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NEWS REPORT

Country:	Latvia
Title:	Amendments to the concept of discrimination in the field of social security
Date:	4 December 2015
Expert:	Kristīne Dupate
<u>Context</u>	
Issue at stake:	Amendments to the concept of discrimination in the field of social security with regard to pregnancy/maternity discrimination
Ground of discrimination:	Sex
Source:	Legislation
Field:	Statutory social security
Applicable law:	Amendments to the Law on Social Security

Content

Law development: On 29 September 2015, the Parliament adopted amendments to the Law on Social Security. Among several amendments, Article 2¹ providing for the obligation of non-discrimination was amended by a provision (paragraph 5¹) expressly stipulating that discrimination on the grounds of sex occurs in case of less favourable treatment of a woman during pregnancy or 1 year after pregnancy or for entire breast-feeding period. The Law on Statutory Social Insurance is the umbrella law to the entire social security system in Latvia, embracing education, vocational training, statutory social insurance, state and municipal social allowances and services and the statutory health-care system.

Key points of analysis: The amendment ensures more precise implementation of the obligations (concepts) of Directive 79/7/EEC and Directive 2004/113/EC (as long as it might be applicable to the services provided by the state). However, the amendments are imprecise and do not ensure full and complete implementation of the EU gender equality law.

Firstly, the new provision is defective itself, since, according to the grammatical reading, it prohibits less favourable treatment during the pregnancy and maternity period while the concept under the EU law is wider. Namely, EU law prohibits not only less favourable treatment during pregnancy and maternity but also less favourable treatment by the reason of the pregnancy and maternity. Consequently, it also covers situations after in which a person might be treated less favourably by the reason of pregnancy and maternity. This is especially important and common in the field of statutory social insurance where entitlement to the allowances is dependent to the insurance periods and amount of statutory social insurance periods.

Secondly, the amendment does not correct all deficiencies with regard to the correct implementation of EU gender equality law. The wording of Article 5(1) of the Law on

Social Security prohibits discrimination when receiving the social services, however, the concept of social services is not defined. Consequently, it is unclear whether the prohibition of discrimination applies to the entire social security system or only to one type of the social protection measures, namely, social services. In case of the narrow interpretation of the concept of 'social services' under the provision in question, the Latvian legislator also fails to properly implement Directive 2000/43/EC. Regarding the implementation of the concepts, the Law on Social Security only refers to direct and indirect discrimination, harassment and instruction to discrimination, but does not provide the definitions of such concepts. Then it is 'silent' with regard to the prohibition of sexual harassment. Finally, Article 5(6) allows justification of the discrimination if there is a legitimate aim and the measures chosen are proportionate. It follows that Article 5(6) in principle allows justification of direct discrimination.

Internet link sources:

The Law on Social Security, Official Gazette No.144, 21 September 1995, available in Latvian at <http://likumi.lv/doc.php?id=36850>, accessed 2 December 2015.

Amendments to the Law on Social Security, Official Gazette No.222, 12 November 2015, available in Latvian at <http://likumi.lv/ta/id/277778-grozijumi-likuma-par-socialo-drosibu->, accessed 2 December 2015.