

## Greece, Council of State, case number 3729/2011, Judgement of November 24th 2011

### Deciding bodies and decisions

- Council of State, case number 3729/2011
- Supreme Administrative Court, November 24<sup>th</sup> 2011

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### Area of law

Non-discrimination

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### Subject matter

Social policy - Equality and non-discrimination - Indirect discrimination on the grounds of disability - lack of reasonable accommodation for a disabled candidate during written exams for filling one post of notary public

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### Summary Facts Of The Case

The applicant, who is disabled (100% lower limbs disability and vesicorectal disorders), was a candidate for filling the post of notary at the town of Stavroupoli, Xanthi. The competition, that took place at the building of the National School for Judges at Thessaloniki, included written exams on 5 different subjects in a period of 3 days. Each examination lasted 4 hours. The applicant informed in due time the competition's committee of her disability. During the first exam the applicant filed a statement of objection complaining that: a) there was no toilet accessible to disabled persons at the building, b) it was harder for her to cope with 8 hours of written exams each day, c) she had to move away from her suitably equipped home at Xanthi for 5 days in order to compete. Her objection was never officially answered and the applicant came second in the competition. Finally, the applicant lodged a complaint (*application for annulment*) against the competition's results before the Council of State.

The Council of State found that, according to the combined interpretation of art. 21 par. 2, 3 and 6 of the Constitution and the relevant provisions of Directive 2000/78/EC, the State has a special positive duty to provide reasonable accommodation for disabled persons in public competitions, in order for them to compete on an equal footing with non-disabled candidates. However, in the absence of specific state legislation on the issue, each competition's committee has the duty to take all proper measures for the reasonable accommodation of disabled candidates. In this case the Court found that, given the nature of the candidate's disability, the lack of toilet for disabled persons was by itself enough to undermine her capacity to perform according to her abilities and, thus, annulled the competition and ordered the competition's committee to repeat the exams taking all appropriate measures to enable the candidate to have access to adequate facilities.

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### Relation to the scope of the Charter

The case falls within the scope of the Charter pursuant to Article 51(1) therein as it concerns the interpretation of the national law implementing the EU equality and non-discrimination directives in the area of access to the profession of public notary.

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### Sources - EU and national law

- Law 3304/2005 on non-discrimination (Implementation of Directives 2000/43/EC and 2000/78/EC)
  - Law 2830/2000 on the Code of Public Notary
  - 20049/B6/20.2.2007 Decree of the Minister of National Education and Religions (Reasonable accommodation for disabled candidates at university entrance exams)
  - Constitution of Greece, Art. 21 par. 2, 3 and 6 (protection of persons with disabilities)
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### Comments

The judgment at hand helped raise awareness for the reasonable accommodation of disabled candidates in all public competitions, but there hasn't been any legislative initiative to provide for specific rules.

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