

The Ombudsman as a competent body for the promotion of the principle of equal treatment

Speech made by Despina Mertakka on the 12th -14th/5/2011 in the conference Europe in Action 2011 “Family Action for the inclusion of people with intellectual disabilities in Society”, Palm Beach, Larnaca

Introduction

The Ombudsman is an Independent Authority, established in Cyprus in 1991. It is recognized as the national human rights institution that investigates complaints against actions of public departments on the grounds of maladministration: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information or unnecessary delay.

With the amendment of 2004, by which the Ombudsman was appointed as Cyprus’ Equality Authority and as Cyprus’ Anti-discrimination Body, (together they comprise “the Cyprus Equality Body”) a notable legal evolution of the Institution was signalled. The Ombudsman’s role was further empowered with additional fields of action, which contributed to the more effective pursuit of its institutional mandate in promoting the equality principle.

The principle of equal treatment, as it is put forward in the European Directives 2000/43, 2000/78 & 2006/54, aims to combat both direct and indirect discrimination, in the public, as well as the private sector, on the grounds, amongst others, of disability.

The Persons with Disabilities Laws (127(I) 2000), as amended by Law 57(I) 2004 is the relevant legislation expressly covering the non-discrimination principle for disabled persons. The handling of complaints regarding discrimination in access and supply of goods and services was entrusted to the Cyprus Anti-Discrimination Body.

The Equality Body's field of practice covers a wide range of activities, such as:

- employment, self-employment and occupation, including vocational training and guidance
- social security, social insurance and healthcare
- education and
- access to goods and services, including housing

In addition to the examination of complaints regarding discriminatory conduct, the Equality Body, according to Law 42(I)2004, has also been granted with additional powers and responsibilities as follows:

- to promote equality in the enjoyment of human rights and liberties
- to promote equality in opportunity
- to take all appropriate measures to ensure compliance with the national anti-discrimination legislation
- to supervise and ensure that there is compliance with the equality legislation and to impose monetary fines or other penalties in case of non-compliance
- to draft Codes of Practice and advise on good practices
- to undertake statistical or social surveys for matters falling under its jurisdiction and
- to investigate matters relating to discrimination either on its own initiative, or following the request of persons or groups of persons

Since Law 42(I)2004 came into force, complaints from citizens have reached the Ombudsman protesting against discrimination on the ground of disability, resulting from actions taken by the administration in violation of the new provisions concerning equal treatment. The most important cases of Equality Body are summarized immediately below in an attempt to bring into light complaints of serious nature and the important changes that have been achieved as a consequence of the Ombudsman's intervention.

Important Decisions of the Equality Body

- Access of persons with disability to education/vocational training

- A 17 year old student with hearing difficulties had been refused entry into Cyprus Nursing School because of her disability since only applicants with excellent hearing could be admitted to the School.

- The Ombudsman advised that the complainant should not be refused entry into the School, if she is successful in the entry exams. She also advised that the relevant Regulations should not include criteria of a discriminatory nature, and that the already existent criteria regarding hearing disability of the person should be abolished.

- The complainant was finally enrolled as a student.

- Reasonable accommodation for persons with disability in employment

- a person with multiple disabilities (severely restricted vision and kinetic disabilities) was appointed in the public service as a telephone operator

- he was transferred within two months from his initial post to another one that caused him functional problems in his work

- he requested to be transferred back to his old post where, taking his disability into account, the working conditions were more suitable for him

- The Ombudsman stated that the employer had failed to comply with the provisions of the Persons with Disabilities Law because he failed to take reasonable measures and to provide the complainant with reasonable accommodations

- The Equality Authority advised for the complainant to be transferred back to his old post, suggestion with which the Ministry of Health complied without delay.

- Another striking case was that of a young woman with chondroplasia (dwarfism). She had not been offered a job, not because of her qualifications and her actual competencies, but because of her height. The employer believed that because of her

height, she would not be able to handle certain duties related to the position.

- The Equality Authority again stressed that the principle of reasonable adjustment which has been included in the national law had not been enforced.
 - It was recommended that the employer establish a policy of access to equal opportunities to people with a disability during recruitment procedures
- Discrimination on the grounds of special needs (Dyslexia case)
 - The Cyprus Dyslexia Association submitted a complaint against the Ministry of Education and Culture regarding the lack of adequate facilitations for dyslexic children during their final Lyceum exams including also their access to higher education
 - The Ministry believed that the facilitations given to dyslexic children provide them “a head start” over the rest of students
 - The Ombudsman disagreed with this view and noted that any differentiations made to the exam papers as compensatory measures aim to bring dyslexic students at the same position with the non-dyslexic students in order to perform according to their true abilities
 - The Ombudsman concluded that the Ministry’s policy introduced an indirect and unlawful discrimination at the expense of dyslexic children during their education and should be directly revised
 - In cooperation with the Attorney General, the Ministry of Education and Culture proceeded with the amendment of the discriminatory Regulations
- The accessibility of people with disabilities to their workplace
 - The Cyprus Confederation of Organizations of the Disabled submitted a complaint against the Limassol General Hospital regarding the non provision of justifiable adjustments that would guarantee the safe transfer from and to the workplace of the disabled people that it employs
 - The Ombudsman stated that any direct or indirect discrimination at the expense of disabled people at their workplace is prohibited

- She also stated that the employer is legally obliged to provide the necessary adjustments and justifiable facilitations in the workplace
- The access of disabled people in work positions of the public sector
 - The Equality Authority dealt also with problems concerning the obstacles that disabled people face in the area of accessing work positions in the public sector
 - People with disabilities are in an inferior position in comparison to the rest of the candidates because there are not any satisfactory compensatory measures during the process of the written exams that take place for appointment purposes in positions of the public service
 - On a national level, the prohibition of discriminations at the expense of disabled people in the area of employment was legislated with the People with Disabilities Laws of 2000 to 2007
 - The Ombudsman noted that the complainant had the right for correct adjustments / facilitations in order to ensure equality to the starting point for the claiming of a professional position in the public service
 - She expressed the opinion that the subject of the facilitations in favour of the examined persons who are disabled must be legally regulated with a relevant addition to the conditional law and in such a way that as to ensure that the decisions taken will be made in cooperation with expertise people on subjects of disability and accordingly in each occasion
 - In compliance, the Ministry of Labour and Social passed the Law 146(I)2009, where quotas were introduced when employing in the broader public sector in favour of the disabled people
- Access of people with disabilities to public buildings
 - A complaint was submitted on the subject of access facilities for disabled people to public buildings, leading to phenomena of social exclusion and reduced opportunities to people with disabilities

- The Ombudsman noted that the public authorities should face with greater sensitivity the subject of access of disabled people to public buildings and take measures to provide all the necessary access facilities
 - Specific recommendations were made to the Ministry of Communications and Works and during the last few years important steps were taken in this sector to ease accessibility of disabled people to public buildings
- The obligation of the State to ensure the education and training of persons with disabilities
 - A complaint was submitted by the parents of children attending the Centre for Spastic and Handicapped Children who had to assume the financial burden of a monthly fee for the school attendance of their child.
 - The Ombudsman noted that the obligation of the state and its ancillary bodies to ensure that persons with disabilities are fully integrated is a given one
 - The relevant national law coupled with the revised European Social Charter as well as European Council's Directives 2000/43/EC and 2000/78/EC and 2006/54/EC contain specific provisions for the equal treatment of disabled people that aim to eliminate and avoid any apparent or other form of discrimination against persons with disabilities and to encourage their access to specific sectors including that of education
 - The Ombudsman underlined that a principal parameter of the framework of the respect of the rights of disabled people is to overcome the bias that a disabled individual is a passive recipient of services and to show the way towards a human centred approach upheld by an individualised approach of these persons
 - The Ombudsman noted that it is necessary to provide these children with opportunities of equal education. It is only with the equal use of the public and social good of education that phenomena of social exclusion of the disabled may be avoided
 - In this manner the equal treatment of disabled persons in all areas of social life is safeguarded

Convention on the Rights of Persons with Disabilities

The results for the last 6 years of the Equality Body's operation appear positive. The passing of laws and the establishment of independent promotion authorities of the principle of anti-discrimination are not enough, though. The institutional framework on its own cannot face the multifaceted and deeply rooted inequalities that disabled people face. Within the framework of the CRPD new possibilities of a full range protection for the rights of the disabled people are entrusted. The Ombudsman who has been designated as the independent mechanism for the monitoring of the implementation of the Convention has recognised this new challenge that has risen as an extension to the Institution's already established role as the protector of citizen's rights, and that it is consistent with the Institution's continuous renewal and adaptability status.