

Press and Information Division

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Opinion of Advocate General L. A. Geelhoed in Case C-256/01

Debra Allonby v Accrington & Rossendale College

**RELIANCE ON THE PRINCIPLE OF EQUAL TREATMENT IS NOT
POSSIBLE WHERE DIFFERENCES IN PAY AS BETWEEN MEN AND
WOMEN CANNOT BE ATTRIBUTED TO A SINGLE SOURCE**

*A pension scheme for teachers which excludes lecturers who teach on the basis of
contracts for the provision of services may be indirectly discriminatory if
appreciably more women than men appear to be affected thereby*

A college of further education, Accrington & Rossendale College, terminated the employment of its part-time, mostly female lecturers (including Ms Allonby). It subsequently bought in their services again through the intermediary of an agency, Education Learning Services (ELS), with which those lecturers are registered as self-employed persons. Through those arrangements the college sought to achieve savings in operating costs. For the lecturers concerned the arrangements entail a reduction in pay and benefits in relation to those which they received under the original employment relationship with the college.

Ms Allonby brought proceedings against the College, ELS and the State founded on unlawful discrimination on the ground of sex in regard to pay and the conditions of access to a pension scheme. The Court of Appeal (England & Wales) (Civil Division), before which the matter came at last instance, referred certain questions in that connection to the Court of Justice for a preliminary ruling.

**Opinions of the Advocates General are not binding on the Court. It is the
function of the Advocates General, acting in complete independence, to
propose a legal solution in cases before the Court.**

Advocate General Geelhoed points out that the exercise by Ms Allonby of her professional activities since she has been engaged by ELS as a self-employed person has altered very little: she is *de facto* bound by the instructions of the management of the College as principal. There is however one significant difference. Her remuneration for her work as a subcontractor is received from ELS which is contractually bound to deliver the educational services required by the College. It follows that **the difference in pay cannot be attributed to a single source, and that there is no body that can be held liable for that difference and for its elimination** which, under the Court's case law is a pre-requisite for the application of the principle of equal treatment.

In Advocate General Geelhoed's view, this case is an illustration of a broader evolution which is emerging in employment relations in the European Community. Employers are increasingly contracting out more and more activities to specialised contractors or undertakings and the classic employer-employee relationship under an employment contract is being supplanted by contractual arrangements for the provision of services under which the providers of the services operate as self-employed persons. These developments should not *per se* be regarded as undesirable from a social or societal point of view. None the less, the legal arrangements instituted as a result of these developments may also be used to evade the consequences of the Community principle of equal treatment.

With regard to the right to join a pension scheme, which is regarded as a component of pay, the Advocate General points out that a comparator or a comparative framework is necessary in order to determine whether there is discrimination on the ground of sex. Accordingly, if Ms Allonby may not in respect of one component of her remuneration compare herself with a specific comparator then nor may she in respect of another component of her remuneration.

In Advocate General Geelhoed's view that does not mean that there cannot be indirect discrimination stemming from sector-wide or legislative schemes. The United Kingdom occupational pension scheme for teachers excludes lecturers who teach under an agreement to provide services. There may be indirect discrimination if it appears that appreciably more women than men are affected thereby. Whether that is the case and whether there is an objective justificatory ground are, however, matters for the national court.

N.B. The judges of the Court of Justice of the EC will now begin their deliberations in this case. Judgment will be delivered at a later date.

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