



Reports of Cases

Case C-15/11

Leopold Sommer

v

Landesgeschäftsstelle des Arbeitsmarktservice Wien

(Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria))

(Accession of new Member States — Republic of Bulgaria — Member State legislation making the grant of a work permit to Bulgarian nationals subject to an examination of the situation of the labour market — Directive 2004/114/EC — Conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service)

Summary of the Judgment

1. *Accession of new Member States to the European Union — 2005 Treaty of Accession — Bulgaria — Access to the labour market by Bulgarian students during the transitional period — Conditions which are more restrictive than those set out in Directive 2004/114 — Not permissible*
2. *Approximation of laws — Admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service — Directive 2004/114 — National legislation requiring a systematic examination of the labour market prior to the issuing of a work permit — Not permissible*

(Council Directive 2004/114, Art. 17)

1. Paragraph 14 of Point 1 of Annex VI to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union must be interpreted to mean that the conditions of access to the labour market by Bulgarian students, from 12 January 2007 until the end of the transitional period provided for in the first subparagraph of paragraph 2 of Point 1 of that annex, may not be more restrictive than those set out in Directive 2004/114 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

Indeed, Bulgarian nationals had the right, at the end of the period granted to the Member States for transposing Directive 2004/114, namely from 12 January 2007, to be granted access to the labour market under conditions which were not more restrictive than those set out in Directive 2004/114 for third-country nationals. Accordingly, if access to the labour market of a Member State must be granted to a student who is a third-country national according to the rules laid down in Directive 2004/114, such access must be granted to a Bulgarian student under conditions which are at least as favourable and, in addition, that Bulgarian student must be given preference over a student who is a third-country national.

(see paras 31, 35, 36, operative part 1)

2. National legislation which states that a systematic examination of the labour market must be carried out and that the issuing of a work permit is allowed only if neither a national of the Member State in question nor a foreign national available on the labour market who is willing and able to carry out the job is available for the vacant position to be filled by the foreign national in respect of whom the application is made provides for a more restrictive treatment of Bulgarian nationals, from 12 January 2007 until the end of the transitional period provided for in Annex VI to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, than that given to third-country nationals under Directive 2004/114 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

Such national legislation cannot be compatible with Directive 2004/114, in particular Article 17 thereof, since, during that examination, the situation of the labour market must be taken into account without it being necessary to establish the existence of exceptional circumstances which justify its being taken into account.

As regards national legislation according to which, where the fixed maximum number of foreign nationals employed for an administrative region of the Member State concerned has been exceeded, the issuing of a work permit to third-country nationals is subject, not only to the systematic examination of the situation of and developments in the labour market, but also to the application of additional conditions, given that Directive 2004/114 precludes such systematic examination, it *a fortiori* precludes national measures which go beyond that examination.

(see paras 43-45, operative part 2)