

# Case C-115/08

## Land Oberösterreich

v

ČEZ as

(Reference for a preliminary ruling  
from the Landesgericht Linz)

(Action for cessation of actual or potential nuisance caused to land by the activities of a nuclear power plant situated on the territory of another Member State — Obligation to tolerate actual or potential nuisance caused by installations which have been officially authorised in the Member State where the action is brought — Authorisations issued in other Member States not taken into account — Equal treatment — Principle of non-discrimination on grounds of nationality under the EAEC Treaty)

Opinion of Advocate General Poiares Maduro delivered on 22 April 2009 . . . I - 10268

Judgment of the Court (Grand Chamber), 27 October 2009 . . . . . I - 10279

### Summary of the Judgment

1. *Community law — Principles — Equal treatment — Discrimination on grounds of nationality — Prohibition — Scope — Application under EAEC Treaty*  
(Art. 12 EC)

2. *Community law — Direct effect — Primacy — Obligation for the national court to interpret national law in a manner consistent with Community law*  
(Arts 10 EC and 192 EA)

1. It would appear to be contrary to both the purpose and the consistency of the treaties to allow discrimination on grounds of nationality, which is prohibited under the EC Treaty by virtue of Article 12 EC, to be tolerated within the scope of application of the EAEC Treaty. Although the principle of prohibition of any discrimination on grounds of nationality within the scope of application of Community law is expressly laid down only in Article 12 EC, it is a general principle which is also applicable under the EAEC Treaty.

that installation, whereas undertakings having an industrial installation situated in the Member State where the action is brought and in possession of an official authorisation may not be the subject of such an action and may only be the subject of a claim for damages for harm caused to a neighbouring property.

(see paras 90, 91, 139, operative part 1)

The principle of prohibition of discrimination on grounds of nationality within the scope of application of the EAEC Treaty precludes the application of the legislation of a Member State under which an undertaking in possession of the necessary official authorisations for operating a nuclear power plant situated in the territory of another Member State, may be the subject of an action for an injunction to prevent an actual or potential nuisance to neighbouring property emanating from

2. The duty imposed on Member States by Article 10 EC and Article 192 EA to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of Community law is incumbent on all the authorities in the Member States, including, for matters within their jurisdiction, the courts.

It is for the national court to give, in so far as possible, to the domestic legislation

which it must apply an interpretation which complies with the requirements of Community law. If such an application in accordance with Community law is not possible, the national court is bound to apply Community law in full and protect the rights it confers on individuals, and to disapply, if necessary, any provision in so far as application thereof, in the circum-

stances of the case, would lead to a result which is contrary to Community law.

(see paras 138, 140, operative part 2)