



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

### NEWS REPORT

<b>Country:</b>	The Netherlands
<b>Title:</b>	Supreme Court requires strict application of the proportionality test in the case of reduction of survivor's pension because of age difference
<b>Date:</b>	12 February 2016
<b>Expert:</b>	Marlies Vegter
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Judgment by the Dutch Supreme Court on the reduction of the survivor's pension of widows of a partner more than ten years older
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National court decision
<b>Field:</b>	Other
<b>Applicable law:</b>	Act on Equal Treatment of Men and Women

### Content

**Decision of the Court:** On 18 December 2015, the Dutch Supreme Court rendered a decision on the question as to what extent pension funds are allowed to reduce the survivor's pension of a woman who has been married to a man who was more than ten years older than herself. Many pension funds apply a reduction of two or three percent per year in that situation on the ground that, because of the age difference between the widow and her deceased partner, the survivor's pension is higher than the average pension, which means that the participants in the pension fund will have to pay a higher premium. The application of such a reduction leads to indirect discrimination of women, as significantly more women than men are more than ten years younger than their husband/registered partner. The question that was brought before the Supreme Court was whether there is an objective justification for the indirect discrimination and, more specifically, how the proportionality test – which is part of the objective justification test – must be carried out.

The Supreme Court ruled in the first place that the fact that the pension reduction is the result of negotiations between the social partners does not mean that courts have to take a reticent stance in this respect. The judge has to give an autonomous opinion on the matter and is not restricted by the freedom of (collective) bargaining of employers ('organisations') and trade unions.

Secondly, the Supreme Court stated that the proportionality test must be strict and must focus on the details of the case at hand. The pension fund had stated that abolishment of the regulation on reduction would lead to a one-time increase in costs of approximately EUR 10 million and to a yearly increase of approximately EUR 1 million. The Supreme Court ruled that these global considerations were not precise enough. The pension fund should have presented specific calculations of the consequences of not applying the reduction, both for the fund itself and for the premiums to be paid by the participants in the fund.

Furthermore, these calculations should give insight into the relation between the damage as a result of not applying the reduction and the entire size of the fund.

**Key points of analysis:** The judgment makes it clear that the proportionality test must be applied strictly and that the freedom of negotiations of the social partners cannot impede the right to equal treatment of men and women. Lower courts had taken a reticent stance in both respects, giving the pension funds room to present general justifications and to refer to the collective bargaining process as a justification. The Supreme Court has now made it clear that this line of reasoning is not valid.

**Internet link source:**

Judgment by the Supreme Court,  
<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2015:3628>, accessed 28 January 2016.