

Test-Achats v. DKV Belgium

1) Reference Details

Jurisdiction: Commerce Tribunal, Brussels, Belgium.

Date of Decision: 7 March 2005

2) Facts

The Belgian consumer association Test-Achats brought this action against the company DKV Belgium which provides specialised insurance for sickness and invalidity. In 2004 they introduced a rate rise in their insurance premiums which was differentiated according to age.

The increase was graded such that policy holders from 0-19 years old had no increase; those 20-39 years old had an 8% increase; those 40-59 years saw a 16% increase, and those over 60 incurred a 24% increase.

3) Law

- Law of 25 February 2003 for the fight against discrimination

4) Legal Arguments

The defendants argued in the first place that Test-Achats did not have locus standi under article 19 of the law of 25 February 2003 for the fight against discrimination. The defendants in particular argued that Test-Achats had had legal personality for five years, but have only included the fight against discrimination in their statutes since 14 May 2004. Furthermore, the company asserted that it could only be the subject of an action by such an association where the latter has the agreement of the victim.

The applicant association produced a dossier with eight testimonies of persons insured by BVK which declared their agreement to the action.

On the substance of the case, DKV justified the difference in treatment on the basis of consideration of the increasing costs of medicine and medical developments. The extent of the increase in costs connected with hospitalisation was greater with the increase in age, therefore a difference in rate applied on the basis of age.

5) Decision

Firstly, the court had to establish the locus standi of Test-Achats under anti-discrimination law.

Locus standi under the Law of 25 January 2003 is granted to the Centre for Equal Opportunity and the Fight against Racism, and also to all other establishments for public utility which have had legal personality for at least five years, and whose statutes include the obligation to defend human rights and combat discrimination. The Court estimated that the five year requirement applied to the legal personality but did not extend to the inclusion of the fight against discrimination as a purpose within the statutes of the association. The Court found that the association did have the locus standi to act in this case.

Concerning the substance, the Court found that the distinction with age is connected with the greater risk that older people pose for the company in terms of payouts. However, this was a

risk that the company was aware of when it entered into the policies, the risk itself had not altered. The rising costs of healthcare and hospitalisation have risen for everyone, and so all policy holders should share in that regardless of their age. The difference in risk according to age has already been taken account of legitimately at the point of contract. In consequence, the Court decided that there was not room to create a distinction on the basis of age in the distribution of the higher costs among policy holders. As such, the differentiated augmentation of policy rates by age was declared discriminatory and contrary to the Law of 25 February 2003.