



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

### NEWS REPORT

<b>Country:</b>	Greece
<b>Title:</b>	Indirect gender discrimination in access to Police Academy - Preliminary reference to CJEU
<b>Date:</b>	3 November 2016
<b>Expert:</b>	Sophia Koukoulis-Spiliotopoulos
<b>Context</b>	
<b>Issue at stake:</b>	Common minimum height requirement for men and women for access to the Police Academy
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 23 of the EU Charter of Fundamental Rights; Directive 2006/54/EC (Recast); Article 4(2) of the Greek Constitution; Article 1(1) of Presidential Decree 90/2003.

### Content

**Law/Case law development:** Following the abolishment of maximum quotas for the access of women to the Police Academy, Article 1(1) of Presidential Decree (PD) 90/2003<sup>1</sup> raised the minimum height requirement for women, which was 1.65 m,<sup>2</sup> to the existing minimum height requirement for men (1.70 m).<sup>3</sup> In 2008 and 2010, the Council of State (Supreme Administrative Court – CS)<sup>4</sup> held that this provision was compatible with both Article 4(2) of the Greek Constitution<sup>5</sup> and Directive 76/207/EEC,<sup>6</sup> as it did not entail indirect discrimination to the detriment of women.<sup>7</sup> The CS dealt again recently with this issue; this time it made a preliminary reference to the Court of Justice of the European Union (CJEU) (CS judgment No. 1420/2016).

**Key points of analysis:** The issue at stake is whether a provision fixing a common minimum height requirement for access of men and women to the Police Academy creates indirect discrimination against women. This would be the case, according to Article 2(1)(b) of Directive 2006/54, if it is established or presumed that this provision puts women at a particular disadvantage compared with men, unless it is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary. The Greek State must provide concrete justifications – not mere

---

<sup>1</sup> OJ A 82/2003.

<sup>2</sup> By virtue of PD 4/1955, OJ A 1/1955.

<sup>3</sup> See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2009), 'Greece', *European Gender Equality Law Review* 1, pp. 60-63, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2016.

<sup>4</sup> CS 1247/2008, 2367 and 2369/2010.

<sup>5</sup> Article 4(2) of the Greek Constitution: 'Men and women have equal rights and obligations'.

<sup>6</sup> Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 39, 14.2.1976, pp. 40-42.

<sup>7</sup> See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2009), 'Greece', *European Gender Equality Law Review* 1, pp. 60-63, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2016.

generalisations<sup>8</sup> - by proving that a height of at least 1.70 m is necessary for the discharge of every specific police duty, irrespective of gender stereotypes.

In its judgment (No. 1420/2016), the CS invoked, *inter alia*, Directive 76/207, as modified by Directive 2002/73/EC.<sup>9</sup> In particular, it quoted Article 2 thereof, which contains the definitions of direct and indirect discrimination on the ground of sex and allows 'as regards access to employment, including the training leading thereto, a difference of treatment which is based on a characteristic related to sex, where by reason of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate'. The CS also quoted the provisions of Article 3 of Directive 76/207, as modified by Directive 2002/73, which prohibit direct and indirect discrimination on the ground of sex in the public or private sectors regarding, *inter alia*, access to employment and vocational training. Furthermore, the CS noted that the above Directives were replaced by Directive 2006/54/EC (Recast) which contains provisions similar to the above that are of direct effect.

The CS also noted that 'measures related to access to employment, training and working conditions in the army or other militarily organised corps are not excluded from the scope of the above Directives' and that 'the adoption of derogations to the equal treatment principle are only allowed in specific and clearly provided cases of threat to public security, in accordance with the principle of proportionality which requires that derogations do not exceed what is appropriate and necessary for achieving the aim pursued by the measure (C-222/84, *Johnston*, C-273/97, *Sirdar*, C-285/98 *Kreil*)'. The CS further recalled that 'there is indirect discrimination on grounds of sex where a criterion or qualification, although formulated in a neutral way, disadvantages – or leads to complete exclusion - in practice a much larger percentage of persons of one sex regarding the opportunity to access vocational training and employment, promotion and working conditions, except if this different treatment is due to factors which are objectively justified and are unrelated to any discrimination on grounds of sex (C-100/95. *Kording*, C-243/95, *Hill*, C-187/00, *Kutz-Bauer*, C-196/02, *Nikoloudi v.OTE*)'.

The CS further noted that 'in the instant case, the question arises whether the applicable provisions of PD 90/2003, which fix a common minimum height of 1.70 m as a necessary qualification of male and female candidates for access to the training leading to employment in the Greek Police, conflict with the above Directives 76/207/EEC, 2002/73 EC and 2006/54/EC, because entailing indirect discrimination on grounds of sex, given that, as it is set out in the [claimant's] pleadings and it results from scientific research data provided by the claimant, as well as from common experience, female candidates fulfill the above condition at an overwhelmingly lower percentage than male candidates'.

Finally, 'in view of the fact that the issue at stake has not been clarified by the CJEU', the CS deemed it necessary to submit to the CJEU, in accordance with Article 267 of the Treaty on the Functioning of the EU, the following preliminary question:

'Is the provision of Article 1(1), which modified Article 2(1) of PD 4/1955<sup>10</sup> and which provides that the civilian candidates to the Schools for Officers and Constables of the Police Academy must, among other qualifications, "have a height (men and women) of at least 1.70 m.", compatible with the provisions of Directives 76/207/EEC, 2002/73 EC and 2006/54/EC, which prohibit any indirect discrimination on grounds of sex regarding

<sup>8</sup> See in particular, CJEU Cases C-196/02 *Vasiliki Nikoloudi v. Organismos Tilepikinonion Ellados AE* [2005] ECR I-1789, Paragraph 52; C-167/97 *Seymour-Smith and Perez* [1999] ECR I-623, Paragraph 76.

<sup>9</sup> Directive 2002/73/EC on the implementation of the principle of equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269, 5.10.2002, pp. 15-20.

<sup>10</sup> OJ A 1/1955.

access to employment, vocational training and promotion and working conditions in the public sector (except if this different (in result) treatment is due to factors which are objectively justified and are unrelated to any discrimination on grounds of sex, and it does not exceed what is appropriate and necessary for serving the aim pursued?').

**Internet link sources:**

PD 4/1955, OJ A 1/1955; PD 90/2003 OJ A 82/2003, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 2 November 2016.

Council of State judgment No. 1420/2016, Labour Law Review (Επιθεώρησης Εργατικού Δικαίου), vol. 75, July-August 2016, Issue No. 7 (1775), pp. 877-875 (in Greek), accessed 2 November 2016.