

## **Georg Badeck and others, Case C-158/97 [2000] ECR I-1875**

### **1) Reference Details**

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from State Constitutional Court of the Land of Hesse (Sweden)

Date of Decision: 30 March 2000

Link to full case:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997J0158:EN:HTML>

### **2) Facts**

The proceedings from which the preliminary questions arose were between the Equal Opportunities Ombudsman and the Orebro County Council (Sweden). The proceedings concerned the fact that the pay of two female midwives, Ms Ellemen and Ms Wetterberg, was less than that received by a clinical technician, Mr Persson.

The midwives argued that Mr Perssons' work was of equal value to that of the midwives. However the hospital in which they worked disagreed and argued that the value of the two different roles was not equivalent, and even if it were, there was no discrimination as the two roles were governed by different and unrelated terms of employment. The terms included different working hours that were governed by different pay allowances.

### **3) Law**

*European Community Law*

- Council Directive 76/207 - Equal Treatment Directive

### **4) Legal questions referred to the ECJ**

1. Under Article 119 of the Treaty of Rome and Council Directive 75/117/EEC 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 a supplement for inconvenient working hours be included in the basis for a pay comparison in relation to a pay discrimination claim? What difference does it make that the supplement for inconvenient working hours varies from month to month depending on the working schedule?
2. In answering Question 1 should significance be attached to the fact that as part of their tasks the midwives must regularly work hours which entitle them to the supplement for inconvenient working hours, whereas the clinical technician does not regularly perform work during times which afford entitlement to such a supplement?
3. In determining the question whether the supplement for inconvenient working hours is to be included in the basis for a pay comparison in relation to a pay discrimination claim, must significance be attached to the fact that, under national law, that supplement is included in basic pay for the purpose of determining pensions, sick pay, damages and other earnings-related payments?

## 5) Decision

The ECJ answered the preliminary questions determining that any pay allowances for inconvenient hours should not be taken into account when calculating a salary to be used in pay comparison calculations. The Court further stated that:

*“[I]f a difference in pay between the two groups compared is found to exist, and if the available statistical data indicate that there is a substantially higher proportion of women than men in the disadvantaged group, Article 119 of the Treaty requires the employer to justify the difference by objective factors which are unrelated to any discrimination on grounds of sex.”*