



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

NEWS REPORT

Country:	Cyprus
Title:	Direct age discrimination in the age criterion in a job advertisement of the Nicosia Municipality
Date:	14 December 2016
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<u>Context</u>	
Issue at stake:	The equality body rules that age discrimination exists even if this was to be applied only as last resort where candidates scored equally on other criteria
Ground of discrimination:	Age
Source:	Report of the Equality Authority regarding unlawful direct discrimination on the ground of age in the announcement of vacancies by the Nicosia Municipality for 11 fixed term employees, 6 September 2016, File No. A.K.I. 18/2015
Field:	Employment
Applicable law:	The combating of racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004; Law on Equal Treatment in Employment and Occupation N. 58(I)/2004

Content

Case: In May 2015 the Equality Body received a complaint that in April 2015 the Nicosia Municipality advertised for 11 vacancies. The advertisement stated that applicants would be assessed on the basis of their academic qualifications and experience in related duties. Applicants scoring equally on these criteria would be further assessed on the basis of their date of birth (priority was to be given to younger applicants). In response to the Equality Body's investigation, the Mayor of Nicosia argued that the age criterion would be applied only where the applicants had scored equally on the first two criteria, adding that the same system applies to promotions in the public sector. The Mayor argued that in the end the Municipality did not have to resort to the age criterion because the applicants did not score equally on the first two criteria.

Decision of the Equality Body: The Equality Body found that differential treatment based on age can only be justified if the conditions set in the law¹ with regard to proportionality and legitimacy of the aim are met. This means that the Municipality must prove that there is no better way for achieving its aim with a lesser impact on the right to equal treatment and that the aim has significant benefits which justify the negative impact on equality. In this case, the criteria set by the Directive and by the transposing legislation must apply in addition to the criteria set by the advertisement. The report referred to the CJEU ruling in the case of Hütter² which established that less favourable

¹ Equal treatment in employment and occupation N. 58(I)/2004, article 5(2), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html

² CJEU, Case No. C-88/08 available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=75456&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=438599>.

treatment of persons who acquired professional experience before reaching 18, compared to persons who acquired it after this age, infringed Directive 2000/78. The CJEU distinguished between offering a better reward to more experienced workers and offering differential treatment using as a criterion the time of acquiring professional experience. Such a treatment could not be objectively justified because the means used were neither appropriate nor necessary for reaching a legitimate goal.

The report found that the aim behind the age criterion in this case was not legitimate, as it merely sought to address the dilemma of candidates scoring equally on the first two criteria set. The aim was not directly or indirectly connected to employment policy nor could it otherwise be justified within the remit of the Directive. By introducing the age criterion, the Municipality expressed its preference for younger candidates without justifying this preference on any of the exceptions foreseen in the Directive. If the age criterion had been applied, it would lead to less favourable treatment of candidates scoring equally on all other criteria, so essentially the Municipality was on the one hand trying to address the dilemma of candidates scoring equally but at the same time secure that younger rather than older employees would be joining its workforce. As a rule, employers tend to justify the age criterion in favour of younger employees through the inaccurate and stereotyped perception that older persons do not have the same will, readiness and capacity to respond to job requirements and cannot adapt to developments and new needs. In law however, the age criterion can only be justified if it meets the requirements of the principle of proportionality. The report concluded that the Municipality's age criterion amounted to unlawful direct discrimination and recommended that in the future the possibility of a candidate scoring equally be addressed through other means and not through age. No sanctions were imposed.

Key points of analysis: In spite of the fact that age discrimination in access to employment is very common, the evidential difficulties involved often mean that it cannot be adequately addressed. The case at hand and the cascading system of criteria set by the Municipality offered an opportunity for setting parameters and indicators to address the issue. However, the delay in examining such complaints usually means that third party rights are created, which renders the Equality Body's meaningful intervention difficult.

Internet link source:

[www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/\\$file/AKI182015_06072016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AD1A8BF2BBDAFC1FC2257FFD001D498C/$file/AKI182015_06072016.doc?OpenElement).