

Case C-285/98

Tanja Kreil

v

Bundesrepublik Deutschland

(Reference for a preliminary ruling
from the Verwaltungsgericht Hannover)

(Equal treatment for men and women — Limitation of access by women to
military posts in the Bundeswehr)

Opinion of Advocate General La Pergola delivered on 26 October 1999	1-	71
Judgment of the Court, 11 January 2000	1-	95

Summary of the Judgment

*Social policy — Men and women — Access to employment and working conditions — Equal treatment — Derogations on grounds of public security — Subject to the rules of Community law — Option available under Article 2(2) of Directive 76/207 — Scope — Total exclusion of women from armed units of the German Bundeswehr — Not permissible — Breach of the principle of proportionality — Derogation provided for under Article 2(3) of the Directive — Not applicable
(Council Directive 76/207, Art. 2(2) and (3))*

Although it is for the Member States, which have to adopt appropriate measures to ensure their internal and external security, to take decisions on the organisation of their armed forces, it does not follow that such decisions must fall entirely outside the scope of Community law. It is not possible, without impairing the binding nature of Community law and its uniform application, to recognise that there is inherent in the Treaty a general exception covering all measures taken by a Member State for reasons of public security, above and beyond the specific cases contemplated in certain provisions. Accordingly, such measures are subject to 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.

When, in the case of the organisation of the armed forces in the Federal Republic of Germany, the competent national authorities avail themselves of the option open to them under Article 2(2) of the Directive — that is to say, of excluding from the scope of the Directive occupational activities for which, by reason of their nature or the context in which they are carried out, sex constitutes a determining factor — they cannot, without contravening the principle of proportionality, adopt the general position that the composition of all armed units in the Bundeswehr must remain exclusively

male. Since the derogations provided for in Article 2(2) can apply only to specific activities, such an exclusion, which applies to almost all military posts in the Bundeswehr, cannot be regarded as a derogating measure justified by the specific nature of the posts in question or by the particular context in which the activities in question are carried out.

As regards the possible application of Article 2(3) of the Directive, under which differences of treatment are allowed out of a concern to protect women, the total exclusion of women from all military posts involving the use of arms is not one of the differences of treatment permissible.

It follows that Directive 76/207 precludes the application of provisions of national law, such as those of German law, which impose a general exclusion of women from military posts involving the use of arms and which allow them access only to the medical and military-music services.

(see paras 15-16, 19-20, 27, 29-32 and operative part)