



Press and Information

Court of Justice of the European Communities

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Judgment in Case C-115/08
Land Oberösterreich v ČEZ

The Austrian courts, when hearing an action for cessation of nuisance between neighbouring landowners and the Temelín nuclear power plant, must take account of the operating authorisation granted by the Czech authorities

That authorisation is part of the Community system aimed at ensuring protection of the population against nuclear hazards

In Austria an owner of land may prohibit his neighbour from causing nuisance, emanating from the latter's land, in so far as it exceeds normal local levels and significantly interferes with the usual use of the land. However, if the interference is caused, in excess of that level, by an officially authorised installation on the neighbouring land, the landowner is entitled only to bring court proceedings for compensation for the damage caused.

The Land Oberösterreich (Province of Upper Austria) is the owner of land used for agriculture and agricultural trials, on which there is an agricultural college. The land is situated about 60 km from the Temelín nuclear power plant, which itself is situated in the Czech Republic and operated by the Czech energy company, ČEZ. The construction and operation of that nuclear power plant were authorised by the Czech authorities in 1985 and it has been operating at full capacity since 2003.

According to the Land Oberösterreich, the radioactivity generated by the normal functioning of the Temelín nuclear power plant or the risk of contamination caused by the operation and potential malfunction of the plant cause a lasting interference with the normal use of its land.

For that reason, the Land Oberösterreich and other private owners applied to the Landesgericht Linz (Regional Court, Linz), seeking an order that ČEZ put an end to the actual or potential nuisance relating to the ionising radiation potentially emanating from the Temelín nuclear power plant and adapt it according to the prevailing technical standards or close it if the required adaptations cannot be made.

The Austrian court found that, in Austria, there is discrimination between industrial installations which have been granted official authorisation by the national authorities and those which have been granted authorisation by the authorities of another Member State in that authorisations granted by the latter are not taken into account in an action for cessation of nuisance brought against their owner.

It therefore asked the Court of Justice whether the prohibition of discriminations on grounds of nationality allows such a difference in treatment and whether the authorisation granted by the Czech authorities for the operation of the Temelín nuclear power plant should be recognised in Austria in such legal proceedings.

The Court finds, first of all, that the industrial activity pursued at the Temelín nuclear power plant falls within the scope of application of the EAEC Treaty.¹

Next, the Court observes that undertakings which operate an installation situated in a Member State are usually undertakings established under the law thereof and that their situation is

¹ Treaty establishing the European Atomic Energy Community.

comparable to that of a national of that Member State. Consequently, a difference in treatment which works to the detriment of installations which have received official authorisation in a Member State other than Austria must be regarded as a difference in treatment on grounds of nationality. Moreover, the principle of prohibition of any discrimination on grounds of nationality is a general principle of Community law which is also applicable under the EAEC Treaty.

The Court notes that under the EAEC Treaty the Community possesses legislative competence to establish, for the purpose of health protection, an authorisation system which must be applied by the Member States. The granting of official authorisations for the construction and operation of nuclear installations, in their various aspects relating to health protection against the dangers of ionising radiations for the general public, therefore comes within the scope of application of the EAEC Treaty. It follows that a difference in treatment which works to the detriment of nuclear installations which have received official authorisation in another Member State must be examined in the light of that treaty.

Next, the Court notes that aims of a purely economic nature, such as protection of the interests of domestic economic operators, cannot justify discrimination on grounds of nationality.

The Court observes, in particular, that basic standards for health protection for the general public against the dangers arising from ionising radiations have been adopted at Community level, compliance with which at Temelín was checked by the Commission following the accession of the Czech Republic. Moreover, the questions relating to safety at that power plant were evaluated by the Commission and were the subject-matter of recommendations and monitoring by the Commission, with a view to bringing it up to a level of nuclear safety comparable to that prevailing in the European Union.

The Court further states that, in the event of malfunction of the protection system introduced under the EAEC Treaty, the Member States have a number of remedies at their disposal for obtaining the corrections necessary in the circumstances.

In those circumstances, **Austria cannot justify the discrimination practised in respect of the official authorisation granted in the Czech Republic for the operation of the Temelín nuclear power plant** on the ground that it is necessary for protecting life, public health, the environment or property rights. The existing Community legislative framework, of which that authorisation forms a part, contributes precisely and essentially towards ensuring the protection of those values. Thus that difference in treatment cannot be regarded as either necessary or proportionate for the purposes of protection.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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