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NEWS REPORT

Country:	Cyprus
Title:	Supreme Court defines the limits of administrative authority as regards public sector appointments based on disability quotas
Date:	20 November 2015
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Update of flash report nr:	N/A
<u>Context</u>	
Issue at stake:	Supreme Court rules that administrative decisions for appointments in the public service on the basis of quotas in favour of persons with disability cannot disregard medical and expert opinion as to the candidates' suitability.
Ground of discrimination:	Disability
Source:	Supreme Court, <i>Eleni Paroutsi v. Educational Service Committee</i> , Case No. 5700/2013, 30 October 2015.
Field:	Employment
Applicable law:	Law on hiring of persons with disabilities in the wider public sector (Special Provisions) N. 146(I)/2009.

Content

Case: The quotas law adopted in 2009 (the Law)¹ provides for the appointment in the public sector of those persons with a disability who are listed in a special catalogue of candidates through an application to the appointing body, in this case (the Educational Service Committee (the respondent). Applicants are assessed for compliance with the Law's definition of 'a person with disabilities'. The Law further provides for the creation of a special multi-thematic committee (MTC) formed by medical professionals. The MTC gives expert opinion as regards to the applicant's disability and suitability for the job.

A Greek teacher with a visual disability whose application for inclusion in the catalogue of teachers with a disability was rejected, applied to the court for judicial review of the rejecting decision. She had submitted medical certificates showing that she suffered from degenerative macular lesion in both eyes and that her visual acuteness is 1/20 after correction. Her case was referred for examination to the MTC as foreseen by article 5 of the Law that assessed the applicant on the basis of its "Protocol of Evaluation" and found

¹ Cyprus, Law on appointment of persons with disabilities in the wider public sector (Special Provisions) [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] 2009 N. 146(I)/2009. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

her to meet the Law's definition of a person with disabilities. The MTC's opinion was communicated to the respondent who interviewed the applicant and decided to reject her application, relying on their conclusion that her health problem does not place her in a disadvantageous position compared to other candidates. That decision of the Educational Service Committee was subjected to judicial review upon application by the applicant in 2014; the court decided to annul it due to lack of investigation and justification and as a result of an error of law.² This decision was subsequently appealed against and the determination of the appeal was pending at the time of writing.

Meanwhile, the applicant's vision deteriorated upon which she re-applied for inclusion in the special catalogue and was again rejected, this time on the justification that her health condition renders her unsuitable for working as a teacher. She applied *again* to the court for judicial review, arguing that the decision of the respondent lacked proper investigation, was not justified and violated the procedure, as the respondent failed to take into account the opinion of the MTC. The respondent claimed that the opinion of the MTC was not binding and that it retained the right to carry out its own investigation, as it did in this case, by conducting the interview with the applicant. The Committee further argued that the mere fact that the applicant met the definition of 'person with disabilities' did not impose a duty on the administration to take that advice and include her in the special catalogue of candidates.

Decision of the Court: The court rejected the respondent's arguments as regards the non-binding nature of the opinion of the MTC establishing that the appointing body is compelled to take it into consideration. If the MTC found that the applicant met the definition of disability foreseen in the Law and found her suitable for appointment, and these findings coincided with the conclusions of the medical certificates submitted by the applicant, the interview carried out by the respondent and the questions put to the applicant did not provide any insights into the question at hand, which was the applicant's suitability for the job. The court noted that during the interview, the applicant was asked whether she had been in contact with the National Organisations for the Blind, whether she was a public assistance receiver, whether she had worked in Greece and whether Greece had laws about disability quotas. The court concluded that this line of investigation did not lead into any sound evaluation as to whether she was suitable for employment, adding that the mere fact that the respondent was the body mandated with the appointment decision did not mean that such decision could be taken with disregard to the findings of the body to whom the legislator assigned the task of giving a medical opinion as to the suitability of the candidate. The Court ruled in favour of the applicant and annulled the rejecting decision in the grounds of not having been properly investigated, lacking justification and relying upon an error of law.

Internet link source: www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-5700-2013.htm&qstring=%EB%EF%E3%F9%20and%20%E1%ED%E1%F0%E7%F1%E9%2A%20and%202015

Last accessed 18/11/2015.

² Supreme Court, Eleni Paroutsi v. the Republic of Cyprus, Case No. 1449/2012, 14 March 2014.