

NEWS REPORT

Date:	15 June 2011
Expert:	François Moysse
Title:	First significant court decision on discrimination
Country:	Luxembourg
<u>Context</u>	
Issue at stake:	Indirect discrimination concept used for the first time in court
Ground of discrimination:	Age and gender
Source:	Conseil Supérieur des Assurances Sociales, 27 octobre 2010, Arrêt 2010/160, Journal des Tribunaux Luxembourg 2011, p.59
Field:	Social benefits
Legislative provisions:	Article 196 of code of social insurance

Contents

Case: The appeal court on social insurance matters issued on 27 October 2010 a judgment where indirect discrimination was alleged. The court used the definition of the directives 2000/43 and 2000/78.

The issue concerned alleged discrimination based mostly on gender but also possibly on age. Indeed, article 196 of the social insurance code states that an old-age pension is paid to the surviving spouse/registered partner, unless, among other exceptions, the deceased beneficiary of the pension was more than 15 years older than the surviving spouse/partner.

It was argued by the claimant that very few women would benefit from such a pension, as usually they are younger than men. Therefore women would be subject to indirect discrimination, as much more frequently they would be in such a situation where the payment of such pension would be excluded by law.

The Court found that there is no discrimination in this case, as the provisions of the code were gender-neutral.

The Court extracted the definition of indirect discrimination from the *Bilka* case of the CJEU of 13 May 1986 and applied it to the only legal basis invoked in the present case i.e. article 10bis of the Luxembourg Constitution, which states that *all Luxembourgers are equal before the law*.