

Pregnant woman not compensated by the CNS: ALEBA turns to the Constitutional Court

Luxemburg, 25 July 2024 – On Friday 14 June 2024, the Conseil Arbitral de la Sécurité Sociale de Luxembourg (Luxembourg Social Security Arbitration Board) agreed, at first instance, to refer two questions to the Constitutional Court for a preliminary ruling on whether article 25 of the Social Security Code was consistent with the Constitution.

Refusal of maternity allowance by the CNS

In this case, the CNS had refused to grant a maternity allowance to a member of ALEBA who represented her through the law firm Mbonyumutwa Avocats, on the grounds that she had not been affiliated as an employee for at least 6 months prior to the start of her maternity leave.

While it is true that this member had only been affiliated as an employee with her last employer for 5 months and 20 days prior to her maternity leave, she had previously been affiliated with the ADEM as an unemployment benefit recipient for only 9 months, after having been affiliated uninterruptedly as an employee for more than 13 years.

The CNS's refusal to pay compensation was based on Article 25 of the Social Security Code, which states that unemployed people are not entitled to maternity benefits, even though they are affiliated to the Social Security system like everyone else through the ADEM.

Preliminary questions to the Constitutional Court

Given that this discrimination is provided for by law (in article 25 of the Social Security Code), Mbonyumutwa Avocats had no choice but to raise it before the Conseil Arbitral de la Sécurité Sociale, which has jurisdiction to hear appeals against CNS decisions.

The Conseil Arbitral de la Sécurité Sociale has therefore granted our request to refer these preliminary questions to the Constitutional Court to determine whether such discrimination against pregnant women is justified.

If the Constitutional Court finds that there is unjustified discrimination and declares article 25 of the Social Security Code to be contrary to the Constitution, the CNS's refusal to grant the member compensation will no longer have a legal basis and she will be able to receive her maternity allowance.

Implications for women's rights

The Constitutional Court's response is therefore of vital importance not only for this case, but also for women's rights in general when they wish to take maternity leave immediately after a period of unemployment.

ALEBA is delighted to have opened a breach in the fight against this incomprehensible discrimination against pregnant women in Luxembourg law, and assures its members that it will of course be keeping a close eye on the case.