

Press and Information Division

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Judgment of the Court of Justice on the reference for a preliminary ruling in Case C-224/01

Gerhard Köbler v Republic of Austria

**A MEMBER STATE IS LIABLE FOR THE DAMAGE CAUSED TO AN
INDIVIDUAL BY AN INFRINGEMENT OF COMMUNITY LAW ATTRIBUTABLE
TO A SUPREME COURT IF THE INFRINGEMENT IS MANIFEST**

The decision of the Verwaltungsgerichtshof dismissing Mr Köbler's action does not constitute a manifest infringement of Community law and thus does not render the Austrian State liable

Mr Köbler has been employed since 1 March 1986 as an ordinary university professor in Innsbruck (Austria). In 1996 he applied for the special length-of-service increment for university professors. The grant of that benefit is dependent under Austrian law on the completion of 15 years' service solely in Austrian universities. Mr Köbler had completed the requisite length of service if the duration of his service in universities of other Member States were taken into consideration.

Upon refusal of his application Mr Köbler brought proceedings before the Austrian courts, arguing that such a requirement constituted indirect discrimination contrary to Community law.

On that point the Verwaltungsgerichtshof, administrative court of last instance, made a reference to the Court of Justice of the European Communities. Following a judgment of the Court in a similar ¹, the Austrian court withdrew its request for a preliminary ruling. By a judgment of 24 June 1998 the Verwaltungsgerichtshof dismissed Mr Köbler's action on the ground that the special length-of-service increment was a loyalty bonus which justified a derogation from the provisions on freedom of movement for workers.

¹ In Case C-15/96 *Schöningh-Kougebetopoulou* [1998] ECR I-47 the Court held that a measure which makes a worker's remuneration dependent on his length of service but excludes any possibility for comparable periods of employment completed in the public service of another Member State to be taken into account is likely to infringe the principle of freedom of movement for workers.

Mr Köbler brought an action for damages before the Landesgericht für Zivilrechtssachen, Vienna, against the Republic of Austria on the ground that the judgment of the Verwaltungsgerichtshof was contrary to Community law. The referring court submitted certain questions to the Court in that connection.

The Member States are obliged to make good damage caused to individuals by infringements of Community law attributable to national courts adjudicating at last instance.

The Court points out, first of all, that it has already that the system of the EC Treaty requires the Member States to afford reparation of damage caused to individuals as a result of breaches of Community law for which they are responsible, whichever is the authority of the Member State responsible for the damage.

In fact, the essential role played by the judiciary in the protection of the rights derived by individuals from Community law would be weakened if individuals were not able, under certain conditions, to obtain reparation for damage caused by an infringement of Community law attributable to a court of a Member State adjudicating at last instance. In such a case individuals must have the possibility of rendering the State liable in order to obtain legal protection of their rights.

In accordance with settled case-law the Court has laid down **three conditions which are necessary and sufficient** to render the State liable for infringements of Community law attributable to it. Those conditions, which **also apply where a national court adjudicating at last instance infringes a rule of Community law**, are as follows:

1. the rule of law infringed must be intended to confer rights on individuals;
2. **the breach must be sufficiently serious;** and
3. there must be a direct causal link between the breach of the obligation incumbent on the State and the loss or damage sustained.

In order to determine whether the infringement is sufficiently serious when the infringement at issue stems from a decision of a national court adjudicating at last instance, the competent national court, taking into account the specific nature of the judicial function, must determine whether that court has manifestly infringed the applicable law. **State liability can be incurred only in the exceptional case where the national court has manifestly infringed the applicable law and the Court's case-law in the matter.**

It is for the legal system of each Member State to designate the court competent to determine disputes relating to that area of law.

The Austrian legislation concerning the grant of the special length-of-service increment for university professors is incompatible with Community law and cannot be justified.

2 In particular, in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357 and Joined Cases C-46/93 and C-48/93 *Brasserie du Pacheur and Factortame* [1996] ECR I-1029.

The Court finds that the Austrian law which requires, for the grant of the special increment for university professors, 15 years' experience acquired exclusively in Austrian universities constitutes an obstacle to freedom of movement for workers prohibited by the EC Treaty.

The Court notes, for the first time, that, although an objective of rewarding workers' loyalty to their employers (loyalty bonus) might in principle be justified by public-interest reasons, the Austrian provision entails obstacles which cannot be justified by such an objective. In fact, it leads to a partitioning of the market for the employment of university professors in Austria and runs counter to the principle of freedom of movement for workers.

The Court considers that the Austrian Supreme Administrative Court did not commit a manifest and thus sufficiently serious breach of Community law; consequently, the Austrian State does not incur liability for it.

In accordance with the Court's settled case-law, it is, in principle, for the national courts to determine whether the criteria for establishing the liability of Member States for damage caused to individuals by breaches of Community law are satisfied. None the less, in the present case the Court has available to it all the materials enabling it to examine the requisite criteria.

The Court considers that the judgment of the Verwaltungsgerichtshof of 24 June 1998 is based on an incorrect reading of the *Schöning-Kougebetopoulou* judgment and constitutes an infringement of Community law. However, the Court finds that the infringement in itself cannot be described as manifest.

The Court emphasises that it had not had the opportunity of ruling on whether a measure for rewarding an employee's loyalty to his employer (loyalty bonus) may be justified under Community law. Consequently, the reply in that regard was not obvious.

Secondly, nor does the fact that the Verwaltungsgerichtshof ought to have maintained its request for a preliminary ruling make it possible to reach a determination in that regard. It was owing to its incorrect reading of the judgment of the Court that the Verwaltungsgerichtshof no longer considered it necessary to persist with its request for a preliminary ruling.

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Available in all community languages.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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