Annual Report 2006

Cyprus Anti-Discrimination Body

Printing: **Governmental Print Office** Source of cover: **Sonia Delaunay (1885-1979)** Design by: Κιμόνα

Contents

An introductory note from the Ombudsman

The second Annual Report of the Cyprus Anti-Discrimination Body is a good opportunity and probably the unique means to ascertain the distance which the newly founded Body has to cover from the measures undertaken since May 2004.

The Body was constituted in the context of harmonising national legislation with the European acquis and focuses its action in combating all forms of racism, whether racial, ethnic or based on age, language, religion or other beliefs as well as sexual orientation in the extremely sensitive sectors of education, access to goods and medical care.

In brief, the Body deals with the vulnerable groups of the population, whether these are European citizens or citizens of third countries and their "new" rights as recognised and safeguarded by the Community acquis and the respective legislation of each member state.

The Body has been assigned the functions of carrying out investigations and statistical surveys into matters of discrimination and monitoring of the legislation as well as the taking of measures aimed at the implementation, the preparation of codes of practice, the imposition of sanctions and the investigation of complaints concerning violations of the legislation.

A brief look at the Report for 2006 will demonstrate that the Cyprus Anti-Discrimination Body carried out all the activities and seized every opportunity to attain positive results. It is noted indicatively that in 2006 the Authority received 136 complaints and submitted 34 reports on discrimination issues. At the same time, it has effectively undertaken a mediatory role leading to mutually acceptable solutions for all implicated parties.

By continuing the effort it embarked upon since 2005, the Body unfolded an intensive activity to inform the public with lectures, seminars and discussions on its competences and on the manner which these may be harnessed by the public. It carried out a survey on the perceptions prevailing in Cyprus as regards homosexual persons, which was presented in a public event, and participated in international meetings and further-education programmes on the issue of racism.

The Cyprus Anti-Discrimination Body has overcome its functional weaknesses (it continues to be supported by the Sector of Human Rights of the Commissioner's Office (Ombudsman) and acted with maturity and flexibility in a sector fraught with inherent difficulties and gave a dynamic impetus to the perspective of an forming an open, tolerant and biased-free society which shows respect to the dignity of human beings and is capable of affording equal opportunities and rights to all its members.

Eliana Nicolaou
Commissioner for Administration

Competences of the Anti-Discrimination Body

The confines of the institutional possibilities and the purview of action of the Body are expressly delineated in the Community acquis and the respective legislation and its action is geared towards combating discrimination based on race, community, language, colour, religion, political or other convictions, national or ethnic origin.

The Body's mandate finds application in the remits of social protection, social insurance and social benefits, health and medical care, education, participation in associations and professional organisations and access to goods and services, including housing.

On a broader scale and always based on the regulations incorporated in the new general framework for the combating of discrimination embodied in Law No. 42(I)/2004, one of the principal competences of the Commissioner for Administration, as an independent authority against racism and discrimination, is to safeguard the enjoyment of human rights and freedoms established under the Constitution of the Republic of Cyprus or stipulated in the European Convention of Human Rights and its Protocols, in other European Conventions and Conventions of the United Nations ratified by Cyprus, free from all forms of racial or other discrimination.

Beyond the investigation of individual complaints and the provision of aid to victims of discrimination, the institutional competences of the Body include multifarious statutory possibilities of action extending to a broad range of activities in the ambit of prevention, enforcement and education, the principal of which are:

- to promote equality in the enjoyment of human rights and equality of opportunities independent of racial, national or ethnic origin, community, language, colour, religion or other beliefs;
- to take measures for the practical implementation of the legislative provisions governing or prohibiting any discriminatory treatment which is prohibited under the law;
- to enforce sanctions;
- to determine codes of good practice;
- to conduct investigations and statistical surveys on issues of discrimination;
- to examine matters related to discrimination

whether, of the Body's own accord or upon the requisition of individuals or organisations;

- to co-ordinate the action of governmental authorities and raise the awareness of the administration and of the citizens in the society in general.

The new framework established for the combating of all forms of discrimination introduces important legal methodological tools adopting the concept of direct or indirect discrimination prohibited under the law. It also affords particular independent protection against harassment or against all measures ordering the application of discriminatory treatment based on racial or ethnic origin.

Beyond the determination and specification of these crucial concepts, the new provisions constitute a complex mechanism of protection of the people or groups of the population affected that go beyond a traditional system of imposing sanctions in special occasions. So apart from the possibility of enforcing sanctions, emphasis is laid on the mediatory action for the promotion of the notion of equality, the mobilisation of the citizens as regards the raising of the awareness of the public and the society in general and the representation of the victims of discrimination.

The new legal framework introduces the possibility of taking positive action aimed at preventing or compensating for any disadvantage linked to racial or ethnic origin in an effort to enhance the provision of aid to victims of discrimination. This new form of action responds to the particular needs of vulnerable groups of the population who are the principal recipients of the protection afforded.

Activities of the Anti-Discrimination Body

1. Consideration of individual complaints

The investigation of complaints related to racism and discrimination and the provision of independent assistance to victims of discrimination was at the core of the actions carried out by the Body in the course of 2006. Since its inception on 1 May 2004 and until the end of 2006 the Body received 307 complaints and investigated 240 of them. A total of 105 complaints were received in 2006 alone.

The complaints were submitted by citizens of the Republic, by foreigners, natural and legal persons and by non-governmental organizations or groups of persons. Complaints were submitted by Cypriot citizens (Greek Cypriots and Turkish Cypriots), foreigners, immigrants, refugees, asylum seekers as well as persons belonging to socially vulnerable and/or excluded groups of the population in need of particular social care and protection such as the disabled, the elderly and the mentally ill. They involved mainly public and governmental agencies, local administration bodies and persons of public law.

2. Mediatory action

By continuing the practice of the previous years and in conformity with its statutory possibilities, the Body developed an intensive mediatory activity, which in specific instances ended in finding commonly acceptable solutions to the benefit of the affected persons. This occurred in incidents where the Body ascertained that the complaint was substantiated at first sight and provided scaled protection depending on each case functioning as a mechanism of protection of the victim's rights. In the cases most favourable for the victim, the Body was successful in restoring legality whereas in other incidents it opened a corridor of communication between the complainant and the public authority or justified the stance adopted by the public authority and substantiated it based on the principle of legality.

I am citing the following cases:

- A foreigner complained to the Body that he was refused service by a certain banking institution demanding that the foreigner had first to submit a permanent residence permit in Cyprus. The Body intervened by contacting the management of the implicated banking institution and received the explanation that in order to serve the foreigner, the latter was required to furnish particulars of his identity. After having informed foreigner of this fact, the former went to the bank and was served.

- A European citizen, who was a permanent resident of the village community of Meneou, appealed to the Cyprus Anti-discrimination Body claiming that the Community Council displayed an unjustified and disproportionate discriminatory treatment against him since he was required to pay community tax in the order of CY£85,00 compared to an amount of CY£55,00 which other residents of the community were required to pay. The Body intervened and the amount of the community tax was reduced to CY£70,00. The differentiation in the sum compared to the sum, which other community residents were required to pay, was justified because residents of the coastal area, where the complainant resided, benefited from additional community services.

- A European citizen and resident of Cyprus appealed to the Body alleging unreasonable delay in the consideration of his application to be issued with a residence permit. Upon examination of the complaint and the Body's mediation, the processing of the application was concluded and the residence permit was issued.

- Two European citizens, who lived permanently in Cyprus, appealed to the Body filing separate complaints and claimed that procedural difficulties and delays were observed in the issuance of their residence permit in Cyprus. It was ascertained that the procedural difficulties were due to their particular residence and employment status. After a relevant detailed briefing of the Body on the actions required, actions were taken to settle the matter.

- Two European citizens, permanent residents of Cyprus, submitted separate complaints arguing that they were faced with procedural difficulties in the issuance of a European Medical Care Card. The Body intervened and the card was issued to them.

- A Cypriot national lodged a complaint with the Body claiming that the Ministry of Health refused to issue his British wife with a medical care card. The Body intervened and a meeting of the complainant was arranged with the competent officer of the Ministry of Health which lead to the settlement of the issue.

- A foreigner permanently residing in Cyprus complained to the Body in respect of the payment of

hospitalisation expenses at the Nicosia General Hospital. Upon intervention of the Body, the matter was settled and the foreigner was released from the hospital.

▸ A Cypriot citizen filed a complaint arguing that, his ailing foreign wife had not been granted a public allowance in breach of the principles of non-discrimination. An investigation into the matter revealed that the payment of the public benefit required the submission of the residence permit from the complainant's foreign wife. The Body proceeded with the measures required for a prompt issuance of the residence permit and the payment of the public allowance.

3. Submission of Reports

Reports were submitted with specific suggestions and recommendations to combat problems of discrimination on a broader scale in the instances of individual complaints submitted before the Authority, which concerned broader issues of racism and discrimination affecting larger groups of persons. It is mentioned, indicatively, that a total of 36 reports on discrimination-related issues were submitted in the course of 2006 which concerned the possession of the refugee card, the fulfillment of the obligation of military service, the grant of pensions, state grants and allowances as well as the implementation of the principle of equal treatment in respect of age and disability. The reports submitted pointed out incidents of institutional and functional insufficiency and shortcomings in the organisation, which make the respect of the non-discrimination principle impossible, formulating organisational and statutory proposals aiming at the settlement of the issues in question and the improvement of the services provided.

4. Informing the public about the competences and activities of the Body.

The Commissioner for Administration and the officers of the Body participated in one-day events, congresses and seminars held with the aim of informing the citizens and vulnerable groups of the population and systematising the contact and collaboration with organized groups of the population and non-governmental organisations. In the same context, the Body continued the distribution of information material throughout 2006 in respect of the competences of the Body in the Greek, English and Turkish language. These activities aimed at the better information of the citizens on the mission, the work and the competences of the Cyprus Anti-Discrimination Body and the promotion of the collaboration of the Commissioner for Administration with organised bodies of the public and private sector in order to combat racism and discrimination.

5. Participation in the National Work Group against Discrimination

In the course of 2006, the Commissioner for Administration and the officers of the Body participated in meetings and activities of the National Work Group for the Combating of Discrimination. The Group comprised representatives of bodies, services, organisations, professional agencies and non-governmental organisations.

6. Participation in the European Network of Equality Bodies (Equinet)

The Cyprus Anti-Discrimination Body participates in EQUINET since its inception. This is a network that connects and co-ordinates all the independent bodies responsible for the implementation of the European Directives. In this context, the independent bodies exchange data on the means and the strategic actions taken by the national authorities for the implementation of the directives. This information on the various cases and the practices of dealing with them is sent to the data bank of the network. It is for this reason that the officer of the Body, George Kakotas participated in the general meeting of the members of the Network held in Brussels from 7 to 10 February. The same officer took part in a training programme of the Network organised in Budapest from 12 to 14 March 2006 entitled "Training on the practical implementation of anti-discrimination legislation: "Obstacles, best practice and case law of Equinet".

In addition thereto, the officer of the Body Melina Tringidou took part in a conference held at Vilnius in Lithuania from 17 to 18 November 2006 entitled "International Equality Bodies Meeting".

7. Presentation of a survey concerning the views, conceptions and responses of Cypriot citizens on the issue of homosexuality.

The Office of the Commissioner for Administration, being the competent authority against Racism and Discrimination, carried out a public opinion survey throughout Cyprus about the views of the Cypriots on homosexuality. The results of the survey were

presented and discussed in the context of an event held on 5 May 2006 with the co-operation of the Cypriot Gay Liberation Movement.

8. Staffing of the Anti-discrimination Body

In 2006, the Body was staffed by the employees of the Office of the Commissioner and more specifically by Senior Officer Mr. Aristos Tsiartas, and the Officers George Kakotas, Melina Tringidou and the Assistant Secretarial Officer Elisavet Christou. All the employees of the Body exercised their duties parallel to their duties as officers in Office of the Commissioner for Administration.

General Remarks

The annual report of activities of the Cyprus Anti-Discrimination Body for 2006 reveals, albeit indicatively, the challenges faced by the society in Cyprus in the ambit of the respect of diversity. All in all, the report formulates the fluctuations and the priorities of the respect of the principle of non-discrimination in practice and of the rights of foreigners (European citizens and third-country nationals) as well as of the rights of vulnerable groups of the population. In this sense, the report traces the implementation of the principle of equal treatment in practice and of the respect of the individual and of his/her civil and social rights in a modern state of law.

It is a fact that the principal problems of discrimination evolve around the situation of aliens in Cyprus. Nevertheless, modern social reality as pointed out in the report shows that the problems for the respect of the principle of equality involve vulnerable groups of the population. This may be ascribed to the fact that consolidated practices and conceptions not aimed at a conscious recognition of the principles of the protection of human rights favour a diversion from the principle of non-discrimination and the appearance of racial phenomena.

Nevertheless, it is worth noting that a mobilisation and the taking of positive actions in the field of the eradication of discrimination was observed in 2006 and in particular after the country's accession to the European Union in all the levels of the Body's activity whose result and orientation, however, remains uncertain to date.

The specific thematic areas of this report as well as the experience accumulated by the Body since its inception in May 2004 after having examined more than 240 complaints reveals a persistence of the known functional difficulties and of bad administration practices, which adversely affect the respect for human rights of immigrants and of European citizens who are moving, working or residing in Cyprus. It could also be stated that the response of the implicated competent authorities in Cyprus toward the phenomenon of the immigration of large numbers of immigrants remains passive and awkward. The initiatives taken from time to time at an administrative level and the intensive harmonisation efforts made in the foregoing years for the implementation of the community acquis do not go hand in hand with the administrative reality and practice that has evolved in Cyprus.

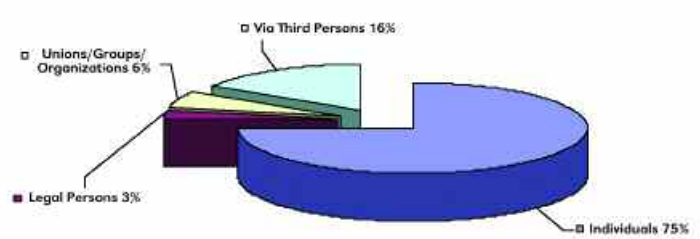
At any rate, the course of transposition of the Community acquis, albeit slow, gives rise to hopes for a new approach in dealing with the immigration phenomenon laying emphasis on the priorities and particularities of the Cypriot society in the light of the principles of a modern state.

Nowadays, an integrated approach of the social phenomenon of immigration by means of an integrated and complete immigration policy is widely recognised as a necessity. Such policy will place emphasis on the social integration of the immigrants, which is the aim of the Community Directives, whereas immigration will function smoothly in the benefit of the immigrants and of the country in general.

Statistical Analysis

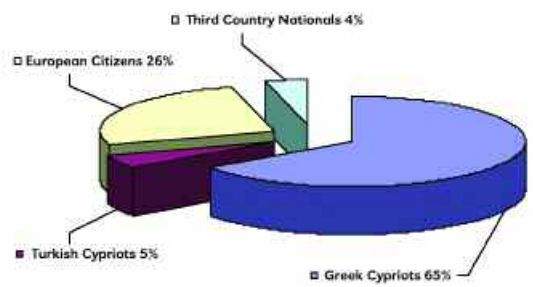
Between May 1st 2004, the date that the Cyprus Anti-Discrimination Body begun its operations, and December 31st 2006, a total of 307 complaints were submitted.

In 2006, 105 complaints were submitted to the Body. 79 out of the 105 were submitted by individuals, 3 complaints were submitted by legal persons, while 17 were submitted via third person. (Graph 1)



Graph 1

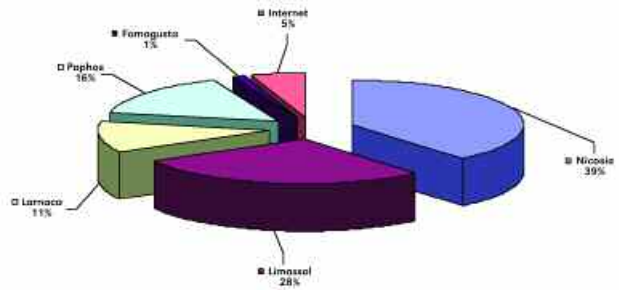
69 out of the 105 complaints were submitted by Greek Cypriots, 5 by Turkish Cypriots, 27 by European citizens and 5 by third country nationals (Graph 2).



Graph 2

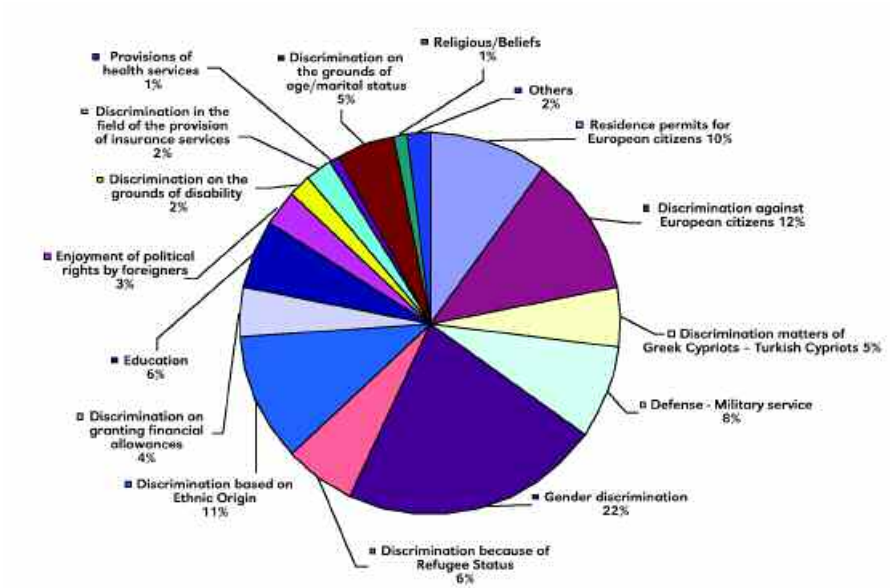
It is noted that, 41 complaints were submitted from the district of Nicosia, 29 from the district of Limassol, 12 complaints from the district of Larnaca, 17 from the district of Paphos and 1 from

the district of Famagusta. It is also worth mentioning that, 5 complaints were submitted to the Body through Internet (Graph 3).



Graph 3

Regarding the thematic classification, the complaints submitted to the Body in 2006, can be divided into the following categories (Graph 4).

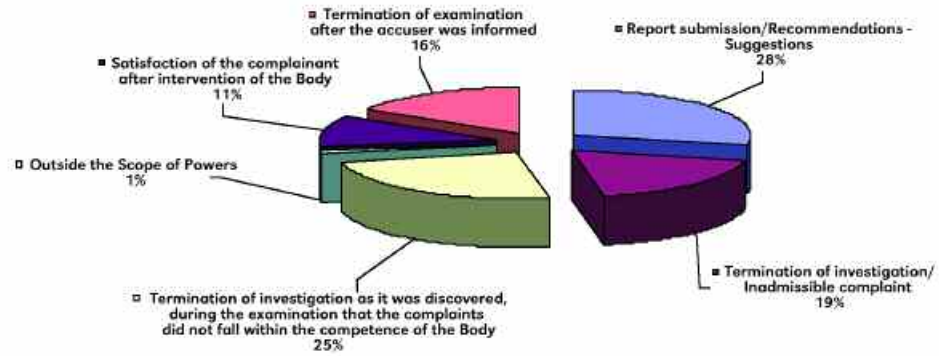


Graph 4

- Gender discrimination 22%
- Discrimination against European citizens 12%
- Discrimination based on Ethnic Origin 11%
- Residence permits for European citizens 10%
- Defense – Military service 8%
- Education 6%

- Discrimination because of Refugee Status 6%
- Discrimination matters of Greek Cypriots – Turkish Cypriots 5%
- Discrimination on the grounds of age/marital status 5%
- Discrimination on granting financial allowances 4%
- Enjoyment of political rights by foreigners 3%
- Discrimination on the grounds of disability 2%
- Discrimination in the field of the provision of insurance services 2%
- Others 2%
- Provisions of health services 1%
- Religious/Beliefs 1%

During 2006, the examination of 122 cases was completed, with the following results (Graph 5).



Graph 5

- 34 complaints led to the submission of a Report with specific suggestions/recommendations
- 23 complaints were considered unsubstantiated and their investigation was terminated
- 31 complaints were not investigated to completion, as it was discovered, after an investigation began, that they did not fall within the competence of the Body
- 1 complaint was not investigated because it fell out of the competence of the Body
- 14 complaints ended up in satisfaction of the complainant after the intervention of the Body
- 19 complaints were filed after the complainant was informed about the relevant legislation and procedures that he or she has to follow.

Grant of driving licence to citizens of member states of the European Union by the Department of Road Transport
(AKP 47-2005, AKP 107-2005)

EU citizens residing in Cyprus filed complaints in respect of the practice of the Department of Road Transport requiring from European citizens applying to be issued with a driving licence to furnish documents from the Civil Registry and Migration Department certifying that they reside in Cyprus for a period of at least six months.

The Commissioner was informed on the procedure applied by the above Department for the grant of a driving licence to non-Cypriots which was the following:

- citizens of third countries were required to furnish a valid residence permit in Cyprus from the Civil Registry and Migration Department which had to be in effect for a period of at least six months.
- EU citizens were not required to submit a residence permit in Cyprus but had to furnish either a receipt (issued by the Civil Registry and Migration Department) of the submission of an application to be granted a residence permit, or an Alien Registration Card. In both cases, the issue of a driving licence required the lapse of a minimum six-month period from the date of issue of the above documents.

The above practice was adopted upon indications of the Civil Registry and Migration Department with the aim of providing services to aliens residing legally in Cyprus.

The investigation showed that the driving licence legislation allows the issuance of a licence only to those persons who have their habitual residence in Cyprus, something which the same legislation construes as being a period of residence of at least six months within a year. The above legislative provision was adopted on the basis of the provisions of Directive 91/439/EEC. Nevertheless, the Commissioner highlighted that "habitual residence" as interpreted by the legislation is not equivalent to legal and permanent residence. The Commissioner opined that although migration control constitutes a legitimate objective on the part of the state, the control of the legality of the residence of a person falls, principally, within the competence of the authority, which has been assigned this role, being in this case the Civil Registry and Migration Department and the Police – and should not be exercised by any body vested with public authority. The Commissioner noted that despite the fact that the immigration documents issued by the state may be used by the Department of Road Transport to check whether the applicant of a driving licence fulfills the pre-requisite of the six-month residence period in Cyprus, this control may be exercised in many ways and does not necessarily require the submission of these documents.

The Commissioner indicated that the Treaties of Establishment of the European Union recognise the fundamental right of every EU citizen to move and reside freely within the territory of the Member States and that the community anti-discrimination legislation prohibits discrimination on the basis of national origin in the ambit of access to goods and services. The Commissioner supported that all the above reveal the need of the establishment of procedures by the competent state authorities, which assist the access to public services by the European citizens, particularly in fields which are directly linked to the freedom of movement within the European Union such as the grant of driving licences. Based on these cogitations, the Commissioner formulated the opinion that the practice followed by the Department of Road Transport to check the pre-requisite of a six-month residence period for aliens on the exclusive basis of the immigration documents granted to them by the Civil Registry and Migration Department was not expedient. She also added that the decision as to whether the requirements for the issuance of a driving licence are met or not should fall within the exclusive purview of the Department of Road Transport based on the latter's own investigation and consideration of all the particulars submitted before it.

The Commissioner proposed that the Department of Road Transport reconsiders the disputed practice taking into account her own positions on the respective matter.

The Director of the Department of Road Transport informed the Commissioner with a letter in July 2007 that the disputed policy of the Department applied to EU citizens had changed following the Commissioner's positions and suggestions. The letter also contained the respective circular forwarded to the members of staff of the Department in May 2007.

Acquisition of Refugee status on account of the refugee status of the mother (AKP 5-2006, AKP 10-2006, AKP 11-2006, AKP 26-2006, AKP 27-2006, AKP 34-2006, AKP 35-2006, AKP 38-2006, AKP 44-2006, AKP 50-2006, AKP 52-2006, AKP 56-2006, AKP 57-2006, AKP 58-2006)

A member of the House of Parliament lodged a complaint in respect of the non-entitlement of persons whose mother, but not father, is a refugee, to acquire refugee status as opposed to persons, who acquire refugee status because their father is a refugee and consequently become eligible for state benefits. It was propounded that this fact constitutes an adverse discrimination based on gender between the two categories of persons in breach of the principle of equality. The same position was upheld by thirteen affected citizens who filed individual complaints on the same issue.

Article 119 of The Civil Population Laws of 2002 to 2004 (Law 141(I)/2002) stipulates the following: "Displaced person is a person whose

(a) permanent residence is situated in the occupied areas which has become inaccessible;

(b) permanent residence is situated in the buffer zone which is either controlled by the Peacekeeping Force or has been evacuated and made available for the needs of the National Guard.

It is understood that those children, whose father is a displaced person, are considered as having their permanent residence in the occupied areas and, consequently, for the purposes of this law, are considered displaced from the same place from which their father originates..."

The matter of expanding the meaning of the term "displaced person" so as to comprise children born from a displaced mother and a non-displaced father was discussed in the past and repeatedly by the competent Parliamentary Committee. A relevant bill of law which had been tabled was not forwarded for approval because it was deemed that it would have the following consequences:

"....(i) The percentage of displaced persons shall increase disproportionately compared to the percentage observed immediately after the invasion of 1974 and this entails the risk that the statistics of the State will not be perceived as credible by foreign Governments and International Organizations, which are helping us economically and politically and are aware of the true facts and figures.

(ii) The number of registered voters on the electoral list of the occupied areas shall increase with the respective decrease in the number of constituents in the free areas.

(iii) The number of those persons who shall become entitled to various housing subsidies and other financial benefits granted to displaced persons shall increase significantly and, thus, it will be necessary to find and dispose of many millions of pounds which are impossible to cover from State Budgets.

The approval of the above demand will also result to the immediate registration of 45.000 children as displaced persons and later on of their descendants who were born after the invasion of a displaced mother and a non-displaced father. This means that the percentage of the displaced persons will increase immediately from 34% to 42% and will also experience a dramatic increase thereafter..."

The general principle that all persons are equal before the law, the administration and justice is enshrined in Article 28 of the Constitution. The first paragraph of this provision ensures equality in its substantial or analogous form and its application ensures similar treatment to similar persons and the dissimilarity in the treatment of dissimilar persons. The second paragraph of this constitutional provision, which reinforces the other provisions of the Constitution, prohibits all adverse discrimination as regards the enjoyment of the rights and freedoms protected by the Constitution. On this ground, variations in the enjoyment of these rights are not legitimate.

The Commissioner mentions in her Report that the differentiated treatment of the two genders remains historically consistent and is reflected in the policy of the state until today based on the events of the invasion, which resulted in the displacement of a number of the population to the northern part of Cyprus. Nevertheless, the legislative developments in the field of discrimination make the regulation in question contrary to the principle of equality. The Commissioner propounds that equality between genders has a double meaning, which is both negative and positive. Based on the jurisprudence of the Territorial Council, the principle of equality, negatively, prohibits the creation of unequal situations as well as the differentiation of the rights and obligations of the citizens, amongst each other and vis-à-vis the state based on the difference between genders. Positively, the principle ensures that equal possibilities are afforded to both genders for the develop-

ment of their personality, free individual action and generally their participation in social life. The difference in the treatment of the two sexes is legitimate only if justified by exceptional reasons, which are based on the need for the greater protection of women, especially in matters of maternity, marriage and family or on purely biological differences imposing the enforcement of special measures.

As regards the seriousness of the reasons invoked by a state to justify the different treatment based on gender, the European Court of Human Rights formulated the following (judgement Burghartz v. Switzerland dated 22 February 1994, Series A., No. 280-B, par. 27): *"....The Court reiterates that the advantage of the equality of sexes is today a major goal in the member States of the Council of Europe; this means that very weighty reasons would have to be put forward before a difference of treatment on the sole ground of sex could be regarded as compatible with the Convention".*

Given the above, the Commissioner finally concluded that the existing statutory regulation governing the acquisition of the refugee status should set us thinking given that it introduces obvious and untenable discriminations based on sex and contravenes the principle of equality. The philosophy on which the different treatment of individuals born to a refugee mother against those whose father is a refugee, may have responded to a given set of circumstances. Nevertheless, present conditions do not justify a regulation of such disparate extent and nature since it does not conform to the principle of equality as established in the Constitution, in the laws and in statutory regulations concerning the equality of the sexes.

The Commissioner stresses that the recognition of the refugee status of persons in the light of the events of 1974, constitutes a primary moral obligation of the state toward these persons. This, however, does not mean that the recognition of the refugee status must necessarily be tantamount to an obligation of the state to grant economic benefits to all those enjoying such status. On the contrary, other general and objective criteria could be introduced, for the purpose of the benefits, which do not contravene the principles of equality and non-discrimination. This classification could be considered reasonable given that the definition of the persons made refugees on account of the events of 1974, who directly suffered the consequences of the invasion,

does not coincide in all its extent with the second and third-generation of refugees. In every case, the institutions of the state are vested with the competence and the initiative to determine and regulate the status of the refugee. This does not mean, however that the regulations should give rise to conditions of adverse treatment against any person nor must they be incapable of any justification or be contrary to the notion of justice.

Suggestions were made to examine the possibility of applying the regulation in question directly and in favour of those persons, whose mother is a refugee, a provision valid for the category in whose favour the statutory regulation was enacted. In the context of monitoring the implementation of the suggestions of the Commissioner it was ascertained that the House of Representative at a plenary meeting dated 5 July 2007 voted a bill of law amending The Civil Registry Laws which enacts a displaced person's certificate, on account of descent for persons born to refugee father and a refugee mother.

Grant of a widower's pension to the husbands of insured deceased female workers

(AKP 5-2005)

The Anti-Discrimination Body considered a number of complaints concerning incidents where the Social Insurance Services granted widow's pensions to the widows of insured deceased male persons but did not grant a widower's pension to the husbands of insured deceased women.

Article 39 of The Social Insurance Law relates to the subject matter of the complaints. In accordance with the same Article, the persons entitled to a widower's pension are: a) the widows of insured male workers living with their husband before the latter's death, or in case they did not cohabitate, of women who were sustained by the deceased and b) the widowers of insured female persons who are permanently incapable of sustaining themselves and were sustained by their female spouse before her death. The application of the above article of the legislation had in practice as a result – excluding the above exception – the exclusion of men from the entitlement to be granted a survivor's pension. The complainants contended that the specific legislative

provision is unfair, it reserves gender-based discrimination and violates the principle of equality as established in the Constitution of the Republic of Cyprus.

The Commissioner also stated from the outset that the equal treatment rule is binding on all bodies of the state and in particular upon the House of Representatives which has a legislative function. In addition thereto, she noted the fact that because equality before the law is interpreted in its essential or analogous form, the legislator is granted discretion to determine specific deviations from the equal treatment principle provided that those are reasonable and objectively justified.

In this case, to justify the deviation from the principle of equality, the implicated authority invoked economic and social grounds founded on the "role" of women in society. The Commissioner formulated the position that the invocation of economic reasons related to the viability of the Social Insurance Fund cannot on their own be a ground for a reservation of blatant discrimination based on the sex of the persons insured. The Commissioner also disagreed with the position of the implicated authority that the existing social conditions may justify the different treatment between men and women in granting a widower's pension. She also added that in the context of a modern social state, in which the financial burden of sustaining a family are borne by both spouses, the different treatment of men and women for purposes of granting a survivor's pension – given that men and women are subject to the same obligations as regards the payment of contributions in the Social Insurance Fund – cannot be considered reasonable and/or justified.

Upon examining the matter, the Commissioner concluded that there is case law established by the European Court of Justice (ECJ) and by the European Court of Human Rights (ECHR) on the matter in question.

Specifically, in Case C-147/95, the Court of the European Communities considered that the provisions of Greek Law concerning the grant of a survivor's pension discriminated on the basis of the gender of the persons insured in the same manner as the provisions embodied in the Social Insurance Legislation of Cyprus. In its preliminary ruling in April 1997, the Court of Justice judged that the case in question fell within the purview of Article 119 (currently Article 141) of the Treaty establishing

the European Community, which prohibits all discrimination as regards the pay received by men and women for equal work. According to the above approach, the Court of Justice ruled that the disputed provisions, which made the grant of a widower's pension dependent on conditions not applicable to widows, introduced a direct discrimination against men and could not be upheld.

Another relevant case mentioned by the Commissioner is the judgement of the European Court of Justice in Case 3604/97. The case concerned a British national whose application to be granted a widower's pension was rejected under the law providing for the grant of a survivor's pension to women only. The European Court of Justice ruled in its judgement delivered in June 2002 that the discrimination on account of gender embodied in the specific Law violated Article 14 of the "European Convention for the Protection of Human Rights and Fundamental Freedoms" and proceeded to adjudicate pecuniary damages in favour of the applicant.

According to the above, the Commissioner stated finally that the contested regulatory provision introduces unjustified discrimination between the sexes and suggested that the statutory scope of the entitlement to be granted a survivor's pension be extended to cover widowed men. The Commissioner forwarded the Report to the Attorney-General of the Republic to act on the matter in accordance with the provisions of Law No. 42(I)/2004.

The Director of Social Insurance informed the Commissioner with a letter sent in August 2007 that the matter of the grant of pensions to widowers is being reviewed with the purpose of formulating and submitting a complete and improved proposal on the basis of the Commissioner's own positions and suggestions.

State grants afforded to single persons in the context of The Housing Scheme for the Revitalisation of Communities with a population of up to 200 inhabitants (AKP 127-2005)

The Body considered the criterion of age and family status required for the grant of a subsidy for the acquisition of a dwelling in areas with a population of up to 200 inhabitants and more specifically the

minimum age of 35 laid down for single persons who are desirous of acquiring a house in the said areas. The complainant contended that this requirement gives rise to discrimination against unmarried persons below the age of 35 wishing to acquire a house in the said areas.

The Housing Scheme for the Communities with a Population of up to 200 inhabitants was adopted in the context of the policy for the revitalisation of the rural areas with a population of up to 200 inhabitants through the erection of new houses or the improvement or extension of existing ones whilst creating the pre-requisites to keep the existing inhabitants in their place of residence and to encourage other persons to take up residence in those areas.

In accordance with a relevant document of the Ministry of the Interior brought to the attention of and considered by the Commissioner in the conduct of her investigations *"the successful implementation of the Scheme shall have beneficial results for small communities and shall contribute in the sustainable development of the rural areas and in the reversal of the progressive tendency of the abandonment of the rural areas by the population and the ageing of the inhabitants living in the rural areas"*

The persons qualifying for the above Scheme are, among others, persons falling within the category "special cases". Special cases are considered to be persons with special needs, single parent families and single persons (persons above the age of 35).

Under The Combating of Racism and Other Discrimination (Commissioner) Law of 2004 [No. 42(I)/2004] all forms of direct or indirect discrimination on the grounds of race, nationality, ethnic origin, religion, convictions, community, language, colour, special needs, age and sexual orientation are prohibited. With the introduction of this new legislative and statutory framework, the provision on equality embodied in Article 28 of the Cyprus Constitution is not a mere guideline but acquires a wider purview of application. A new statutory review regime is created in whose context it may be deemed that certain regulation violates the principle of equality and of non-discrimination.

The Commissioner noted in her Report that a crucial element is the fact that the purpose of the Scheme is to revitalise small communities in the rural areas through the grant of subsidies for the

erection or improvement of housing units in the said communities. Beyond the effort to maintain the existing population in those areas, the Scheme is generally aimed at encouraging young persons to take up residence in rural communities.

In this context, the Commissioner concluded that the regulation, which excludes a specific group of persons on account of their age from being included in the Scheme without any objective or reasonable substantiation, introduces an unfair and distinct treatment which is incompatible with the principle of equality whereas she stressed that it does not conform to nor does it serve the declared objects of the Scheme.

The Commissioner pointed out that the inclusion of young persons, below the age of 35, in those categories, from which they may benefit from the provisions of the Scheme, reinforces the objective that the Scheme aims to achieve since this would broaden the circle of those persons, who would be interested to be included in the Scheme, and in this manner would contribute to the efforts of revitalisation of the rural areas. A factor, which supports the above position, is the fact that, in Cyprus, professional and social emancipation is by rule attained at a much younger age than the age limit determined in the Scheme. Thus, these persons may respond more effectively to the financial criteria laid down by the Scheme.

In view of the above observations, the Commissioner suggested that competent services examine the provisions of the Scheme which concern the issue of the inclusion of all those considered as single persons, as soon as possible, by fully respecting the principal of equal treatment and their human rights.

As informed by the Commissioner, the possibility of the direct materialisation of her suggestions is remote, at the present stage due to the adverse economic parameters that this would entail. The General Director of the Ministry of the Interior gave assurances that the differentiation of the age limit in the specific housing scheme shall be examined in good time when the conditions allow it.

Requisition of the Apostolic Church of Jesus Christ that its minister be exempt from mandatory military service in the National Guard (AKP 100-2005)

The Anti-Discrimination Body examined the complaint submitted by "the Apostolic Church of Jesus Christ" concerning the rejection by the Ministry of Defence of the request of Mr. I.A. to be relieved of mandatory service in the National Guard on account of his obligations as minister-deacon for music in the *"Apostolic Church"*.

In a Report submitted in January 2006, the Commissioner reported that *"Apostolic Church"* was a registered charitable institution, member of the International Ministerial Fellowship and of the Pancyprian Union of Evangelical Churches belonging to the European Evangelic Alliance. Mr. I.A. was ordained minister/deacon on 3 October 2003 and was the only ordained deacon in charge of music in the Church and, thus, his presence was absolutely necessary at the gatherings of *"Apostolic Church"*.

For this reason, the *"Apostolic Church"* filed an application with the Minister of Defence on 31 May 2005 to obtain full exemption from mandatory military service for its minister in accordance with Section 4 (3) b of The National Guard Laws of 1964 to 2003 which exempts clergymen from service in the National Guard. Upon examining the issue at hand, the Commissioner found that the application had been referred to the Consultative Military Recruiting Committee, which after having considered the matter asked the Attorney-General's Office to render an opinion on the issue. The Attorney-General's Office mentioned that for purposes of implementation of the law there was no definition of what a *"minister"* is but the basic criterion as regards the interpretation of the said term is the objective aimed by the legislator. The law stipulates that the only competent person to decide on whether all the requirements, which would satisfy the legislator's objective, are met as well as on any other matter is the Minister of Defence who convenes an ad-hoc council especially for this purpose.

In another relevant opinion, the Attorney-General of the Republic indicated that *"the aforesaid laws do not contain a definition of the term "minister". Nevertheless, the grammatical meaning ascribed to the term is the same as the one attached to the terms priest and clergyman of any degree."* He also highlighted

that an investigation should be carried out on any matter raised in respect of the exclusion of conscripts from military service to ascertain the true facts of each case. When a conscript invokes that he is a minister of religion and applies to be exempt from mandatory military service in the National Guard, the investigation should inquire, among others, whether the denomination, to which the minister belongs, is a *"religion"*, whether its doctrines and rites are free, within the meaning of Section (2) of Article 18 of the Constitution and whether the conscript concerned is a *"minister"* of this *"religion"* not only in theory but also in practice, whether he has been officially ordained and has a congregation for which he performs his religious functions. In the opinion it is stressed that *"things would have been different otherwise and the above investigation would not have been necessary had the person concerned furnished a certificate proving that he was a registered minister under The Marriage Law."*

In order to ascertain the true circumstances in the matter of the above claimant, the Ministry of Defence requested the information and was informed that the claimant was a registered minister and that his name appeared in the records kept with the Ministry of the Interior under the provisions of The Marriage Law of 2003. Thereunder and having also considered the content of the letters submitted by the *"Apostolic Church"* in relation to the functions of I.A., the Ministry concluded that he was not a minister of the above Church but acted as a musician during the ceremonies and gatherings of the said church. Thus, the claimant's application to be exempt from mandatory military conscription was rejected.

Bearing in mind the information laid before the Commissioner in charge of the Anti-Discrimination Body, she concluded that the competent authority thought hard over the complainant's case but the ratio decidendi relied on the fact that the complainant was not a registered minister. As the Body stated this is where the problem lied when it came to take a decision on the matter since the fact that the claimant was not a registered minister, who officiated marriages, did not mean that he was not a minister for purposes of being granted an exception from mandatory military service under the provisions of The National Guard Law. Potentially this element could have been taken into account. Nevertheless, it had to be considered also in the

light of all the other parameters of the matter to form a complete picture of the claimant's role in the *"Apostolic Church"* and to ascertain whether his functions were those of a minister. In particular, the doctrines of the Church in question, the characteristics and the nature of the functions and competences of the complainant as a deacon as well as the significance of his position in the ceremonies of worship of the Church should have been taken into account.

In addition thereto, the Anti-Discrimination Body emphasized that the problematic nature of the matter and the difficulty in corroborating the correctness of the decision does not only concern its brief reasoning but also the fact that the crucially important elements, which acted decisively in the taking of the decision, were based on comparative reports and juxtapositions with the roles exercised by ministers in the Christian Orthodox Church.

In these instances, she continued, one should not overlook the protection of the religious freedom afforded by the Cyprus Constitution aimed at safeguarding the freedom of religious conscience and not the dominant religion. This freedom has an additional statutory/functional dimension meaning that its exercise implies the positive intervention of the state. Besides, it is only in this manner that religious pluralism guaranteed by the Constitution is substantially re-enforced. In this case, the constitutional principle of equality amongst all religions imposes that the direct reference and inference of conclusions based on the knowledge and experience of the deciding body originating from the dominant religion should be avoided.

According to the above, the Body suggested that the requisition of I.A. be reviewed by the Minister of Defence and that the relevant legislative regulations for the exemption of ministers from military service should be applied in a manner that allows their notion and interpretation to be conform with and oriented towards the essential meaning of the freedom of religious conscience and equality of all religions safeguarded by the Constitution.

Exemption of persons belonging to the religious groups of Armenians, Maronites and Roman Catholics (Latins) (AKP 8-2005 and AKP 85-2005) from mandatory military conscription.

The Anti-Discrimination Body examined complaints in respect of the voluntary conscription into the military of persons belonging to the religious groups of the Maronites, Armenians and Roman Catholics (Latins). The complainants contended that the favourable treatment of these citizens discriminates against Greek Cypriot citizens of the Republic who are conscripted into the National Guard.

Pursuant to Article 4 of The National Guard Laws of 1964 to 2003, all the citizens of the Republic, excluding expressly designated categories, are subject to the provisions of the Law and have the obligation to serve in the National Guard upon completion of the age of 18 up to the age of 50. Article 6 of The National Guard Laws authorises the Council of Ministers to exempt, upon a relevant decision, any person or category or classes of persons from mandatory military service for purposes of public interest, which make such exemption necessary. In this context, the Council of Ministers issued decision No. 41.296 of 29 June 1994 making the conscription of persons belonging to the religious groups of the Maronites, Armenians and Latinos voluntary.

An investigation in this regard revealed that the criteria, which the Ministry of Defence took into consideration, to propose the conscription of these persons on a voluntary basis were: a) the continuous protests from the representatives of the above religious groups that the conscripts belonging to their religious community be afforded special treatment, b) the particularities presented in the case of the above conscripts (origin, religion, enclaved relatives etc.), and c) the small number of persons from the above religious groups conscripted into military service every year (35-40).

In the above statutory context, the Commissioner concluded that based on the implementation of the decision of the Council of Ministers, with which citizens of the Republic belonging to specific religious groups, are exempted from mandatory service as laid down in Article 4 of the respective legislation, raises questions of unjustified discrimination. This regulation introduces the notion of favourable treatment in matters of fulfillment of the military obliga-

tions compared to other persons, who are under the same regime, being citizens of the Republic, and substantially enacts a differentiated treatment amongst equals. In the letter and spirit of Article 6 of The National Guard Law, exemptions of this kind are not justified if based on a general and vague invocation of the public interest.

The Commissioner deemed that the rationale behind the enactment of voluntary conscription of those belonging to the aforesaid religious groups by means of a decision lacks foundation since it is unconvincing and legally unfounded. On this account, it constitutes an unjustified discrimination against Greek Cypriot conscripts, an event incompatible with the letter and the spirit of The National Guard Laws.

Suggestions have been submitted so that the Ministry of Defence re-examines the matter and proceeds to take all the necessary corrective measures to safeguard the principle of equality in the light of the contents of the Report. In the process of monitoring the implementation of the suggestions of the Commissioner It has been ascertained that competent authorities have fully complied with the above suggestions. More specifically, the Council of Ministers approved the mandatory conscription of Maronites, Roman Catholics and Armenians beginning with the draftees of Class 2008 with its decision dated 19 June 2007.

Equal treatment in mandatory conscription amongst Cypriot citizens (AKP 3-2005, AKP 105-2005, AKP 11-2005, AKP 119-2005, AKP 123-2005, AKP 128-2005, AKP 130-2005, AKP 4-2006, AKP 51-2006)

After the submission of a number of complaints, the Body examined whether the decision of the Council of Ministers No. 57.677 dated 9 April 2005 stipulating that persons born of a Cypriot mother and a foreign father are under the obligation of fulfilling a service period in the National Guard of only six months contains discriminatory provisions since it allows for the adverse treatment of persons born of a foreign mother who are under the obligation to serve a 25-month period in the National Guard compared to those persons born of a foreign father.

According to the Director-General of the Ministry of Defence, the above decision was taken upon a proposal/suggestion made by the Ministry in order to avoid the phenomena which had been observed following a previous decision No. 52.283 of 6/2/2003 taken by the Council of Ministers. The new decision stipulates that all those persons of a Cypriot extraction, who were born in Cyprus or abroad in the period from 16 August 1960 to 11 June 1999 and whose father or mother is a Cypriot, and who are entitled to become citizens of the Republic at the time of their birth, benefited from the provision of a six-month military service. Thus, according to the views expressed by the Director-General the proposal/ suggestion of the Ministry of Defence aimed at encouraging the children of Cypriot women, whose husbands are not Cypriots, to become citizens of the Republic of Cyprus and not at reducing the military service of the persons of a Cypriot descent born of a Cypriot father. At the same time, the above decision of the Council of Ministers ensures that persons born of a foreign father and a Cypriot mother will at least perform a six-month military service, with all the benefits that this shortened service entails.

Article 4 of The National Guard Law of 1964 to 2004 stipulates that all citizens of the Republic, excluding expressly determined categories of persons, are subject to the provisions of the Law from the age of 18 until the age of 50. At the same time, for the purposes of the said law, citizens of the Republic are all persons of a Cypriot origin born of a Cypriot father. Section 5(1) of The National Guard Laws of 1964 to 2004, provides that the mandatory military service for those persons, who may be conscripted into military service under Article 4 of the Law, comprises 26 months unless the Council of Ministers determines a shorter period of service for a specific category of persons. The decision of the Council of Ministers of 8/1/2003 No. 57.068 reduces the military service term to twenty-five months.

Article 109(1) of The Civil Registry Laws determines that ....*"a person born in Cyprus, on or after 16 August 1960, is a citizen of the Republic, if in the year of his/her birth one of his/her parents was a citizen of the Republic, or, if at the time of his/her birth, his/her parents were not living, he/she would have been entitled, if he/she had not died, to become a citizen of the Republic.*

Section 109(3) of the Law is of seminal importance since provides that any adult person born during the decisive period laid down by the law may acquire, upon an application, the status of the citizen of the Republic if at the time of his/her birth, his/her mother was a citizen of the Republic or was entitled to become a citizen of the Republic. If this person is an adult, the application for naturalisation may be submitted by any of his/her parents.

The Commissioner underlines in her report that according to the applicable legislation, any adult person fulfilling the specified requirements and choosing to become a registered citizen of the Republic shall voluntarily become a citizen of the Republic on account of the nationality of one of his/her parents. As a result these persons should enjoy the same rights and have the same obligations with all the other citizens of the Republic. A derogation from a particular obligation and, in this case, from fulfilling mandatory service should be adopted in extraordinary incidents and be fully and adequately justified. In addition thereto, in accordance with the case law of the Territorial Council, the derogation from the universal obligation of military service and the duration of the prescribed military service period, is permitted for serious reasons laid down in the law on the basis of general and objective criteria and provided that an issue of pubic interest is involved.

Having assessed all the elements and parameters of the differentiated treatment enjoyed by a category of persons compared to any other category in respect of the duration of the mandatory service period, the Commissioner decided that the reasoning behind this differentiation cannot be sufficiently and convincingly upheld. She also stresses that despite the questions raised in respect of the regulation laid under scrutiny, the discrimination against another category of persons who performed a military service in the National Guard, which is four-times longer, was not taken into account on a comparative and parallel basis. Moreover, the argument alone that this adjustment encourages the children of Cypriot women, whose husbands are not Cypriot, to become citizens of the Republic and serve in the National Guard, even for a six-month period, does not suffice to completely and sufficiently substantiate the derogation from the principle of equal treatment.

Suggestions were also made to consider the possibility of taking all measures which are necessary to safeguard the application of the principle of equal treatment for all conscripts. The process of the implementation of the Commissioner's suggestion is being monitored.

Grant of child subsidy to a Turkish Cypriot residing in the occupied areas (AKP 27-2005)

In March 2005, a Turkish Cypriot submitted a complaint against the Grants and Subsidies Service of the Ministry of Finance. The complainant argued that his application submitted around July 2004 to be granted a child subsidy was not examined or processed and the ground afforded by the public servant in charge of his application was that he is a Turkish Cypriot residing in the occupied areas. The complainant mentioned that he works in the free areas and pays his contributions to the Social Insurance Department and stated that the non-examination of his application on this ground constituted a discrimination against his person.

The relevant legislation provided that the right to be granted a child subsidy is vested with all families having their usual residence in Cyprus, provided that they meet some other requirements, amongst which, the co-habitation of these children with their parents. Moreover, families meeting specific income criteria are granted an additional child allowance further to the basic subsidy.

The implicated service informed the Commissioner that Turkish Cypriots living in the occupied areas may not be granted child subsidies because it impossible to apply the laws of the Republic in the occupied areas on account of the continuous occupation of Cyprus and the presence of the Turkish army. In the instant case, the application of the complainant was finally dismissed in April 2006. Upon an investigation carried out into the matter it was ascertained that his family resided in the occupied areas and that the address mentioned as his place of residence in his application was the address of his work in the free areas.

In her report, the Commissioner refers to the decision of the Supreme Court relevant to the matter at hand issued on 14 February 2006 in Appeal No.

911/2004 *Mehmed and Meral Birinci vs The Republic of Cyprus.* In that case, an appeal had been lodged against the decision of the Ministry of Finance to reject an application filed by a Turkish Cypriot residing in the occupied areas to be afforded a student grant for his daughter studying in the United Kingdom. The Court dismissed the appeal and accepted the position of the implicated service that the competent authority was not in a position to examine or determine whether the pre-requisites laid down in the legislation are met because it is actually impossible to carry out such examination in the occupied areas of Cyprus. Furthermore, the Court stressed that special grants are, in the least, one part of the public burdens assumed by the state and that according to the Constitution of the Republic of Cyprus all persons are obliged to contribute in accordance with their capabilities. Given this fact and because it is impossible to subject the citizens living in the occupied areas to any obligation to contribute to these public burdens, the Court decided, in the same manner, that it is impossible to apply the laws governing the provision of special grants to these citizens.

The Commissioner agreed with the Court that the requirement of the *"habitual residence"* of a family, which must be met for the grant of a child subsidy, and which must be a place within the territory controlled by the Republic of Cyprus, is objectively reasoned in the light of the particularities presented in the examination of applications submitted by Turkish Cypriots residing in the occupied areas. She also added that the implicated service is, in each case, obliged, to consider whether the pre-requisites imposed by the relevant legislation are fulfilled and that, undoubtedly, in cases of applicants residing in the occupied areas the competent authority is not in a position to carry out this examination due to the presence of the Turkish army. The Commissioner supported that this ground renders substantially impossible the implementation of the law. Furthermore, the Commissioner mentioned that she agrees with the issues raised by the Supreme Court, in this matter, namely that it is not possible to ensure that the economic obligations against the state, of the citizens residing in the occupied areas, are fulfilled.

According to the above and considering the fact that Turkish Cypriots residing in the free areas are treated equally with Greek Cypriots when it comes

to granting social benefits/allowances, the Commissioner adopted the position that the disputed practice of the implicated service does not constitute a discriminatory treatment based on the ethnic origin of the citizens and that the rationale behind the differentiated treatment of those persons living in areas not controlled by the state does not exceed the objectively permitted limits. The Commissioner opines that all of the above applies to the complainant's case and, therefore, it is not possible to submit any suggestion.

Maximum age limit for the grant of financial aid for the acquisition of a disabled person's car
(AKP 116-2005)

The Cyprus Anti-Discrimination Body considered a complaint submitted on behalf of a blind person aged 73 against the decision of the Council of Ministers No. 61.144 of 16.11.2004, which determined the age of 70 as the maximum age limit for the grant of financial aid for the acquisition of a disabled person's car. According to the complaint the fact that those persons over the age of 70 are not eligible under the Financial Assistance Scheme for the Disabled to exercise the rights granted to disabled persons for the acquisition of a motor vehicle, because they have exceeded the age of 70, constitutes a discrimination against them based on age.

Under the provisions of the above Scheme, the persons entitled to be afforded financial aid for the acquisition of a car are those falling within the meaning of the term *"disabled person"* which under Article 1 of the Scheme comprises: *"... citizens of the Republic of Cyprus and of the Member States of the European Union, whose age exceeds 18 but not 70 years and who are permanently disabled, whether from birth or on account of a subsequent event, and following a report submitted by the Government Medical Council constituted for this purpose, and whose disability consists in:*

- *dismemberment or severe weakness of the upper and/or lower extremities due to any cause resulting in a permanent degree of disability of more than thirty-nine per cent (39%).*
- *limitation of the visual acuity in both eyes which, even with corrective lenses, exceeds 6/60 in the best eye...."*

Under the provisions of the Scheme, the car may be driven, upon approval granted by the Minister of Finance, by the members of the beneficiary's family. Moreover, the car may be transferred to another person after the lapse of a five-year term upon approval of the Minister of Finance. In the case of death of the beneficiary, the car is transferred to his/her heirs without reimbursement of the financial aid granted by the Government.

According to the Director-General of the Ministry of Finance *"... the age ceiling has been laid to avert the exploitation of the above right by the members of the disabled person's family.*

The Commissioner mentions in her report that the provisions contained the Scheme lead to the acknowledgment of the necessity of the support of persons with disabilities by the family and the society in general. In the instant case, the state acknowledges that it is possible for the members of the family of a disabled person to use the car aimed at serving the eligible disabled person, which has been acquired with the aid of the state in the context of implementation of the Scheme. In this manner, the purview of protection of disabled persons is extended since the need of the mobility of persons with disabilities is acknowledged even if the persons themselves are unable, due to their incapacity, to make personal use of their car. The responsibility of their mobility is usually undertaken by the members of their family.

The Commissioner mentioned that the provisions of the Scheme under scrutiny are lawful and justified since they are infused with the necessity to support persons with disabilities and to respect their right for equal participation in social life. Moreover, the provision of facilities for the mobility of persons with disabilities contributes to an upgrading of their quality of life by safeguarding their right to an independent life, and averts phenomena of social exclusion.

In respect of the provision excluding disabled persons over 70 from making use of the favourable provisions of the Scheme, the Commissioner concluded that under the given circumstances there are no general or special grounds, which would reasonably and objectively, justify a different treatment of these persons. Furthermore, she states that the need to afford facilities for the mobility of disabled persons becomes more imperative in the instances of the elderly disabled. The invocation of the possibility that members of the family of an elderly disabled person may make use of such right does not by itself justify the different treatment of disabled persons above the age of 70 since such regulation is not harmonised with the spirit and the constant position upheld through the decision of the Council of Ministers allowing the use of a car essentially by any person when the disabled individual cannot possess a driving licence and even more so in the case under question where the complainant was blind.

Suggestions have been made that the specific provision of the Scheme be reconsidered in the light of the reasons and the facts set out in the Commissioner's report. The suggestion has not yet been implemented because the implicated service maintains its initial stance and invokes, further, the possibility of abuse of the provisions of the Scheme by all persons becoming disabled after the age of 70.

The obligation of the State to ensure the education and training of persons with disabilities

(AKP 109-2005)

The matter of the obligation of the State to ensure the education of children with disabilities and their integration in the general education and vocational training system in ordinary schools (whether in the context of an ordinary class or of a special group) or in special schools with the expense of the state was put before the Anti-Discrimination Body. The complaint was triggered by the fact that parents of children attending the Centre for Spastic and Handicapped Children had to assume the financial burden of a monthly fee of CY£20,00 for the school attendance of their child. The complainants expressed the view that the state was obliged to pay this amount because they argued that if the state does not dispose of special schools for these children, it has, first and foremost, the obligation to establish such schools or at least assume the responsibility for and financial support of these children and the cost of their attendance in existing Centres such as the Centre for Spastic and Handicapped Children.

The investigation carried out by an officer from the Office of the Commissioner for Administration included a communication and a meeting with the competent officer in matters of special education in

context of the Elementary and Secondary Education at the Ministry of Education and Culture, with the Directors of the Centre of Spastic and Handicapped Children and with those of the Special School *"Evangelismos"* attended by children with similar disabilities. In addition thereto, visits were carried out at the Centre of Spastic and Disabled Children and in the *"Evangelismos"* Special School in Nicosia as well as at 2 public schools attended by children with multiple disabilities who are integrated in ordinary school classes or in special education units.

The Commissioner stressed in her report that the obligation of the state and its ancillary bodies to ensure that persons with disabilities are fully integrated is a given one and the that the obligation to afford equal services for their education accrues from The Training and Education of Children with Special Needs Laws of 1991 and 2001, the provisions of The Children with Disabilities Law of 2000 and from the provisions embodied in the revised European Social Charter. She also noted that secondary Community law and in particular Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which contains specific provisions for the equal treatment of disabled people, hold a special place in our legislative system. An essential element of Cyprus legislation, which has transposed the above Community Directives into national law, is to eliminate and avoid any apparent or other form of discrimination against persons with disabilities and to encourage their access to specific sectors including that of education.

The Commissioner underlined that a principal parameter of the framework of the respect of the rights of disabled people is to overcome the bias that a disabled individual, or a person with special needs, is a passive recipient of services and to show the way towards a human centred approach upheld by an individualised approach of these persons. This approach reveals the possibilities, which education affords to these persons. In the matter of the education offered to this group of the population, the Commissioner notes that it is necessary to provide these children with opportunities of equal education. It is only with the equal use of the public and social good of education that phenomena of social exclusion of the disabled may be avoided.

The Commissioner upholds the position that the work carried out by the Centre for Spastic and Handicapped Children and at the "Evangelismos" Special School is particularly important. The establishment and the operation of special education units in public schools for the attendance of the disabled persons is also noteworthy. Despite the existing problems, this effort contributes to the integration of pupils with special education needs and in particular with learning difficulties in the system of public education and in society in general.

The Commissioner underlines that the particular issue of inequality considered in this case, is ascribed to the fact that children, who attend the Centre of Spastic and Handicapped Children for any reason, are practically required to pay an extra amount of CY£20,00 for their attendance whereas children integrated in other public schools of special education in Nicosia attend such schools without assuming additional financial burdens. The fact that a specific financial amount must be expended for the attendance of these children is an element, which may be considered as giving rise to inequalities, as opposed to those children integrated in a public school without having to assume any financial burden.

The Commissioner concluded that the above issue should be considered by the competent authorities. The existing legislative provisions and regulations establish the obligation of the state to ensure the education of disabled children as a general principle. Nevertheless, beyond ensuring the right of education of disabled persons in legislation, it is important to materialise this right and to view each case in the light of the protection and welfare afforded by statutory regulations. In this manner, the equal treatment of disabled persons in all areas of social life including the field of education is safeguarded. In addition thereto, it must not be overlooked that the education of disabled persons is fraught with obvious problems and that a big portion of the responsibility is assumed by the parents themselves and by their families. Furthermore, it is obvious as the Commissioner stresses in her report that the state bears a greater responsibility for the education of these children given the fact that the education afforded to these persons in childhood and before adulthood, is of seminal importance.

Suggestions have been made that the competent state bodies examine the matter, without delay, and

consider the necessity of covering the expenses of the education of the disabled persons without their parents having to assume an additional financial burden.

Cyprus Anti-Discrimination Body