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Press and Information

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Judgment of the Court of Justice in Case C-147/03

Commission of the European Communities v. Republic of Austria

**THE LEGISLATION ON ADMISSION TO AUSTRIAN UNIVERSITIES IS
CONTRARY TO COMMUNITY LAW**

Making access for students who have obtained their secondary education diploma in another Member State subject not only to the general Austrian admission requirements, but also to the requirements for immediate admission to the chosen course of study in that other State constitutes indirect discrimination on grounds of nationality

The Court of Justice of the European Communities has held that the Austrian legislation on admission to higher and university education infringes the prohibition on discrimination on grounds of nationality and is contrary to the provisions of the EC Treaty concerning vocational training. Austria has failed to take the measures necessary to ensure that holders of secondary education diplomas awarded in other Member States have access to higher and university education under the same conditions as holders of Austrian secondary education diplomas. The Court therefore allowed the action of the European Commission.

The Austrian legislation on university studies (Universitäts-Studiengesetz) provides that students who have obtained their secondary education diploma in a Member State other than Austria and who wish to pursue their higher or university studies in Austria must not only produce that diploma, but also prove that they fulfil the conditions of access to the chosen course of study in the State in which they obtained their diploma, such as, in particular, success in an entrance examination or obtaining a sufficient grade to be included in the *numerus clauses*.

The Court finds that that legislation on admission introduces not only differential treatment to the detriment of students who have obtained their secondary education diploma in a Member State other than Austria, but also a difference in treatment between those same students according to the Member State in which they obtained their secondary education diploma. That legislation adversely affects students from other Member States more than Austrian students and therefore leads to indirect discrimination on grounds of nationality.

That discrimination could be justified only if it were based on objective considerations independent of the nationality of the persons concerned and were proportionate to the legitimate aim of the national provisions.

The Court then verifies whether the indirect discrimination is supported by justifications:

- The interest of safeguarding the homogeneity of the Austrian higher or university education system

First, **excessive demand for access to specific courses could be met by the adoption of specific non-discriminatory measures (an entry examination or the requirement of a minimum grade)**. Second, Austria has failed to demonstrate that, in the absence of the current legislation, the existence of the Austrian education system in general and the homogeneity of higher education in particular would be jeopardised.

- The interest of preventing abuse of Community law

The possibility for a student from the European Union, who has obtained his secondary education diploma in a Member State other than Austria, to gain access to Austrian higher or university education under the same conditions as holders of diplomas awarded in Austria constitutes the very essence of the principle of freedom of movement for students guaranteed by the EC Treaty. That possibility cannot therefore of itself constitute an abuse which, in any case, must be subject to assessment on a case-by-case basis.

- Compliance with the two conventions concluded within the framework of the Council of Europe in 1953 and 1977 on the equivalence of diplomas leading to admission to universities

The rights arising from international agreements concluded by a Member State before its accession to the European Union may not be invoked in intra-Community relations. That applies, *a fortiori*, in respect of agreements concluded by it following its accession.

The Court therefore holds that the indirect discrimination is not justified and declares that Austria has failed to fulfil its obligations under the principles of the EC Treaty.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE EN FR GR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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