A.L. 85 ta' l-2007

ATT DWAR L-UNJONI EWROPEA
(KAP. 460)

Ordni ta' l-2007 dwar Trattament Indaqs ta' Persuni

BIS-SAĦĦA tas-setgħat mogħtija bis-subartikolu (2) ta' l-artikolu 4 ta' l-Att dwar l-Unjoni Ewropea, il-Prim Ministru għamel dan l-Ordni li ġej:– Kap. 460.

1. It-titolu ta' dan l-Ordni hu Ordni ta' l-2007 dwar Trattament Indaqs ta' Persuni. Titolu.

2. (1) F'dan l-Ordni, sakemm ir-rabta tal-kliem ma titlobx mod ieħor: Tifsir.

"l-Att rilevanti" tfisser l-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa; Kap. 456.

"id-Direttiva" tfisser id-Direttiva tal-Kunsill 2000/43/KE tad-29 ta' Ġunju 2000 li timplimenta l-prinċipju ta' trattament ugwali bejn persuni irrispettivament mill-oriġini razzjali jew etnika tagħhom;

"diskriminazzjoni" tfisser diskriminazzjoni diretta jew indiretta bażata fuq oriġini razzjali jew etnika, u "iddiskrimina" u "diskriminatorju" għandhom ikunu interpretati bl-istess mod;

"fastidju" lil persuna tfisser li tassoġġetta lil persuna għal xi att, talba jew imġiba li dik il-persuna ma tiħux gost bihom, inklużi kliem megħud, ġesti jew il-produzzjoni, wiri jew ċirkolazzjoni ta' kliem miktub, stampi jew materjal ieħor, u "tagħti fastidju" lil persuna għandu jkun interpretat bl-istess mod;

"Kummissjoni għall-Ugwaljanza" tfisser il-Kummissjoni Nazzjonali għall-Promozzjoni ta' l-Ugwaljanza għall-Irġiel u n-Nisa mwaqqfa taħt l-artikolu 11 ta' l-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa, u "il-Kummissarju" għandu jkollu l-istess tifsira mogħtija lilha bl-artikolu 2 ta' l-istess Att;

"il-Ministru" tfisser il-Ministru responsabbli għall-ugwaljanza;

"riklam" tfisser kull forma ta' riklam, kemm jekk lill-pubbliku jew le, u kemm f'gazzetta, magazin jew pubblikazzjoni oħra, fuq it-televiżjoni jew radju jew fuq l-internet jew bil-wiri ta' avviż, kartellun, *billboard*, *trailer* jew volantin kemm b'kull mezz ieħor, u referenzi għall-pubblikazzjoni jew il-wiri ta' riklami għandhom ikunu interpretati bl-istess mod.

(2) Għall-finijiet ta' dan l-Ordni, iżda salvi d-disposizzjonijiet tas-subartiklu (3) ta' dan l-artiklu:

(a) diskriminazzjoni diretta titqies li tiġri meta persuna tiġi ttrattata inqas favorevolment minn kif persuna oħra tkun, kienet tiġi, jew kieku tkun, ittrattata f'sitwazzjoni simili;

(b) diskriminazzjoni indiretta titqies li tiġri meta disposizzjoni, kriterju jew prattika li jidhru newtrali jistgħu jqiegħdu persuna fi żvantaġġ partikolari meta mqabbla ma' persuni oħra, kemm-il darba dik id-disposizzjoni, dak il-kriterju jew dik il-prattika ma jkunux oġġettivament ġustifikati minn skop leġittimu u l-mod kif jintlaħaq dak l-iskop ikun wieħed adatt u meħtieġ;

(ċ) fastidju għandu jitqies li hu diskriminazzjoni meta jkun relatat ma' oriġini razzjali jew etnika u jingħata bl-iskop jew ikollu l-effett li jmur kontra d-dinjità ta' persuna u li joħloq ambjent intimidatorju, ostili, degradanti, umiljanti jew offensiv;

(d) struzzjoni biex issir diskriminazzjoni kontra xi persuni għal xi raġuni msemmija fil-paragrafu (ċ) għandha titqies bħala diskriminazzjoni.

(3) Trattament inqas faverevoli li jkun ibbażat fuq karatteristika relatata ma' xi wieħed mill-motivi msemmija fil-paragrafu (ċ) tas-subartiklu (2) ta' dan l-artiklu m'għandux jikkostitwixxi diskriminazzjoni meta minħabba fl-attivitajiet okkupazzjonali partikolari involuti, jew minħabba fil-kuntest li fih dawn isiru, it-trattament ikun wieħed leġittimu u l-karatteristika tkun tikkostwitwixxi rekwiżit okkupazzjonali ġenwin li jkun wieħed proporzjonat fiċ-ċirkustanzi:

Iżda l-oneru li ssir prova ta' rekwiżit okkupazzjonali ġenwin għandu jaqa' fuq il-persuna li tallega l-eżistenza tiegħu.

(4) Dan l-Ordni m'għandux japplika fil-każ ta' differenzi fit-trattament li jkunu bażati fuq in-nazzjonalità u huma mingħajr

preġudizzju għall-liġijiet u l-kondizzjonijiet relatati mad-dħul jew ir-residenza ta' ċittadini ta' pajjiżi terzi jew persuni bla stat f'Malta u għal kull trattament li jirriżulta mill-istatus legali ta' dawn l-individwi involuti.

Għan ta' dan l-Ordni.

3. L-għan ta' dan l-Ordni hu biex jimplimenta d-disposizzjonijiet tad-Direttiva.

Ebda diskriminazzjoni minn persuni eċċ.

4. (1) Ebda persuna, stabbiliment jew entità, kemm jekk fis-settur pubbliku kemm f'dak privat, inklużi korpi pubbliċi, m'għandha tiddiskrimina kontra xi persuna oħra dwar:

(a) protezzjoni soċjali, inklużi sigurtà soċjali u kura tas-saħħa;

(b) vantaġġi soċjali;

(ċ) edukazzjoni;

(d) aċċess għal u provvista ta' oġġetti u servizzi li huma disponibbli għall-pubbliku, inklużi d-djar;

(e) aċċess għal kull servizz ieħor skond ma jiġi msemmi bil-liġi għall-finijiet ta' dan l-Ordni.

(2) Meta persuna responsabbli għal xi stabbiliment u, jew entità tonqos milli taqdi l-obbligi tagħha li tissopprimi l-fastidju kif provdut taħt is-subartiklu (2) ta' l-artiklu 6 ta' dan l-Ordni, dak in-nuqqas għandu, għall-finijiet tas-subartiklu (1) ta' dan l-artiklu, jikkostitwixxi diskriminazzjoni.

Ebda diskriminazzjoni minn banek eċċ.

5. (1) Ebda bank jew istituzzjoni finanzjarja jew kumpannija ta' l-assigurazzjoni m'għandhom jiddiskriminaw kontra xi persuna fl-għoti ta' xi faċilità fir-rigward ta' l-istabbiliment, tagħmir jew fit-tnedija jew estensjoni ta' xi negozju jew fit-tnedija jew estensjoni ta' xi forma ta' impjieg ta' persuna li timpjega lilha nnifisha jew fl-assigurazzjoni ta' dak in-negozju jew tal-persuna li timpjega lilha nnifisha.

(2) Xejn fis-subartiklu (1) ta' dan l-artiklu m'għandu jitqies li jikkostitwixxi diskriminazzjoni safejn il-kondizzjonijiet li taħthom il-faċilità jew il-kopertura ta' assigurazzjoni huma offruti jew rifjutati jkunu jirriflettu konsiderazzjonijiet ġenwini bażati fuq ir-riskju finanzjarju fl-għoti ta' dawk il-faċilitajiet jew ta' din il-kopertura ta' assigurazzjoni.

Piena.

6. (1) Mingħajr preġudizzju għad-disposizzjonijiet ta' xi liġi oħra, kull min jassoġġetta lil xi persuna oħra għal fastidju li jitqies bħala diskriminazzjoni għall-finijiet ta' dan l-Ordni, jew jittratta b'mod inqas favorevoli lil xi persuna oħra għaliex din il-persuna tkun irrifjutat jew issottomettiet ruħha għal dak il-fastidju, ikun ħati ta' reat kontra dan l-artiklu u jista', bla preġudizzju għal kull responsabbiltà oħra taħt xi liġi oħra, jeħel, meta jinsab ħati multa ta' mhux iżjed minn elf lira jew priġunerija għal mhux iżjed minn sitt xhur, jew dik il-multa u priġunerija flimkien.

(2) (a) Persuni li jkunu responsabbli għal xi stabbiliment jew entità msemmija fis-subartiklu (1) ta' l-artiklu 4 ta' dan l-Ordni m'għandhomx jippermettu l-fastidju ta' persuni li jkollhom id-dritt li jkunu preżenti f'dak l-istabbiliment jew entità, jew li jistgħu jgawdu minn faċilitajiet, oġġetti jew servizzi provduti f'dak l-istabbiliment jew f'dik l-entità.

(b) Dawk il-persuni responsabbli kif hawn qabel imsemmi jistgħu jġibu prova b'difiża tagħhom li huma jkunu ħadu dawk il-passi li jkunu raġonevolment prattikabbli biex jevitaw dak il-fastidju.

Vittimizzazzjoni tal-kwerelant.

7. Ħadd ma jista' jivittimizza lil xi persuna għaliex din tkun ressqet ilment lill-awtoritajiet leġittimi jew għaliex din tkun bdiet jew ipparteċipat fi proċeduri biex tingħata rimedju minħabba fi ksur allegat tad-disposizzjonijiet ta' dawn ir-regolamenti, jew għaliex tkun żvelat informazzjoni, kunfidenzjanli jew mhix, lil xi korp regolatorju pubbliku appuntat, dwar atti ta' diskriminazzjoni jew ta' trattament diskriminatorju li jkunu qegħdin jiġu allegati.

Reklami.

8. (1) Ħadd ma jista' jippubblika jew juri, jew iġiegħel li jkun pubblikat jew muri, xi riklam li jippromwovi d-diskriminazzjoni jew li jkun diskriminatorju jew li jista' raġonevolment jiftiehem li jindika intenzjoni li ssir diskriminazzjoni.

(2) Kull persuna li taġixxi bi ksur tas-subartiklu (1) ta' dan l-artiklu tkun ħatja ta' reat u tista', meta tinsab ħatja, teħel il-pieni stabbiliti għal kontravenzjonijiet.

Min jagħti fastidju eċċ ghandu jaghmel rapport.

9. (1) Fuq talba magħmula minn persuna li tallega li tkun ngħatat fastidju jew li ġarrbet diskriminazzjoni, jew fuq talba magħmula mill-Kummissjoni għall-Ugwaljanza li taġixxi wara li jsirilha ilment jew b'xi mod ieħor, il-persuna kwerelata jew li lilha jsir l-ilment ta' fastidju jew ta' trattament diskriminatorju jew li tkun ħadet passi, huma x'inhuma, biex tivverifika jew tinvestiga l-ilment, għandha, fi żmien għaxart ijiem tax-xogħol minn dik it-talba, tagħti lill-kwerelant jew lill-

Kummissjoni għall-Ugwaljanza, skond il-każ, rapport ta' l-ilment u jew rapport fuq il-passi li jittieħdu biex l-ilment jiġi verifikat jew investigat.

(2) Il-persuna mitluba tagħti r-rapport imsemmi fis-subartiklu (1) ta' dan l-artiklu għandha d-dritt li titlob mingħand il-persuna li titlob ir-rapport jew lill-Kummissjoni għall-Ugwaljanza, skond il-każ, riżarċiment ta' dawk l-ispejjeż raġonevoli li tkun għamlet biex tfassal u tagħmel ir-rapport:

Iżda dawn l-ispejjeż jistgħu jinġabru lura mill-persuna responsabbli għal dak il-fastidju jew diskriminazzjoni jekk jirriżulta li dak il-fastidju jew diskriminazzjoni kienu attwalment saru.

Reviżjoni li ssir mill-Kummissarju.

10. (1) Il-Kummissarju, bl-għajnuna tal-Kummissjoni għall-Ugwaljanza, għandu jirrevedi kontinwament it-twettiq tad-disposizzjonijiet ta' dan l-Ordni.

(2) Bla ħsara għad-disposizzonijiet l-oħra ta' dan l-Ordni, il-funzjonijiet tal-Kummissarju taħt is-subartiklu (1) ta' l-artiklu 12 ta' l-Att rilevanti għandhom jestendu, u għandhom ikunu wkoll japplikaw *mutatis mutandis,* għal kwistjonijiet ta' trattament indaqs ta' persuni fl-ambitu tat-tifsir tad-disposizzjonijiet ta' dan l-Ordni u għal kwistjonijiet ta' konformità mad-disposizzjonijiet ta', u għall-infurzar tad-drittijiet taħt, dan l-Ordni, u dawn il-funzjonijiet għandhom jibqgħu jkunu eżerċitati bl-għajnuna tal- Kummissjoni għall-Ugwaljanza.

Il-Kummissarju jista' jibda investigazzjonijiet.

11. (1) Il-Kummissarju jista' jibda investigazzjonijiet fuq kull materja li tkun tinvolvi xi att jew ommissjoni li allegatament tkun illegali taħt id-disposizzjonijiet ta' dan l-Ordni.

(2) Il-Kummissarju jista' wkoll jibda investigazzjonijiet meta jirċievi xi lment bil-miktub minn persuni li jallegaw li jkunu l-vittmi ta' xi att jew ommissjoni li jmur kontra d-disposizzjonijiet ta' dan l-Ordni.

(3) Jekk il-Kummissarju jkun jidhirlu li persuni li jixtiequ jressqu lment taħt is-subartiklu (2) ta' dan l-artiklu jkunu jeħtieġu għajnuna biex jifformulaw l-ilment, il-Kummissarju għandu jieħu, jew jordna li jittieħdu, dawk il-passi raġonevoli li jistgħu jkunu meħtieġa biex jgħin lil dawk il-persuni jressqu l-ilment tagħhom.

Disposizzjonijiet ta' l-Att rilevanti.

12. Id-disposizzjonijiet ta' l-artiklu 18 ta' l-Att rilevanti u ta' kull regolament magħmul taħtu, kif ukoll ta' kull arranġament magħmul taħt dawk ir-regolamenti fir-rigward ta' referenzi li jsiru mill-Kummissjoni lill-qorti ċivili kompetenti għal rimedju, għandhom ikunu japplikaw għall-investigazzjonijiet li jsiru taħt dan l-Ordni:

Iżda xejn f'dan l-artiklu m'għandu jżomm lil xi persuna li jkollha interess legali milli tieħu hi stess azzjoni għal rimedju jew, meta l-azzjoni tkun ittieħdet mill-Kummissjoni, milli tingħaqad magħha u ssir parti fil-kawża.

Min ghandu jġib prova.

13. (1) Jekk persuna li tqis li hu jew hi tkun ġarrbet diskriminazzjoni tistabbilixxi, quddiem qorti jew xi awtorità kompetenti oħra, fatti li minnhom jista' jiġi preżunt li kien hemm diskriminazzjoni diretta jew indiretta kontrih jew kontriha, l-oneru tal-prova li ma kien hemm ebda diskriminazzjoni għandu jaqa' fuq il-persuna, stabbiliment jew entità li kontrihom tkun diretta l-allegazzjoni ta' diskriminazzjoni.

(2) Id-disposizzjonijiet tas-subartiklu (1) ta' dan l-artiklu għandhom japplikaw ukoll meta l-Kummissjoni nnifisha tieħu azzjoni biex tirreferi l-allegazzjoni ta' diskriminazzjoni lill-qorti kompetenti f'isem il-persuna li tkun saret diskriminazzjoni kontriha jew meta tintervjeni biex tappoġġa lil persuna li tkun qegħda tallega diskriminazzjoni u li tkun qegħda tieħu azzjoni biex tingħata rimedju.

Reat magħmul minn kumpannija.

14. Meta jsir xi reat kontra d-disposizzjonijiet ta' dan l-Ordni minn soċjetà, kumpannija, assoċjazzjoni jew korp ieħor ta' persuni, kull persuna li, fiż-żmiem meta jkun sar ir-reat, kienet direttur, *manager*, segretarju jew uffiċjal simili ieħor ta' dik is-soċjetà, kumpannija, assoċjazzjoni jew korp ieħor ta' persuni jew kienet tat x'tifhem li qed taġixxi f'xi waħda minn dawk il-karigi, għandha titqies li tkun ħatja ta' dak ir-reat sakemm ma ġġibx prova li r-reat ikun sar bla ma kienet taf hi u li hija kienet imxiet bid-dileġenza kollha dovuta biex ma tħallix lir-reat isir .

Id-dritt li tittieħed azzjoni quddiem il-qorti kompetenti.
Kap. 452.

15. (1) Mingħajr preġudizzju għad-disposizzjonijiet ta' l-artiklu 30 ta' l-Att dwar Impjiegi u Relazzjonijiet Industrijali, persuna li tallega li xi persuna oħra kienet ikkommettiet fir-rigward tiegħu jew taghha xi att li taħt xi disposizzjoni ta' dan l-Ordni jkun wieħed illegali, ikollha d-dritt li tieħu azzjoni quddiem il-qorti ta' ġuriżdizzjoni ċivili kompetenti u li titlob lill-qorti tordna lill-konvenut biex jieqaf iwettaq dawk l-atti illegali u, skond ma jkun japplika, tordna l-ħlas ta' kumpens għal dawk id-danni li jiġu mġarrba bl-għemil ta' dawk l-atti illegali.

(2) F'kull proċedura taħt is-subartiklu (1) ta' dan l-artiklu għandu jkun biżżejjed li l-attur jipprova li hu jew hi kienu trattati b'mod inqas favorevoli skond id-disposizzjonijiet ta' dan l-Ordni u għandha tkun responsabbiltà tal-kwerelat li jipprova li dan it-trattament inqas favorevoli kien'ġustifikat skond id-disposizzjonijiet ta' dan l-Ordni.

(3) F'kull azzjoni ta' din ix-xorta kif provdut fis-subartiklu (1) ta' dan l-artiklu l-attur għandu, iktar u b'żieda għal danni u spejjeż

bħal dawk li setgħu attwalment saru u li kienu dovuti skond il-liġi, ikun intitolat li jirkupra b' kumpens dik is-somma flus kif il-qorti tista' fid-diskrezzjoni tagħha tqis li tkun raġonevoli meta jitqiesu ċ-ċirkostanzi kollha tal-każ u skond ma l-qorti tagħti u tiddeċiedi fil-proċeduri tal-każ.

Il-kwerelant jista' jkun assistit mill-entità li tinforza dan l-Ordni.

16. (1) Xejn f'dan l-Ordni jew f'xi liġi oħra m'għandu jżomm lil xi assoċjazzjoni, organizzazzjoni jew enti legali oħra, li jkollha interess leġittimu li tiżgura li jkun hemm konformità ma' dan l-Ordni, milli tindaħal hi stess jew f'isem il-kwerelant jew biex tassistih, bl-approvazzjoni tiegħu jew tagħha, f'xi proċedura ġudizzjarja jew amministrattiva li hemm provdut dwarha għall-infurzar ta' obbligi taħt dan l-Ordni.

(2) Id-disposizzjonijiet tas-subartiklu (1) ta' l-artiklu 13 u tas-subartiklu (2) ta' l-artiklu 15 għandhom japplikaw *mutatis mutandis* għal kull proċedura istitwita skond is-subartiklu (1) ta' dan l-artiklu.

L.N. 85 of 2007

EUROPEAN UNION ACT
(CAP. 460)

Equal Treatment of Persons Order, 2007

Cap. 460.

IN exercise of the powers conferred by sub-article (2) of article 4 of the European Union Act, the Prime Minister has made the following Order:-

Citation.

1. The title of this Order is the Equal Treatment of Persons Order, 2007.

Interpretation.

2. (1) In this Order, unless the context otherwise requires:

"advertisement" means any form of advertisement, whether to the public or not and whether in a newspaper, magazine or other publication, on television or radio or on the internet or by display of a notice, poster, billboard, trailer or flyer or by any other means, and references to the publishing or display of advertisements shall be construed accordingly;

Cap. 456.

"Equality Commission" means the National Commission for the Promotion of Equality for Men and Women set up under article 11 of the Equality for Men and Women Act, and "the Commissioner" shall have the same meaning assigned to it by article 2 of the same Act;

"discrimination" means direct or indirect discrimination based on racial or ethnic origin and "discriminate" and "discriminatory" shall be construed accordingly;

"harassment" of a person means to subject the person to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material and "to harass" a person shall be construed accordingly;

"the Minister" means the minister responsible for equality;

"the Directive" means the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

"the relevant Act" means the Equality for Men and Women Act.

(2) For the purposes of these regulations, but saving the provisions of sub-article (3) of this article:

(a) direct discrimination shall be taken to occur where a person is treated less favourably than another person is, has been, or would be, treated in a comparable situation;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put a person at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;

(c) harassment shall be deemed to be discrimination when it is related racial or ethnic origin and takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) an instruction to discriminate against persons on any ground mentioned in paragraph (c) shall be deemed to be discrimination.

(3) A less favourable treatment which is based on a characteristic related to any of the grounds mentioned in paragraph (c) of sub-article (2) of this article shall not constitute discrimination where by reason of the particular occupational activities concerned, or of the context in which they are carried out, the treatment is legitimate and the characteristic constitutes a genuine occupational requirement which is proportionate in the circumstances:

Provided that the burden of proving a genuine occupational requirement shall lie on the person who alleges its existence.

(4) This Order shall not apply to any differences of treatment based on nationality and are without prejudice to laws and conditions relating to the entry into and residence of third country nationals and stateless persons in Malta and to any treatment which arises from the legal status of these individuals concerned.

Scope.

3. The object of this Order is to implement the provisions of the Directive.

Non-discrimination by persons etc.

4. (1) No person, establishment or entity, whether in the private or public sector and including public bodies, shall discriminate against any other person in relation to:

(a) social protection, including social security and healthcare;

(b) social advantages;

(c) education;

(d) access to and supply of goods and services which are available to the public, including housing;

(e) access to any other service as may be designated by law for the purposes of this regulation.

(2) The failure by any person responsible for any establishment and, or entity to fulfil his obligation to suppress harassment as provided under sub-article (2) of article 6 of this Order shall, for the purposes of sub-article (1) of this article, constitute discrimination.

Non-discrimination by banks etc.

5. (1) No bank or financial institution or insurance company shall discriminate against any person in the grant of any facility in respect of the establishment, equipment or in the launching or extension of any business or the launching or extension of any form of self employment or the insurance of that business or the person in self employment.

(2) Nothing in sub-article (1) of this article shall be deemed to constitute discrimination in so far as the conditions under which the facility or the insurance cover is offered or withheld reflect genuine considerations based on the financial risk in the grant of such facilities or of such insurance cover.

Penalty.

6. (1) Without prejudice to the provisions of any other law, whosoever subjects another person to harassment deemed to be discrimination for the purposes of this Order, or treats less favourably another person by reason of such person having rejected or submitted to such harassment, shall be guilty of an offence against this article and shall, without prejudice to any other liability under any other law, be liable on conviction to a fine (*multa*) of not more than one thousand liri or to imprisonment for not more than six months, or to both such fine and imprisonment.

(2) (a) Persons responsible for any establishment or entity referred to in sub-article (1) of article 4 of this Order shall not permit the harassment of persons who have a right to be present in such establishment or entity, or to avail themselves of any facility, goods or service provided at such establishment or entity.

(b) It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent such harassment.

Victimisation of complainant.

7. It shall not be lawful to victimise any person for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of these regulations, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged acts of discrimination or discriminatory treatment.

Advertisements.

8. (1) It shall not be lawful for persons to publish or display, or cause to be published or displayed, any advertisement which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate.

(2) Any person who acts in breach of sub-article (1) of this article shall be guilty of an offence and shall, on conviction, be liable to the penalties established for contraventions.

Person causing harassment etc. to provide report.

9. (1) Upon a request made by a person claiming to have been harassed or discriminated against, or upon a request made by the Equality Commission acting upon a complaint or otherwise, the person to whom or against whom the complaint of the harassment or the discriminatory treatment has been made or who has taken any steps whatsoever to verify or investigate the complaint shall, within ten working days of such request, provide the complainant or the Equality Commission, as the case may be, with a report of the complaint and, or a report on the steps taken to verify or investigate the complaint.

(2) The person requested to provide the report referred to in sub-article (1) of this article shall be entitled to claim from the person requesting the report or the Equality Commission, as the case may be, reimbursement of such reasonable expenses incurred in drawing up and making the report:

Provided that such expenses may be recovered from the person responsible for such harassment or discrimination if it is found that such harassment or discrimination did in fact take place.

Review by the Commissioner.

10. (1) The Commissioner, with the assistance of the Equality Commission, shall keep under review the working of the provisions of this Order.

(2) Subject to the other provisions of this Order, the functions of the Commissioner under sub-article (1) of article 12 of the relevant Act shall extend, and shall also apply *mutatis mutandis,* to issues of equal treatment of persons within the meaning of the provisions of this Order and to issues of compliance with, and the enforcement of rights under, the provisions of this Order, which functions shall continue to be exercised with the assistance of the Equality Commission.

Commissioner may initiate investigations.

11. (1) The Commissioner may initiate investigations on any matter involving an act or omission that is allegedly unlawful under the provisions of this Order.

(2) The Commissioner may also initiate investigations on the receipt of a complaint in writing by persons who claim to be the victims of an act or omission contrary to the provisions of this Order.

(3) If it appears to the Commissioner that persons who wish to make a complaint under sub-article (2) of this article require assistance to formulate the complaint, the Commissioner shall take or order the taking of such reasonable steps as may be necessary to assist such persons in making the complaint.

Provisions of the relevant Act.

12. The provisions of article 18 of the relevant Act and of any regulations made thereunder, as well as any arrangements made under those regulations in respect of references of a matter by the Commission to the competent civil court for redress, shall apply to investigations under this Order:

Provided that nothing in this article shall prevent any person having a legal interest from himself taking action for redress or, where action has been taken by the Commission, from joining in and becoming a party to the suit.

Burden of proof.

13. (1) If a person who considers that he or she has been discriminated against establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination against him or her, the burden of proving that there has been no discrimination shall lie on the person, establishment or entity against whom the allegation of discrimination is directed.

(2) The provisions of sub-article (1) of this article shall also apply where the Commission itself takes action to refer an allegation of discrimination to the competent court on behalf of the person discriminated against or where it intervenes in support of a person alleging discrimination and taking action for redress.

Offence committed by company, etc.

14. Where an offence against the provisions of this Order is committed by a partnership, company, association or other body of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such partnership, company, association or other body of persons or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Right of action before competent court.
Cap. 452.

15. (1) Without prejudice to the provisions of article 30 of the Employment and Industrial Relations Act, a person who alleges that any other person has committed in his or her regard any act which under any of the provisions of this Order is unlawful, shall have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act.

(2) In any proceedings under sub-article (1) of this article it shall be sufficient for the plaintiff to prove that he or she has been treated less favourably in terms of the provisions of this Order and it shall be incumbent on the defendant to prove that such less favourable treatment was justified in accordance with the provisions of this Order.

(3) In any such action as is provided in sub-article (1) of this article the plaintiff shall, over and above and in addition to such damages and costs as may have been actually suffered and be due according to law, be entitled to recover by way of compensation such sum of money as the court in its discretion may consider reasonable taking into account all the circumstances of the case and as the court on the trial of the cause shall award and assess.

Complainant may be assisted by entity enforcing this Order.

16. (1) Nothing in this Order or in any other law shall prevent any association, organization or other legal entity, having a legitimate interest in ensuring that this Order is complied with, from engaging itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under this Order.

(2) The provisions of sub-article (1) of article 13 and of sub-article (2) of article 15 shall *mutatis mutandis* apply to any proceedings instituted in accordance with sub-article (1) of this article.

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