

## **Marschall v Land Nordrhein- Westfalen, Case C-409/95 [1997] ECR I-6363**

### **1) Reference Details**

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from Germany

Date of Decision: 11 November 1997

Link to full case:

[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=695I0409](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=695I0409)

### **2) Facts**

Hellmut Marschall was employed as a teacher at a comprehensive school. On 8 February 1994 Mr Marschall applied for a promotion, however, he was told by the District Authority that they intended to appoint a woman. Mr Marschall unsuccessfully complained to the District Authority, who stated that as there was an equally qualified female candidate and less women employed at that bracket than men, a female candidate would be offered the promotion.

Mr Marschall brought proceedings against the District Authority in the local courts. At first instance it was held that as the female candidate and Mr Marschall were equally qualified, the outcome of the case would be dependent on the compatibility of the Equal Treatment Directive and paragraph 25(5) of the *Beamtengesetz für das Land Nordrhein-Westfalen*, which states,

*"[W]here, in the sector of the authority responsible for promotion, there are fewer women than men in the particular higher grade post in the career bracket, women are to be given priority for promotion in the event of equal suitability, competence and professional performance, unless reasons specific to an individual [male] candidate tilt the balance in his favour."*

The Court relying on the decision of the ECJ in *Kalanke v Freie Hansestadt Bremen* [1995] ECR I-3051 stated:

*"[T]hat it consider[ed] that the priority which the provision in question accords in principle to women seems to constitute discrimination within the meaning of Article 2(1) of the Directive and that such discrimination is not eliminated by the possibility of giving preference, exceptionally, to male candidates."*

Further, the Court stated its belief that:

*"The basis for assessing candidates is unduly narrowed since only the numerical proportion of men to women at the level concerned is taken into account. Furthermore, the provision in question does not improve women's ability to compete on the labour market and to pursue a career on an equal footing with men but prescribes a result, whereas Article 2(4) of the Directive allows only measures for promoting equality of opportunity."*

The Court stayed proceedings and asked for a preliminary ruling from the ECJ.

### **3) Law**

### *National Law*

- Beamtenengesetz für das Land Nordrhein-Westfalen (Law on Civil Servants of the Land)

### *European Community Law*

- Council Directive 76/207 - Equal Treatment Directive

### *European Case Law*

- *Kalanke v Freie Hansestadt Bremen* [1995] ECR I-3051

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

1. Does Article 2(1) and (4) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, preclude a rule of national law which provides that, in sectors of the public service in which fewer women than men are employed in the relevant higher grade post in a career bracket, women must be given priority where male and female candidates for promotion are equally qualified (in terms of suitability, competence and professional performance), unless reasons specific to an individual male candidate tilt the balance in his favour?

## **5) Decision**

The ECJ held that a national rule which, in a case where there are fewer women than men at the level of the relevant post in a sector of the public service and both female and male candidates for the post are equally qualified in terms of their suitability, competence and professional performance, requires that priority be given to the promotion of female candidates unless reasons specific to an individual male candidate tilt the balance in his favour is not precluded by Article 2(1) and (4) of Council Directive 76/207/EEC of 9 February 1976 provided that:

- a. [I]n each individual case the rule provides for male candidates who are equally as qualified as the female candidates a guarantee that the candidatures will be the subject of an objective assessment which will take account of all criteria specific to the candidates and will override the priority accorded to female candidates where one or more of those criteria tilts the balance in favour of the male candidate, and
- b. [S]uch criteria are not such as to discriminate against the female candidates.