

■ PREFACE

Claudia Fuchs & Konrad Lachmayer

European Community Law in Austria

Austria has been a member of the European Union since 1995. Austria has since then tried to contribute to further integration in order to establish a position as "model European" within the Union. Although ECJ case law reveals difficulties in implementing European law, the significant number of ECJ preliminary ruling procedures towards Austria proves that Austrian courts, including the Administrative as well as the Constitutional Court, have in principal accepted the supremacy of European Community law from the very beginning.

The relevance of European Community law and of the ECJ's case law is still increasing and has a major impact on the Austrian constitutional order. Two main examples for this phenomenon are the acceptance of the ECJ as lawful judge and the constitutional prohibition of so called "reverse discriminations": As far as the role of the ECJ within the Austrian legal order is concerned, the Austrian Constitutional Court agreed that a violation of the duty to make a preliminary reference under Article 234 EC also induces a violation of the constitutionally protected right to a lawful judge. On the latter topic, the Austrian Constitutional Court accepted that forms of discrimination that occur when the direct applicability of EC law leads to a worse treatment of the Member State's own citizens compared to other EU citizens are to be scrutinized under the national constitutional order and especially its equal-treatment clause. This may lead to the unconstitutionality of Austrian laws.

However, the relation between European and Austrian constitutional law is not a one-way street. Austrian preliminary procedures and the questions of Austrian courts have contributed to shape and enhance the European case law. The interrelation between European constitutional law and Austrian constitutional law shows the establishment of a network of constitutional law. The interrelation on a judicial level also confirms the development of a judicial dialogue between the European courts and the national constitutional courts within the European Union.

In this issue, the Constitutional Developments section puts a focus on the relation of Austrian law and European Community law. The contribution of *Albert Posch* gives a general introduction to the Austrian way of opening its domestic legal order for European Community law. The relevant decisions of the Austrian Constitutional Court have been translated and commented by *Tanja Marktler*, *Ulrich Jedliczka*, *Claudia Hanslik* and *Thomas Müller*.

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Also in this issue: *Rafael Leal* analyzes EU foreign trade policy regarding Brazil, Russia, India and China. *Simone Motyka* and *Andreas Schirk* summarize the conclusions of the 2008 Workshop on International Constitutional Law in Vienna concerning "constitutional limits to security".

In the book reviews section you will find discussions of books dealing with terrorism combat and the limitation of rights as well as with transnational constitutionalism.

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Editors-in-Chief

The ICL-Journal is an all-electronic, e-mail delivered, quarterly published, academic periodical with a focus on International Constitutional Law. If you are interested in receiving the journal, you may download each issue from: www.icl-journal.com. There is no subscription fee.

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Media owner & publisher: Dr. Konrad Lachmayer, Department of Constitutional and Administrative Law, University of Vienna - Faculty of Law, Schottenbastei 10-16, 1010 Vienna, Austria. Manuscripts may be submitted via e-mail to journal@internationalconstitutionallaw.net. Manuscripts are peer-reviewed.