



NEWS REPORT

Date: 19 December 2010
Expert : Corina Demetriou
Title: Self-initiated investigation of the Equality Body regarding the policy at the Open University favouring older candidates
Country: Cyprus
Context

Issue at stake: The Equality Body intervenes to establish that favouring older candidates for University courses amounts to unlawful discrimination.
Ground of discrimination: Age
Source: Equality Body Decision dated 22/11/2010, Ref. A.K.I. 74/2009
Field: Education, access to vocational training.
Legislative provisions: The Combating of Racial and Other Forms of Discrimination (Commissioner) Law 2004, Article 32; Equal Treatment in Employment and Occupation Law 2004; Cypriot Constitution Article 20.1; First Additional Protocol to the European Convention for Human Rights, Article 2; Open University Law of 2002, Article 5(a).

Content

Case: A complainant applied to the Equality Body regarding the 'points system' used by the Open University for the purposes of admission, which allegedly excluded him on grounds of age. The complaint was subsequently withdrawn by the complainant after his application for admission was accepted. The Equality Body nevertheless decided to investigate the matter on its own right, since the procedure involved *prima facie* indirect discrimination on the ground of age. The Open University is a State owned educational institution offering open and distance education, addressing the demand for life-long learning. The procedure for admission to the Open University takes into consideration a number of 'points' in order to decide on admission of applicants. One of the criteria is the

number of years which have elapsed from obtaining a school leaving certificate, which potentially means that older applicants will be preferred. In its exchange with the Equality Body, the Open University admitted applying a policy of preferential treatment towards older applicants, in an effort to avoid discrimination against them in favour of younger applicants who have more opportunities to find a place to study in conventional universities.

Decision of the Equality Body: In its decision, the Equality Body referred to an ECJ ruling¹ establishing that access to university education which prepares the student for obtaining a qualification or a special skill for a certain profession or occupation amounts to access to vocational training. Taking this as a departure point, the report goes on to describe the legislative framework regarding the prohibition of discrimination on the ground of age in access to vocational training including the exceptions foreseen in the law transposing Directive 2000/78/EC, with references to the ECJ rulings in the cases of *Mangold*² and *Palacios*.³ The report then states that it has approached the issue from the perspective of the right to education which is guaranteed by the Cypriot Constitution (Article 20.1), by the First (Additional) Protocol to the European Convention for Human Rights (Article 2) and by Article 5(a) of the Open University Law of 2002 which describes the University's mission as providing to all equal opportunities for learning irrespective of age, place and time of studying. Although the report does not elaborate on the relevance of these legislative provisions, they recall the general equality principle, without the notion of positive action in favour of traditionally disadvantaged groups. In its conclusion, the report states that each case has its own facts and that it is not a rule that younger candidates have more opportunities to study at conventional universities or, vice versa, that older candidates have less opportunities or have not already studied in a conventional university. Finally, the report states that the justification for the criterion under examination does not concern labour market policies, which must in any case be decided by the state and not by educational institutions; as such it does not fall under the exception of the law transposing Directive 2000/78/EC, which allows differential treatment on the ground of age when this refers to labour market policies. The report concludes that the criterion of the number of years which have elapsed since leaving school introduces discrimination prohibited by law and as such should cease to be applied.

¹ Case 293/83, *Gravier v. City of Liège* (1985) ECR 593.

² C-144/04, dated 22.11.2005.

³ C-411/05, dated 16.10.2007.



Internet link source:

At the time of writing, the report had not yet been uploaded on the Equality Body's website.