

CYPRUS

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Contents

1.	National court system.....	1
2.	Restrictions regarding access to justice.....	4
3.	Length of judicial proceedings.....	8
4.	Are procedures concluded within a reasonable time?.....	10
5.	Does provision exist for speedy resolution of particular cases?.....	11
6.	Is it possible to waive the right of access to a judicial body?.....	12
7.	Access to non-judicial procedures.....	12
8.	Legal aid.....	15
9.	Forms of satisfaction available to a vindicated party.....	17
10.	Adequacy of compensation.....	17
11.	Rules relating to the payment of legal costs.....	18
12.	Rules on burden of proof.....	20

1. National court system

The judicial system of the Republic of Cyprus¹ is, since its inception, structured by Cypriot constitution as a two-tier system, which to a large extent continued the judicial structures and processes established during British colonial rule.² There is a continuing debt to and an ongoing influence by English law on the Cypriot legal system as it is common-law based and validity of the laws established during the British period is maintained to this day by Article. 188.1 of the Constitution, subject to any subsequent legislative amendments.³ The current system was shaped in 1964 with the merger of the jurisdictions of the two superior courts, the Supreme Constitutional

¹ This does not include the justice system in the breakaway unrecognised Turkish Republic of Northern Cyprus (TRNC) situated in the northern part of the country.

² The British ruled Cyprus from 1878 until 1959. This is the time that the modern system of justice was set up modelled on the basis of the British colonial systems, see G. Georgallides G. S (1979) *A Political and Administrative History of Cyprus 1918-1926 with a Survey of the foundations of the British Rule*, Cyprus Research Centre, Nicosia, pp. 37-87. For a brief outline of the current system see 'Judicial System and Court Procedure', in: D. Campbell (ed.) *Introduction to Cyprus Law*, Andreas Neocleous & Co., Yorkhill Law Publishing, pp. 73-104.

³ See A. Filos (2009) 'Legal and Judicial System', in: J. Ker-Lindsey & H. Faustmann (eds) *The Government and Politics of Cyprus*, Peter Lang, pp. 169-184, at p.170-173.

Court and the High Court by a law enacted, according to its' preamble, "in order to enable the Judiciary to function in the circumstances of the anomalous situation".⁴

As a result of the aforesaid merger, the Supreme Court exercises original and appellate civil and criminal functions and is vested with authority as the Supreme constitutional Court, an administrative court, an admiralty court, an appellate court and a court with exclusive jurisdiction to issue prerogative writs.⁵

There are six subordinate courts, which are inferior and are under the supervision of the Supreme Court: (i) the five District Courts,⁶ which exercise civil and criminal jurisdiction. The Civil Division has competency over all civil issues as well as on matters relating to discrimination in all other fields beyond the scope of work and employment, as provided by the Race Directive 43/2000 (social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services);⁷ (ii) three Assize Courts which have unlimited jurisdiction to adjudicate over criminal matters; (iii) the five District Family courts, which have jurisdiction to hear all family matters; (iv) the Labour Disputes Courts, often referred to as 'the Labour Courts', which have jurisdiction to hear employment issues as well as matters relating to discrimination in employment and occupation;⁸ (v) the Rent control courts; and (vi) the Military court.⁹

⁴ By the Cyprus/Administration of Justice (Miscellaneous Provisions) Law 33/1964. For more details see Z. M. Nedjati, (1970) *Cyprus Administrative Law*, Nicosia, pp. 11-15, 131-213.

⁵ Such as habeas corpus, mandamus, certiorari, prohibition and quo warranto.

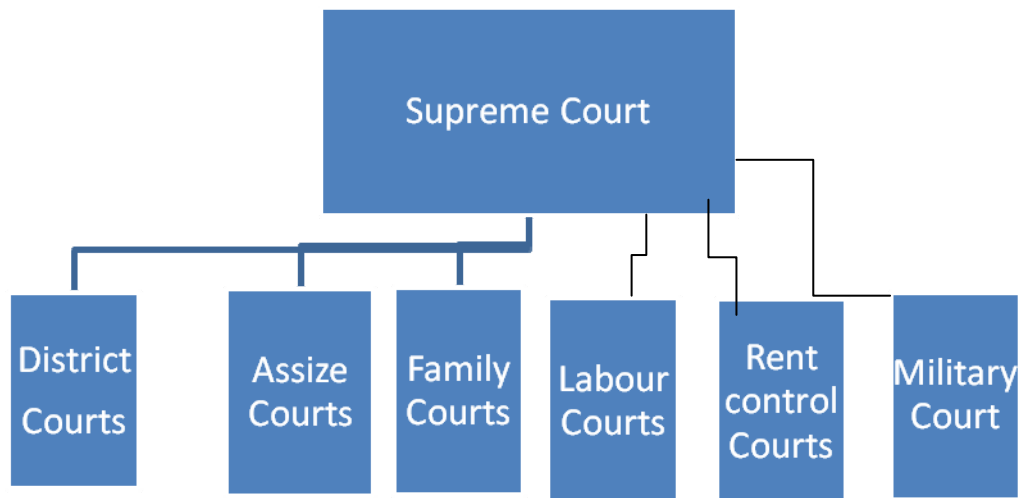
⁶ Situated in the five cities of administrative districts of Nicosia, Limassol, Larnaca, Paphos and in Famagusta area (the city of Famagusta is under Turkish occupation).

⁷ Cyprus/ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004)

⁸ The Cyprus/ Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

⁹ For brief but concise introduction by the judges Y. Constantinides and T. Eliades (n.d.) *The Administration of Justice in Cyprus*, <http://www.juradmin.eu/en/members/pdf/cyprus.pdf> (accessed 26.09.2009)

Figure: The Cypriot Court Structure



The President of the Supreme Court is appointed by the President of the Republic from the ranks of the members of the Supreme Court; the judges are also appointed by the President from the ranks of the Presidents of the District or Assize Courts or from the legal profession. The judges of subordinate courts are appointed by the Supreme Court from the ranks of lawyers in private practice or the Attorney General's office, who have experience of five years of practice.¹⁰ Article 1 of the Cypriot Constitution provides for the independence of the judiciary. The doctrine of separation of powers (executive, legislative, judicial) is applied in Cyprus.

Courts have inherent jurisdiction to control the judicial procedure so as to ensure that it does not cause injustice. Subordinate courts are subject to the Supreme's Court supervisory role.

Action in civil matters is commenced as provided by the civil procedure rules and litigants draft and submit pleadings (statements of claim, of defence, of counterclaim etc) in preparation for the trial. Preliminary matters are dealt with beforehand by seeking clarification and examining the most appropriate reliefs such as interlocutory relief (for instance injunction to prevent further damage until the dispute is decided).

The trial system is adversarial based on the British Common law traditions, as amended by statutes, and is conducted on the basis of the rules of Civil Procedure and law of Evidence to adjudicate over the evidence presented. In civil cases the normal rule is that the party that makes an assertion must prove its case; the standard of proof required is the balance of probabilities.¹¹ In discrimination cases the burden of proof is reversed once the plaintiff (alleged victim) establishes a

¹⁰ The retirement age of District judges is 60 and 68 for Supreme Court judges.

¹¹ No proof is required for formal admissions, judicial notice and presumptions of law and fact.

prima facie case of the basic facts: the burden then shifts to the defendant/complainant¹² who must then rebut the presumption of prima facie discrimination by disproving the allegations that no violation of the law occurred.¹³ For cases involving racial discrimination in fields other than employment and occupation, the law provides that should the respondent fail to rebut the presumption of discrimination, then the District Court considers that the breach has been established and the complainant is required to present on oath all relevant facts to assess the damages.¹⁴

Appeals are carried out by applying to the superior courts (i.e. the Supreme Court) to review the determination of the lower courts. There are strict time limits for lodging an appeal: 42 days from the date of the judgement for an appeal from the final determination and 14 for interlocutory injunctions. There is no third tier in Cyprus; the determination of the Supreme Court is final. Another important and commonly used procedure is the judicial review of administrative action under article 146 of the Republic of Cyprus Constitution. There is no level beyond the Supreme Court.

2. Restrictions regarding access to justice

A number of restrictions were located which may have the effect of undermining the right of access. These are the following:

Statutory time bars apply in the case of many Cypriot laws. Since 1964, save for any agreement entered by the parties,¹⁵ there are no statutory limitations to actions: the Cyprus/Law on suspension of Limitations of actions 57/1964 suspended all time bars in respect of actions instituted on or after 21.12.1963.¹⁶ Nevertheless, there are *procedural time limits* that restrict actions allowed by litigants, for instance the time limits for lodging an appeal are strictly adhered to: 42 days from the date of the judgment for an appeal from the final determination and 14 for interlocutory injunctions.

The use of the notion of locus standi as means to restrict access to justice, particularly as regard access to the ECJ. The case of *Stavros Marangou v. The Republic of Cyprus through the Public*

¹² As contained in Article 8 of the Race Equality Directive as well as in Article 10 of the Employment Directive.

¹³ Law N.58(I)/2004, Section 11; Law N.59(I)/2004, Section 7.

¹⁴ Law N.59(I)/2004, Section 7.

¹⁵ *Cyprus/Civil Procedure Rules*, Cap 12.

¹⁶ This is the beginning of the 'troubles' in Cyprus, the long intercommunal conflict that eventually led up to the Greek coup, the Turkish army invasion and current de facto partition of the country, what on investigative journalist referred to as 'the first partition' (see M. Droussiotis (2006) *The First Partition, Cyprus 1963-1967*, Alfadi, Nicosia).

Service Commission,¹⁷ a case alleging violation of the non-discrimination principle of Article 28 of the Constitution on the grounds of belief deriving from the fact that he is a homosexual.¹⁸ The Republic argued, by way of a preliminary objection, that the applicant lacked legitimate interest that would enable him to file the present recourse, as his failure to discharge his military obligations meant that he did not possess the required qualifications for the post. The Court sustained the Republic's preliminary objection and rejected the applicant's recourse. This is not the only instance where the issue of locus standi is used to block access to court redress. Cases involving claimants who are purported to belong to certain categories or are ascribed certain characteristics seem to be particularly vulnerable to having their access blocked; such a category are Turkish-Cypriots claiming their properties located in the Republic-controlled areas against the institution of the "Custodian" of Turkish Cypriot Properties, which is the Interior Minister. In *Mehmet Ahmet v. the Republic of Cyprus*¹⁹ concerning the administration of an estate belonging to a deceased Turkish-Cypriot, the Custodian of Turkish-Cypriot Properties objected²⁰ to a request to sell and divide the proceeds of the sale to the heirs.²¹ Counsel for the plaintiff argued that the Custodian had no locus standi and that Law 139/1991 providing for the administration of Turkish Cypriot properties by the 'Custodian' is incompatible with the EC law. The trial Court refused the claim and also ruled that section 33 of Law 139/1991 does not apply to cases where the administrator of an estate is empowered to proceed with the allocation of the property but is unable to do so as a result of an estoppel. An appeal to the Supreme Court for permit to submit a preliminary question to the ECJ about the legality of the Custodian law was dismissed. The Supreme Court rejected the argument on *locus standi* and secondly, it noted that is the appellant did not appeal against the trial Court findings on the provisions of section 33, therefore whatever the ruling of the ECJ, the trial Court decision would still stand.

The immunity enjoyed by certain individuals such as elected and appointed state officers; diplomats; lawyers on issues relating to the conduct of cases they handle. The Cypriot Constitution provides for the following cases of immunity:

- Article 45 of the Constitution provides that the President or the Vice-President of the Republic shall not be liable to any criminal prosecution during their term of office.

¹⁷ *Stavros Marangou v. The Republic of Cyprus through the Public Service Commission* (17.07.2002, Case no. 311/2001). The applicant applied to the Court seeking the annulment of the decision of the Public Service Commission to reject his job application for a post at the Ministry of Interior because of his failure to serve in the army, pursuant to article 31(b) of the Public Service Law.

¹⁸ This was before the passage of the law purporting to transpose the anti-discrimination acquis.

¹⁹ Cyprus/ Civil Case no. 277/2006 (13.01.2009).

²⁰ Based on sections 33, 53, 55 and 58 of the Cyprus/Law on Administration of Estates, Cap. 189, the relevant Regulations and sections 2, 3, 5, 6(α) and 6(γ) of the Cyprus/Law on Turkish-Cypriot Properties (Administration and Other Subjects) (Temporary Provisions) 139/1991.

²¹ Based on sections 31, 32, 33, 51 και 53(1)(στ) of the Cyprus/Law on Administration of Estates, Cap. 189.

- Article 106(1) of the Constitution provides that members of the now defunct Communal Chambers shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the Chamber.

- Article 83 of the Constitution provides that members of the House of Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives. Representatives cannot, without the leave of the Supreme Court, be prosecuted, arrested or imprisoned for the duration of their term. Such leave is not required in the case of an offence punishable with imprisonment for five years or more in case the offender is taken in the act. In such a case the Supreme Court has discretion to decide whether it should grant or not leave for the continuation of the prosecution or detention so long as the accused continues to be a Representative. If the Supreme Court refuses to grant leave for the prosecution of a Representative, the period during which the Representative cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question. If the Supreme Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until the person accused ceases to be a Representative.²²

- Article 133(10) of the Constitution provides that no action shall be brought against the President or any other judge of the Supreme Court for any act done or words spoken in his judicial capacity.

- It is thought that a lawyer acting in the course of trial procedure is not liable for defamation or libel for expressions under, orally or in writing during the proceedings.²³ The same author similarly reiterates the traditional position that privileged correspondence between a lawyer and his/her client, written or oral, with the aim of providing advice cannot be subject to prosecution. It is suggested that no court action could be taken against lawyers for their negligent conduct during the handling of court case,²⁴ but disciplinary action is possible. However, this is increasingly challenged in U.K. and elsewhere and is likely to influence the situation in Cyprus.

²² A number of cases have gone before the Supreme Court to decide on the meaning of the terms “liable to civil or criminal proceedings”, in the context of at. 83.2, such as *Lefkios Chr. Rodosthenous v. The Republic* (1961) CLR 152 and 382; and *Georghios A. Georghiou v. The Republic* (1984) 2 CLR 65, p. 75; *Re Georghiou* (1983) 1 CLR 1; *The Attorney General V. Georghios Afxentiou Georghiou* (1984) 2 CLR 1. 251; *The Republic v. Nicos Sampson* (1977) 2 CLR 1.

²³ This the view expressed by A. Emilianides (2007) *Επαγγελματικό Δίκαιο των Δικηγόρων*, ΔΙΚΑΙΟΝΟΜΙΑ, p.141, who cites the 19th century case of *Munster v. Lamb* (1883) 11QBD 588.

²⁴ He cites the case of *More v. Weaver* (1928) 2 KBD 520; however, a lawyer will be liable for other civil offences such as illegal interference, as per *Sowell V Champion* (1837) 6 Ad & El407 or for fraud, as per *Pasley v. Freeman* (1789) 3 Term Rep. 51. See A. Emilianides (2007) *Επαγγελματικό Δίκαιο των Δικηγόρων*, ΔΙΚΑΙΟΝΟΜΙΑ, p.141.

For instance the British Court of Appeal has ruled that there is no general rule that a lawyer was or was not immune from liability in advising a client to settle a case.²⁵

The national specificities of Cyprus are the result of what can be termed as ‘country-specific structural problems’ which may have the effect of hindering access to justice. These include various issues that derive from the unresolved ‘Cyprus problem’, which creates practical discriminatory problems originating from the de facto division of the country, and leads to practices amounting to discrimination against Turkish-Cypriots mostly (e.g. failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish-Cypriots in access to property and various other constitutional rights; the violation of Greek-Cypriot rights by Turkey and a certain tendency of the authorities and the courts to affirm and support constitutional deviations). The continuous application of the ‘doctrine of necessity’ by both government and courts, a matter expanded below, engenders a legal vacuum within which several discriminatory policies are established and practiced. Moreover, the visible lack of legal anti-discrimination tradition, owing, at least partly, to the predominance that ‘the Cyprus problem’ has enjoyed for the past forty years in terms of prioritisation of issues to be addressed in the public sphere. This phenomenon manifests itself in several fields such as the lack of consumer awareness or consumer-consciousness, the authorities’ tendency to ‘hide’ problems of racism and discrimination and label as ‘unpatriotic’ any person who ‘exposes Cyprus’ to the European fora, or the lack of monitoring mechanisms and the service failures of agencies and institutions of the state (e.g. police and immigration authorities that consistently refuse to comply with the Equality Body’s recommendations). The relative weakness of civil society and their lack of training and skills often allow these service failures to go undetected and/or to be tolerated. Even though the Directives highlight the importance of consultation, little effective consultation takes place in practice.

The Doctrine of Necessity: In 1963 the Cypriot President Archbishop Makarios proposed 13 amendments to the Constitution, which by and large removed the consociational element from the Constitution by limiting the communal rights of the Turkish Cypriots. The Turkish-Cypriots withdrew from the administration of the state in protest; since then, the administration of the Republic has been carried out by the Greek-Cypriots. Even though it was never officially proclaimed, in practice Turkish ceased to be used as an official language since 1963, as the relevant provisions in the Constitution requiring the use of both languages in all legislative, executive and administrative acts²⁶ ceased to be implemented. Instead, Greek is the only language used by the state in official documents, including laws, Ministerial decisions and the official

²⁵ See the Court of Appeal case of *Arthur J.S. Hall & Co (a firm) v Simons and other appeals* (1998) 14 December 1998, ‘Friday Law Report: No general immunity for advice to settle’, reported in The Independent 18.12.2009, at <http://www.independent.co.uk/arts-entertainment/friday-law-report-no-general-immunity-for-advice-to-settle-1192053.html> (accessed 24.09.2009)

²⁶ Article 3 of the Constitution.

Gazette. In 1964 the Supreme Court ruled that the functioning of the government must continue on the basis of the “doctrine of necessity”.²⁷ The situation that has emerged gave rise to a number of claims by Turkish Cypriots for discrimination which rose sharply in number following the 2003 partial lifting in the restrictions of movement between north and south of the country. A typical manifestation of this irregular situation which is in place since 1964 is the fact that all Turkish Cypriot properties located in the Greek-Cypriot controlled south of the country (hereinafter “the south”) are placed under the control of the Interior Minister acting as “Custodian” of these properties, essentially denying the Turkish Cypriot owners of any rights in relation to their properties, including the right of access, the right to sell or rent, the right to receive compensation when expropriated, until “resolution of the Cyprus problem”. This has resulted in a number of law suits by Turkish Cypriots against the Republic as well as a number of applications by Turkish Cypriots to the ECtHR, although no decision has yet been issued by the ECtHR.

3. Length of judicial proceedings

Article 30(2) of the Constitution provides for the right to “a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law”. The Cyprus/Procedural Regulation for the Timely Issue of Court Decisions of 1985 provides, in Rule 3(a), that all judgments must be issued the soonest possible after the completion of the proceedings and must not be reserved for periods exceeding six months. According to Rule 5 of the said Regulation, following the expiration of the said six monthly period, the affected litigant may apply to the Supreme Court to request a remedy. If a judgment is reserved for a period exceeding nine months, the Supreme Court carries out a self-initiated review of the delay. Rule 5 empowers the Supreme Court (a) to order the re-trial of the case, (b) to order that judgment be issued within a specified time limit and if there is no compliance to order the retrial of the case by another competent court; and (c) to issue any other order for the necessary and correct for the delivery of justice. Pursuant to this Regulation, the Supreme Court regularly conducts self-initiated checks on delays in delivering judgments and issues orders that judgments are delivered by a set deadline. The possibility of re-trial often meets with the reaction of the litigants who are unwilling to go through the same procedure again and therefore hardly any orders for retrial are issued. The Supreme Court has ruled on numerous occasions that trial must take place within reasonable time; otherwise the legal maxim ‘justice delayed is justice denied’ may be operative.²⁸ As for the

²⁷ The case was *Attorney General of the Republic v Mustafa Ibrahim and Others* (1964) CLR 195. See Z. M. Nedjati, (1970) *Cyprus Administrative Law*, Nicosia. G. M. Pikiş (2006) *Constitutionalism- Human Rights- Separation of Powers, the Cyprus Precedent*, Martinus Nijhoff Publishers, Leiden/Boston, p. 27-40.

²⁸ This was referred to in the case of *Agapiou v. Panayiotou* (1988) 1 CLR 257 (CA), per Pikiş j, who reiterated that that the dispensation of justice within reasonable time is an integral part of the notion of fair trial, as provided in art. 30.2 of the Constitution.

reasonableness of the length of the proceedings, this depends on the particular facts and circumstances of the case, its complexity and conduct of the parties – the obligation to proceed swiftly burdens the judges and lawyers alike; a serious delay may lead to the annulment of the decision.²⁹ In civil cases, time begins to run from the date the action was initiated.³⁰

From the 52 cases studied, those which were simple and did not involve the examination of witnesses and/or where the defendant did not contest the claim, judgments could be issued within the range of one month to two years. Cases involving the repayment of debt where the debtor did not contest the claim, would take on average, about three months to be resolved. Cases involving the payment of compensation could take between one to three years, depending on the number of witnesses called, the length of the examination and cross-examination of witnesses and the number of adjournments. Ex parte applications, such as applications for referral to the ECJ, for exclusion of a judge, for suspending the execution of orders pending trial and requests for legal aid, would take, on average three months to be resolved. Out of all 52 cases examined, the case which took the longest was a civil claim against a local authority for an accident where the plaintiff claimed general damages for physical injury, loss of future earnings and special damages. This case took three years and nine months because several hearing sessions had to be conducted to prove the damage suffered. Procedures before the Supreme Court under Article 146 for review of administrative acts, a procedure most commonly used by complainants in various spheres of the law, would range between 1.5 to three years. From the cases studied, there does not appear to emerge any difference in the duration of cases depending on whether the rights involved are derived from community law or from national law.

To sum up, cases concerning the repayment of debt where there was no contestation from the defendant or where there were few or no witnesses to be examined were resolved within a few months (1-3 months). Cases involving the payment of compensation take longer (1-3 years) as the Court examines evidence to assess the claims. Review procedures before the Supreme Court also take between 1-3 years, although ex parte applications are resolved within 1-3 months.

²⁹ *Kyriakos Victoros v Christodoulou* (1992) 1 AAD 512.

³⁰ See G. M. Pikiş (2006) *Constitutionalism- Human Rights- Separation of Powers, the Cyprus Precedent*, Martinus Nijhoff Publishers, Leiden/Boston, pp. 80-82.

4. Are procedures concluded within a reasonable time?

The number of cases studies against the whole body of case law is rather small to enable any safe conclusions. It is important to note that in the Cypriot context very few civil cases are actually tried through the end, as the vast majority of them is settled out of court either at the beginning of the procedure or in the course of the procedure, as the delays of the judicial procedure very often serve as an incentive for the parties to reach an amicable settlement. Amongst the few cases tried, there does however appear to be a clear pattern of delay in the completion of judicial processes ranging from one to three or even more years. This is also evidenced by the fact that a significant number of applications were submitted against Cyprus to the ECtHR complaining of delays in judicial proceedings which sometimes amounted to 12 years. The repeated ECtHR judgments against Cyprus for delays in the delivery of justice have caused Cyprus to be placed under the supervision of the Committee of Ministers of the Council of Europe and if there is no compliance with the recommendations there is a risk that a resolution may be adopted against Cyprus. This development has led to a new bill, to be discussed by the House of Representatives at its next session, providing for completion of the judicial process “within a reasonable time”. The report which accompanies this bill states that article 30(2) of the Cypriot Constitution, which corresponds to article 6.1 of the European Convention on Human Rights (ratified by Cyprus under law N. 39/1962) safeguards the right to a hearing within a reasonable time. The report further refers to article 13 of the Convention and to the requirement for effective national remedies for violation of rights protected by the Convention, including the right to a hearing within a reasonable time, safeguarded by article 6.1.2 of the Convention. In several of the applications filed against Cyprus, the ECHR has found that the rights and obligations of applicants were not tried by the Cypriot Courts within a reasonable time and that for this violation there was no effective remedy at the national level, which led to a breach of article 13 of the Convention. Compliance by the Cypriot government with the ECtHR decisions in these cases also involves the adoption of measures for introducing effective remedies for the delays in the judicial process. The bill is entitled ‘Law on Effective remedies for the violation of the right to a hearing within a reasonable time 2009’ and provides inter alia that: the right to a hearing within a reasonable time is actionable and the litigant affected may sue the Republic demanding remedies. This applies to both first instance cases and to cases before the Supreme Court, the family court, the rent control court etc. but not to criminal cases. Under the new bill, an action may be brought within a year from the issue of the final judgment or while the case is pending. The competent court to try cases pending before first instance courts is the Supreme Court presided over by any Supreme Court judge. For cases pending before the Supreme Court the action for the delay must be tried by three Supreme Court

judges appointed by the President of the Supreme Court. The referral of a case to the Supreme Court seeking a remedy for the delay will not suspend or otherwise affect the procedure at the trial court on the merits of the case. The remedies foreseen in case a violation is established include compensation for monetary loss, costs and expenses as well as non-monetary award for damage suffered by the applicant as a result of the violation. Also the Supreme Court may order the acceleration of the process and the avoidance of new delays.

With regards to the Ombudsman - a national Equality Body - who does not conduct open hearings prior to issuing decisions, it is not appropriate to talk about length of proceedings. At the level of investigation of complaints, some investigations do take longer than others, although the reasons for this are not always uniform or clear. For example, a complaint submitted to the Equality body for discrimination against Turkish Cypriots as a result of the non-use of the Turkish language by the state took some two and a half years to be dealt with. Instead, the complaint of the Latin community for the right of the members of the religious groups to stand as candidates for the Presidential elections, an issue with significantly less policy implications than the thorny issue of the Turkish language, was dealt with within six months. The Equality Body also appears reluctant to take up issues of anti-Turkish public discourse in the media, particularly when this is expressed by politicians: there are complaints made,³¹ where the Equality Body chose not to issue a decision or where the decision is still pending for one, two or more years.³²

5. Does provision exist for speedy resolution of particular cases?

No provision for speedy resolution was made in any one of the 52 cases studied, nor is there any such provision in the legislation. One cannot altogether exclude the possibility that the urgent nature of a case might cause a judge to set an earlier rather than a later hearing date, however there is no evidence for that and in practice it does not seem possible, since the Court will in any case set a hearing date on the earliest possible opportunity in the Court's busy schedule. Ex parte applications are usually tried within one to three months, owing more to their nature rather than to any urgency perceived by the Court.

³¹ The Equality Body (A.K.P. 29/2004) examined a complaint against the failure of the government to use Turkish language, one of the two official languages, in the Official Gazette, in public signs and posts, in public announcements and publications, in violation of the Constitution and of the anti-discrimination laws. The complaint was submitted on 28.07.2004, the decision was not issued until 31.05.2006.

³² For instance a complaint that the law on the acquisition of nationality/citizenship in Cyprus, Population-data Archives Law No. 141(I)/2002, which contains a number of discriminatory provisions on the ground of ethnic or racial origin and nationality contrary to Protocol was made on 14.01.2007 but it still pending. Also, a complaint was submitted to the Equality Body claiming that the provisions of the Cyprus/ property law 49/1970 are discriminatory against Turkish-Cypriots on 20.01.2008 and is still pending.

6. Is it possible to waive the right of access to a judicial body?

On some occasions it is possible to waive the right of access to a judicial body. This is restricted to contractual relationships where parties have agreed to accept arbitration. According to Arbitration Law Cap 4, article 3, a written agreement for the referral and submission of future disputes to arbitration is irrevocable and the arbitration award carries the strength of a Court decision. This does not apply to employment cases where the statutory rights granted by the law cannot be contracted out.

7. Access to non-judicial procedures

In 2004 the Ombudsman was appointed as national Equality body with an extensive mandate to hear complaints of discrimination based on sex, on all the five grounds provided by Directives 2000/EC/43 and 2000/78/EC and on other grounds covered by the Constitution and the international conventions ratified by Cyprus.

The Ombudsman was modernised in 1991 with a new law³³ which provided for an independent office created with the task of monitoring public administration and investigating complaints of maladministration based on the British model with some minor deviations.³⁴

The mandate of the Equality Body covers discrimination forbidden by law, which includes discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin. Furthermore, the same law empowers the Equality body to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution and by the Conventions ratified by the Republic of Cyprus (such as the Protocol Twelve) and referred to in the Law and to promote equality of opportunity in employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

The law vests the Equality Body with powers beyond those prescribed by the two EU Directives such as: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings;

³³ Cyprus/ Law No. 3/1991, as amended by Law No. 98(I)/1994; 101(I)/1995; 1(I)/2000 and 36(I)/2004.

³⁴ Interview with Aristos Tsiartas, Head of Human Rights Sector of the Commissioner for Administration and head of the Anti-discrimination body 26.9.2008. The official website refers to the Swedish Ombudsman model established over 100 years ago as the point of reference, see http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/index_gr/index_gr?OpenDocument

the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit³⁵ and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.³⁶ The Equality Body's decisions can be used for the purposes of obtaining damages in a district court or an employment tribunal. The Equality Body's is further empowered to impose small fines,³⁷ to issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.³⁸ However, all orders, fines and recommendations issued or imposed by the are subject to annulment³⁹ by the Supreme Court of Cyprus upon an appeal lodged by a person with a 'vested interest.'⁴⁰ The Equality Body may also investigate issues on his/her own right where the it deems that any particular case that came to his/her attention may constitute a violation of the law.⁴¹ Also, the Equality Body's may investigate cases following applications by NGOs, chambers, organizations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.⁴² In such cases, the Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. The findings and reports of the Equality Body must be communicated to the Attorney General who will, in turn advise the Republic on the

³⁵ Which time limit shall not exceed 90 days from publication in the Official gazette (The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 28).

³⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 14(2) and section 14(3), Part III, list the limitations to the Commissioner's power to issue orders as follows: where the act complained of is pursuant to another law or regulation, in which case the Commissioner advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 39(3) and 39(4)]; and where discrimination did not occur exclusively as a result of violation of the relevant law; where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties; where the eradication cannot take place without violating contractual obligations of persons of private or public law; where the complainant does not wish for an order to be issued; or where the situation complained of no longer subsists.

³⁷ The fine to be imposed cannot exceed CYP350 (600 Euros) for discriminatory behaviour, treatment or practice [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(a)], CYP250 (427 Euros) for racial discrimination in the enjoyment of a right or freedom [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(b)], CYP350 (600 Euros) for non-compliance with the Commissioner's recommendation within the specified time limit [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (a)] and CYP50 (85 Euros) daily for continuing non-compliance after the deadline set by the Commissioner [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (b)].

³⁸ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

³⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

⁴⁰ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

⁴¹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

⁴² Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

adoption or not of appropriate legislative or administrative measures, taking into account the Republic's international law obligations and who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision.

In addition to the mandate to combat discrimination on the grounds prescribed in the two directives 43/2000/EC and 78/2000/EC, the law⁴³ vests the Ombudsman with the mandate to

- combat discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin⁴⁴;
- to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law⁴⁵ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁴⁶ and
- promote equality of opportunity irrespective of grounds listed in the preceding section in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

Furthermore, the Equality body deals with gender discrimination in employment and vocational training,⁴⁷ sexual harassment, maladministration and human rights violations by the public sector.

It is not obligatory to proceed to an equality body before going to court and the equality body will suspend examination of a complaint if this goes to court. Although a decision of the equality body may be used to obtain compensation in Court, in practice this has not happened so far, perhaps because victims of racial/ethnic discrimination very rarely have the means to instigate a legal suit; also they rarely have the luxury of waiting for a number of years until their case is adjudicated in Court.

⁴³ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

⁴⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1) (a), Part I.

⁴⁵ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

⁴⁶ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1) (b), Part I.

⁴⁷ Law on Equal Treatment of Men and Women in Occupation and Vocational Training No. 191(I)2004, purporting to transpose Directives 76/207/EEC and 97/80/EC.

Despite all these powers granted to the institution, it is crucial to note that the function of the Ombudsman is one of essential *mediation* and not combating discrimination.⁴⁸

Indeed, in most complaints investigated the Equality Body has chosen to exercise this function rather than make use of its full powers and impose sanctions. In the few hundreds of cases it has investigated so far, it acted more like a mediatory body, issuing reports with recommendations, reflecting the traditional practice of the Cypriot ombudsman with no powers for sanctions. This policy is explained by the Equality Body to be a tactical move, given the fact that the fines provided by the law are too small to act as a deterrent. It should however be pointed out that, even if the Equality Body did issue binding decisions and imposed sanctions, one cannot rule out the possibility of extensive non-compliance on the part of governmental bodies which would eventually undermine the prestige and weaken the institution of the Equality Body. In addition, the interests of the victims, especially compensation, are not sufficiently protected in mediation: victims are very rarely, if ever, compensated. In some cases victims are happy to have some immediate redress, but in others they are left with no compensation or essential remedy. Most victims of discrimination are not sufficiently informed and are not aware of their alternative legal possibilities during mediation. Unless there is a complaint by a lawyer or NGO, no one represents the interests of the victims of discrimination during mediation procedures. The outcomes of mediation procedures are not publicly known. There is no way of assessing if the outcomes of mediation effective, proportionate and dissuasive: the problem of racial and ethnic discrimination by public authorities and professional bodies is widespread, as the complaints are hardly diminishing.

8. Legal aid

In 2009 a set of regulations were adopted by the Council of Ministers within the framework of the Law on Equal Treatment between Men and Women in Employment and Vocational Training, entitled Regulations for the Provision of Independent Assistance to Victims of Discrimination 2009. The regulations provide for the provision of legal aid, Court representation, representation before administrative and/or independent bodies and legal advice on issues of gender discrimination in the employment field.

In the proceedings before the Ombudsman/Equality body, no issue of legal aid arises since the procedure is free.

⁴⁸ The origins go back to 1972, when it was originally set up by the first Law on the Commissioner for Administration Cyprus/ Law 107/1972. However, the politically turbulent years prior to 1974 and the war of 1974 caused considerable delay to the actual operation of the office.

There are no public bodies offering legal assistance or representation in discrimination cases, nor are there public funds available for NGOs who would like to offer assistance and representation to victims. Lawyers working for NGOs are almost exclusively dealing with asylum, on funding provided by UNHCR or the European Refugee Fund, which is contributed to by the European Commission and the Republic of Cyprus. In these cases, however, anti-discrimination is only a small part of their work, focusing more on asylum procedures and the rights of refugees.

The new laws transposing the Race Equality Directive have eased the criteria for an association to engage in judicial or other procedures allowing organisations who are interested parties to represent their members, provided they have “legal standing” or “a legitimate interest” and the consent of their affected members.⁴⁹ Although this presents considerable improvement to the previously existing law, where the test of who has a “legitimate interest” was hard to satisfy,⁵⁰ in practice associations have made little use of this opportunity. NGOs regularly file complaints with the Equality Body but have not as yet taken any case to Court.

At this stage and given that NGOs have not made use of the aforesaid provision in order to bring cases to Court on behalf of their members, no assessment of the effectiveness of this provision is possible. In theory, the provision paves the way for more practical involvement of NGOs in the fight against discrimination. In practice, no NGO at the moment offers free Court representation to victims of discrimination, as that would require the hiring of a lawyer from a law firm in order to take the case to Court. Although there are legal advisors working for some NGOs and providing legal advice to victims, in order for these persons to be permitted to appear in Court they need to have Bar Association license and work for a law firm.

⁴⁹ Cyprus/ Law on Equal Treatment Irrespective of Racial or Ethnic Origin N. 59(I)/2004, article 12 (31.03.2004).

Article 12 of the law provides that organisations or other legal persons whose aim, as articulated in their constitution, is the eradication of discrimination on the ground of racial or ethnic origin may, with the permission of the person who has the right under this law, apply to the district courts claiming compensation. In addition, such organisation has the right to file a complaint to the equality body on behalf of such person. No organisation has so far made use of this provision in order to bring a case to Court on behalf of a victim of discrimination, although several complaints have been submitted by NGOs to the specialised body on behalf of specific individuals as well as on behalf of vulnerable groups in general.

⁵⁰ The interpretation given to Article 146(2) of the Constitution by the Supreme Court in the case of Osman Saffet v. the Cyprus Palestine Plantations Co. Ltd and another restricted the right of recourse to physical and legal persons who had been adversely and directly affected and had legitimate interest. ‘Representatives’ were not considered to have legitimate interest⁵⁰ and the term “community” is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution. In order for an association to have a legitimate interest, the specific administrative act under review must have *directly affected* the whole or part of the membership, whereas if it only affected one member or if there are conflicting interests between members then the association had no legitimate interest (The Police Association v. The Republic).

9. Forms of satisfaction available to a vindicated party

In court proceedings compensation is available to a vindicated party, but there are also other forms of 'satisfaction' available. The District Court assesses and awards damages such as pecuniary, nominal or punitive damages. Punitive damages are very rarely awarded and, generally speaking, the amounts awarded by the Cypriot Courts tend to be rather low compared to the damages awarded in other countries, although differences in the standard of living ought to be taken into consideration in order for safe comparisons to be made. In addition to damages, a victim of discrimination may apply to the Labour Court seeking reinstatement to a position from which s/he was unlawfully dismissed, but again this is a remedy rarely sought or used. The competent courts to try racial discrimination cases at first instance are the District Courts.⁵¹ Furthermore, persons alleging discriminatory behaviour from public authorities may, under Article 146 of the Cyprus Constitution,⁵² also apply to the Supreme Court to set aside the act complained of. The person in whose favour a decision under 146 has been made may institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court.

The Equality Body has no right to award compensation only to impose small sanctions, to issue orders for elimination of situation which caused discrimination and to issue recommendations. The Equality Body's decisions may be used in Court to claim compensation. They are also subject to review by the Supreme Court under article 146 of the Constitution. The Equality Body's investigations are suspended when the case is filed in Court.

10. Adequacy of compensation

With regard to the adequacy of compensation, again conclusions may not easily be drawn from the cases studied, given that in a great number of cases the remedy sought was not compensation but the setting aside of a decision which has caused discrimination or which denied a victim of access to legal aid and so fourth. In the civil cases studied which concerned repayment of debt, the Court ordered the repayment of the full amount plus interest the rate of which ranged from 5.5 per cent to 14 per cent, depending on the provisions of the loan agreement. In the cases concerning accidents, the general and special damages awarded were very close to the amount claimed; in such cases, although one would be tempted to assume that compensation was adequate, one should not lose

⁵¹ Cyprus/The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31.3.2004) Section 8(1).

⁵² The right to recourse to Article 146 of the Cyprus Constitution is restricted to governmental administrative acts

sight of the fact that the amount claimed was not calculated arbitrarily but was based on previously established legal authority which provided for very low amounts of compensation. Indeed, the amounts paid in Cyprus for compensation are generally very low compared to other countries. Although regard must be had to the comparative standard of living, the amounts generally claimed and paid may not be altogether unconnected to the unequal bargaining position of individuals fighting against large multinational insurance companies, who are often assigned the handling of the lawsuit on behalf of the insured defendant. The amounts awarded can hardly be said to have a deterrent or punitive effect especially on the multinational insurance company.

The same applies in the case of the fines to be imposed by the Equality Body, amounting to only CYP350 (EUR 598) for unlawful discrimination and CYP250 (EUR 427) for racial discrimination in the enjoyment of a right.⁵³ The penalties which can be awarded by the Courts in case of unlawful discrimination are not particularly high either: Maximum CYP4.000 (Euros 6,835.27) for physical person⁵⁴ and/or imprisonment of up to six months; CYP7.000 (Euros 11,961.72) for legal persons. If the offence has been committed out gross negligence, the fine for physical persons is up to CYP2.000 (Euro 3,417.63); for legal persons, the fine is up to CYP2.000 (Euro 3,417.63) for the managing director, chairman, director, secretary or other officer if it can be proven that the offence was committed with his/her consent plus an additional fine of up to CYP4.000 (Euro 6,835.27) for the company or organisation.⁵⁵ Under Cyprus/law 58(I)/2004⁵⁶ the penalties are identical to those provided for the law transposing the Race Directive.⁵⁷ Same applies to procedures and penalties under Cyprus/Law N.57 (I)/2004 on persons with disabilities.⁵⁸

11. Rules relating to the payment of legal costs

In respect of legal fees, the following rules are in place:

- Contingency fees are prohibited.
- For contentious matters, a lawyer can have a prior written agreement with his/her client fixing the amount and mode of payment of the costs and disbursements.

⁵³ Cyprus/ The Combating of Racial and Other Forms of Discrimination (Commissioner) Law N.42(I)/2004 (19.03.2004), Section 18.

⁵⁴ Under Cyprus/ Law on Equal Treatment (Race or Ethnic Origin) 59(I)/2004 (31.03.2004) which transposes the Race Directive.

⁵⁵ Cyprus/The Equal Treatment (Race or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004) Section 13.

⁵⁶ The law transposing the Employment Framework Directive.

⁵⁷ Cyprus/The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 15.

⁵⁸ Cyprus/Law on Persons with Disabilities N. 57(I)/2004 Section 6, amending Section 9 of the basic law.

- Where fees for contentious matters are not regulated by an agreement as aforesaid, they are governed by the Rules of Court.
- If a client is not satisfied with the bill rendered by his/her lawyer, s/he may apply to the Courts Registrar to have the bill taxed. The Registrar will exercise his discretion on whether to tax the bill or not by taking into consideration all relevant circumstances and especially the complexity, difficulty or novelty of the case, the specialised knowledge and responsibility required as well as time consumed by the lawyer, the volume of documents drafted or perused, the urgency and importance of the matter to the client and the value of the money or property at stake.

In practice, most lawyers have a charging rate which is uniformly applied to all clients. The rate will be higher for experienced lawyers and lower for junior lawyers. The rates are decided by the individual lawyer and are a matter of agreement with the client. The Cyprus Bar Council Rules provide only for a minimum charging rate for extrajudicial work. The professional bodies governing the affairs of lawyers, namely the Cyprus Bar Association and other disciplinary bodies try to monitor the fees charged by lawyers and in the event of a complaint about overcharging they will investigate and, if appropriate, will direct that fees are repaid to the client, as well as order other disciplinary action.

The costs of litigation may be recoverable from the other party. The general rule is that the successful litigant is awarded an order as to costs to be paid by the unsuccessful litigant,⁵⁹ however this rule may not be implemented if the Court finds that the conduct of the successful litigant deserves disentitlement to costs. A successful litigant in a complex commercial case may expect to recover only 50-70 per cent of actual legal costs incurred.⁶⁰ The costs are assessed by the Courts Registrar and include part of the disbursements included in the legal costs.

For contentious matters lawyers can have a prior written agreement with clients fixing the amount and mode of payment. For non-contentious matters, lawyers can charge fees which are subject to taxing by the Courts Registrar, following a complaint from the clients. The Cyprus Bar Council Rules provide only for a *minimum* charging rate for extrajudicial work.

There are no legal costs involved in filing a complaint to the Ombudsman ; the procedure is not technical the assistance of a lawyer is not required.

⁵⁹ Cyprus/Kyriakou v Leontiou (1987) 1 CLR 420.

⁶⁰ A. Neocleous & Co (2000) *Introduction to Cyprus Law*, New York: Yorkhill Law Publishing.

12. Rules on burden of proof

In discrimination cases the burden of proof is reversed once the plaintiff (alleged victim) establishes a prima facie case of the basic facts: the burden then shifts to the defendant/complainant⁶¹ who must then rebut the presumption of prima facie discrimination by disproving the allegations that no violation of the law occurred.⁶² For cases involving racial discrimination in fields other than employment and occupation, the law provides that should the respondent fail to rebut the presumption of discrimination, then the District Court considers that the breach has been established and the complainant is required to present on oath all relevant facts to assess the damages.⁶³

⁶¹ As contained in Article 8 of the Race Equality Directive as well as in Article 10 of the Employment Directive.

⁶² Law N.58(I)/2004, Section 11; Law N.59(I)/2004, Section 7.

⁶³ Law N.59(I)/2004, Section 7.