

Press and Information Division

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Judgment in Case C-112/00

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**THE FACT THAT THE AUSTRIAN AUTHORITIES DID NOT BAN A PEACEFUL
DEMONSTRATION OF LIMITED DURATION ON THE BRENNER MOTORWAY
IS NOT CONTRARY TO COMMUNITY LAW**

That administrative decision, motivated by respect for the freedoms of expression and assembly, was accompanied by measures enabling serious disruption to intra-Community trade to be avoided.

Transitforum Austria Tirol, an association for the protection of the environment, organised a demonstration from 12 to 13 June 1998 on the Brenner motorway to bring to the attention of the public the problems caused by the increase in traffic on that route and to call upon the Austrian authorities to take corrective measures. On 15 May 1998, it duly informed the competent administrative authorities (the Bezirkshauptmannschaft in Innsbruck) and the media of the demonstration, which passed on the information to Austrian, German and Italian road-users. That demonstration, which the Austrian authorities found to be lawful as a matter of national law, took place peacefully on the appointed date and caused the complete closure of the Brenner motorway to road traffic for 30 hours.

Schmidberger, a company specialising in transport between Italy and Germany, brought an action before the Austrian courts seeking compensation from Austria, which it considered to be liable for a restriction of the free movement of goods contrary to Community law. It claimed damages of ATS 140 000 (EUR 10 174.20) because five of its heavy-goods vehicles were immobilised for four consecutive days (the day before the demonstration was a bank holiday and the two following days fell at the weekend, during which lorries may not, in principle, operate).

The Oberlandesgericht Innsbruck (Innsbruck Higher Regional Court), Innsbruck stresses that the requirements of Community law must be taken into account. More particularly, in its

view, it is necessary to determine whether the principle of the free movement of goods requires Member States to ensure free access to major trunk routes and whether that obligation prevails over fundamental rights, including the freedoms of expression and assembly in issue in this case. It is on this point, in particular, that it seeks the guidance of the Court of Justice.

The Court points out, first of all, that **the free movement of goods is one of the fundamental principles of the Community and that any restriction of that freedom must be eliminated as between the Member States. Where a Member State abstains from adopting the measures required to deal with obstacles to intra-Community trade it may be held liable, even if they are not caused by the State and result from actions taken by private individuals**, as was the case in France in 1997 ¹.

The Court emphasises that that obligation is all the more essential where what is at issue is a trunk route of primary importance such as the Brenner motorway, which is one of the principal communication links between northern Europe and the north of Italy. Consequently, **the fact that Austria did not ban a demonstration which closed that motorway for almost 30 hours is a restriction of intra-Community trade in goods within the Union** and is, in principle, incompatible with Community law unless there is an objective justification for that restriction.

According to the Court, in assessing whether that obstacle to free movement may be justified it is necessary to take into consideration the objective pursued by the national authorities in considering whether to grant authorisation: in this case, the respect for the demonstrators' fundamental rights of freedom of expression and freedom of assembly guaranteed by the Austrian Constitution and the European Convention of Human Rights (ECHR), the observance of which the Court of Justice of the European Communities ensures. The Court considers it necessary in such a situation to weigh the interests involved - the protection of the freedom of expression and assembly, on the one hand and compliance with the free movement of goods, on the other - and, having regard to the specific factors submitted for its attention, to decide whether a fair balance between those interests was struck.

The Court states that the situation is not at all like that which was the subject of the Court of Justice's judgment against France for failure to fulfil its obligations in 1997. On the contrary, the demonstrators exercised their rights of expression and assembly peacefully and within the limits of the law, they took care to warn the road users concerned on both sides of the border in good time and they blocked access to a single route, on a single occasion and for a limited period, which enabled the Austrian authorities to pass on the information in turn and to take accompanying measures to limit, as far as possible, the disruption to road traffic (for example, by setting up alternative routes). Having regard to the wide margin of discretion which must be accorded to them in the matter, the national authorities were therefore reasonably entitled to conclude that the legitimate objective pursued by that demonstration could not be achieved by measures less restrictive of Community trade. **The Court of Justice therefore finds that the authorisation of that demonstration did strike a fair balance between safeguarding the fundamental rights of the demonstrators and the requirements of the free movement of goods.** Consequently, the Austrian authorities cannot be said to have committed a breach of Community law such as to give rise to liability on the part of the Member State concerned.

¹ Case C-265/95 *Commission v France* [1997] ECR I-6959 and Press Release No 76/97.

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