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NEWS REPORT

Country:	Belgium
Title:	Gender discrimination in healthcare
Date:	22 September 2016
Expert:	Jean Jacqmain
<u>Context</u>	
Issue at stake:	Unequal reimbursement of medications
Ground of discrimination:	Sex
Source:	National court decisions [Court of Cassation, judgment of 14 June 2004, <i>Chroniques de droit social</i> , 2004, pg. 5-8 with J. Jacqmain's case note. Labour Court of Veurne, judgment of 14 March 2013, <i>Algemene Rol</i> n°12/130/A, unreported]
Field:	Statutory social security
Applicable law:	Constitution of Belgium, Articles 10 and 11; Consolidated Act of 14 July 1994, concerning the Healthcare and Sickness Benefits Insurance Scheme; Royal Decree of 21 December 2001 (pharmaceutical specialities), ancillary to the Consolidated Act.

Content

Case development: A man affected by breast cancer was prescribed two specific medications by his physician. When he applied to his sickness fund for reimbursement, this was refused because the relevant social security regulations only provided for reimbursement to women.

Decision of the Court: When the patient challenged the sickness fund's decision, the Labour Court of Veurne found in its judgment of 14 March 2013 that, given that the medications are effective in the treatment of the disease, the disputed regulations were conducive to gender discrimination against men, prohibited by Article 4 of Directive 79/7/EEC. Moreover, as men are exposed to the risk of breast cancer, although in a far lesser proportion than women, the disputed regulations also breached the general principle of equality under the law (Articles 10 and 11 of the Constitution). Consequently, the faulty provisions had to be set aside (as prescribed by Article 159 of the Constitution) and the patient was entitled to reimbursement. The sickness fund did not appeal against this judgment.

Key points of analysis: The Labour Court of Veurne's decision is particularly important because a set of case law extending over ten years and concerning the reimbursement of two medications used in the treatment of osteoporosis had been concluded in a very unsatisfactory way.

The Labour Court's reference to Directive 79/7/EEC was also very opportune because although Article 3 of the directive includes statutory social security schemes concerning "sickness", and thus "healthcare", in its material scope, the Court of Justice hardly ever

had the opportunity to examine that particular aspect. Indeed, the only distantly related case was C-137/94 *Richardson* [1995-I-3407].

Internet link source: All relevant legal texts are available in Dutch and French on www.juridat.be, accessed on 18 August 2016.