



AKTH Stakeholder Workshop

“Exchange of experience and good practices on how to promote integration and unite European citizens through environment events and activities”

Nicosia, 18 November 2014

“Successful stories of the Ombudsman Office combating discrimination and promoting inclusion of EU citizens in Cyprus”

Keynote Speech

Nasia Dionysiou, Anti-Discrimination Body

Good morning everyone. First of all I would like to thank Akti for the invitation to represent the Office of the Ombudsman and share with you some of our experience in combating discrimination and promoting inclusion of European citizens in Cyprus. Just a few words before jumping into the main topic of my keynote speech about our Office, which was set up in 1991, as the independent authority responsible to deal with individual complaints concerning maladministration, misbehaviour and human rights violations by state authorities or officers. The basic law has since been amended six times, and as a result, in addition to its core mandate, the Office has been empowered further to act as:

- Equality and Anti-discrimination body, in accordance with the respective EU Directives;
- National Mechanism for the Prevention of Torture, in compliance with the Optional Protocol of the UN Convention against Torture;

- National Institution for Human Rights with broad functions of protecting, promoting and guaranteeing human rights, in line with the UN Paris Principles; and
- Independent Authority for the Promotion of the Rights of Persons with Disability, under article 33(2) of the Convention on the Rights of Persons with Disabilities.

Especially under its competence as Anti-discrimination Body the Office during the last ten years has had the opportunity to examine several issues related to the observance of the rights of Europeans residing in Cyprus and the principle of equal treatment. Equality between women and men and non-discrimination are considered amongst the EU's founding values. Accordingly, the Union acts to prevent discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, by means of legislation and policies in areas such as employment and access to goods and services.

Let's not forget that in a Europe of open borders, more and more people live, work, study and do business all across Europe and of course this stands true also for Cyprus. At the same time, EU citizenship is conferred automatically to all nationals of all EU countries and gives each and every citizen of the Union an additional set of rights which have a concrete and positive impact on their daily lives. In this respect, EU legislation and EU policies aim to monitor the implementation and application by Member states of EU citizenship rights and therefore to make it easier for citizens to exercise and take full advantage of their rights, which lie at the heart of their everyday life.

It does not fall into the scope of this workshop to talk for the whole range of these rights. I have, therefore, chosen to speak about three important categories of Europeans' rights, namely, political rights, family rights and the inclusion of Roma people, and share with you some of the most relevant experience of our Office. Of course, our daily work covers mostly other obstacles and problems that the EU citizens face in their day-to-day life in Cyprus, as regards, for example, their residence documents, their access to social welfare benefits or even the obligations

imposed to them by municipal or community councils, private companies, such as insurance or telecommunication companies etc. However, I chose to talk about three major aspects of the inclusion procedure, which provide the EU citizens the opportunity and the possibility to feel as an active part of the Cyprus society.

To begin with the political rights, it shall be clarified that every EU citizen has the right to be able to vote and stand as a candidate in municipal and European Parliament elections in her/his place of residence regardless of nationality. For the implementation of this right, in particular regarding municipal elections, the Parliament of Representatives passed legislation, according which, in order to take part in elections, citizens must apply to be entered in the electoral roll of their place of residence as an expression of their interest in voting.

However, in the first years after the Cyprus accession to the EU, the Anti-discrimination Body had been called to highlight that the competent authorities were obliged to make the necessary arrangements to enable the EU citizens to be entered on the electoral roll in due time before polling day. Furthermore, they should inform voters and persons entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections. As it was found out from the investigation carried out by our Office, in many occasions no campaigns took place and no other forms of formal information was provided to European citizens, in respect to their above rights. As a result, even in regions with large concentration of EU population, people were unaware of their rights and, consequently, their participation in elections was very limited. This observation led the Ombudsman to submit recommendations on how municipal and community councils should take appropriate measures with regard to promote awareness and encourage participation in elections.

Speaking now of the right to family life, one must point out that no social inclusion can be achieved if a person who has decided to move to another country is deprived of the possibility to retain her/his family. This issue is regulated by the EU Directive

on the right of citizens of the Union to move and reside freely within the Member States, which was designed, among other things, to encourage Union citizens to exercise their right for free movement and residence, to cut back administrative formalities to the bare essentials and to extend the rights of free movement and residence to third country nationals who are family members of Union citizens exercising this right.

In many occasions the Anti-Discrimination Body had to intervene and to point out to the competent public authorities, namely the Migration Department and the Police, that the family members who do not have the nationality of a Member State enjoy the same rights as the citizen who they have accompanied. Especially in cases of expulsion decisions, we underlined that both Union citizens and members of their family may be expelled only on grounds of public policy, public security or public health and that under no circumstances may an expulsion decision be taken on economic grounds. Furthermore, measures affecting freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the state. We also had to repeat that previous criminal convictions do not automatically justify expulsion and that in any event, before taking an expulsion decision, a number of factors must be assessed such as the period for which the individual concerned has been resident, his or her age, degree of integration and family situation in the country and links with the country of origin.

It was under the same Directive who some EU citizens claimed rights regarding their same-sex partner. In particular, Article 2(2)b of the Directive treats any “partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State” as a family member “if the legislation of the host Member State treats registered partnerships as equivalent to marriage”. When incorporating the Directive in the legal order of Cyprus, the Cypriot Parliament did not include either different-sex or same-sex partners in the category of ‘family members’. For these cases, Article 3(2)b of the Directive states that the host Member

State shall facilitate entry and residence of “the partner with whom the Union citizen has a durable relationship, duly attested” by undertaking an extensive examination of the personal circumstances and by justifying any denial of entry or residence to these people.

In a number of reports, the Anti-Discrimination Body read the Directive within the broader legal framework and expressed the opinion that restrictive interpretation of all relevant provisions followed by the Cyprus authorities was to the detriment of EU citizens who had registered partnerships - especially same-sex ones - in their country of origin. Such restrictive interpretation would make it virtually impossible for this category of EU citizens to exercise their freedom of movement and establishment. We concluded that the blanket exclusion of same-sex partners of EU citizens from the rights deriving from the EU acquis on the mere ground that same-sex marriage was not recognized in Cyprus amounted to an unjustified discrimination and was incompatible with the spirit of the Directive and basic principles of Community Law; at the very least, there should have been some examination of the individual circumstances surrounding each case.

With this occasion, the Anti-Discrimination Body went further and argued that there is a legal gap in regulating cohabitation outside marriage of both different-sex and same-sex couples, and that Cyprus remains one of the few EU member states that have not introduced civil partnerships. We therefore pointed out that legal recognition of civil partnerships would have a positive impact on public attitudes towards same-sex couples and would contribute to eliminating negative stereotypes against them, as experience in other countries has shown.

Lastly, I would like to say a few things regarding the EU policies for the inclusion of the Roma community. The Roma - Europe’s largest ethnic minority - have been part of Europe for centuries, but frequently face prejudice, intolerance, discrimination and exclusion and even today they live in considerably worse socioeconomic conditions than the population at large. For this reason, the EU decided to take action and to set up a Framework for National Roma integration strategies, which runs until 2020. Our

office followed the procedure of drafting the Framework and participated by sending comments, observations and examples of good practice.

In Cyprus, although historically there is a Roma community, this community has been never afforded minority rights or any other forms of minority status as granted by the Constitution to the three religious groups (Maronites, Armenians and Latins). Instead, their vast majority were included to the Turkish Cypriot community, due to the fact that they were mostly Turkish-speaking and Muslims. It is true that the Roma in Cyprus have to a large extent been ignored, avoided and marginalised in society, never recognised as anything that refers to their identity and culture. Our involvement was mostly on the subject of education, and in particular in terms of enrolment, school attendance and curriculum. In particular, in 2011 we recommended that the Ministry of Education should take measures in order to facilitate Roma students' transport to school, avoid segregation in separate schools, give emphasis to their Roma identity, history and culture, reduce dropout rates and provide motivation to Roma parents to involve actively in school society.

I won't expand further. I hope I managed to give a clear picture of our work regarding the observance of the rights of EU citizens with the aim of their full inclusion in our society. It must be admitted that our role is becoming more and more difficult, given the worsening social situation caused by the economic crisis which brings many categories of population at risk of poverty and social exclusion and undermines social cohesion and social peace. My wish is that, this situation, together with the broader political debate, at European and at national level, on the free movement and other rights of EU citizens, will not lead us to setbacks, in terms of inclusion, tolerance and multiculturalism.

Thank you very much.