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Insurers are not allowed to discriminate against transgender people

Brussels, 27.10.2016 – Madam X. was born male and underwent sex reassignment surgery in 1997. Since then she has gone through life as a woman without any problems, until she wanted to take out hospitalisation insurance. The insurance company only wanted to agree to taking out an insurance policy with her if there was a specific exclusion in the policy that related to her trans identity. The judge in the first instance ruled that this condition discriminates against transgender people.

Madam X. followed a gender confirmation treatment in 1997 and became a woman legally in 1998. In 2013 she wanted to take out a hospitalisation insurance through her employer. The insurer only wanted to agree to this if the costs related to 'gender dysphoria' were excluded. This would mean that the reimbursement of all future costs that were somewhat related to her transgender identity could be refused.

"Disadvantaging people because of their gender reassignment is discriminatory", states Liesbet Steven, Vice Director of the Institute of Equality between Women and Men. "Insurers aren't allowed to use general exclusions, linked to the sex reassignment of a transgender person. This is a form of discrimination based on sex."

Discrimination or chronically ill?

The Institute went to court with the victim. The insurer tried to convince the judge that there was nothing discriminatory about the exclusion by claiming that Madam X. was chronically ill. When someone who is chronically ill wants to take out an insurance policy, the insurer can decide to not intervene in certain costs related to that illness. These costs are 'excluded'. In this case the insurer wanted to exclude all costs related to the diagnosis, treatment, causes and consequences of 'gender dysphoria'. Madam X.'s gender confirmation treatment ended in 1997, so she no longer suffers from 'gender dysphoria'. Thus there was no question of a chronic illness when she tried to take out the insurance.

"The insurer wanted to convince the judge that transgender people are 'ill' their entire lives." says Liesbet Stevens. "We are glad they haven't succeeded."

On 6th September the court followed the Institute's stance. The court deemed that since her gender confirmation treatment, Madam X. did not suffer from any gender related illness and was thus treated detrimentally by the proposed exclusion, solely because of her sex reassignment. Anyone who had never undergone a gender confirmation treatment in the past, would have been able to take out a policy with more beneficial conditions. The court therefore determined discrimination based on sexual reassignment.

Transgender people and insurers

Approximately 10% of the notifications the Institute receives are about transgender discrimination. "We notice that more complaints from transgender people reach us about the problems they experience with insurance companies. These can range from exclusions, to additional costs or the refusal to reimburse certain medical expenses.", says Liesbet Stevens. "To better inform transgender people about their rights, the Institute has created a leaflet with tips about insurance."

The court points out that exclusions must be defined precisely and accurately and must not be based on any of the protected criteria in the anti-discrimination law. "The Institute thinks this decision is a powerful signal that transgender people aren't allowed to be discriminated. In the future we hope to reach a constructive dialogue with the insurance world about this matter.", concludes Liesbet Stevens.

The insurance company was sentenced to pay a large compensation and to give Madam X. the possibility to take out insurance once again. This time without exceptions.

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The mission of the Institute for the equality for women and men, which was created in December 2002, is to guarantee and promote the equality of women and men and to fight against any form of discrimination and inequality based on gender in all aspects of life through the development and implementation of an adequate legal framework, appropriate structures, strategies, instruments and actions.

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