

Press and Information Division

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Judgment of the Court of Justice in Joined Cases C-465/00, C-138/01 and C-139/01

Österreichischer Rundfunk and Others

THE TRANSMISSION OF DATA ON THE SALARIES OF EMPLOYEES OF PUBLIC BODIES FOR PUBLICATION IN AN ANNUAL REPORT MAY BE COMPATIBLE WITH COMMUNITY LAW

To be compatible, it must be necessary and appropriate to the objective of sound management of public funds. It is for the national courts to ascertain whether it is necessary to give names or whether it is enough to transmit the data in anonymised form.

Under Austrian law, bodies subject to control by the Rechnungshof (Court of Audit) ¹ are obliged to transmit to the Rechnungshof the salaries and pensions exceeding a certain threshold paid to their employees and pensioners (the threshold is fixed each year, for example EUR 82 430.18 in 2000). Disclosure of the names of the persons concerned is not expressly mentioned in the Austrian legislation, but follows from the doctrine adopted by the Rechnungshof. The Rechnungshof collects the data in an annual report which is transmitted to the Nationalrat (lower house of Parliament), the Bundesrat (upper house of Parliament) and the Landtage (provincial parliaments). It is also made available to the public.

Certain organisations, including ÖRF and other public undertakings, regional and local authorities and a statutory professional representative body, did not communicate the data or communicated it without the names of the employees. They rely principally on a Community directive of 1995 on the protection of personal data. The Rechnungshof applied to the Verfassungsgerichtshof (Constitutional Court) to settle the difference of opinion. (C-465/00)

1 The bodies subject to control by the Rechnungshof are regional and local authorities, social security institutions, statutory professional representative bodies, Österreichischer Rundfunk (ÖRF) (a radio and television broadcasting organisation governed by public law), and other public undertakings.

Two employees of ÖRF, Ms Neukomm and Mr Lauer mann, brought proceedings to prevent ÖRF from acceding to the Rechnungshof's request to communicate data. They appealed against the dismissal of that application to the Oberster Gerichtshof (Supreme Court). (*C-138/01 and C-139/01*)

The two Austrian courts put questions to the Court of Justice on two points: is the Austrian legislation compatible with Community law (in particular the 1995 directive), and are the provisions of Community law directly applicable, in that they may be relied on to block the application of national rules which are contrary to them?

The Court of Justice notes that the Community directive, while having as its principal object to ensure the free movement of personal data, provides that Member States must observe the protection of the fundamental **rights and freedoms** of individuals, in particular their right to private life, with respect to the **processing of personal data**.

The Court considers that the inclusion of the data concerning the salaries paid and their recipients in the annual report constitutes the "processing of personal data". In the context of Community law, fundamental rights include, among others, the rights guaranteed by the European Convention on Human Rights. Whilst the Convention lays down the principle that the public authorities must not interfere with the exercise of the right to private life, it accepts that such an interference is possible under certain conditions (Article 8 of the Convention).

The Court states that the communication by an employer to a third party of data relating to the remuneration received by an employee or pensioner is an interference with private life within the meaning of Article 8 of the Convention, which may be justified if it is **in accordance with the law**, pursues a **legitimate aim** mentioned in that article, and is **necessary** in a democratic society to achieve that aim.

In this respect, the Court finds, first, that **the interference is in accordance with the Austrian law**. However, it is for the national courts to ascertain whether the disclosure of the names of the persons (which is not provided for) meets the requirement of foreseeability. Next, the Court observes that the object of the interference is to ensure the thrifty and appropriate use of public funds by the authorities, which constitutes **a legitimate aim** within the meaning of Article 8 of the Convention, which mentions the "economic well-being of the country". Finally, as regards **necessity**, the Court considers that it is for the national courts to examine whether it is necessary to make available to the general public the names of the persons in relation to their salaries, and whether it would not have sufficed to inform the general public only of the salaries and other financial benefits to which the employees concerned are contractually entitled.

The Court concludes that, if the national courts consider that the Austrian legislation is not compatible with the Convention, it cannot comply with the Community directive either. If, on the other hand, they consider that the legislation is both necessary and appropriate to the public interest objective pursued, it will then be for them to ascertain whether, by not expressly providing for disclosure of the names of the persons concerned, the legislation meets the requirement of foreseeability.

As regards the direct applicability of the Community directive, the Court considers that the provisions of the directive in question are sufficiently precise to be relied on by an individual

before the national courts to block the application of rules of national law which are contrary to those provisions.

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