



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

NEWS REPORT

| | |
|----------------------------------|--|
| Country: | Cyprus |
| Title: | Supreme Court rejects argument that quotas in favour of persons with disabilities are against the equality principle |
| Date: | 6 October 2015 |
| Expert: | Corina Demetriou |
| <u>Context</u> | |
| Issue at stake: | The Court rejected an application which had sought to challenge the decision to appoint as teachers two persons with disability on the basis of a law setting quotas in employment of persons with disabilities in the public sector |
| Ground of discrimination: | Disability |
| Source: | Costas Tsikas et al v The Republic of Cyprus through the Educational Service Committee, Supreme Court, Review Jurisdiction, Case No. 1519/2010 and 1520/10, 3 September 2015 |
| Field: | Employment |
| Applicable law: | Law on hiring of persons with a disabilities in the wider public sector (Special Provisions) ¹ |

Content

Case: The claimants applied to the Court seeking to annul a decision of the respondents which had appointed two other parties (hereinafter 'the interested parties') as teachers in public schools. The claimants had been listed in the catalogue of persons awaiting appointment in public schools in positions 77 and 75 respectively; the interested parties were listed in positions 755 and 1261 respectively. The interested parties were also listed in the catalogue of teachers with disabilities awaiting appointment, under numbers 1 and 2 respectively. This catalogue had been compiled in accordance with a law introducing quotas for persons with disabilities in the public sector² (hereinafter 'the quotas law'). The claimants argued that the quotas law violates articles 20 and 21 of the Fundamental Rights Charter, article 14 of the ECHR and article 28 of the Constitution. They claimed that the quotas law results in unfair treatment between the candidates competing for a position in the public sector and differentiates on the basis of personal characteristics and not on the basis of the 'correct and single measure of judging candidates, which is their ability to fulfil the duties of the position'.

The claimants maintained that the priority given to the interested parties violated the principle of equality since the decision to appoint them as teachers in spite of the order of priority of the catalogue had breached the order of seniority and therefore affected their

¹ Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος] Ν. 146(I)/2009. Available at www.cylaw.org/nomoi/enop/non-ind/2009_1_146/full.html.

² Law on hiring persons with disabilities in the wider public sector (special provisions) of 2009 N. 146(I)/2009 [Ο περί Πρόσληψης Ατόμων με Αναπηρίες στον Ευρύτερο Δημόσιο Τομέα (Ειδικές Διατάξεις) Νόμος του 2009], N. 146(I)/2009) article 4.

listing in the order of priority. They argued that the compilation of the catalogue of persons with disability was in itself unconstitutional and unlawful.

Decision of the Court:—The Court rejected the argument that quotas are unlawful and disagreed with the submission of the claimants that previous Supreme Court judgements had established that laws providing for quotas were unconstitutional. The Court clarified that the equality principle as established in Article 28 of the Constitution safeguards against arbitrary differentiations but does not exclude reasonable ones which are allowed as a result of the essential nature of the circumstances. In such cases, the Court added, differential treatment of unequal or exceptional situations does not amount to a deviation from, but on the contrary to a practical implementation of, the equality principle; in this case the priority given to persons with disabilities falls within the boundaries of reasonable differentiation precisely for implementing equality. The Court cited ECtHR rulings to state that protection from discrimination is violated when states fail to offer different treatment to persons whose circumstances are significantly different³ and referred to EU Directives⁴ for combating discrimination which expressly provide for the adoption of positive action for the purpose of balancing disadvantages due to a protected characteristic. The Court further cited the CJEU ruling in the case of *Johnston v. Chief Constable of the Royal Ulster Constabulary*, case No. 222/84 of 15 May 1986, to establish that any exception to such differential treatment must be narrowly construed as the EU gives emphasis to the individual rights recognized by EU law. The Court rejected the claimants' submission that the burden of priority arrangements must be borne by the state and not by individuals, such as the claimants themselves, relying on the principle of proportionality when a legitimate aim is being pursued, as was the case here.⁵ The Court concluded that the differential treatment is deemed reasonable under the circumstances. The claimants' application was therefore rejected and the decision to appoint the interested parties in the public service was confirmed.

Internet link source:

http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015
Last accessed 05.10.2015.

³ The cases cited were *Thlimmenos v Greece*, Case No. 34369/97 and *Pretty v United Kingdom*, Case No. 2346/02.

⁴ The Directives cited were: 2000/43/EC, 2006/54/EC, 2004/113/EC. The Court made a number of mistakes in its citations: it states that article 5 of Directive 2006/54/EC provides for reasonable accommodation measures for persons with disabilities; that Directive 2000/43/EC provides for gender equality; that Directive 2006/54/EC provides for Equality in Employment etc. The Court failed to mention Directive 2000/78/EC and the CRPD.

⁵ The Court cited the CJEU ruling in *Burden v United Kingdom*, Case No. 13378/05 to support its finding on proportionality and legitimate aim.