

C-169/07 Hartlauer Handelsgesellschaft mbH v Wiener Landesregierung and Oberösterreichische Landesregierung, judgment of 10 March 2009

Facts: The applicant was a German applicant wishing to establish a private dental clinic in Austria. In order to do so, it required the authorisation of the Länder, which refused to authorise the company as there was no need to set up the dental clinics. The company contended that this went against the spirit of Art. 49 TFEU providing for the freedom of establishment.

Held: The national law in question had the effect of creating a restriction to freedom of establishment, by discouraging and preventing undertakings of other Member States from pursuing their activities within Austrian territory.

The Court considered the justification for this national provision, such as the objective of maintaining a balanced high-quality medical service open to all and by preventing the risk of serious harm to the financial balance of the social security system.

The national law could to be justified firstly because it was inconsistent: prior authorisation was required for new independent outpatient clinics, but not for new group practices. Moreover, it could not be justified as the discretion of the authorities responsible for issuing prior authorisation was not sufficiently circumscribed in so far as it was not based on objective, non-discriminatory criteria which were known in advance. As the national provision was disproportionate, it would have to be set aside.