

Haris Kountouros<sup>1</sup>

## **Summary of legislation implementing**

***Directive 2000/78/EC establishing a general framework  
for equal treatment in employment and occupation***

**with respect to sexual orientation**

**in Cyprus**

This summary was written in 2005 at the request of Kees Waaldijk & Matteo Bonini-Baraldi, when they were writing their book *Sexual orientation discrimination in the European Union: National laws and the Employment Equality Directive* (The Hague: T.M.C. Asser Press, 2006), and has been published on the website of the E.M. Meijers Institute of Legal Studies of the Universiteit Leiden; see [www.emmeijers.nl/experts](http://www.emmeijers.nl/experts).

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<sup>1</sup> King's College London. The author would like to thank Dr Nicos Trimikliniotis of the Cyprus Institute of Labour, Pancyprian Federation of Labour (INEK, ΠΕΟ), Mr Nicos Moiseos of the Cyprus Workers' Confederation (ΣΕΚ) and especially Mr Alecos Modinos of the Gay Liberation Movement of Cyprus (AKOK) for helpful information. Errors and omissions remain mine.

## Introduction

Despite significant progress in the social and economic domain since gaining independence from the United Kingdom in 1960, Cyprus has lagged behind in recognising basic equality rights for homosexual people. Repressive penal provisions against male homosexuals, dating back to the colonial era, were maintained well into the late 1990s.<sup>2</sup> Following the *Modinos* judgment of the European Court of Human Rights in 1993, homosexuality was finally decriminalised in 1998.<sup>3</sup> Legislative amendments in June 2000 and July 2002 removed a number of negative elements which had remained in the 1998 legislation.<sup>4</sup>

Though a positive step, the legislative package 1998-2002 did not seek to tackle discrimination against homosexuals in the workplace and more broadly. The legal changes were themselves driven less by a concern about recognising rights for gays and lesbians and combating discrimination and social exclusion, than by the pragmatic need for the Republic of Cyprus to respect human rights and the *acquis communautaire*, in order to comply with its obligations relating to its accession to the European Union. In practice, discrimination against gays and lesbians is still rife and so are obsolete attitudes and homophobia in the workplace and elsewhere. On a very crude estimation, there are about 30,000 gay and lesbian workers in Cyprus, corresponding to 10 percent of the total working population. The enactment and implementation of the Employment Equality Directive (EED) opens up the prospect for developing a culture of equality in employment and occupation and for removing discrimination based on sexual orientation.<sup>5</sup> This summary traces the main elements of the Cypriot implementing legislation and provides a short commentary on these.

## Enactment and scope of Law 58(I)/2004.

A bill to outlaw discrimination in employment and occupation, in implementation of the Employment Equality Directive, was introduced in the second half of 2003, three years after the adoption of the Directive. The delay in introducing the bill and the heavy workload of the legislative body during the final months leading to the accession of Cyprus to the European Union meant that almost no

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<sup>2</sup> It has to be noted that, pursuant to the British tradition, no laws existed on lesbians.

<sup>3</sup> *Modinos v Republic of Cyprus*, judgment 22 April 1993, [1993] 16 *EHRR* 485. The five-year delay in repealing laws outlawing homosexuality threatened to result in Cyprus' expulsion from the Council of Europe for failure to comply with the Court's decision. The House of Representatives adopted a government-sponsored bill decriminalising homosexual acts between consenting adults in private on 21 May, 1998, just eight days prior to the date set by the Committee of Ministers (of the Council of Europe) as the last date on which Cypriot laws had to comply with the Court's ruling.

<sup>4</sup> These included discriminatory provisions on the meaning of 'privacy' which effectively deemed 'public' (and, hence, unlawful) any sexual acts between men where more than two people were present. Another notable element of the 2002 legislation was the lowering of the age of consent for homosexual persons to 17 years (from 18, as per the 1998 legislation) and the raising of the age of consent for heterosexuals to 17, from 16. See N. 145(I)/2000, Ο Περί Ποινικού Κώδικα (Τροποποιητικός) (Αρ. 4) Νόμος του 2002, Άρθρα 3(α) και 9.

<sup>5</sup> Council Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation (OJ [2000] L 303/16).

room was left for proper scrutiny and consultation with trade unions and other interested organisations, such as the Gay Liberation Movement of Cyprus (AKOK).<sup>6</sup> Consultation was largely confined to a single exchange of letters during the first months of 2004 and two subsequent very brief meetings organised by the Parliamentary Committee for Work and Social Security, that is the parliamentary committee responsible for the study of the relevant bill. One of the two main employers' associations in Cyprus, the Federation of Employers and Industrialists (OEB), did not even participate in the meetings, but merely sent a memo expressing its disagreement with some of the proposed provisions, notably those dealing with sanctions. The absence of proper consultation was strongly criticised by the AKOK in two written submissions to the Ministry of Labour and the Parliamentary Committee for Labour and Social Security on 15 January and 19 February 2004.

Law 58(I)/2004, on equal treatment in employment and occupation ('the Law'), was adopted by the House of Representatives on 18 March 2004 and entered into force on 01 May 2004, that is the date of accession of Cyprus to the EU.<sup>7</sup> The Law implements the provisions of the Employment Equality Directive, with the exception of those relating to persons with disability (which have been transposed by a separate law),<sup>8</sup> as well as those provisions of the Race Equality Directive which relate to employment and occupation.<sup>9</sup> Like all other legislation, this Law effectively applies only to the part of the island controlled by the Republic of Cyprus.

Law 58(I)/2004 applies to all natural and legal persons in both the private and public sectors.<sup>10</sup> Its purpose, as laid out in section 3, is to establish 'a framework for the combating of discrimination based on racial or ethnic origin, religion or belief, age or sexual orientation in the field of employment and occupation in order to put into effect the principle of equal treatment'.<sup>11</sup> The 'principle of equal treatment' is defined as 'the absence of any direct or indirect discrimination based on one of the grounds referred to in section 3 of the Law'.

The scope of the Law is laid down in section 4 and is limited to employment and occupation. The Law expressly applies to (a) conditions for access to employment, to self-employment or occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all

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<sup>6</sup> AKOK: Απελευθερωτικό Κίνημα Ομοφυλοφίλων Κύπρου. Cf. Minutes of the Plenary meeting of Parliament on 18 March 2004, pp. 54-58.

<sup>7</sup> N. 58(I)/2004, Ο Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του 2004.

<sup>8</sup> See N. 57(I)/2004, Ο Περί Ατόμων με Αναπηρίες (Τροποποιητικός) Νόμος του 2004.

<sup>9</sup> A separate law, N. 59(I)/2004, Ο Περί Ίσης Μεταχείρισης (Φυλετική ή Εθνοτική Καταγωγή) Νόμος του 2004, has transposed the provisions of the Race Equality Directive (Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ [2000] L 180/22)) relating to social protection, including social security and healthcare, social advantages, education, and access to and supply of goods and services which are available to the public, including housing.

<sup>10</sup> Law 58(I)/2004, section 2. Cf. Article 3(1) EED.

<sup>11</sup> Law 58(I)/2004, section 3 : 'Σκοπός του παρόντος Νόμου είναι η θέσπιση πλαισίου για την καταπολέμηση των διακρίσεων λόγω φυλετικής ή εθνοτικής καταγωγής, θρησκείας ή πεποιθήσεων, ηλικίας ή σεξουαλικού προσανατολισμού στον τομέα της εργασίας και της απασχόλησης προκειμένου να υλοποιηθεί η αρχή της ίσης μεταχείρισης'.

levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; and (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.<sup>12</sup>

The Law does not apply to ‘differential treatment’ based on nationality, nor to provisions and conditions for entry into and residence in Cyprus by third-country nationals and stateless persons and to the treatment which arises from the legal status of third-country nationals and stateless persons.<sup>13</sup> ‘With the exception of differential treatment based on race and ethnicity’, the Law also ‘does not apply to payments of any kind made by state schemes, including state social security or social protection schemes, with the exception of occupational social security’.<sup>14</sup> Furthermore, ‘with the exception of differential treatment based on race and ethnicity’, the Law is ‘without prejudice to measures which are provided by national legislation and which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others’.<sup>15</sup>

## **The principle of equal treatment**

### *(a) The prohibition of discrimination*

According to section 6(1) of the Law the following are prohibited:

- (a) direct discrimination;
- (b) indirect discrimination;
- (c) harassment; or
- (d) instruction to discriminate on the grounds of religion or belief, age, sexual orientation, racial or ethnic origin in the matters covered by section 4.<sup>16</sup>

The definitions of the terms ‘direct discrimination’ and ‘indirect discrimination’, laid out in section 2 of the Law, replicate Article 2(2)(a)-(b) of the Employment Equality Directive. ‘Harassment’ is defined in the same provision as ‘the unwanted conduct which is expressed in words or deeds and which is related to

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<sup>12</sup> Law 58(I)/2004, section 4.

<sup>13</sup> *Ibid.*, section 5(1).

<sup>14</sup> *Ibid.*, section 5(3)(a).

<sup>15</sup> *Ibid.*, section 5(3)(b).

<sup>16</sup> My translation. The original Greek version is as follows:

6(1). Τηρουμένων των διατάξεων των άρθρων 7 και 8, απαγορεύεται οποιαδήποτε –

(α) άμεση διάκριση;

(β) έμμεση διάκριση;

(γ) παρενόχληση, ή

(δ) εντολή για την εφαρμογή διακριτικής μεταχείρισης λόγω θρησκείας ή πεποιθήσεων, ηλικίας, σεξουαλικού προσανατολισμού, φυλετικής ή εθνοτικής καταγωγής στους τομείς που καλύπτει το άρθρο 4.

one of the reasons listed in section 3 [of the Law], with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.<sup>17</sup> However, it is not made explicit that 'harassment' is deemed to be a form of discrimination within the meaning of the term when relating to one of the grounds falling under section 3. The same is observed with respect to an 'instruction to discriminate'. While this is prohibited by section 6(1)(δ), it is not explicit that it constitutes discrimination within the meaning of the term.<sup>18</sup> This contrasts with the Directive which understands both 'harassment' and 'instruction to discriminate' to be discrimination.<sup>19</sup> A concern about the way in which Article 2 EED has been transposed in the Cypriot Law is that 'harassment' and 'instruction to discriminate' may be treated by the courts as less serious than discrimination, although in practice the consequences for the victim can be just as serious.

By virtue of section 5(2), differences in treatment on the grounds listed in section 3 'do not constitute discrimination as defined by the present Law where, by reason of the nature of the particular occupational activities concerned or of the context in which such activities take place, a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate'.<sup>20</sup> This provision replicates Article 4(1) EED.

One effect of the Law upon its coming into force is to repeal 'any existing provision of a law, regulation or decree [or part thereof], which is incompatible with [its] provisions'.<sup>21</sup> Section 16(2) states that 'the competent authority is obliged to withdraw or amend accordingly every existing individual or regulatory administrative act which is incompatible with the provisions of [the] Law'.<sup>22</sup> Disputes concerning the compatibility of existing provisions with the Law are referred to the competent courts, which include the District and Supreme Courts, for resolution.<sup>23</sup> Provisions (or parts thereof) contained in collective and individual agreements, individual contracts of employment, or company rulebooks incompatible with the Law are also repealed upon the Law's entry

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<sup>17</sup> Άρθρο 2: 'Παρενόχληση' σημαίνει την ανεπιθύμητη συμπεριφορά που εκφράζεται με λόγια ή με πράξεις και συνδέεται με έναν από τους λόγους που αναφέρονται στο άρθρο 3, με σκοπό ή αποτέλεσμα την προσβολή της αξιοπρέπειας ενός προσώπου και τη δημιουργία εκφοβιστικού, εχθρικού, εξευτελιστικού, ταπεινωτικού ή επιθετικού περιβάλλοντος.'

<sup>18</sup> *Ibid.*

<sup>19</sup> See Article 2(3)-(4) EED.

<sup>20</sup> Section 7 provides a justification for differences in treatment relevant to churches and other organisations the ethos of which is based on religion or belief (replicating Article 4(2) EED), while section 8 provides for justifications of differences of treatment on grounds of age (replicating Article 6 EED). These provisions do not concern sexual orientation.

<sup>21</sup> Law 58(I)/2004, section 16(1).

<sup>22</sup> The word 'the' at the beginning of this provision should presumably be read as 'every'. The original Greek version of this section 16(2) is as follows: 'Η αρμόδια αρχή υποχρεούται να ανακαλέσει ή να τροποποιήσει αναλόγως οποιαδήποτε ατομική ή κανονιστική διοικητική πράξη η οποία είναι αντίθετη με τις διατάξεις του παρόντος Νόμου'.

<sup>23</sup> *Ibid.*, section 16(3).

into force.<sup>24</sup> Any new such provisions (or parts thereof) which are incompatible with the Law are deemed void.<sup>25</sup>

*(b) Positive action and the promotion of equal treatment*

The Law explicitly allows for positive action. According to section 9, 'it does not constitute an act of discrimination on the basis of the present Law any more favourable treatment in occupation which, although may indirectly appear as discrimination, is intended to prevent or compensate disadvantages due to racial or ethnic origin, religion or belief, age or sexual orientation'. However, no mention is made of any measures which may be taken to ensure 'full equality in practice' and the phrase itself is not used in the Cypriot Law. The Law also does not seek to impose any duty on public authorities, such as the Ministry of Labour and Social Security, to adopt positive action measures. This is regrettable, especially since the Bill transposing the Employment Equality Directive in respect of persons with disability was amended prior to its final adoption as law in order to provide explicitly that the Ministry of Labour can adopt measures to promote the principle of equal treatment.<sup>26</sup>

On the other hand, a separate law, the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, empowers the Commissioner for Administration (or Ombudsman) to take action to 'promote equal opportunities irrespective of racial or ethnic origin, language, colour, religion, political or other belief, special needs, age and sexual orientation (...) in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance, medical care, education, and access to goods and services including housing'.<sup>27</sup> To this end, the Commissioner can issue recommendations and codes of conduct and raise awareness, for example by public awareness campaigns, aimed at promoting equal treatment. The expanded range of issues, which come under this law, provide a more promising basis for promoting the principle of equal treatment. It should be noted, however, that the Commissioner's actions in this area have no legal force and depend largely on the willingness of public and private bodies to comply with her recommendations.

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<sup>24</sup> *Ibid.*, section 16(4).

<sup>25</sup> *Ibid.*, section 16(5). In all cases referred to in section 16, the part of a disputed provision which is not in breach of the Law's provisions remains valid.

<sup>26</sup> See sections 9-10 of Law 57(1)/2004, Ο Περί Ατόμων με Αναπηρίες (Τροποποιητικός) Νόμος του 2004 amending section 28 and inserting section 28A to Law 127(1)/2000, Ο Περί Ατόμων με Αναπηρίες Νόμος του 2000. The relevant amendments were proposed by the Law Commission to the Ministry of Labour and the responsible Parliamentary Committee. The difference in treatment between the two bills becomes even more evident when considering that both bills were treated as a package. See Minutes of the Plenary meeting of Parliament, 18 March 2004, pp. 50-60.

<sup>27</sup> See N. 42(I)/2004, Ο Περί Καταπολέμησης των Φυλετικών και Ορισμένων Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004, sections 3(1)(γ) and 6.

## Enforcement

The Law expressly recognises the right of every person who considers themselves wronged by any breach of its provisions to bring a legal action and to use any available means to establish such breach and any 'material or moral damage' they have suffered because of it.<sup>28</sup> In a civil legal procedure, when a claimant establishes a *prima facie* case of violation of the Law's provisions, the burden of proof shifts to the defendant who needs to establish that no violation of the Law has occurred, or that the violation had no adverse consequence against the claimant.<sup>29</sup> 'Any adverse treatment or reaction against any person who lodges a complaint or is involved in a procedure aimed at the realisation of the principle of equal treatment' is expressly prohibited by section 10 of the Law.

Trade unions and other organisations with a legitimate interest are granted the right to act on behalf of one or more of their members, provided they have obtained their consent.<sup>30</sup> It is not clear whether consent needs to be given in writing or not. The provision appears to be extending a right to act on behalf of a person only to organisations with members and only in respect of persons who are themselves members of the organisation which is to act on their behalf. A question arises as to whether an organisation is entitled to act on behalf of a person who has given her consent, but is not herself member of that organisation (perhaps because the organisation itself is an equality body without members). It is also unclear as to whether organisations can join complainants in proceedings involving the application of the Law, rather than act on their behalf. Moreover, it seems that organisations cannot institute legal proceedings on their own motion. This is so even where, for example, a union has evidence that discrimination takes place in a workplace.

These omissions are very regrettable. Individual complaints are very unlikely due to the culture which prevails in Cyprus, forcing most gays and lesbians to remain 'closeted'.<sup>31</sup> People who are openly gay are 'tolerated' as long as they keep a low profile. This acts as a major barrier to the prospect of judicially seeking to enforce equal treatment rights provided by the Directive and the transposing Law. That is why it is so important to vest trade unions and other organisations, such as the AKOK, with a right to bring legal proceedings before the courts on their own motion. The failure to do so indicates a short-sighted approach to the complex issue of tackling discrimination.

An additional weakness is that the Law does not impose a requirement for disseminating information on the rights and obligations it creates and therefore fails to transpose Article 12 EED. Information on the ground is extremely limited

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<sup>28</sup> Law 58(I)/2004, section 11. 'Material and moral damage' appears in the Greek original version as 'υλική και ηθική ζημιά'.

<sup>29</sup> *Ibid.*, cf. Article 10(1) EED.

<sup>30</sup> Law 58(I)/2004, section 14: 'Οργανώσεις εργαζομένων ή άλλες οργανώσεις που έχουν έννομο συμφέρον μπορούν, με την συγκατάθεση των μελών τους που νομιμοποιούνται με βάση τον παρόντα Νόμο, να ασκούν εξ'ονόματος τους τα δικαιώματα που απορρέουν από τα άρθρα 11 και 13'.

<sup>31</sup> Cf. Trimikliniotis (2005), *Report on Measures to Combat Discrimination. Country Report: Cyprus*, p. 55.

and there is no tradition of anti-discrimination in Cyprus.<sup>32</sup> This means that employers and workers can be oblivious of their rights and obligations and those who are affected by discrimination can be unaware of the law's protection. This perpetuates discrimination and obsolete attitudes in the workplace and impedes the effective application of the law.

Legal cases involving the Law's provisions generally fall under the jurisdiction of the Court of Labour Disputes. In certain special cases, mainly in relation to judicial challenges against administrative decisions, jurisdiction is reserved for the Supreme or District Courts.<sup>33</sup> Compensation must cover at least the real damage suffered by the victim, plus interest.<sup>34</sup> In addition to compensation, the Law also provides for the possibility of penal sanctions. A fine and/or imprisonment may be ordered against any person who violates sections 6 (prohibition of discrimination) and 10 (prohibition of victimisation). In the case of legal persons, a fine and/or imprisonment for violation of sections 6 and 10 may be ordered against the director, president, manager, secretary or other similar official of the organisation.<sup>35</sup> An additional fine can also be ordered against the organisation.<sup>36</sup>

The Law also provides for an 'extra-judicial' procedure for enforcement. It may be recalled that Law No. 42(I)/2004 empowers the Commissioner for Administration (Ombudsman) to take actions to promote equal opportunities. That same law empowers the Ombudsman to investigate complaints by persons who consider themselves wronged by discriminatory treatment based, inter alia, on the victim's sexual orientation. In turn, Law 58(I)/2004 grants a right to every person who considers that they have been wronged by a violation of its provisions to lodge a complaint with the Commissioner.<sup>37</sup> The relationship between the two laws indicates that a complaint to the Commissioner in this particular procedure can only be lodged in respect of the scope of Law 58(I)/2004, rather than the expanded scope of Law 42(I)/2004, that is only in respect of matters concerning discrimination in employment and occupation. Trade unions and other organisations with a legitimate interest may submit a complaint to the Commissioner on behalf of one or more of their members, provided they have obtained their consent.<sup>38</sup> In accordance with the provisions of Law No. 42(I) and depending on the facts of the case under investigation, when an investigation reveals discrimination, the Commissioner may order the end of the discriminatory practice or provision and set a deadline for compliance, make recommendations to affected parties, issue codes of conduct and impose fines on natural and legal persons in the public and private sectors. All orders, fines and recommendations issued or imposed under this law are

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<sup>32</sup> *Ibid.*, pp. 5, 26 and 57.

<sup>33</sup> Law 58(I)/2004, section 12.

<sup>34</sup> *Ibid.*, section 12(3).

<sup>35</sup> *Ibid.*, sections 15(1)-(2). In both cases the fine cannot exceed CYP 4,000 (approx. EUR 6,900), while imprisonment cannot exceed six months.

<sup>36</sup> *Ibid.*, section 15(2). The fine cannot exceed CYP 7,000 (approx. EUR 12,200).

<sup>37</sup> Law 58(I)/2004, section 13.

<sup>38</sup> *Ibid.*, section 15.

subject to annulment by the Supreme Court upon an appeal lodged by a person with a 'vested interest'.<sup>39</sup>

A particular strength of this procedure is that it is free, while at the moment no legal aid scheme exists in Cyprus, save for criminal matters, something which hampers the prospects for enforcing the law by judicial means. Compliance with the Commissioner's reports and decisions is not as high as it should be, as reportedly, 40 percent of her reports are ignored especially by public bodies and authorities.<sup>40</sup> It remains to be seen whether the Commissioner's decisions in respect of cases involving discrimination will have a high rate of compliance. It should be said, however, that the very low level of fines which can be ordered by the Commissioner – CYP 350 (around EUR 600) – appears an insufficient deterrent against discriminatory practices.<sup>41</sup> Having said this, further fines of CYP 350 can be imposed for non compliance, and/or CYP 50 (about EUR 85) per day for continuing failure to comply after the expiry of the deadline for compliance set in the Commissioner's decision.<sup>42</sup>

The Commissioner can also, either on her own motion or after a request by public and governmental bodies and organised groups, launch an investigation into any situation, in which:

- (a) there has been treatment or behaviour by a private or public person, or where a law, rule, criterion or practice has been applied, in violation of section 6 of Law 42(I)/2004;
- (b) there is a law, rule, criterion or practice which constitutes a violation of section 6 of Law 42(I)/2004;
- (c) a law, rule, criterion or practice which is intended to be applied by a public or private person would constitute a violation of section 6 of Law 42(I)/2004.<sup>43</sup>

This procedure, which is provided under Law 42(I)/2004, must be distinguished from the extra-judicial procedure laid out by Law 58(I)/2004. Accordingly, the scope of laws, rules, criteria or practices which may come under scrutiny is not confined to employment and occupation, but extends to social insurance, medical care, education, and access to goods and services including housing (as *per* section 6 of Law 42(I)/2004). Where the Commissioner concludes that a rule or practice is in breach of the principle of equal treatment she can make recommendations to the relevant parties. If the behaviour or treatment, law, rule, criterion or practice has resulted from the application of another law, regulation or other legislative instrument, the Commissioner must inform the Attorney General of the Republic.<sup>44</sup> The Commissioner must also inform the Attorney General when she determines there is a violation of section 6 in the second and, for public persons only, the third case above (that is, (b) and (c)).

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<sup>39</sup> Law 42(I)/2004, sections 23 and 146.

<sup>40</sup> Hadjivasilis M., 'Στον κάλαθο το 40% των εκθέσεων της Επιτρόπου'. I have no data on the rate of compliance in the private sector.

<sup>41</sup> Trimikliniotis (2005), p. 50.

<sup>42</sup> Law 42(I)/2004, section 26(1)(α)-(β).

<sup>43</sup> Law 42(I)/2004, sections 32-34.

<sup>44</sup> *Ibid.*, section 33.

The Attorney General is, in turn, obliged to look at the matter and, where necessary, take appropriate action.<sup>45</sup> The findings of the Commissioner must also be communicated to the House of Representatives.

The above procedure is clearly intended to ensure that the regulatory framework which exists in Cyprus does not contain discriminatory provisions. However, the attainment of this objective arguably depends vitally on at least three factors. First, it depends on the practical capability of the Commissioner's office to investigate what is potentially a very large body of legal and other instruments. Second, it depends on stakeholders taking an active involvement in the process, as it is simply not possible to expect the Commissioner to single-handedly detect the myriad of rules, criteria and practices which may contain discriminatory provisions across laws and regulations. Thirdly, it depends on the willingness and efficacy of the executive and legislative branches to act, once they are informed of the Commissioner's findings, so as to ensure the regulatory framework complies with the principle of equal treatment.

Finally, Law 58(I)/2004 empowers the Minister of Labour, whose department is responsible for this law, to appoint a team of inspectors, led by a Chief Inspector, in order to promote the better application of its provisions.<sup>46</sup> Their powers and responsibilities are to be defined by regulations.<sup>47</sup> As of the end of 2005, no such inspectors were appointed and no regulations had been prepared, or were being prepared, in order to put into effect this provision.

### **Concluding comments**

The largely 'carbon-like' transposition of the Employment Equality Directive in Cyprus may be partly justified as an attempt to ensure accurate implementation, but can also be viewed as the result of the delay on behalf of the Government to bring forward legislation to implement the principle of equal treatment in employment and occupation. As noted in the beginning of this summary, the procedure leading to the adoption of Law 58(I)/2004 cannot be considered satisfactory. A result of the hasty manner in which the Law was enacted has been that, with the possible exception of the enforcement procedure involving the Commissioner for Administration, this does not extend beyond the minimum requirements of the Directive. Arguably, for example, the scope of the Law should have been broader, to include access to goods and services, social security and social protection. Additionally, despite the replication of most of the Directive's provisions, as we have seen, some provisions have not been transposed accurately, or even not at all.

It is suggested that the prospects for combating discrimination based on sexual orientation in Cyprus depend on a number of factors. One such factor is whether the existing legislative framework will be buttressed with the necessary means to ensure that this is properly applied and that the rights which the Law provides are effectively enforced. This arguably concerns especially the appointment of an Inspectorate for compliance with the principle of equal

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<sup>45</sup> *Ibid.*, sections 38-39.

<sup>46</sup> Law 58(I)/2004, section 19(1).

<sup>47</sup> *Ibid.*, section 19(2).

treatment in the workplace and the provision of legal aid to assist victims of discrimination to seek redress by legal means. The provision of information on the rights and obligations of all persons in relation to the principle of equal treatment must also be considered a paramount need. Social partners and NGOs should be granted an explicit right to bring legal proceedings challenging discriminatory practices or provisions on their own motion.

Yet, the combating of discrimination based on sexual orientation involves a much broader range of issues than enforcement. In particular, it depends significantly on the development of a common course of action by all relevant stakeholders, not least the social partners and NGOs, such as the AKOK. Articles 13 and 14 of the Employment Equality Directive provide explicitly for the encouragement of social dialogue and of dialogue with NGOs. However, Law 58(I)/2004 merely requires the Minister of Labour to take into consideration the views of the social partners and relevant NGOs when preparing his report on the implementation of the Law in Cyprus to the European Commission, pursuant to Article 19 EED.<sup>48</sup> The failure to provide for an institutional role for unions and other stakeholders in policy-making on combating discrimination stands in stark contrast with the intention of the Directive and also the Union's guidelines for employment.<sup>49</sup> As noted in the Cypriot report on the implementation of the Community equality directives,<sup>50</sup> 'when it comes to policy-making, dialogue or consultation with non-governmental organisations is either nonexistent, very limited or appears to have little influence over the outcome of the process; there is little feedback or proper engaging in a debate, so as to identify the best possible ways of combating discrimination'.<sup>51</sup> Saying this, it also needs to be stated that social partners themselves have not shown much enthusiasm for tackling discrimination against gays and lesbians, reflecting the wider societal culture which exists on the issue. For its part, AKOK, a lonely voice struggling to bring to light discrimination and homophobia, faces significant problems and opposition from the church (which in Cyprus is a mighty power) and other conservative institutions, rendering it an outcast in Cypriot society, with no substantive support from the state or the social partners.

Perhaps the most notable aspect of the Cypriot implementing legislation concerns the powers granted to the Commissioner for Administration by Law 42(I)/2004 and the right given to victims of discrimination to file complaints with her Office (see section 13 of Law 58(I)/2004). In light of the limited prospects for judicial enforcement of anti-discrimination provisions, especially in the field of sexual orientation discrimination, and of a general absence of other initiatives or actions on the issue (by NGOs or social partners),<sup>52</sup> the Commissioner's office emerges as the key player for addressing discrimination in both the public and private sectors. The Commissioner's powers of review and investigation provide a basis for bringing domestic laws, regulations and practices in line with the

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<sup>48</sup> Law 58(I)/2004, section 18(2).

<sup>49</sup> See Council Decision on Guidelines for the employment policies of the Member States (OJ [2005] L 205/21).

<sup>50</sup> That is, Directives 2000/43/EC and 2000/78/EC.

<sup>51</sup> Trimikliniotis (2005), p. 5.

<sup>52</sup> *Ibid.*

principle of equal treatment. However, a major weakness of this procedure, besides concerns about compliance with the Commissioner's decisions, is the continuing delay on the part of the government to fund the Commissioner's office sufficiently in order to make adequate staffing arrangements so as to cope with the additional duties bestowed upon it by the new legislation.<sup>53</sup> Furthermore, practice suggests that the process of formal repeal of those laws which do not comply with anti-discrimination laws is triggered off only after a complaint has been filed with the office of the Commissioner for Administration, despite the possibility of an 'own-motion' investigation by the Commissioner.<sup>54</sup>

Overall, a great deal more should be done to tackle discrimination against gays and lesbians in Cyprus. Robust action by governmental and non-governmental bodies is required to inform and educate people and institutions of their obligations and rights under the law and provisions must be put in place to ensure the effective application and enforcement of the relevant legislation. Social dialogue and dialogue with NGOs should be encouraged and supported, and policy-making, which should actively involve all key stakeholders, should be aimed at changing attitudes and developing a more inclusive and tolerant society. The implementation of the Employment Equality Directive is a necessary step to this direction but, in itself, not a sufficient one.

## Literature

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<sup>53</sup> *Ibid.*, p. 53.

<sup>54</sup> *Ibid.*, p. 4.