

Helping those who help us: Some guidance for policy makers in the Republic of Cyprus

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INTRODUCTION

This policy brief describes the legislative framework that regulates the living and working conditions of foreign domestic workers (FDW) in the Republic of Cyprus (RoC or Republic). It identifies the main challenges they face while in the country and makes recommendations on how these can be addressed. The recommendations seek to introduce amendments on the legal and institutional levels, while also empowering FDW and bringing social change more directly. The policy brief draws on the findings of the PRIO Cyprus Centre report ‘Helping those who help us: Challenges faced by foreign domestic workers in the Republic of Cyprus’¹ and data analysis found in the Ombudsman Report, ‘The Status of Foreign Domestic Workers in Cyprus.’² Both publications were funded by the London School of Economics Hellenic Observatory under its 2019-2020 A.G. Leventis Research Innovation Programme on Cyprus.

The legal framework regulating the rights of FDW in the Republic of Cyprus

As of July 2019, there were just over 19,000 registered FDW, constituting about 50% of all immigrants from non-EU countries in the RoC.³ Their high numbers notwithstanding, there is no law that deals specifically with the entry and stay of FDW in the Republic. Instead, their rights and responsibilities, like those of all other immigrants, are found in the Aliens and Immigration Law 1972 to 2019 [Cap. 105]. This general legal document is shaped in relation to FDW through decisions of the Council of Ministers of the Republic, which receives recommendations on this topic from the Ministerial Committee on the Employment of Migrants.

The legal framework regulating the entry of FDW in the RoC is characterised by openness, in that it allows private individuals who meet relatively lax requirements⁴ to bring FDW to the Republic for the purpose of providing domestic services in their households. While the conditions for entry are quite generous, the conditions for the stay of FDW in the RoC are not. The recruitment of all immigrant workers involves the Ministry of Labour and Social Insurance, yet FDW are, exceptionally, the concern of the Civil Registry and Migration Department. Every FDW must sign an employment contract, in the absence of which they are not legally employed, and therefore not legally residing in the country. The standard employment contract for FDW was drafted by the Migration Department rather than the Ministry of Labour, and stipulates the number of working hours per week and the employee's remuneration, but not much else beyond that. It makes no reference to the type of work that the FDW should be expected to perform, breaks within the day or the payment of overtime.

The contract includes a general provision that in case of a 'labour dispute between the Employee and the Employer. . . one of the two parties or both parties separately, may submit in writing a relevant complaint to the District Aliens and Immigration Unit of the Police, as well as the Department of Labour Relations for examination by the Labour Disputes

Committee.⁵ Yet, there is no explanation in the contract as to: why the police (and not least, its Immigration Unit) are to be involved in an employment dispute; what the Labour Disputes Committee may decide and how its decision may impact /link to possible actions by the Immigration Unit of the Police; what procedure the Labour Disputes Committee will follow and how long the procedure is expected to last; and, finally, what are the rights of each party during this process (for example, whether the employee will continue to be paid by the employer, and if not, whether she is allowed to seek work elsewhere).

Illuminating the challenges faced by FDW

The employment contract is clear that: 'The Employee shall work for 6 days per week for 7 hours per day.'⁶ Despite the lack of any ambiguity, virtually no FDW works 42 hours per week. Instead, participants in the empirical research reported that they work an average of 58 hours per week, almost 40% more than what their contract allows (see Figure 1). More than 1 in 5 work more than 70 hours, a number that is close to, or even more than twice, what they are contractually obligated to work. This is partly because of the living arrangements of FDW; since they are living in their employers' houses, they are 'on call' and expected to be available around the clock. This expectation is particularly problematic if the employee's tasks stretch into the night, a phenomenon that is common among those with caring responsibilities. Of the 150 respondents to the questionnaire, 38% stated that working into the night, including beyond midnight, is a regular feature of their work routine. While the contract allows working during the night, it requires that the employee receives the necessary amount of rest in the day – however, not one of the interviewees described this as their lived reality.

The research participants reported earning, on average, a monthly net salary of €337. If this is divided by the number of hours FDW tend to work per month,⁷ their hourly rate is €1.29. In addition to their very low salary, 32% reported that there was at least one time when they were not paid for work they did, or were paid less than what they had been promised. To a different question, the same number of participants (33%) answered that they are not always paid on time. While these unjust remuneration practices are not rare, by far the most striking finding in this respect was the almost universal refusal of employers to pay overtime for work over and above the 42 weekly hours prescribed in the contract. To the question 'If you work beyond the hours of your contract, do you receive extra payment?' only 7% replied positively; 34% stated that they are not paid overtime, while the majority (58%) answered that they do not know how many hours they are contractually obligated to work.

PARTICIPANTS' WORKING HOURS

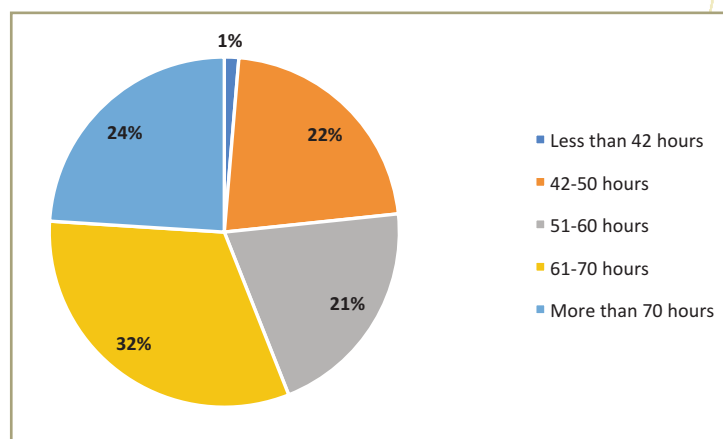


Figure 1 – Participants' working hours

Although none of the participants in our research project reported physical or sexual violence against them, some hinted at it or expressed concerns that it was likely to happen. Yet, 75% stated that they would not go to the police if someone harmed them physically. This finding is even more worrying when one considers that only 15% of FDW contact a doctor and/or have a doctor appointment independently of their employers, which potentially creates an additional barrier to their effective protection. The final challenge faced by FDW, which is especially detrimental to the 79% who are mothers, relates to the fact that they are prohibited from reunifying with their families while they work in Cyprus. For a third-country migrant to be able to bring their family to the RoC, s/he must prove that she has reasonable prospects of successfully obtaining permanent residency. Application for permanent residency requires residing in the RoC for at least five years. Yet, because of a decision of the RoC Supreme Court, FDW as a whole are banned from applying for this, even after the five years have passed.⁸ This ban is not in compliance with EU Law⁹ and has been criticised in a number of international fora.¹⁰

Recommendations

(A) LEGAL CHANGES

Legal changes should take place on three different planes: first, the State should sign and ratify key international conventions, most notably the International Convention on the Protection of Migrant Workers and Members of their Families (1990), and the ILO Convention Concerning Decent Working Conditions for Domestic Workers C. 189 (2011). Second, the RoC should amend its national legislation to bring it in line with international standards. Amendments should focus on lifting the restriction on the number of employers FDW can change while in the Republic and changing the rule that prevents those who have been in the RoC for more than five years from obtaining permanent

residency. Further, decisions of the Council of Ministers and the Ministerial Committee on the Employment of Migrants should be published on the Labour Office and Migration Department websites and should be translated into English and the native languages of the bulk of FDW in the country.

Finally, the RoC should make fundamental changes to the standard employment contract. At the most basic level, there should be two different employment contracts – one for those FDW who work as carers (of the elderly, disabled or children) and one for those who work primarily as cleaners. This will give a better idea to prospective FDW as to what they should expect to be doing when they come to the Republic, and will also allow those who perform different types of work to be remunerated accordingly. Additionally, both contracts should include detailed descriptions of the employee's duties, set working hours and provisions on the payment of overtime. In terms of remuneration, the contracts should ensure that this is in line with the national minimum wage, while allowing employers to deduct set amounts for the provision of accommodation and sustenance. The contracts should also include detailed descriptions of the labour dispute settlement procedures and any possible outcomes that these can give rise to. It is important that FDW are consulted before any amendments to the law or contract are adopted.

(B) INSTITUTIONAL CHANGES

By far the most essential institutional change that must take place is to shift responsibility for FDW from the Migration Department to the Labour Office, a change mandated by the Council of Ministers in 2010,¹¹ which has, nevertheless, still not been implemented. Additionally, steps should be taken to make the labour dispute settlement procedure more victim-centred rather than immigration focused. These could include, for example, scrapping the requirement of involving the police in what should be a simple administrative (rather than a criminal) process, relaxing the rules on what is considered admissible evidence and not requiring that allegations are to be proven beyond any reasonable doubt.¹²

Institutional changes that encourage FDW to come forward with their complaints could also be adopted. An example of such a change would be to hire people who speak FDW languages for governmental positions that interact with FDW. Further, a specialised unit that deals with FDW complaints, either within the police, the Labour Office or the Migration Department, could be set up. This would result in the development of expertise when examining and responding to such complaints, allow investigating officers to spot systemic abusive practices by employers or private employment agents, and empower and motivate the police to more effectively put a stop to them.

(C) SOCIAL CHANGES

The State should implement, among and for both FDW and their employers, projects that enhance awareness of their rights and duties. For example, the RoC could provide information sessions or seminars, newsletters, leaflets or short videos with details about the rights and duties of each and information about what constitutes abuse. These could be shared with FDW on their arrival to the Republic, when they sign their contract in the presence of the private employment agent that helped bring them to the RoC, in community centres and churches that are often visited by FDW, in police stations or the Ministry of Labour where they are likely to make a complaint and, crucially, in the embassies of the RoC in the FDW's countries of origin. An effective way of making sure that the same information reaches both parties to the employment contract is to make compulsory to both, at the beginning of their working relationship, an information session delivered by staff of the Labour Office.

Additionally, the State should fund organisations and schemes that support and advocate for migrants' rights. Such schemes could include the organisation of meetings between newcomers and FDW who have been in the Republic for years, or research projects that identify challenges faced by FDW and make recommendations on how these can be addressed. Emphasis should also be placed on outreach activities in order to engage with FDW who are employed in more remote villages in the Republic. The state has recently lifted the ban on FDW forming or joining a trade union, but it should also provide information and incentives to existing trade unions, so that they can start admitting and representing FDW as their members. Finally, the State, or State-funded organisations, could also offer training to FDW community leaders on how to mobilise their members to demand better rights protection.

Notes

- ¹ Nasia Hadjigeorgiou, 'Helping those who help us: Challenges faced by foreign domestic workers in the Republic of Cyprus' (PRIO Cyprus Centre, 2020).
- ² Nasia Hadjigeorgiou and Despina Mertakka, 'The Status of Foreign Domestic Workers in Cyprus' (RoC Ombudsman, 2020).
- ³ Data provided upon request by the RoC Civil Registry and Migration Department. The number does not include those FDW who, for whatever reason, are residing and working in the Republic irregularly and who are estimated to be numerically close to those that have a valid residence permit (RoC Ombudsman, *Report on the Institutional Framework Regulating Domestic Work in Cyprus [Αυτεπάγγελτη Τοποθέτηση Της Επιτρόπου Διοικήσεως Και Προστασίας Ανθρώπινων Δικαιωμάτων, Ως Εθνικής Ανεξάρτητης Αρχής Ανθρώπινων Δικαιωμάτων, Αναφορικά Με Το Θεσμικό Πλαίσιο Που Ρυθμίζει Την Οικιακή Εργασία Στην Κύπρο]* (21 Oct 2019), [60]).
- ⁴ The requirements are available at <http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/5314ED0D3F68CA9EC2257D2C003A4D6C2?OpenDocument>.
- ⁵ Employment Contract, Article 4.e. The Employment Contract can be found at: [http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/\\$file/DW_CONTRACT_07.05.2019.pdf](http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/F16DFEEA3AF1715FC2257D6D0042D6B6/$file/DW_CONTRACT_07.05.2019.pdf).
- ⁶ Employment Contract, Article 2.1.A.
- ⁷ That is, 261 hours (58 hours per week multiplied by 4.5 weeks).
- ⁸ *Cresencia Cabotaje Motilla v. The Republic of Cyprus through the Minister of the Interior and the Chief Immigration Officer* (RoC Supreme Court, Case no. 673/2006, 21 Jan 2008).
- ⁹ *Staatssecretaris van Justitie v Mangat Singh* (Court of Justice of the European Union, Case C-502/10, 18 Oct 2012).
- ¹⁰ UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Twenty-third and Twenty-fourth Periodic Reports of Cyprus,' adopted by the Committee at its 2544th and 2545th meetings on 11th and 12th May 2017 (CERD/C/CYP/23-24), [22]-[23]; UN Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Eighth Periodic Report of Cyprus,' adopted by the Committee at its 1604th and 1605th meetings on 4th July 2018 (CEDAW/C/CYP/CO/8), [38]-[39].
- ¹¹ RoC Ombudsman, *Report on the Status of Domestic Workers in Cyprus [Τοποθέτηση Επιτρόπου Διοικήσεως Ως Εθνική Ανεξάρτητη Αρχή Ανθρώπινων Δικαιωμάτων Αναφορικά Με Το Καθεστώς Των Οικιακών Εργαζομένων Στην Κύπρο]* (2 July 2013), [30].
- ¹² If, for instance, the FDW is cleaning the house of her employer, but also the houses of two of the employer's relatives, it could be inferred, unless there is evidence to the contrary, that the employer was aware of and maybe even facilitated this arrangement.

THE AUTHOR

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PRIO

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