



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

FLASH REPORT

Country:	Cyprus
Title:	Age restriction in a disability scheme
Date:	31 January 2019
Expert:	Corina Demetriou
<u>Context</u>	
Issue at stake:	The Supreme Court reverses trial Court decision about the legality of an age restriction in a disability welfare scheme
Ground of discrimination:	Age and disability
Source:	Supreme Court of Cyprus, Appeal Jurisdiction, <i>Republic of Cyprus through the Finance Ministry v. xxxxx Lakatamites</i> , ¹ Review Appeal No. 190/2012, 4 October 2018
Field:	Access to social provision
Applicable law:	Article 28 of the Constitution (non-discrimination provision)

Content

Facts: In 2010 the claimant filed a judicial review application at the Supreme Court seeking to reverse a decision of the Ministry of Finance that had rejected his application for a grant under a scheme which funds the acquisition of a car for persons with disability. The rejection by the Ministry of Finance relied on the fact that he had already turned 70 which was the age limit foreseen in the scheme. At first instance, the trial court upheld his claim, ruling that his exclusion from the scheme on the ground of his age amounted to unlawful discrimination in contravention of article 28 of the Constitution and of the principle of equal treatment. The Republic appealed the trial court ruling on the grounds that the right to financial assistance is not protected by the Constitution and, in the case at hand, the claimant had not been treated less favourably than other persons of his age under the same circumstances.

Decision of the Court: The Court concluded that equality is infringed only if the differential treatment does not rely on an 'objective and reasonable discrimination' that differential treatment must be examined in connection with the aim it serves and the realities on the ground at any given time. The age limit of 70 was found not to infringe the equality provision of the Constitution, as the essential nature of things in the given case justified the imposition of reasonable discrimination premised upon objective criteria applied on all affected persons without exception. Removing the age restriction in the scheme was likely to lead to an uncontrollable and sharp increase in the number of eligible persons which would render the scheme economically unsustainable given the state of public finances. The Court further concluded that the case at hand fell outside the scope of the laws transposing the Equality acquis which had been invoked by the claimant during trial since there was no act of discrimination prohibited by law or any violation of the equal treatment principle so as to trigger the application of these laws.

¹ The respondent's first name was concealed for data protection purposes.

According to the Court's interpretation, differential treatment based on age may be lawful if it is reasonable and based on objective criteria, which include the state of public finances. If other persons bearing the same characteristics as the claimant (including the claimant's age) are or would be treated equally, then no prohibited discrimination has occurred. At this stage of the judicial examination, the equality legislation which draws on the *acquis* did not come into play and therefore could not impact the Court's reasoning. Since this examination led to the conclusion that the differential treatment was reasonable, the conclusion is that it is not prohibited by law. This conclusion places the act complained of outside the scope of the equality legislation.

The Court allowed the appeal of the Republic and reversed the trial Court decision, essentially rejecting the Claimant's argument that the age limit in the disability scheme was discriminatory. The decision established that the constitutional equality provision does not prohibit 'reasonable discrimination' premised upon an objective assessment of essentially different real situations based on the public interest. According to the Court, since no discrimination could be established under the Constitution, there was no scope of application for the equality legislation drawing on the equality *acquis*, because the legislation covers only 'discrimination prohibited by law'.

Key points of analysis: The decision is highly problematic as regards the application and the implementation of the equality *acquis* in Cyprus. The exceptions foreseen in the Employment Equality Directive are far narrower than the test of reasonableness used by the Courts in Cyprus in order to assess the applicability of article 28 of the Constitution. Where an act passes this vague test of reasonableness, which is the case in most of the instances of less preferential treatment, then according to the Court this places the act outside the scope of the equality *acquis*, leaving no more for the triggering of the more favourable provisions of the Employment Equality Directive and essentially cancelling the latter. The state of public finances was, in the past, held by the Equality Body to be inadequate as a justification for departing from the equality principle.

Internet link source:

www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2018/3-201810-190-12-3anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A.