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NEWS REPORT

Country:	Serbia
Title:	M.J v U insurance, no. 07-00-93/2016/02
Date:	21 September 2016
Expert:	Ivana Krstic
<u>Context</u>	
Issue at stake:	Different amount of premium for the voluntary health insurance
Ground of discrimination:	Sex
Source:	National equality body (Opinion of the Commissioner for the Protection of Equality)
Field:	Goods and services
Applicable law:	The Law on the Prohibition of Discrimination (LPD)

Content

Case development: An Opinion of the Commissioner for the Protection of Equality, issued on 10 June 2016, is the first decision dealing with the use of sex as a factor in the calculation of premiums for the purposes of insurance which result in differences in individuals' premiums for men and women. In this case, the claimant, M.J., claimed that a premium for the voluntary health insurance, designed for healthy policy holders who were between 26 and 30 differed for men and women (EUR 276,84 for women and EUR 168,72 for men). The claimant accidentally discovered that insurance company prescribed different amounts of premium for men and women. She was first offered a premium in the amount of EUR 168,72 and when she accepted the offer was surprised to see a higher amount in her contract. She was subsequently informed that the problem occurred due to the insurance employee calculating the premium offer on the basis that she was a male. The health insurance company explained that there is no law which prohibits the use of sex as a factor in the calculation of premiums and that the amount of premiums depends on statistical data on received requests for compensation in the previous reporting period. It also stated that for the life insurance mortality table has been applied, which is different for men and women, and demonstrates that the level of insured risk may be different for two sexes. Finally, it explained that women are protected with higher insurance rate as they have more benefits in the provision of medical services.

Decision of the CPE: In its decision, the Commissioner for the Protection of Equality (CPE) relied on Article 21 of the Constitution which prohibits discrimination, as well as on the following articles of the Law on the Prohibition of Discrimination: Article 2, paragraph 1 that defines and prohibits discrimination, Article 6 that prohibits direct discrimination, Article 17, paragraph 1 that prohibits discrimination in the provision of public services, and Article 20, paragraph 2 that prohibits denial of rights or grant of privileges, be it overtly or covertly, pertaining to sex. Finally, the CPE refers to the Law on Gender Equality which prohibits direct discrimination.

In its analyses, the CPE first found that there was discrimination in this case, as was undisputable that the monthly insurance premium for men was EUR 14,06 and for women EUR 23,07 (which on annual basis was EUR 152 for men and EUR 250 for women). The CPE further found that women do not receive any additional health services which are covered by their premium, as all insurers regardless their sex are covered by the following services: examination of the general practitioner, examination of the specialist, diagnosis and laboratory analyses (basic coverage), and annual physical examination, ophthalmic examination and physical therapy (supplementary coverage). Thus, the CPE found no reasonable justification for difference in amount of premium which is based on sex. The CPE particularly underlined that the 'sex' of policy holders does not say anything about his/her state of health or type and frequency of medical examinations covered by voluntary health insurance. It concluded that the different life expectancy for men and women does not depend only on the sex of particular person, but is also determined by economic and social environment, life habits, diet, consumption of alcohol or tobacco, the practice of leisure activities, etc.

Key points of analysis: It is very important that the CPE found application of the Law on the Prohibition of Discrimination in this case, as the Law on Insurance, adopted in 2015,¹ does not prohibit the use of sex as a factor in the calculation of premiums for the purpose of insurance. This is even more significant bearing in mind that in this case insurance rates were submitted to the Ministry of Health and the National Bank of Serbia (as a regulatory body) for approval. Therefore, it is important that the CPE found discrimination in this case, which is obviously widespread in Serbia. The CPE agreed that in creating particular insurance packages, an insurance company is allowed to assess the amount of the sum insured, relying on professional rules and insurance regulations, as it has a legitimate interest to secure its profit. Therefore, the insurance company is free to decide whether it will conclude a contract with a particular client. However, for this assessment, the sex of the client is not by itself a risk as it does not indicate, in any way, how often he/she will use health services covered by voluntary health insurance.

This is also a very rare opinion which refers to the jurisprudence of the CJEU. Namely, the CPE relied on the judgement delivered in *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*,² where the CJEU found that Member States are not allowed "to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits", as it works "against the achievement of the objective of equal treatment between men and women." It further found that Member States may decide to permit exemptions from the rule of unisex premiums and benefits, as long as they can ensure that underlying actuarial and statistical data on which the calculations are based, are reliable, regularly updated and available to the public. The CPE relied on this ruling in order to support its finding.

Internet source: None available.

¹ Law on Insurance, *Official Gazette of the Republic of Serbia*, No. 139/14, 18 December 2014. This Law entered into force in June 2015.

² C-236/09, CJEU, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, 1 March 2011.