

3. To what extent are rules of Community law protecting competition and freedom to provide services, particularly Articles 49 EC, 50 EC and 87 EC in conjunction with Articles 81 EC, 85 EC and 86 EC, or other rules of Community law, infringed by an interpretation of the second sentence of paragraph 421(g)(1) of SGB III to the effect that employment covered by compulsory social security means only employment that comes within the scope of application of the Sozialgesetzbuch?

4. a) To what extent is it possible and necessary to interpret the provision in conformity with European law so as to avoid an infringement as described in Question 3?

b) If an interpretation in conformity with Community law should not be possible or necessary, to what extent does the second sentence of paragraph 421(g)(1) of SGB III infringe Community law inasmuch as the free movement of workers is not protected?

(<sup>1</sup>) OJ, English Special 1968(II), p. 475.

**Action brought on 13 May 2005 by the Commission of the European Communities against the Republic of Austria**

(Case C-209/05)

(2005/C 171/18)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 13 May 2005 by the Commission of the European Communities, represented by Maria Condou and Wolfgang Bogensberger, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

(a) declare that, when rejecting visa applications in relation to nationals of third countries who are members of the families of citizens of the Union exercising their right to freedom of movement,

— by not stating precise, sufficiently detailed and complete reasons, even though there are no public security grounds preventing their disclosure, and

— by not granting the parties concerned the same legal remedies in respect of the decisions rejecting their visa applications as are available to nationals of the State concerned in respect of acts of the administration,

the Republic of Austria has failed to fulfil its obligations under Articles 6 and 8 of Directive 64/221/EEC; (<sup>1</sup>)

(b) order the defendant, the Republic of Austria, to pay the costs of the proceedings.

*Pleas in law and main arguments*

Directive 64/221/EEC imposes various obligations on the Member States in relation to the measures adopted, for persons falling within their personal scope, on the grounds of public policy, public security or public health, in particular as regards the reasons on which decisions are based and legal remedies available against decisions. Pursuant to Article 6 of the directive the person concerned is to be informed of the grounds of public policy, public security, or public health upon which the refusal to issue a visa to a member of the family of a citizen of the Union is based. Article 8 of the directive stipulates that the person whose visa application was rejected must have at least the same legal remedies against the decision as are available to nationals of the State concerned in respect of acts of the administration.

The Commission is of the view that certain provisions of the Austrian Fremden-gesetz (Law on Aliens) do not correspond to the aforementioned Community law requirements contained in the directive.

Pursuant to Paragraph 93(2) of the Fremden-gesetz, a written decision is to be given only on application in writing or by protocol by the party concerned and it is sufficient, in the statement of reasons of the decision, to state only the relevant legal provisions. Under Article 6 of the directive, however, the Member States are under an automatic duty to state reasons: the stating of reasons may not be dependant on urgency, nor on the applications of the person concerned. The mere indication of the legal provisions applied does not, furthermore, satisfy the requirements demanded of a statement of reasons: mere reference to the legal provisions applied in reaching a negative decision does not amount to adequate information on the grounds of rejection. The Court's case-law also shows that a precise, sufficiently detailed and complete statement of reasons for a decision is required so that the person concerned can challenge the decision made against him and protect his interests accordingly.

Paragraph 94(2) of the Austrian Fremden-gesetz does not allow for appeals against refusals or declarations of invalidity of visas. This provision infringes the obligation under Article 8 of the directive, according to which the person concerned must have the same legal remedies as are available to nationals of the State concerned in respect of acts of the administration, regardless of whether these are remedies submitted to administrative authorities or the courts. The Commission considers incorrect the Republic of Austria's arguments that the refusal of legal remedies in this connection is justified by the fact that neither refusals nor declarations of invalidity of visas have any consequential effect beyond the individual act in question and that submitting a new application is a quicker means of reaching one's goal than pursuing a legal remedy against the decision. Submitting a renewed application entails the risk that the objectively incorrect decision may simply be repeated.

(<sup>1</sup>) OJ, English Special Edition 1963-1964, p. 117.

**Action brought on 20 May 2005 by the Commission of the European Communities against the Republic of Austria**

(Case C-226/05)

(2005/C 171/19)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 20 May 2005 by the Commission of the European Communities, represented by Dr Bernhard Schima, acting as Agent with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that the Republic of Austria has failed to fulfil its obligation to completely implement Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (<sup>1</sup>) in that

- contrary to Article 24(1), it has failed to enact any provisions to implement the directive as regards the Federal Government's law on mineral raw materials, its law on blasting supplies and explosives and the law of the *Land* of Salzburg relating to electricity production;
- it has failed to implement Article 11 as regards external emergency plans in the *Länder* of Burgenland, Salzburg, Styria and Tyrol;
- it has failed to implement Article 12 of the directive in the *Land* of Upper Austria;
- it has failed to implement Article 8(2)(b) of the directive in the *Länder* of Burgenland, Upper Austria, Salzburg, Tyrol and Vorarlberg;

or that the Republic of Austria has failed to inform the Commission of any implementing measures in all these instances;

2. order the Republic of Austria to pay the costs.

*Pleas in law and main arguments:*

According to Article 24(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, the directive should be implemented in national law by the Member States not later than 24 months after its entry into force, that is to say, by 3 February 1999. The implementation of the directive in Austria rests partly with the Federal Government and partly with the *Länder*.

The Commission is of the opinion that the implementation of the directive in the Republic of Austria is incomplete or insufficient: there are gaps as regards implementation in areas of importance and the implementing measures partly fall short of the requirements of the directive.

At the Federal law level, implementation in the areas of the law on mineral raw materials and the law on blasting supplies and explosives is still outstanding. At the level of the *Länder*, implementation of the directive in the area of the Salzburg law relating to electricity production is still outstanding.

Article 11(1) of the directive — the drawing up of an external emergency plan for measures to be taken outside the establishment — has not been implemented in the *Länder* of Burgenland, Salzburg, Styria and Tyrol.