



NEWS REPORT

Date: 6 February 2014
Expert: Rikki Holtmaat
Title: Lower insurance benefit for Turkish woman
Country: The Netherlands
Context
Issue at stake: Court upholds decision to grant lower insurance benefit to Turkish woman
Ground of discrimination: Race/ ethnic origin
Source: National court decision
Field: Access to goods and services

Content

Decision of the Court: A Turkish woman, who as a 10-year old had become disabled as a result of a traffic accident, has received a lower insurance benefit than claimed by her lawyer, partly on the ground of her sex and ethnicity. Where 430.000 EUR was claimed, only 70.000 EUR was granted by the District Court of The Hague.

The amount of 430.000 EUR was estimated by an independent centre for bodily injury, the NRL ("Nederlands Rekencentrum Letselschade"). This amount was based on expectations concerning the girl's level of education. Simply put, the NRL multiplied the average yearly wage for the category of jobs the girl could have been able to get on the basis of her expected level of education with the number of working years until the statutory retirement age of 67.

The insurance company however held, on the basis of actuarial statistics, that the majority of Turkish women stop working after they have their first child, which is around the age of 26. After ten years, they re-enter employment, but they still work on a half time basis. On the basis of all these averages, the insurance company estimated that the harm caused by the accident did not amount to the 430.000 EUR as assessed by the NRL.

This line of reasoning was accepted by the District Court. The judge found that using actuarial statistics with regard to the victim's cultural background and gender does not run counter to the principle of equality (as enshrined in the first Article of the Dutch Constitution), as it remains possible for a judge to deviate from these statistics, in case personal circumstances give cause to do so. In this particular case however, the judge found that no reason existed to deviate from the statistics. He therefore decided on an insurance benefit of 70.000 EUR only, as requested by the insurance company.

The Dutch press has paid a lot of attention to this case in the aftermath of this judgment, mostly (implicitly) condemning the judge's decision. All major newspapers and television broadcasters have reported on the matter and a Member of Parliament



of the Christian Democratic Appeal has posed a Parliamentary question.¹ A spokesman of a Turkish interest organization (the "Stichting Inspraakorgaan Turken in Nederland") has condemned the decision, calling it "a textbook case of discrimination". Also, a member of the Dutch equality body Netherlands Institute for Human Rights (NIHR) has called the judgment gender-related discrimination in Dutch daily *Algemeen Dagblad*.²

The family of the victim decided to bring the case to the Court of Appeal. The decision in appeal is still pending, but can be expected at the end of the year 2014.

Internet link source and additional information: the judgment can be retrieved at www.uitspraken.rechtspraak.nl, using ECLI:NL:RBDHA:2013:9276.

¹ This Parliamentary question (2014D01676) has, as of yet, not been answered by the responsible minister. He has responded that an answer to the questions posed required 'interdepartmental cooperation'.

² 'Familie: rechter uit jaren '50', in: *Algemeen Dagblad*, 24 December 2013