

Case C-236/09 Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres [2011]

Facts: Directive 2004/113/EC implemented the principle of equal treatment between men and women in the access to and supply of goods and services. While the Directive provided for unisex premiums and benefits for post-2007 contracts in the insurance sector, Art. 5(2) provided an exception allowing Member States to permit differences in treatment between women and men after this date, based on actuarial data and reliable statistics which are updated regularly and available to the public. The applicant, Association belge des Consommateurs Test-Achats (ASBL) and two private individuals, considered that a national provision implementing the derogation offered by Article 5(2) infringed the principle of equality between men and women. On this basis, the Belgian Constitutional Court referred a question of the Directive's compatibility with the principle of gender equality as enshrined in Art. 6(2) TEU.

Held: The principle of equal treatment required that comparable situations must not be treated differently, unless differential treatment is objectively justified. Article 5(2) of Directive 2004/113/EC creates the risk that the derogation from the equal treatment between men and women persists indefinitely, which would be contrary to the achievement of the objective aimed at. Therefore, the Court ruled that the derogation from the principle of equal treatment between men and women in the field of insurance was unlawful in so far as it was not subject to a time limit. Moreover, the provision breached Arts. 21 and 23 of the Charter of Fundamental Rights on non-discrimination and equality between men and women respectively.