



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

### NEWS REPORT

<b>Country:</b>	Cyprus
<b>Title:</b>	Supreme Court finds that age restriction in a disability benefit amounts to age discrimination that cannot be justified on the basis of the poor state of public finances Cyprus
<b>Date:</b>	18 March 2016
<b>Expert:</b>	Corina Demetriou
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The Court accepted an application from a disabled claimant aged 65+ for the judicial review of an administrative decision which rejected his application for a disability benefit on account of an age restriction contained in the grant scheme.
<b>Ground of discrimination:</b>	Age, disability
<b>Source:</b>	<i>Petros Michaelides v The Republic of Cyprus through the Minister of Labour and Social Insurance</i> , Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016
<b>Field:</b>	Access to social provision
<b>Applicable law:</b>	Constitution of the Republic of Cyprus article 28, Law on Persons with Disabilities N. 127(I)/2000, CRPD, The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004

### Content

**Case:** In 2012 the claimant applied for a grant under a welfare scheme for severe kinetic disability to the authorities, attaching among other documents a medical certificate showing that he had suffered a stroke that confined him to a wheelchair after his 65<sup>th</sup> year of age. The welfare scheme in question excludes applicants aged under 12 and over 65 years unless they have become eligible before they turned 65.<sup>1</sup> The claimant's application to the Department for Social Integration of Persons with Disabilities for a grant under this scheme was rejected. In July 2012 his son contacted the Department for Social Integration of Persons with Disability of the Ministry of Labour asking for the deletion of the age limit in the scheme. The Department responded that they were aware that some of their schemes needed modifications but due to restrictions in finances as a result of the economic crisis they were "unable to immediately modernize the scheme", as they put it. In November 2012 another request was addressed by the claimant to the authorities, this time to the Labour Minister, asking for the removal of the age restriction from the scheme. In support of this request, the claimant attached a decision of the Equality Body, which had meanwhile been appointed as monitoring body for the

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<sup>1</sup> For details, see the terms of the scheme at [http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd10\\_en/dsdpd10\\_en?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsdpd10_en/dsdpd10_en?OpenDocument).

implementation of the CRPD, in relation to a complaint submitted by the claimant, which established that the age restriction in the scheme amounted to age discrimination prohibited by law and that the issue would be referred to the Department for Social Integration of Persons with Disabilities once again when public finances improve. The Labour Minister's response was along the same lines, i.e. that she was aware that the scheme needed revision but until it is revised the Ministry is obliged to apply the condition set in the scheme, which exclude the claimant due to his age. The claimant applied to the Supreme Court for judicial review seeking to set aside the Minister's decision, claiming age discrimination in violation of article 28 of the Constitution, of the CRPD and of the law setting up the Equality Body.<sup>2</sup> Counsel for the respondent claimed that the application should be rejected because the Minister's letter did not constitute an executory administrative act which can be subjected to judicial review because it was merely advisory in nature and repetitive of the decision of the Department, since the issue fell within the mandate of the Department and not of the Minister. The respondents further argued that the application to the Minister did not introduce any new evidence to justify a new investigation and the issue of a new decision for the claimant. The claimant argued that the decision of the Equality Body was the new evidence in light of which the Minister was called upon to decide on the claimant's case.

**Decision of the Court:** Adopting the claimant's argument, the Court rejected the respondent's preliminary objection and found that since the scheme itself did not foresee any appeal procedure, the claimant was justified in applying for judicial review of the act of the Minister, since she holds a superior position over the issuing body, which is the Department. Besides, since the Minister had evaluated the claimant's application anew assessing also the question of age discrimination, the respondents were not justified in denying the Minister's competence to decide.

In relation to the substance of the claim, the Court rejected the respondent's argument that no discrimination occurred because the claimant was treated in the same way as other persons in his position and his age group; the court found that the claimant was obviously eligible for the grant but was excluded because of his age, adding that the age restriction in the scheme violated the Law on Persons with Disabilities N. 127(I)/2000. The court added that the age criterion was not connected with an objective and reasonable assessment justifying the differential treatment and was therefore unlawful. The court also dismissed the respondent's argument that the allowance foreseen in the scheme was not protected by a constitutional right as it was discretionary in nature. The court also rejected the respondent's argument that the age restriction was intended to limit the number of applicants at a time of economic crisis, adding that the fiscal interests of the state cannot be described as or equated with a general public interest, especially if this is done in a manner which attempts to justify exclusions of individual rights. The Court stated that deviations are only allowed to the extent that the constitutional provisions themselves allow and subject to the proportionality principle. The Minister's rejection of the claimant's application was annulled. The judicial review procedure does not foresee the issue of orders for corrective measures to be taken in order to the scheme to be revised or the claimant's application to be satisfied.

**Internet link source:** [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016)  
Last accessed 15/03/2016.

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<sup>2</sup> The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004.