



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Belgium
<b>Title:</b>	Pension benefits for frontier workers
<b>Date:</b>	1 January 2016
<b>Expert:</b>	Jean Jacqmain
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Gender equality in statutory social security and remuneration
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National Court Decision; Court of Cassation, judgment of 14 December 2015, S.11.0110.N, unreported.
<b>Field:</b>	Statutory social security
<b>Applicable law:</b>	Royal Decree of 23 December 1996, ancillary to the Modernization of Social Security Act of 26 July 1996; Royal Decree of 21 December 1967 regulating the pension scheme for paid workers; Protection of Remuneration Act of 12 April 1965.

### **Content**

**Case law development:** Ms. Brouwer, a Belgian citizen and resident, was occupied in the Netherlands as a frontier worker from 1960 to 1998. When she became entitled to a Dutch retirement pension, she also applied for a Belgian allowance aimed at compensating for the difference between the benefit which she would have been entitled to if she has been occupied in Belgium and the Dutch benefit. This allowance was granted; however, it was calculated on the basis of notional daily wages which were fixed annually by way of Royal Decrees. Until 1994, the amount of these wages was lower for female workers as compared with their male colleagues.

**Decisions of the Courts:** When Ms. Brouwer complained about gender discrimination in the calculation of the allowance, the Labour Court in Hasselt decided in her favour on 16 June 2006. The Pensions Office appealed and on 18 December 2008, the Labour Court of Appeal in Antwerp referred to the Court of Justice for a preliminary ruling on the compatibility of the Belgian provisions with Directive 79/7/EEC. In case C-577/08 *Rijksdienst voor Pensioenen v. Elisabeth Brouwer*,<sup>1</sup> the Court of Justice found that, for the period from 1984 up to 1994, Article 4(1) of Directive 79/7/EEC precluded national legislation under which the calculation of retirement pensions was based on different national wages for men and women, concerning equal work or work of equal value.

Resuming its examination of the case, the Labour Court of Appeal in Antwerp reached a final judgment on 17 June 2011. Logically, it followed the CJEU's ruling as to the period from 1984 to 1994. Concerning the previous period, the CJEU had found that Directive 79/7/EEC was not applicable, nor was Article 119 EEC (now Article 157 TFEU) as the object of the dispute was a statutory social security benefit (see Case 80/70 *Defrenne*

---

<sup>1</sup> [2010-I-7489].

I).<sup>2</sup> However, in this respect the Labour Court of Appeal based its reasoning on Article 14 of the Royal Decree n° 40<sup>3</sup> of 24 October 1967 concerning women's work according to which any worker was entitled to initiate legal proceedings in order to obtain enforcement of the principle of equal pay for male and female workers as enshrined in Article 119 EEC.<sup>4</sup> Consequently, this principle was grounded on a domestic legal provision so that, between 1968 and 1984, the successive Royal Decrees which fixed different notional daily wages for men and women were incompatible with such a provision and had to be set aside by the courts in compliance with Article 159 of the Constitution. In conclusion, the Labour Court of Appeal decided that for the period from 1968 up to 1994, the Pensions Office had to calculate Ms. Brouwer's benefit anew on the basis of the men's notional daily wages, and to compensate her accordingly.

The Pension Office immediately appealed against this decision ; inexplicably, the Court of Cassation took four years to reject the appeal, both on a technicality and because the Pensions Office had requested the Court to discuss the factual merits of the case, which the Court was not empowered to do.

**Key points of analysis:** This case is extremely interesting as to the retrospective validity of a pioneering domestic legal provision which referred to EU law but was adopted nine years before the CJEU ruled on the direct effect of Article 119 EEC (see Case 43/75 *Defrenne II*).<sup>5</sup>

**Internet link source:**

All legal texts available in French and Dutch on <http://www.juridat.be>, accessed on 30 December 2015.

---

<sup>2</sup> [1971 - 445].

<sup>3</sup> Equivalent of an Act of Parliament.

<sup>4</sup> That provision was later inserted as Article 47ter into the Protection of Remuneration Act of 12 April 1965.

<sup>5</sup> [1976 - 455].