



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

NEWS REPORT

Country:	Belgium
Title:	Refusal of an insurance to cover costs related to gender reassignment
Date:	01 May 2018
Expert:	Jacqmain Jean
<u>Context</u>	
Issue at stake:	Occupational social security / Gender reassignment
Ground of discrimination:	Sex
Source:	Labour Court in Brussels, judgment of 6 September 2016, <i>Algemene Rol</i> n° 15/3108/A, unreported and Labour Court of Appeal in Brussels, judgment of 16 March 2018, <i>Algemene Rol</i> n° 2016/AB/1090
Field:	Statutory social security, employment
Applicable law:	Act of 10 May 2007

Content

Case: After being diagnosed with gender dysphoria, a man underwent a surgical operation of reassignment and the sex conversion was duly registered. More than 15 years later, she found employment with a firm where an occupational hospital care insurance scheme was available to employees. However, the individual policy which the insurance company proposed included a clause under which the employee had to waive any claim for reimbursement of hospital costs related to her gender dysphoria, analysed as a chronic disease which had been diagnosed previous to the conclusion of the contract. If the employee did not accept that clause, access to the insurance would be denied.

The employee objected that due to the reassignment operation, she was cured of the disease, which consequently was not chronic, although it could still entail hospital costs, e.g. for the replacement of a mammary prosthesis. Moreover, under Article 4 (2) of the Act of 10 May 2007 aimed at fighting discrimination between women and men (the "Gender Act"), any adverse treatment grounded on gender reassignment is regarded as discrimination grounded on sex, while discrimination in an occupational social security scheme is prohibited under Articles 6 (1) (4) and 12 (1). Relying on Article 25 of the Gender Act, the employee applied to the Labour Court for an order to put an end to the illegal treatment; the Institute for Equality of Women and Men (the "gender agency" as envisaged by Article 20 of Directive 2006/54/EC) also applied for such an order.

Decision of the Court: In succession, the Labour Court in Brussels and the Labour Court of Appeal in Brussels found that there was discrimination grounded on gender reassignment and ordered the insurance company to give the employee access to the insurance scheme, under a penalty of EUR 2,000. Under Article 23 (2) of the Gender Act,

fixed damages of EUR 1,300 were also granted in compensation of the moral prejudice to the employee who, however, reserved her right to take further action should she suffer material prejudice.

Key points of analysis: The Institute failed in its claim that the order should also made applicable to any other unknown victim because the Labour Court of Appeal considered that, in contrast of the facts of the case which had led to the CJEU's decision in Case C-54/07 *Feryn* [2008-I-5187], the Institute could not produce any convincing indication that the insurance company had adopted a systematic policy concerning similar situations.

Internet link source: Decision of the Labour Court of Appeal (in Dutch) accessible on www.juridat.be, accessed on 17 April 2018.