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# Country report

## Gender equality



Cyprus  
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# **Country report**

## **Gender equality**

How are EU rules transposed into national law?

### **Cyprus**

Vera Pavlou

Reporting period 1 January 2018 – 31 December 2018

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## **1 Introduction**

### **1.1 Basic structure of the national legal system**

Cyprus is a unitary presidential republic. Until 1960, when Cyprus became independent, the legal system was based on the English legal system, which applied the principles of common law and equity. Following independence in 1960 the English legal system was largely preserved. Currently, the following laws are applicable: the Constitution, the laws in force under Article 188 of the Constitution, the principles of common law and equity and the laws enacted by the Parliament. With the accession to the EU, the Constitution of Cyprus was amended to incorporate the supremacy of EU law over national law.

### **1.2 List of main legislation transposing and implementing the directives**

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training, implements Directive 2006/54/EC.

Law 100 (I)/1997 on the Protection of Motherhood, implements Directive 92/85/EEC (although not explicitly, in the sense that there is no provision in the law stating that it is an implementing measure of Directive 92/85/EEC).

Law 177(I)/2002 on equal pay between men and women for equal work or work of equal value, implements EU equal pay provisions.

Law 47(I)/2012 on parental leave and leave on force majeure grounds, implements Directive 2010/18 on parental leave.

Law 59(I)/2010 on Social Insurance, implements provisions on social security (although not explicitly, in the sense that there is no provision in the law stating that it is an implementing measure of EU legislation).

Law 18(I)/2008 on equal treatment between men and in women in access to goods and services and their provision, implements Directive 2004/113.

Law 117(I)/2017 on the protection of paternity, contains provisions on paternity leave.

Law 42(I)/2004 on combating racial and other forms of discrimination (Equality Body) implements Directive 2000/43/EC. Although this law does not cover sex, pursuant to Article 17A(2) of Law 205(I)/2002 on equal treatment between men and women in employment and vocational training, the powers of the equality body under Law 42(I)/2004 are also applicable when investigating sex discrimination complaints.

### **1.3 Sources of law**

The main sources of gender equality law are the Constitution, EU legislation and case law, national law and ratified international treaties. Provisions on gender equality might also be included in collective agreements. The equality body produces reports and opinions following the examination of complaints and on the basis of investigations it carries out on its own initiative. If the equality body finds that there is unlawful discrimination, it has the power to impose a fine and/or issue a recommendation (Article 17(1) Law 42(I)/2004 on combating racial and other forms of discrimination). A 'recommendation' is a misnomer in this case because the equality body's recommendations are binding. The recommendations can include requests to the public or private entity responsible for the discrimination to take practical measures, within a specific timeframe, to remedy and avoid the repetition of the discriminatory treatment or action. The equality body can only issue binding recommendations after consulting all parties involved. The follow-up to the binding

recommendations is carried out by the equality body, which can impose a fine in the event of non-compliance.<sup>1</sup>

The opinions of the equality body, as well as authoritative scholarly opinions, might be used by the courts as interpretative tools.

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<sup>1</sup> Part IV of Law 42(I)/2004 on combating racial and other forms of discrimination (Equality Body).



## **2 General legal framework**

### **2.1 Constitution**

#### 2.1.1 Constitutional ban on sex discrimination

Article 28 of the Constitution of Cyprus enshrines equality. Direct and indirect discrimination on the basis of sex are expressly prohibited. The prohibition of discrimination applies vertically, i.e. against the state and horizontally, i.e. in relations between private parties.

Article 28(1) provides that 'all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby'. Article 28(2) provides that

'Every person shall enjoy all rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of her community, race, religion, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless there is express provision to the contrary in this Constitution'.

#### 2.1.2 Other constitutional protection of equality between men and women

There are no other constitutional provisions on equality between men and women in Cyprus.

### **2.2 Equal treatment legislation**

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training expressly prohibits sex discrimination.

Law 177(I)/2002 on equal pay between men and women for equal work or work of equal value expressly bans pay discrimination on the basis of sex.

Law 58(I)/2004 on equal treatment in employment and work bans discrimination on the grounds of religion or belief, age, sexual orientation, race and ethnic origin.

### 3 Implementation of central concepts

#### 3.1 General (legal) context

##### 3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

In March 2018, the Committee on Gender Equality in Employment and Vocational Training of the Ministry of Labour published the study 'Cypriot law and case law: Sexual harassment and the protection of motherhood'.<sup>2</sup> The study gives an overview of EU and domestic legislation on sexual harassment at work and the protection of motherhood. The study aims to raise awareness and disseminate information to interested parties and the public but does not discuss any limits of the legal definitions or problems with the practical implementation of sex equality concepts in national law.

##### 3.1.2 Other issues

The notions of multiple and intersectional discrimination have yet to be introduced in legal discourse in Cyprus. The same goes for the specific problems of transgender, intersex and non-binary persons. Indirect sex discrimination and positive action measures, while formally included in legal instruments, have not yet been sufficiently discussed by the judiciary.

##### 3.1.3 General overview of national acts

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training implements Directive 2006/54/EC.

##### 3.1.4 Political and societal debate and pending legislative proposals

A legislative proposal on legal gender identity recognition<sup>3</sup> is currently pending in the House of Representatives. This legislation, once approved, will introduce the right to modify one's name and sex in identity documents (national ID cards, passports and other documents) so that they correspond to that person's gender identity. Medical gender reassignment procedures will not be a prerequisite to exercise the right.

#### 3.2 Sex/gender/transgender

##### 3.2.1 Definition of 'gender' and 'sex'

The notions of gender and sex are not defined in national legislation. The difference between the notions of 'gender' and 'sex' are discussed in scholarly and public debates in Cyprus.<sup>4</sup> In these discussions sex (*βιολογικό φύλο*) is understood to encompass the biological features used to distinguish between men and women, while gender (*κοινωνικό φύλο*) refers to socially constructed differences between men and women that are historically contingent and subject to change. Decisions of the equality body make references to the notions of gender and sex but without providing a definition of either.<sup>5</sup>

<sup>2</sup> Committee on Gender Equality in Employment and Vocational Training (2018), 'Cypriot law and case law: sexual harassment and the protection of motherhood', (*Κυπριακή νομοθεσία και νομολογία: το αδίκημα της σεξουαλικής παρενόχλησης και η προστασία της μητρότητας*), March 2018, available at [http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/5A8EA302041882A1C22579BA00371ABC/\\$file/KYRPIAKH%20NOMOTHESIA%20KAI%20NOMOLOGIA.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/5A8EA302041882A1C22579BA00371ABC/$file/KYRPIAKH%20NOMOTHESIA%20KAI%20NOMOLOGIA.pdf).

<sup>3</sup> In Greek: νομική αναγνώριση ταυτότητας φύλου.

<sup>4</sup> For example, Pilavaki, A. (Committee on Gender Equality in Employment and Vocational Training) (2010), 'The gender dimension of the labour market in Cyprus and in Europe', (*Η έμφυλη διάσταση στην αγορά εργασίας στην Κύπρο και την Ευρώπη*), November 2010.

<sup>5</sup> For example, Equality Body (2013b), 'Report on the detention of a transgender person in the central jail', complaint number 37/2013, (*Τοποθέτηση της Αρχής κατά των Διακρίσεων σχετικά με την κράτηση τρανσέξουαλ στις Κεντρικές Φυλακές*), Nicosia, 6 August 2013.

### 3.2.2 Protection of transgender, intersex and non-binary persons

There is no legislation to specifically protect transgender, intersex and non-binary persons as gender identity and sex characteristics are not protected grounds under the Cypriot non-discrimination legal framework. Arguably, the equality principle as expressed in Article 28 of the Constitution is in principle broad enough to protect transgender, intersex and non-binary persons against discrimination but this has not been tested in case law. Article 28(2) provides that

‘Every person shall enjoy all rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of her community, race, religion, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless there is express provision to the contrary in this Constitution’.

### 3.2.3 Specific requirements

In Cyprus there is legal void concerning the protection against discrimination of transgender, intersex and non-binary persons. In the examination of a complaint against the refusal of the Civil Registry to modify the identity documents of a transwoman to reflect her gender identity, the equality body stressed that the legal void concerning gender reassignment in Cyprus creates situations of arbitrariness. In its concluding remarks, the equality body advocated

‘the implementation of a clear institutional framework that establishes rapid and transparent administrative procedures through which transgender individuals can change their gender and name based on their own self-identification in all their official documents (birth certificate, passport, identity card, driving license, educational certificates, etc.). These procedures should under no circumstances require sterilization or other compulsory medical treatment such as hormone therapy or sex reassignment surgery but should be based on the conscious choice of a person to adopt the opposite sex from his or her biological [one]’.<sup>6</sup>

Five years after the report of the equality body, no such institutional framework has been adopted.

## 3.3 Direct sex discrimination

### 3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited under Law 205(I)/2002 on equal treatment between men and women in employment and vocational training. Article 2 of Law 205(I)/2002 defines direct discrimination as a situation ‘where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation’. The national definition is thus a direct translation of the EU law definition of direct discrimination in Directive 2006/54.

### 3.3.2 Prohibition of pregnancy and maternity discrimination

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training prohibits pregnancy and maternity discrimination as a form of sex discrimination. Article 2 defines sex discrimination as ‘any direct or indirect discrimination [...] including any unfavourable treatment of a woman related to pregnancy, childbirth, breastfeeding, motherhood or illness due to pregnancy or childbirth [...]’. Law 205(I)/2002

<sup>6</sup> Equality Body (2014), ‘Report regarding the legal recognition of the gender identity of trans persons’ (Έκθεση Αρχής κατά των Διακρίσεων σχετικά με τη νομική αναγνώριση της ταυτότητας φύλου των διεμφυλικών ατόμων), Nicosia, 2 April 2014.

prohibits sex discrimination in a range of areas including access to and conditions of vocational training (Article 7), access to and conditions of work (Article 8), dismissal (Article 9) and access to and exercise of professions on a self-employed basis (Article 10). Article 11 prohibits the unfavourable treatment of women in the above-mentioned areas on grounds of pregnancy, childbirth, breastfeeding, motherhood or illness due to pregnancy or childbirth.

Although the legislation does not explicitly characterise pregnancy discrimination as direct discrimination, national courts, drawing on EU legislation and case law, have repeatedly held that pregnancy-based discrimination is a form of direct sex discrimination.<sup>7</sup> Characterising pregnancy-based discrimination as direct discrimination has also been the approach of the equality body.<sup>8</sup>

The national provisions on the prohibition of pregnancy and maternity discrimination comply with the relevant definition under Article 2(2)(c) of Directive 2006/54.

### 3.3.3 Specific difficulties

There are no specific difficulties in applying the concept of direct discrimination in Cyprus.

## 3.4 Indirect sex discrimination

### 3.4.1 Explicit prohibition

Article 28 of the Constitution prohibits direct and indirect sex discrimination. Law 205(I)/2002 on equal treatment between men and women in employment and vocational training prohibits indirect discrimination. Indirect discrimination is defined as a situation 'where an apparently neutral provision, criterion or practice places persons of one sex in a notably disadvantageous position compared to persons of the other sex, unless that provision, criterion or practice can be objectively justified by a legitimate purpose and then means to achieve that purpose are appropriate and necessary'.

In the view of the author of this report, the national definition is not fully compliant with the EU law definition of indirect discrimination under Article 2(1)(b) of Directive 2006/54. This is because the translation in Greek of particular disadvantage as 'notably disadvantageous position' (*ιδιαίτερα μειονεκτική θέση*) introduces an additional requirement, that of the disadvantage having to be notable, which renders the national definition more restrictive than the EU provision.

### 3.4.2 Statistical evidence

National courts and tribunals can use statistical evidence when examining indirect sex discrimination cases but there is limited case law. In the case *Elena Aresti v General Attorney of the Republic* on indirect discrimination in the conditions of access to employment as a guard in the antiquities department, the Industrial Disputes Tribunal held that there was not sufficient evidence that meeting a physical robustness criterion disproportionately affects women.<sup>9</sup> The tribunal, however, used statistics showing that women were significantly underrepresented in the position of guard in the antiquities department (81 % men and 19 % women) as an indication that the hiring body discriminated against women candidates.

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<sup>7</sup> For example: Limassol Industrial Disputes Tribunal, Decision of 16 February 2009 (Application No.312/05); Limassol Industrial Disputes Tribunal, Decision of 6 July 2017 (Application No. 710/12) and Industrial Disputes Tribunal, Decision of 28 December 2016 (Case number 813/2012,).

<sup>8</sup> For example, Equality Body (2015), 'Report on a Municipality of Nicosia practice which constitutes direct sex discrimination in access to employment', Nicosia, 8 December 2015.

<sup>9</sup> Limassol Industrial Disputes Tribunal, Decision of 26 February 2009, (Application No. 576/06).

### 3.4.3 Application of the objective justification test

There is no recent case law on indirect discrimination whereby the objective justification test is analysed and applied.

### 3.4.4 Specific difficulties

There is limited case law on indirect sex discrimination in Cyprus, which makes it difficult to discern national courts' understanding and application of indirect discrimination. There have been two industrial tribunal decisions and one Supreme Court decision on indirect sex discrimination (see below). Parts of the reasoning in these cases indicate that the concept and tests of indirect discrimination are not fully understood in Cyprus.

In *Elena Aresti v General Attorney of the Republic* the claimant brought a sex discrimination claim because the conditions of access to employment as a guard in the antiquities department introduced a physical robustness criterion that put women candidates at disadvantage.<sup>10</sup> The tribunal did not put the criterion under scrutiny claiming that there was no sufficient evidence that a robustness criterion indirectly discriminated against female candidates. The tribunal held that there was direct discrimination; yet by reading the case as one of direct discrimination, the tribunal missed the opportunity of developing an indirect discrimination analysis. Construing this case as indirect discrimination would have been more significant because it would have allowed the tribunal to challenge the robustness criterion.

In *Elenis Xenofontos v the Republic, the Ministry of Defence and others* the claimant alleged that the promotion criteria in the armed forces were discriminatory against female officers. However, the industrial tribunal held that it was not competent to examine the substance of the claim as it was an issue within the jurisdiction of the administrative court; the claimant waited four years for the decision.<sup>11</sup>

In the Supreme Court decision, the claimant argued that the conditions of access to employment for public school teachers were discriminatory against men. The rules for access to employment in public education at the time credited men with an additional point to counterbalance the time they spend in compulsory army service; the Supreme Court held that one additional point was inadequate and resulting in what the Court wrongly characterised as indirect sex discrimination against men.<sup>12</sup> In the view of the author of this report, the provision is a positive action measure in favour of men to counterbalance their delay in accessing the profession due to compulsory army service. The Court could have examined whether the measure meets the proportionality principle, which is a requirement for positive action measures. However, the situation is clearly not one of indirect discrimination because there is no apparently neutral provision, criterion or practice – apart from compulsory army service, the legality of which is not contested in the case – which creates disadvantage for one sex; the provision is only applicable to men.

Complaints against indirect discrimination are more likely to be filed with the equality body than with the courts. This might be because filing a claim with the equality body is free and leads to a decision faster than court proceedings –the equality body normally examines complaints within a year while courts and tribunals take three to four years. Filing a claim with the equality body is also more straightforward: it can be done online through the body's website and the claimant or their representative does not have to be concerned with complex jurisdictional rules because the complaint will be examined to the extent that the issue falls within the body's mandate.

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<sup>10</sup> Limassol Industrial Disputes Tribunal, Decision of 26 February 2009, (Application No. 576/06).

<sup>11</sup> Limassol Industrial Disputes Tribunal, Decision of 19 May 2016 (Application Number 286/2012).

<sup>12</sup> Supreme Court, Decision of 27 January 2011, *Papaioannou v the Republic* (Case number 503/2009).

### **3.5 Multiple discrimination and intersectional discrimination<sup>13</sup>**

#### 3.5.1 Definition and explicit prohibition

There is no legislation on multiple and intersectional discrimination in Cyprus. There are no pending legislative proposals for the incorporation of the concepts of multiple and intersectional discrimination in national legislation.

#### 3.5.2 Case law and judicial recognition

There is no case law on multiple or intersectional discrimination. The equality body has issued some decisions and reports that refer to how different grounds of discrimination interact and put people in situations of vulnerability without, however, describing these interactions as intersectional discrimination nor theorising the concept. An area where the equality body has mentioned the interaction of different grounds of discrimination is the regulation of migrant domestic workers' conditions of stay and work. Domestic workers in Cyprus are predominantly female third-country nationals and the equality body has emphasised that they are exposed to discrimination both because they are women and based on their nationality.<sup>14</sup>

### **3.6 Positive action**

#### 3.6.1 Definition and explicit prohibition

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training establishes the possibility of adopting positive action measures to advance gender equality (Article 6). Positive action measures can be set through collective agreements or other agreements between employers and workers, in an equality plan in any public or private company or service. Positive action is defined as

'measures that, with a view to ensuring full and substantive equality between men and women in working life, provide for specific advantages for the persons of the unrepresented sex, and especially for women, in employment posts or employment hierarchy posts or sectors of vocational training to facilitate the exercise by these persons of an employment activity, or [measures] that prevent or remedy disadvantages in these persons' employment advancement'. (Article 2)

Measures for the protection of women due to pregnancy, giving birth, breastfeeding and motherhood are not considered positive action.

The national definition complies with the EU definition under Article 157(4) TFEU.

#### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The notion of 'equal opportunities' is not defined in national legislation or in case law.

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<sup>13</sup> See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

<sup>14</sup> See generally, Equality Body (2013), *Report on the status of domestic workers in Cyprus*, Nicosia, 2 July 2013. There might be earlier equality body decisions that discuss these notions but these are no longer publicly available. All of the equality body's decisions used to be available online. For reasons the author is not aware of, under the mandate of the current body, decisions are available only from 2011 onwards.

### 3.6.3 Specific difficulties

There is no obligation to develop any positive action measures in the field of gender equality, but only the possibility to justify such measures as exceptions to the equality principle. To date, no specific positive action measures to promote gender equality in employment, or any other field, have been developed by any public or private law entity in Cyprus.

### 3.6.4 Measures to improve the gender balance on company boards

Cyprus has not adopted any measures to improve the gender balance in company boards. An attempt by the House of Representatives to introduce legislation directed towards gender balance on the board of directors of semi-governmental organisations was struck down by the Supreme Court in 2017. The House of Representatives sought to ensure that women would make up at least one third of the board of directors in certain organisations governed by public law. The provision was introduced in 2016 with a legislative amendment to Law 149/1988, which regulates the appointment of boards of directors in certain public law organisations. The Supreme Court struck down the amendment as being against the Constitution and specifically Article 28 on the equality principle. The Court said that while the equality principle does not rule out 'reasonable discrimination', this must be justified. For the Court, the numerical underrepresentation of one sex is not an acceptable justification but 'an arbitrary, from a constitutional point of view, discrimination which disregards meritocratic and other objective criteria set by the law'. The Court held that Article 147(4) TFEU did not apply in this case. In its reasoning, the Court distinguished between measures that set 'specific advantages' in favour of the least represented sex with the purpose of advancing gender equality in employment and professional careers - which would be allowed under Article 147(4) - and 'positive discrimination', in the sense of preference in favour of candidates of the underrepresented sex in the boards of certain public law organisations, which is not allowed. The argument that Article 23 of the EU Charter of Fundamental Rights could be triggered was rejected by the Court with the reasoning that the measure in question was not applying EU law. The Court did not really explain what the difference between 'specific advantages' and 'positive discrimination' might be.

### 3.6.5 Positive action measures to improve the gender balance in other fields

No positive action measures to improve gender balance in other fields have been adopted in Cyprus.

## **3.7 Harassment and sexual harassment**

### 3.7.1 Definition and explicit prohibition of harassment

Harassment is explicitly prohibited under Article 12 of Law 205(I)/2002 on equal treatment between men and women in employment and vocational training. Law 205(I)/2002 defines harassment as 'unwanted conduct related to a person's sex which has the purpose or result of offending the person's dignity, especially if it creates an intimidating, hostile, humiliating or aggressive environment' (Article 2). The definition complies with the EU law definition of harassment in Article 2(1)(d) of Directive 2006/54.

### 3.7.2 Scope of the prohibition of harassment

The prohibition of harassment covers employment and access to goods and services but does not extend beyond those areas. Law 18(I)/2008 on equal treatment between men and women on access to goods and services and their provision excludes education and the content of media and advertising from its material scope of application (Article 4(3)).

### 3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited under Article 12 of Law 205(I)/2002 on equal treatment between men and women in employment and vocational training. Law 205(I)/2002 defines sexual harassment as 'any form of unwanted conduct of a sexual nature, verbal or physical, with the purpose or effect of offending the person's dignity, especially if it creates an intimidating, hostile, humiliating or aggressive environment, during employment or vocational training or during access to employment or vocational training' (Article 2).

### 3.7.4 Scope of the prohibition of sexual harassment

The prohibition of sexual harassment covers employment and access to goods and services but does not extend beyond those areas

### 3.7.5 Understanding of (sexual) harassment as discrimination

According to Law 205(I)/2002 on equal treatment between men and women in employment and vocational training, the notion of sex discrimination explicitly includes harassment and sexual harassment (Article 2). The law explicitly states that the fact that a person rejects or submits to such conduct cannot be used against that person (Article 12(1)).

### 3.7.6 Specific difficulties

Awareness of harassment, including sexual harassment, is relatively recent in Cyprus. Information campaigns and public debate on what constitutes (sexual) harassment and what remedies there are against such conduct are in their infancy. A recent study of the Committee on Gender Equality in Employment and Vocational Training highlighted that the length and cost of judicial proceedings deter victims from filing complaints.<sup>15</sup> This points to the need to create effective, extra-judicial mechanisms to deal with harassment at work. To some extent, the equality body, as a quasi-judicial body, has an important role in the fight against harassment.

## **3.8 Instruction to discriminate**

### 3.8.1 Explicit prohibition

Instructions (or orders) to discriminate is included in the notion of sex discrimination as defined in Law 205(I)/2002 on equal treatment between men and women in employment and vocational training (Article 2).

### 3.8.2 Specific difficulties

There is no case law concerning the prohibition against instructions/orders to discriminate and the equality body has not issued any opinion or reported specific difficulties in that respect.

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<sup>15</sup> Committee on Gender Equality in Employment and Vocational Training (2018), 'Cypriot law and case law: sexual harassment and the protection of motherhood', (*Κυπριακή νομοθεσία και νομολογία: το αδίκημα της σεξουαλικής παρενόχλησης και η προστασία της μητρότητας*), March 2018 available at [http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/5A8EA302041882A1C22579BA00371ABC/\\$file/KYRPIAKH%20NOMOTHESIA%20KAI%20NOMOLOGIA.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/5A8EA302041882A1C22579BA00371ABC/$file/KYRPIAKH%20NOMOTHESIA%20KAI%20NOMOLOGIA.pdf).



### **3.9 Other forms of discrimination**

Discrimination by association and assumed discrimination are not covered under national law.<sup>16</sup> Such forms of discrimination could in principle be prohibited under Article 28 of the Constitution.

### **3.10 Evaluation of implementation**

National law complies to a large extent with the requirements of EU law on gender equality; most notions are almost directly translated and transposed in national legislation. The protection against discrimination of intersex, transgender and non-binary persons is not satisfactory. There are also issues with the lack of understanding of indirect discrimination and the purpose of positive action measures

### **3.11 Remaining issues**

Although legal requirements have been met, little attention is paid to the effective implementation of the framework put in place to comply with EU law. The notion of substantive equality, for instance, is not fully understood as reflected in the fact that no positive action measures have been implemented.

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<sup>16</sup> Assumed discrimination is when someone discriminates against a person because they think that that person has a protected characteristic even if they do not. For example, thinking that someone is gay and discriminating against them even if that person is not gay.

## **4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)**

### **4.1 General (legal) context**

#### 4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

In February 2019, the Ministry of Labour, the equality body and the Committee on Gender Equality in Employment and Vocational Training organised a forum on equal pay at which surveys and statistics concerning the gender pay gap were presented. The gender pay gap is currently 13.9 %. The convenors of the forum pointed out that even though the right to equal pay is now enshrined in legislation, there is gender bias in perceptions of the abilities and roles of men and women, which accounts for the persistently high gender pay gap. Participants also highlighted the underrepresentation of women in company boards and other high-pay positions, which also contributes to the gender pay gap.<sup>17</sup>

#### 4.1.2 Surveys on the difficulties of realising equal treatment at work

Much of the public debate on gender equality has focused on the gender pay gap and harassment at work without much emphasis on other broader issues.

#### 4.1.3 Other issues

In Cyprus, women shoulder most of the unpaid domestic and care work within the household, which often hinders their participation in the labour market.<sup>18</sup>

#### 4.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals.

### **4.2 Equal pay**

#### 4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value is incorporated in national legislation by Law 177(I)/2002, which transposes the relevant equal pay provisions of the recast directive. Article 5(1) provides that any sex discrimination concerning all aspects and conditions of pay for equal work or work of equal value is prohibited.

#### 4.2.2 Definition in national law

Law 177(I)/2002 on equal pay between men and women for equal work or work of equal value defines 'pay' as the ordinary basic or minimum remuneration and all contributions paid directly or indirectly by the employer to the employee on the basis of an employment relationship (Article 2). The national definition is a direct translation of the EU law definition of pay under Article 157(2) TFEU.

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<sup>17</sup> Economy Today (2019), 'Cypriot women are paid 13.9% less than men', 07/02/2019. [https://economytoday.sigmalive.com/oikonomia/kypros/6523\\_oi-kypries-ergazomenes-plironontai-139-ligotero-apo-toys-antres\\_07/06/2019](https://economytoday.sigmalive.com/oikonomia/kypros/6523_oi-kypries-ergazomenes-plironontai-139-ligotero-apo-toys-antres_07/06/2019); Philenews, "Only three complaints in three years despite the gender pay gap" 07/02/2019 [http://www.philenews.com/oikonomia/kypros/article/652315/mono-3-katangelies-se-16-chronia-para-to-chasma-amoibon\\_07/06/2019](http://www.philenews.com/oikonomia/kypros/article/652315/mono-3-katangelies-se-16-chronia-para-to-chasma-amoibon_07/06/2019).

<sup>18</sup> Pilavaki, A. (Committee on Gender Equality in Employment and Vocational Training) (2010), 'The gender dimension of the labour market in Cyprus and in Europe', (*Η έμφυλη διάσταση στην αγορά εργασίας στην Κύπρο και την Ευρώπη*) November 2010.

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 5 of Law 177(I)/2002 on equal pay between men and women for equal work or work of equal value prohibits any sex discrimination concerning all aspects and conditions of pay for equal work or work of equal value; this article is an explicit implementation of Article 4, Recast Directive 2006/54.

#### 4.2.4 Related case law

There is no related case law or equality body decisions.

#### 4.2.5 Permissibility of pay differences

Pay differences are not permitted.

#### 4.2.6 Requirement for comparators

A comparator is not required to substantiate a claim of unequal pay.

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

Article 18 of Law 177(I)/2002 on equal pay between men and women for equal work or work of equal value sets an open-ended list of parameters to be considered when establishing equal value. They are: the nature of duties; the level of responsibility, abilities and seniority; the requirements of the job relating to physical and intellectual abilities; the conditions under which the work takes place; and the extent to which any differences in the work are minor and sporadic.

#### 4.2.8 Other relevant rules or policies

There are no other relevant rules or policies.

#### 4.2.9 Wage transparency

The legislation does not provide for a wage transparency requirement in the sense of obliging employers to disclose pay rates and the gender pay gap generally or to the interested party. Under Article 14 of Law 177(I)/2002, employers and any employees must disclose any relevant information to the Inspector if requested.

#### 4.2.10 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The Recommendation has not been implemented in Cyprus.

#### 4.2.11 Other measures, tools or procedures

In 2014, the Government established a two-tier certification system. According to this system companies may receive a certification for a specific good practice they implement in the field of gender equality, or an equal employer certification if they have established and implement a detailed equality plan.

### 4.3 Access to work, working conditions and dismissal

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Article 14 of Recast Directive 2006/54 is implemented by Article 8 of Law 205(I)/2002 on equal treatment between men and women in employment and vocational training, which states that equal treatment in access and conditions of employment applies to men and women. Similarly, Article 9 on equal treatment in dismissal applies to men and women. In the definitions section, Law 205(I)/2002 defines 'a worker' as any man or woman who works or receives vocational training, full-time or part-time, fixed or open-ended term, continuous or discontinuous, irrespective of the place of work, including domestic workers but excluding self-employed persons.

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

The definitions section of Law 205(I)/2002 (Article 2) defines employment (*απασχόληση*) as

'the provision of service or services, for pay, on the basis of individual contract of work or apprenticeship or other relationship, regulated by private or public law, in any sector, public or private, including Public Service, the judiciary, public educational services, local government, legal persons or organisations of public or private law, the armed forces and the security forces'.

Vocational training is any training with the purpose of acquiring skills or qualifications to exercise a profession or to work, irrespective of the level of training and the person's age. The notion of working conditions is not defined.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

National legislation includes the exception on occupational activities under Article 14(2) of the recast directive. Article 4(2) of Law 205(I)/2002 excludes professional activities with characteristics that are related to a specific sex inasmuch as such characteristics are a genuine and determining occupational requirement. The proportionality principle must be applied.

An annex to the Law 205(I)/2002 specifies the excluded professional activities. These are:

- i) employment in a specific position for reasons of physiology (excluding natural health or resistance) or authenticity, as for artistic performances, where the filling of the position by a person of the other sex would cause a significant change in the nature of the position;
- ii) employment in a post, e.g. services outside of Cyprus, in a state where the legislation and customs are such that the specific services may not reasonably be provided by a person of the other sex;
- iii) employment in a specific position, where the position concerns the provision of services of a personal nature, such as home care for elderly people or people with disabilities;
- iv) the employment of men as prison guards in men's prisons;
- v) employment in the security forces or private security bodies - in special forces, the mission of which concerns the control and removal of violent individuals, the suppression of nuisance and the liberation of hostages or other people who are being illegally detained, in positions where the employment of a man or a woman is imposed for moral reasons or respect for the personality of the individual;
- vi) the employment of women working underground in mines.

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

Such situations would be covered by the prohibition of discrimination against pregnant workers or workers who have recently given birth because sex discrimination includes any unfavourable treatment (Article 2 of Law 205(I)/2002).

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

Special measures on the protection for women in relation to pregnancy and maternity are explicitly excluded from the notion of discrimination (Article 2 of Law 205(I)/2002).

#### 4.3.6 Particular difficulties

There are no particular difficulties in the implementation of the national legal framework.

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

No positive action measures have been implemented.

### **4.4 Evaluation of implementation**

EU law in the areas of equal pay and equal treatment at work has been correctly implemented.

### **4.5 Remaining issues**

There are no remaining issues.

## **5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54 and 2010/18)<sup>19</sup>**

### **5.1 General (legal) context**

#### 5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

The equality body has reported that 25 % of the complaints received in between 2011 and 2016 concerned discrimination at work, including dismissal, due to pregnancy or maternity. A forum on the protection of motherhood was organised in June 2018 with the participation of various governmental bodies and trade unions to discuss issues concerning sex discrimination at work related to pregnancy and motherhood. At the forum, the Committee on Gender Equality in Employment and Vocational Training (Ministry of Labour) reported that 50 % of the complaints received concerned unlawful dismissals against pregnant workers. However, only two cases reached the courts, which indicates a tendency to prefer extra-judicial proceedings. Both the equality body and the Committee on Gender Equality at Work noted that complainants are not fully aware of their rights and of employers' obligations. Information campaigns were organised to raise awareness.

#### 5.1.2 Other issues

In Cyprus, there is a considerable lack of affordable childcare facilities for children up to the age of six, when compulsory free primary education becomes available and most young parents rely on unpaid childcare from their own parents. This creates obstacles for older women to participate in the labour market and pushes younger women into part-time work to meet care responsibilities.

#### 5.1.3 Overview of national acts on work-life balance issues

Law 205(I)/2002 on equal treatment between men and women in employment and vocational training.

Law 47(I)/2012 on parental leave and leave on force majeure grounds.

Law 100(I)/1997 on the protection of motherhood.

Law 117(I)/2017 on the protection of paternity.

#### 5.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals.

### **5.2 Pregnancy and maternity protection**

#### 5.2.1 Definition in national law

Law 100(I)/1997 on the protection of motherhood does not define a pregnant worker, a worker who has recently given birth or a worker who is breastfeeding. However, Law 100 (I)/1997 provides that an employee who presents a certificate by an authorised doctor attesting her pregnancy and expected delivery date has the right to maternity leave (Article 3(1)).

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<sup>19</sup> See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment* European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway* European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

### 5.2.2 Obligation to inform employer

The pregnant worker must inform her employer with a certificate issued by an authorised doctor.

### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law on the definition of a pregnant worker or worker who has recently given birth.

### 5.2.4 Implementation of protective measures (Articles 4-6 of Directive 92/85)

According to the laws on health and safety at work, the employer must assess the risks of working conditions to the pregnant woman and must lay down the measures to be taken to protect the health and safety of the pregnant or breastfeeding employee or her child. If preventive measures are not practically possible, then the employer amends the working conditions or the terms of the employment or moves the worker to a different post without affecting any of her rights. If the employee is engaged in night work and presents a medical certificate that her health and safety is affected, the employer exempts her from work and transfers her to day work without affecting any of her rights or exempts her from work for the full period of her absence.

### 5.2.5 Case law on issues addressed in Articles 4 and 5 of Directive 92/85

There is no case law concerning protective measures.

### 5.2.6 Prohibition of night work

Night work is not prohibited but if the worker's health is in danger – as attested by a medical certificate – the employer must take measures that include transferring the worker to day work or, if not possible, exempting her from work.

### 5.2.7 Case law on the prohibition of night work

There is no case law on the prohibition of night work.

### 5.2.8 Prohibition of dismissal

Under Article 4A of Law 100 (I)/1997 on the protection of motherhood, a pregnant worker is protected against dismissal from the moment she informs her employer of her pregnancy and until five months after the end of her maternity leave. Article 4B introduces three exceptions to protection against dismissal: i) when the employee is guilty of serious misconduct or conduct that justifies the rupture of the employment relationship; ii) the enterprise has ceased to exist; and iii) the employment contract has expired, except in cases where the non-renewal of the employment contract is linked to pregnancy, childbirth, breastfeeding or maternity leave.

### 5.2.9 Redundancy and payment during maternity leave

The payment for maternity leave does not cease in cases where the employee becomes redundant (Article 30 of Law 59(I)/2009 on Social Insurance).

#### 5.2.10 Employer's obligation to substantiate a dismissal

In a case of dismissal in the circumstances allowed by the law, the employer must notify the employee in writing of the dismissal/or notice of dismissal and duly substantiate the reasons.

#### 5.2.11 Case law on the protection against dismissal

A limited number of complaints are filed at district labour courts on the protection against dismissal of pregnant workers. Complainants first file their complaints at the Ministry of Labour, which refers them to the Committee on Gender Equality in Employment and Vocational Training. The Committee provides independent legal advice and helps claimants to initiate judicial proceedings. In 2017 to 2018, there were three judgments concerning the dismissal of pregnant workers. In two of the cases, industrial dispute tribunals awarded compensation,<sup>20</sup> while in the third case, the claim was rejected on the basis that the claimant did not file her claim within the 12-month time limit.<sup>21</sup> EU case law, when discussed, explains and justifies the national legal provisions and their interpretation. The cases discussed are: C-421/92 *Habermann*, C-32/93 *Webb*, C-342/93 *Gillepsie*, C-394/96 *Brown* and C-232/09 *Danosa*.

Complaints against pregnancy-related dismissals can also be filed with the equality body, which is an extra-judicial forum. In 2017 to 2018, there was one decision concerning pregnancy-related dismissal.<sup>22</sup> The complainant had been working for the State General Laboratory since 2011 based on what was characterised by the employer as contracts for services. When the complainant asked to postpone the start of her new contract by three months because she had given birth two weeks earlier, the employer refused and as a result she could not take up a new contract. In her complaint to the equality body, the complainant also brought a claim that the employer misclassified her as an independent contractor (self-employed) instead of an employee. Based on the misclassification as self-employed, the employer refused to apply the provisions of Law 205(I)/2002 on equal treatment between men and women in employment and occupational training, which give protection against discriminatory dismissal such as the dismissal of a woman who has recently given birth.

Although the equality body concluded that the claimant was an employee and that her dismissal was prohibited sex discrimination, the reasoning and the steps followed disregard EU law and are deeply problematic because they create legal uncertainty as to the fate of similar future complaints. To examine the claimant's status, the equality body looked at national case law on employee status, which, however, was not of help in this case. Despite various indicia that point to employee status (work takes place at the employer's premises, times of work are fixed, there is a monthly salary, she was engaged continuously for six years), the equality body states that it is unable to determine the claimant's status and claims that the only competent authority to determine employee/self-employed status is the Director of Social Insurance. As the complainant was able to get the opinion of the Director stating that she is an employee, the equality body granted her dismissal protection.

The equality body ought to be able to determine whether the complainant falls under the personal scope of provisions against pregnancy-related dismissal – this is clearly under the body's mandate. National provisions on pregnancy-related dismissal, including those determining personal scope, must be read in light of EU law and should not be applied if there is a mismatch. Whether a claimant is entitled to pregnancy-related dismissal

<sup>20</sup> Limassol Industrial Disputes Tribunal, Decision of 6 July 2017, *Savvidaki v Katerina Travel&Tours* (case number 710/12); Decision of 3 March 2017, *Kaja Giecewicz v Moorings Snack Bar* (case number 662/2011).

<sup>21</sup> Nicosia Industrial Disputes Tribunal, *Nicolaou v Ministry of Education* (case number 34/2015).

<sup>22</sup> Equality Body (2018), Case number 27/2017 *Report concerning discrimination at work*, Nicosia, 27 November 2018.



protection is a matter of EU law and not of national law. Had the equality body looked at the broad EU law definition of pregnant worker or worker who has recently given birth, there would be no doubt that the claimant is entitled to dismissal protection.

### **5.3 Maternity leave**

#### 5.3.1 Length

According to Article 3(2) of Law 100(I)/1997 on the protection of motherhood, the total duration of maternity leave is 18 continuous weeks.

#### 5.3.2 Obligatory maternity leave

Article 3(2) of Law 100(I)/1997 on the protection of motherhood provides that out of the 18 weeks of maternity leave, the woman must take at least two weeks before and nine weeks after the due date. From this provision it follows that there are 11 weeks of obligatory maternity leave.

#### 5.3.3 Legal protection of employment rights (Articles 5, 6 and 7 of Directive 92/85)

Employment rights are ensured during the situations under Articles 5, 6 and 7 of Directive 92/85. While not an explicit implementation of Article 11 of Directive 92/85, Article 11 of Law 205(I)/2002 on equal treatment between men and women in employment and vocational training prohibits any discrimination, direct or indirect, against a worker due to pregnancy, childbirth, breastfeeding, motherhood or illness related to pregnancy or childbirth. The burden of proof is reversed in such cases.

#### 5.3.4 Legal protection of rights ensuing from the employment contract

Article 7 Law 100(I)/1997 ensures rights during maternity leave. The provision states:

'Maternity leave does not affect the employee's seniority or her right to promotion or return to the post she had before maternity leave or to any other similar post with the same pay and work-related benefits, excluding commission-based pay calculated exclusively in relation to the quantity and/or value of produced work'.

#### 5.3.5 Level of pay or allowance

Maternity allowance is paid at a higher level than sick pay. The weekly rate of benefit for maternity allowance is equal to 72 % of the weekly value of the insurance point of the insured person's basic insurance in the relevant contribution year. The benefit is not payable to women who receive full wages during the maternity allowance period. If reduced wages are paid, the amount of such wages and the benefit payable cannot exceed full wages.

The weekly rate of benefit for sick leave is 60 % of the insurable earnings up to the basic earnings, increased by 20 % for a dependent spouse and by 10 % for each of the children or other dependants (the maximum number of dependent children and other dependants is two). If there is no increase for the spouse, a 10 % increase is paid for up to two dependants. If both spouses are entitled simultaneously to a benefit, the increase for dependants is paid only to the spouse who is entitled to the increase with the greater amount. The weekly amount of supplementary allowance is equal to 50 % of the weekly value of the insurable earnings that exceeds the basic insurable earnings up to a maximum of twice the basic insurable earnings. The benefit is not payable if the employed person concerned receives full wages. If reduced wages are paid, the benefit payable, added to the wages paid, must not exceed full wages.

### 5.3.6 Additional statutory maternity benefits

It is in the employer's discretion to top-up the maternity allowance.

### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

To be eligible for maternity benefits, the worker must have been insured for at least 26 weeks.

### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 7 of Law 100(I)/1997 ensures the right of a woman to return to the post she had before maternity leave or to any other similar post with the same pay and work-related benefits

### 5.3.9 Legal right to share maternity leave

There is no right to shared maternity leave in Cyprus.

### 5.3.10 Case law

There is no related case law.

## **5.4 Adoption leave**

### 5.4.1 Existence of adoption leave in national law

Article 3(3) and (4) of Law 100 (I)/1997 on the protection of motherhood provides for paid maternity leave in respect of adoption. The duration is 16 continuous weeks from the day of adoption of a child up to 12 years old. The right to maternity leave for adoption is conditional upon notifying the employer at least six weeks in advance, or as soon as practically feasible.

### 5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

The adoptive mother is protected against dismissal under Article 4A of Law 100(I)/1997 on the protection of motherhood. The protection starts from the date the worker notifies her employer and extends to five months after the end of maternity leave due to adoption.

### 5.4.3 Case law

There is no relevant case law.

## **5.5 Parental leave**

### 5.5.1 Implementation of Directive 2010/18

Directive 2010/18 on parental leave has been implemented in Cyprus with Law 47(I)/2012 on parental leave and leave on force majeure grounds.

### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

Law 47(I)/2012 on parental leave applies to all employees in the public and private sectors (Article 3).

### 5.5.3 Scope of the transposing legislation

Law 47(I)/2012 on parental leave applies to all employees who have completed six months of service with the same employer, including part-time workers, fixed-term workers and temporary agency workers (Article 3).

### 5.5.4 Length of parental leave

The length of parental leave is up to 18 weeks for each child. If the parent is a widower, parental leave can be extended up to 23 weeks for each child (Article 4). Leave for force majeure (or emergency care) is up to seven days per year. It is granted for urgent family reasons related to an illness or accident of dependent family members requiring the employee's presence (Article 12). To be granted force majeure leave, the employee must inform the employer as soon as possible.

### 5.5.5 Age limits

Parental leave is granted to take care of a child up to eight years old. In adoption cases, parental leave is granted up to eight years from the end of maternity leave due to adoption provided that the child is not older than 12 years old. If the child is disabled, parental leave is granted until the child becomes 18 years old (Article 4(5.1)).

### 5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual to each parent (Article 4(1)).

### 5.5.7 Transferability of the right to parental leave

The right to parental leave is in principle non-transferable. Exceptionally, when one parent has taken at least two weeks of parental leave, he or she might transfer two weeks of the remaining leave to the other parent (Article 4 (1)).

### 5.5.8 Form of parental leave

While the total duration of parental leave is 18 weeks per child, there are additional rules on how it can be distributed. Parental leave has a minimum duration of one week and a maximum duration of five weeks per calendar year in case of one or two children. In case of three or more children the maximum duration is seven weeks in a calendar year. The maximum duration can be increased with the employer's consent (Article 5 (2)).

### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

The right to parental leave is conditional upon completing six months of service with the same employer. The sum of fixed-term contracts is taken into account for the purpose of calculating the qualifying period (Article 3).

### 5.5.10 Notice period

The worker who intends to exercise the right to parental leave must notify the employer in writing three weeks in advance (Article 6). If the child is severely ill, the notification period is one week (Article 6).

### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

Under Article 8 of Law 47(I)/2012 on parental leave and leave on force majeure grounds, the employer may postpone the date of parental leave for reasons related to the good functioning of the enterprise, such as if the work is seasonal, when it is not possible to

find a replacement, when a significant number of personnel request parental leave simultaneously or when the worker's tasks are of strategic importance for the enterprise.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

Parents of children with a disability have a right to parental leave until the child is 18 years old (Article 4(5)(1)).

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

The legislation on parental leave provides for no measures to address the specific needs of adoptive parents. Adoptive parents have the same rights to parental leave and time off work as natural parents; the definition of 'parent' for the purposes of Law 47(I)/2012 includes natural and adoptive parents (Article 2).

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

Article 17 of Law 47(I)/2012 protects parents who exercise their right to parental leave against unfavourable treatment and dismissal. The employer may not dismiss or give notice of dismissal to an employee from the moment a request for parental leave has been submitted and until the end of parental leave.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

Following the end of parental leave the parent has the right to return to her employment at the same or similar position, which cannot be inferior to the position held before parental leave (Article 10(1)).

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

All rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. Any changes due to legislation, collective agreements or practice are applicable to those rights as well (Article 10(4)).

#### 5.5.18 Status of the employment contract or relationship during parental leave

The status of the employment contract/relations during parental leave is not defined in the legislation. However, we could consider that the employment contract/relationship is suspended as the worker has no obligation to provide work and the employer provides no remuneration. All acquired rights or rights in the process of acquisition are maintained and any changes due to legislation, collective agreements or practice are applicable to those rights as well.

#### 5.5.19 Continuity of entitlement to social security benefits

There is continuity of the entitlement to social security during parental leave (Article 10(5)).

#### 5.5.20 Remuneration

Parental leave is unpaid.

#### 5.5.21 Social security allowance

There is no social security allowance during parental leave.

#### 5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

National law does not introduce any more favourable provisions but only implements the requirements of Directive 2010/18.

#### 5.5.23 Case law

There is no case law on unfavourable treatment and dismissal in relation to parental leave.

### **5.6 Paternity leave**

#### 5.6.1 Existence of paternity leave in national law

Paternity leave is provided for under Law 117(I)/2017 on the protection of paternity. The duration of paternity leave is two weeks (Article 3, Law 117(I)/2017). A father who intends to take paternity leave must inform his employer in writing two weeks before the starting date (Article 4, Law 117(I)/2017). During paternity leave, the employee receives a paternity benefit according to social security law. There is a qualification period of 26 weeks, i.e. the employee must be insured for at least 26 weeks to be entitled to the benefit (Article 23(1b), Social Security Law 59(I)/2010). The benefit is calculated according to the same formula as the maternity leave benefit: the weekly rate is equal to 72 % of the weekly value of the insurance point of the insured person's basic insurance in the relevant contribution year.

#### 5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

National legislation provides for protection against unfavourable treatment and dismissal of workers who exercise their right to paternity leave. Article 5(1) of Law 117(I)/2017 on the protection of paternity states that the employer may not terminate or give notice of termination of employment to a worker who exercises his right to paternity leave. Protection against dismissal starts from the moment of notifying the employer of the intention to take paternity leave and expires upon the end of paternity leave (Article 5). Under Article 7, the worker who takes paternity leave is protected from unfavourable treatment in relation to acquired rights, promotion and returning to the same job.

#### 5.6.3 Case law

The right to paid paternity leave has only recently been introduced in Cyprus; there is no related case law.

### **5.7 Time off/care leave**

#### 5.7.1 Existence of care leave in national law (Article 7 of Directive 2010/18)

Article 12 of Law 47(I)/2012 on parental leave and leave on force majeure grounds provides for up to 11 days of time-off from work per year to personally handle urgent family matters related to illness or accident of a dependent family member (leave on force majeure grounds). To be granted force majeure leave, the employee must inform the

employer as soon as possible. Like parental leave, leave on force majeure grounds is unpaid.

#### 5.7.2 Case law

There is no case law in relation to time off/care leave.

### **5.8 Leave in relation to surrogacy**

Parental leave and leave on force majeure grounds are not available to the surrogate mother.

### **5.9 Flexible working time arrangements**

#### 5.9.1 Right to reduce or extend working time

Law 76(I)/2002 on part-time work (prohibition of discrimination) provides workers with a legal right to reduce or extend their working time (Article 8).

#### 5.9.2 Right to adjust working time patterns

National legislation does not provide for a legal right to adjust working time patterns beyond the right to reduce or extend working time. The right to adjust working time patterns might be stipulated in collective agreements in certain sectors or agreed in individual contracts or through practice/custom.

#### 5.9.3 Right to work from home or remotely

National legislation does not provide for a legal right to work from home. Such a right might be stipulated in collective agreements in certain sectors or agreed in individual contracts or through practice/custom.

#### 5.9.4 Other legal rights to flexible working arrangements

Rights to flexible working arrangements are not stipulated in legislation in Cyprus. Such rights might be included in collective agreements, agreed individually or through practice.

#### 5.9.5 Case law

There is no relevant case law.

### **5.10 Evaluation of implementation**

National law implements EU law, but the stipulated rights do not extend beyond the level required by EU law.

### **5.11 Remaining issues**

The piecemeal way in which legal rights related to work-life balance have been implemented is probably making their exercise difficult. There are currently four different laws that contain rights related to work-life balance in addition to any collective or individual agreements that might set additional rights or extend existing ones. Consolidating or codifying the legal provisions would make the exercise of such rights more straightforward.

## **6 Occupational social security schemes (Chapter 2 of Directive 2006/54)**

### **6.1 General (legal) context**

#### **6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues**

There are no recent national surveys or reports concerning occupational or statutory social security issues.

#### **6.1.2 Other issues related to gender equality and social security**

There are no other issues.

#### **6.1.3 Political and societal debate and pending legislative proposals**

There are no pending legislative proposals concerning gender equality and social security.

### **6.2 Direct and indirect discrimination**

Law 133(I)/2002 on equal treatment between men and women in occupational social insurance schemes prohibits direct and indirect discrimination on the ground of sex (Articles 2, 3 and 4).

### **6.3 Personal scope**

Article 3(1A) of Law 133(I)/2002 is a direct translation of Article 6 of Directive 2006/54.

### **6.4 Material scope**

Article 3(1B) of Law 133(I)/2002 is a direct translation of Article 7 of Directive 2006/54.

### **6.5 Exclusions**

Article 3(1A) and (1B) of Law No. 133(I)/2002 have incorporated the same exclusions as specified under Article 8 of Directive 2006/54.

The occupational social insurance scheme includes provisions that provide benefits to employees in the public and private sectors and to employees and self-employed people in the same company or group of companies, which supplement or replace the benefits under the social insurance scheme.

### **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

There is no difference between men and women in occupational social security schemes; men and women enjoy the same benefits.

### **6.7 Actuarial factors**

In Cyprus, sex is not used as an actuarial factor in occupational social security schemes.

### **6.8 Difficulties**

In Cyprus there is a distinction between statutory pension schemes and occupational pension schemes. The general social insurance scheme (GSIS) and the social pension scheme are statutory, while occupational pension schemes for employees in the public

service and the broader public sector, the voluntary provident fund schemes and other similar pension schemes fall under the category of occupational pension schemes. Under all occupational pension schemes, men and women enjoy equal treatment as provided in the Equal Treatment for Men and Women in Occupational Social Insurance Schemes Act.

### **6.9 Evaluation of implementation**

National law complies with EU law in occupational social security.

### **6.10 Remaining issues**

There are no remaining issues.



## **7 Statutory schemes of social security (Directive 79/7)**

### **7.1 General (legal) context**

#### **7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)**

There are no recent national report or surveys concerning statutory social security schemes.

#### **7.1.2 Other relevant issues**

There are no other issues.

#### **7.1.3 Overview of national acts**

Law 59(I)/2010 (as amended) regulates statutory social security schemes.

#### **7.1.4 Political and societal debate and pending legislative proposals**

There are no pending proposals.

### **7.2 Implementation of the principle of equal treatment for men and women in matters of social security**

The principle of equal treatment for men and women in matters of social security is not explicitly included in Law 59(I)/2010 (as amended) which regulates statutory social security schemes.

### **7.3 Personal scope**

Law 59(I)/2010 applies to employees and the self-employed (Article 3(2)).

### **7.4 Material scope**

Law 59(I)/2010 covers maternity benefit, sickness benefit, unemployment benefit, pensions (old-age, disability and survivor's pension), orphans' allowance, missing person's benefit and paternity benefit. The law also provides for certain one-off allowances: childbirth allowance and funeral allowance.

### **7.5 Exclusions**

There are no exclusions.

### **7.6 Actuarial factors**

Sex is not used as an actuarial factor; the level of benefits is the same for men and women.

### **7.7 Difficulties**

There are no specific difficulties.

### **7.8 Evaluation of implementation**

The implementation in national law is satisfactory.

## **7.9 Remaining issues**

There are no remaining issues.

## **8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)**

### **8.1 General (legal) context**

#### 8.1.1 Surveys and reports on the specific difficulties of self-employed workers

There are no recent surveys or reports concerning the specific difficulties of self-employed workers in Cyprus.

#### 8.1.2 Other issues

There are no further issues.

#### 8.1.3 Overview of national acts

Law 59(I)/2010 on Social Insurance and Law 205(I)/2002 on equal treatment in employment and occupation contain provisions on self-employed workers.

#### 8.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals.

### **8.2 Implementation of Directive 2010/41/EU**

Directive 2010/41/EU has not been expressly implemented in Cyprus. However, certain provisions of Law 59(I)/2010 on Social Insurance and of Law 205(I)/2002 on equal treatment in employment and occupation could be considered as incorporating the rights set out in Directive 2010/41/EU. It should be noted that neither of the two laws specify that they implement Directive 2010/41/EU.

Article 10 of Law 205(I)/2002 stipulates the right of equal treatment of men and women in relation to access to a profession on a self-employed basis, the terms and conditions of exercising the profession, access to training including apprenticeship, and termination. Article 12 of Law 205(I)/2002 which protects against harassment and sexual harassment also covers self-employed persons in the situations covered by Article 10. Law 59(I)/2010 on Social Insurance applies to self-employed persons (Article 3(2b)). Article 29 grants a maternity allowance of 18 weeks to insured workers who have given birth or became a mother through surrogacy and 16 weeks to adoptive mothers.

### **8.3 Personal scope**

#### 8.3.1 Scope

Law 59(I)/2010 does not explicitly define the notions of self-employed and self-employment but refers to the Second Schedule, Part I, under the title 'self-employed', where it is stated that the term 'self-employed' covers any employment in Cyprus of a person who is pursuing a gainful activity, provided that such activity is not insurable under the First Schedule, Part I, under the title 'Employees, Insurable and Non-Insurable Employment'. The First Schedule refers to employment in Cyprus of a person based on a contract of work or training, or under such circumstances from which an employer-employee relationship can be derived.

#### 8.3.2 Definitions

The notions of self-employed and self-employment are not explicitly defined in Cyprus but the term 'self-employed' covers any employment of a person who is pursuing a gainful

activity, provided that such activity is not insurable under the First Schedule, Part I, under the title 'Employees, Insurable and Non-Insurable Employment', which refers to employment of a person based on a contract of work or training, or under such circumstances from which an employer-employee relationship can be derived.

### 8.3.3 Categorisation and coverage

All self-employed workers fall under the same category. Agricultural workers are also covered, except for agricultural workers who are under 16 years old.

### 8.3.4 Recognition of life partners

According to Law 184(I)/ 2015 on civil partnerships, partners who conclude a civil partnership have, by analogy, the same rights as spouses except for adoption rights. Therefore, to the extent that a piece of legislation applies to spouses, it covers partners in a civil partnership as well.

## 8.4 Material scope

### 8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Article 10 of Law 205(I)/2002 stipulates the right of equal treatment of men and women in relation to access to a profession on a self-employed basis, the terms and conditions of exercising the profession, access to training including apprenticeship, and termination. The provision binds natural and legal persons of both private and public law. There is, however, no explicit reference in the law specifying that the said provision implements the equality principle under Article 4, Directive 2010/41/EU.

### 8.4.2 Material scope

The material scope of Article 10 of Law 205(I)/2002 is the same as that of Article 4, Directive 2010/41/EU.

## 8.5 Positive action

To date, the Cypriot Government has taken no positive action measures to promote sex equality in the field of self-employment.

## 8.6 Social protection

Law 59(I)/2010 on Social Insurance, which applies to self-employed persons as well, covers childbirth allowance, funeral allowance, maternity benefit, sickness benefit, old age pension, survivor's pension and incapacity pension. These are available to self-employed persons provided they have been insured.

## 8.7 Maternity benefits

Article 29 of Law 59(I)/2010 on Social Insurance stipulates a right to maternity allowance for 18 weeks to any insured woman who has given birth or became a mother through surrogacy, and for 16 weeks to adoptive mothers. The maternity allowance is granted on a mandatory basis and there is no choice of systems. It is calculated with reference to the previous year's weekly wage. The allowance is composed of the basic and supplementary benefits. The weekly rate of the basic benefit is equal to 72 % of the weekly average of the basic insurable earnings of the beneficiary in the previous contribution year. The weekly amount of the supplementary benefit is equal to 72 % of the weekly average of insured earnings of the beneficiary, beyond her basic insurable earnings. The rate of the maternity allowance is higher than that of the sickness allowance; thus the national

provision complies with the sufficiency criterion under Article 8(3)(a) of Directive 2010/41/EU. Employers may supplement the benefit up to the beneficiary's full wages. There are no services supplying temporary replacements or national social services. A person who is in the service of his/her spouse or is in the service of his/her life partner is insured as a self-employed person. Life partners who have concluded a civil partnership under Law 184(I)/ 2015 on civil partnerships are entitled to the same benefits as spouses.

## **8.8 Occupational social security**

### **8.8.1 Implementation of provisions regarding occupational social security**

Law 59(I)/2010 on Social Insurance applies to all those gainfully occupied, either on an employed or self-employed basis (Article 3(2)) as stipulated under Article 10 of Directive 2006/54.

### **8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)**

National law introduces no exceptions for self-employed persons regarding occupational social security matters.

## **8.9 Prohibition of discrimination**

Article 10 of Law 205(I)/2002 prohibits sex discrimination in the field of self-employment. It stipulates the right of equal treatment of men and women in relation to access to a profession on a self-employed basis, the terms and conditions of exercising the profession, access to training including apprenticeship, and termination. The provision binds natural and legal persons of both private and public law.

## **8.10 Evaluation of implementation**

Directive 2010/41/EU has not been expressly implemented in Cyprus, but other pieces of national legislation cover the issues. Thus, domestic law complies with the requirements of Directive 2010/41/EU.

## **8.11 Remaining issues**

There are no remaining issues.

## **9 Goods and services (Directive 2004/113)<sup>23</sup>**

### **9.1 General (legal) context**

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

There are no recent surveys or reports concerning equal access to goods and services.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

Issues of discrimination concerning access to and supply of goods in the digital economy have not attracted any attention in Cyprus.

9.1.3 Political and societal debate

Issues of discrimination concerning access to and supply of goods in the digital economy have not attracted any attention in Cyprus.

### **9.2 Prohibition of direct and indirect discrimination**

Law 18(I)/2008, which implements Directive 2004/113, prohibits direct and indirect discrimination (Article 5).

### **9.3 Material scope**

Article 4 of Law 18(I)/2008 is a direct translation of Article 3 of Directive 2004/113.

### **9.4 Exceptions**

Because Article 4 of Law 18(I)/2008 is a direct translation of Article 3 of Directive 2004/113, the exceptions regarding the content of media, advertising and education are also transposed into national law.

### **9.5 Justification of differences in treatment**

Article 4(5) of Directive 2004/113 is copied in the national implementing measure under Article 5(3) but there is no related case law.

### **9.6 Actuarial factors**

Article 7(1) of Law 18 (I)/2008 provides that all new contracts concluded after 21 December 2007 must not give rise to differences between individuals' premiums and benefits.

### **9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113**

Law 18(I)/2008 was amended to comply with the interpretation by the CJEU in *Test-Achats*. Currently Article 7(2) of Law 18(I)/2008 prohibits discrimination on the ground of sex in insurance contracts that lead to differences in the calculation of premiums and benefits; it applies to all new insurance contracts from 21 December 2012.

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<sup>23</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018), *Gender equality and the collaborative economy* European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

### **9.8 Positive action measures (Article 6 of Directive 2004/113)**

Article 6 of Law 18(I)/2008 states that positive action is compatible with the law; however, no positive action measures have been taken.

### **9.9 Specific problems related to pregnancy, maternity or parenthood**

Article 7(5) of Law 18(I)/2008 provides that 'the costs of pregnancy and maternity allowance may not lead to differences in individual premiums and benefits.' Thus theoretically, there are no specific problems related to pregnancy and maternity regarding access to and supply of goods and services; however, since there is no relevant case law or studies on the issue, it is difficult to test whether this is the case.

### **9.10 Evaluation of implementation**

National law has incorporated Directive 2004/113 almost word for word.

### **9.11 Remaining issues**

There are no remaining issues.

## **10 Violence against women and domestic violence in relation to the Istanbul Convention**

### **10.1 General (legal) context**

#### 10.1.1 Surveys and reports on issues of violence against women and domestic violence

The Association for the Prevention and Handling of Violence in the Family (SPAVO) disseminates data related to domestic violence; data is collected based on cases reported to the association. Based on data collected in 2017, the association reported that in 89 % of cases of domestic violence, women were the victims, while in the clear majority of the cases, the perpetrator was someone known to the victim. Of the cases reported, 54 % concerned physical and psychological violence, 11 % involved sexual violence, and 4 % concerned harassment.

#### 10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Law 119(I)/2000 on domestic violence concerns the protection of victims.

#### 10.1.3 National provisions on online violence and online harassment

There are no specific provisions regulating online violence and online harassment of women and girls.

#### 10.1.4 Political and societal debate

There is political and societal debate on the issue of domestic violence and of violence against women more broadly. The adoption of the Istanbul Convention gave visibility to the issues. The equality body has recently organised a series of seminars with public authorities on the issue of harassment and sexual harassment at work. These seminars did not extend to or involve private employers.

### **10.2 Ratification of the Istanbul Convention**

Cyprus ratified the Istanbul Convention on 10 November 2017 with Law 14(111)2017. Two related laws, one on the criminalisation of violence against women and a second on the criminalisation of harassment and stalking of women, are still pending in Parliament.



## **11 Compliance and enforcement aspects (horizontal provisions of all directives)**

### **11.1 General (legal) context**

#### 11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There are no recent studies examining specific difficulties for victims of gender discrimination in accessing redress.

#### 11.1.2 Other issues related to the pursuit of a discrimination claim

In a small society such as Cyprus, access to courts to complain against gender-based discrimination, especially if harassment or sexual harassment is involved, is not very common due to social stigma and fear of detriment despite the existence of legal protection against victimisation. Lack of awareness of rights is also an important obstacle to pursuing a claim against discrimination.

The reversal of the burden of proof concerning discrimination claims has been important in improving access to redress.

#### 11.1.3 Political and societal debate and pending legislative proposals

There are no pending legislative proposals.

### **11.2 Victimisation**

Article 17(1) of Law 205(I)/2002 provides that, in addition to any compensation, dismissal is absolutely void, as well as any detrimental change in the working conditions of the employee who has made a complaint or protest aiming at the implementation of equal treatment, or the employee who has parried or denounced sexual harassment. Article 17(2)(a) provides that it is against the law to reject a candidate for a job or for professional orientation, education, or training because she has complained about discrimination or sexual harassment. Article 17(2)(b) provides that a trainee is protected against detrimental treatment due to filing a complaint. Article 17(4) states that the provisions are also applicable to any person who helped the worker or candidate to file a complaint or protest in any way, including giving judicial or extra-judicial testimony.

### **11.3 Access to courts**

#### 11.3.1 Difficulties and barriers related to access to courts

The general concerns associated with litigation – length and costs of the proceedings – apply to Cyprus. Third-country national workers filing a complaint against their employers must do so with the Immigration Authority and this can be a major obstacle in complaining in the first place due to the fear of deportation. The equality body has issued two reports documenting specific barriers that migrant domestic workers face in filing complaints against their employers including for harassment and sexual harassment.<sup>24</sup>

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<sup>24</sup> Equality body (2013), *Report on the status of domestic workers in Cyprus* (Nicosia, 2 July 2013a); Equality body (2010), *Report on the procedure of labour dispute settlement between migrant workers and their employers* (Nicosia, 12 March 2010).

### 11.3.2 Availability of legal aid

Legal aid is provided by the Committee on Gender Equality in Employment and Vocational Training. Legal aid includes legal advice and legal representation in court proceedings or in other administrative procedures.

## **11.4 Horizontal effect of the applicable law**

### 11.4.1 Horizontal effect of relevant gender equality law

Horizontal effect does not, at least in principle, pose any particular problems in Cyprus; as stated in the different sections, prohibitions against discrimination bind public and private parties.

### 11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

It is not expected that the *Bauer* judgment will have any added impact in Cyprus.

## **11.5 Burden of proof**

The reversal of the burden of proof is incorporated in all national implementing legislation.

## **11.6 Remedies and sanctions**

### 11.6.1 Types of remedies and sanctions

Law 205(I)/2002 on equal treatment in employment and vocational trainings stipulates pecuniary and non-pecuniary damages; in cases of prohibited dismissal, the court can order reinstatement on the complainant's request (Article 15). Criminal sanctions – a fine and/or imprisonment of up to six months – are also provided for in relation to some of the prohibited conduct covered by the law.

Law 177(I)/2002 on equal pay between men and women provides for pecuniary and non-pecuniary damages, in addition to an order against the employer to recognise the claimant's rights (Article 22). Criminal sanctions – a fine and/or imprisonment of up to six months – are also provided for in the act (Article 24).

Law 47(I)/2012 on parental leave and leave on force majeure stipulates compensation of up to EUR 7 500 (Article 20).

Law 117(I)/2017 on paternity leave stipulates a fine of up to EUR 7 000 (Article 15).

Law 100(I)/1997 on the protection of motherhood stipulates a fine of up to EUR 7 000, which can be increased to up to EUR 8 000 for a second offence within two years (Article 9).

### 11.6.2 Effectiveness, proportionality and dissuasiveness

The sanctions can be considered effective, dissuasive and proportionate.

## **11.7 Equality body**

Since 2004 the Office of the Commissioner for Administration (Ombudsman) has established an independent equality body with the mandate to combat discrimination in the fields of employment and occupation. It investigates complaints of discrimination on the grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation. Since 2008, the equality body's mandate has been extended to the

investigation of sex discrimination complaints in access to goods and services, including insurance and financial services. The equality body can examine complaints against private and public employers or other state authorities. Following the examination of a complaint and consultations with the parties concerned, the equality body has the competence to issue recommendations and/or impose a fine. The recommendations that the equality body issues following consultations with the parties concerned are binding; the equality body has the power to impose a fine for non-compliance. In addition to the examination of individual complaints, the equality body has the competence to carry out investigations on its own initiative on issues within its mandate and to issue legislation and policy reform proposals. The equality body offers no legal aid and may not represent complainants at judicial proceedings.

The website of the Equality Body is available [here](#).

The Committee on Gender Equality in Employment and Vocational Training is an independent agency of the Ministry of Labour. It examines gender discrimination complaints in the context of employment/vocational training, offers free legal advice to victims and can assist them in pursuing their claim at the courts. The Committee can also organise information and awareness campaigns.

The Committee's website is available [here](#).

### **11.8 Social partners**

Cyprus has a voluntary system of industrial relations; collective agreements are not legally enforceable, but their provisions might be taken into account by the courts as interpretative tools. The role of social partners in setting equality standards has been rather limited as most related protection derives from legislation and is of recent origin; to a large extent, gender equality legislation has been adopted to comply with EU law.

### **11.9 Other relevant bodies**

There are think tanks and research institutes with a focus on gender equality, but they are not directly involved in the enforcement of gender equality law. Their role is to research, mobilise, lobby and raise awareness concerning issues of gender equality. An example of such an organisation is the [Mediterranean Institute of Gender Studies](#).

### **11.10 Evaluation of implementation**

In most areas discussed in the report, national law complies with EU law requirements.

### **11.11 Remaining issues**

The issue of access to redress mechanisms by migrant workers, especially those who are illegal residents, is an area of concern in Cyprus. As there is no firewall between complaining against discrimination and facing prosecution and deportation for illegal stay, migrants are not able to effectively access their right to be protected against discrimination. In practice, an illegally resident migrant will only complain to the authorities when there has been an incident of physical violence or an industrial accident and even in such circumstances, the police will bring charges for illegal stay. In the past, the equality body denounced this practice and called for the enactment of provisions that guarantee a temporary right to stay and the right to work for victims, at least for the duration of any proceedings.<sup>25</sup> In another report, the equality body drew attention to cases

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<sup>25</sup> Equality Body (2012a), Complaint Number 351/2011, *Report in relation to the handling of a migrant worker's complaint for industrial accident*, (Έκθεση της Επιτροπής Διοικήσεως αναφορικά με το χειρισμό καταγγελίας που υποβλήθηκε από μετανάστη εργαζόμενο για εργατικό ατύχημα), Nicosia: 4 January 2012.

where migrant domestic workers were victimised because they filed complaints against their employers.<sup>26</sup>

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<sup>26</sup> Equality Body (2012b), Complaint Number 588/2012, *Report in relation to the arrest and detention of a domestic worker while expecting investigation of her labour dispute claim and the handling of her claim by the authorities*, (Έκθεση της Επιτροπής Διοικήσεως και Προστασίας Ανθρωπίνων Δικαιωμάτων αναφορικά με τη σύλληψη και κράτηση οικιακής εργαζόμενης εν αναμονή της εξέτασης καταγγελίας της για εργατική διαφορά με τον εργοδότη της και με το χειρισμό της ίδιας της καταγγελίας), Nicosia 5 June 2012.

## 12 Overall assessment

Overall, Cyprus has fully implemented the EU gender equality acquis. EU accession has been a decisive turning point in the legal protection of gender equality. However, there seem to be difficulties in progressing from a mere prohibition of discrimination to substantive equality. A case in point is the issue of positive action. Although positive action is legally allowed as an exception to the non-discrimination principle – to comply with EU law – no positive action measures have been effectively designed. The promise is there, but the potential is completely underutilised since no concrete positive action measures have been adopted. Another example is the lack of understanding of the concept of indirect discrimination.

Equipping the equality body with the mandate to examine claims against discrimination has been a very important step in giving vulnerable groups and individuals such as migrant women and transgender persons access to a complaints mechanism. The work of the equality body over the last decade has been very important in bringing attention to structural problems concerning the rights and protections of groups and individuals who have difficulties in accessing the court system. On several occasions, following the examination of complaints, the equality body has made clear proposals for policy and legislative change to advance substantive gender equality.

Issues such as the protection of transgender, intersex and non-binary persons are only now starting to emerge in legal discussions despite sustained activism for over ten years. The debate around a draft law on the legal recognition of gender identity brought attention to the issues and protection gaps in the gender equality framework in this respect.

An issue of considerable concern in Cyprus is that of the legal treatment of women on a migrant domestic worker visa who make up the majority of third-country national workers in Cyprus. The legal and policy framework governing the conditions of entry, stay and work of migrant domestic workers is highly problematic and falls short of national and EU law requirements including those on gender equality. Although gender equality law and most EU labour law sources clearly apply to domestic workers including migrants,<sup>27</sup> the relevant legal and policy framework in Cyprus is not in compliance and must be reviewed.<sup>28</sup>

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<sup>27</sup> Pavlou, V. (2016a), 'Domestic Work in EU law: the relevance of EU employment law in challenging domestic workers' vulnerability', *European Law Review*, pp. 379-398.

<sup>28</sup> Pavlou, V. (2016b). 'Migrant domestic workers, vulnerability and the law: Immigration and employment laws in Cyprus and Spain', *Investigaciones Feministas*, 7(1), 1-7.

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