

Bundesverwaltungsgericht, Urteil vom 23. Juni 2005, - Az. 2 C 21.04 -

The plaintiff, a 59-year-old civil servant, worked as a part-time teacher with a regular teaching duty of 20 hours a week for a German *Land*. 87 % of the part-time teachers in that *Land* are women. According to the respective national provisions on working time and salary the salary of part-time teachers is calculated in proportion to the regular teaching duty of their full-time colleagues (27 hours). Thus the normal ratio is 20:27. For teachers above the age of 58 however the teaching duty may be reduced to 19 hours for part-time and 25 hours for full-time work. When the plaintiff was granted such reduction she applied for a calculation of their salary at the more profitable ratio of 19:25.

Since the *Land* refused to adjust her salary the plaintiff brought proceedings submitting *inter alia* that the calculation on the basis of the non-reduced teaching duty amounted to an indirect discrimination of women and thus violated Art. 141 EC (equal pay for men and women).

While the action of the plaintiff was successful in first and second instance the Federal Administrative Court quashed the decisions of the lower courts and dismissed the action. The Court argued that the reduction of teaching hours did not justify an adjustment of the salary since German law strictly provides that - irrespective of a teacher working full or part-time - the salary has to be calculated on the basis of the regular teaching duty. Accordingly, the relief for older teachers does not form part of the salary calculation system. It is an advantage *sui generis* (comparable to reductions for teachers fulfilling administrative tasks in addition to their teaching duty) which has no influence on the ratio or the basic salary per hour and, thus, does not fall within the scope of Art. 141 EC.