

Case C-224/01

Gerhard Köbler

v

Republik Österreich

(Reference for a preliminary ruling
from the Landesgericht für Zivilrechtssachen Wien (Austria))

(Equal treatment — Remuneration of university professors — Indirect
discrimination — Length-of-service increment — Liability of a Member State
for damage caused to individuals by infringements of Community law for which
it is responsible — Infringements attributable to a national court)

Opinion of Advocate General Léger delivered on 8 April 2003 I- 10243

Judgment of the Court, 30 September 2003 I- 10290

Summary of the Judgment

1. *Community law — Rights conferred on individuals — Infringement by a Member State — Obligation to make good damage caused to individuals — Infringement attributable to a supreme court — No effect — Court competent to decide a case relating to such compensation — Application of national law*

2. *Community law — Rights conferred on individuals — Infringement by a Member State — Obligation to make good damage caused to individuals — Conditions in the event of infringement attributable to a supreme court — Manifest character of the infringement — Criteria*
3. *Freedom of movement for persons — Workers — Equal treatment — Remuneration of university professors — Indirect discrimination — Length-of-service increment which takes into account only the length of service in the universities of the Member State concerned — Not permissible — Whether justifiable — No justification (EC Treaty, Art. 48 (now, after amendment, Art. 39 EC); Council Regulation No 1612/68, Art. 7(1))*
4. *Community law — Infringement by a Member State — Obligation to make good damage caused to individuals — Infringement attributable to a supreme court — Particular circumstances — Lack of manifest character of the infringement*

1. The principle that Member States are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible is also applicable when the alleged infringement stems from a decision of a court adjudicating at last instance.

relating to such reparation. Subject to the reservation that it is for the Member States to ensure in each case that those rights are effectively protected, it is not for the Court to become involved in resolving questions of jurisdiction to which the classification of certain legal situations based on Community law may give rise in the national judicial system.

That principle, inherent in the system of the Treaty, applies to any case in which a Member State breaches Community law, whichever is the authority of the Member State whose act or omission was responsible for the breach.

(see paras 30-31, 33, 46-47, 50, operative part 1)

It is for the legal system of each Member State to designate the court competent to adjudicate on disputes

2. Member States are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible where the

rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between that breach and the loss or damage sustained by the injured parties. In order to determine whether the infringement is sufficiently serious when the infringement at issue stems from a decision of a court adjudicating at last instance, the competent national court must, taking into account the specific nature of the judicial function and the legitimate requirement of legal certainty, determine whether that infringement is manifest.

In particular, the national court must take account of all the factors which characterise the situation put before it. Those factors include, in particular, the degree of clarity and precision of the rule infringed, whether the infringement was intentional, whether the error of law was excusable or inexcusable, the position taken, where applicable, by a Community institution and non-compliance by the court in question with its obligation to make a reference for a preliminary ruling under the third paragraph of Article 234 EC.

In any event, an infringement of Community law will be sufficiently serious where the decision concerned was

made in manifest breach of the case-law of the Court in the matter.

(see paras 51-56, operative part 1)

3. Article 48 of the Treaty (now, after amendment, Article 39 EC) and Article 7(1) of Regulation No 1612/68 on freedom of movement for workers within the Community are to be interpreted as meaning that they preclude the grant by a Member State *qua* employer, of a special length-of-service increment to university professors which secures a financial benefit in addition to basic salary, the amount of which is already dependent on length of service, and which a university professor receives if he has carried on that profession for at least 15 years with a university in that Member State and if, furthermore, he has been in receipt for at least four years of the normal length-of-service increment.

As it precludes, for the purpose of the grant of the special length-of-service increment for which it provides, any possibility of taking into account periods of activity completed by a university professor in another

Member State, such a regime is clearly likely to impede freedom of movement for workers.

Although it cannot be excluded that an objective of rewarding workers' loyalty to their employers in the context of policy concerning research or university education constitutes a pressing public-interest reason, the obstacle which such a measure entails clearly cannot be justified in the light of such an objective.

(see paras 70-72, 83,
operative part 2)

4. An infringement of Community law does not have the requisite manifest character for liability under Community law to be incurred by a Member State for a decision of one of its courts adjudicating at last instance when, firstly, Community law does not expressly cover the issue of law in question, there is no answer to be found in the Court's case-law and the answer is not obvious and secondly, the infringement is not deliberate in nature but results from the incorrect reading of a judgment of the Court.

(see paras 122-123, 126,
operative part 3)