



NEWS REPORT

Date:	16 December 2014
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Title:	Supreme Court decision affirms the appointment of a person with a disability in the public sector on the basis of employment quotas.
Country:	Cyprus
<u>Context</u>	
Issue at stake:	The Supreme Court rejects an application for the judicial review of the decision to hire a person with disability in the public service.
Ground of discrimination:	Disability
Source:	Renos Pittalis v. Educational Service Committee, judgement delivered on 25 September 2014, Case No. 1602/2011.
Field:	Employment
Legislative provisions:	Constitution Article 28, Constitution Article 146, Law on Hiring Persons with Disabilities in the Wider Public Sector (Special Provisions) Law on 2009 N. 146(I)/2009.

Content

Facts: The applicant, who was hired as a teacher on the basis of a service contract, applied to the Supreme Court under article 146 of the Constitution for the judicial review of the decision to appoint to the public educational service a person listed as having a disability for the purposes of employment quotas in the public sector.¹ The applicant claimed that the decision to appoint this person (hereinafter “IP”) lacked due investigation and justification; violated the Law on the Hiring of Persons with Disabilities in the Wider Public Sector (Special Provisions) Law on 2009 N. 146(I)/2009 (hereinafter “the quotas law”); was the result of abuse of power and bad faith on the part of the administration; and violated the equality provision of the Constitution (article 28). In particular, the applicant claimed that the decision to list IP as a person with disability for the purposes of a quota-based appointment in the public sector suffered from lack of investigation as to whether IP met the definition of disability found in the quotas law, claiming that the competent body failed to investigate whether IP’s condition was permanent or how it prevented him from working or what chances of treatment and cure did his condition have. The applicant claimed that IP in fact did not meet the definition of disability as contained in the quotas law, because he does not present any insufficiency or disadvantage causing

¹ Following the freezing in recruitments in the public sector as a result of the economic crisis, teachers are normally hired on the basis of individual service contracts, rather than being appointed in the public service. In this case, the applicant who was hired as a service-providing contractor sought to challenge the appointment of IP in the public service, as it carries more benefits rather than a service contract.



permanent or indefinite physical, mental or intellectual disability. The applicant also argued that if IP could be hired in the public sector this means that his disability does not prevent him from finding work in the private sector. With references to legal precedents which established that positive action violates the equality provision of the Constitution, the applicant claimed that positive discrimination (such as quotas in employment) in favour of a group of persons (such as persons with disability) violates the equality provision of the Constitution (Article 28) and as such the entire quotas law violates the Constitution.

The respondents argued that IP had supplied medical evidence of the nature and extent of the side effects of the medication he was taking, which rendered it difficult for him to continue working in his previous job. They also stated that IP's classification as a person with disability was made by a special multi-thematic committee using an evaluation protocol designed on the basis of an international system of classification of functionality, disability and health of the World Health Organisation. They also claimed that the reasons for classifying IP as a person with disability were clearly stated in the justification report.

Decision: The Court found that the decision to appoint IP in the public service was duly justified and that it was the result of adequate investigation. It therefore rejected the application for annulling the appointment of IP and ordered the applicant to pay all costs. The applicant's allegations that the quotas law violates the equality principle and the Constitution were not examined by the Court. None of the parties invoked the law transposing Directive 2000/78/EC which legitimises positive action and overrides all national laws including the Constitution.

Internet link source and additional information: The judgment is available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201409-1602-11.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%202014