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NEWS REPORT

Country:	Belgium
Title:	Age discrimination before the Belgian Council of State
Date	23 October 2017
Expert:	Bribosia Emmanuelle
<u>Context</u>	
Issue at stake:	Maximum age as an occupational requirement not discriminatory according to the Belgian Council of State
Ground of discrimination:	Age
Source:	Ruling of the Council of State no. 239.217 adopted on 26 September 2017
Field:	Employment
Applicable law:	Directive 2000/78/EC and the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination

Content

Case: A proceeding for annulment was initiated against a refusal to appoint a candidate for a position at the Brussels Regional Agency for Public Cleanliness because of his age. A regulation provides that 35 is the maximum age to apply for this position. This condition does not apply to workers hired by the Regional Agency for Cleanliness before they were 35. The claimant, who is older, asserts that fixing the maximum age of 35 for candidates for a position of worker for public cleanliness cannot constitute a genuine occupational requirement and is, therefore, a direct discrimination based on age, prohibited by the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination that transposes Directive 2000/78.

Decision of the Court: According to the Council of State, this condition is not illegal and is necessary to guarantee that the position can be fulfilled for a certain amount of time by newly appointed workers. Indeed, the Council considered that, since the position requires excellent physical condition, it is no longer possible for people of a certain age to fulfil the essential requirements of the work at stake. The Council of State also underlined that, in this matter, its control is only a marginal one (standard of abuse of authority) and that it is for the claimant to prove that the requirement is not essential for the position. The proceeding for annulment was rejected.

Key points of analysis:

- The maximum age of 35 for applying to a position of public cleanliness worker can be considered as a genuine occupational requirement since it requires an excellent physical condition;
- The Council of State only operates a marginal control to see whether there was not an abuse of authority in the way the public authority decided which requirements candidates should meet;

- The burden of proof regarding the unsuitability of a job requirement (a maximum age here) lies on the claimant.

Internet link source: <http://www.raadvst-consetat.be/?lang=fr>.