



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Date:</b>	17 February 2015
<b>Expert:</b>	Corina Demetriou
<b>Title:</b>	Supreme Court decision interprets the laws transposing Council Directive 2000/78 and setting out the mandate of the Equality Body
<b>Country:</b>	Cyprus
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The Supreme Court clarifies the procedure for amending laws containing discriminatory provisions and sets aside a decision of the administration which relied on an opinion of the Attorney General
<b>Ground of discrimination:</b>	Age, but it can equally apply to all other grounds
<b>Source:</b>	Decision of the Supreme Court in Nicoletta Charalambidou v The Republic of Cyprus, the Finance Minister and the Attorney General, Case No. 1695/2009, Judgement delivered on 17 December 2014.
<b>Field:</b>	Employment
<b>Legislative provisions:</b>	Law on Equal Treatment in Employment and Occupation N. 58(I)/2004; Law on Pensions N. 97(I)/1997; the Combating of Racial and other Forms of Discrimination (Commissioner) Law 42(I)/2004.

### Content

**Case:** The applicant was a former public servant who had opted to retire before reaching the age of 45 and who was denied part of the retirement benefits available to other retiring public servants because of her young age. She applied to the Supreme Court under article 146 of the Constitution, which sets the procedure for the judicial review of administrative acts, seeking to annul the 2009 decision of the Ministry of Finance which had denied her the entire retirement package. The Ministry of Finance had relied on article 27(1) of the Law on Pensions N. 97(I)/1997 which provides for fewer retirement benefits for public servants retiring before the age of 45; it foresees for the payment of a lump sum but not the pension, which is frozen until the retiring employee attains the age of 55 (increased to 58 for certain categories of public servants).

In 2008 the Equality Body had ruled that the said legislative provision amounted to age discrimination prohibited by the Law on Equal Treatment in Employment and Occupation N. 58(I)/2004 which transposed Council Directive 2000/78 and had proposed its amendment. The Attorney General to whom the Ministry of Finance had applied for his opinion, did not share the Equality Body's position, considering that Directive 2000/78 and its transposing law 58(I)/2004 provide that the Directive does not affect national arrangements as regards retirement age.

Relying on the opinion of the Attorney General, the Ministry of Finance informed the applicant that the legislative provision on which it had relied in order to calculate her retirement benefits did not violate the equality acquis and therefore need not be amended.

**Decision of the Court:** The Supreme Court considered the following questions put by the applicant:

- Whether the decisions of the Equality Body issued under Law 58(I)/2004 (transposing Council Directive 2000/78) and under Law 42(I)/2004 (setting out the mandate of the Equality Body) were binding on public administration; and
- Whether article 27(1) of the Pensions Law N. 97(I)/97 violates Law 58(I)/2004 for introducing age discrimination and whether it ought to be amended, under article 16 of Law 58(I)/2004.

As regards the first question, Law 42(I)/2004 setting out the mandate of the Equality Body provides in article 39 that the Equality Body must inform the Attorney General regarding legislative changes deemed necessary in order to comply with the equality acquis, following which the Attorney General must inform the Council of Ministers regarding measures to be taken. The Supreme Court concluded that the validity of the opinion of the Attorney General is thus subject to judicial review. It added that article 39 of Law N. 42(I)/2004 can only be interpreted so as to mean that the Attorney General must inform the executive regarding changes in the legislation deemed necessary by the Equality Body because the law contains unlawful discrimination. The Court stated that the wording in article 39 as regards “measures that can be taken” can only mean measures based on the recommendations of the Equality Body; had the legislator intended to give power to the Attorney General to reject the recommendations of the Equality Body, the wording of the law would have explicitly provided that the Attorney General may adopt, amend or reject the recommendation.

The Court further noted that Law 58(I)/2004 gives exclusive jurisdiction to the Equality Body to examine discrimination complaints and therefore any decision of the Equality Body can be checked by a body that is hierarchically higher than the Equality Body but not by the Attorney General, whose mandate is restricted to advising the Minister or Ministers about measures to be taken on the basis of the Equality Body’s recommendations. In the present case, the public administration rejected the applicant’s claim relying on the opinion of the Attorney General, which was based on an incorrect interpretation of the law and ignored the recommendation of the Equality Body; this procedure was wrongful and in breach of article 39 of Law 42(I)/2004.

Article 16 of Law 58(I)/2004 provides for the annulment of any law, regulation or order that contains direct or indirect discrimination and for the duty of the public authority to so amend or annul the law that is contrary to this provision.

The Court ruled that the decision as regards the applicant’s retirement package was wrongful and ought to be set aside. The applicant’s request for referral of a number of questions to the CJEU was therefore also rejected.

**Internet link source and additional information:**

[http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3\\*%20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3*%20and%2058(%E9)#)