

Annual Report 2006



Cyprus Equality Authority

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An introductory note from the Ombudsman

In 2006 the Equality Authority progressed steadily in all its fields of practice, thereby advancing its wider objective of promoting the principle of equality and equality of opportunity in the area of work and occupation.

The complaints submitted were of a serious nature and covered the Equality Authority's entire field of practice in combating discrimination on the grounds of sex, disability, ethnic origin, age, language, as well as the serious issue of sexual harassment in the workplace. The Equality Authority's decisions and suggestions touched upon practices, laws, schemes of service, decisions and conducts.

In total, fourteen Decisions were submitted, whilst, at the same time, the Equality Authority activated its powers for preventive action, when it took a position about two cases, as to whether an intended treatment or intended application of a criterion constitutes unlawful discrimination.

In this introduction to the Equality Authority's Annual Report of 2006, I would like to emphasize its additional powers that structure and give support to its actions, and which are not related to its primary, though not only, authority of investigating complaints.

The Equality Authority has vigorously promoted the enlightenment of citizens on equality matters, with lectures in Nicosia and other cities, giving great emphasis on matters emerging from its own field of practice. Its Officers also took part in EU training programmes, as well as in the European Union's Information Campaign to combat discrimination. In that context, a Code of Conduct to Combat Sexual Harassment and Harassment in the Workplace and two informative leaflets were prepared. These provide useful information on the equality principle, the concept of substantive equality between men and women and the rights of disabled people in the workplace.

The Equality Authority, in the two years of its life, has proved that with consistent, determined and bold use of the powers found within its legislation, it can change people's concepts and beliefs surrounding matters of equality for the better.

Eliana Nikolaou

Commissioner for Administration (Ombudsman)

Equality Authority's Field of Practice

In the Equality Authority's institutional field of practice there weren't any substantial diversifications during the year of 2006. As a result, the Equality Authority's practice continued covering four sectors:

First Sector

¹As this complies with the directive 2000/78/EC.

The Commissioner of Administration (Ombudsman) was appointed on the basis of The Equal Treatment in Occupation and Employment Law¹, as the competent body to examine complaints regarding prohibited discriminations on the grounds of religion or beliefs, age, sexual orientation, race or ethnic origin in occupation and employment. The legislation covers a wide field of activities in both the public and private sector and it renders unlawful any act of discrimination within the entire sphere of employment, starting with its early stages, such as the hiring procedure and extending as far as its final stages, such as dismissal, including vocational training and membership and involvement in Trade Unions or other organizations of workers and employers.

Second Sector

The Ombudsman was appointed on the basis of The Equal Treatment of Men and Women in Occupation and Vocational Training Law, in compliance with directives 76/207/EEC and 97/80/EC, as the competent body to examine complaints regarding prohibited discriminations on the grounds of sex, in both the private and the public sector, in the fields of practice of Occupation and Vocational Training. Concerning the abovementioned law, discrimination on the grounds of sex concerns any direct or indirect discrimination, including sexual harassment in the workplace, or any adverse treatment of pregnant women.

The compliance of the national legislation with directive 2002/73/EC, achieved with the passing of The Equal Treatment of Men and Women in Occupation and Vocational Training (Amended) Law of 2006, was an important progress during 2006, concerning the institutional framework relevant with discrimination on the grounds of sex. This amended law provided more complete definitions of direct and indirect discrimination and sexual harassment and added to the concept of harassment as a form of sex discrimination relating to a person's gender. The new provisions that were added to the basic law regarding the legalization of organizations for representation of victims who suffered discrimination on the grounds of sex, the promotion of social dialogue for equal treatment of men and women and the dialogue between the competent body² and non-governmental organizations were also major achievements in 2006.

²Minister of Labor and Social Insurance.

Third Sector

The Ombudsman is afforded the authority to examine complaints regarding discriminatory behaviors that are in violation of the provisions of the Equal Pay between Men and Women for Equal Work or for Work of Equal Value Law. It has to be clarified that, the research for the purposes of evaluation of the value of comparable professions and their classification has been assigned to the ad hoc Committee of Research and Evaluation of Work, the members of which are selected by a list drawn up by the Minister of Labor and Social Insurances in cooperation with organizations of workers and employers.

Fourth Sector

Lastly, on the basis of the Persons with Disabilities Law, the Ombudsman was assigned the responsibility to investigate complaints regarding discriminating treatment on the grounds of disability in employment, in both the private and public sector. Specifically, this field of practice covers the entire sphere of employment and it concerns employment access terms, the selection criteria, the hiring terms, professional development, vocational training and preparation, and membership in organizations of workers or employers.

General valuations

The results from the first three years of the Equality Authority's operation appear positive. The passing of laws and the establishment of independent promotion authorities of the principle of anti-discrimination are not enough, though. The institutional framework on its own cannot face the multifaceted and deeply rooted inequalities that ethnic minority groups, immigrants, women, or disabled people face. The independent authorities must be supported with accompanying reinforcement measures, with the necessary funds and the necessary human workforce. The understaffing of the Equality Authority (two workers, one of whom with additional duties) is one of the reasons that during 2006 only a limited number of complaints were completed. Another reason is the emphasis given to the organizations' and the public's awareness raising regarding the Equality Authority's field of practice.

The exploitation of the Equality Authority's potentials by the social partners was low. Only 9 complaints were submitted by organized groups that are activated for the promotion of the principle of equal treatment. It is notable that none of the complaints was submitted by a Trade Union.

The extremely low number of complaints for violations of the principle of anti-discrimination in the private working sector brings up some questions, without this being taken as evidence for the absence of discriminations in the private

working sector. On the contrary, it shows that there is insufficient knowledge by the workers concerning protection mechanisms thereof from prohibited discriminations, as well as their legislatively established protection from possible victimization by their employers, in case there is a complaint. The absence of an assistance mechanism and legal support to the victims of discriminations in access to occupation is also an important void, which operates as a first (guiding) step before the submission of a complaint to the Equality Authority or to the Court having jurisdiction over that matter.

In the three years of the Equality Authority's operation there was no complaint concerning discriminations on the grounds of sexual orientation. Again, this does not lead to the conclusion that this kind of discrimination never occurs. It is noted that during the Cyprus investigation that took place in 2006 and that was conducted by the Authority against Racism and Discriminations for purposes of recording the reactions of the Cypriot citizens regarding homosexuality, the results showed that there is a very high superstition against it.

The institution's effectiveness is found to be satisfactory during its first three years of operation regarding compliance to the Ombudsman's suggestions or propositions. The first surprise and reserve of the individuals or bodies against whom there were complaints submitted for discrimination followed willingness on their part to comply with the Equality Authority's recommendations. In some cases where there was denial to comply it was ascertained that it was due to the ignorance or the incomprehensibility of the new institutional framework, especially in relation to indirect discriminations, which are often unnoticeable even by the people who commit them.

The year 2006 presented great development in that the Ombudsman had the opportunity not merely to intervene in order to suppress a discriminating act but also to prevent possible discrimination. This occurred after the Ombudsman was asked to consult two bodies of the public sector in occupation about their actions, in order to avoid possible violations of the principle of anti-discrimination.

Statistical data

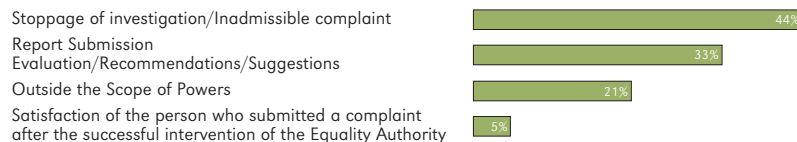
In 2006, 68 complaints regarding unlawful discrimination were submitted to the Equality Authority. 34 additional complaints were also incorporated whose investigation was pending from previous years. 42 out of these 102 complaints were completed and classified as follows:

► 14 were found to be admissible and a Report was submitted with suggestions or recommendations³,

³ A Report is submitted when a complaint is found admissible.

- 9 were found to be outside the Equality Authority's scope of powers,
- 17 were found to be inadmissible or they were withdrawn,
- 2 came to a closing after the successful intervention of the Equality Authority.

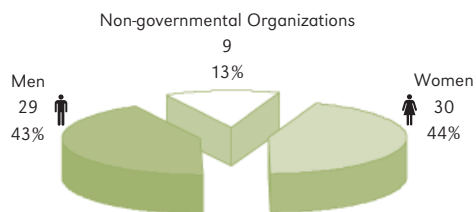
Results after investigation of the complaints



64 of the complaints that were submitted in 2006 concerned the public sector, 2 concerned the semi-governmental sector, and 2 concerned the private sector.

As was also the case in 2005, most of the complaints were submitted by individuals, with a slight excess of the complaints being submitted by women. Specifically, 30 complaints were submitted by women, 29 by men, and 9 by non-governmental organizations.

Complaints for discriminations to the Equality Authority



⁴ According to article 34 of the Combating of Racial or Some Other Discriminations (Ombudsman) Law the Ombudsman has the authority to investigate – after the submission of a relevant claim – whether the intended provision, term, criterion or policy constitutes unlawful discrimination.

As regards the thematic classification of the complaints, discrimination on the grounds of disability was prevalent with a number of 23 complaints. Complaints on the grounds of sex followed second, numbering 18 complaints, not including complaints regarding sexual harassment in the workplace, numbering 2 cases. Subsequent are complaints for discriminations on the grounds of race (10), age (5), language (3), and ethnic origin (2). As in previous years, likewise in 2006 no complaints were submitted for discriminations on the grounds of sexual orientation, religion, or beliefs.

In addition to the above complaints, there were 2 cases in 2006 in which a written claim was submitted to the Equality Authority requesting that it investigated whether intended actions were likely to recommend a legally prohibited discrimination⁴ (see chapter “The Equality Authority's positions after a claim”).

During the year 2006 the Equality Authority was manned by two officers: Mrs Eliza Savvidou, Senior Officer of the Commissioner for Administration's (Ombudsman) Office,

acting as head of the Equality Authority, and Mrs Stella Komninou, Officer of the Commissioner of Administration's (Ombudsman) Office, who is employed on a temporary basis.

Awareness raising/Training

In 2006, the Equality Authority gave great emphasis in informing employees, employers, organizations and activists about the Authority's jurisdictions and about the provisions of the institutional framework relevant with the prohibitions of discriminations in occupation and employment. It also gave emphasis in training the Equality Authority's officers. Following are some indicative examples of the Authority's activities:

- ▶ In May 2006, and after an invitation by the Mediterranean Institute of Management for the purposes of a postgraduate program, an Equality Authority officer gave a lecture in which she analyzed the anti-discrimination principle in occupation and employment, the institutional framework which governs it and the Authority's powers.
- ▶ In June 23, 2006 for the purposes of the "Training Seminar of Activists and Counsels for the Rights of Disabled People" an Equality Authority officer analyzed the Authority's powers and activities regarding discriminations on the grounds of disability.
- ▶ In October 20, 2006 the Equality Authority accepted an invitation by the Protection Committee of the Mentally Disabled People in order to expound on its powers, its role in promoting the principle of equality and its experience regarding discriminations due to disabilities up to that time. For the purpose of that speech an Equality Authority officer took part in the "Seminar for the Effectiveness of the European Provision 2000/78 regarding the Occupation of Mentally Disabled People".
- ▶ On December 5-7, 2006, a seminar entitled "Workshop on Equality Issues for Good Governance in the Public Sector for Malta and Cyprus" concerning equality issues and equal treatment in the workplace was held in Malta, where the Equality Authority accepted an invitation by the Republic of Malta to join the seminar as a member of the educational group for the attendees from the public service of Malta and Cyprus. The presentation organized by an Equality Authority officer concerned the activities of all the national bodies that are occupied with combating discriminations in the Republic of Cyprus, giving great emphasis on the power and activities of The Office of the Commissioner for Administration (Ombudsman's) and of the Equality Authority. For the purposes of that presentation and as workshop exercises for the seminar the Equality Authority's officer used real life examples of discriminations that had been investigated by the Equality Authority.

Furthermore, Equality Authority's representatives took part in the following educational seminars:

- ▶ "Anti-discrimination and diversity training: Good practices and future needs", Warsaw, April 24-25, 2006.
 - ▶ "Closing the Gender Pay Gap", Brussels, May 21-23, 2006.
 - ▶ "Methodology of Evaluation of Professions for Purposes of Equal Pay between Men and Women", Nicosia, July 5-6, 2006.
 - ▶ "The Benefits of Diversity and Inclusion for SME's", Limassol, September 29, 2006.
 - ▶ "Ombudswork for Children", Athens, September 28 - October 1, 2006.
 - ▶ "Combined in Europe - Together in North Rhine-Westphalia: Diversity and Equal Opportunities in Companies, Organizations and Public Administration", Brussels, February 13, 2006.
 - ▶ Representatives of the Equality Authority also attended Conference workshops entitled "Meeting between Commissioner Spidla and the Representatives of National Equality Bodies Designated in Accordance to Directive 2002/73/EC" which took place at Brussels on December 18-20, 2006.
 - ▶ In July 2006, The Office of the Commissioner for Administration (Ombudsman) submitted a proposal (VP/2006/005) to the European Committee for the financing of a campaign intending to inform the Cypriot citizens about discriminations and the need to combat them. Being submitted in the framework of the communal program against discriminations (Community Action Program to Combat Discrimination), the particular proposal was approved, therefore being followed by the Equality Authority's preparation of informative leaflets and a Code of Practice in the Greek language:
 - ▶ "Learn your rights - Equal treatment and substantial equality for the disabled people in occupation and employment".
 - ▶ "Learn your rights - Equal treatment and substantial equality for men and women in occupation and employment".
 - ▶ "Code of Practice for the treatment of Sexual Harassment and Harassment in the Workplace".
- In the informative leaflets entitled "Learn your Rights", the public has the opportunity to read in comprehensible language about the violation of the anti-discrimination principle in occupation and employment. The Code of Practice for the treatment of Sexual Harassment was written in a useful and explanatory way and with clear guide lines about the preventive as well as about the repressive treatment of sexual harassment by employers.

Printing of the Code and the leaflets is due in the first quarter of 2007.

Presentation of Cases

Age discrimination in access to professional education

A group of women nursing officers submitted a complaint against the Ministry of Health regarding age discrimination in access to professional training. The accusers reported that their applications to study the Program in the Faculty of Midwives, which is a professional training postgraduate program, was rejected because they did not fulfill the maximum age limit of 32 years old, a requisition that was a necessary term for their introduction to the specific program.

The Ministry of Health justified the necessity of the maximum age limit for the Midwives' program on the argument that if the senior line was the only required qualification without taking the age limit in consideration, then the participants would only be 40 year old people. It was also supported that based on previous years' experience, it was expected that a great number of the older nurses who would study the particular postgraduate program, would not accept to work at the midwives' departments alleging either their age or the possibility of being promoted to a higher rank due to the completion of the relevant postgraduate program. Under this speculation the Ministry of Health finally claimed that the maximum age limit intended to ensure the adequate staffing of the midwives' department and prevent the repetition of previous years' incidents.

It is noted that based on The Equal Treatment in Occupation and Employment Law (2004) any different treatment due to age does not constitute discrimination when this is justified objectively and without bias by a legitimate aim and when the means to achieve that objective are appropriate and necessary (article 8).

After investigation it came to light that the postgraduate programs offered by the Ministry of Health in cooperation with the Nursing School aim on the one hand to provide to the nurses the possibility of acquiring the necessary qualifications for a promotion, and on the other hand to employ specialized personnel for the various medical services. The acquisition of the abovementioned postgraduate qualification is essential for the promotion of a nurse to the position of Chief Nurse, according to the familiar Service Plan.

Based on the arguments of the Ministry of Health the Ombudsman judged that the setting of a maximum age limit of 32 as an entrance criterion to the midwives' postgraduate program could neither be impartially justified nor served as means for achieving either of the two objectives mentioned above; as a result, this maximum age limit could not be considered an "appropriate and necessary" means. On the contrary, this criterion of max-

imum age limit placed the offended in an unfavorable position regarding both their right in postgraduate studies and in professional development.

In the Ombudsman's recommendation for abolishing the maximum age limit as an entrance criterion to the Nursing School for purposes of education, either in graduate or postgraduate study programs, there was absolute compliance.

Age discrimination in coastal fishery license granting

After investigating a complaint about the Department of Fisheries and Marine Research not granting an inshore fishery license for the year 2005, it was ascertained that the criterion implemented during the examination of the applications based on which younger applicants were given priority, consists unlawful discrimination. It was also ascertained that direction of the Regulation 6(4) (b) 354/2005 which excludes applicants above the age of 40 from receiving a category B' license, constitutes a direct and unlawful discrimination on the grounds of age.

In the Report it is noted that as far as its environmental dimension is concerned, the Common Fisheries Policy aims to preserve its resources as a basic requisition in order to guarantee the normal and sustainable development of its fishing patterns. One basic problem of the CFP is the perennial redundant ability of the fishing fleet that affects the fishing patterns and the preservation of the stocks in a negative way. Having that in mind it is not only justified but is rendered a necessity to take measures with time and local prohibitions in combination with a system of controlled entrance of people in fishery. The Equality Authority, however, pointed that the criteria implemented during the controlled entrance of people in the department of fishery must not clash with the principle of anti-discrimination. In other words, these criteria cannot refer to age, beliefs, sex, or origin of the applicants. There are so many unbiased criteria that can be implemented, such as criteria concerning the suitability of a fishing boat, the suitability of the fishing equipment or the amount of the boat's production. Besides, the issued licenses are connected with the boat (article 3 regarding the Fishing Law) and not with the individual owner/applicant.

In the Ombudsman's recommendation to eliminate the age criterion from the law provisions in issue there was no compliance.

Sex discrimination in access to employment

The Equality Authority investigated a complaint by a woman who was a candidate for appointment in a male dominated work position, that of messenger at the Cooperative Bank of Agios Athanasios. The accuser claimed

that she was not hired despite the fact that she came first in the written and oral exams, on the one hand because she was a woman and on the other hand because of her age (42 years old).

The investigation showed that there is indeed unequal treatment between the two sexes and in favor of men concerning the messenger profession, and that finally a much younger than the female accuser male candidate fulfilled that work position with no objective justifications. Specifically, it was found that the accuser came first both in the written and the oral exams that were organized by the House that Agios Athanasios had assigned the provision of services of staff employment to for the position of messenger. The Cooperative Bank's Interview Committee decided to interview the woman aiming just to negate the written and oral exams' results. It is noteworthy that after an investigation the Equality Authority came across the fact that out of a total of 72 Cooperative Banks 13 people hold the position of messenger with only one of them being a woman.

Despite the Ombudsman's findings it was not possible for any suggestion to be made leading to a practical result for the accuser due to the fact that there were third party rights involved, that of the hired person. It was explained to the accuser that as a victim of discrimination on the grounds of sex she has the right to claim compensation, by the competent court, for the damage she suffered by the violation of The Equal Treatment of Men and Women in Occupation and Employment Law.

Sex discrimination in the field of vocational training

A female professor who was a candidate for appointment in the public educational service submitted a complaint to the Equality Authority against the Educational Service Commission (E.S.C.) regarding the rejection of her request to attend the program of Occupational Training at a different from the suggested date. The offended woman who was summoned by the E.S.C. to appear at the Cyprus Pedagogical Institute (C.P.I.) in order to attend the Vocational Training Program in October 2005 – April 2006, would be at that time in an advance pregnancy and would expect delivery of her child. That was the reason she requested to be allowed to attend the previous program regarding the time period that would take place in June 2005 – January 2006. It was established that the accuser's request had been rejected by the E.S.C. because, according to the educational legislation, the latter is committed to summon the candidates to attend the vocational training program retaining their ranking in the familiar Appointing Board.

It is noted that based on the current legislation not attending the vocational training program entails the candidate's dismissal from the Appointing Board, a fac-

tor which is of grave importance for their occupational rehabilitation taking in consideration that the expectancy for appointment to a work position to the Public Educational Service is very long. The cases where a candidate is not disqualified and always based on the current legislation, is when s/he is unable to attend the program for serious health reasons. Pregnancy or labor which are not diseases cannot be considered a "health reason" and were therefore not predicted by the legislative party as a reason for not being disqualified by the Board. As a result, women candidates are in danger of being disqualified from the Boards when due to pregnancy or labor they are unable to attend the vocational training program. The Ombudsman thought that this void in the law leads to indirect discrimination at the expense of pregnant or puerperal candidates, since it places them in a disadvantageous position in the field of access to work positions in public education.

It was therefore recommended that pregnancy and labor be added to the reasons for not being disqualified by the Board. In addition, it was suggested to include the possibility of the pregnant candidates to attend the previous program when delivery is expected during the next program, with the reservation that their appointment would occur in any case without violation of the priority order of the Board. Upon compliance with the recommendation the Educational Service Commission started the process of amendment of the relevant article.

Discrimination in employment due to pregnancy

One of the most serious complaints that the Equality Authority investigated in 2006 concerned two temporary public employees the contracts of whom were not renewed because and while they were on maternity leave.

Both women were working on a temporary basis in the public sector, the first at the Limassol General Hospital since 2002 and the latter at the Famagusta District Administration since 2003, with their services being extended with consecutive contracts. Not offering new contracts at due time owed entirely to the fact that they were absent on maternity leave. Both women were rehired after the end of their maternity leave. The investigation brought to light that the way the cases of these two women were dealt with was not an isolated incident but was actually part of the Public Administration and Personnel Department's general policy which instructed not to extend contracts of services to temporary employees who were absent on maternity leave.

In her relevant Report the Ombudsman expressed the opinion that the above policy constitutes direct and unlawful discrimination on the grounds of sex and specifically, sex discrimination that is prohibited by The Equal Treatment of Men and Women in Occupation and

Vocational Training Law. The Public Administration and Personnel Department questioned the correctness of the Equality Authority's conclusion and claimed that its actions in issue were based on the General Attorney's oral response. It is noted, however, that a written response by the General Attorney had preceded according to which not providing work to a person who is absent for reasons of pregnancy, delivery, breastfeeding, motherhood, or disease owed to pregnancy or delivery constitutes adverse treatment among the candidates.

The Ombudsman summoned the Public Administration and Personnel Department to a meeting in order to discuss the context of the proposition that was intending to make, based on the article 22 of The Combating of Racial and Other Discriminations (Ombudsman) Law of 2004. The Ombudsman's final proposition set a one month deadline concerning the immediate elimination of the abovementioned policy of not renewing the contracts of temporary employees who are on maternity leave and the informing, in a written form, all the employees of the Department who deal with staffing issues of the Public Service about the content of the decision taken.

Language/ethnic origin discrimination in access to employment

1.

An English citizen who is a permanent resident of Cyprus submitted a complaint against the Cyprus Tourist Organization (C.T.O.) claiming that in the criteria of issuing a working license for a tourist agency by a foreigner there is a term which constitutes language discrimination and by extension, discrimination on the grounds of ethnic origin.

It was ascertained that in the requisitions for granting a tourist agency working license there is not in the first place a term demanding the knowledge of a specific language by the applicant/businessperson. The language criterion is indirectly implied, however, in the requisitions for issuing a tourist agency license, since, based on the article 5(3) (b) of the Tourist Agencies and Travelling and Guides' Law, where the agency's manager is the applicant businessperson him/herself, as is usually the case with small tourist businesses, she/he is required to know well one of the Republic's official languages (Greek or Turkish). The Ombudsman decided that this regulation introduced indirect discrimination at the expense of the commune foreigners due to language in the sector of provision of services, thus placing the foreigners in an adverse position in comparison to the Cypriots during the submission of applications for the establishment of small tourist agencies, which the owners seek to run themselves or appoint as managers other commune for-

eigners. In addition, the Ombudsman formed the opinion that the specific regulation introduces direct language discrimination at the expense of commune foreigners, considering that it excludes from administrative work positions in tourist agencies all those who do not know one of the Cypriot Republic's official languages.

Considering that the above provision is in contrast to The Equal Treatment in Occupation and Employment Law of 2004, it is abolished based on the article 16(1). To ensure the prevention of complications and unnecessary court procedures the Ombudsman suggested the typical elimination of the regulation in issue, and for that purpose she submitted her Report to the General Attorney of the Republic of Cyprus. The Cyprus Tourist Organization originally disagreed with the position of the Equality Authority. Later, however, there followed a meeting between the Ombudsman and the CTO's Tourist Administrator of the Quality Assurance Department in order to discuss the whole matter, during which the latter committed to promote the necessary amendment.

2.

A doctor of Austrian origin who is married to a Cypriot citizen and is a permanent resident of Cyprus submitted a complaint claiming that the term included in the Service Plan for Medical Workers and based on which the candidates for appointment to the position of a Medical Worker are required to have an "excellent" knowledge of the Greek language, constitutes language discrimination.

The Ministry of Health, as well as the Public Administration and Personnel Department, supported that the criterion of having an excellent knowledge of the Greek language constitutes an essential requirement for the satisfactory execution of the Medical Worker's duties, the proper communication between doctors and patients, and the best service of the civilians, who mostly speak Greek as a native language. They also supported that having a very good knowledge of the Greek language is an essential prerequisite for the satisfactory execution of the duties of all the employees who hold a position in the Public Service and it constitutes a firm policy by the Government.

Based on the investigation evidence, however, it was ascertained that the demand for "very good" knowledge of the Greek language is not justified objectively in relation to the practical nature of the duties at the position of the Medical Worker. It was also established that the same language criterion is not demanded for registration in the Doctors' Record nor is it demanded for access to the same work positions in the private sector.

Therefore, the Equality Authority came to the conclusion that the required level of knowledge of the national language which exceeded the required level necessary for

the satisfactory exercise of the doctor's profession was an indirect language discrimination in the field of access to employment to the specific positions of the Public Service, in the sense that while it appeared as a neutral term it nevertheless had a disadvantageous effect in the treatment of those individuals whose mother tongue was not the Greek language.

Because the Equality Authority established that the Service Plan's term of a very good knowledge of the Greek language for the position of a Medical Worker constituted indirect language discrimination at the expense of the commune (and other) foreigners, it transferred the relevant Report to the General Attorney of the Republic, based on the article 39 of The Combating of Racial and Other Discriminations (Ombudsman) Law of 2004.

The Ministry of Health in relation with the Public Administration and Personnel Department agreed with the Equality Authority's proposition and they have placed the amendment issue of the referred criterion to the Medical Worker's Service Plan. The amendment is due within the year of 2007.

3.

A Greek Citizen submitted a complaint claiming that in the Service Plan for the position of Mine Worker in the Public Service there is a term (that of the registration to the Cyprus Scientific and Technical Chamber (C.S.T.C.)) which excludes her from appointment to that position despite the fact that she holds the required academic and other qualifications and despite the fact that the specific position is available for the commune citizens as well.

It was established that according to the particular Service Plan the candidates must be registered members to the C.S.T.C. until the expiry date of their application's submission's deadline for appointment to the position. Taking for granted that, based on the relevant regulations, the commune movement employees cannot register as members of the C.S.T.C. before their settling in Cyprus and that as a rule, they cannot settle in Cyprus if they do not firstly acquire a work position, the Equality Authority came to the conclusion that the relevant provision of the specific Service Plan entails indirect discrimination at their expense.

Aiming to eliminate the indirect discrimination that was ascertained being included in the Service Plan of the Mine employee position and that is possibly also included in other Service Plans for positions of other mechanical science fields of the public sector, the Equality Authority suggested the amendment of the plan in such a way that it demands from the candidates either that they are members of the C.S.T.C., or to hold the required qualifications to register as members of the C.S.T.C. The Authority also suggested that in cases where the chosen

candidate is not a registered member of the C.S.T.C. the offer of appointment is given under the precondition that within a given deadline s/he will ensure his/her registration as member of the C.S.T.C which is necessary for the exercise of the position's duties.

The Equality Authority transmitted the relevant Report to the General Attorney of the Republic of Cyprus based on the article 39 of The Combating of racial and other discriminations (Ombudsman) Law of 2004.

Discrimination on the grounds of special needs

The Cyprus Dyslexia Association along with the parents of a dyslexic child submitted a complaint against the Ministry of Education and Culture regarding the lack of adequate facilitations for dyslexic children during the final Lyceum exams as well as during the entrance exams for the Higher and Tertiary Education Institutions (H.T.E.I.). Specifically, the complaint concerned the insufficient regulation about this matter and the policy followed by the Ministry of Education and Culture which result to the placing of dyslexic children in an adverse position than those non-dyslexic, in education, including their access to higher or/and tertiary education.

It was ascertained that during the entrance exams for Higher and Tertiary Educational Institutions the Ministry did not provide the necessary facilitations that the District Committee (the responsible body for evaluating dyslexic children's needs) required as a compensation to each student's learning difficulty due to insufficient regulations, based on the view that the facilitations given to dyslexic children provide them a "head start" over the rest of the students. It was also ascertained that the Ministry's applied policy to place the final decision, regarding the facilitations that ought to be given to children with special needs, exclusively to the judgment of an unauthorized body was incorrect.

The Ombudsman disagreed with the Ministry's view that the facilitations given to dyslexic children provide them a "head start" over the rest of the students. The Ombudsman also added that the terms "privileged treatment", "head start" and "advantage" used by the Ministry are problematic since they give the wrong impression that dyslexic children undergo favorable regulations aiming or/and resulting to their advance on the expense of the other students during examination time. The Report notes that any differentiations made to the exam papers as compensatory measures for the children with special needs do not entail change on the level, content, or the expected criteria of the exam process. These measures aim to bring dyslexic students at the same position with other students in order to avoid a disadvantageous treatment of the first in relation to the latter. In other words, these measures do not provide any advance for

the dyslexic student who is already in a disadvantageous position in relation to the non-dyslexic student, but put the two kinds of students on the same level and allow the dyslexic student to perform according to his/her true abilities.

The Ombudsman also noted that the law specifically defines that the State should not allow direct or indirect discriminations on the grounds of special needs in the sector of education, and that the Republic of Cyprus is additionally committed by its conventional obligations, as these are defined in the Convention on the Rights of the Child, the European Social Charter, and the relevant on the subject directives of the European Union. The unified regulation of the Law regarding the conduct of the 2006 Cyprus Examinations concerning the additional 30 minutes times does not provide any substantial equality to the people with special needs. And while the Ministry aims to ensure the “irreproachability” of the exams, not providing facilitations to people with special needs in order to achieve that goal cannot be characterized as “appropriate and necessary means” and as such, are not objectively justifiable.

The Ministry’s applied policy to place the final decision, concerning the facilitations that ought to be provided to the children with special needs, exclusively to the judgment of an unauthorized body, that of the Examinations Service was also wrong.

Based on the above the Ombudsman concluded that the Ministry’s policy introduces an indirect and unlawful discrimination at the expense of dyslexic children during their education, including their access to higher and tertiary education and should, therefore, be directly revised. In addition, the Ombudsman transferred her report to the General Attorney of the Republic after establishing that the Treatment and Education of Children with special needs laws of 1999 until 2001, article 15 and the relevant regulations, articles 65 to 68 along with the Cyprus Examinations Procedure Law of 2006, constitute indirect discrimination on the grounds of special needs, and should be eliminated. In cooperation with the General Attorney, the Ministry of Education and Culture proceeded with the amendment of the regulations in issue, which are due within the year 2007.

Sexual harassment

A temporary institutional female employee at a Public Service department submitted a complaint to the Equality Authority concerning the treatment of another complaint that she herself submitted for sexual harassment by one fellow worker in her workplace.

It was established that in the case under examination there were serious indications that other female employees had been sexually harassed by the same person. The accuser’s complaint, however, was considered not genuine

and without being examined in its essence the Head Body commenced a disciplinary procedure at the expense of the female employee on the argument that the specific woman did not hold back the sexual harassment but tolerated it and that she fell under the offence of immoral conduct and lack of honesty. In other words, the supervisor acted in the exact way that the law prohibits the employers from acting in case of complaint by an employee for sexual harassment. Specifically, the Head Body compelled the female employee to be absent from her work, originally with sick leave and later with absence leave resulting to her loss of salary. The Head Body later suspended her, resulting to additional loss of salaries, and begun disciplinary proceedings aiming to her dismissal. Beyond that, no sustainable measure for the termination, non-repetition, or removal of the sexual harassment’s consequences were taken by the employer.

The Equality Authority proposed that the female accuser be immediately restored to her work removing any adverse consequence as a result of the measures taken at her expense. In that framework the following suggestions were made:

- ▶ To be allowed to the woman to keep working without any adverse alterations of her working conditions or terms.
- ▶ To return the salaries lost during her sick and absence leave that she was forced to take as well as those lost during her suspension.
- ▶ To take every sustainable measure for the protection of herself and her other female colleagues from possible future sexual harassment.

The Social Welfare Services immediately complied with the above recommendations.

The Equality Authority’s positions following a claim

During 2006 the Ombudsman took a position about two cases, after the submission of relevant complaints, as to whether an intended treatment or intended application of a regulation, criterion, or policy constitutes unlawful discrimination.

1.

The first claim was submitted by the Chief of the Police who requested that the Ombudsman took a position regarding two propositions he had made concerning the decreasing of the number of women in the police force. The first proposition had to do with the Chief’s suggestion about establishment of quotas at the expense of women during their hiring at the Police. His second proposition had to do with establishing unified physical criteria for men and women as well as unified physical

criteria regarding the level of difficulty of the physical exercises that the candidates undergo as part of the hiring procedure to the Police.

It is noted that the General Attorney of the Republic had already delivered his opinion that the establishment of quotas at the expense of women in the framework of the Police's hiring system would oppose the Directive 76/207/EEC and the Court of Justice of the European Communities' case law. The Ombudsman fully agreed with the content of the referred opinion and explained to the Chief of the Police that having that in mind he should abandon any thoughts of establishments of quotas at the expense of women.

The Ombudsman also disagreed with the Chief of the Police's second proposition regarding the establishment of unified criteria for men and women in the athletic examinations (as well as of unified height) for the reason that such an action would lead to direct discrimination on the grounds of sex at the expense of women in the sector of access to employment in the Police. The Ombudsman points that a woman's diversity does not fall under question. Regarding the Court of Justice of the European Communities' established case law, any adverse treatment connecting with the biological diversity of women constitutes a direct discrimination on the grounds of sex. Beyond that point, the anti-discrimination right is not only violated when there is not equal treatment between equals, but also when member states do not diversify the treatment of those people who are in a different position from others without an objective and reasonable explanation.

2.

The second claim was submitted by the Civil Aviation Department. Based on that claim, it was asked by the Ombudsman to take a stand as to whether the decision of not allowing to a Republic's trainee to continue his Air Traffic Control educational program because he lost sight in his one eye after commencing the program, would constitute unlawful discrimination on the grounds of disability. It was also asked from the Ombudsman to take a position in relation to the Department's view that the trainee could not claim a position of air traffic controller after the completion of his educational program, due to the medical standards required for the specific position.

As for the first issue that was brought up, the Ombudsman advised the Department of Civil Aviation to allow the trainee to complete his educational program under close observation and guidance for security purposes. As for the second issue that was brought up, the Ombudsman advised the Department to isolate the possibility or not of future employment of the trainee. The Ombudsman gave that advice based on the fact

that while the specific scholarships are given analogously to the Department's real needs for personnel and that as a rule the trainees who complete successfully the educational program are appointed, this is not an absolute condition. On the contrary, completing the educational program does not lead to the direct employment of the trainee as an Air Traffic Controller and does not entail an obligation by the Department of Civil Aviation to employ the trainee, but renders the trainee typically qualified as regards the required academic training he needs to claim a position as an ATC, if and whether he fulfills all the rest requirements of the familiar Service Plan, one of which is to hold the required health level, as this is defined by the National Organization of Civil Aviation.