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NEWS REPORT

Country:	Cyprus
Title:	Reference number 2/2016 of Cyprus Supreme Court: Certain Legal Persons Public Law [Appointment of Boards of Directors] [Amendment] Law of 2016
Date:	24 July 2017
Expert:	Lia Georgiades
<u>Context</u>	
Issue at stake:	The Board of Directors of any of the certain legal persons governed by public law is composed by members of whom at least one third belongs to either sex
Ground of discrimination:	Sex, national origin
Source:	Legal Adjudication of Supreme Court of Cyprus
Field:	Positive action, Boards of Directors
Applicable law:	Articles 28 and 35 of the Constitution of the Republic and the Principle of Equality

Content

The President of the Republic, by his reference No.2/2016 to the Supreme Court, asked for the Supreme Court's legal adjudication whether the Certain Legal Persons Public Law [Appointment of Boards of Directors] [Amendment] Law of 2016, governed by Public Law, is inconsistent and contrary to Articles 28 and 35 of the Constitution of the Republic and contrary to the Principle of Discrimination on separation of powers, after the addition of [Article 3. 1] which states: 'the Board of Directors of any of the certain legal persons governed by public law is composed by members of which at least one third belongs to either sex'.

The President of the Republic argued, that the amended Law institutionalises the introduction of positive discrimination in favour of the underrepresented sex, which is inconsistent to Article 28 of the Constitution and cannot be rescued by Article 23 of the Charter of Fundamental Rights of the European Union, nor by Article 157 (4) of the Treaty of the European Union.

In contradiction to that, the House of the Representatives argued that the provision does not violate the principle of equality as safeguarded by Article 28 of the Constitution since it does not create discrimination between similar persons and it is therefore, a reasonable discrimination and not arbitrary which not only serves public interest, but it is also compatible with the principle of proportionality.

Additionally, the House of Representatives argued that Ratifying Law 7/1985 of the United Nations Convention on the Elimination of All Discrimination against Women creates an obligation for States to eliminate all forms of discrimination against women.

The Law also does not restrict Article 28 but confirms gender equality which is part of the right to equality and is not an unequal treatment of similar situations. Additionally, the Law does not violate the Principle of Discrimination on separation of powers and is duly justified.

Besides that, the House of Representatives also argued/claimed that the Law does not violate the principle of separation of powers and that it is therefore, duly justified.

The Supreme Court examined the facts before it and decided that: ... our case law is clear that such provisions, as introduced by the Law, violate the principle of equality as enshrined in Article 28 of the Constitution and binds all according to Article 35 of the Constitution (Kittis and Others v Republic (2006) 3 JSC 734; Republic v Constantinou [2002] 3 JSC 534, in which it was emphasized that the favourable treatment of persons mentioned in the Law is done against specified candidates, who are asked to undertake the responsibility that the whole society has for the class of persons that the Law wants to favor. In addition, the Law was not justified on the ground that the discrimination, made by it, was just and reasonable so as to overcome the obstacle of Article 28 of the Constitution (Republic v Christoforou and Others (1986) 3 CLR, 1523.

Importantly, the Supreme Court stated that both Article 157 (4) of the Treaty of the European Union and Article 23 of the Charter of Fundamental Rights are not applicable in this case since they do not provide any measures which aim to any special advantages in favor of the less represented sex.

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