EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 66772/13
Konstantinos DELIMATSIS and Others
against Cyprus

The European Court of Human Rights (Third Section), sitting on 10 November 2020 as a Committee composed of:

Georges Ravarani, *President*,
Georgios A. Serghides,
María Elósegui, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 October 2013,

Having regard to the factual information submitted by the respondent Government and the submissions in reply filed by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The list of applicants is set out in the appendix. They were represented before the Court by Dr C. Paraskeva, a lawyer practising in Nicosia.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties and as derived from the documents submitted by them, may be summarised as follows.

1. The applicants' recruitment and employment status

3. The applicants are all employed by the Cypriot armed forces. Between 1995 and 2000 they signed fixed-term employment contracts for a five-year period with the Minister of Defence. On the basis of their employment contracts they were recruited to the armed forces as "Five Year Service Volunteer Petty Officers" (*Εθελοντές Πενταετούς Υποχρεώσεως* - "FYSVPOs") and were seconded to the National Guard. At the material time,

the conditions of their recruitment and employment were governed by the "Five Year Service Volunteer Petty Officers Regulations" (Regulatory Act 44/95; hereinafter "Regulations 44/95"), which were enacted under the Army of the Republic Laws (Law no. 33/90).

4. According to the terms of their recruitment, as for all FYSVPOs, their contracts could be renewed after the initial five-year period according to the needs of the service for another two five-year periods and then their employment would continue on the basis of their contracts until compulsory retirement at the age of fifty-seven (Law no. 215(I)/2012 concerning Members of the Armed Forces of the Republic (retirement and relevant matters) (provisions of general application)). The applicants' contracts were so renewed.

5. The applicants are not considered permanent staff of the armed forces.

6. In 2011 the first applicant wrote to the Ministry of Finance, as it appears, concerning the conditions of his retirement.

7. By a letter dated 3 June 2011 he was informed that every employed person in Cyprus was insured under the State Social Insurance (old age) Pension Scheme and was entitled to a social security pension on the basis of that scheme. However, only civil servants who held a permanent post in the public service were covered by the Public Service Pension Scheme under the Pension Laws of 1997-2010 and not those, as in his case, who worked on the basis of a contract of employment.

2. Developments subsequent to the lodging of the application

8. In 2017 Regulations 44/95 were repealed and new regulations were enacted (Regulations 429/2017) under the Armed Forces Law (Law no. 36(I)/2016). FYSVPOs were named "Contractual Non-Commissioned Officers" (*Συμβασιούχοι αξιωματικοί*) and the applicants' conditions of employment (including career advancement, wages and other benefits and retirement) are now governed by the Recruitment, Hierarchy, Promotion and Termination of Employment of Contractual Non-Commissioned Officers Regulations (Regulations 429/2017). On the basis of the new Regulations, having reached the retirement age of fifty-seven, the applicants have the right to conclude a new fixed-term employment contract for three years, which can then be renewed for a further three years period until the age of sixty-three.

B. Relevant domestic law

9. At the material time of the applicants' recruitment, the Cypriot armed forces also employed "Permanent Non-Commissioned Officers" (*Μόνιμοι Υπαξιωματικοί* – "PNCOs") and "Volunteer Non-Commissioned Officers" (*Εθελοντές–Εθελόντριες Υπαξιωματικοί* -"VNCOs").

10. The conditions of recruitment and employment of PNCOs were governed at the material time by the Armed Forces Law of 1990 (Law

no. 33/1990) and the Non-Commissioned Officers Regulations of 1990 (Regulations 91/90). Regulation 6 of the latter Regulations set out the qualifications required for PNCO's, the selection and appointment procedure. It was open to all citizens of the Republic to apply if they met the eligibility criteria. According to Regulation 46 of Regulations 44/95 (see paragraph 3 above) having served in the army as FYSVPOs was considered an advantage for a permanent post.

11. The appointment, conditions of employment, qualifications, promotion, wages, retirement and pension of PMCOs, are now governed by Law no. 36(I)/2016 (which replaced Law no. 33/1990; see paragraph 8 above) and the Appointment, Promotion and Retirement of permanent Non-Commissioned Officers Regulations of 2017 (Regulations 428/2017 which repealed Regulations 91/90). The retirement benefits of PNCOs are covered by the Pension Laws of 1997-2010 (Law no. 97(1)/97, as amended).

12. The conditions of recruitment and employment of VNCOs were governed by the Volunteer Non-Commissioned Officers Regulations of 1990 (Regulations 53/90). VNCOs were recruited on fixed-term employment contracts for an initial period of three years which could be renewed subsequently for three-year periods according to the needs of the service. In the event of dismissal or non-renewal of their contracts, they were entitled to a lump sum gratuity. The new Regulations 428/2017 (see paragraph 11 above; Regulation 46) provide for the appointment of VNCOs, who had been recruited under fixed-term employment contracts under Regulations 53/90, as PNCOs.

13. There are no longer any VNCOs serving in the armed forces.

14. In 1993 special Regulations were enacted covering women PNCOs who were either graduates from military school or women VNCOs (the Women Non-Commissioned Officers Regulations of 1993; Regulations 311/93)

THE COMPLAINTS

15. The applicants complained under Article 1 of Protocol No. 12 and Article 14 taken in conjunction with Article 1 of Protocol No. 1 of the Convention that they were subjected to discriminatory treatment *vis-à-vis* both VNCOs and PNCOs without any objective and reasonable justification. In particular they claimed that:

(a) they were excluded from having a permanent post in the army unlike VNCOs who were able to get permanent contracts following six years of service (two consecutive three-year contracts) on the basis of direct appointment by the Minister of Defence. This was despite being essentially in a similar position and having the same qualifications and initial status as VNCOs;

(b) although they held the same position as PNCOs and had in essence the same qualifications and responsibilities with them they did not have equal work benefits (e.g. holiday and sick leave) and retirement rights on the ground that the applicants were employed on fixed-term contracts.

16. The applicants also complained under Article 13 that they did not have an effective remedy in relation to their complaints. Relying on a number of Supreme Court's judgments they argued that the Supreme Court did not have the jurisdiction to proceed to an extended application of a legislative arrangement; it was a well-established domestic law principle that the non-existence of a legislative provision could not be remedied by a judicial decision.

THE LAW

A. Complaints under Article 1 of Protocol No. 12 to the Convention as well as under Article 14 taken in conjunction with Article 1 of Protocol No. 1

17. The applicants complained that their rights under Article 1 of Protocol No. 12 to the Convention as well as under Article 14 taken in conjunction with Article 1 of Protocol No. 1 had been violated. These provisions read as follows:

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

18. The Court considers that it is not necessary to examine the question of exhaustion of domestic remedies, as these complaints are in any event inadmissible for the following reasons.

19. The Court notes that the alleged discriminatory treatment of the applicants lies at the heart of their complaints under all the above provisions.

20. It observes that both for the purposes of Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, discrimination means treating differently, without an objective and reasonable justification, persons in similar situations (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 81, ECHR 2013 (extracts), and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 55, ECHR 2009). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently (see *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017). However, not every difference in treatment will amount to a violation of the above provisions. Firstly, the Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination (ibid.). Secondly, a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (ibid.).

21. Turning to the present case, with regard to the first part of the applicants' complaint concerning alleged discrimination *vis-à-vis* VNCOs, it transpires from the information submitted that, in fact, FYSVPOs were not excluded from permanent posts in the army but that it was open to them, as to VNCOs and all citizens of the Republic who met the eligibility criteria, to apply to be appointed as PNCOs by participating in the competition procedure under Regulations 91/90 (see paragraph 10 above; Regulation 6). According to Regulations 44/95 having served in the army as FYSVPOs was considered an advantage for a permanent post (see paragraph 10 above; Regulation 46).

22. This having been said, it emerges from the case-file that under Regulations 311/93 (see paragraph 14 above) successful women VNCOs' candidates were appointed as PNCOs, as a form of positive measures to encourage the recruitment of women in the national army. Further, although under Regulations 428/2017 (see paragraph 10 above; Regulation 46)

(enacted subsequent to the lodging of this application) VNCOs who had been recruited under fixed-term employment contracts under Regulations 53/90 (see paragraph 12 above) could be appointed as PNCOs, only women had been appointed given that when the vacant positions were published there had not been any male VNCOS recruited under Regulations 53/90. Therefore, in view of the above, the applicants have not established that male VNCOS actually enjoyed preferential treatment in accessing or having permanent posts and thus, have not shown that there has been a difference in treatment. In so far as female VNCOs are concerned, the applicants' complaint is focused on their contractual/employment status; they have not complained of discrimination on the grounds of sex or that the positive measures taken with regard to female officers lacked objective and reasonable justification.

23. Secondly, in so far as the applicants' complaint concerns alleged discrimination *vis-à-vis* PNCOs, it is noted that, as FYSVPOs, they fell under a different contractual and legal regime from PNCOs who were permanent staff members and the differences in their employment terms and rights stemmed from this. Nonetheless, the Court will leave open the question of whether this difference in treatment falls within the notion of "other status", as in any event the applicants have not shown that they were in an analogous or relevantly similar situation to PNCOs (see *Fábián v. Hungary*, cited above). It transpires from the relevant documents in the case-file that the duties and work of FYSVPOs differed depending in which military section they served as they were appointed according to needs of the army. PNCOs had seniority in terms of hierarchy to FYSVPOs if they were of the same rank. Thus, PNCOs did not carry out duties lower than contractual officers if they were in the same department. It was not excluded that FYSVPOs could carry out similar temporary duties to PNCOS if there was a lack of staff but not if they were in same section. The applicants, however, have not given any indication concerning their respective and actual duties and obligations in the army or any specific details as to how these were the same or at least similar to those performed by PNCOs of the same rank. Their claim is thus very general, without any individualised information or detail.

24. For all the reasons set out above, the Court finds that the applicants' complaints under Article 1 of Protocol No. 12 and Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

B. Complaint under Article 13

25. The applicants complained that they did not have an effective domestic remedy in relation to their complaints, as required under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

26. Given that the applicants' substantive complaints have been rejected as manifestly ill-founded, it follows that the applicants do not have an "arguable claim" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 24 April 1988, § 52, Series A no. 131). Consequently, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 December 2020.

Olga Chernishova	Georges Ravarani
Deputy Registrar	President

Appendix

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Konstantinos DELIMATSIS	1972	Greek	Larnaca
2	Irodotos ANTONIOU	1976	Cypriot	Limassol
3	Christos BOKOS	1973	Greek	Larnaca
4	Christakis CHRISTODOULOU	1979	Cypriot	Limassol
5	Marios DIMITRIOU	1973	Cypriot	Limassol
6	Panagiotis FOTIS	1970	Greek	Larnaca
7	Athanasios GRAMMATIKOS	1969	Greek	Larnaca
8	Panagiotis MATZIARIS	1968	Cypriot, Greek	Larnaca
9	Panagiotis PAPADOPOULOS	1970	Cypriot	Limassol