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Judgment of the Court of 24 May 1988. - Commission of the European Communities v Italian Republic. - Failure of a Member State to fulfil its obligations - Exemption from VAT of the services of veterinary surgeons. - Case 122/87.

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Keywords

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Tax provisions - Harmonization of laws - Turnover taxes - Common system of value-added tax - Exemptions under the Sixth Directive - Exemption of the provision of care in the exercise of the medical and paramedical professions - Services provided by veterinary surgeons - Chargeable to tax

(Council Directive 77/388/EEC, Art . 13 (A) (1) (c))

Summary

Article 13 (A) (1) (c) of Directive 77/388 concerning exemption from value-added tax of care provided in the exercise of the medical and paramedical professions must be interpreted as meaning that the exemption provided for

therein does not extend to services provided by veterinary surgeons . As is expressly indicated in most of the language versions of the directive, that provision relates to care administered to persons and excludes care administered to animals .

Parties

In Case 122/87

Commission of the European Communities, represented by Giuliano Marengo and Daniel Calleja, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G . Kremlis, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department of Contentious Diplomatic Affairs, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that by exempting from value-added tax the services provided by veterinary surgeons the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of : Lord Mackenzie Stuart, President, G . Bosco, J . C . Moitinho de Almeida and G . C . Rodríguez Iglesias (Presidents of Chambers), T . Koopmans, U . Everling, Y . Galmot, C . Kakouris and F . Schockweiler, Judges,

Advocate General : J . L . da Cruz Vilaça

Registrar : H . A . Ruehl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 15 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 March 1988,

gives the following

Judgment

Grounds

1 By an application lodged at the Court Registry on 8 April 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by exempting from value-added tax the services provided by veterinary surgeons in the exercise of their profession the Italian Republic had failed to fulfil its obligations under the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member states concerning turnover taxes - Common system of value-added tax : uniform basis of assessment (Official Journal 1977, L 145, p . 1) (" the Sixth Directive ").

2 By virtue of the combined provisions of Article 10 of Decree No 633 of the President of the Republic of 26 October 1972, as amended by Decree No 24 of the President of the Republic of 29 January 1979 (Gazzetta Ufficiale della Repubblica Italiana (Official Gazette of the Italian Republic) No 30, 31.1.1979, p.983) and Article 99 of Royal Decree No 1265 of 27 July 1934, services provided by veterinary surgeons are exempt from value-added tax (VAT).

3 Considering that exemption to be contrary to the Sixth Directive and in particular Article 2 thereof, the Commission, by letter of 5 June 1985, called upon the Italian Republic, pursuant to the first paragraph of Article 169 of the EEC Treaty, to submit its observations . The Italian

Government did not concede that it was in breach of the Treaty and therefore, on 17 June 1986, the Commission delivered to it a reasoned opinion . In the absence of any response thereto the Commission brought the present action .

4 Reference is made to the Report for the Hearing for a fuller account of the Italian legislation, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

5 Article 2 of the Sixth Directive provides :

"The following shall be subject to value-added tax :

1 . The supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such ... " .

6 Article 4 provides :

"1 . 'Taxable person' shall mean any person who independently carries out in any place any economic activity specified in paragraph 2 ... " .

The activities specified include all services .

7 The Commission maintains that by virtue of the above-mentioned provisions VAT must be charged on the services provided by veterinary surgeons .

8 In the pre-litigation procedure, the Italian Government relied in its defence upon Article 13 (A) (1) (c) of the Sixth Directive, which provides for the exemption of certain services from VAT . It contends that the services provided by veterinary surgeons come within the scope of that provision, which refers to the provision of care "in the exercise of the medical and paramedical professions as defined by the Member State concerned " .

9 It must be observed, without its even being necessary to consider whether the term "medical and paramedical professions" might include veterinary surgeons, that all the language versions of the part of Article 13 cited above, with the exception of the English and Italian versions, expressly limit the exemption of the provision of care to care administered "to persons" and that that limitation unambiguously excludes care administered to animals from the scope of Article 13 (A) (1) (c) .

10 That interpretation is reinforced by the fact that Article 28 (3) (b) of the Sixth Directive allows those Member States which, upon its entry into force, exempted the services provided by veterinary surgeons from VAT (the Italian Republic did not) to continue to do so during a transitional period . That transitional provision would be devoid of purpose if Article 13 were to be interpreted as requiring definitive exemption of the same services .

11 It should be noted, lastly, that at the hearing the Italian Republic finally conceded that the Commission' s action was well founded .

12 In view of the foregoing considerations, the Commission' s application must be upheld .

Decision on costs

Costs

13 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs . Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs .

Operative part

On those grounds,

THE COURT

hereby :

(1) Declares that by exempting from value-added tax the services provided by veterinary surgeons in the exercise of their profession, the Italian Republic has failed to fulfil its obligations under the Sixth Council Directive (77/388/EEC) of 17 May 1977 (Official Journal 1977, L 145, p . 1);

(2) Orders the Italian Republic to pay the costs .