Editorial 18(4)

In this issue Stuart Goosey focuses on age discrimination in relation to judicial retirement in the UK, which is set at the age of 70. Goosey advocates a pluralist theory of discrimination to explain when such differential treatment is justified. This theory focuses on efficiency, equality of opportunity, social equality, autonomy and respect and it is argued that using these criteria, the UK’s judicial retirement age may be justified as it advances equality of opportunity and social equality by increasing the turnover of judges and the number of vacancies available to younger candidates and groups, such as women, who are currently under-represented. This outweighs the detriment to older judges subject to that requirement, which is also mitigated by the fact that the majority elect to retire before 70 and the age threshold was set following consultations between senior members of the judiciary and the Lord Chancellor.

Natalie Alkiviadou focuses on hate speech and hate crime reviewing the instruments currently available which are intended to deal with these issues. She argues that the failure to include homophobic and transphobic speech and transphobic crime constitutes a ‘hierarchy of hate’ with some forms of hate considered more significant than others. The focus within the international and European framework on hate speech and hate crime has been to focus primarily on speech targeting racial and religious groups, with other forms of hate, relating to sexual orientation and gender identity, treated as less important. She is critical of UN, the Council of Europe and the EU approaches to this issue because of their prioritization of specific types of hatred. Despite growing awareness of the need to improve protection in these areas, change has yet to be implemented. Alkiviadou notes that there is one exception, namely Cyprus, whose Criminal Code does include incitement of violence or hatred on the basis of sexual orientation and gender identity, but even there the penalties for homophobic and transphobic speech are lower than for racist and xenophobic speech.

Jamil Mujuzi considers the measures taken by the Seychellois courts to protect the right to freedom from discrimination. Under Article 27 of the Seychellois Constitution ‘every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.’ Exceptions are made for programmes aimed at the amelioration of the conditions of disadvantaged persons or groups. But Article 27 does not make clear the specific grounds on which a person has the right not to be discriminated against. As Mujuzi notes, this contrasts with other Constitutions, including
those of South Africa, Kenya, and Namibia. In the Seychelles, this gap has been filled by the courts and Mujuzi discusses the relevant jurisprudence of the Court of Appeal and Supreme Court on this issue, as well as their definitions of equal protection of the law. He concludes that the Constitution needs to be amended to include the specific grounds, suggested by the Seychellois courts, but also to draw from those suggested by international human rights bodies.