

### Case C-224/01 Kobler [2003]

**Facts:** An Austrian Law provided for a salary increase to professors who had completed 15 years of service in Austrian institutions. Mr Kobler's application was denied because his 15 years of service also included positions in universities in other Member States. The dispute reached the Supreme Administrative Court of Austria, which requested for a preliminary ruling from the ECJ. The Court asked the Austrian Supreme Court whether, in the light of one of its recent judgments, it was necessary to maintain this request; the Austrian Supreme Court withdrew its request and dismissed Mr Kobler's application. Mr Kobler brought an action for a declaration of liability for breach of a provision of Community law; in connection with these proceedings, the Regional Civil Court of Vienna referred for a preliminary ruling a question on the interpretation of Article 39 EC.

**Held:** In international law a State which incurs liability for a breach of an international commitment is viewed as a single entity, irrespective of whether the breach is attributable to the legislature, the judiciary or the executive. That principle must apply in the Community legal order, as all State authorities are bound in performing their tasks to comply with the rules laid down by Community law. The principle is also applicable where the alleged infringement stems from a decision of a court adjudicating at last instance, as otherwise the full effectiveness of Community rules and the protection of individual's rights would be weakened. This does not affect either the principle of *res judicata*, as it requires reparation but not revision of the judicial decision responsible for the damage, nor the independence of the judiciary, as it concerns not the personal liability of the judge but that of the State, and it is in line with the case-law of the ECHR. However, State liability for an infringement of Community law by a decision of a national court adjudicating at last instance can be incurred only in the exceptional case where the court has manifestly infringed the applicable law. In this regard, the Austrian Supreme Court inferred from the recent case law of the Court that since the benefit was a loyalty bonus, it could be justified even if it was in itself contrary to the principle of non-discrimination laid down in Article 39 of the Treaty. However, the case law of the Court did not include a view on whether or under what conditions the obstacle could be justified, therefore the inferences drawn by the Austrian Supreme Court were based on an incorrect reading and it should have maintained its request for a preliminary ruling. Consequently, this infringement is not sufficiently serious for liability to be incurred, as Community law does not expressly cover the point as to whether a loyalty bonus can be justified, no reply was to be found to that question in the Court's case law and the reply was not obvious.