with a broad discretion to fix the amount of community duties and taxes based on criteria which they consider appropriate. As the Commissioner noted, despite the fact that the purpose of tax apportionment is understood based on criteria relating to factors such as the type of the serviced provided, the extent and value of property, etc. in the context of application of the legislation, this discretion of the community authorities is not absolute and acknowledges restrictions from the principles of administrative law pertaining to the exercise, in an acceptable manner, of their discretion as well as from provisions of other legislations prohibiting unfavourable treatment on the grounds of origin of a community citizen.

During the investigation of the relevant complaints, the European institutional framework on

discrimination was examined and it was established that this provides European citizens with a wide range of protection against discrimination on the grounds of their national origin. The degree of protection is clearly more enhanced for European citizens moving within the European Union, who are protected from discrimination due to citizenship, by both the Charter of Fundamental Rights of the European Union and the legislation governing the circulation and residence of European citizens within the territory of Member-States.

In the Report, there is extensive reference to the national institutional framework and, in particular, to Law no. 59(I)/2004 substantially incorporating in the national law the provisions of Directive 2000/43/EC of the European Union. According to the provisions of the relevant law, any direct or indirect discrimination to specific sectors of activities, one of which is the sector of access to goods and services available to the public, on the grounds of racial or ethnic origin of a person, is prohibited. The interpretative provisions of the Law define both "direct" discrimination, which is prohibited in an absolute manner and without exceptions, and "indirect" discrimination, which is the consequence of seemingly neutral practices and is prohibited "unless …it is objectively justified by a legitimate aim and the means of meeting this aim are appropriate and necessary".

The Commissioner judged that the framework of protection provided by Law no. 59(I)/2004 is particularly significant because, firstly, it identifies the activity sectors in which discrimination is prohibited and, secondly, with the adoption of a detailed definition of the concepts of prohibited discrimination, significant methodological legal tools are introduced for combating discrimination.

Furthermore, the Commissioner expressed the opinion that the equal treatment of European citizens and nationals as well as the prohibition of every indirect (covert) discrimination forms a crucial element for the implementation of the specific legislation.

Based on the above, the Commissioner reached the conclusion that the setting out of criteria which, for taxation purposes, discriminate, directly or indirectly, between Cypriot and non-Cypriot inhabitants of a community and reserve for the latter a more unfavourable treatment vis- -vis Cypriot inhabitants, is contrary to the aforementioned legislation against discrimination.

In one complaint, the Commissioner established that the criteria which have been set out by the competent Community Council for community tax apportionment, based on which "foreign" inhabitants come under a special tax category, were incompatible with the institutional framework against discrimination and they should have been reassessed.

In the remaining complaints, the crucial criteria concerned the imposition of higher duties; in one case, to the inhabitants of the "coastal area" of a community, inhabited in its majority by European citizens, and, in the other case, to the inhabitants of "villas", without however specifying any secondary criteria based on which there was a separation of "houses" and "villas". Although it was not possible to establish a direct discrimination against the complainants from the evidence set before the Commissioner, she, however, concluded that there is a prima facie issue of a possible indirect (covert) discrimination against them on the grounds of nationality/citizenship. Therefore, she proceeded to the investigation of whether the criteria in question were objectively justified by the given circumstances and whether they were appropriate and necessary, in order to be considered as permitted by exception as provided for in the legislation.

In this context, the Commissioner expressed the opinion that in the cases under investigation

the requirement for the existence of a legitimate aim was fulfilled, since the fair apportionment to the inhabitants of the communities of the cost for the provision of some basic and necessary utility services constitutes such an aim. However, by assessing all the parameters of the cases under investigation in their entirety and taking also into account the difference in the duties payable between tax categories, which she considered to be disproportionate, the Commissioner was not convinced about the appropriateness and necessity of the criteria in question and about their compatibility with the relevant legislation.

In the light of all the above, the Commissioner recommended to the relevant Community Councils to review their approach as regards the imposition of community duties and taxes and proceed to the implementation of criteria, which do not involve a difficult or disadvantaged treatment of EU nationals residing in communities. In this context, the Commissioner suggested that the adoption of discriminatory measures which have as a point of reference the nationality of the taxpayer should be avoided noting that these measures must be compatible with the legal framework against discrimination and should not violate the principle of equal treatment between Cypriot and non-Cypriot residents in the communities.

A copy of the Report was communicated to the President of the Union of Cyprus Communities, with the request to forward it to all the members of the Union for consideration.

Legal consolidation of same-sex couple relationships (AKP 142/2009, AKP 16/2010).

Upon the submission of two complaints by Cypriot citizens with regard to the absence of legislative provisions regulating the symbiotic relationships between persons of the same sex, the Commissioner decided to go back to the issue of respect of the rights of homosexuals. This issue had been the subject of previous interventions of the Commissioner, the most recent of which concerned the equal treatment of same-sex couples in a registered cohabitation relationship in the context of implementation of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of Member States[3]. The aim of the said report was to encourage the State to take effective measures for the equal treatment of same-sex couples and the full respect of their private life without, however, this obligation being linked to the recognition of marriage (or other legal relationship) between homosexuals.

This report aimed at tackling the problem more effectively and more thoroughly. The new forms of cohabitation, both amongst heterosexual and same-sex individuals constitute a reality which requires the redefinition of the traditional concept of marriage and mainly the introduction of legislative regulations, which will legally consolidate these new forms of cohabitation. In response to the specific complaints, the Commissioner considered it appropriate to examine both the possibility of implementation to the Cypriot legal system of the covenant of registered cohabitation and the amendment of the existing legislation in a manner allowing civil marriage between same-sex individuals.

3. *«Report of the Anti-Discrimination Body on the respect of the principle of equal treatment of same-sex couples in a registered cohabitation relationship, in the context of implementation of Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the territory of Member States», Nicosia 3 August 2009*

Through an extensive analysis of the national legislation and Community law as well as of the jurisprudence of international courts and considering the relevant adjustments made by many European countries, the Commissioner underlined the legal gap that exists with regard to the legal recognition of the symbiotic relationships between people of the same or opposite sex. In the report, there was extensive reference to the jurisprudence of the European Court of Human Rights which criticised national practices which constituted a discrimination against homosexuals. As it even appears from the study of the relevant regulatory framework, the prospect of legal recognition of these relationships does not meet constitutional impediments, since the Constitution refers to a state law for the regulation of the matter.

In particular, the legal recognition of same-sex cohabitants is considered, under the current circumstances, imperative, in the context of the principle of equal treatment, since the existing legal gap inevitably creates inequalities against these persons which are not susceptible to convincing justification. Furthermore, the continuation of this situation and, in particular, the legal ignorance of this social reality reproduces negative stereotypes and prejudices against these persons.

The Commissioner pointed out that from their experience at the Office, it is shown that the undertaking of regulatory action on behalf of the competent bodies of the State would eliminate the discrimination against Cypriot citizens, and it would also constitute an alignment with the fundamental principle of free movement of persons within the European Union. And this is so because, as noted in successive reports of the Commissioner, the gap that exists does not allow for the practical implementation of this principle for European citizens residing in Cyprus with their same-sex or heterosexual partners. More specifically, the exclusion of same-sex couples from the scope of the relevant European Directive[4], which was already part of the Cypriot legal system, constitutes direct discrimination of European citizens on the grounds of sexual orientation.

Finally, the Commissioner concluded that the necessity to legally consolidate free cohabitation becomes more imperative since today in Cyprus the cohabitation out of wedlock, even a long and steady one, does not entail rights nor does it regulate property or other relations between partners. In this sense, the legal regulation of free cohabitation does not undermine the institution of marriage which continues to form the predominant basis for the creation of a family. However, this regulation responds to an evolving social reality and to the real needs of people who are equal members of our society. This fact is confirmed by both the corresponding legislative provisions of many European countries and the requirements of the European and international law on the elimination of all forms of discrimination.

Upon submission of the Report, a representative of the Office attended a meeting at the Ministry of Interior in May 2010 whose aim was to discuss the issue of regulating the cohabitation of same-sex couples. The discussion was attended by the Director-General of the Ministry of Justice, the Director of the Civil Registry and Migration Department, a representative of the Law Commissioner's Office, a Senior Officer of the Ministry of Interior while, despite the invitation, there was no representative of the Legal Service. During the meeting, there was reference to the opinions of the Legal Service and mainly to that of 23 April 2010 which states, inter alia, that the states which allow same-sex couples to marry or have a "civil contract" have not, in their majority, ratified like Cyprus, the 12th Protocol of the European Convention on Human Rights which imposes upon Member States the obligation to ensure the enjoyment of any right provided for in a law without

4. Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the territory of Member States, incorporated in the Cypriot legal system with law no. 7 (I) 2007

discrimination. At the end of the meeting, the Director-General of the Ministry of Interior stated that the concerns of the participants shall be recorded and a relevant note shall be submitted to the Minister of Interior. In December 2010, the Director-General asked with a letter the services involved to send their comments on whether the absence of a legislative framework regulating the cohabitation of same-sex couples constitutes a discriminatory treatment against them.

Unequal Treatment of Women Prisoners on issues relating to their admission into the Open Prison and into the Centre for Non-institutional Occupation (AKP 142/2008).

The Anti-Discrimination Body received a complaint by a Member of the Parliament (MP) in relation to the possibility of women prisoners being admitted into the Open Prison. According to the MP, women prisoners do not have, unlike male prisoners, the possibility to serve part of and/or their entire prison term in a place other than the Closed Prison, and as a result they are subject to unequal treatment vis-a-vis male prisoners. The Commissioner's investigation was also extended to the issue of admission of women prisoners into the Centre for Guidance and Non-Institutional Occupation of Convicts.

The Commissioner established that, as regards the issue of admission into the Open Prison, the national institutional framework refers to the right of admission of all convicts, men and women. However, today, the building of the Open Prison houses only male prisoners. The reason, according to the Prisons Department, that the legislation applies selectively only to male prisoners is the shortages in the building premises of the Prisons. The women admitted into the Open Prison are detained in Wing 3 – the Women's Wing - and enjoy all the privileges enjoyed by men admitted into the Open Prison without discrimination.

Based on the above, the Commissioner noted that the poor building infrastructure of the Central Prisons is not an issue which is either new or not known. These deficiencies combined with the overpopulation of prisoners form a major source of problems in the Prisons and adversely affect the conditions of prison administration, separation, welfare and enjoyment of prisoners' rights.

In this case, the Commissioner concluded that the non-existence of a building separate from the Closed Prison and destined to accommodate women prisoners which can be admitted into the Open Prison creates, at first, an issue of unjustified discriminatory application of the legislation and regulations against women prisoners. According to the entire legislative framework, the admission of a prisoner into an Open Prison does not entail only the enjoyment of additional privileges. For an Open Prison to have a material sense and value and serve its purpose, prisoners should be detained in a special area outside the strictly guarded area of the Prison. Therefore, under the circumstances, women cannot in essence be admitted into the Open Prison.

Furthermore, the Commissioner noted that the problem of unequal treatment of women prisoners becomes more acute as regards the issue of their admission into the Centre for Guidance and Non-Institutional Occupation of Convicts, since, in this case, although the law does not distinguish

between male and female prisoners, the relevant Regulations seem in fact to establish their different treatment. In particular, male prisoners who are admitted into the Centre for Guidance and Non-Institutional Occupation of Convicts are selected out of the prisoners of the Open Prison and live, after being selected, in a separate area, while women prisoners selected for admission into the Centre for Guidance and Non-Institutional Occupation of Convicts for non-institutional occupation, continue to live in the closed female wing.

As the Commissioner noted, in this case, this different treatment between male and female prisoners, in an institutional manner – as arises from the relevant regulations – constitutes not only a violation of the principles of equal treatment but it also contradicts the very purpose of the law which wants, especially during the last stage of serving the sentence, the detention of all prisoners of the Centre for Guidance and Non-Institutional Occupation of Convicts in a special area, under a controlled freedom regime, for the purpose of their smooth reintegration into society after their imprisonment.

The Commissioner expressed her satisfaction for the actions of the Prisons Department in connection to the creation of a separate detention area for female prisoners admitted into the Open Prison and into the Centre for Guidance and Non-Institutional Occupation of Convicts. However, she recommended the immediate adoption of measures which, until the completion of the above project, shall ensure the equal treatment of male and female prisoners in terms of this issue. In addition, the Commissioner suggested the taking of initiative on behalf of the Prisons Department for the amendment of the relevant Regulations on the admission of women prisoners into the Centre for Guidance and Non-Institutional Occupation of Convicts, in the light of the principles of equal treatment.

After the submission of the Report, a letter of the Director-General of the Ministry of Justice and Public Order dated 7 October 2010 to the Senior Director of the Prisons Department was communicated to the Commissioner. With this letter, the Senior Director of the Prisons Department is requested to identify the Regulations of the Prisons (General) Regulations that need to be amended as regards the issue of the admission of women prisoners into the Open Prison and into the Centre for Guidance and Non-Institutional Occupation of Convicts and promote their amendment following a relevant consultation with the Office of the Commissioner for Administration.

The process of implementing the recommendations included in the Report of the Anti-Discrimination Body is being monitored.

Handling by the Prisons Department of a complaint filed by a foreign detainee for maltreatment by a prison guard on the grounds of his religious beliefs (AKP 116/2009).

Mr. H.P.S filed a complaint against the Prisons Department with an undated letter claiming that he was beaten up by a prison guard who asked him, in an insulting way, to remove his turban worn to express his religious beliefs. Mr. H.S. then sent two letters dated 15 and 16 October 2009, lodging a

complaint against the Prisons Department denouncing that a specific guard had been commenting many times in an insulting way his origin and religion while, as he states, he had been physically abused by him (he was beaten up).

During the investigation of the complaint, the Senior Director of the Prisons Department obtained a written declaration by the complainant in which the prisoner confirmed that he had not filed a complaint against the Prisons Department. Furthermore, the Senior Director of the Prisons stated that perhaps the complaint had been lodged by another prisoner with the same name who had already been dismissed.

The Commissioner expressed her deep concern about the fact that the Director of the Prisons Department invited the prisoner to clarify or confirm before him what he says in his complaint. And this is so because, in this way, the prisoner was confronted with the person against whom his complaint is turned, and was invited to present all his allegations before the Prisons Department. Moreover, these actions are even more alarming because the specific prisoner lodged a complaint about his physical abuse, according to his allegations, by staff members of the Prisons Department.

The Commissioner expressed the view that such actions do not contribute constructively to the maintenance of an open and free communication between prisoners, her Office and the Prisons Department, which constitutes an essential requirement for the effective exercise of her responsibilities. Moreover, they do not assist in the creation of a climate of mutual trust and understanding between the prisoners and the Prisons staff, which forms a requirement, under the Prisons Regulations.

The Commissioner suggested that similar actions should be avoided in the future, so as not to create a negative climate for all prisoners who may wish to lodge a complaint with her Office or with any other competent authority. As to this particular case, the Commissioner suggested a more careful investigation of the complainant's allegations.

Minimum age limit for appointment to the position of Certifying Officer (AKP 144/2009).

Mrs. K. K. lodged a complaint with the Anti-Discrimination Body about the minimum age limit for appointment to the position of a Certifying Officer. According to the complainant, one requirement for the appointment to the position of a Certifying is for the applicant to be a person who, inter alia, has completed the 35th year of age. Given that at the time of submission of the complaint, the complainant was 31 years old, her application had not been accepted, as she noted. The complainant's argument was that the aforementioned requirement is contrary to the principle of equality and creates unjustified discrimination on the grounds of age. Through the examination of the existing criteria for the appointment of Certifying Officers, it was established that indeed candidates should, inter alia, complete the 35th year of age and not be over 70.

From all evidence set before the Anti-Discrimination Body, it arose that the criteria for

appointment to the position of a Certifying Officer which have been set out in 1993 and reviewed in 1995 shall be diversified soon in the context of modernisation of the relevant legislation. As the Director-General of the Ministry of Interior noted in a relevant letter, the new criteria to be adopted shall set out, inter alia, the age of 25 as the minimum age limit for appointment. Therefore, the Ministry expressed its intention to re-assess the complainant's application in the context of the new criteria for appointment.

Based on the above, the Commissioner expressed her satisfaction in relation to the intentions and actions of the Ministry of Interior for the upgrade and modernisation of the criteria for appointment to the position of a Certifying Officer. She noted that the establishment by law of the age limit of 25 appears, at first, to be within the permitted limits set out by the principle of equal treatment. She also pointed out that, based on the principle of equal treatment, the introduction of age criteria for appointment to the position of a Certifying Officer could be considered legitimate if the changes imported are susceptible to reasonable and adequate justification and at the same time serve the purposes of their enactment.

In view of the corrective actions taken by the Ministry of Interior, the Commissioner suggested the direct completion of the procedures for the adoption of the new criteria. As regards the complainant's case, the Commissioner noted that she should be informed of the developments on the issue of adoption of new criteria as well as of the decision of the service following the re-assessment of her application in the context of these criteria.

With a letter sent in March 2011, the Director-General of the Ministry of Interior informed the Anti-Discrimination Body that, firstly, an amending bill for the modernisation of the legislation on Certifying Officers has already been submitted to the House of Representatives and secondly, the application of the complainant shall be assessed upon enactment of the new legislation.

The age criterion of the Subsidy Scheme for Infertile Couples for IVF Treatment (AKP 126/2009).

Mrs. H. P. lodged a complaint against the Ministry of Health as regards the right to receive subsidy for IVF treatment. More specifically, the complainant states that she is 42 years old, married and her efforts to have a child had failed up to this day. For this reason, she decided to proceed to an in vitro fertilisation (IVF) treatment and she applied to the Ministry of Health asking to receive the said subsidy. Her application was rejected since, according to the decision of the Council of Ministers no. 66813/6-2-2008, only women under 40 have the right for subsidy and free medication. According to the complainant, the above decision of the Council of Ministers leads to an unfair and unequal treatment since it sets the applicant's age as the sole decisive criterion for obtaining the subsidy.

During the investigation of the complaint, the criteria which apply to other European countries for coverage of the IVF treatment costs were sought. It was found that these criteria vary from country to country within the European Union.

For example, in Greece the Insurance Organisation for the Self-Employed covers 75% of the cost of medication and gives a specific lump sum for each IVF treatment, up to 3 in total, to women aged up to 50 years. The same age limit of 50 is also fixed in Greece by the Agricultural Insurance Organisation. At this point, I would like to point out that the age limit of 50 years has been established in the Greek legal system as the maximum age limit for women for IVF treatment[5].

In England, the National Health System covers the cost of IVF treatment for women up to the age of 39 years, setting, however at the same time, other criteria which are taken into account for the granting of subsidy, such as the existence of other children, previous failed attempts and the overall health condition of the woman.

Based on the evidence examined, the Commissioner concluded that the age criterion, as the sole criterion set, fails to adequately justify the exclusion of a large number of women who wish to get the subsidy for IVF treatment. Although age forms a significant factor which should be seriously examined, it cannot by itself form the decisive element, ignoring other equally crucial information. Therefore, the exclusive use of the age criterion does not form the most adequate means for achieving the legitimate aim of supporting infertile couples.

The Commissioner noted that it is advisable to establish an integrated system for the assessment of each case, which shall take into account a set of criteria, such as age, physical health, marital status, etc. Furthermore, as already noted, the nature and quality of the family relationships to be created by the birth of a child, should also be taken into account. For the more rational and equitable use of the funds provided for, the Commissioner recommended the setting out of additional income or social criteria.

At the time of drafting of this Report, the Ministry of Health was already processing a bill for the regulation of the medically assisted reproduction and for this reason, the Report of the Commissioner was submitted to the Minister of Health, with the recommendation to examine and proceed to a series of measures taking into account all the above having as a goal the more balanced treatment of all infertile couples.

Discriminatory treatment on the grounds of age in the provision of financial aid to cover the cost of robotic radical prostatectomy abroad (AKP 164/2008, AKP 63/2010).

The Anti-Discrimination Body received two complaints in relation to the rejection of requests to cover the cost of robotic radical prostatectomy abroad by the Ministry of Health. The complainants claimed that, as a result of the Minister's decision, they had suffered unfavourable discrimination on the grounds of their age and their right to private and family life has been violated.

From all the evidence and views set before the Body, it was established that the Ministry has indeed rejected the requests of the complainants because they did not meet the requirements of the regulations of the Scheme for the Provision of Financial Aid for Health Services not offered by the Public Sector, because of their age. Given the Ministry's practice to give the right to cover the cost of treatment using the robotic method abroad only to people under 65, it was further

5. Law no. 3305/2005

established that people over 65, with the same needs, are at a disadvantage as regards their treatment options which are limited to the sole available option of open radical prostatectomy offered at state hospitals which, unlike the corresponding robotic method, does not give the possibility of reducing the impact on the patient's erectile function.

The Commissioner firstly noted that the Regulations of the Scheme do not associate the implementation of their provisions to any age criteria. She also judged that the exception in the principle of equal treatment observed in relation to the handling of requests by persons over 65 was not justified and did not serve a legitimate aim.

The Commissioner reached this conclusion after taking into account that the competent Ministry based its decision on a generalised brief reference to the "reality" of an increasing number of applicants asking for financial aid for treatment abroad and failed to specify the purpose and the specific parameters, which justify the introduction of age criteria. Furthermore, the Commissioner pointed out that, despite the seriousness of the consequences brought about by the Ministry's decisions to a large group of people, the factors on which these decisions are based, apart from the vague and contradicting manner in which they are expressed, are not the result of a basic investigation and do not derive from reliable evidence.

When commenting the Minister's position that the introduction of age criteria in covering the expenses abroad was based on the guidelines of the European Association of Urology (UAU) and on the indication that patients with life expectancy over 10 years are treated with radical prostatectomy, the Commissioner pointed out that the Ministry calculated the "life expectancy" of the Cypriot man based on the estimation of the Medical Services Department without documenting it and without such estimation being consistent with the contemporary reality as regards the increase in the age average in European countries.

In addition, the Commissioner expressed her concern as regards the a priori attribution of erectile dysfunction to all men over 65, on the grounds of assumptions, irrespective of the individual health condition of each man, fully ignoring their right to sexual life. She concluded that this levelling treatment, on the grounds of an unfounded "life expectancy" leads to the exclusion and to the unfavourable discrimination of patients on the grounds of age ignoring crucial personal issues hurting the nucleus of the right to private and family life and to the human dignity of man.

Lastly, the Commissioner underlined that the age classification in this case did not comply with the requirements of the relevant regulatory framework.

Therefore, the Commissioner suggested the re-assessment of the requests of the complainants based on the findings and concerns expressed in the Report.

Furthermore, the Commissioner stressed that the implementation of the Scheme in general, should be made having in mind the principle of equal treatment and the fundamental rights of individuals in order to eliminate the cases of unfavourable discrimination on the grounds of age. To this end, she suggested the avoidance of the introduction of general age criteria while the exemption, in exceptional cases, from this principle should, as she pointed out, be strictly justified also in connection to a special purpose based on fair grounds or evidence of a documented investigation and scientific knowledge.

The issue of exemption from the right to public benefit of Cypriot citizens working in diplomatic missions abroad (AKP 64/2010).

A complaint was lodged with the Anti-Discrimination Body about the implementation of the regulations of the Public Benefits Law[6], and in particular articles 3(10)(c), by the Social Welfare Services in the cases of Cypriot citizens residing abroad as a local staff of the diplomatic missions of the Republic of Cyprus. In particular, with a letter dated 3 November 2009, Mr. A.P. lodged a complaint against the Social Welfare Services on behalf of his son, G. P. The complainant is the father of a nineteen-year old boy with special needs, a public benefit recipient since 1994 as a disabled person, whose benefit was interrupted in April 2007 when his family moved to Athens due to the father's secondment to the Embassy of the Republic of Cyprus.

The Commissioner noted that the decision of the Social Welfare Services to stop giving the public benefit to the disabled child of the complainant on the grounds that he lives outside Cyprus, led inevitably to the inability to meet his special personal needs. This decision was based on article 3 (10)(c) of the relevant Law, under which a public benefit is not given to any person not being in Cyprus for a period of more than one month.

The Commissioner concluded that the obsession of the Social Welfare Services to abide by the letter of the law and the strict interpretation of its provisions cannot be justified by the conditions of this specific case and finally led to the unfavourable treatment of the complainant, in full contrast to the spirit and purpose of introducing the public benefit. The fact that due to the serious financial dependence of the family on the public benefit, the person with disability was finally obliged to abandon his family and return to Cyprus and live with his grandparents and his carer, in order to be able to receive the necessary amount to meet his needs is indicative of the above.

In light of the above, the Commissioner recommended to the Social Welfare Services to re-assess their decision not to grant a public benefit to the person with disabilities during the period in which he lived in Athens with the complainant, examining its request under article 4 of the relevant Law.

Furthermore, the Commissioner suggested that, until the necessary amendment of the relevant Law, the Social Welfare Services should examine more carefully any applications for the granting of a public benefit to Cypriot citizens who live abroad but are employed by the Republic of Cyprus and continue to pay their contributions to the Social Insurance Fund of Cyprus. To this end, each case should be examined in the context of its special conditions and according to the provisions in force, which should also be interpreted broadly taking into account the spirit and purpose of the Law. Moreover, the Commissioner noted that the possibility of exercising the powers of the Director for the granting of a public benefit under article 4 of the relevant Law should be carefully examined and each case should be assessed independently.

After the submission of the aforementioned Report to the Social Welfare Services, the Director of the competent Services stated in a letter that article 4 could not be applied in the case of the complainant since it applies only in cases of meeting emergency needs and not for granting benefits

6. Law no. 95 (I)/2006

on a steady and monthly basis. As regards the recommendations of the Body for the relevant amendment of the legislation, the Director of the Social Welfare Services states that the process of reviewing the legislation has already begun and policy documents have been sent to the Ministry of Labour and Social Insurance for briefing and instructions based on the relevant recommendations.

Combating Draft Evasion with the obligation for alternative service and the effects of this measure on individuals with real mental health problems (АП 1212/2010, АКР 124/2009).

The Anti-Discrimination Body examined two complaints which pertained, the first one, to the alleged failure of the Ministry of Defence to adopt effective measures for the elimination of the phenomenon of draft evasion and, the second one, to the issue of alternative service that, following the recent amendments of the National Guard Law [National Guard (Amending) Law of 2007, Law no. 88(I)/2007], persons with health problems are called to carry out. According to the second complainant, the relevant legislative regulations expose people with existing real mental health problems, whose exemption from military obligations should, as he noted, be ensured, given their material weakness to meet them.

It was deemed expedient that the aforementioned two issues formed the subject of a single Report since it was judged that they refer, in essence, to two sides of the same object. On the one hand, the need to address the phenomenon of draft evasion and, on the other, the need to ensure the non-victimization of a group of conscripts in need of effective protection due to health problems.

Having studied and taken into account the views of the Ministry of Defence as regards the issues under consideration, the Commissioner noted, at first, that the tendency for draft evasion by a group of conscripts using as a pretext mental health reasons, is a real and serious issue and, as such, it is recognized both by the state and society in general. As revealed by the investigation, efforts have been made through successive amendments to the National Guard Laws for its combating. However, due to the unsatisfactory implementation in practice of the relevant regulations and their ineffectiveness as regards the combating of exemptions given under such pretext, a new amendment of the relevant legislation is under progress in view of adopting new more appropriate and preventive regulations.

The Commissioner stressed that, as regards the ability to fulfill military obligations, it is critical to establish in each case, based on objective and commonly accepted rules of the medical science, the state of the mental and physical capacity of all those required to fulfill their military obligations. Therefore, once there are no real health reasons and the regulations on conscientious objections do not apply, it is legally irrelevant to evaluate the will of the conscript for the fulfillment or not of his obligation. Otherwise, if the fulfillment of the military obligations is left exclusively to the will of the conscript, we would inevitably be led to a direct violation of the principle of equality and universality of military service obligation established by the provisions of article 4 of the National Guard Laws. Essentially, the military service obligation would become a right, something entirely contrary to the letter and spirit of the relevant provisions.

The Commissioner concluded that as a result of the phenomenon of draft evasion, justified feelings of injustice are created amongst the conscripts who are classified and fulfill their National Guard obligations while they are asked to postpone their academic or professional plans and cope under difficult sometimes conditions for completing their military service, while knowing at the same time that a significant number of conscripts have not been classified using various pretexts. An issue of equal treatment of people is therefore created while in fact they are under the same or similar conditions but they are not equally treated as regards their military service obligation.

At the same time, the Commissioner pointed out that there is another significant aspect of the matter, which should not be overlooked, which deals not only with who and how many citizens are obliged to fulfill their military obligations, but also with the people who really cannot fulfill these obligations due to real health problems. In this sense, the Commissioner expressed the view that the rigid implementation of a legislative framework as regards the obligation of alternative service is not the most effective response to draft evasion, given that there is always the danger of victimization of persons whose health condition and, in particular, mental health, does not allow them to fulfill any form of service.

The Commissioner noted that there should be a practical effort to harmonise two perfectly legitimate goals: on the one hand, the effective elimination of draft evasion and on the other hand, the protection of mentally ill people. In view of the ongoing process for the amendment of the legislation, the Commissioner suggested that the actions of the Ministry of Defence tend to respect, in practice, the principle of equal treatment of all citizens as regards the universal military service obligation. At the same time, the Commissioner noted that the rights of mentally-ill people, who, based on objective scientific medical criteria, should be treated appropriately, should not be ignored or undermined.

Upon submission of the Report and, in particular on 10 February 2011, the House of Representatives enacted the amending bill of the National Guard Law, the drafting of which was in progress during the investigation of the complaints. With a letter dated 28 February 2011, the Director-General of the Ministry of Defence informed the Body that the new legislation includes significant provisions on the prevention and combating of the phenomenon of draft evasion, which according to the Ministry, shall be limited to a great extent and shall also contribute to the smooth operation of the National Guard.

Implementation of the Principle of Equal Treatment during the students' admission procedure to the halls of residence of the University of Cyprus (AKP 121/2009).

Mrs. A.P. lodged a complaint against the University of Cyprus about the admission procedure of first-year students who have got a place through the second and third allocation to the halls of residence of the University of Cyprus. The complainant stated that for Cypriot first-year students, who get a place through the second and/or third allocation, which takes place at the end of August (immediately after the announcement of the results for the Universities of Greece) no right is

granted for getting a place at the hall of residence since there is no provision for a separate deadline for submission of applications for the admission of these students while the relevant procedures have already been completed and all places have been given.

Based on the evidence set before the Commissioner by the competent Department of the University of Cyprus, it was found that there is no application procedure for the submission of applications by first-year students who get a place through the second and/or third allocation for their admission to the hall of residence, as is the case with the rest of the students. According to the view expressed by the Studies and Student Welfare Service, this gap is mainly due to the fact that the results of the second and third allocations are announced in mid-September, time at which the selection procedures have already been completed and the students who have been selected have been given the available rooms.

For this reason, the Commissioner expressed the view that the exclusion of a category of students from the procedures for admission to a hall of residence cannot be adequately justified on the basis of the arguments set by the Studies and Student Welfare Service. And this is so because for other categories of students, such as the cases of Greek first-year students and foreign students, there is a separate procedure of submission and evaluation of applications, outside the deadlines applied for Cypriot students. Therefore, the Commissioner concluded that the existing framework for the submission and evaluation of applications for admission to the hall of residence creates, through the material exclusion of a category of students, a deviation from the principle of equality of such an extent and form that any convincing justification cannot be acceptable. The Commissioner judged that, in this specific case, there is an unequal treatment against the students who get places through the second and/or third allocation, which consists of the lack of a procedure for the submission and evaluation of applications for their admission to the hall of residence, a procedure which exists for all other student categories.

The Commissioner recommended to the competent Departments of the University of Cyprus to review the existing procedures and proceed with those actions which shall ensure the equal treatment of all students, with the provision of equal opportunities for admission to the hall of residence.

In compliance with the above recommendations, the competent Departments of the University of Cyprus proceeded to the enactment of procedures for getting a place at the hall of residence ensuring in this way their equal treatment with the rest of the first-year students.

The process of exemption from Religious Instruction class in Primary and Secondary education schools (AKP 135/2009).

The Anti-Discrimination Body received a complaint about the procedure followed by the Ministry of Education for the exemption of Secondary Education students from Religious Instruction class and the occupation of exempt students during such a class. During the examination of the complaint, it was established that the investigation would be incomplete if it did not extend to the corresponding exemption procedure followed in Primary Education schools, since this issue

concerns a significant number of students. Therefore, the Commissioner's Report also concerns the procedures of exemption of Primary Education students from Religious Instruction class.

In particular, Mr. A.Z. and Mrs. N.Z. lodged a complaint against the Ministry of Education in respect to the treatment of their daughter, M., who attends the first grade of Secondary School. More specifically, the complainants state that they submitted a request for the exemption of their daughter from Religious Instruction class on the grounds that they are Jehovah's Witnesses. Their application was accepted with a decision of the Secondary Education Headmistress who specified that their daughter was to be occupied during Religious Instruction class with the preparation of a project on a subject to be fixed in consultation with the school management and it would not form part of the student's assessment. Up until October 2009, the school management refused to execute the above decision obliging their daughter either to attend the Religious Instruction class or be in the school yard without supervision.

Article 18, clause 1 -3 of the Constitution of the Republic of Cyprus provides that:

«…1. Every person has the right to freedom of thought, conscience and religion.»
2. All religions whose doctrines or rites are not secret are free.
3. All religions are equal before the law. […]»

In addition, clause 4 of the above article states that every person is free and has the right to profess his faith and manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief. The right to freedom of thought, conscience and religion is only subject to restrictions which are deemed necessary for public order and safety, the public health, the public morals and the protection of the constitutional rights and liberties[7]. Furthermore, clause 7 of this article provides that until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person.

The right to freedom of thought, conscience and religion forms a fundamental human right recognized by a series of international conventions. Indicatively, it is stated that relevant provisions are included both in the European Convention on Human Rights[8] (ECHR) and the Charter of Fundamental Rights[9].

Special emphasis of this freedom is placed on the right of each human to profess a specific religion or belief and to manifest freely his religious beliefs. In a contemporary and democratic society, where many different religions co-exist, the State should organise and ensure the smooth exercise of all religious beliefs, remaining neutral and impartial. This role of the State is directly connected with ensuring public order and safety, religious diversity and tolerance for diversity.

As repeatedly stressed by the European Court of Human Rights, the freedom to exercise and manifest religious beliefs has also its negative side, that is, the right not to be required to disclose one's faith or religious beliefs and not to be required to make any declaration from which it could be inferred whether someone belongs to a religion or a belief[10].

This context also includes the right to exempt students from the Religious Instruction class during their study at Primary and Secondary Education schools. The Commissioner noted that the

7. Article 18, clause 6 of the Constitution of Cyprus
8. Article 9: freedom of thought, conscience and religion
9. Article 10: Freedom of thought, conscience and religion
10. *Alexandridis v. Greece,* no. 19516/06, § 38, ECHR 2008-..., and, *mutatis mutandis, Hasan and Eylem Zengin v. Turkey*, no. 1448/04, § 76 *in fine*, ECHR 2007-XI

general framework for the protection of religious freedom makes it imperative for the exemption not to be accompanied by any indirect sanction or onerous requirement. The exercise of any right becomes substantial only in cases where it is not subject to onerous requirements which ultimately affect the rights of the interested party.

Such onerous requirement could be the requirement to disclose the student's religious beliefs, which is contrary to the negative freedom of religion, which states that it is not required to disclose religious beliefs.

During the investigation of the complaint as regards Primary Education schools, the Commissioner established that the exemption procedure provided for in article 17 of the relevant Regulations concerns only students of other religions («students who are not Christian Orthodox»). Therefore, the exemption procedure inevitably involves the disclosure of the applicant's religion or at least a declaration that he is irreligious, heterodox or of another religion. Otherwise, the request for exemption from Religious Instruction class shall be rejected since there is no provision for any other reasons which justify such exemption.

During the investigation of the complaint in respect to Secondary Education schools, the Commissioner established that the relevant Regulations provide for the exemption from Religious Instruction class for «special reasons», which are not specified by the Regulations. As the Director-General of the Ministry of Education stated, students who are not Christian Orthodox are exempt from Religious Instruction class on the grounds of this provision. Moreover, as stated, it has been clarified with a Ministerial decision that the term «special reasons» also includes reasons of conscience.

From the examination of the evidence which have been analysed, the Commissioner concluded that the disclosure of religious beliefs as a necessary element to exercise a right constitutes an onerous requirement since it is not connected causally to the serving of a legitimate aim. In particular, this requirement violates the principle of necessity since, on the one hand, it conflicts with the negative freedom of religion of both students and their parents and, on the other hand, it is contrary to the special right of parents to guide their children during the exercise of the above right. In addition, the Commissioner judged that, in this specific case, the disclosure of religious beliefs is not reasonably justified and it is not necessary in order to serve any legitimate aim. Furthermore, the possible disclosure of sensitive personal data, such as religion, may form a serious reason for abstention from the exercise of the right of exemption from Religious Instruction class.

Therefore, the Commissioner concluded that the overall treatment of parents and students wishing to be exempted from Religious Instruction class does not comply with the principles of freedom of thought, conscience and religion either because they are forced to disclose their religious beliefs or because there is not a clear regulatory framework as regards the terms and the procedure of exemption known to the interested parties beforehand. Moreover, the framework of abstention of students from school celebrations remains extremely problematic.

As regards the evidence of this specific case reported by the complainants, the Commissioner concluded that the handlings of the Ministry of Education finally led to the stigmatisation of the student, since for many months after the commencement of the school year the student was isolated from her classmates and was in the school yard. It is characteristic that, although the student had obtained an exemption from Religious Instruction class as from 21 September 2009,

the exemption decision was fully implemented in April 2010, two months prior to the end of the school year. This leads to the conclusion that the student's case was not treated with due seriousness by the competent authority and eventually led to her unfavourable discrimination on the grounds of her religious beliefs.

For the effective exercise of religious freedom and the removal of any onerous requirement, the Commissioner recommended the following:

- The examination of the possibility of amending the relevant Regulations at points where there are ambiguities or gaps.
- The preparation by the Ministry of Education of a relevant application form for exemption from Religious Instruction class and abstention from school celebrations.
- The ongoing updating and training of those employed in Primary and Secondary Education schools for handling students exempt from Religious Instruction class or abstention from school activities, so as to ensure that students are not stigmatised because of their choice.

Ex-officio investigation for the non-participation of a paraplegic student in the charitable flight "Joy and Life" (AKP/AYT 1/2009)

On the occasion of publications in the daily press and the allegation of the Cyprus Paraplegic Organisation for the exclusion of a paraplegic student from participation in the charitable flight «Joy and Life» which took place on 8/12/2008, the Commissioner decided to intervene ex-officio, in the context of her responsibilities under the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law of 2004 (Law no. 42(I)/2004). The student was enrolled in a special education unit for people with physical or other disabilities.

In the context of the investigation, an officer of the Anti-Discrimination Body contacted the student's father who briefed him on the incident. The comments and views of the Ministry of Education and Culture as regards the allegations of the father and the positions of the Cyprus Paraplegic Organisation have also been requested.

From the investigation, it was established that, despite the fact that the organisers of the event knew beforehand of the participation in the excursion of children with physical or other disabilities and the special needs involved, the school management and the competent Minister did not plan nor did they take the appropriate measures in order to ensure the participation of the student in the excursion. It was also noted that the drastic mobilisation of the Ministry was observed only following the personal intervention and persistence of the student's father. With all this evidence in mind and having taken into consideration the charitable and educational character of the event, the Commissioner concluded that the handling of the student by the Ministry of Education on the

issue of providing facilities for her participation in the excursion was not the appropriate one while her right for equal participation in the event was not respected.

In particular, the Commissioner pointed out that the handling of the issue by the competent authority was governed by a reasonable series of unplanned solutions, since the solutions which have been proposed involved either the unsafe transportation of the student or her unequal treatment, given the fact that she would be transferred alone to the airport and not with the rest of the students. At the same time, the paradox arising from the evidence of this specific case was pointed out, that is, in an otherwise praiseworthy charitable event for raising awareness for people with disabilities, the equal participation of a student with a disability in this event was not ensured.

From all the evidence of this case, it was found that under the given circumstances and in view of the nature and purpose of the event, the most fair and pedagogical solution appropriate in this case was the use of a special bus for the transportation of all students. The higher cost entailed for the use of a special bus did not in any case set off the pedagogical significance and the need to ensure the equal participation of the student in the school excursion.

Lastly, the Commissioner expressed her concern about the purpose served by the handling of the competent authority in respect to the practical observance of the principles and proclamations of the Ministry of Education itself for combating discrimination and social exclusion[11] and the wider purposes for making such events. Since the poor handling pointed out by this case puts to test, through such unfortunate and sad incidents, the same purposes for making such events, they should, as the Commissioner added, be a cause for concern by the Ministry in view of avoiding similar incidents.

The Commissioner recommended that the Ministry of Education and Culture examine as a priority the issue of equal participation of students with disabilities in the entire spectrum of educational activities including excursions and events. In this context, it deems necessary to adopt effective measures which would ensure the equal access to and participation of all children with disabilities in all educational/school activities. For the effective combating of the risk of educational exclusion of children with a disability, the Commissioner recommended the identification and removal of all obstacles and barriers to equal access of students with a disability to all school excursions and events, in interdependence of the special issues presented by each form of disability.

For purposes of examining and taking all necessary measures for ensuring the equal treatment of children with disabilities in the entire spectrum of school activities, the Report was submitted to the Minister of Education and Culture.

11. For example, «Target 1» for 2009-2010 School Year was «The prevention of social exclusion through education, in the context of a democratic and human school».

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Annex

Guidelines for the Media against Racism, Xenophobia and Discrimination

In an attempt to contribute towards the combating, prevention and eradication of phenomena of racism, xenophobia and discrimination of any form, the Office of the Commissioner, in the context of its responsibilities as the Anti-Discrimination Body, recommends the following ethical guidelines in terms of fulfilling the media's mission for respect for diversity and combating of discrimination.

All people involved in the media:

1) **Respect and honour the civilisation of all countries, peoples and nations.**
2) **Are in solidarity with all peoples and individuals fighting against dictatorship, oppression and foreign occupation of their homeland.**
3) **Promote the understanding amongst all inhabitants of Cyprus, regardless of whether they are indigenous (Greek-Cypriots, Turkish-Cypriots, Armenians, Maronites or Latins) or immigrants.**
4) **Equally defend the rights of all people and all social groups, regardless of race, national origin, sex, colour, religion, language, age, political and ideological beliefs, economic status, social status, personal or other special characteristics.**
5) **Try to ensure that the presentation of facts, actions and social phenomena is done in a manner which does not reproduce racist and xenophobic stereotypes and does not cause social panic for any group of the population and for any person with special characteristics.**
6) **Include in the media agenda positive and not only negative facts, actions and phenomena which relate to immigrants and other social groups with particular characteristics. It is recommended, for example, to include in their programmes and pages counterbalancing shows and publications, in view of making the culture, customs and traditions of immigrants as well as their positive contribution to the Cypriot society known.**
7) **Offer a voice to immigrants and refugees especially as regards issues which affect and concern them.**
8) **Seek to present identifiable persons belonging to the social groups of immigrants, who have contributed significantly to the society.**
9) **Act in such a manner so as to include in the media human resource immigrants or persons who come from vulnerable social groups in order to enhance diversity and representativeness.**

10) Avoid the publication of texts, photographs, sketches as well as the transmission of information and entertainment programmes, which may foster hatred, xenophobia, prejudice and negative stereotypes against any racial, national or social group or person.

11) Use the correct and precise terminology for reporting each case of refugees or immigrants. It is recommended, for example, to avoid the term «illegal immigrant» and use the term «irregular immigrant», since, according to the International Amnesty and the High Commission of the United Nations, the term «illegal» is derogatory and is connected to the notion of illegality and criminality and creates negative stereotypes.

12) Avoid using generalisations or phrases which mock, vilify or devalue the individuals and social groups belonging to the category of immigrants or having special characteristics or facing social exclusion.

13) Avoid in cases of reporting crimes or other forms of delinquency and social deviation, to indicate the nationality, religion, country of origin, economic and social status or other characteristics of the persons involved, unless they form an integral part of the relevant information.

14) Seek the maximum possible documentation or crossing of information and details relating to refugees, immigrants and other vulnerable groups.

15) Are specially trained on issues of management of matters on immigrants and other vulnerable social groups for combating racism and xenophobia which may be reproduced by the media.

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