

JUDGMENT OF THE COURT (First Chamber)
27 May 2004^{*}

In Case C-285/02,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht Minden (Germany) for a preliminary ruling in the proceedings pending before that court between

Edeltraud Elsner-Lakeberg

and

Land Nordrhein-Westfalen,

on the interpretation of Article 141 EC and Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19),

^{*} Language of the case: German

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, A. La Pergola, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges,

Advocate General: F.G. Jacobs,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

- Ms Elsner-Lakeberg, by H. Bubenzer, Rechtsanwalt,

- the Land Nordrhein-Westfalen, by A. Machwirth, acting as Agent,

- the German Government, by M. Lumma, acting as Agent,

- the Commission of the European Communities, by N. Yerrell and H. Kreppel, acting as Agents,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2003,

gives the following

Judgment

- 1 By order of 26 July 2002, received at the Court on 2 August 2002, the Verwaltungsgericht (Administrative Court) Minden referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 141 EC and Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19).

- 2 That question was raised in proceedings between Ms Elsner-Lakeberg and her employer, the Land Nordrhein-Westfalen, concerning Ms Elsner-Lakeberg's request for remuneration for her additional hours of work.

Legal framework

Community rules

- 3 According to Article 1 of Directive 75/117:

‘The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called “principle of equal pay”, means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

...’

National legislation

- 4 Article 78a of the *Beamtengesetz für das Land Nordrhein-Westfalen* (Civil Service Code for North Rhine-Westphalia), as published on 1 May 1981 (GV NRW S. 234), provides that civil servants are obliged to work additional hours where the job requires it. Where such additional work exceeds five hours per calendar month, extra leave corresponding to all additional hours worked must be granted. Where it is incompatible with the job for leave to be granted, certain civil servants are entitled instead to supplementary pay for such additional work.

- 5 Article 5(2)(1) of the Verordnung über die Gewährung von Mehrarbeitsvergütung für Beamte (Regulation on the granting of remuneration for excess hours for civil servants) of 13 March 1992 (BGBl. 1992 I, p. 528), as amended on 3 December 1998 (BGBl. 1998 I, p. 3494), provides that, in the case of additional work in the teaching sector, three teaching hours is equivalent to five hours.

The main proceedings and the question referred for a preliminary ruling

- 6 Ms Elsner-Lakeberg, who has the status of a civil servant, works part-time as a secondary school teacher for the Land Nordrhein-Westfalen. Full-time teachers there work for 24.5 hours per week, which corresponds to 98 hours per month, based on an average of four weeks per month, whereas Ms Elsner-Lakeberg teaches for 15 hours per week, corresponding to 60 hours per month.
- 7 In December 1999 she was required to teach 2.5 additional hours in that month. Her request for remuneration of those hours was refused on the basis that the relevant legislation provided that excess hours worked by a teacher who is a civil servant would be remunerated only when the additional work exceeded three hours in a month. She therefore received no pay at all for the additional 2.5 hours worked.
- 8 Having unsuccessfully pursued the administrative appeal procedure, Ms Elsner-Lakeberg brought proceedings before the Verwaltungsgericht Minden.

- 9 Considering that the dispute before it called for an interpretation of Community law, the Verwaltungsgericht Minden decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is it compatible with Article 141 EC in conjunction with ... Directive 75/117 ... that men and women teachers, part-time as well as full-time, who are officials in the Land Nordrhein-Westfalen are not granted remuneration for excess hours worked if that additional work does not exceed three teaching hours in the calendar month?’

The question referred for a preliminary ruling

- 10 By its question, the national court essentially asks whether Article 141 EC and Article 1 of Directive 75/117 must be interpreted as precluding national legislation which provides that teachers, part-time as well as full-time, do not receive any remuneration for additional hours worked when the additional work does not exceed three hours per calendar month.
- 11 The Land Nordrhein-Westfalen and the German Government submit that part-time teachers are treated in exactly the same manner as full-time teachers. All teachers are entitled to remuneration if more than three additional hours are worked. In that

case the additional hours are remunerated in exactly the same manner. Equality of remuneration is ensured for both regular working hours and additional hours.

- 12 The Court notes that, according to settled case-law, the principle of equal pay, as enshrined in Article 141 EC and Article 1 of Directive 75/117, means that, for the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to the aspects and conditions of remuneration is prohibited in so far as that different treatment cannot be justified by an objective unrelated to sex or is not necessary to achieve the objective pursued (see to that effect, *inter alia*, Case C-236/98 *JämO* [2000] ECR I-2189, paragraph 36; and Case C-381/99 *Brunnhöfer* [2001] ECR I-4961, paragraphs 27 and 28).
- 13 The Court has held, with respect to part-time workers, that the members of the class of persons placed at a disadvantage, be they men or women, are entitled to have the same scheme applied to them as that applied to the other workers, on a basis proportional to their working time (Case C-33/89 *Kowalska* [1990] ECR I-2591, paragraph 19).
- 14 According to equally settled case-law, the term 'pay' referred to in Article 141 EC and Article 1 of Directive 75/117 comprises any other consideration, in cash or in kind, present or future, provided that the worker receives it, even indirectly, in respect of his employment from his employer (see in particular Case C-262/88 *Barber* [1990] ECR I-1889, paragraph 12; and *Brunnhöfer*, cited above, paragraph 33).

- 15 As regards the method to be used for comparing the pay of the workers concerned in order to determine whether the principle of equal pay is being complied with, again according to the case-law, genuine transparency permitting an effective review is assured only if that principle applies to each aspect of remuneration granted to men and women, excluding any general overall assessment of all the consideration paid to workers (see *Barber*, cited above, paragraphs 34 and 35; and *Brunnhofer*, cited above, paragraph 35). Accordingly, it is necessary for a separate comparison in respect of the pay for regular hours and the pay for additional hours.
- 16 In the main proceedings, the pay for additional hours constitutes consideration paid by the Land Nordrhein-Westfalen to the teachers concerned in respect of their employment.
- 17 Although that pay may appear to be equal inasmuch as the entitlement to remuneration for additional hours is triggered only after three additional hours have been worked by part-time and full-time teachers, three additional hours is in fact a greater burden for part-time teachers than it is for full-time teachers. A full-time teacher must work an additional three hours over his regular monthly schedule of 98 hours, which is approximately 3 % extra, in order to be paid for his additional hours, whilst a part-time teacher must work three hours more than his monthly 60 hours, which is 5 % extra. Since the number of additional teaching hours giving entitlement to pay is not reduced for part-time teachers in a manner proportionate to their working hours, they receive different treatment compared with full-time teachers as regards pay for additional teaching hours.

- 18 It is for the national court to determine, first, whether the different treatment established by the legislation in question affects considerably more women than men and, second, whether there is an objective unrelated to sex which justifies such different treatment and whether it is necessary to achieve the objective pursued (see, to that effect, Case C-278/93 *Freers and Speckmann* [1996] ECR I-1165, paragraph 28).
- 19 In those circumstances, the question referred for a preliminary ruling should be answered as follows: Article 141 EC and Article 1 of Directive 75/117 must be interpreted as precluding national legislation which provides that teachers, part-time as well as full-time, do not receive any remuneration for additional hours worked when the additional work does not exceed three hours per calendar month, if that different treatment affects considerably more women than men and if there is no objective unrelated to sex which justifies that different treatment or it is not necessary to achieve the objective pursued.

Costs

- 20 The costs incurred by the German Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Minden by order of 26 July 2002, hereby rules:

Article 141 EC and Article 1 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, must be interpreted as precluding national legislation which provides that teachers, part-time as well as full-time, do not receive any remuneration for additional hours worked when the additional work does not exceed three hours per calendar month, if that different treatment affects considerably more women than men and if there is no objective unrelated to sex which justifies that different treatment or it is not necessary to achieve the objective pursued.

Jann

La Pergola

von Bahr

Silva de Lapuerta

Lenaerts

Delivered in open court in Luxembourg on 27 May 2004.

R. Grass

P. Jann

Registrar

President of the First Chamber