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Judgment of the Court in Case C-372/21 | Freikirche der Siebenten-Tags-Adventisten in Deutschland

Public subsidies paid to denominational private schools may be reserved for churches and religious societies recognised by the Member State concerned

The recognition requirement laid down by Austria appears justified in order to enable parents to choose an education for their children according to their religious beliefs

The 'Free Church of the Seventh-day Adventists in Germany' is a church established and recognised in Germany. It applied to the Austrian authorities for a subsidy for the staff costs of a private school established in Austria which it recognises and supports as a denominational school. Its application was refused on the ground that such subsidies are reserved for churches and religious societies recognised in Austria.

The Free Adventist Church then brought the matter before the Austrian courts. Since the Austrian Supreme Administrative Court had doubts as to whether that recognition requirement is compatible with EU law and, in particular, with the rules on freedom of movement, it referred questions to the Court of Justice on the matter.

In today's judgment, the Court of Justice finds, first of all, that EU law does apply to such a case. It is true that the EU Treaties provide that the European Union is to be neutral towards the organisation by the Member States of their relations with churches and religious associations and communities. Nevertheless, that does not mean that their economic activities, such as providing courses in establishments financed largely by private funds, are altogether excluded from EU law.

Next, the Court observes that, subject to the matters to be verified by the Austrian Supreme Administrative Court, the recognition requirement under national law constitutes a restriction on the freedom of establishment. The conditions for that recognition are likely to be satisfied less easily by churches and religious societies established in other Member States and are thus such as to place them at a disadvantage.

However, the Court considers that that restriction on the freedom of establishment may be justified provided that it pursues a legitimate objective and observes the principle of proportionality.

Thus, in Austria, denominational private schools supplement the State school system, which is interdenominational, making it easier for parents to choose an education for their children according to their religious beliefs. By allowing that choice, the Austrian legislation pursues a legitimate interest.

Furthermore, it does not appear unsuitable and nor does it go beyond what is necessary. It seeks in particular to ensure that subsidised schools cater for a significant part of the population that may potentially choose that option of education, which is supplementary to that offered by State schools.

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 European Union law or the validity of a European Union 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 a similar 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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