

MODULE 6: LEGAL FRAMEWORK

Time: 40 minutes

Objectives:

- Introducing the national/ local, EU, and international legal framework protecting diversity and combating discrimination.
- Introducing the legal framework on integration.
- Introducing the legal framework on migration and work permits.
- Focusing on the specific national/ local legislation and its implementation.
- Introducing the legal obligations of employers in protecting diversity and combating discrimination at workplace.

Materials:

Projector

Slides PP 6.1 & PP 6.2

Internet access or downloaded video: <https://www.youtube.com/watch?v=mQYmPI3DFt0>

INSTRUCTIONS

- 1) Trainers recall that combatting discrimination and promoting diversity on the workplace are European priorities. Those priorities are implemented and enforced by European directives and orientations.
- 2) Trainers play the video issued by the European Parliamentary Research Service by clicking on the link below:
<https://www.youtube.com/watch?v=mQYmPI3DFt0>
or play it after they have downloaded it.
- 3) Trainers present PP 6.1 and introduce the EU legal framework protecting diversity and combating discrimination.
- 4) Trainers present PP 6.2 and introduce the international legal framework protecting diversity and combating discrimination.
- 5) Trainers introduce the national/ local legal framework protecting diversity and combating discrimination.
- 6) Trainers introduce the legal framework on integration.
- 7) Trainers introduce the legal framework on migration and work permits.
- 8) Trainers introduce the legal obligations of employers in protecting diversity and combating discrimination at workplace.

Notes for the trainers

EU legal framework protecting diversity and combating discrimination

Discrimination and unequal treatment at work are prohibited by international, regional and national legislations. In the EU, the fight against discrimination and the promotion of the principle of equal treatment are at the heart of European employment and labour relations policy and are promoted through primary law (e.g. founding treaties) and secondary law (e.g. directives). It is reminded that all EU directives are by default transposed to national law by all member states. The main legal instruments concerning the employment of migrants are:

- Directive 2014/66/EU defining conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer
- Directive 2014/36/EU on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment.
- Directive 2011/98/EU on a single application procedure for a single permit to reside and work in the EU and on a common set of rights for third-country workers.
- Directive 2009/50/EC concerning the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (the 'Blue Card directive')
- Directive 2006/54/EC the Equal Opportunities Directive, on equal opportunities and equal treatment of women and men in employment and occupation
- Directive 2004/113/EC prohibiting sex discrimination in access to and supply of goods and services
- Directive 2000/78/EC prohibiting discrimination on the basis of sexual orientation, religion or belief, age and disability in the area of employment and focuses exclusively on the field of employment addressing discrimination more broadly ("Employment Equality Directive")
- Directive 2000/43/EC prohibiting discrimination on the basis of race or ethnicity in the context of employment ("Racial Equality Directive")

In 2000 and a few months after the Racial Equality Directive, the Employment Equality Directive (Council Directive 2000/78/EC) was adopted. The Employment Equality Directive defines the minimum rules against discrimination on the basis of religion and belief, disability, age, and sexual orientation. The Employment Equality Directive covers access to employment and occupation, vocational training, promotion, employment conditions, and membership of certain bodies. The Employment Equality Directive can be found here: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>. A study (European Implementation Assessment) on it can be found here: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536346/EPRS_STU\(2016\)536346_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536346/EPRS_STU(2016)536346_EN.pdf)

The same year, the Charter of Fundamental Rights of the European Union (2000/C 364/01) assesses a number of rights coming to support and protect people from discrimination at the workplace: Article 15 on the freedom to choose an occupation and the right to engage in work; Article 21, on non-discrimination; Article 23, on equality between men and women; Article 26 on the integration of disabled persons; and article 31 on fair and just working conditions. More information about the Charter can be found here: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

International legal framework protecting diversity and combating discrimination

- UN International Convention on the Elimination of All Forms of Racial Discrimination, 1965.
- UN Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- UN Convention on the Rights of Persons with Disabilities , 2006.

National legal framework regulating employment, migration, protecting diversity and combating discrimination in the Republic of Cyprus

Aliens and Immigration Law

According to the Aliens and Immigration Law of the RoC, third country citizens have restricted access to employment and more specifically, they have the right to work only in domestic work or in agriculture and animal farming. The terms and conditions of employment and labour practices applicable to third country migrants, including their contracts, issued by the competent government services, as well as the collective agreement in force in the farming sector, increase their vulnerability per se as they are in substance themselves exploitative.

In the majority of cases, domestic workers are obliged to live at their employers' house, which, by its very nature, is automatically exempted from labour inspections and effectively barred from unionisation. Similarly, agricultural migrant workers are required to live at their workplaces, often in stables or barns, in the same space as the animals they tend, and which are evidently unsuitable for human habitation.

In the majority of cases, exploitation is taking place due to long hours of work, sometimes unpaid or not fully paid, confiscation or withholding of travel and residence documents, restrictions of freedom of movement and not allowance of any day off, violence and threats and many times sexual violence as well, debt bondage and inhuman and degrading living conditions or living conditions violating their right to private life. These feudal employment conditions render migrant workers in these sectors vulnerable to extreme exploitation. Such conditions, as the ones faced by the vast majority of migrants in Cyprus working in the above mentioned areas, were found by the ECtHR in *Siliadin v. France* (Application no. 73316/01) to amount to treatment contrary to Article 4 of the ECHR which provides that no one shall be held in slavery or servitude and no one shall be required to perform forced or compulsory labour. In addition, migrant workers are potential targets for traffickers because of their race and ethnicity and their lack of awareness about their rights under national or international law or of the system.

This migration model was instituted at the beginning of the 1990s, in agreement with the social partners (trade unions and employer associations), in order to meet acute labour shortages in low-skilled or unskilled jobs and in sectors such as agriculture, services, cleaning and catering services, the construction and hotel industries, jobs that Cypriots would not take up. Ever since, Cyprus has followed a very strict migration policy based on the issue of temporary work permits that are not normally renewable for more than a maximum period of 4 or 5 years. (Exempted from the provision of this regulation are migrant domestic workers working for elderly, seriously ill or disabled people or people with special needs, families with young children, both parents who work, and people with large incomes) With this permit, a migrant is attached to a specific employer and a specific job. Migrants can change employer only if they are given the so called "release paper" by their employer and only after the first 6 months of employment or if they can prove to the competent authorities that their rights are violated by the employer, after filing a complaint to the Labour Relations department. With a release paper given either by the employer or by the authorities, depending on the case, a migrant has one month within which to find a new employer, otherwise they become automatically undocumented. The same applies if a migrant worker abandons their employment due to severe exploitation and violation of their rights, very often including also sexual abuse and violence, and if they do not report a complaint to the authorities within 14 days after they abandon their employment. Very often, migrants in abusive and exploitative conditions find it difficult to report or file complaints against their employers to the Immigration Police, fearing immediate deportation, as a result of which they become immediately undocumented subject to detention and deportation. In

addition, the employer may at any moment terminate the employment of the migrant employee without providing a “release paper.” In that event, the migrant will automatically lose their resident permit as well and therefore be subject to arrest, detention and deportation. Their absolute dependence and bondage to their employers make migrants very vulnerable to extreme exploitation and trafficking.

Another key factor contributing to the vulnerability of third-country migrants is that the entry, residence and employment process of migrants is facilitated not by state structures and mechanisms but through private profit-making agencies, regulated by law, as well as by individuals within the migrant communities who act as middle-persons, both in Cyprus and in their countries of origin. A direct consequence of the operation of private agencies is the extremely high cost of migration (ranging from €2000 – €10000, depending on the country of origin), the brunt of which is borne by migrants and, to a much lesser extent, by employers. In addition to the restrictive migration model and policies, the exorbitant migration debts are partly responsible for the large number of undocumented migrants in Cyprus. With such huge migration debts, migrants are unwilling or unable to return to their countries of origin when their residence and employment permits expire or are revoked. They therefore end up with irregular status whereby they become extremely vulnerable to discrimination and exploitation, including trafficking. In addition, private agencies are often implicated in trafficking networks and working for this purpose in close association with similar agencies in the countries of origin of migrants.

The employment of European citizens is regulated by **Law no. 7(I) of 2007 The Right of Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic of Cyprus Law of 2007**. According to the above legislation, the freedom of movement and residence in the Republic can be restricted only on the grounds of reasonable threat of public order, safety or health. As from 1st May 2004, any European national can enter the territory of the Republic of Cyprus by simply showing a valid passport or identity card. The members of the family of a European citizen have the same rights as European citizens. The competent authority for the implementation of these Laws is the Ministry of Interior.

Information on **the right of students from third country to employment** can be found here: http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/page5h_en/page5h_en?OpenDocument and here: [http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/8C2740D030AB2E39C22580A50026B97A/\\$file/booklet%20on%20living%20july%202010%20english.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/8C2740D030AB2E39C22580A50026B97A/$file/booklet%20on%20living%20july%202010%20english.pdf)

Cyprus Refugee Law

Cyprus Refugee Law provides that recognised refugees have the same rights as Cypriot citizens to employment. There are no restrictions to any particular sector. The same applies to persons with subsidiary protection.

During the first six months from the date of the submission of their asylum application, asylum seekers are not allowed to work. After the six-months period, asylum seekers have restricted access to employment – mainly in the farming and agriculture industry and also in some other unskilled jobs.

More information on the right of refugees (recognised refugees, persons with subsidiary protection, and asylum seekers) can be found here:

http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/page5j_en/page5j_en?OpenDocument

Law on Preventing and Combating Trafficking in Human Beings and for the Protection of the victims of 2014 (Law No 60(I)/2014)

In relation to employment, victims of trafficking should have access to vocational training and retraining and full access to the labour market. The Department of Labour is responsible for the implementation of such rights, including for finding jobs for victims. Unfortunately, the reality is that the Department of Labour has no vocational training programmes for victims of trafficking and in practice, it refers them for employment only in the same sectors in which they have been victimised – farming and agriculture and cleaning.

Protection of Young Persons at Work, No. 48(I)/2001

This Law covers the employment of young persons by any employer. The employment of children under 15 years of age is prohibited except for the purpose of:

- (a) Vocational or occupational training.
- (b) Employment of a child in cultural, artistic, sports or advertising activities.

This law regulates among others the working time and hours of children under the age of 15.

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/C70E68C0D442D95CC22581CB0041B587?OpenDocument>

The Protection of Maternity Law No. 100(I)/97

“Maternity rights are secured through the “Maternity Protection Law” 1997 last amendment 2002 (64(I)/2002).

Who is entitled to Maternity Leave?

An employed woman who presents a certificate of a registered medical practitioner stating the expected week of her confinement is entitled to maternity leave. Maternity leave is provided for 16 weeks of which 9 weeks must compulsorily be taken at the beginning of the second week before the expected date of confinement and 6 weeks of compulsory leave to be taken after confinement (Section 3(2)).

An employed woman, who adopts or takes in to her care a child less than 12 years of age for the purpose of adoption, is allowed maternity leave for 14 weeks (Section 3(3)).

Maternity Rights

- During maternity leave the employed woman is allowed a grant (Art 3(4)).
- The employed woman is protected against termination or notice of termination of employment during the period in which the employed person notifies the employer and for the period ending 3 months after maternity leave. This does not apply in cases where the employed woman is found guilty of a misdemeanor, or the business at which she is employed closes down or the contract period has expired (Section 4).
- Women who gave birth and are breast-feeding or have increased responsibilities for the care/raising of the child, can, for a six-month period, commencing on the date of birth or maternity leave, interrupt their employment for one hour or go to work one hour later or leave work one hour earlier. The one-hour excuse period is considered working time (Section 5(1)).”

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/4E0D1D8995BF66B2C22581CB0041B592?OpenDocument>

The Equal Treatment of Men and Women in Employment and Vocational Training Law, No. 205(I)/2002

This Law aims at the application of the principle of equal treatment for men and women in respect of employment, access to vocational guidance, vocational education and training and the conditions of their provision, including professional development and the conditions and preconditions of dismissal. This Law shall not affect more favourable provisions.

According to this law, “Discrimination” based on sex means every action or omission which constitutes or entails unfavourable treatment based on gender, including sexual harassment, but not including protection of mothers due to pregnancy, childbirth, nursing, maternity or sickness due to pregnancy or childbirth positive actions;” and “Indirect discrimination based on sex” shall exist where an apparently neutral provision, criterion or practice, puts at a disadvantage substantially higher proportion of the members of one sex, unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to gender.” Also, it provides that “Principle of equal treatment” means that there shall be no discrimination on the basis of sex, either directly or indirectly, with reference in particular to marital or family status, regarding any issues regulated by this Law.”²¹

It also provides that “any act that constitutes sexual harassment or causes direct or indirect discriminatory treatment shall be prohibited. Employers and representatives of legal entities or their supervisor, or the person competent/responsible shall abstain from such an act, whether isolated or repeated.”²²

The Gender Equality Committee has been constituted under this law and it is responsible for its implementation.

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/4F1DB719F3AA8A73C22581CB0041B58A?OpenDocument>

Protection of Workers Who are Posted to Carry Out Temporary Work within the Republic in Accordance with the Framework of the Transnational Provision of Services 2002 Law, No 137(I)/2002

This Law shall apply to undertakings established in a Member State, which posts workers within the framework of the transnational provision of services.

Protection of Posted Workers

- Undertakings are obliged to guarantee workers posted the minimum terms and conditions of work and employment, as set by legislative, regulative or administrative provisions or/and collective agreements regarding activities, including excavation, earthmoving, actual building work etc.
- The terms and conditions of work and employment include among others minimum rates of pay, annual paid holidays, protection of health, safety and hygiene at work, equal treatment between men and women, etc.²³

²¹ <http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/4F1DB719F3AA8A73C22581CB0041B58A?OpenDocument>

²² Ibid

²³ <http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/AD830E04732CA070C22581CB0041B588?OpenDocument>

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/AD830E04732CA070C22581CB0041B588?OpenDocument>

The **Private Employment Agency Law [L.126(I)/2012**, as amended] harmonises Cyprus law with Directive 2006/123/EU of the European Parliament and of the Council. It regulates the establishment and the operations of private agencies focusing on combatting the exploitation of migrant workers. This law describes and lists the conditions and qualifications that need to be fulfilled by natural or legal persons working in such agencies. It also states the different penalties for trafficking offences.

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/FC5E44740BAFF78AC22581CB0041B590?OpenDocument>

The General System for the Recognition of Professional Qualifications Law of 2002

For more information:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/61B8BEF20F43E081C22581CB0041B594?OpenDocument>

Also, for information on the Second General System for the Recognition of Professional Qualifications Law of 2002:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/A5624C79F6D366B5C22581CB0041B58D?OpenDocument>

And for information on The Third System for the Recognition of Professional Qualifications Law of 2004:

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/12797C454AA938A2C22581CB0041B599?OpenDocument>

Persons with Disabilities Law of 2000, No 127(I)/2000 and the ratifying **Law 8(III)/2011 of the Convention on the Rights of Persons with Disabilities**. The legal framework provides for equal rights and opportunities in employment and prohibits discrimination on the ground of disability, a term which includes the denial of reasonable accommodation in employment.

Industrial Relations Code

The Industrial Relations Code is an agreement signed by the Social Partners in 1977. The Agreement lays out in detail the procedures to be followed for conflict resolution in labour disputes. Even though the Code is a voluntary agreement, it is highly respected by the social partners. Apart from the procedural provisions agreed upon in the Code, the Code also re-affirms the participating parties' willingness to respect the four fundamental rights/ principles clearly laid out in the Code. These four fundamental rights / principles are:

- The right to organise.
- The right to collective bargaining, collective agreements and joint consultation.
- The definition of issues proper for collective bargaining, joint consultation, and management prerogatives.
- The affirmation of strict adherence to the provisions of International Labour Conventions that the government of Cyprus has ratified.

For more information and to download the Code:

http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/page38_en/page38_en?OpenDocument

Brief description on the termination of legal residency

Articles 180Δ – 18ΠΘ of the Aliens and Immigration Law require that every person who is not considered as lawfully residing in Cyprus, receives a written decision issued from the Civil Registry and Migration Department. This decision is called the ‘return decision.’ The return decision must state the factual and legal reasons of why the residency of person is not legal anymore, provide a reasonable time for the voluntary return of the person²⁴ to their country and explain the available means to challenge this decision.

Any decision to deport or remove a person can be issued and implemented only in case the person has not left the country voluntarily. Detention can only be effected only for the purpose of deportation and only if the person avoids or obstructs the procedure of deportation. A decision to detain a person must always be a measure of last resort, and the authorities have the obligation to examine other alternatives before issuing this decision; for example, retention of travel documents and signing to a police station.

The Cyprus Government has also, ratified, inter alia, the following conventions:

- ***The ILO Migration for Employment (Revised) Convention***, 1949, No. 97,
- ***The Migrant Workers (Supplementary provisions) Convention***, 1975, No.143
- ***The Discrimination (Employment & Occupation) Convention***, 1958, No. 111

Moreover, the Cyprus government has also accepted **Article 19 of the Revised European Social Charter** (i.e. The right of the migrant workers and their families to protection and assistance). These instruments provide, inter alia, for no less favourable treatment of migrant workers than that of nationals.²⁵

It must be highlighted that sexual harassment and harassment on a protected ground (gender, sexual orientation, racial/ ethnic origin, age, disability, religious/ political background) are also forms of prohibited discrimination.

Activity A – identifying discrimination at the workplace/ Sharing experiences

Time: 1 hour

Materials:

Projector

Markers

Cards/ paper

Internet access or downloaded video: <https://www.youtube.com/watch?v=mQYmPI3DFt0>

INSTRUCTIONS

- 1) Trainers make four groups of trainees.
- 2) Each group will be focused on one kind of discrimination as presented in the video: religion and belief, disability, age, and sexual orientation.
- 3) Each group will have to find a story, either made up or inspired from a personal experience, and write it down.

²⁴ Voluntary return can be limited or not be given at all if the person is a danger to public safety, public order or security of the Republic of Cyprus.

²⁵ http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/page5d_en/page5d_en?OpenDocument

- 4) Trainers ask the spokespersons of each group to present their stories.
- 5) Trainers discuss each story with the participants. Trainers connect each story to the legal framework and describe under which conditions workers can be protected by the legal framework. During the discussion, trainers will also introduce the employers' obligations in protecting diversity and combating discrimination at workplace.

Tips for the trainers

Considering that this activity is based on a consequent amount of theoretical notions, trainees can lose their focus. It is therefore recommended to maintain their attention by regularly referring to the video. Replaying some parts in order to highlight and/ or maintain a certain dynamic can be useful.

The trainers should be well organised and tackle this chapter of the training in a logical order as listed above in the part introducing the objectives.

As the legal framework may differ from a country to another, introducing the national legal framework can help identifying the different degree to which law applies, i.e. on the national level and on the international/ EU one.

ACTIVITY B – Preventing discrimination in recruitment

Time: 30 minutes

Materials:

Projector

Markers

Cards/ paper

- 1) Trainers distribute 2 cards/ papers with the word YES and the word NO to each trainee.
- 2) Trainers are going to ask a number of questions to the trainees who will have to answer by raising only one card: YES or NO
- 3) Each correct response should be explained by the trainers.

Notes for the trainers

List of questions (with the answers):

- Does using only online platform for applications match anti-discrimination measures?
NO – not everyone has knowledge or access to a computer or to the internet.
- Is it OK if a prospect employer asks you why you are wearing hijab?
NO - Beliefs, including religious beliefs, must not be considered as employment criteria.
- If a pregnant employee is fired, can they file a complaint?
YES – National law prevents employer from firing a pregnant employee.
- If an employee is gay and if his co-workers call him names, such as “princess,” can it be considered as a form of discrimination?
YES – When the sexual orientation of someone is mocked on the workplace, it is a form of discrimination.
- Can a manager or supervisor foster a positive working environment able to combat discrimination?
YES – It is the employer's responsibility and duty to both respect and implement the legal framework on diversity and anti-discrimination on the work place.

Tips for trainers: For each response, please recall to which article/directive the answer is related to



