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## Non-discrimination on grounds of age in the field of Employment and Occupation

*...a brief guide*



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## INTRODUCTION

This Guide has been prepared to give information, advice and practical guidance on matters of age discrimination in the field of employment and occupation, to all parties concerned and especially to employers and employees.

The Guide informs on the relevant legislation of the Republic of Cyprus, it gives guidelines on how to avoid discrimination incidents on grounds of age in employment and it clarifies the cases where different treatment on grounds of age must not be regarded as discriminatory and under which conditions. Moreover, this Guide describes cases of discrimination on grounds of age, which have been brought before the Court of Labour Disputes of the Republic of Cyprus, or are the subject of proceedings for preliminary ruling by the European Court of Justice, or investigation proceedings before the Equality Authority of the Office of the Commissioner for Administration (Ombudsman) as the competent independent Authority with jurisdiction on these matters.

The text of this Guide does not constitute legal advice. Given that each case should be considered according to its real facts, employers should seek legal advice from a lawyer or apply to agencies which are competent for combating discrimination, for further information and guidelines on how to deal with certain cases. The same applies to persons who wish to lodge a complaint about a possible discrimination on grounds of age in employment.

## 1. CYPRUS LEGISLATION

The right to equal treatment in employment is governed by the Equal Treatment Employment and Occupation Law of 2004 (L. 58(I)/2004), which is the harmonisation law for Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation).

### ***The Equal Treatment in Employment and Occupation Law (L.58(I)/2004)***

The said law guarantees the protection against discriminations on grounds of race or ethnic origin, religion or beliefs, sexual orientation and age in the field of employment and occupation. It is noted that the prohibition of discrimination should be implemented also to third-country nationals, yet it does not cover the different treatment on grounds of nationality and does not contain provisions governing the entry and residence of third-country nationals and their access to employment and professional activity.

For the purposes of this Guide, emphasis will be given only to age as a ground of discrimination.

**THE SCOPE OF THIS LAW** covers the industrial relations in both the **private** and **public** sector, and

**THE OBJECT** of this Law is to fight discrimination on grounds of age as regards:

- terms of access to employment, self-employment and work;
- selection criteria and terms of recruitment, in all sectors of activity and on all levels of professional hierarchy, including professional development;
- access to all types and levels of vocational orientation, training, further education and re-orientation, including the acquisition of practical and professional experience;
- working conditions and terms of employment, including terms of dismissals and emoluments; and
- membership and participation to employees or employers organisations.

### **According to the Law's provisions:**

«**direct age discrimination**» exists where one person is treated less favourably on grounds of age than another is, has been or would have been treated in a comparable situation.

«**indirect age discrimination**» exists where an apparently neutral provision, criterion or practice would put persons of a certain age at a particular disadvantage compared with persons of a different age, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

«**harassment**» means the undesirable conduct expressed in words or acts and which is connected to the age of a person, with the purpose or effect of violating the dignity of that person and creating an intimidating, hostile, humiliating, degrading or offensive environment.

**The GENERAL RULE** is the promotion of the principle of non-discrimination on grounds of age in employment, either direct or indirect, and the provisions of the Law aim at implementing the said rule, in order to promote and enforce the principle of equal treatment.

All persons who consider themselves as being offended in the violation of the Equal Treatment in Employment and Occupation Law have the **RIGHT TO LODGE A COMPLAINT** and use any adequate means to prove the violation as well as any material or moral damages they have suffered due to such violation.

The Law also provides for the protection of the person who lodges the complaint or is involved in the proceedings aiming to implement the principle of equal treatment, by prohibiting any unfavourable treatment or consequence against that person.

### 1.1. Age as a ground of discriminatory behaviour

Age as a ground of discrimination differs substantially from other grounds of discrimination defined in the Law due to its continuously changing nature. The age of a person is never the same as opposed, for example, to race or ethnic origin. Moreover, stereotypes on a person change depending on his/her age. This does not apply to persons of different race or sexual orientation, for whom stereotypes are expressed in the same manner during their whole life.

Most times, the less favourable treatment of a person due to his/her age derives from stereotypes, prejudices and consolidated perceptions in relation to the specific age group. For instance, young persons are considered immature, while elderly are considered to be close-minded, unable to assimilate new ideas and without any motives for improvement. Based on the above erroneous and simplified opinions, employers may take decisions that place the persons of a certain age in a less favourable position in comparison with other persons. In such a case, where there is a direct and apparent relation between a person's age and the less favourable treatment, e.g. refusal to hire, the said treatment constitutes discrimination on grounds of age.

### 1.2. Different treatment due to age - Is it always a discrimination?

Different treatment due to age is not an uncommon phenomenon, since we often have cases where age is used as criterion of entry in a profession or position, or cases where experience of a certain number of years is required for promotion, condition that indirectly excludes younger people. However, **the critical question is** whether the criterion of age, which is used in certain circumstances, is unjustified or justified under the provisions of the Law and, by extension, if it constitutes discrimination on grounds of age or not.

### Explicit exceptions of the Law

According to article 5, different treatment on grounds of age regarding all kind of benefits paid by public schemes or schemes treated like other public schemes, including social insurance public schemes or social protection schemes, is excluded from the scope of Law.

Moreover, according to article 6(3), the determination of age for the purposes of retirement or disability allowances offered by professional systems of social insurance, including the establishment of a different age limit for employees or groups or categories of employees and the use of age criteria in the actuarial calculations **does not constitute discrimination**.

### «Possible» exceptions of the Law

According to the provisions of Law 58(I)/2004, different treatment on grounds of age, either direct or indirect, may be justified, if specific and strict conditions are observed.

#### Direct discrimination:

Under article 8 of the Law, different treatment on grounds of age **does not constitute discrimination, if:**

«(1) ...

- (a) *It is objectively and reasonably justified by a legitimate object, in particular with regard to policy in the field of employment, labour market and vocational training; and*
- (b) *the means for the achievement of this object are appropriate and necessary.»*

Therefore, the differentiation between, on one part, the different treatment justified on the basis of legitimate objects of employment, labour market and vocational training policies and, on the other part, the prohibited discriminations are of substantial importance.

According to the above, the necessary conditions for the implementation of an age limit without constituting discrimination are:

- the **existence of a legitimate object**;
- the **objective justification** of this object;
- the selection of **appropriate and**
- **necessary means** for the achievement of this object.

In the process of selecting the means to be used, in order to be appropriate and necessary, according to the principle of proportionality, it should also be proved that:

- (a) There was no alternative criterion, less discriminatory in its implementation, for the achievement of the legitimate object.
- (b) The said criterion is efficient (i.e. the legitimate object has been achieved on the basis of this criterion).
- (c) Advantages from the achievement of this object outweigh the disadvantages, due to the implementation of this criterion.

**In case any of the above elements is missing, the discrimination on grounds of age is not considered justified and continues to apply.**

The above "objective justification test" should apply rigorously in order to avoid any unfair treatment of persons of a certain age on the basis of stereotypes and prejudices.

According to the same article, cases where direct different treatment due to age may be considered justified are specified below:

*"(2) Differential treatment referred to in paragraph (1), may include, inter alia -*  
*(a) the establishment of special conditions for the access in employment and vocational training, for employment and work, including dismissal and remuneration limits, for the young people, the elderly and employees with dependant persons, in order to favour their professional integration or secure their protection;*  
*(b) the establishment of minimum age, professional experience or seniority limits in employment or in some benefits connected to employment;*  
*(c) the establishment of a maximum age limit for recruitment, based on the experience requested for the job or the need of a reasonable period of employment before retirement."*

Paragraph (2)(a) of article 8 refers to the establishment of special conditions, which, once implemented by the employer, may constitute a more favourable treatment in employment, either for young people or the elderly, with the aim to compensate the disadvantages presented in association with their age. It is noted that this provision of the Law does not oblige the employer to take such positive measures, but it ensures that, once these measures are taken, the different (more favourable) treatment received by these groups of employees shall not constitute discrimination.

The establishment of a different age under paragraph 2 of article 8 may be accepted as non discriminatory only where there is full compliance with the provisions of paragraph (1) of the same article. That is to say, where the different treatment has been subjected to the objective justification test and has been judged as non discriminatory.

#### Indirect discrimination:

Based on the definition of indirect discrimination, as described above in Paragraph 1 of this Guide, different treatment on grounds of age, which results from the use of a prima facie neutral practice, provision or criterion, may be considered justified where the said practice, provision or criterion which has been used, is justified objectively by a legitimate object and means of the achievement of this object are expedient and necessary. The objective justification test applies here as well.

**THE DIFFERENCE BETWEEN DIRECT AND INDIRECT DISCRIMINATION** is that direct discrimination on grounds of age may be considered justified only in the cases expressly mentioned by the law and not in a general scope just like in the case of indirect discrimination. So, with regard to direct discrimination, different treatment should relate to institutional objects of the labour market, vocational training and employment policy **only**. To the contrary, indirect discrimination should relate to a wider scope of activities and the object justification of the practice or the measure that is used and which creates indirectly a different treatment on grounds of age are sufficient proof that it does not introduce a discrimination on grounds of age in violation of the provisions of the Law.

#### **General exemption – “Genuine and determinative occupational requirement”**

Under article 5 of the Law, different treatment on grounds of age is permitted in cases where, due to the nature of the specific professional activities or the framework of these activities, a characteristic constitutes a genuine and determinative occupational requirement, when the objective is legitimate and the requirement is proportionate. A similar principle is repeated in article 6 of the Law, regarding employment in the armed forces. In particular, this article defines that different treatment on grounds of age is permitted in relation to employment in the armed forces, to the extent that the establishment of an age limit is justified by the nature and duties of the position. That is to say that even in this article any different treatment on grounds of age is not absolute, but it should be considered as justified.

In order to fully understand the foregoing in their practical aspect, we quote below as examples certain Decisions by the Labour Disputes Court, of the Court of Justice of European Communities and of the Equality Authority of the Office of the Commissioner for Administration (Ombudsman).

## **2. DECISION BY THE LABOUR DISPUTES COURT (LDC)**

### **Age Discrimination in access to employment**

In Case 258/05 (Avgoustina Hadjiavraam v Morfou Cooperative Credit Society), the Plaintiff was excluded, on grounds of age, by the Respondents' clerical staff recruitment procedure, in violation of the Equal Treatment in Employment and Occupation Law. In the said recruitment procedure for the position of clerical assistance – computer operator, an age limit has been imposed, which was the 26th year for lyceum graduates and the 31st year for university graduates. The Plaintiff alleged that while she fulfilled all qualifications for the said position, the Respondents rejected her application on the ground that she was above the age limit which was a prerequisite for recruitment.

The Respondents rejected her allegations and advanced the following arguments:

- The Plaintiff's age has not been taken into consideration in the decision making for recruitment the candidates in the said positions.
- The Plaintiff had less academic qualifications than the candidates who were hired.

The LDC by examining the substance of the case, found that the Plaintiff proved some facts of sufficient importance on which she could base her argument that the reason why she has not been invited to the interview (she suffered a less favourable treatment) and has been excluded from the recruitment procedure is her age. In particular, from the evidence presented before the Court it appears that:

- (a) When submitting her application the Respondents told her that her age poses a problem.
- (b) The Respondents' competent body transmitted the applications to two persons and ordered them to present a list of candidates fulfilling the conditions of vacancy.
- (c) During the recruitment procedure, the Respondents defended the age limit before the Ombudsman who was investigating a complaint of the Plaintiff for unfavourable treatment on grounds of age, saying that they do not want to have “old” employees for this position.
- (d) Two candidates over the age of 30 who had equal or more qualifications from other candidates who were younger and invited to an interview, were rejected from the recruitment procedure at the evaluation stage.

The above facts were judged to prove that the age limit was abided by and that the Respondents showed a preference for younger candidates. Consequently, the burden of proof has been shifted to the Respondents in order to prove that the Plaintiff has not been treated unfavourably on grounds of age, something that was not achieved since they did not give any persuasive explanations and details on the above facts and on how the Plaintiff has been evaluated in order to come to the conclusion that the Plaintiff was not the adequate person to be invited to the interview.

Consequently, the Court decided that the Plaintiff had been subjected to direct discrimination on grounds of age in violation of Law 58(I)/2004.

### 3. DECISIONS BY THE EUROPEAN COURT OF JUSTICE (ECJ)

#### Discrimination on grounds of age – retirement age-limit

Case C-411/05 (*Felix Palacios de la Villa v Cortefiel Servicios SA*) is about a collective agreement which provided for the automatic termination of the working contract when employees reach the age of 65, i.e. the retirement age. The ECJ stated that that national legislation, according to which the fact that a worker has reached the age fixed for compulsory retirement leads automatically to the termination of his employment relationship, affects the duration of the employment relationship between the worker and his employer and, more generally, the engagement of the worker concerned in an occupation by preventing his future participation in the labour force. Consequently, national legislation of that kind must be regarded as directly imposing less favourable treatment for workers who have reached that age as compared with all other persons in the labour force. Therefore, such legislation establishes a difference in treatment directly based on age.

The Court decided that the prohibition on any discrimination on grounds of age must be interpreted as not precluding national legislation such as that at issue in the main proceedings, pursuant to which compulsory retirement clauses contained in collective agreements are lawful where such clauses provide as sole requirements that workers must have reached retirement age, set at 65 by national law, and must

have fulfilled the conditions set out in the social security legislation for entitlement to a retirement pension under their contribution regime, where:

- the measure, although based on age, is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market; and
- the means put in place to achieve that aim of public interest do not appear to be inappropriate and unnecessary for the purpose.

In this case, compulsory retirement, because the worker has reached the age-limit provided for, may be appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy consisting in promoting full employment by facilitating access to the labour market. The ECJ decided that it does not appear unreasonable for the authorities of a Member State to take the view that compulsory retirement, because the worker has reached the age-limit provided for, may be appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy consisting in promoting full employment by facilitating access to the labour market.

In the general context of national legislation the aim of promoting access to employment by means of better distribution of work between the generations may, in principle, be regarded as 'objectively and reasonably' justifying 'within the context of national law' a difference in treatment on grounds of age laid down by the member states.

Furthermore, the Court stated that the measure cannot be regarded as unduly prejudicing legitimate claims of workers subject to compulsory retirement because they have reached the age limit provided for; the relevant national legislation is not based only on a specific age, but also takes account of the fact that the persons concerned are entitled to financial compensation by way of a retirement pension at the end of their working life, the level of which cannot be regarded as unreasonable.

The ECJ considered that the competent authorities of each member state have the responsibility to balance various interests by acting in such way so the national measures falling within this scope do not exceed the appropriate and necessary measure for the achievement of the state's legitimate aim.



### Discrimination on grounds of age as to employment conditions, including remuneration

In case C-88/08 (*Hütter v Technische Universität Graz*), the ECJ was called to examine a national legislation which excludes periods of employment completed before the age of 18 from being taken into account for the purpose of determining the remuneration of contractual public servants. In this case, the claimant and one of his colleagues were recruited at the same period of time, in the same position of the public sector and were placed, according to the above legislation, at a different salary scale. The claimant and his colleague had the same professional experience, since they participated in the same apprenticeship programme, for the same period of time. However, as the claimant's colleague was 22 months older than him, the period of apprenticeship completed by him after attaining his majority was only approximately 6,5 months, as contrasted with 28,5 months in the case of his colleague so she was recruited at a higher incremental step.

The legitimate aims presented before the Court by the Defendants were the following:

- The said system enables public services to make use of a clear and uniform structure for determining the pay of contractual public servants.
- The desire of the legislature was to avoid making apprenticeship more costly for the public sector and thereby promote the integration of young people who have pursued that type of training into the labour market.
- To exclude accreditation of professional experience acquired before full legal capacity has been attained, at the age of 18, in order not to place persons who have pursued a general secondary education at a disadvantage as compared with persons with a vocational education and to encourage them to pursue secondary education.

The Court stated that the first aim is clearly legitimate; however, the means used to achieve that aim are neither appropriate nor necessary, since they lead to a difference in treatment between two persons who have pursued the same studies and acquired the same experience based solely on the criterion of age. As to the next aims, they appear contradictory since the one encourages pupils to pursue a general secondary education rather than vocational education and the other one aims to promote the recruitment of persons who have had a vocational education rather than of persons with a general education. However, the Court ruled that the criterion of age at which previous experience was acquired applies irrespective of the type of education pursued.

The Court noted that rewarding professional experience that enables the worker to perform his duties better is, as a general rule, acknowledged to be a legitimate aim. The fact remains, however, that national legislation such as that at issue in the main proceedings does not merely reward experience but also establishes, where experience is equal, a difference in treatment on the basis of the age at which that experience was acquired, a fact that it is not subjectively justified and, therefore, it is contrary to the provisions of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

### Age discrimination in relation to the terms and conditions of employment

In case C-144/04 (*Mangold v Helm*), the EJC has examined a national legislation according to which fixed-term contracts concluded with categories of workers above the age of 52 and 58, could be renewed without restrictions and without being transformed into a contract of employment of indefinite duration, as applies for the rest of the employees. This measure is based on the thought that, since employers would not have an increased liability towards that specific category of employees, due to the fact that the fixed-term contract may not be transformed into a contract of employment of indefinite duration, they would be more willing to recruit older employees. Therefore, the legitimate aim of promoting part time employment, recruitment and vocational integration of unemployed older workers who encounter considerable difficulties in finding work, should be achieved.

The Court stated that legitimacy of such a public-interest objective cannot reasonably be thrown in doubt. However, it still remains to be established whether, according to the actual wording of that provision, the means used to achieve that legitimate objective are 'appropriate and necessary'.

In this case, the application of national legislation such as that at issue in the main proceedings leads to a situation in which all workers who have reached the age of 52, without distinction, whether or not they were unemployed before the contract was concluded and whatever the duration of any period of unemployment, may lawfully, until the age at which they may claim their entitlement to a retirement pension, be offered fixed-term contracts of employment which may be renewed an indefinite number of times. This significant body of workers, determined solely on the basis of age, is thus in danger, during a substantial part of its members' working life, of being excluded from the benefit of stable employment which, however, as the Framework Agreement makes clear, constitutes a major element in the protection of workers.

The Court ruled that the age as the only criterion, when it has not been shown that fixing an age threshold, as such, is objectively necessary to the attainment of the objective which is the vocational integration of unemployed older workers, it must be considered to go beyond what is appropriate and necessary in order to attain the objective pursued.

#### Age discrimination as to the terms and conditions of employment

In case C-388/07 (*The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*), the European Court of Justice ruled on the interpretation of Directive 2000/78/EC and gave guidelines on the application of its provisions, as to the principle of non discrimination on grounds of age. In this case the Court was called on to provide an answer to the question whether the national legislation of the UK, which permits employers to derogate from the principle of non-discrimination on grounds of age and to discriminate against people at or over the age of 65 on grounds of age in relation to recruitment or to dismiss an employee by reason of retirement, is legal or constitutes a violation of the provisions of the said Directive. In particular, the said national legislation deprived employees who have reached or are about to reach the age of 65, of any protection against discrimination on recruitment and dismissal, by preventing their future participation in the labour market.

*(Please note that this case, contrary to the above-mentioned case Félix Palacios de la Villa v Cortefiel Servicios SA, does not pertain to retirement of employees, i.e. it does not determine the retirement age, but it refers to benefits and the protection of employees who have reached the retirement age specified by the national legislation)*

The ECJ stated that age discrimination as a general rule is not allowed, however there may be some exemptions, provided that the aim is legitimate and the means of achieving that aim are appropriate and necessary. Furthermore, it noted that legitimate aims are those falling within the scope of a State's social policy, such as aims connected to employment policy, labour market or vocational training. Those aims are of general interest and are differentiated by individual interests characterising the employer's condition, such as the decrease of costs or the improvement of competitiveness.

The ECJ clarified that the national court has to establish whether that provision is a legitimate aim and whether the means of achieving that aim are appropriate and necessary. The ECJ underlined that the national court should not be limited to mere generalisations as to the legitimacy of the aim, since it imposes on Member States the burden of establishing to a high standard of proof the legitimacy of the aim relied on as a justification, as well as the adequacy of means selected for the achievement of that aim.

Finally, the ECJ noted that the prohibition of discriminations on grounds of age is the duty of the Community, as well as an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce.

#### 4. DECISIONS BY THE EQUALITY AUTHORITY OF THE OFFICE OF THE COMMISSIONER FOR ADMINISTRATION

Age discrimination complaints have also been lodged with the competent independent authority of the Republic of Cyprus, which is the Equality Authority of the Office of the Commissioner for Administration. The Equality Authority has examined complaints pertaining to age discrimination in employment and occupation and delivered the following decisions which are published in the Annual Report of the Equality Authority for the year 2006 and in the press.

##### Discrimination on grounds of age in access to vocational training

A group of women nursing officers submitted a complaint against the Ministry of Health regarding age discrimination in access to professional training. The accusers reported that their applications to study the Program in the Faculty of Midwives, which is a professional training postgraduate program, was rejected because they did not fulfil the maximum age limit of 32 years old, a requisition that was a necessary term for their introduction to the specific program.

The Ministry of Health justified the necessity of the maximum age limit for the Midwives' program on the argument that if the senior line was the only required qualification without taking the age limit in consideration, then the participants would only be 40 year old people. It was also supported that based on previous years' experience, it was expected that a great number of the older nurses who would study the particular postgraduate program, would not accept to work at the midwives' departments alleging either their age or the possibility of being promoted to a higher rank due to the completion of the relevant postgraduate program. Under this speculation the Ministry of Health finally claimed that the maximum age limit intended to ensure the adequate staffing of the midwives' department and prevent the repetition of previous years' incidents.

After investigation it came to light that the postgraduate programs offered by the Ministry of Health in cooperation with the Nursing School aim on the one hand to provide to the nurses the possibility of acquiring the necessary qualifications for a promotion, and on the other hand to employ specialized personnel for the various medical services. The acquisition of the abovementioned postgraduate qualification is essential for the promotion of a nurse to the position of Chief Nurse, according to the relevant Service Plan.

The Commissioner for Administration ruled that setting a maximum age limit of 32 as an entrance criterion to the midwives' postgraduate program could neither be impartially justified nor did it serve as means for achieving either of the two objectives mentioned above; as a result, this maximum age limit could not be considered an "appropriate and necessary" means. On the contrary, this criterion of maximum age limit placed the offended in an unfavourable position regarding both their right in postgraduate studies and in professional development.

##### Discrimination on grounds of age in coastal fishing licence granting

After investigating a complaint about the Department of Fisheries and Marine Research not granting an inshore fishery license for the year 2005, it was ascertained that the criterion implemented during the examination of the applications based on which younger applicants were given priority, consists unlawful discrimination. It was also ascertained that direction of the Regulation 6(4) (b) 354/2005 which excludes applicants above the age of 40 from receiving a category B' license, constitutes a direct and unlawful discrimination on the grounds of age.

In the Report it is noted that as far as its environmental dimension is concerned, the Common Fisheries Policy (CFP) aims to preserve its resources as a basic requisition in order to guarantee the normal and sustainable development of its fishing patterns. One basic problem of the CFP is the perennial redundant ability of the fishing fleet that affects the fishing patterns and the preservation of the stocks in a negative way. Having that in mind it is not only justified but is rendered a necessity to take measures with time and local prohibitions in combination with a system of controlled entrance of people in fishery. However, despite the legitimate aim pursued, the Equality Authority pointed out that the age criterion implemented is neither the most appropriate nor the most convenient way to achieve it. There are so many unbiased criteria that can be implemented, such as criteria concerning the suitability of a fishing boat, the suitability of the fishing equipment or the amount of the boat's production. Besides, the issued licenses are connected with the boat (article 3 of the Fishing Law) and not with the individual owner/applicant. Based on the elements of the investigation, in her Report the Commissioner for Administration concluded that the use of the criterion of age in the specific case is made in violation of Law N.58(I)/2004 and constitute discrimination on grounds of age.

## Discrimination on grounds of age in accessing flight attendant positions

A 38 year old man, with long experience in the flight attendant position, filed a complaint against the Cyprus Airways. Specifically, the complainant reported that he had submitted an application for the position of the seasonal flight attendant, which was, however, not accepted because he exceeded the age limit of 30 that was termed as a requisite for the filling of the position.

Cyprus Airways did not refuse that the age criterion was a prerequisite for that position and stated that this was necessary mainly due to the nature of the job which is very demanding and the employee has to be in perfect medical condition in order to carry out his duties satisfactorily, usually a characteristic of younger people. The Commissioner stated that in order to achieve this objective employees should be subjected to medical examinations which shall be carried out regularly in order to establish that their health is in good condition according to the Joint Aviation Regulations. If the employee, regardless his age, meets the condition for «perfect medical condition», then he should be allowed to work or to continue working, in the said position. Moreover, it is noted that in the European Regulations (Joint Aviation Regulations) a maximum age limit is not posited in the least qualifications required for the flight attendants, such as also no other airline company in Cyprus requires such a condition for the employment of flight attendants.

The Cyprus Airways' argument was based on the generalisation of assumed perceptions and stereotypes, which are particularly inaccurate and prejudicial for the persons belonging to the specific age group, who have both the willingness and ability, from the health, qualifications, skills or/and experience point of view, to practice the said profession. Finally, the Commissioner underlined that the criteria should be objective and not subjective, meet the needs of the specific position and regard the qualifications, the experience, abilities and skills of each candidate.

The accusation was found well-grounded. Specifically, the Ombudsman judged that the maximum age limit of the age 30 for the filling of the flight attendant position constitutes direct discrimination on the grounds of age in the field of accessing work positions, by violation of the Equal Treatment in Occupation and Employment Law.

For more information on matters pertaining to discrimination on grounds of age, religion, beliefs, race or ethnic origin and sexual orientation in employment and occupation, you may contact the following bodies:

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