



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

NEWS REPORT

Country:	Latvia
Title:	Discriminatory conditions for the access to occupational social security pensions
Date:	29 February 2016
Expert:	Kristīne Dupate
<u>Context</u>	
Issue at stake:	Conditions for the access to occupational social security pensions; periods spent on pregnancy, maternity and child-care leaves
Ground of discrimination:	Sex
Source:	Legislation
Field:	Statutory social security
Applicable law:	The statute on special service pensions; The Law on State Pensions; decision of the CJEU in case C-351/00, <i>Pirkko Niemi</i>

Content

Law development: On 19 January 2016, the State Social Insurance Agency adopted a decision refusing the right to a special service pension to Ms. K. The reason for such a decision was the fact that Ms. K does not qualify for the minimum period of employment in a particular profession granting the right to special service pension, and, in particular, she has only a 7 year, 4 months and 12 days employment period in the relevant profession instead of the 7 years and 6 months employment period required by the Statute on Special Service Pensions. She does not have the sufficient employment period because during her employment period she gave birth to two children. On account of this, she was on maternity leave twice and once on child-care leave (with interruption from 27 December 1995 until 7 April 1997), and the law does not provide that such period must be taken into account as employment periods.

This case is not among the majority of cases because it concerns a profession and the periods of employment that are under transitional provisions, namely, the periods of employment 1 January 1999 in the professions in the field of transportation. However, such fact does not waive the application of EU law in general considering less favourable treatment by reason of maternity and parental leave as discrimination on the grounds of sex.

Key points of analysis: According to Latvian law, certain specific categories of the persons employed in public service are entitled to special service pensions. The idea of such special pensions is that persons in certain professions are subject to special employment conditions resulting in the need for earlier retirement than normal. Thus, special service pensions are bridging pensions. The current legal regulation on special service pensions takes into account gender specific needs by taking into account periods spent on maternity and parental leave as employment periods. However, as it appears in

practice, there are still some exceptional situations arising under historical legal regulation under transitional periods relating to certain specific professions and employment periods.

Although this kind of pension is fully paid from the state budget (statutory social insurance budget for old-age pensions), nevertheless it corresponds to all three criteria established by the ECJ in *Niemi*, thus falling within the scope of Article 157 of the TFEU and Directive 2006/54/EC as an occupational social security scheme and not a statutory social insurance scheme falling under Directive 79/7/EEC. Therefore, taking into account the equal pay principle, the special service pension must be calculated by also taking into account periods spent on maternity and child-care leave. Moreover, taking into account Article 12 of Directive 2006/54/EC, with regard to the retroactive effect of the regulation on the equal treatment in occupational social security schemes it applies to employment periods starting from 17 may 1990.

Internet link source:

- The statute on special service pensions (*Nolikums "Par izdienas pensijām"*), OG No.24, 18 June 1996, available in Latvian at <http://likumi.lv/doc.php?id=65827>, accessed on 29 February 2016.

- The Law on State Pensions (*Likums "Par valsts pensijām"*), OG No.182, 23 November 1995, available in Latvian at <http://likumi.lv/doc.php?id=38048>, accessed on 29 February 2016.