



NEWS REPORT

Date:	15 June 2011
Expert :	Corina Demetriou
Title:	Supreme Court rules on age discrimination claim
Country:	Cyprus
<u>Context</u>	
Issue at stake:	Supreme Court Judgement does not find age discrimination in an age limit for the position of a prison guard
Ground of discrimination:	Age
Source:	Supreme Court decision Application No. 135/07, <i>Tassos Tratonikola v. The Republic of Cyprus</i> through the Director of the Prisons Department and the Ministry of Justice.
Field:	Employment
Legislative provisions:	The Combating of Racial and Other forms of Discrimination (Commissioner) Law N.42(I)/2004; law 58(I)/2004 and 59(I)/2004 transposing the two Equality Directives, article 28 of the Cypriot Constitution.

Content

Description: An unsuccessful job applicant challenged before the Supreme Court a public service scheme which sets the required age of candidates for the position of prison guard hired on a permanent basis to be between 20-30 years. By way of exception, persons aged between 30-40 could be eligible provided they have served as prison guards for at least a year on a temporary basis. The claimant's job application was rejected on the ground that he was over 30 and, according to an opinion provided by the Attorney general, that his previous service in the position of a prison guard could not be relevant for it was not in a temporary position as required by the scheme. . The claimant argued there was a violation of Article 28 of the Constitution, which prohibits discrimination on all grounds, as well as violation of the Combating of Racial and Other forms of Discrimination (Commissioner) Law N.42(I)/2004¹ and the Law on Equal treatment in Employment and Occupation N.58(I)/2004² which prohibits the fixing of an age limit in job advertisements. The respondent (the Republic) argued that the age limit did not amount to discrimination as it was connected to the nature of the duties of a prison guard.³

¹ This law appoints the Ombudsman as the equality body and sets out its mandate.

² This law roughly transposes Council Directive 2000/78/EC.

Decision of the Court: On 13 April 2011⁴ The Supreme Court found admissible the complainant's claim to set aside the administrative decision rejecting his job application and annulled it. In its reasoning, the Court recalled that Article 28 of the Constitution prohibits discrimination and constitutes a criterion against which any legal provision should be viewed. Article 28 and the right to equality do however not prohibit differential treatment provided that there is an objective assessment of essentially different situations and that difference in treatment is based on public interest (citing a case of 1988).

In other terms, the principle of equality is breached when differentiation is not based on an objective and reasonable discrimination (citing a case of 1969). In the present case, the differentiation between persons applying for a temporary position as opposed to those applying for a permanent position was not objective and could not be justified and the respondent's argument that an age problem existed in the case of persons over 30 who have previously served on a temporary contract as opposed to those having served on a permanent position was very weak and amounted to discrimination between temporary and permanent employees. The Court did not rule however on the age discrimination issue.

The ruling had the effect of reversing the trial Court decision and cancelled the administrative decision by which the applicant's job application was rejected. Unlike the procedure under Law 58(I)/2004, which transposes Directive 2000/78/EC, this procedure does not give rise to compensation.

Internet link: The decision is not available on line.

³ Note from the expert: the exact nature of the duties to be carried out by prison guards are not spelled out in the judgement.

⁴ Application No. 135/07, Tassos Tratonikola v. The republic of Cyprus through the Director of the Prisons Department and the Ministry of Justice .