



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

Authorities' observations on the report on the visit to Cyprus

25-26 November 2021



European Economic
and Social Committee

Observations from the Government of the Republic of Cyprus on the draft report of the European Economic and Social Committees Fundamental Rights and Rule of Law Group on its visit to Cyprus on the 25th-26th of November 2021

The Republic of Cyprus would like to express its appreciation to the Fundamental Rights and Rule of Law Group for the interesting exchange of views that took place on the 25th of November and would like to present additional comments to the subsequent draft “Report on the visit to Cyprus 25-26 November 2021” in the following sections.

The Republic of Cyprus would like to underline once more its commitment to uphold the rule of law principle as a core value of the EU and an indispensable element of a democratic society.

1. Fundamental Rights related to social Partners

Social dialogue is one of the most important elements for setting labour policy. Especially in the sphere of work, but also generally in the social sector, making good use of honest social dialogue in an atmosphere of trust for the development of policy decisions, remains central to the processes of consensus-based policy formulation. In this respect, Cyprus has a large number of permanent Tripartite Social Dialogue Bodies dealing with employment policies, labour law, and social issues in which social partners participate as advisors. The most important of these is the Labour Advisory Board, which regularly deals with all labour and social issues affecting the world of work. The introduction of new legislation or amendments to existing legislation are always discussed at the highest tripartite level that is the Labour Advisory Board.

In order to further strengthen the implementation and enforcement of equal pay legislation in particular, officers and inspectors of the Ministry, along with officers from the Ombudsman’s Office, follow a detailed training programme of theoretical and practical content, aimed at enhancing their knowledge and skills when conducting inspections or handling complaints regarding the Law on Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed. Their training includes job evaluation methods. Moreover, during the period 2010-2021 inspections were carried out on the basis of an annual target set at 200-300 inspections per year, which were both preventive and repressive in nature. In addition to requesting data aiming mainly at detecting direct discrimination in pay, the inspectorate’s role also focused on providing information to both employers and employees on the provisions of the legislation, but also practical compliance guidance to employers. In 2022, targeted and more detailed inspections are taking place, based on a risk assessment that has been conducted.

It is important in this context to explain that measures concerning discrimination, equal pay between men and women, protection of migrant workers in Cyprus and other pieces of legislation in relation to labour inspection are covered by specific Laws.

Such legislation is Law N.205(I)/2002 regarding equal opportunities for men and women in the workplace and vocational training which is monitored by the Department of Labour. The Department of Labour is actively taking all necessary measures to implement its national legislation on the enforcement of the equality principle and the promotion of equal opportunities for men and women in the workplace, vocational training, according to the Law 205(I)/2002 as has been amended and is fully harmonized with EU directive 2006/54/EC. This is fulfilled with the extrajudicial mechanism of Gender Equality Inspectors of the Department of Labour which continues to examine complaints concerning gender discrimination (including complaints in relation to sexual harassment at work, pregnancy and maternity) in order to ensure equality in employment and to combat discrimination. A person facing sex discrimination can submit a complaint to the quality Inspectors under The Equal Treatment for Men and Women in Employment and Vocational Training Law. This Law No.205(I)/2002, as amended, provides in Section 27 the way/procedure for investigating a complaint by the Gender Equality Inspectors of the Ministry of Labour and Social Insurance. Specifically, the gender equality inspector will proceed with mediation between the complainant and the employer in order to resolve the issue. If an agreement is reached the inspector will write a report and both parties will then sign it. If an agreement is not reached, a report will be drafted which can be presented before a court. Equality Inspectors are posted in each PES District Office and may advice or receive and examine complaints regarding the protection of maternity or may receive complaints regarding sex discrimination which are investigated according to the Equal treatment of Men and Women in Employment and Vocational Training Law.

Regarding the **National Action Plan for the Integration of Migrants** it should be mentioned that a draft Action Plan was prepared by the Ministry of Interior in 2020 and although its formal adoption by the Council of Ministers is still pending, many actions have been implemented by the competent authorities.

In this context it should be clarified that the Public Employment Services (PES) of the Department of Labour offer all job seekers (including migrants) assistance in finding employment, without discrimination, through registration, job search services and placement services, which include vocational guidance, counselling and referrals to training programmes and job vacancies. Asylum seekers have access to specific sectors of employment regulated by a ministerial order. The range of these sectors/occupations has been expanded in 2019 in order to include more attractive occupations.

In the period 2018-2021, in order to improve the services offered by the Public Employment Service, the Department of Labour hired 30 new temporary Employment Counselors, for the provision of individualized services to the unemployed, mainly people belonging to vulnerable groups. They are placed in Public Employment Service Offices throughout the Republic of Cyprus. Their contracts have been extended until the end of 2023.

2. Freedom of association and assembly

As regards the observation of the **shrinkage of civic space**, partly because of the replacement of the national registries with regional registries and the delays this has provoked, it should be taken into account that the decentralization of the procedures followed by the public service is a process that has been repeatedly proven to benefit the citizens. The delay observed is due to the fact that suddenly a huge number of NGOs had to be checked regarding the compliance of the statutes with the provisions of a new Legislation [104(I)/2017]. The audits were mainly aimed at ensuring that, unlike under the previous legislation, the statutes have been strengthened with degrees of transparency and democracy. In order to expedite the process, especially for the Nicosia District which has the largest number of registrations, the ministry proceeded with the process of purchasing services from law firms.

The changes imposed by the Law 104(I)/217 were aimed, on the one hand, at the proper management of the finances of NGOs in order to avoid tax evasion and money laundering phenomena, on the other hand, they were aimed at strengthening democracy in the operation of NGOs. For the first time, the requirement for collective decision-making through general assemblies was strengthened to such an extent that it made the NGO's pillars of democracy, rather than the one-person or few-person entities they were before and created a healthier framework for their operation. As far as the implementation of a single policy is concerned, training seminars were organized, and a huge amount of time and cost was invested in order to improve the procedures. Through statutes reviewing, it was found that a large part of the problem facing the NGO's sector in Cyprus today is mainly the attempt to exploit the definition of the Association, so that various companies, mainly sports or other schools, are not registered as companies but as Associations, in an effort to win tax and other reliefs but also to receive grants. This is also the reason why the owners of sports schools feel strongly about the implementation of the new law, since when such cases are detected, they are deleted from the Association registers. We do not agree that there is complexity in the process for unions operating on the basis of the constitutional right of assembly. On the contrary, the process became very demanding for Associations that were actually businesses and falsely registered as Associations. The complexity arose from the Ministry of Interior requirements to establish that Associations representatives were not in fact tax-evading businessmen through the 104(I)/2017 Law.

As for the allegations of **“hefty and unnecessary requirements”** imposed on CSOs, the Ministry of Interior considers that the amount of €40,000 is too high, since more than 90% of NGOs declare income below €40,000 per year. Also, a large number of NGOs that declare income below €40,000 have not yet submitted the simple financial report required by the Law. Taking into account that a large number of associations are actually businesses which, if were registered as debtors in the register of companies, would have to submit accounts from zero income, it emerges how the amount of €40,000 creates a huge incentive for companies to submit false representations (declaring e.g. that instead of a karate school it is a karate club, instead of a tennis school it is a tennis club) in order to manage to evade taxes on the one hand

and create unfair competition on the other. These cases have been identified and a strict control framework has been implemented, which so far shows among other things that in several cases the audited accounts submitted for income over €40,000 do not follow European or International Audit standards. In addition to that, a risk assessment of the entire NGOs registry for the offenses of money laundering and terrorist financing has been initiated on the basis of the FATF guidelines. The results so far have shown that 24% of NGOs are moderately high and high risk for money laundering and 13% for terrorist financing. The Ministry has drawn up a program of further control for these cases. The requirement for a clean criminal record and a certificate of non-conviction for crimes against minors [in the case of Associations that also target minors in their activities-e.g dancing, martial arts, sports, reading etc], provided for by the Law 104(I)/2017, does not differ from the definitions in the rest of the legislation of the Republic of Cyprus which provide such obligations. Finally, the outcome of the controls performed by the Registrars do not support the claims of the NGOs regarding the reasons behind the rejection of applications of many CSOs.

Concerning the **deregistration procedure**, the inclusion of these organizations in the lists of Associations/institutions to be deleted, relate primarily to the non-submission, after a period of 4 years, of a statute harmonized with Legislation 104(I)/2017. The deregistration procedure targets the vast majority of inactive NGOs that were established since the enactment of the previous legislation in 1972 and which ceased to operate without being obliged to notify the Registrar. The fact that out of 2500 unions only about 60 came forward and protested their deletion and only one appealed to the Court, with the decision being against it, proves that the vast majority of the deleted CSOs were inactive unions. There were even some NGOs that did not present themselves for updating because they owed income tax and contributions to the social security fund and saw the process as an opportunity to deregister. Of course, according to Law 104(I)/2017 a liquidation process follows.

Furthermore, we reiterate our position that claims regarding **libel** are completely baseless and unsubstantiated.

Last but not least, we would like to mention some measures that the Republic of Cyprus has taken in order to strengthen the role and the involvement of CSOs in public life:

In 2021 the Council of Ministers approved the elaboration of a **National Strategy on Active Citizenship and Participatory Governance**, which is currently being conducted by the Office of the Commissioner for the Citizen.

The Government submitted to the Parliament the **legislation on “Citizens’ Initiative”**, the philosophy of which is based on the European Citizens’ Initiative. The legislation has already been discussed at the Parliamentary Committee on Legal Affairs and will be discussed at the Plenary Session of the Parliament in autumn, in order to be approved.

The Office of the Commissioner for the Citizen takes on **actions to empower the civil society**, as follows:

- In December 2021 a major Conference under the title “SDGs and the aspect of co-design and participatory processes regarding the implementation of the 2030 Agenda” was organized, with the participation of NGOs, citizens, politicians, the government and other stakeholders.
- In 2022 the Open Citizens’ University was established, with regular round-table debates open to the public.
- The first Democracy Forum in Cyprus took place in May 2022, with two pre-events, i.e. an Ideas Lab on Public Consultations and a Digital Democracy Hackathon.
- In 2021 a series of presentations on the EU Program CERV (Citizens, Equality, Rights and Values) and its funding opportunities for NGOs was organized all over Cyprus.

3. Freedom of Expression and the Freedom of Media

Regarding **Media Pluralism** it should be taken into account that transparency has been strengthened (Article 30A) following the enactment of the amending law of Radio Television Organizations Laws on 23/12/2021 (aligning national legislation with the Directive 2018/1808/EU). More specifically paragraph (2) of Article 30A stipulates that the media service provider shall make accessible to the Cyprus Radio Television Authority, information concerning its ownership structure, including the beneficial owners. Paragraph (3) provides that any measure the Authority takes for this purpose shall respect fundamental rights, such as private and family life of the beneficial owners and shall be necessary and proportionate and its aim shall be to achieve a goal of general interest.

4. The right to non-discrimination

The **gender pay gap** has decreased significantly during the last decade and keeps following a downward trend. It has further decreased by 20% since 2017 (11,2%), and currently stands at 9% according to the latest available data for 2020.

Eliminating the gender pay gap, has been a clear and constant goal of the Ministry of Labour and Social Insurance, and this has been pursued through several targeted actions. A national model for certifying enterprises which adopt policies promoting gender equality in the workplace and especially equality in pay has been developed, and a National Certification Body has been established since April 2014. So far, 61 companies have been rewarded for their efforts to ensure equal pay and attract and retain the underrepresented sex, for applying actions to improve gender balance in decision-making positions, for adopting gender-neutral job classification systems, for implementing policies aiming at the reconciliation of work and family life, to mention only a few. 25 of the certified companies have renewed their certification.

Moreover, the Ministry of Labour and Social Insurance engages in activities contributing to raising public awareness on the gender pay gap and its detrimental consequences on women's economic and social life, such as the organisation of annual Equal Pay Day events. A panel discussion which was titled "The gender pay gap between men and women - The current situation and concerns for the future" as well as an online campaign marked the 2022 Equal Pay Day. A representative of the Ministry and one representative from each of the trade unions and employers' associations participated in the panel, aiming to shed light on issues such as the implications of the gap for workers, the economy and society, the impact on young people and the importance of choosing a profession amongst others. More than 1700 persons watched the panel discussion online, commenting and raising questions.

The following table shows the percentage and number of women in partial employment for the past 10 years according to the Labour Force Survey of the Statistical Service of Cyprus:

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Percentage of women working in partial employment	12,9%	13,7%	16,1%	17,2%	16,5%	16,5%	16,1%	14,9%	15,1%	14,2%	13,4%
Number of women working in partial employment	24.505	25.138	28.103	30.597	28.721	28.785	29.315	28.362	29.401	27.749	27.138

As shown above, the number and percentage of women working in partial employment has decreased in the last 2 years. Also, the share of employed women working in partial employment in 2021 is the lowest since 2012.

Furthermore, additional effort was taken to safeguard the **rights of people with disabilities**. After the ratification of the UN Convention on the Rights of Persons with Disabilities in 2011, the Republic Cyprus has adopted its National Strategy for Persons with Disabilities 2018-2028 and implements three-yearly National Disability Action Plans (2013-2015, 2018- 2020 and 2021-2023), defining the vision, values, strategic goals and actions for further fulfilment of the rights of citizens with disabilities, in all areas of their life. Cyprus's Disability Strategy and Action Plans are linked to the concluding observations made to the Republic of Cyprus by the UN Committee for the Rights of Persons with Disabilities in 2017 and take into account the opinions and suggestions of the organisations representing persons with disabilities.

Moreover, the National Strategy for Persons with Disabilities 2018-2028 and the National Disability Action Plans (2013-2015, 2018- 2020 and 2021-2023) are in line with the European Disability Strategy 2021-2020 and the European Disability Strategy 2021-2030. The National Disability Action Plan 2018-2020 included 86 actions, of which 54 (percentage 63%) were fully implemented, 26 (percentage 30%) were partially implemented, and 6 (percentage 7%) were

not implemented. The New National Disability Action Plan 2021-2023 was enriched with more actions (135 in total) to be implemented by 8 ministries and 3 deputy ministries.

For the purposes of monitoring the effective implementation of the National Disability Strategy and the NDAPs, the Department of Social Inclusion of Persons with Disabilities requests from each competent body to self-evaluate its implementing actions annually. The results are submitted to the Pancyprian Council for Persons with Disabilities and the Council of Ministers.

Regarding complaints from persons with disabilities, the Office of the Commissioner for Administration and Human Rights has been designated as the Independent Mechanism by the Ministers' Council with its Decision No. 73.519 dated 9.5. 2012. Every person with disability has access to submit a complaint to be independently investigated. In addition, Cyprus has ratified the Optional Protocol of the UNCRPD giving the right to every person to submit a complaint to the UN Committee for CRPD.

In relation to access in housing it is noted that every person with disability who fulfils financial criteria and is eligible for Guaranteed Minimum Income, is also eligible for a monthly subsidy to rent a house, higher than the subsidy of a person without a disability.

On the issue raised regarding the limitations on the **place of residence of migrants** it is clarified that the relevant Decree prohibiting asylum seekers to stay in certain areas aimed to the avoidance of the creation of ghettos resulting from the concentration of big numbers of migrants in areas with small populations in a way that would prohibit their integration in local communities. It is reminded that relevant Acquis (Reception Conditions Directive- Article 7(2)) allow MS to decide on the residence of the asylum seeker.

5. The Rule of Law

The **“doctrine of necessity”** is irrelevant to the rule of law and the reforms put forward by the Government aiming to further safeguard the application of this fundamental principle.

However, since it is mentioned in the Draft Report it is necessary to put forward certain factual Information regarding this doctrine in order to avoid misunderstandings. Following the inter-communal conflicts of 1963 and the subsequent withdrawal of Turkish Cypriot officials from functions and bodies of the Republic, the Cypriot legal system ended up at once unable to reproduce itself by, and in accordance with, its own framework and legality (of which the principle of bi-communality was a basic constitutional trait). The Parliament, consisting solely now of Greek Cypriot members, passed a law that overrode certain provisions of the Constitution related to the bi-communal composition of the judicial bodies and the adoption and promulgation of legislation. The Supreme Court rendered the pivotal decision *The Attorney General of the Republic v. Mustafa Ibrahim and others* [1964] CLR 195, ruling famously that the aforementioned legislation is not subject to unconstitutionality, due to the ‘doctrine of necessity’ (fundamental maxim of which, as stated, is that the salvation of the state should be the supreme law), Basically the doctrine of necessity applied so as to preserve the fundamental services of the state including the administration of Justice. **CY Constitution provides**

preventive and repressive control of the Laws (articles 140 and 144 of the constitution) so checks and balances are existing within the framework of the doctrine of necessity. Therefore, all the information provided under section 5 in this report must be considered, with the above clarifications in mind.

Furthermore, references to the **Attorney General** are inaccurate because the Attorney General does not participate in the Council of Ministers but he participates in the National Council. He is the legal advisor to the government. Furthermore, there is no Constitutional norm that prohibits the President of the Republic to appoint as an Attorney General a person that participated in the government as a Minister before his appointment as an Attorney General as long as he has the qualifications which the Constitution provides in Art 112,113. It should be taken into account that the Ministers in the Republic of Cyprus are not Members of the Parliament and they do not necessarily participate in a political party. The Attorney General performs his duties in accordance to the Constitution and the legislation of the Republic of Cyprus.

Regarding the **presumption of innocence** in civil cases it is underlined that the allegation concerning “the existence of a criminal investigation to be proof of wrongdoing, even prior to any court decision in the case in question” is plainly wrong. A criminal investigation is never proof of wrongdoing without a court decision.

Concerning the allegations regarding **lack of transparency on migration policy** it should be noted that migrants who enter the Republic of Cyprus legally are very well informed about their rights and obligations prior to their arrival in order to proceed with the practical arrangements of their stay (visa, residence permit, work permit, access to health and educations etc.). Irregular migrants are not informed since they arrive irregularly. Asylum seekers are given access to the required reception conditions, health care and vulnerability screening as prescribed by EU Law as soon as they arrive.

Furthermore, the Ministry of Interior has never proceeded with expulsions before the rejected asylum or irregular migrant concerned had received a final decision (i.e after an appeal to the court) regarding his/her case.

Finally, **the Cyprus Investment Program** (referred to in the document as “golden passports”), has stopped.

6. Fundamental Rights Challenges in the non - government controlled areas of the Republic of Cyprus

The official term is “areas that are not under the effective control of the Government” and references to the “south” should be avoided.



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