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NEWS REPORT

Country:	Greece
Title:	Non-enforcement of principle of equal treatment at competition held by the Ministry of Foreign Affairs
Date:	25 April 2018
Expert:	Athanasios Theodoridis
<u>Context</u>	
Issue at stake:	Discriminatory treatment of candidate employees of Ministry of Foreign Affairs
Ground of discrimination:	Race/ethnic origin, age, disability
Source:	National equality body
Field:	Employment
Applicable law:	Anti-discrimination Law 4443/2016, Article 3, para 1 (a)

Content

Case development: The Greek Ombudsman with the advisory opinion no. 236691/52486/2017, which was published on its website on 28/3/2018, assessed the notice of competition held by the Ministry of Foreign Affairs (no P19GEN - 34379) on the recruitment of five experts, according to which the participation of candidates is excluded when:

- (a) they have become Greek citizens through the process of naturalization, but they have not completed 3 years after the acquisition of the Greek nationality;
- (b) they have not completed the 32nd year of their age;
- (c) they suffer from serious cardiovascular or serious respiratory or nephrology or contagious diseases or serious disorders of the nervous system.

The Ombudsman drew the Ministry's attention on the fact that a differential treatment which relies on one of the protected characteristics, as provided in law 4443/2016¹ (ethnic origin, age, disability), is considered to be permissible only if this characteristic constitutes a substantive and critical professional prerequisite for the nature or the context of the specific professional activities and on condition that the specific aim is legitimate and this prerequisite is proportional. Possible derogations from the principle of equality, deriving from the specific provisions on the competence or the terms for the recruitment of the Experts Sector, must be interpreted and applied in compliance with the principle of equal treatment. Otherwise, they must be considered to be repealed.

The Ombudsman considered that imposing a 3-years condition after the acquisition of the Greek nationality on candidates to participate in the abovementioned competition stands

¹ Greece, Law 4443/2016, Article 4, para.1, On the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions (OJ 232 A/ 09.12.2016).

against the principle of equal treatment since it creates a differential treatment among Greek citizens. As for the minimum age limitation set in the notice of the competition, the Ombudsman highlighted that any differential treatment on grounds of age must be specifically justified, and it must accrue that the age limitation is objectively necessary for the realisation of the legitimate aim pursued, as well as that there is no alternative, less strict measure for the achievement of this aim. Therefore, the Ombudsman considered that the age limitation was not justified.

Finally, as far as the exclusion on grounds of specific diseases is concerned, the Ombudsman supported that the conclusion on whether the candidates are healthy and physically suitable for the duties they will undertake, must be an outcome of an ad hoc medical assessment, according to the procedure prescribed under the Staff Code. It is also doubtful whether the collection and processing of the candidates' health data will be in compliance with the legislation on the protection of sensitive personal data as far as such collection is not necessary for the assessment of their suitability. For all the above-mentioned reasons, the Ombudsman requested the immediate review of the notice of competition terms in order for them to be in compliance with the legislation on equal treatment.

The Ministry responded that it would take into account these remarks in the context of the ongoing amendment of the provisions of its organic law.

Key points of analysis: It is noteworthy that in this advisory opinion the Greek Ombudsman used different approaches for each ground to evaluate whether the differential treatment was justified. On the ground of age, the Ombudsman based its reasoning on the absence of legitimate aim as reflected in the Directive 2000/78/EC (Article 6). On the ground of disability and ethnic origin (nationality), the Ombudsman rather focused on the principle of proportionality as enshrined in the constitution”.

Internet link source: <https://www.synigoros.gr/resources/docs/20180328-synopsi.pdf>.