

Case C-409/95

Hellmut Marschall  
v  
Land Nordrhein-Westfalen

(Reference for a preliminary ruling  
from the Verwaltungsgericht Gelsenkirchen)

(Equal treatment for men and women — Equally qualified male and  
female candidates — Priority for female candidates — Saving clause)

Opinion of Advocate General Jacobs delivered on 15 May 1997 ..... I - 6365  
Judgment of the Court, 11 November 1997 ..... I - 6383

Summary of the Judgment

*Social policy — Men and women — Access to employment and working conditions — Equal treatment — Derogations — Measures to promote equality of opportunity between men and women — Scope — National provision giving priority to the promotion of women over men where women have equal qualifications and are under-represented — Saving clause allowing an objective assessment of each individual case on the basis of criteria not discriminatory towards women — Whether permissible*

*(Council Directive 76/207, Art. 2(1) and (4))*

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 Directive 76/207 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, provided that:

- in 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
- such criteria are not such as to discriminate against the female candidates.