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FLASH REPORT

Country:	Greece
Title:	Indirect gender discrimination in access to seasonal firefighters
Date:	20 April 2020
Expert:	Panagiota Petroglou
Context	
Issue at stake:	Award of bonus points to candidate seasonal firefighters who have served in the army or in other corps to which women have no or only limited access
Grounds of discrimination:	Gender
Field of application:	Employment
Source:	National legislation
Applicable law:	Article 1(21) Presidential Decree 38/2020, OJ A 73/26.03.2020

Content

Applicable law: Article 1(21) Presidential Decree 38/2020, OJ A 73/26.03.2020, (hereinafter 'the new provision') amended Article 8(1)(a) of Presidential Decree 36/2019, OJ A 62/22.04.2019, concerning access to the posts of seasonal firefighters.¹ According to the new provision, 50 bonus points are awarded to candidates who have served as volunteer soldiers for a 5-year term ('εθελοντές πενταετούς υποχρέωσης'), as professional soldiers in the Greek Army ('επαγγελματίες οπλίτες - ΕΠ.ΟΠ.'),² as reserve officers ('έφεδροι αξιωματικοί'), or in the Special Forces of the Greek Army³ ('Ειδικές Δυνάμεις') or the Presidential Guard ('Προεδρική Φρουρά').⁴ On 30 March 2020, the Chief of the Fire Brigade⁵ issued a call for 1.300 seasonal firefighters under a fixed-term employment contract, which is renewable for up to five consecutive firefighting seasons. The call replicates the new provision on the award of bonus points.

On this occasion, 29 members of the Greek Parliament (of SYRIZA, the political party of the opposition) submitted a question⁶ to the competent Minister of Citizen Protection. The MPs argued that this provision places female candidates at a significant disadvantage. This

¹ In Greece the firefighting season lasts from 1 May to 31 October each year.

² For many years there has been a blanket exclusion of women from all the operational and technical work posts of professional soldiers ('Επαγγελματίες Οπλίτες' - ΕΠ.ΟΠ.). CS Judgments Nos 1323/2016 and 1324/2016 (Full Section) found that the provisions of Article 1(2) Act 2936/2001, OJ A 166/25.07.2001, which provided such a blanket exclusion, were in breach of the constitutional provisions on gender equality and Directive 76/207/EC.

³ In Greece compulsory military service is limited to men.

⁴ Women do not have access to the Presidential Guard, which is staffed by soldiers of the Army selected on the basis of certain criteria, *inter alia* a minimum height requirement of 1.88m.

⁵ Decision of the Chief of the Fire Brigade No 17980 οικ. Φ. 211.5/30.03.2020 [ΑΔΑ:ΩΜΩΒ46ΜΤΛΒ-Π4Ρ].

⁶ According to Articles 126-128B of the Regulation of the Greek Parliament, Members of the Parliament can address written questions to Ministers for any public issue with the aim to inform the Parliament thereof. The Ministers have to answer in writing to the MPs within 25 days.

is due to the fact that (a) an overwhelming majority of those serving in the Special Forces ('Ειδικές Δυνάμεις') of the Greek Army are men, as a result of the qualification process and access criteria thereto and (b) access to the Presidential Guard ('Προεδρική Φρουρά') is limited to men as it is staffed by selected soldiers serving their military service. This constitutes indirect discrimination against female candidates in breach of Article 11(1), (2) Act 3896/2010 implementing Directive 2006/54⁷, which will be perpetuated in the future given that the fixed-term contracts of the successful candidates are renewable for up to five consecutive firefighting seasons.

Key points of analysis: The issue of the award of bonus points to candidates who have served in the army or in other corps to which women have no or only limited access has been raised in the past, concerning: (i) access to the Port Police School for Officers and (ii) access to the corps of Special Guards ('Ειδικοί Φρουροί') of the Greek Police.

Regarding access to the Port Police School for Officers, the relevant call⁸ was open to both genders, albeit bonus points were provided to candidates who had served in the Greek Army as reserve officers and warrants (2.000 bonus points), sergeant-majors and sergeants (1.000 bonus points) and corporals (500 points). In its Judgment No 1016/2015, the Council of State (hereinafter 'CS') found that female candidates were put at a significant disadvantage, as women do not serve military service in Greece. However, this disadvantage was objectively justified due to the nature of the job, as Port Police officers are military staff, governed by the same provisions applicable to their colleagues in the Navy. Thus, in its reasoning, the CS recalled two relevant CJEU judgments: *Dory*⁹ and *Schnorbus*,¹⁰ finding that the impugned provision did not introduce indirect discrimination to the detriment of women because (a) it was objectively justified by the legitimate aim of public security and the need to select candidates of a high qualification pertinent to the duties of Port Police and (b) it counterbalanced the delay to the career of male candidates of the categories who are awarded the bonus points. According to the CS, the 500, 1.000 or 2.000 bonus points awarded could be easily counterbalanced either by scoring ½, one or two marks higher, respectively, than male candidates in the certificate of Greek secondary education or, where relevant, by having knowledge of a foreign language. The Court implicitly considered that female candidates excel in these qualifications. Consequently, the impugned provision was found to be appropriate and necessary to achieve the legitimate aim. With the same reasoning, the CS confirmed the legality of the impugned provision, which reserved four out of 33 posts in total to candidates who had served in the 'Special Forces' of the Greek Army, i.e. exclusively male candidates.

The second case concerned access to 1.200 posts of the Special Guards ('Ειδικοί Φρουροί'), a special corps of the Greek Police. The impugned provision¹¹ provided, *inter alia*, the award of 500 bonus points to candidates who had served in the Greek Army as reserve officers or in the Special Forces ('Ειδικές Δυνάμεις'). The Administrative Court of Athens, in its Judgment No 2455/2015, made explicit reference to CS Judgment No 1016/2015 (above)

⁷ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23–36.

⁸ Decision No 1212.3/12/06/21.11.2006 of the Chief of the Port Police.

⁹ CJEU, C-186/01, *Alexander Dory v. Bundesrepublik Deutschland*, 11 March 2003, para. 40. The Court found that limitation of compulsory military service to men will generally entail a delay in the progress of the careers of those concerned, even if military service allows some of them to acquire further vocational training or subsequently to take up a military career.

¹⁰ CJEU, C-79/99, *Julia Schnorbus v. Land Hessen*, 7 December 2000, ECLI:EU:C:2000:676. In this case a selection procedure accorded preference to applicants who had completed compulsory military or civilian service, which could be done only by men, thus putting in a disadvantage female candidates. The Court found that such provisions are not precluded by Directive 76/207, in so far as such provisions are justified by objective reasons and prompted solely by a desire to counterbalance to some extent the delay resulting from the completion of compulsory military or civilian service.

¹¹ By virtue of Article 9(6) Act 2734/1999, OJ A 161/05.08.1999, Ministerial decision No 7002/12/1-1/26.03.2007, OJ B 419/2007 of the Minister of Public Order, as amended by ministerial decisions No 7002/12/1-κε/2010, OJ B 764/02.06.2010 and 7002/12/1-κη/2011, OJ B 1619/15.07.2011.

and adopted the same reasoning, merely rephrasing it. It consequently held that the impugned provision did not introduce indirect discrimination to the detriment of women.

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