Contents

An Introductory note from the Ombudsman

This Report is double in the sense that it concerns two time periods of the Equality Authority's actions, 2007 and 2008.

Having to utilize an exceptionally broad field of jurisdictions and groups of people falling within that field, the Authority manages to bring to light issues of serious discriminations in the area of production procedure, both in their practical implementation as well as in the legislation governing that.

Even though any deduction is still premature – there are areas of jurisdictions that have not been tested with the investigation of the complaints – what distinguishes the particular period is on the one hand the increase of the complaints on the grounds of sex, that reached percentages of up to 55% in 2008, and on the other hand the important expansion of the authority's jurisdictions in matters that concern discriminations on the grounds of sex with the enactment of the Equal Treatment of Men and Women (Access to Goods and Services and the Provision thereof) Law 18(1)/2008, that virtually broadens the equal treatment of the sexes in every area of activities, mostly in financial services.

The interventions of the Authority and its propositions drastically affected the legislation in crucial matters. Indicatively are noted, the amendment of the Law so as not to impede the exercising of the profession of the real-estate agent by European citizens, the broadening of the area of employment for asylum applicants, the same regulation of the maternity leave for the working mother who has a child through adoption with that who has a biological child, and the amendment of the plan conditions for the provision of allowance to people with heavy disability so as to prevent the categorization thereof to beneficiaries and non beneficiaries on the basis of the prime cause of their disability etc.

The Equality Authority responds to the extremely demanding provisions governing its action with consistency and in every possible way, which provisions require, beyond the investigation of complaints, the

conducting of researches, and the issue of a Practice Code, the Authority's active presence to international meetings as well.

The staffing problems of the Authority continue to trouble it and to be a constraint to its work. It is expected, however, that these will be dealt with to a serious degree with the recent reinforcement and the hierarchical upgrading of the Officers of the Office of the Commissioner for Administration (Ombudsman). Nonetheless, it must also be noted that the new jurisdictions in the area of equal treatment of the sexes and the completion of the relevant legislation create new perspectives and change the scenery with a possible reevaluation of the Authority's mode of operation and the inclusion of the discriminations on the ground of sex in the forms of discrimination that trouble the Equality Authority today.

Eliana Nikolaou
Commissioner for Administration (Ombudsman)

The jurisdictions of the Equality Authority

The basic jurisdiction of the Equality Authority is the investigation of complaints for the violation of the principle of equal treatment in the area of occupation and employment, both in the private as well as in the wider public sector, on the grounds of sex, religion or beliefs, age, sexual orientation, racial or ethnic origin. In addition, on the basis of the jurisdictions that were assigned to the Commissioner for Administration (Ombudsman) with the authorizing law L.42(I)/2004, the Equality Authority investigates complaints for discriminations in the area of employment and on the grounds of race, community, language, colour and political beliefs.

The entire legal framework that defines the jurisdictions of the Equality Authority springs from the community law and it was put to effect in harmonization with relevant European directives. These are the following five laws:

- The Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004, harmonizing with the directive 2000/43/EC.
- The Equal Treatment in Occupation and Employment Law of 2004, harmonized with the directive 2000/78/EC and 2000/43/EC.
- The People with Disabilities Law of 2000 to 2007, harmonized with the directive 2000/78/EC.
- The Equal Treatment of Men and Women in Occupation and Vocational Training Laws of 2002 to 2009, harmonizing with the directive 2002/73/EC.
- The Equal Pay between Men and Women for the same Work or for Equal Value Work Laws of 2002 to 2009, harmonized with the directive 2006/54/EC.

Expansion of the jurisdictions of the Equality Authority

In 2008 the jurisdictions of the Equality Authority were expanded

outside the sector of occupation and vocational training as concerns especially discriminations on the grounds of sex. Specifically, with the passing of the law L.18(I)/08 in May 2008, which is harmonizing with the directive 2004/113/EC, the Commissioner for Administration (Ombudsman) was assigned the jurisdiction to investigate complaints for discriminations on the grounds of sex in the area of accessing goods and services and the provision thereof, including the insurance and financial services, both in the private as well as in the public sector.

As concerns the insurance and other financial services, it was established with the article 5(2) of the directive 2004/113/EC that the member states may decide until December 21 2007[1] the proportional differences between individual premiums and provisions of the insured, when the usage of the sex is a decisive factor in the evaluation of the danger based on important and reliable actuarial and statistical data. In those frameworks, and until the established deadline, Cyprus completed a study regarding life insurances, based on which Cypriot women live more years than men hence the premiums for women are justified to be lower than those for men. On the basis of that study the Superintended of Insurance allowed the exception only for life insurances and in December 27 2007 he briefed the Committee about the matter.

For the purposes of the above law “Goods” are the products valued in money that may constitute as such the object of trade transactions and “Services” are considered those services being provided against payment, such as the services for finding personnel, the medical care services, the services providing legal or tax advice, construction services etc.

From the application field of the Equal Treatment of Men and Women (Access to Goods and Services and the Provisions thereof) Law, L.18(I)/08, are excluded the sector of education and mass media of information as well as the content of advertisements.

1. Date of incorporating the conditioned directive to the national laws of the member states.

With article 10 of the conditional law there is introduction of the reversed onus of proof during the investigation of complaints on the grounds of sex in the area of accessing goods and services and the provision thereof. Specifically, it is provided that when the person who is claiming violation of the current law invokes and provides ground for true circumstances from which the violation is considered probable, the Ombudsman requires his/her litigant to prove that there was never such violation of that law. During the exercising of the jurisdictions of this thematic cycle, when the Ombudsman finds a complaint to be viable she has the authorities provided to her with the Combating of Racial and Some Other Discriminations (Ombudsman) Law, that is, she has the authority to issue decrees, make recommendations and enforce a fine, according to the occasion.

The staffing of the Equality Authority

In 2007 and 2008 the Equality Authority continued to be understaffed. Its personnel, like in previous years, consisted of two officers, both of the field of the law, Mrs. Eliza Savvidou as the Head of the Equality Authority and Mrs. Stella Komninou, who held the position of the Officer of the Office of the Commissioner for Administration (Ombudsman) on a temporary basis. The year 2008 was particularly difficult concerning the staffing issue. In 1.7.2008 Mrs. Stella Komninou resigned from the post due to her assignment to a permanent post to the Ministry of Labor and Social Insurances. Her post was replaced the same day by Mrs. Christiana Kleridou, law official, who resigned however in 9.10.2008. In order to fill the vacancy created, Mrs. Niovi Georgiade, economist, was employed on a temporary basis on 13.10.2008.

The continuous changes to the staff, the lack of experience from the newly employed persons and the need to train them created unavoidable delay problems to the completion of the Authority's work. The experience, however, from the first years of operation of the Equality Authority showed that it must be staffed with scientists who are experts in issues of discriminations and have good knowledge of the labor market and collective and individual labor relations.

Publications of the Equality Authority and other actions

Code of Practice for the handling of sexual harassment in the workplace

With the opportunity of the declaration of the year 2007 as the "European year of Equal Opportunities for All", the Equality Authority went ahead to publish a Code of Practice for the handling of sexual harassment in the workplace, having the economic support of the European Committee. The Code consists of two parts. The first part records the general principles and examples are cited. The provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Law that are relevant with sexual harassment are also explained. The second part provides the guide lines for the design and implementation of an effective policy of handling sexual harassment and harassment in the workplace by the employer, both on a preventive level as well as on as a suppressive level.

With the issue of the Code the Equality Authority carried out a big campaign for relevant informing of the employers both in the private as well as in the wider public sector and the employees. Copies of the Code were sent to the local authorities, semi-governmental organizations, public and educational service, non-governmental organizations, trade-unions and employer organizations. In addition, the publication both of the issue of the Code and of its contents was promoted to the mass media. The Code, which was issued in February 2007 in 5000 copies, was exhausted within three months due to the great demand following the entire campaign, resulting to its reissue, which took place in May 2007.

The results of the above action were particularly positive. It is indicatively noted that some semi-governmental organizations, as well as private businesspeople, went ahead to the formation of a policy for the handling of incidences of sexual harassment in the workplace and of internal procedure of investigating complaints for sexual harassment. The Police used the Code as an aid for the trainers of the Police Academy and

included the teaching of the Equal Treatment of Men and Women in Employment and Vocational Training Law in the educational program of the academy.

Informative leaflets concerning discriminations on the grounds of sex and disability

In 2007, in the framework of the "European Year of Equal Opportunities for All" and with the economic support of the European Committee the Equality Authority completed the issue of two informative leaflets entitled "Learn your rights and claim them". The first leaflet concerned the equal treatment and substantial equality of people with disability in employment and vocational training. The distribution of the two leaflets took place in parallel and in the framework of the campaign for informing about the issue of the Code for the handling of sexual harassment.

Pancyprian quantitative research concerning sexual harassment in the workplace

The action of the Equality Authority against discriminations on the grounds of sex was completed for the year 2007 with the conducting of a Pancyprian quantitative research on sexual harassment in the workplace and on the perception of Cypriot citizens on that matter. The research took place through Cyprus College's Research Centre and with the economic support of the European Union. It lasted from July 7 2007 to July 23 2007 and the specimens were 650 working men and women, aging from 18 to 65 years old.

The results of the research were particularly interesting for the outlining of the phenomenon of sexual harassment in the Cypriot labor market. 23% of the specimens declared that they know at least one person from their friendly or family environment who had undergone or is undergoing sexual harassment. One out of ten reported a personal experience of their sexual harassment at the workplace. According to the findings of the research the instances of sexual harassment are more in Limassol than in the other cities. The victims of sexual harassment are by rule women (83%) and they belong to the age group of 18 to 30 years old. The more instances of sexual harassment take place during the first

two years of the employee's work and while his/her stay at work is increased the possibility of manifesting harassing behavior of a sexual nature is decreased. The majority of the culprits for sexual harassment are men (90%), whom most are married and mainly on the same professional degree with the victim (32%). The education of the culprit does not seem to affect the carrying out of actions of sexual harassment, since 44% of the culprits have a secondary education and 43% have a tertiary education. The culprits of the sexual harassment belong mostly to the following age groups: up to the age of 35 (39%), from 36 to 40 years old (22%) and from 41 to 45 years old (20%). What was worrying was the response given by the specimens as to how would they react in the occasion of their being sexually harassed in their workplace. Only 10% stated that they would report it to the administration, while 28% stated that they would not reveal to anyone. From the persons who had already suffered sexual harassment only 10% stated that they reported the incidence to the administration of the business in which they were employed and 22% stated that they did not reveal anything to anyone.

The presentation of the results of the above research took place in 8.10.2007 in an open event at the Journalists' House in Nicosia. The comment of the research took place by the professor of the Aristotle University of Thessaloniki, Mrs. Theofano Papazisi.

Research regarding social perceptions about people with disabilities

A second Pancyprian research took place in 2007 by the Equality Authority and the Authority against Discriminations and Racism with the support of the European Committee, regarding the social perceptions around people with disabilities. The conducting of the research was assigned to the Research Centre of Cyprus College and was carried out with stratified random sample and specimen of 773 citizens, ages 18 and above, who live in urban and rural areas. Especially regarding the area of labor, it arose from the research that seven out of ten citizens believe that it is disadvantageous for someone who has a disability to claim a professional position, while two out of ten citizens believe otherwise. The majority of the specimens (four out

of ten) stated that they are not aware that there exist laws in Cyprus which prohibit discriminations during recruiting at the expense of people with disability. The percentages were higher among women, in the age groups from 18 to 24 years old, at the District of Limassol and in people with college or university education. Almost all the specimens (95%) supported the implementation of positive measures in favor of the disabled people, such as the creation of positions in the public sector of employment the filling of which will be carried out exclusively by disabled people. The results of the research were presented in an event that took place in September 25 2007 at the Ministry of Finance.

Enlightenment, Training and Events

In 2007 and 2008 the Equality Authority continued the efforts of informing employees and employers on the national legal framework for the combating of discriminations in the area of employment. In those frameworks the Commissioner for Administration participated:

- In December 2007 in a conference against discriminations in which she presented the jurisdictions both of the Equality Authority as well as of the Authority against Discriminations and Racism.
- In July 2008 IN a convention in which she developed the issue of implementing the European policies and the community regulations and practices for the equality of men and women in Cyprus.
- In October 2008 in an event of the Cyprus Human Resource Management Association where she developed the issues of sexual harassment in the workplace and the protection of the victim both on a judicial as well as on an extrajudicial level.
- In December 2008 in a convention of the Pancyprian Federation of Women's Organizations (POGO) concerning female migration.
- In November 2008 in an event presenting the results of the Pancyprian research conducted by the Cyprus Gender Research Centre regarding the representation of both sexes to the educational profession and its extensions to the education and social future.

The Equality Authority participates to the European Network of the National Independent Gender Equality Bodies that have been comprised in harmonization with the directive 2002/73/EC. In those frameworks representatives of the Equality Authority participated in the Network's annual meetings which take place twice a year in Brussels. In addition, the Equality Authority participates to the National Labor Groups for the Campaign on Diversity that is under the auspices of the European Committee in Cyprus.

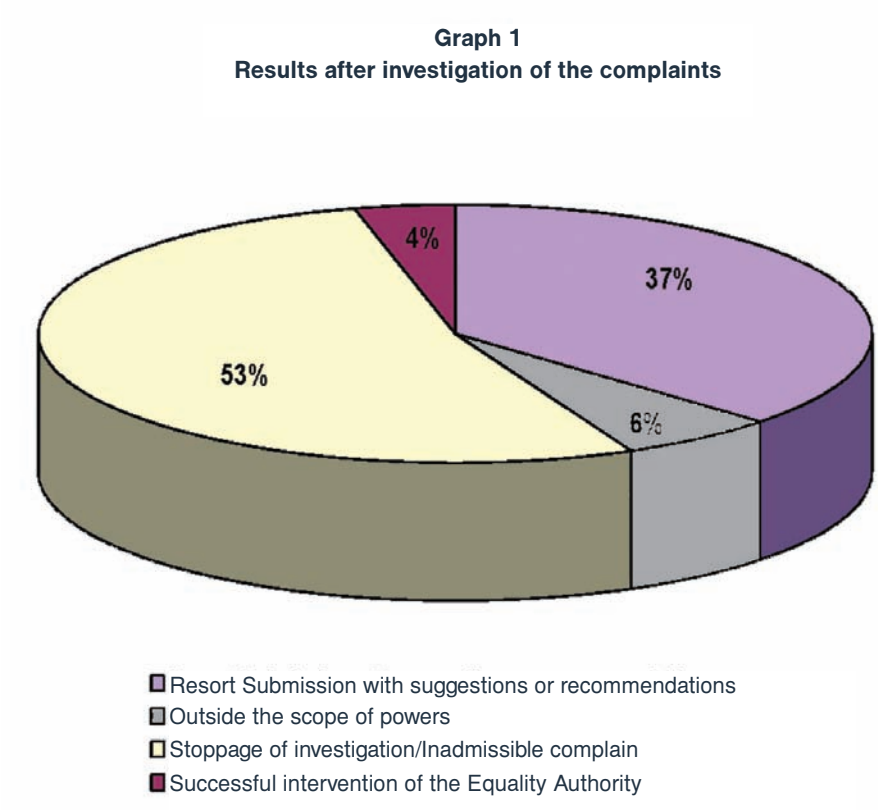
Finally, representatives of the Equality Authority were invited as speakers in the following events:s

- In March 2007 in an event of the Democratic Labor Federation of Cyprus (DEOK) and of the Cyprus Gender Equality Observatory concerning the experience of the Equality Authority.
- In March 2007 in a television show at CYBC regarding discriminations at the expense of people with disabilities.
- In April 2007 in a briefing meeting for the action of the Equality Authority that took place at the Offices of POGO.
- In October 2007 in a show of the First Program of the CYBC Radio dedicated on diversity and the combating of discriminations.
- During the months May and June 2007 in a series of experiential workshops that were organized by the Cyprus Family Planning Association in all Districts, for working women both of the private as well as of the public sector, regarding sexual harassment in the workplace.
- In September and October 2007 in a series of seminars for informing the Officers of the Social Welfare Services regarding sexual harassment in the workplace.
- In March 2008 in a joint meeting of the Cyprus Confederation of Organizations of the Disabled (CCOD) and the National Confederation of Disabled People, Greece regarding the problems met by people with disabilities.
- In September 2008 in a seminar of the Social Welfare Services regarding the combating of discriminations at the expense of disabled people.

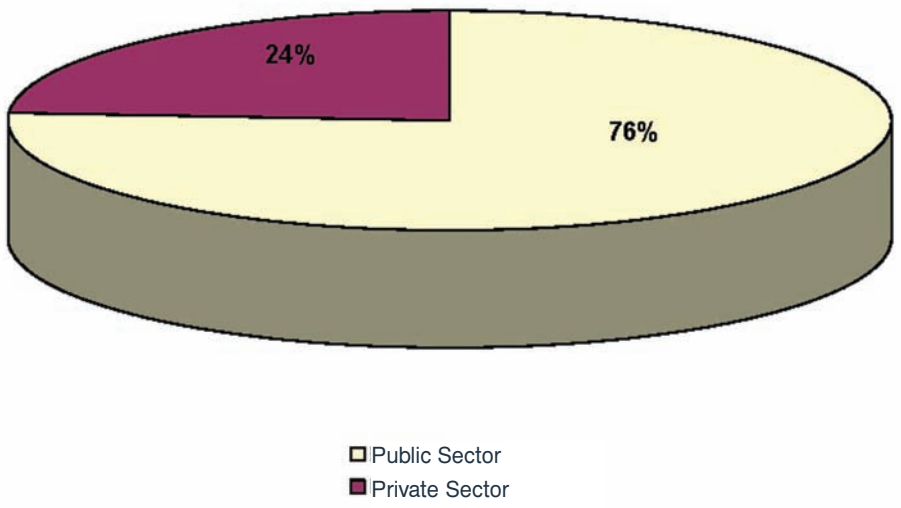
Statistical Data

In 2007-2008, 208 complaints regarding unlawful discrimination were submitted to the Equality Authority. Moreover, in 2007, 115 complaints were submitted and 63 additional complaints were also incorporated whose investigation was pending from previous years. 118 out of 178 complaints were completed. In 2008, 93 complaints were submitted to the Equality Authority, 58 additional complaints were transferred from previous years and 95 out of 151 complaints were completed.

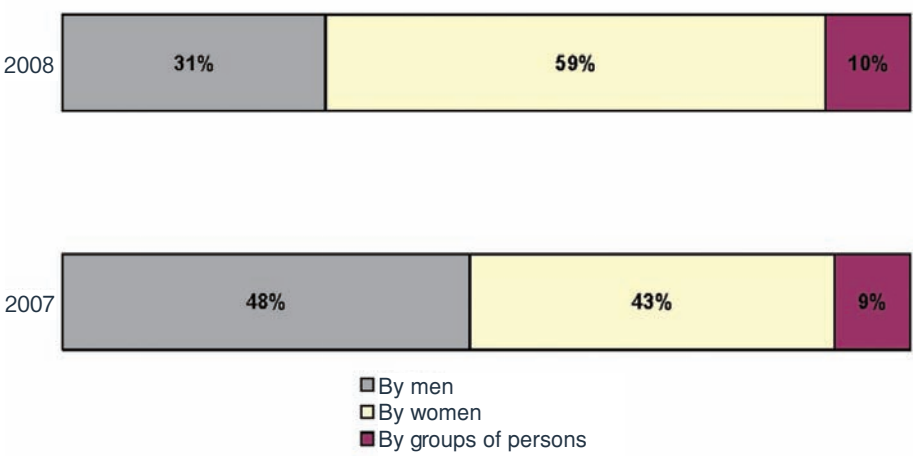
Graph 1
Results after investigation of the complaints



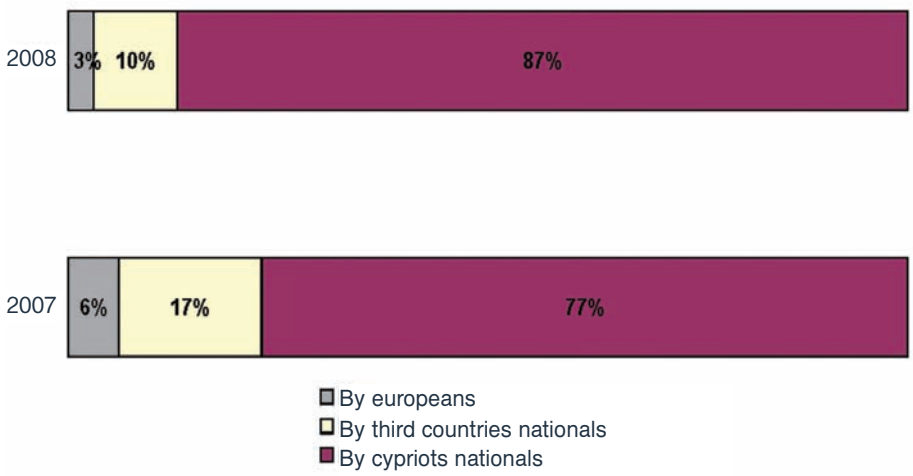
Graph 2
Complaints by sector



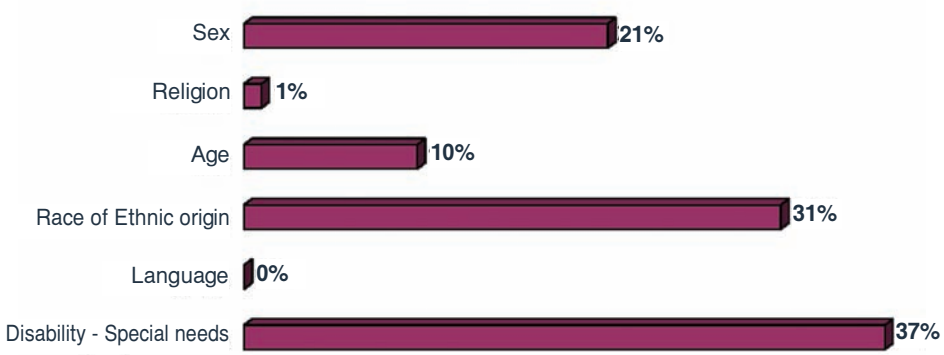
Graph 3
Complaints submitted



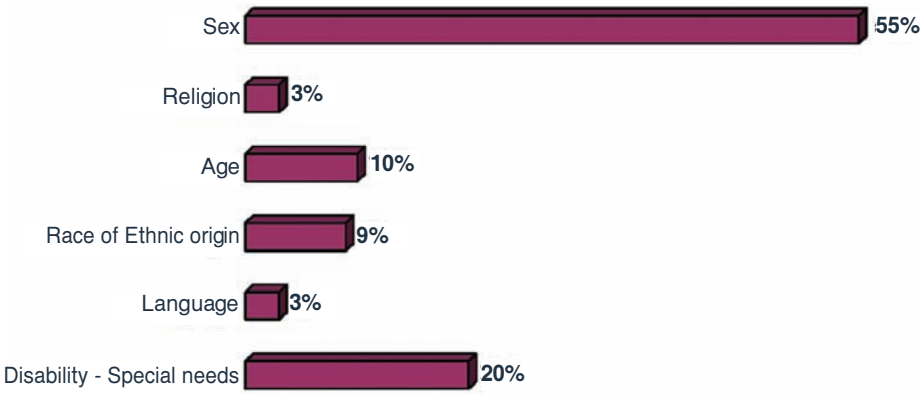
Graph 4
Complaints sumbitted



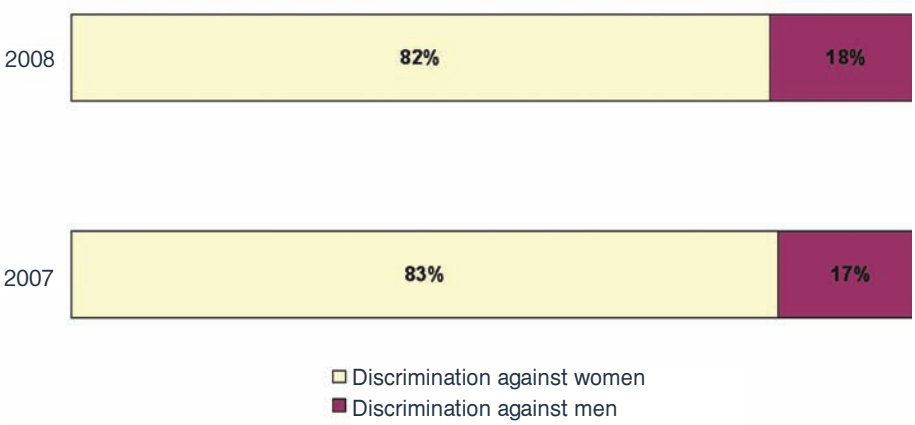
Graph 5a
Discrimination on the grounds of... (2007)



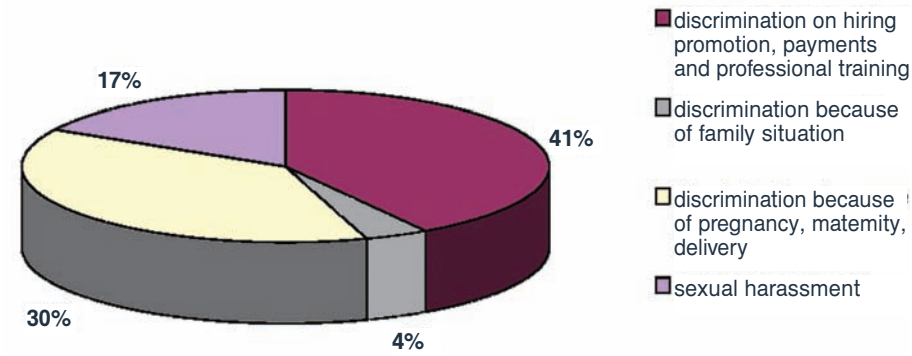
Graph 5b
Discrimination on the grounds of... (2008)



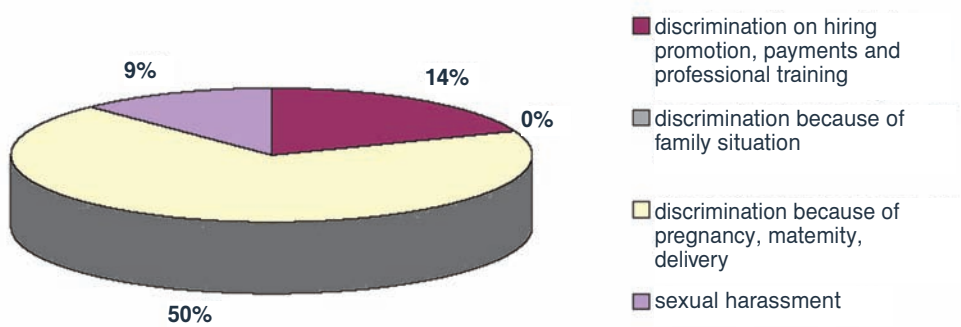
Graph 6
Complaints submitted for discrimination on the grounds of sex



Graph 7a
Discrimination on the grounds of sex (2007)



Graph 7b
Discrimination on the grounds of sex (2008)



General Valuations

The number of complaints submitted to the Equality Authority since its formation presents variances each year, with samples of increasing tensions, however, in the last two years. From May 2004 until the end of this year 33 complaints were submitted. In 2005, 84 complaints were submitted and in 2006, 64 complaints were submitted. In 2007 the number of complaints rose to 115, with a small decrease in 2008, during which 93 complaints were submitted. It is believed that the number of complaints does not reflect the true image as regards discriminations in the employment area nor can we extract the conclusion that there are not many cases of discriminations in the working space in general.

As to the thematic of the complaints, there are such variances between the years 2007 and 2008 so as not to be able to extract safe conclusions about the kind of discriminations that the employees mainly suffer in the Cypriot labor market. In 2007 the complaints on the grounds of discriminations outnumbered any other discrimination. In second place were the complaints for discriminations on the grounds of racial or ethnic origin and the third place have complaints for discriminations on the grounds of sex (See graph 5a). On the contrary, the first place in 2008 in figures had complaints for discriminations on the grounds of sex, the second place complaints for discriminations on the grounds of disability and the third place complaints for discriminations on the grounds of age (See graph 5b).

As concerns specially complaints for discriminations on the grounds of sex, those concerned mostly discriminations due to pregnancy, delivery of a baby or motherhood and discriminations during the employments and in relation to professional development (See graph 7a and 7b). During 2007 and 2008, like in the previous years, no complaints were submitted for discriminations in employment on the grounds of sexual orientation. That cannot be taken as evidence of absence of such nature of discrimination. Considering also that the Cypriot society is not very tolerant to diversity, it is believed that the non submission of complaints for discriminations on the grounds of sexual orientation is due mainly to

the concern of the victims of such discrimination for the possibility of making public their homosexuality through the procedure of investigation.

Based on those laws harmonizing with directives 2000/43/EC, 2000/78/EC and 2002/73/EC, the field of jurisdictions of the Equality Authority is not limited to the investigation of complaints for treatment, behavior or practice of application of criteria which constitute direct or indirect discrimination in the employment area, but, it is extended to provisions of legal context as well as to conditions, including the conditions of individual or collective labor agreements, that are possible to constitute direct or indirect discriminations. That caused the reaction and problematization of trade unions, with the main argument that any intervention of the Equality Authority in relation to the content of collective labor agreements is possible to violate the trade unionist freedom and especially, to violate the principle of establishment of labor conditions through free collective negotiations. The Equality Authority is in any case, particularly careful when investigating complaints that concern conditions of collective labor agreements and, intervenes only when it is obvious that conditions of collective agreements violate the principle of equal treatment independent of the sex, age, beliefs, religion, disability, sexual orientation or national or ethnic origin. The Commissioner for Administration established a close cooperation with trade unions, from which she systematically requires to state their position when specialized issues arise through a complaint of labor nature, and which she additionally calls for consultations prior making her final recommendation, when the issue under examination concerns conditions of a collective labor agreement.

During 2007, the jurisdictions that were assigned to the Commissioner for Administration in compliance with directive 2000/43/EC caused the reaction of the Public Service Commission (PSC). The President of PSC, suggested, in specific, the amendment of the Combating of Racial and Some Other Discriminations (Ombudsman) Law, L.58(I)/2004, so as to exclude the Commission from its provisions, that is, not to subject it to the control by the Equality Authority. The whole matter was resolved and that suggestion was abandoned after a relevant consultatory response of the Attorney General of the Republic.

According to the conditional response the Ombudsman is the body to which the responsibility of realizing the purposes of directive 2000/43/EC is assigned to, since it supervises the implementation of the law that prohibited the relevant discriminations in the public and private occupation and employment sectors, such as required by the directive. The body which makes the appointments/ promotions to the Cyprus public service is PSC. In the occasion of the exclusion of PSC from the provisions of the Law L.58(I)/2004, the possibility of examining the complaints by an independent body on issues of accessing employment in the public service will be eliminated, as required by directive 200/43/EC. The powers, that is, of the Commissioner for Administration will be limited substantially to the private occupation and employment sectors, and in short, there will not be compliance with the provisions of the directive when it concerns the public labor sector.

As concerns the entire legal framework that was established in harmonization with the European directives against discriminations, the Equality Authority is troubled by the regulations of article 39 of L.42(I)/2004. Based on this article, when the Commissioner for Administration ascertains after the investigation of a complaint an unlawful discrimination in a text of legal context, she informs the Attorney General of the Republic by transmitting to him her relevant finding and after having studied the matter, the Attorney General advises the competent Minister or Ministerial Council and prepares any legislation relevant to his advice. In action the implementation of article 39 was proven to be ineffective, for the reason that on a level of executive force there was noted in some cases distrust to the recommendations of the Equality Authority for the elimination of provisions in legal texts which introduce unlawful discriminations, or delay or even negligence to transmit the whole matter to the legal body, which has also the exclusive jurisdiction to establish or amend the legal context of texts.

Despite the above weakness during 2007 and 2008, in compliance with suggestions, recommendations or observations of the Commissioner for Administration after the investigation of complaints for discriminations there were important institutional changes. Indicatively the following are mentioned:

- On the basis of the observations of the Commissioner for Administration the amending law L.118(I)/2007 was put to effect, with which provisions that obstructed unjustifiably the exercising of the profession of the real-estate agent by European citizens in Cyprus was eliminated.

- With the statutory administrative regulation S.A.R. 364/2008 the sectors to which asylum applicants are allowed to work is broadened. Let it be noted that previously asylum applicants were allowed to work exclusively in agriculture and stockbreeding, which are two of the worst sectors of employment regarding the payrolls and other employment terms, a factor that the Equality Authority judged to constitute discrimination on the grounds of national or ethnic origin.

- The Service Plans of the nurses and doctors were amended so as to eliminate discriminations on the grounds of language that were ascertained to exist in the conditions that concerned the lingual requirements for appointment to those positions.

- With the amending law L.8(I)/2008 the maternity leave was extended by two additional weeks for the working women who have a child through adoption so as to have the same regulation with the existing one for women who deliver a baby.

- After a relevant recommendation by the Commissioner for Administration the plan terms for the provision of allowance to people with heavy disability were amended so as to eliminate the criterion that was applied and based on which disabled people were categorized to beneficiaries and non beneficiaries according to the prime cause of their disability.

- The drafting procedure of amending the entire legal framework that regulates the employment of women in the army has begun after the ascertainment by the Equality Authority that the current legal regulations introduce a series of direct and indirect discriminations at the expense of women in accessing work positions in the army and in their professional development.

- After the investigation of complaints for the non renewal of contracts of pregnant women who were employed on a temporary basis in the public service due to their pregnancy, and on the basis of the Commissioner of Administration's observations, the Department of Public Administration and Personnel issued a Circular with which she informed all the departments and services of the wider public sector about the provisions on the Protection of Maternity Law and the obligation of preserving thereof.

- After a relevant recommendation by the Equality Authority, the Public Educational Commission Law was amended with Law L.52(I)/2007, so that the candidates for appointment to the Educational Services who cannot participate to the vocational training program are not deleted from the Appointing Board, as it used to be the case, but to be given the opportunity to participate to the following program.

- A Gender Equality Commission was formed at the Police Force with order terms to observe the implementation of the principle of equal treatment of the members of the body independently of sex. The recommendation of that Commission happened in compliance with a relevant recommendation by the Commissioner for Administration that she made after the investigation of the measures that the Chief of the Police at the time intended to take aiming to reduce the number of women employed to the police force[2].

The provision of article 13(2), of L.42(I)/2004, based on which the Commissioner for Administration transmits her Report, in which she cites her findings after the investigation of complaint for discriminations, not only to the person who filed the complaint and the person against whom the complaint is filed at but also to the House of Representatives, was proven to be exceptionally useful and led to the development of a

2. See Annual Report 2006, p.25, Par. 1.

constructive cooperation with the House of Representatives. In those frameworks the Ombudsman was repeatedly called to participate to meetings of the House of Representative's Parliamentary Committees for the discussion of her findings which relate with discriminations in the employment sector. It is indicatively noted, that the Ombudsman was called to the Parliamentary Committee of Equal Opportunities between Men and Women during the discussion of the measures that are taken by the Ministry of Labor and Social Insurance for the implementation of laws that concern the equal treatment in employment independently of sex, as well as from other Committees for the discussion of the subject of disabled people accessing positions of the public sector and its content on the Real-Estate Agents Law the provisions of which were judged to limit unjustifiably the exercising of that profession by European citizens.

Presentation of the most important Reports

Discrimination on the grounds of age in the legal protection those being unlawfully dismissed

The Cyprus Labor Institute (PEO-Pancyprian Federation of Labor) has asked from the Equality Authority to examine whether the provisions of article 4 of the Termination of Employment Law, which excludes from the right of compensation due to illegal dismissal those over the age of 65, constitute unlawful discrimination.

The above Law provides protection from illegal dismissals and the employee is granted the right of compensation in the occasion of termination of employment by violation of fundamental individual rights or social/labor rights, which are established for all employees, independent of their age, by the Constitution, with international conventions, mostly of the International labor Organization, and with a series of laws. However, by virtue of article 4 of the same Law, the employees over the age of 65 are excluded from the right of compensation in the occasion of illegal termination of their employment.

The Ombudsman judged that this concerns regulation which leads to a legally unacceptable effect, to set a maximum age limit in exercising the employees' right to be compensated in the occasion of their dismissal due to their trade unionism action or due to their participation to a control committee of the safety conditions in their working environment.

The Ministry of Labor and Social Insurance supported that the age of 65 after the completion of which the employee is not granted the right to be compensated due to termination of his/her employment, was not arbitrarily set but was set on the rationalization that this is the retirement age, and therefore, the rights of the overwhelming majority of the employees over the age of 65 are ensured with their retirement rights. The Equality Authority, however, pointed out that there are persons over the age of 65 who have no retirement rights or have reduced retirement rights. Beyond that, according to a recent Report of the European Committee the danger of poverty in Cyprus for people over the age of 65 is the biggest recorded in all member states of the Community and it reaches 51%, while the pensions are categorized among the lowest of the list in the E.E. It turns up that the elderly are in true need to keep working after they complete the age of 65 and that their exclusion from the protective welfare over the illegal dismissals of the Termination of Employment Law leads to the creation of an age class of employees who are particularly fragile to violations of the labor law.

The law ensures in favor of the employers the possibility not to continue employing their employees over the age of 65 with no obligation to provide compensation in the occasion of dismissal, as long as this takes place on the basis of practice, law, collective agreement, contract, labor rules or otherwise (article 5(d)). Moreover, it is now common business practice for companies, to offer, instead of dismissing a person, special retirement programs of withdrawing plans in the framework of voluntary exit. If, however, the employer chooses to continue employing an employee who has reached retirement age or to hire persons over the age of 65, it does not mean that they are released from the obligation of preserving the labor legislation (in general) based only on the age of their employees. In any case, the age criterion on its own cannot justify a dismissal since it would be termed as abusive, taken the fact that it violates the labor right that is established for all people, independent of their age, gender or nationality. In other words, an employer cannot

dismiss employees or reduce their salaries or allowances based on the sole criterion of age. The employer may however, dismiss elderly people on the basis of their not being able to execute (any longer) their work to a satisfactory degree.

The Report was transmitted to the Attorney General of the Republic in April 2007, by virtue of article 30 of the Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004, so as to put forward the procedure of amending the controversial legal provision with the elimination of the current age criterion. So far there has not been any action towards that direction.

Discrimination on the grounds of age in accessing flight attendant positions

A 38 year old man, with long experience in the flight attendant position, filed a complaint against the Cyprus Airways. Specifically, the complainant reported that he had submitted an application for the position of the seasonal flight attendant, which was, however, not accepted because he exceeded the age limit of age 30 that was termed as a requisite for the filling of the position. The accusation was found well-grounded. Specifically, the Ombudsman judged that the maximum age limit of the age 30 for the filling of the flight attendant position constitutes direct discrimination on the grounds of age in the field of accessing work positions, by violation of the Equal Treatment in Occupation and Employment Law. It is noted that in the European Regulations (Join Aviation Regulations) a maximum age limit is not posited in the least qualifications required for the flight attendants, such as also no other airline company in Cyprus requires such a condition for the employment of flight attendants.

After the submission of the Report there were consultations with Cyprus Airways as to the content of the Ombudsman's[3] final recommendation.

3. By virtue of article 22 of the Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004, when the Ombudsman ascertains a legally prohibited discrimination she does not make a recommendation prior consulting both with the person submitting the complaint as well as with the person whom the complaint is submitted against.

The Cyprus Airways agreed to the immediate elimination of the maximum age limit of the 30 years of age as a requisite qualification for the filling of the flight attendant's position.

The limit of the compulsory retirement of low-grade police officers.

Three members of the Police Force, one simple police officer and two sergeants, went to the Equality Authority complaining about the legislative regulation in force according to which the age of compulsory retirement of police officers with degree not higher than that of the sergeant is the age of 55, in contrast to their colleagues with degrees higher than that of the sergeant who are compelled to retire upon the completion of 60 years of age. One of the three complainants reported that during the time of his compulsory retirement he will have completed only 26 ½ years of service resulting to his not being allowed to a full pension. The age of the compulsory retirement of governmental employees in general is regulated by the Pensions Laws of 1997 to 2005, in section (2) of article 12 in which it is termed that, *the age of compulsory retirement of a police officer holding a degree not higher than that of the sergeant is the age of 55.* This is a legislative regulation dating back to the very old (of 1959) colonial Social Pensions Law, Cap. 311, which provided that all governmental employees retired at age 50.

According to article 8(1) of the Equal Treatment in Occupation and Employment Law, that transfers almost intact article 6 of directive 2000/78/EC, the different treatment due to age does not constitute discrimination since it is objectively and logically justified by a legitimate objective, especially from legitimate objectives that concern the policy in the area of employment, labor market and vocational training, and as long as the means for attaining these objectives are suitable and essential. The Chief of Police supported, among other things, that the condition of the different limit in the compulsory retirement is justified for purposes going back in the policy in the area of employment and labor market. Specifically, he reported that taking for granted that simple police officers and sergeants make up 93, 1% of the workforce of the police force, the condition of their compulsory retirement at the age of

55 contributes to the creation of new work positions and to the regulation of the labor market with the reduction of unemployment. The Ombudsman pointed that the policy in the area of employment and labor market is not laid out by the Police. The measure of the different age limit for the compulsory retirement of low-grade police officers for reasons going back in the policy of employment and labor market may be considered to constitute a justified deviation from the anti-discrimination principle since it complies with the national policy in the area of employment and labor market. On a national level, there was relatively recently (in 2005) enforcement of the increase in the limit of the compulsory retirement from 60 to 63 years old, based on the underlying principle of the low levels of unemployment, the demographic data that point the senescence of the population, the increase of the life expectancy, and the actuarial report based on which there is prediction of problems in 2010 if either contributions or the retirement limit do not increase.

Based on the total data of the research the Ombudsman concluded that the measure of the compulsory retirement of the police officers inferior in degree by 5 years earlier than the other officers is not justifiable by reasons going back to the policy of employment and labor market and therefore it constitutes unlawful discrimination on the grounds of age. Because the above ascertained discrimination on the grounds of age is posited by law, the Report was transferred to the Attorney General of the Republic in August 2008 by virtue of article 39(1) of the Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004, so as to advise, by virtue of section (3) of the same article, the competent Minister or Ministerial Council for that matter regarding the amendment of the legislation. The Chief of the Police expressed his opposition to the result of the Equality Authority through statements that were publicized in a daily newspaper. Also, because there was no action for the elimination of the provision that constitutes discrimination on the grounds of age from the Social Pensions Law, the Cyprus House Legal Affairs Committee decided to examine ex officio the reasons, for which there was no compliance to the directions of the Equality Authority, leaving the whole matter pending.

The age criteria in the granting of scholarships for graduate and postgraduate studies

The Equality Authority kept receiving complaints regarding the age criteria that are in force for the granting of scholarships by the Cyprus State Scholarship Foundation (C.S.S.F.) for graduate and postgraduate studies. In June 13th 2007, a second Report was submitted by the Equality Authority regarding this subject[4], with the ascertainment that Regulation 8, of the (General) Regulations of the Cyprus State Scholarship Foundation of 2007, introduces direct discrimination on the grounds of age in the area of accessing education and vocational training, which should be eliminated. It is noted that originally the maximum age limit for the submission of application in order to claim a scholarship or a scholarship in the form of a loan for studies abroad or at the University of Cyprus was the age 25 for graduate studies and the age 35 for postgraduate studies. In 2007, with the aforementioned Regulations, the maximum limit was extended only as concerns postgraduate studies, from the age 35 to age 40, while for graduate studies it remained at age 25. The position of the Equality Authority is, in any case, that the specific age criteria are not objectively justified and they constitute direct discrimination in the area of accessing education and vocational training.

It is noted, that during the investigation of the complaints the C.S.S.F. did not present any evidence convincing that the different treatment on the grounds of age during the granting of the scholarships could be justified objectively by a legitimate purpose and that for the achievement of that purpose the specific measure is appropriate and essential, so that the particular regulation can be considered as not legally prohibited discrimination in the meaning of the Equal Treatment in Employment and Vocational Training Law.

4. The first Report was submitted in August 5th 2005 and it concerned the complaints with ref. no. C/N 36/2005 and C/N 40/2005. See Annual Report of the Equality Authority for 2005, p. 15 (following).

Taking for granted that the discrimination on the grounds of age was detected in a provision of legal content the Ombudsman transmitted her Report to the Attorney General of the Republic by virtue of article 39 of the Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004. So far the controversial Regulation has not been amended.

The maximum age limit in the employment of temporary postmen

Three temporary postmen complained to the Equality Authority that their contracts were not renewed because they did not fulfill the maximum age limit of the age 35 that was termed as a requisite qualification for the employment of temporary postmen. It is noted, that this maximum age limit is not included in the least qualifications that the candidates are required to have for permanent appointment in the position of the postman based on the familiar Service Plan.

The Cyprus Postal Services supported that the age of a person is directly connected to the quality of his health and that it significantly affects the satisfactory completion of his work. Taken also for granted that there is no possibility of replacing the temporary postmen when they are absent from their work, the Services also supported that employing younger people ensures that fewer persons will be absent for health reasons.

The Ombudsman judged that the above idea is based on perceptions and stereotypes which are particularly imprecise and harmful for those people whose age groups are affected and who, nevertheless, have both the will and the ability, both regarding health as well as qualifications, potentials and experience, to exercise this profession. Based also on the statistical data that are preserved it was ascertained that no working postman of the age groups from 36 to 45 years old and from 46 years old and above exceeded the predicted, in number, sick leave. Prior the submission by the Ombudsman of her final recommendation for the immediate elimination of the maximum age limit during the recruiting of temporary postmen, there were consultations both with the Cyprus Postal Services as well as with the complainants. There was full

compliance to the recommendation and the three postmen were re-hired.

The age limit of discharging Business Consultants

A member of a Company's Board of Directors asked from the Equality Authority to examine by virtue of the Combating of Racial and Some Other Discriminations Law of 2004[5], whether the establishment of a maximum age limit, according to which Business Consultants are dismissed and their service offering is terminated, is probable to constitute unlawful discrimination on the grounds of age in the area of employment. The Equality Authority submitted a justifiable Report for that matter quoting the implemented legal framework both on a European and on a national level, as well as the relevant case law of the Court of Justice of the European Communities. Raising also the question posited to the Equality Authority regarding the implemented legal framework, the Equality Authority concluded that the evaluation of the ability of Business Consultants to fill the expectations of their duties must occur on the basis of objective criteria, so as to ascertain their ability and efficiency regardless of their age.

The accessibility of people with disabilities to their workplace

The Cyprus Confederation of Organizations of the Disabled (CCOD) submitted a complaint in November 2006 against the Limassol General Hospital regarding the non provision of justifiable adjustments that would guarantee the safe transfer from and to the workplace of the disabled people that it employs. The complaint was submitted on the basis of the transportation problems that a blind person was facing in his

5. By virtue of this article the Ombudsman has the authority to examine, after the submission of a relevant complaint, whether the intended treatment of a person or a group of persons constitutes unlawful discrimination.

workplace as a telephone operator of the Limassol General Hospital. The Ombudsman briefed, through her relevant Report, the Hospital Administration about the provisions of the People with Disabilities Law, based on which any direct or indirect discrimination at the expense of disabled people at their workplace is prohibited. The Ombudsman also briefed the Hospital Administration that the main medium for the effective implementation of this prohibition, as well as for the achievement of substantial equality between disabled people and people without disabilities, is the legally enforced obligation of the employer to provide the necessary adjustments and justifiable facilitations in the workplace in favor of the first. Specific suggestions were made for the practical handling of the transportation problems that disabled people employed by the Hospital are facing, which the Hospital Administration showed the good will to comply with and up to a point took some action. In 2008, though, two new complaints were submitted by disabled people who are employed at the Limassol General Hospital, concerning the same matter, hence, the Equality Authority began new research in the framework of which two visits were made to the Hospital. The relevant result of the Equality Authority was expected to be issued in the beginning of 2009.

Dismissal of a disabled person from her work

A female employee of a Shipping Company reported to the equality Authority the adverse treatment by her employer due to her disability, which let to her dismissal. The complainant was diagnosed with multiple sclerosis in 2000 and informed her employer about the matter. Progressively her disease deteriorated and she had to undergo physical therapy twice a week. For that purpose her employer agreed that she worked with a reduced schedule and specifically he agreed that she was granted two of the working afternoons as free. When in 2004 the complainant returned to her work after the end of her maternity leave her employer originally appointed her with additional duties which she had problems executing due to her disease and then in 2007 he announced her that the special arrangement they had for reduced working hours would no longer be in effect. Finally, the complainant was

fired after a dispute she had with her employer about the repeal of the original arrangement that was made about the reduced working hours. The Ombudsman judged, based on the instances of the situation as well as the explanations given by the company lawyer, that the complainant's dismissal which was connected to her disability and could not be justified on objective grounds, constitutes unlawful discrimination on the grounds of disability. In view of this progress the Equality Authority advised the complainant to claim compensation by a competent court as a victim of discrimination for the damage she suffered from the violation of the People with Disabilities Law.

Assignment of manual work to a worker with heavy disability in his hands

A construction worker paid by the hour in the public sector, with disability in the upper and lower limbs, filed a complaint regarding the non satisfaction of his request to be placed to a working position with duties that he could execute. Specifically, he supported that his request to be placed to another position that does not require manual work is pending since 2003. He also supported that in the last period the employers insinuated that they would refer him to a medical council aiming to the termination of his services.

From the investigation of the complaint it arose that the employers neglected to make all those correct adjustments that would create the conditions of substantial equality for the complainant at his workplace. That resulted to the complainant working more than eight years to a work the duties of which he could de facto not complete, that is, in unequal conditions in relation to those of his colleagues which diminish his dignity as an employee. The Ombudsman judged that the elapse of five years after the complainant submitted an application to be placed to non manual work with nothing being achieved could not be justified by the fact that there was a large number of redundant staff that had to be placed in open positions. The Ombudsman also disagreed with the position of the Public Administration and Personnel Department that the complainant should be referred to a medical council in order to ascertain whether it is imposed to terminate his services. Prior the submission of the Ombudsman's final recommendation there were

consultations at her Office, with the participation of representatives from the Department of Public Administration and Personnel, the Public Works Department and the complainant. During the consultations it was agreed that the complainant was immediately placed to an inspection station for road network damages for training purposes in his new duties and to make a new effort to reemploy him to a relevant position in a period of six months.

The access of disabled people in work positions of the public sector

In 2008 the Equality Authority dealt also with problems concerning the obstacles that disabled people face in the area of accessing work positions in the public sector. The reason for this was the submission of a complaint by a disabled people who supported that during the procedure of the written exams that take place for appointment purposes in positions of the public service, the disabled people are in an inferior position in comparison to the rest of the candidates because there are not any satisfactory compensatory measures during the process of the written exam.

On a national level, the prohibition of discriminations at the expense of disabled people in the area of employment was legislated with the People with Disabilities Laws of 2000 to 2007. The directives of article 5(1)(a) and 5(1A) are of special importance, according to which, on the one hand, any discrimination at the expense of disabled people concerning the access terms to employment is prohibited and on the other hand, it is provided that *justifiable adjustments are predicted in order to ensure the preservation of the principle of equal treatment for people with disabilities and for that purpose the employer takes the necessary measures, according to the needs that are presented in a particular situation, so that the disabled person can have access to a working position*. That is, it occurs that based on our national law, which came in effect in harmony with the communal law, the complainant had the right for correct adjustments/facilitations in the written exam that he participated in, in order to ensure equality to the starting point for the claiming of a professional position in the public service. As it has been ascertained, the Special Committee responded positively to his relevant

request, but the facilitations decided for his behalf were not entirely satisfactory for the achievement of the intended goal, that of forming conditions of true equality.

The Equality Authority was especially troubled by the Assessing Candidates for Appointment to the Public Service Law which regulates the entrance method for a number of working positions of the public sector, establishing written exams, without, however, regulating also the matter of facilitations for the disabled people who claim access to these positions. The Ombudsman expressed, in her relevant Report, the opinion that the subject of the facilitations in favor of the examined persons who are disabled must be legally regulated with a relevant addition to the conditional law and in such a way that as to ensure that the decisions for the facilitations in favor of the disabled candidates will be made in cooperation with expertise people on subjects of disability and accordingly in each occasion. Until this legislative regulation is promoted and completed the Ombudsman suggested to the Special Committee that in any occasion of a disabled candidate who is applying for facilitations during the written exam, the Committee should consult the Cyprus Confederation of Organizations of the Disabled prior making any decision, so as to ensure the best possible selection of compensatory measures for their disability.

It is noted, that when the complainant gave the exam again for admittance to positions in the public service, he was granted additional facilitations, considering the observations of the Equality Authority. Additionally, the subjects that arose by the above Report troubled also the Parliamentary Committee of Institutions, Values and Ombudsman. In parallel, the Ministry of Work and Social Insurance decided to promote the introduction of quotas when employing in the broader public sector in favor of the disabled people, a legal measure that the Department of Public Administration and Personnel was agreeable with.

The support of students with dyslexia or other learning difficulties

The mother of a child with dyslexia went to the Equality Authority filing

a complaint for the inefficient support of her son from both the Ministry of Education and Culture as well as from the Social Welfare Services. The aspect of the complaint that concerned the Ministry of Education and Culture focuses on the claim of the child's mother that due to the inefficient staffing of the secondary education schools with a teaching personnel specialized in special education, the provision of special education that the District Committee for Special Education and Training appointed is not sufficient, and as a result, her dyslexic son, keeps being in an adverse position in comparison to the other students as to the learning of the curriculum and the full development of his skills. It arose from the research that the mother had to turn to the private sector in order to ensure the strengthening special education required, charged with the relevant expenses. It is noted that the students of secondary education have the right of free education. It was also ascertained that in the programming of the Ministry of Education and Culture there is no provision for the staffing of schools of Secondary Education with expert personnel as Special Educators. The Ombudsman expressed the opinion concerning the above matter that both the letter, as well as the spirit of the Education and Training of Children with Special Needs Law, enforces the inclusion to the educational programming of effective pedagogic structures in the mainstream secondary education so as to cover in action the reinforcing education that children with special needs require. That also presupposes, among others, the staffing of Secondary Education schools with Special Educators.

As concerns the complaint for the handling by the Social Welfare Services of the application of the specific student about public allowance as a disabled people, so as to cover the expenses of his reinforcing education in the private sector, it was ascertained that during its examination the involved services were called to answer a difficult question, that of whether the student is a disabled people. On a European level the opinions differ. Some member states recognize dyslexia as a disability while others do not. From the examination of this subject it arose in any case, that the prevalent tendency on a European level pressures towards the direction of recognizing dyslexia as a disability by all member states. Indicatively, it is reported that the European Parliament, regarding the discriminations and social exclusion

of children with learning problems (of “dys-”children), also pointing that the percentage of children who face learning problems “dys-” is estimated at 10% annually, and being aware that learning problems “dys-” which hamper communication very early are not recognized as disability by some member states, has asked, through a written statement[6], from the Committee and the Council to encourage the recognition of learning difficulties as disability.

Independently from the difficulty that the Social Welfare Services faced in making the decision whether dyslexic children fall in the definition of the term “disabled person”, it was ascertained that the entire handling of the application was irresponsible. Beyond the delay in the examination of the application, in spite the fact that it concerned a child with learning difficulties and with a single parent, it was finally rejected, without justifying the relevant decision or providing any rationale why the medical certificates that were given after the involved service itself required them and based on which the student has learning/ epistemological disability, were questioned.

The submission by the Equality Authority concerning the above complaint resulted on the one hand to the reevaluation of the student’s need for reinforcement at the school he studies in and on the other hand to the approval of his application for public allowance as a disabled person.

Plans for provision of allowances to disabled people

1.

The Equality Authority received 5 complaints regarding the term of the Plan for the Provision of Allowances of Care to Quadriplegic People Independent of Income, which introduced different treatment of people with quadriplegia, with criterion the prime cause of their quadriplegia. In

6. 0064/2007, DC\671587EL.doc.

paragraph 4 of the Plan it was termed that, *quadriplegic is the person who suffered paralysis to the lowest limbs as a result of injury or disease of the spinal cord and the paralysis forbids him/her from executing any movements with the limps and presents significant disturbance to the sensitivity of the paralysed parts and disorder of the sphincter.* That is, the decisive criterion for the submission of the allowance was the cause creating the quadriplegia. So, the people who were quadriplegics from birth, for example, or became quadriplegics due to disease to the spinal cord or due to brain diseases or myopathy or due to multiple sclerosis, while they were exactly in the same situation with the beneficiaries of the allowance, were excluded from this allowance.

It was ascertained that a definitive factor to providing such limiting definition to the term "quadriplegic person" was the economic burden that was entailed by the implementation of the Plan. In her relevant Report the Ombudsman stressed that the economic burden entailed by similar treatment of the quadriplegic people, without underestimating that factor, does not remove nor can justify their unequal treatment on the factor that caused their disability.

Prior making a recommendation and taking in consideration that the definitive factor of the above described different treatment of people with quadriplegia was the economic burden entailed by their equal treatment, the Ombudsman called for consultations representatives of the Ministry of Finance and of the Ministry of Labor and Social Insurance along with the complainants. In the meeting also participated representatives of the Association of Myopaths, of the organization of Quadriplegics and of the Cyprus Confederation of Organizations of the Disabled. All parties agreed with the Ombudsman's recommendation for the broadening of the definition of the term "quadriplegic person" of the conditional Plan, which Plan was amended in continuity by a decision of the Ministerial Council.

2.

Taking as starting point the submission of the relevant complaint, the Equality Authority was preoccupied also by the age criteria that are applied based on the terms for providing the Allowance for Heavy Motor Disability. According to paragraph 7 of the Plan for the Provision of

Allowance for Heavy motor Disability, children below the age of 12 and people above the age of 65 are excluded from the allowance unless if they became beneficiaries of the allowance before they completed 65 years of age. It was ascertained that the main reason for establishing the maximum and minimum age limit as a prerequisite for the submission of the allowance was once again the economic burden that the state would bear in the occasion of providing the allowance to all the people with heavy motor disability independent of their age. The intervention of the Equality Authority resulted to the making of a decision by the Department of Social Rehabilitation of Disabled People for the reevaluation of the conditional Plan with the removal of age criteria. The reviewed Plan is expected to be submitted to the Ministerial Council for approval.

Termination of granting allowance of care to disabled people

Person with heavy disability filed a complaint about the termination of the care allowance that he was granted by the Social Welfare Services and supported that, considering his heavy disability and the lack of family support, he was in danger of being institutionalized. It is noted that the complainant spent the first 30 years of his life in institutions.

With the People with Disabilities Law of 2000 (L.127(I)/2000)[7] the legislator made a general declaration of the rights of people with disabilities (article 4), such as *the right for a respectable level of life and where necessary through economic provisions and social services.* The Ombudsman pointed, in her relevant with the claim Report that this simple general declaration of the rights of disabled people cannot act on its own in their favor without the legislation of specific legal provisions that enforce the state to implement them in action. The most important progress towards the direction of transforming the previous simple declaration of the rights of disabled people to action, came with the passing of L.95(I)/2006. Especially the regulation of article 3(10)(a)(i),

7. Followed the amending L.57(I)/2004, harmonizing with the directive 2000/78/EC.

overcoming the perception that only disabled people with economic problems need social welfare, provides the freedom to the Director of the Social Welfare Services to approve public allowance even if the disabled person is employed in a fully profitable work. This advantageous treatment of disabled people in favor of those not being disabled is justified and is enforced, based on the principle of proportional equality, which means the similar treatment of likes and dissimilar treatment of dissimilar people. And, finally, as a measure, it contributes to the promotion of the equality of opportunities for disabled people.

As the Ombudsman observed, while previously there was a matter of transforming the simple declaration of the rights of disabled people to legal measures that ensure their application, what arises today, as ascertained, is a matter of transforming to action the legal (positive) measures that were legislated. Specifically, it was ascertained that the Social Welfare Services handled the situation of the complainant as similar to any other case of an allowance beneficiary, who is not a disabled person, by violation of the principle of proportional equality and by extension, by violation of the principle of anti-discrimination. Specifically, it arose from the research that the reexamination of the complainant's case, which led to the termination of the care allowance that he was granted, happened by invocation of the passing of L.95(I)/2006, while at the same time those provision positive for the disabled people were ignored. Beyond that, in an unfortunate effort of enforcing a prohibition over his property his honesty was questioned and it was claimed that he systematically refuses to provide information regarding his economic status, something which is not valid as proven by the research.

The Department of Social Welfare Services complied with the Ombudsman's recommendation for continuing to pay the complainant his care allowance.

Obstacles in the free transportation of employees

Based on the mutual recognition of professional qualifications and

freedom of movement for citizens of the E.E., the Equality Authority investigated a complaint by an Italian person against the Educational Service Commission, regarding the resolution of the latter to reject his application for registration to the Appointing Board for Italian Language teachers, because it was judged that he did not hold qualifications required by the Service Plan. The mandatory qualification for someone to be appointed in the position of the professor is to hold a university degree or title or an equivalent qualification in the specialization that the candidate is aiming to teach.

It was ascertained that the complainant held the title Laurea in Lettere e Filosofia, duration of four years, that he acquired from the Universita Degli Studi Di Udine of Italy and he submitted an application for registration to the Appointing Board for Italian Language teachers. The Educational Service Commission rejected his application on the rationale that his title did not fulfill the above mentioned requirement of the Service Plan. The complainant went to the supreme Court, which judged that: “The decision of the Commission whether the applicant held a university degree or title or an equivalent qualification in the Italian Language and Philology should take place under the light also of the General System of Recognition of Professional Qualifications Laws of 2002 and 2003 (L.179(I)2002 and L.129(I)2003), which provide for a general system of recognition of certificates of tertiary education that certify vocational training of at least three years of studies and in relevant subjects”. During the reexamination of the case the ESC remained in its position and referred the complainant to KY.S.A.T.S (Cyprus Council for the Recognition of Higher Education Qualifications).

In the framework of investigating the complaint the Equality Authority additionally ascertained that the definition that the Commission gave to the provisions of the Directive 89/48/EEC is wrong. The Directive 89/48/EEC is supported on the principle of mutual recognition of diplomas, without prior harmonization of studies, in order to eliminate the obstacles in the freedom of movement of employees in the European space. After stressing out that the decision of the Commission whether the applicant held a university degree in Italian Language and Philology should be done under the light of the General System of Recognition of Professional Qualifications Laws of 2002 and

2003 (L.179(I)2002 and L.129(I)2003), the Ombudsman judged that the rejection of his application for registration in the Appointing Board for Italian Language Teachers and his referral, after four years, to KY.S.A.T.S for recognition of the equality and equivalence of the title of Laurea in Lettera to a university degree in the sector of studies of Italian Language/Philology, contravenes both the communal law as well as the harmonizing Laws of the Republic.

The Ombudsman mentioned that in the occasion that the Commission considers that the complainant's degree has substantial differences from those covered in the Republic, it can, on the basis of the provisions of the Directive, demand from the complainant that he goes practical field adjustment or that he is submitted to the process of acquiring a teaching certificate. Something like that did not happen. The decision of the Committee to refer the complainant to KY.S.A.T.S was found problematic, since it confuses the concepts of academic and professional recognition.

The academic recognition is decided by KY.S.A.T.S, while the professional recognition is decided by the competent bodies that verify if the interested person has the required qualifications for the exercising of a particular legally established profession. As a result, the certification of the adequacy of the complainant's professional qualifications belongs exclusively to the Educational Service Commission.

The Ombudsman had consultations with the complainant and representatives of the Educational Service Commission, after the end of which she made a final recommendation the content of which was, in general lines:

– the immediate revision of the practice of the Commission in relation with claims of communal citizens for their registration Appointing Boards, on the basis of recognizing their professional qualifications.

– The abandonment of the practice for referring the candidates to KY.S.A.T.S.

– In case of doubts as to the adequacy of the professional qualifications of those interested, the Commission is called to turn to the National

Coordinator, the responsibility of whom is to examine the correct application of Communal Directives and Internal Legislation.

The Commission has not complied with the content of the Recommendation until today. The complainant intents to go to the European Court to claim his rights.

More adverse employment terms for foreign workers in agriculture and stockbreeding

A worker from Bulgaria complained to the Equality Authority that with a new collective agreement the salaries of workers in agriculture and stockbreeding decreased and that this constitutes adverse discrimination at the expense of foreign workers in the area of employment, taking for granted that especially in the area of agriculture and stockbreeding almost only foreign workers are employed. It was ascertained that the controversial collective agreement was signed after collective negotiations between Trade Unions and Agricultural Organizations, in which there was participation by the Department of Labor Relations Department of the Ministry of Labor and Social Insurance in the framework of its mediatory role. As agreed, the agreement would be valid from 1.7.2004 to 31.12.2007, and would cover only the small businesses of agriculture and stockbreeding. However, no clear criteria were established as to which of the agricultural businesses will be considered as small and gradually the implementation of the collective agreement expanded to big businesses. With the article 9 of the conditional collective agreement it was established that the agricultural workers (these of small businesses) will be paid gross monthly salary of £220 and net salary £195 (the employer cuts £25 per month for accommodation and nutrition expenses, for contribution of the employee to the Trade Union and for contribution to the Trade Funds of Medical Care). In the occasion that the employer does not provide accommodation and nutrition it was decided to pay gross monthly salary of £385.

With the above collective agreement, beyond the fact that the salary of the agriculture and stockbreeding workers decreased, other important

benefits that the workers previously enjoyed on the basis of Employment Terms for the Sectors of Agriculture and Stockbreeding of 1992 were banned. Specifically, the provision for indexations was banned, the provision for paying 13th salary was replaced with provision for giving 13th salary only to workers who have consecutive service beyond one year at the same employer, thus, leading to the substantial elimination of the fact that the workers of agriculture and stockbreeding are by rule seasonal, and holidays were reduced from 13 to 10 days. It is noted that in almost all the collective agreements, especially those concerning employment sectors in which Cypriots or and Cypriots are employed, there is provision both for 13th salary as well as for Automatic Wage Indexation, while concerning the holidays, their number varies from 13 to 17 days.

From the data of the administrative archives that were inspected it arose that during the collective negotiations that took place prior the making of the controversial collective agreement, the agricultural organizations insisted on the reduction of wages and the shrinking of the other benefits for foreign workers calling for the problems that the agricultural production is facing and the need to decrease labor expenses. The position of the Equality Authority as defined in the Report, is that the handling of the problems or the crisis that the agricultural sector of the economy is going through with the limitation or the removal of rights of universal value cannot be accepted. Neither can any limitation of personal rights can have as their sole criterion of enforcing the discrimination the selfish interest of the party who is benefited party from the discrimination. There is no “public interest of the indigenous” but generally “general interest” that is serviced by the faithful maintenance of the human rights.

Additionally, it arose from the research that the collective agreement signed by the social partners, with the participation of the Department of Labor Relations in the framework of its mediatory role, was the result of collective negotiations for the regulation of wages and other employment terms, especially of foreign workers of the agricultural sector. The Ombudsman notes in her Report that the agreement on merely the agreement on its won constitutes unlawful discrimination for the reason that it leads to de facto different regulation of the workers’

employment terms with the criterion the national or ethnic or racial origin. After the Ombudsman's consultations with the social partners the Equality Authority made a recommendation for the faithful preservation of the principle of equal treatment during the renegotiation of the controversial collective agreement. The relevant collective negotiations had not been completed prior the end of 2008. The proposal, in any case, that was made by the Department of Labor Relations of the Ministry of Labor and Social Insurance, in the framework of those collective negotiations provides improved employment terms of agriculture and stockbreeding workers.

Employment of asylum applicants in agriculture and stockbreeding

From 2005 to 2007, 22 complaints were submitted to the Equality Authority regarding the decision to allow the employment of asylum applicants exclusively in agricultural and stockbreeding operations. It was supported that the exclusion especially of those applying for asylum from accessing the other work sectors, in which foreign workers are allowed to be employed (under conditions), constitutes unjustified discrimination at their expense. It was ascertained that the policy decision to employ those applying for asylum, originally "exclusively" and then "by priority" in the sector of agriculture and stockbreeding was transformed in 2007 in action of legal nature, by which it was now entirely clarified that the only sector in which they are allowed to work is that of agriculture and stockbreeding. In specific, this concerns the Resolution of the Minister of Labor and Social Insurance, which encircled the type of the Statutory Administrative Regulation, by virtue of the Regulation 12(2) of the Refugees (Conditions of Welcoming Applicants) Regulations of 200s, according to which *"…the employment of asylum applicants after the first six months form the date of submission of the application for asylum is allowed in the sectors of agriculture and stockbreeding, considering that they have an employment contract at a specific employer sealed by the Department of Labor"*.

It also arose from the research that the decision to allow the employment of the asylum applicants only in agriculture and

stockbreeding is connected with the vertical increase in 2004 of the asylum applications. It was, actually, one of the measures determined for the prevention of submissions of applications for asylum.

In her relevant Report the Ombudsman expressed the opinion that the regulation in force enforces a large group of foreigners, of s special economic situation, to work in the worst employment sector and with wage conditions that no inexperienced foreign worker would accept. In other words, this is a regulation that in its essence leads to the violation of the principle of labor law for equal treatment and for the guaranteeing of at least one measure of labor condition to anyone who provides his work to another and allows his exploitive treatment as a cheap working unit, not only by the employer but also by the welcoming state itself. The Ombudsman suggested the immediate revision of the decision to allow the asylum applicants to work only in agriculture and stockbreeding on the basis of her observations. In that suggestion there was immediate response. Specifically, with S.A.R. 364/2008 the areas in which the asylum applicants may work are expanded, including also those of manufacturing, waste management, trade and constructions, as well as other activities.

Limitations in the freedom of settling and providing services

1.

Few months after the accession of the Republic of Cyprus to the European Union the Real Estate Agents Law of 2004, L.273(I)/2004 came in effect. In relation to the provisions of this law two complaints were submitted to the Equality Authority by European citizens, who claimed that these provisions posited unjustified limitations in the exercising of the profession of the Real Estate Agent in Cyprus by Europeans.

It was ascertained that the Commission of the European Communities had sent from April of 2006 a notice to the Minister of Foreign Affairs estimating that by legislating a restrictive framework for the exercising of the activity of the real estate agent with the conditional law, the

Republic of Cyprus violated the obligation that it prevails on the basis of the Convention of the EC for the respect of the freedom of settling and providing of services by citizens of one member state to the territory of another member state.

As a result of the warning notice by the Commission a Bill was planned for the amendment of L.273(I)2004 in such a way that is fully complied with the communal law. In view of this progress the Equality Authority submitted a Report to the Parliamentary Committee of Internal Affairs in order to put in consideration its observations during the discussions for the Bill. In addition, the Equality Authority transmitted its Report also to the Attorney General of the Republic by virtue of article 39 of the Combating of Racial and Some Other Discriminations (Ombudsman) Law of 2004. It is noted that the Equality Authority was called and participated in the Discussion of the Bill with the social partners. With the passing, finally, in July 2007 of L.118(I)/2007, the main provisions of the previous Law that introduced limitations in the exercising of the profession of the Real Estate Agent in Cyprus by Europeans were eliminated or amended.

2.

What was also of interest was the complaint by a European citizen against the Council for the Registration of Building and Civil Engineering Contractors for discrimination at his expense on the grounds of language. The complainant, who had a multitudinous previous experience in the profession of the contractor in England, submitted an application to the conditional Council in order to get a license to exercise that profession in Cyprus. In order to examine his application the Council conditioned the applicant to present in an official translation in the Greek language the documents that he had submitted in the English language. Based on the research data, as concerns Cypriot applicants who present justifying data of their qualifications in the English language, the Council does not request their translation in the Greek language as well, in order to examine their application.

The Ombudsman judged that the condition required by the Council for the Registration of Building and Civil Engineering Contractors by

deviation of the practice it applies for the Cypriot citizens, constitutes unlawful discrimination on the grounds of language and by extension on the grounds of national origin.

Discrimination on the grounds of language in the employment sector

Two nurses, who come from Bulgaria and who are settled in Cyprus due to their marriage with Cypriot citizens, complained that after years of employment at the General Hospital their services were terminated on the pretext that they do not hold the required level of knowledge of the Greek and the English languages. It is noted that, due to the insufficient staffing of the Hospitals and the difficulty in finding personnel, it was approved, prior 2004, to cover the needs for personnel with the employment on a temporary basis of persons who did not have the presumptive required language qualifications by the Service Plan. For appointment purposes in the public service in the position of the Nurse it is required to have "very good knowledge of the Greek language" and "very good knowledge of the English language".

Concerning the requirement for "very good knowledge of the Greek language" the Equality Authority had already stated its position with a previous Report[8], after the investigation of a complaint that concerned the Service Plan of a Medical Worker, in which there was also the provision for the requirement of the very good knowledge of the Greek language. Specifically, it was judged that as concerns the doctors whose mother tongue is not the Greek language, the requirement for the knowledge of the Greek language on the level "very good" is not objectively justifiable considering the practical nature of the duties of the particular position. And from the moment that the required level of knowledge of the national language exceeds the necessary measure for the satisfactory exercising of the medical profession this acts as indirect discrimination on the grounds of language, in the meaning that, while it appears at first sight as a neutral terms it nevertheless causes

8. See Annual Report of the Equality Authority for 2006, p.19.

the adverse treatment of those people whose mother tongue is not the Greek language in the area of accessing the specific work position in the public sector. There was full compliance to the suggestion of the Ombudsman for the elimination of that provision in the Service Plan of the Medical Workers that constituted discrimination on the grounds of language.

As for the requirement of the "very good knowledge of the English language", it was ascertained from the examination of other complaints relevant to that subject that what was required in the past for appointment purposes in the public service was only the knowledge of a particular foreign language, that of the English language, and that as a result of previous long lasting colonial ruling. From the pre-accession procedures to the European Union, most Service Plans, at least for scientific positions, were very correctly amended so as to require now only the knowledge of one of the work languages of the E.E., that is, the English, French or German, or in other occasions, one of the most prevailing European languages.

There was no compliance with the suggestion of the Ombudsman for amending the Service Plan for the Medical Workers. So, on the basis of the new Service Plan, what is required now for appointment purposes of medical workers is the very good knowledge of the Greek language and the very good knowledge of the English or French or German language, or very good knowledge of the Greek language and good knowledge of the English or French or German language.

Access to work positions in women's army and their professional development

A group of women non-commission officers of the 3rd row of the National Guard, submitted a complaint to the Equality Authority supporting that, both in the area of accessing work positions in the army as well as in relation to the conditions and terms of employment, as well as their professional development, they undergo discriminations on the grounds of sex.

It arose from the investigation of the complaint that in the entire legal framework that regulates the employment terms in the army there are provisions which constitute direct or indirect discriminations at the expense of women, by violation of the Equal Treatment of Men and Women in Employment and Vocational Training Law. Further below are indicatively listed the main provisions that include discriminations on the grounds of sex:

1. The issues of appointment, hierarchy, promotions and retirement of non-commission officers are regulated with two different legal texts according to the non-commission officer's gender. Specifically, it concerns the Female Non-commission Officers of the Army of the Republic (Appointments, Hierarchy, Promotions and Retirements) Regulations and the Non-Commission Officers of the Army of the Republic (Appointments, Hierarchy, Promotions and Retirements) Regulations. It was pointed out by the Equality Authority that the mere existence of two different legal texts, which regulate matters for the exact similar work position (that of the Non-Commission Officer) and in which there is no determinant difference that is respective to a particular sex, constitutes on its own accord sufficient indication regarding the existence of discrimination on the grounds of sex.

2. In the Regulations 25(5) and 21(5) of the above Regulations a different grading scale is established for the non-commission officers according to their sex and in a way that benefits men non-commission officers.

3. On the basis of Regulations 4 and 7(2) of the Female Non-Commission Officers Regulations, the necessary requirement for direct appointment of women candidates in the position of female non-commission officer is the 6 years of her service in the position of voluntary non-commission officer. It is noted that originally the time of completed service that was required for the direct appointment of women candidates in the position of female non-commission officer was 2 years, while later it extended to 6 years. The initial requirement for the previous

experience of female candidates as volunteers up to two years could be considered justifiable, since it constituted compensatory measure and measure of equaling the two sexes, considering the men's obligations for the fulfillment of their 25 months military service. However, the extension of the above reported time limit from 2 to 6 years, without this being justified objectively, was judged to be disproportional, with adverse consequences for women candidates for direct appointment to the permanent position of the non-commission officer.

4. Based on Regulation 16(2) of the Female Non-Commission Officers Regulations, in occasions of simultaneous appointments of non-commission officers, the men are automatically considered elder in service than their female colleagues, due to their sex. For example, in occasions of simultaneous appointment of one woman and one man in empty positions of non-commission officers, the selected woman, who has (necessarily) service of 6 years, is considered to lack in seniority of her male colleague, for reasons directly and exclusively connected to her sex. In occasions also of direct appointment, where the selected woman additionally holds a university diploma, while her male colleague does not, despite the fact that she prevails over the man both in previous experience as well as in qualifications, she still remains in a position inferior as to seniority of her male colleague, due to her sex.
5. By virtue of the above regulations, the women are entirely excluded from accessing the work position of the Volunteer for Five Years of Service.
6. Based on the article 22 of the Army of the Republic Laws of 1990 to 2006, under specific requirements and independent of the directives of any other law, the right is granted to provide pension to the widow and the children only of male members of the army.
7. Based on the Regulation 5 of the Female Officers Regulations,

every year the Ministry of Defense defines how many of the existing empty positions of non-commission officers will be covered by women non-commission officers.

Beyond the above it was ascertained that the application of the practice of an unwritten separation of the duties of the work position of the non-commission officer to “female” or “male” work and the relevant placing of them of the male and female selected persons. Because, based on the data of the research, the different treatment of women who hold work positions in the army, is based mostly in directives of legal context, the Ombudsman transmitted her relevant Report to the Attorney General of the Republic, so as to promote the elimination of the direct and indirect discriminations that are included therein. That resulted to the putting forth of the process of revising the entire legal framework that concerns the employment terms in the army.

Complaints for sexual harassment in the working environment

Three Reports concerning complaints by women for sexual harassment in the working environment were submitted by the Equality Authority. The conditional complaints were investigated by virtue of the provision of the Equal Treatment of Men and Women in Employment and Vocational Training Law, which makes sexual harassment in the working environment discrimination on the grounds of sex.

1.

The first complaint was submitted by an employee of a semi-governmental organization and it concerned the handling by her superiors, of the report she made for sexual harassment and harassment in her working environment, by a colleague of hers. The complainant supported that as a result of the incidents that were created between her and the accused and due to the submission of an official complaint against him, there was adverse alteration of her working conditions, and finally, her transfer to another Department by decision of the Administration of the semi-governmental organization. It was ascertained by the investigation of the complaint that the

complainant's allegations were well-grounded. Specifically, it was ascertained that her immediate supervisor accepted with no doubts, without investigating the whole matter and without taking any measures for her protection, the accused person's allegation as true and he supported, on the basis of that belief, his further actions. In addition, her immediate supervisor acted repeatedly in a way that placed the complainant in a more adverse position from her other colleagues, in relation to the employment terms and conditions, as well as in relation to the requirements and the transfer criteria, by violation of the relevant Laws. That is, in action, the treatment of the whole matter by her immediate supervisor contributed to the creation of a humiliating, intimidating, aggressive and hostile environment for her for reasons that related to her complaint that she had undergone sexual harassment.

After the investigation of the complaint consultations took place at the Office of the Commissioner for Administration (Ombudsman's) with the administrative executives of the semi-governmental organization and recommendations were made for the erasure of the adverse treatment that the complainant had suffered due to her complaint about her being sexually harassed. There was full compliance with the Ombudsman's recommendations. In addition, the organization decided to organize educational seminars for the personnel with the subject of sexual harassment in the working environment.

2.

The second complaint was made by an employee of a private company at Pafos. In this case, it was ascertained that the complainant's complaint for sexual harassment in her working environment was not taken seriously in consideration by her employer and no research took place as to its essence. On the contrary, the Company Administration went forward with her dismissal, just 15 days after the submission of her complaint for sexual harassment in her working environment. What really troubled the Equality Authority was that the employer had, anyway, turned for guidance for the whole handling of the situation, both to the Department of Labor Relations of the Ministry of Labor and Social Insurance as well as to a Trade Union executive and that, it is on the

basis of his own mistaken guidance that his actions were supported on, among which the complaint's dismissal.

The Ombudsman pointed in her relevant Report that the Equal Treatment of Men and Women in Employment and Vocational Training Laws of 2002 to 2007, define very clearly the way employers must handle any complaints for sexual harassment. The employer is obligated to abstain (either himself or his employees) not only from any action that constitutes sexual harassment, but also from negligence that may lead or ease the realization of actions of sexual harassment, and is called to receive every appropriate measure for the elimination, non-repetition and removal of its consequences. In the framework of that obligation, that is, of the reception of every appropriate and prompt measure for the prevention of any actions that constitute sexual harassment, is included the introduction of a practice code for the handling of sexual harassment in the working environment. The aimed goal, based on the above, is to ensure the prevention of harassment of any sexual nature, and in the occasion that a case appears to ensure the appropriate procedures for the handling of the problem and the avoidance of its repetition. In those frameworks falls also the employer's duty to examine in every severity, rapidity and confidentiality all the accusations that are submitted to him, in relation to actions of sexual harassment.

Beyond the above, the Equal Treatment of Men and Women in Employment and Vocational Training Laws, clearly define the obligation of the competent body, that is, of the Ministry of Labor and Social Insurance, to update, in any appropriate means, both the employees and the employers, as well as the Trade Unions and Unions of Employers, about their obligations and rights. Based on the research data it appeared that the Ministry of Labor and Social Insurance did not adequately fulfill the obligation of updating the employees and employers as well as the Trade Unions, especially in relation to the matter of handling complaints regarding sexual harassment. In view of that ascertainment, the Ombudsman called both representatives from the Department of Labor Relations as well as a representative from the employer side in her Office for consultations. The result of those

consultations was, for one part, the employer to proceed to the formation of a policy for his business concerning the handling of incidences of sexual harassment and to issue a relevant Code of Practice, while the Ministry to proceed to the issuance of an informative leaflet for matters of sexual harassment and to take on the realization of educational seminars regarding the provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Law.

3.

The Third Report concerned the practice that the Department of Labor Relations applied of not investigating complaints that were submitted by foreign house maids for industrial disputes, which included also a complaint for sexual harassment by the employer, considering that accusations of such nature do not constitute industrial disputes. The pretext for the examination of that subject was two relevant complaints by foreign house maids.

The Ombudsman expressed the opinion that the offence of sexual harassment, which is described in the law as behavior that is based on and arises from the labor relation that is created between the employer, supervisors and employees, in the frameworks of their daily transactions in the working environment, falls in the definition of “industrial disputes” that both the Termination of Employment Law as well as the Equal Treatment of Men and Women in Employment and Vocational Training Law give. The nature of the offence of sexual harassment as an industrial dispute arises, also, from the fact that in the occasion of violation of the provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Law (which includes also the prohibition to make actions of sexual harassment) the offended person may go the Industrial Disputes Tribunal to arrange the whole matter. The same law further ensures that those persons, who consider themselves offended by violations of its provisions, may go, besides from the Industrial Disputes Tribunal, also to the Inspectors of the Ministry of Labor. Based always on the same law, the Ministry of Labor and Social Insurance is appointed as the competent body for the complete and effective implementation of the provisions of that law and

the Minister appoints, for the achievement of that goal, the Equality Inspectors who are the competent administrative body for the examination of complaints that concern violation of its provisions, with broad jurisdictions.

It is noted that in the case of the foreign house maids, the administrative procedure followed for the purposes of changing the employer is to submit a relevant application, along with a complaint for industrial dispute, to the Department of Labor Relations, which will then examine the complaint and will advise the Tripartite Committee of Examination of Industrial Discrepancies as to the reliability of the complaint. In the occasion that the decision of the competent committee of examination of complaints is in favor of the foreign house maid, the claim is found reliable and the change of employer is approved. Taken for granted, though, the current practice of the Department of Labor Relations not to examine complaints for industrial disputes that concern sexual harassment, the above referred procedure in such a case is terminated, without accomplishing the change of the employer, and resulting to the deportation of the complainants.

The Ombudsman judged that the conditional practice of the Department of Labor Relations, in combination with the negligence, thus far, to transmit, as it owes, the complaints that concern sexual harassment for examination to the competent administrative body for that matter (that is, the Equality Inspectors of the Labor Department of the same Ministry), results to putting the specific group of foreign women workers of the third countries outside the beneficiary and protective for them provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Laws of 2002 and 2007. The specific group of working women is now one of the most vulnerable groups, especially due to the fact that in most cases the foreign house maids reside in their working environments, and therefore, they are in constant danger of receiving sexual harassment by the culprit. Taken also for granted that the above referred practice is mostly applied in demands for the change of employers of house maids, it has the danger of being received as discrimination on the grounds of national origin.

The Ministry of Labor and Social Insurance finally revised the above applied practice and took back the position that sexual harassment does not also constitute industrial dispute.

Dismissal of pregnant temporary employee from the public service

An employee, who worked at Pafos District Land Office on a two-year contract, complained to the Equality Authority that she was dismissed despite the fact that she was pregnant. During the investigation of the complaint, the employers supported that the decision for the termination of the employment of the complainant was grounded on the provision of the Procedure of Employment of Temporary Employees in the Public and Educational Service Laws of 1995 to 2004, according to which, for purposes of terminating the employment of temporary employees, *"firstly are terminated the services of those employees whose ranking in the familiar board by category of needs is lower"*. The Department of Public Administration and Personnel also supported that from the study of the case of the complainant under the light of the Protection of Maternity Law it was ascertained that there is a clash between the provisions of the two laws, since based on second law (Protection of Maternity Law) the employer is prohibited to terminate the employment of an employee during the time period that she will announce her pregnancy until after the passage of three months from the end of her maternity leave.

With the position that there is a clash between the two Laws, of the Procedure of Employment of Temporary Employees in the Public and Educational Service and the Protection of Maternity Laws, the Ombudsman disagreed. According to the axiom of hierarchy of the law regulations, the special law prevails over the general law (lex specialis derogate legi generalis). The Procedure of Employment of Temporary Employees in the Public and Educational Service Law is a general law that aims to the general regulation of the procedures of employment of people to positions of the public sector on a temporary basis. The Protection of Maternity Law is a special law that aims to protect

especially pregnant women, puerperas, those breast-feeding or those in maternity leave, either these are employed in the public or in the private sector and independent of their employment's nature as definite or indefinite time. Beyond that, the Protection of Maternity Law is not only harmonizing with the communal law but also a result of the national conventional obligations of the Republic of Cyprus.

Based on the above legal regulations as well as the incidences of the examined situation, it arose that the complainant's termination, not only goes against the Protection of Maternity Laws of 1997 to 2007, but also that her dismissal constitutes adverse discrimination at her expense on the grounds of sex in the meaning of Equal Treatment of Men and Women in Employment and Vocational Training Laws of 2002 to 2006. The adverse treatment is constituted in the implementation of the same regulation in different situations. Specifically, the Department of Land and Surveys, ignoring the pregnancy factor, which differentiated the complainant's situation from that of the rest of the temporary employees and enforced a different law, that of the Protection of Maternity Law, applied also in her case the provisions of the Procedure of Employment of Temporary Employees in the Public and Educational Service Law terminating her employment because he held lower rank in the familiar list by category of needs.

The Department of Land and Surveys was imposed a fine by the Equality Authority. In addition, after consultations with the involved parties the Ombudsman also submitted a Recommendation to stop the practice of dismissing pregnant women by invocation of the Procedure of Employment of Temporary Employees in the Public and Educational Service Law and in such a way as to violate the provisions of the Protection of Maternity Law. It is noted, that the Department of Public Administration and Personnel issued a Circular, which was then sent to all the departments and services of the wider public sector, which clarifies the provisions of the Protection of Motherhood Law. With the same Circular, all the departments and services of the wider public sector are called to seek guidance either from the Department of Public Administration and Personnel or from the Attorney General of the

Republic or from the Equality Authority, prior making any decisions when in doubt about situations concerning maternity.

Non-employment of a woman to the General Chemistry of the State due to her pregnancy

A young woman submitted a complaint against the General Chemistry of the state regarding her non-employment on a temporary basis in the position of Lab Technician, due to her pregnancy. The complainant supported that around the end of August to the beginning of September 2007 an officer of the General Chemistry contacted her, and asked if she was available for immediate (within September) appointment in the position of the Lab Technician with contract ending at the end of 2008. She answered that she was going to give birth in September but she was interested in the employment and, while originally she was reported that she would be offered a contract, she was finally not employed. Then, in December 2007, one other person was employed, who in relation to the complainant, was not his turn in the final list of the applicants for employment in the positions of Lab Technicians and without her being asked if she was available for appointment.

Based on the incidents of the case and the legal framework that regulates it, it arose that the non-employment of the complainant in September of 2007 due to her pregnancy, constitutes direct discrimination on the grounds of sex in the meaning of the Equal Treatment of Men and Women in Employment and Vocational Training Laws of 2002 to 2006. The fact that the complainant would give birth in September, hence, for a particular time period would not be available for employment, did not justify based on the case law of the Court of Justice of the European Communities (ECJ), her non employment. The bypassing then of her turn in the final list, resulting to her not being offered a contract during the employments that took place in December 2007, constitutes violation of article 5 of the Procedure of Employment of Temporary Employees in the Public and Educational Service Laws of 1995 to 2004.

The Director of the General Chemistry, recognizing in a meeting that she had with the Head Officer of the Equality Authority the wrong handling of the entire situation, suggested the direct employment of the complainant on a temporary basis in the position of the Lab Technician, over a vacancy. The Ombudsman agreed with that solution, noting, however, that the complainant's non employment from September 2007 will have negative consequences for her, as for example that the experience that will be counted in the formation of the list of the temporary employees for the next year will be of shorter duration placing her in an adverse position over the other candidates. Based on this information it was recommended by the Ombudsman to restore at least part of the damage that the complainant suffered, and be considered fair as a single entity that she was offered service from the date of the last employment of a temporary Lab Technician during the month September of 2007, so as to be counted in both for purposes of transforming her into an employee of indefinite time as well as for purposes of estimating that prior service during the formation of the next lists of candidates for temporary employment. There was full compliance to that recommendation.

Non reception of protection
Measures for pregnant or breast-feeding
kindergarten contract teachers

Two kindergarten teachers, registered in the Appointing Board of kindergarten teachers of pre-school education, submitted a complaint at the Equality Authority against the Educational Service Commission (E.S.C.), regarding the offer to them to be appointed to positions beyond their base due to the fact that they had recently give birth and they were breastfeeding.

It was ascertained from the research that the practice applied during the procedure of appointment of kindergarten teachers on contract who are going through the period in which they are protected by the law due to pregnancy, delivery or breastfeeding, does not coincide with the

current legal framework. Based on that practice, the placing of the kindergarten contract teachers depends mostly from their ranking in the familiar appointing board. That is what exactly happened in the case of one of the complainants, as to which the ESC supported that during her placing (off her base) it did take in consideration that she was breastfeeding (that is why they placed her at Limassol instead of at Pafos), but it also took in consideration the rights of the other contract teachers that preceded her in ranking in the familiar appointing board (that is why she was not placed in Nicosia). In her Report the Ombudsman clarifies relatively two points. Firstly, that the ranking should undoubtedly be strictly kept for appointment purposes. For purposes however of placing, the special protection that the law provides to pregnant women, puerperas and breastfeeding women, not only justifies but also enforces the bypassing of the ranking list. This bypassing may be temporary, for the time that is that the law recognizes that the working mother must be eased for the breastfeeding or the increased care that her child requires. The second point is that with the more favorable treatment of the contract kindergarten teachers who have a child below 12 months during their placing, the subject of violation of the rights of the other teachers is not brought up, nor any violation matter of the principle of equal treatment at the expense of the latter. Equal treatment means the equal treatment of likes and the different treatment of different people. On the contrary, it is the simulation during the placing of women who recently gave birth with the other colleagues that leads to unequal treatment.

Beyond the above, based on the applied practice, when an appointment with contract is offered to a kindergarten teacher, the condition is set that she simultaneously accepts the appointment and her placing to a particular school or District. This is a blackmailing dilemma concerning the kindergarten teachers who are pregnant or have recently given birth, that as a result, often leads to their non acceptance of their appointment, which they are entitled to, anyway, based on their ranking in the familiar appointing board, because they cannot live up to the condition posited to them to work off their base for reasons solely

coming from pregnancy and maternity. Taken for granted that the conditional practice leads indirectly to the exclusion of a number of kindergarten teachers from being appointed for reasons connected with maternity, it constitutes unlawful discrimination on the grounds of sex in the meaning of articles 8 and 11 of the Equal Treatment of Men and Women in Employment and Vocational Training Laws of 2002 to 2007.

In consultations that took place in her Office the Ombudsman explained to the ESC representatives the obligation enforced by Law of anti-discrimination at the expense of women for reasons connecting with pregnancy. She also informed them that she was intending to make a recommendation for the abandonment of the above practice.

Maternity leave for women who have a child through adoption

Two working women who had a child through adoption, submitted a complaint supporting that the Protection of Maternity (Amending) Law of 2007 (L.109(I)2007) introduces discrimination at the expense of women who have a child through adoption, considering that the increase of the two weeks in the maternity leave concerns only working women who deliver a baby. It was ascertained that with the Protection of Maternity (Amending) Law of 2007, the maternity leave was increased by two weeks only for the wage women who deliver a baby. In her relevant Report the Ombudsman reports that this different regulation as to the duration of the maternity leave is supported on the categorization of women in two classes, according to whether they had a child in the biological way or though adoption. By virtue of the established case law of the Supreme Court, the common factor of equality is the homogeneity of the objects and subjects of law excluding the equation between unequal or the discrimination between equals. The dissimilarity between items or the position or situation of people for purposes of equal treatment is not defined under the microscope or scholastically but with the principle of the substantial relevance between them. The substantial relevance between wage women who have a child

in the biological way with those having a child through adoption, is that both become mothers and as mothers they face the same problems concerning the care of their children. After all, the purpose of the positive or special measures for working mothers is the promotion of equality of working women, the prevention and the balancing of the adverse position in which they are placed and the protection of maternity itself as a mutual responsibility of the government and the society. Consequently, the non extension of maternity leave by two weeks for wage women who have a child through adoption is not objectively justified and introduces discrimination at their expense.

The Head Director of the Department of Labor, in his written position relating to the complaints under examination, informed the Ombudsman that the Ministry of Labor and Social Insurance had already deposited to the Parliament a Bill for the extension of maternity leave by two weeks also for wage women who have a child through adoption. In view of that progress, the Ombudsman submitted her Report to the Labor Committee of the House of Representatives, with the suggestion to give priority to the discussion of the Bill that was pending for purposes of eliminating the discrimination that the current legal regulation introduces at the expense of wage women who have a child through adoption. The conditional discrimination was eliminated in April 2008 with the passing of the amending law L.8(I)/2008.

The non renewal of the attachment of a medical worker due to her pregnancy

A medical worker, who was attached to the position of a Clinical Trainer, complained that her attachment was not renewed because during the critical year she was absent with sick leave connected with her pregnancy.

Based on the Equal Treatment of Men and Women in Employment and Vocational Training Laws, any discrimination on the grounds of sex is prohibited, including the discrimination on the grounds of family situation or/and pregnancy, in the sector of accessing a work position, including

the terms and conditions of employment and the requirements and the criteria for attachment. In parallel, the article 7 of the Protection of Maternity Law ensures the working puerperal' rights, including her right to return after her maternity leave to the working position she held before her delivery or to similar nature of work.

Based on the research data, the complainant was not even given the possibility to claim, by submitting an application, her maintaining in the work position she had through attachment, for reasons that were exclusively related to her pregnancy. The Director of the Nursing School had justified the non renewal of the complainant's attachment, supporting that "it is natural not to renew attachment of staff that in essence will not be able to be at the working place for which they are attached for a long period of time and the needs, for which the attachment is required, are not satisfied". This rationale did not respond in any way to reality. On the contrary, it was in the knowledge of the Director of the Nursing School that the ending of the complainant's maternity leave coincides with the time of filling of the positions that had been announced for Clinical Trainers and so she was available to begin her duties immediately. Based on these data, it was judged that the non renewal of the complainant's attachment constitutes unlawful discrimination on the grounds of sex. After consultations that the Ombudsman had at her Office with the involved parties she decided to enforce a fine to the Nursing School.

Absence of protection measures of pregnant working women

Two temporary employees submitted a complaint at the Equality Authority against the Department of Public Administration and Personnel supporting that the practice which the Department follows during the transfer of public employees, excludes entirely the counting in of criteria that concern pregnancy, or disease connected with pregnancy, during the reception of a decision for a transfer application of a working pregnant women to their resident city. The first complainant

had recently given birth to her third child and had requested to be transferred from Nicosia to Limassol where she resides, so as to use her right to come to or go from her work one hour later or earlier respectively, or to stop her work for one hour a day for breastfeeding purposes. In actuality, the complainant could not make use of that facilitation because she was using the bus on a very tight schedule. The second complainant, who also lived at Limassol and worked at Nicosia, was in the fourth month of pregnancy, with a history of previous miscarriage and with a certification from her doctor of a possible new miscarriage.

The General Director of the D.P.A.P. supported that the general principles that govern the transfers of the public employees have repeatedly been expressed in court decisions, according to which they constitute administrative measures, which must be taken in consideration for the interest of the service, based on the needs and without counting in the personal conditions of the employee who applies for the transfer. In any case, however, as he supported, where the family or/and personal reasons that the employees call for are judged as exceptional, there is effort to satisfy their claim.

The Ombudsman notes in her relevant Report that the emphasis given to the effective protection of pregnant women, puerperal, and breastfeeding working mothers is unquestionable. Both on the basis of the Regulations of the Court of Justice of the European Communities and on the basis of the European directive 76/207/EEC, as amended by the 2002/73/EC and the 92/85/EEC, as well as the harmonizing internal legislation, the pregnant working woman enjoys increased protection. By the established case law of the Court of Justice of the European Communities, the legality of the protection is recognized, in relation to the principle of equal treatment between the sexes, on the one hand of the biological condition of the woman during her pregnancy and after her pregnancy, and on the other hand, of the special relations between the woman and her offspring during the period following her pregnancy and delivery of the baby. That is, it does not constitute discrimination on the grounds of sex to treat more favorably a pregnant

working woman for the time and in the way established in the national legislation, since her protection is the duty and goal of the employer, either this is a private employer or the state.

Based on the research data the Ombudsman concluded that the practice followed by the D.P.A.P. in the case of pregnant working women not to proceed to by case examination of the real instances of a case, in view also of the legal or other progresses, posits those working women who are in the state of pregnancy or face health problems that connect with pregnancy or are puerperal or are breastfeeding in more adverse position than their colleagues, independent of sex, who are not in that position. The non counting in of the particularities of the condition of every pregnant working woman separately by the D.P.A.P. equals violation of the regulation that defines that the mutual factor of equality is the homogeneity of objects and subjects of law excluding the equation between those different or the discrimination between those similar. The dissimilarity between objects or the position or the condition of people for purposes of equal treatment is not defined under the microscope or scholastically but with the principle of the substantial relevance between them. The women who are pregnant or are going through their after delivery critical period of the nine (9) months, for which the Protection of Maternity Laws provide for additional facilitations, cannot be considered to be in an equal position with women who are not pregnant or are not in the above mentioned period after the delivery or/and men colleagues. Therefore, their treatment must be adjusted analogously, according also to the needs that come up in every occasion, with main criterion the protection of the pregnant woman, until the ending of the above mentioned periods.

It is also noted in the Report that not receiving the appropriate measures for the protection of pregnant women, puerperal, or breastfeeding working women, does not exclude the possibility to force the referred working women to quit or to abstain in any other way from their work, with adverse consequences for themselves. Taking for granted that such possibility is due exclusively to the condition of

pregnancy, delivery, being puerperal or breastfeeding of the working woman, in combination to the negligence of the competent body to take the necessary measures for their protection, any harmful change of their working conditions will derive from that negligence, will be directly connected with the condition of pregnancy, delivery, being puerperal or breastfeeding and will place the woman in a more adverse position in relation to the other colleagues who are not in the same position.

After having consultations with representatives of the D.P.A.P. the Ombudsman made a recommendation that the criteria that are counted in during the transfers of the public employees must also include the condition of pregnancy or disease connected to the working woman's pregnancy who applies for transfer. Also, that after the delivery period of the nine months the possibility is ensured to use the facilities that she is provided by law for the increased care of the baby and for the breastfeeding. In that recommendation there was compliance, and in addition, as concerns the complainant who was in her fourth month of pregnancy, it was decided that she was immediately transferred to a working position in Limassol.

Discrimination on the grounds of sex in professional evaluation and development

A female employee of the Press Office, who has the position of the typographer, submitted a complaint to the Equality Authority supporting that during the evaluation of her work she is graded lower than her male colleagues, due to her sex. The Public Service (Evaluation of Employees) Regulations of 1990 specifically state that the service report of an employee must be strictly limited to the judgment of its professional value, in the particular position that s/he holds during the year that this refers to. The evaluating officer owes, that is, to judge the satisfactory or not completion of the work on the basis of objective criteria, by using a unified measure of judgment and by putting every effort so that the evaluation reflects the true value of every employee, without its being influenced by external factors or other subjective criteria which are not related with their skills or abilities.

By the investigation of the complaint it was ascertained that the Director of the Press Office was evaluating his staff not on the basis of their satisfactory completion of their duties and professional value in relation to the particular work that they served, but according to what work they were executing. In actuality, there was a categorization of work in "female" and "male", while the evaluation of its execution took place in essence with the criterion on the one hand of the sex of the evaluated employee and on the other hand of how important the work they were executing was considered to be. Indicatively, it is reported that the Director had characterized in the investigation the work he gave to the men as "difficult", "productive" and "wearisome", while he characterized the work executed by women as "easy" and "not particularly important". Based also on the comparative data that came up from the research it was ascertained that no woman had been evaluated as better from a male colleague in the last four years. It was finally ascertained from the research that the evaluations of the staff of the Press Office took effect later on the women's professional development since the Director's recommendations for promotions were supported on those evaluations.

Based on the entirety of the above the Ombudsman concluded that the practice followed during the evaluations constituted discrimination on the grounds of sex at the expense of women by violation of the Equal Treatment of Men and Women in Employment and Vocational Training Law. Prior making her final recommendation the Ombudsman called the involved parties in her Office for consultations. In the Ombudsman's recommendation, to evaluate the employees on the basis of objective criteria for their professional value and independent of their sex, there was full compliance.

Discrimination at the expense of a group of women concerning their employment terms

Especially serious was a complaint submitted at the Equality Authority by a group of eighty women, regarding the employment system in the Cyprus Telecommunication Services (CYTA). Specifically, they complained that

they are working (some of them the last ten years) on annual contracts, as self-employed contract cleaning ladies, resulting to having missed out all the labor rights and benefits which permanent cleaning ladies who work at CYTA have, by executing the exact same work.

From the preliminary investigation of the complaint two basic questions were raised: (1) whether the new forms of work, such as contract work, afflicts the wages mostly of women and function as the pressure pivots for the making of wage agreement adverse for them intensifying finally the pay gap between men and women, and (2) whether from the content of the term of the Agreement Document of Employing Services that the complainants signed came up that there is the element of their dependence from the employer (employer employee relation) in such a degree that there arises a subject of manipulative usage of the term "self-employed". In relation mostly to the second question the opinion of three Unions of Workers were asked (PEO, SEK, DLFC/DEOK).

From the data of the main investigation it arose that the permanent and contract cleaning maids of CYTA were executing the exact work. There was, however, one difference of substantial significance that relates to their employment status. The permanent cleaning ladies had all the rights that result from the labor legislation while in the case of the contract cleaning ladies the provisions of the labor law were not applied, thus, making them de facto cheaper working force for the employer. It was also ascertained that the employment agreement for the services of self-employed contract workers (cleaning ladies) conceals a relation of dependent work. Based on the terms of the conditional agreement, CYTA, as the employer, establishes the way, the time and the place of work which it also supervises. That is, the element of personal dependence is very intense. By extension, there is infraction of the labor legislation that translates to more adverse pay and other labor terms in comparison to the other employees who are employed as wage (hourly rate) either in the same sector or in other sectors on relevant wage scale.

In relation to the question whether the practice of employing cleaning ladies with the status of buying services of self-employed contract

workers constitutes either direct or indirect discrimination on the grounds of sex, it is reported in the Ombudsman's Report that by virtue of article 2 of the Equal Treatment of Men and Women in Employment and Vocational Training Law "direct discrimination on the grounds of sex" exists when a person is subject to adverse treatment on the grounds of sex than an other person is, has suffered or would suffer in a comparable situation. "Indirect discrimination on the grounds of sex", is defined in the same article, it exists when a provision, criterion, or practice seen at first view neutral posits persons of one sex to a particularly adverse position in relation to persons of the opposite sex. The application of the principle of anti-discrimination on the grounds of sex is extended among others in the area of accessing employment (article 8(1)) and concerns especially *"the content, the expression or/and the application of provisions or terms of laws, administrative actions, service plans, internal business regulations, personal or collective employment agreements or contracts of every nature, announcement or advertisements, relevant with the description of the duties of every employment or work position, the terms and the conditions of its execution, the system and the evaluation criteria or/and of promotion of the employees, the employment schedules, benefits of every nature or provisions that connect with a vacancy or employment position, the licenses for any cause, after or with out allowances, as well as any practice relevant to these matters"* (article 8(2)).

Classifying the complainants' case to the above legal framework the Ombudsman concluded that the categorization of the cleaning ladies who are employed at CYTA to hourly regular cleaning ladies and to self-employed contract workers cannot be justified objectively, taking also for granted that the first and the latter are employed for the execution of the same work and the fulfillment of permanent needs. The Ombudsman additionally expressed that the obvious effort to decrease CYTA's operation costs and to increase its competitiveness is not adequate justification of the different treatment of the people that it employs and much more the infraction of the labor law. The practice to assign cleaning to self-employed contract workers that appears in first

view as a neutral practice, applied also independent of sex, but finally puts in a more adverse position a large number of women as to their employment terms. According to that there is indirect discrimination on the grounds of sex.

It is noted that after the submission of the complaint and while its investigation was pending, CYTA informed the Ombudsman that it had decided to proceed to the hiring of cleaning services through a competition calling for the submission of tenders for (1) hiring of services (through contest) from cleaning agencies for the cleaning of its man-staffed buildings in non-working hours and (2) for the hiring of services (through contest) by cleaning persons for the cleaning of its man-staffed buildings in times that include also working hours. Consequently, the Ombudsman noted in her Report that this new decision in essence does not differentiate the practice applied so far. The only difference will lay on the fact that the bidders will establish themselves their salaries without that, however, necessarily meaning an increase of their fees, taken for granted that logically the lowest tenders will be selected. Beyond that, the Ombudsman pointed out that if this new decision is implemented it will lead to the dismissal either of all or some of the complainants, who, lets note down, as ascertained from the research data, were manipulatively employed with contracts of limited time for a number of years and by violation of the Fixed-Term Work Employees (Prohibition of Adverse Treatment) Law.

The Ombudsman made a final recommendation to CYTA to take within two months of time the necessary measures to change the system of employment of the complainants. CYTA complied fully to the recommendation. Specifically, it decided the introduction of the "self-employed" cleaning ladies to the hourly personnel of the organization.

Ex Officio interference of the Equality Authority

The Equality Authority, acting ex officio, suggested in May 2008 the banning of the legal provision that is included in the Equal Treatment of

Men and Women in Employment and Vocational Training Law, and specifically in the Table of the same law, which was formed based on article 4(2). This legal provision, that concerns the prohibition of employment of women in mine fields, was included in the Table considering the obligations of the Republic of Cyprus which arise from the Convention 45 of the National Labor Organization (NLO).

It is noted that the Equality Authority made the above suggestion in view of a recent decision of the Court of Justice of the European Communities[9] (ECJ), which was issued after the examination of an appeal of the European Committee against Austria, regarding the prohibition of the employment of women in the area of underground mining works which was included in its national law. Specifically, it is noted in the conditional decision that the legality, concerning the principle of equal treatment between the two sexes, of the protection on the one hand of the biological situation of the woman during pregnancy and after that and on the other hand of the special relations between herself and her offspring during the year after the pregnancy and the delivery, is recognized. However, article 2(3) of the directive 76/207 does not provide the possibility to exclude women from a work for the reason that women must be protected more than men from dangers concerning men and women in the same way and differ from the special needs to protect women, such as these are clearly noted. With that thought in mind the NLO thought as inexcusable the different treatment on the grounds of sex in the area of accessing work positions in underground mining and not compatible with the directive 76/207[10].

The position of the Ministry of Labor and Social Insurance is that it cannot proceed to the banning of the legal provision, according to which it is prohibited for women to be employed in mines, until Convention 45

9. C-203/03.
10. Directive 76/207/EEC for the implementation of the principle of equal treatment of men and women in accessing employment and vocational training.

of NLO is appealed, and that, according to articles 5(3) and 7 of the Convention and based on the date of its validation from the Republic of Cyprus (23/9/1960), the appeal against the Convention can take place within one year from September 23rd of 2011. It is noted, that also Austria, against which the above referred decision of NLO was issued, was bound by the Convention 45 of NLO.