

## 61996J0124

Judgment of the Court (Sixth Chamber) of 7 May 1998. - Commission of the European Communities v Kingdom of Spain. - Failure of a Member State to fulfil its obligations - Sixth Council Directive 77/388/EEC - Exemption of certain supplies of services closely linked to sport or physical education - Unjustified restrictions. - Case C-124/96.

*European Court reports 1998 Page I-02501*

Summary

Parties

Grounds

Decision on costs

Operative part

## Keywords

*Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Exemption for certain services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in those activities - National legislation restricting the exemption to private establishments with membership fees not exceeding a certain amount - Not permissible*

*(Council Directive 77/388, Art. 13(A)(1)(m) and Art. 13(A)(2)(a), third indent)*

## Summary

*A Member State which provides that VAT exemption for services closely linked to sport or physical education applies only to those private establishments whose membership fees do not exceed a specified amount fails to fulfil its obligations under Article 13(A)(1)(m) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes.*

*The conditions which may be laid down pursuant to Article 13(A)(1) of the Sixth Directive do not in any way affect the definition of the subject-matter of the exemptions envisaged by that provision, but are intended to ensure the correct and straightforward application of the exemptions and refer to measures intended to prevent any possible evasion, avoidance or abuse.*

*To apply the criterion of the amount of membership fees may lead to results contrary to Article 13(A)(1)(m) of the Sixth Directive: it may result, first, in a non-profit-making body being excluded from the benefit of the exemption provided for by the provision and, secondly, in a profit-making body being able to benefit from it. Moreover, there is nothing in that provision to the effect that a*

*Member State, when granting an exemption for a certain supply of services closely linked to sport or physical education provided by non-profit-making bodies, may make that exemption subject to any conditions other than those laid down in Article 13(A)(2) of the Sixth Directive.*

*The third indent of Article 13(A)(2)(a) of the Sixth Directive does not imply that a Member State, by making the exemption envisaged in Article 13(A)(1)(m) subject to one or more conditions laid down in paragraph 2(a) of that provision, may alter the scope of the latter. Moreover, Article 13(A)(2)(a) excludes a restriction of the exemption to private sports bodies or establishments of a social nature which charge membership fees not exceeding a certain amount without taking into account the nature and particular circumstances of each sporting activity.*

## **Parties**

*In Case C-124/96,*

*Commission of the European Communities, represented initially by Enrico Traversa and Francisco Enrique González Díaz, of the Legal Service, and subsequently by Miguel Díaz-Llanos La Roche, Legal adviser, Enrico Traversa and Carlos Gómez de la Cruz, also of the Legal service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg,*

*applicant,*

*v*

*Kingdom of Spain, represented by Luis Pérez de Ayala Becerril, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,*

*defendant,*

*supported by*

*United Kingdom of Great Britain and Northern Ireland, represented by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, assisted by Sarah Moore, Barrister, with an address for service at the British Embassy, 14 Boulevard Roosevelt,*

*intervener,*

*APPLICATION for a declaration that, by providing that VAT exemption for services closely linked to sport or physical education applied only to private establishments whose membership fees did not exceed a specified amount, the Kingdom of Spain infringed Article 13(A)(1)(m) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),*

*THE COURT*

*(Sixth Chamber),*

*composed of: H. Ragnemalm, President of the Chamber, G.F. Mancini, P.J.G. Kapteyn (Rapporteur), J.L. Murray and K.M. Ioannou, Judges,*

*Advocate General: A. La Pergola,*

*Registrar: R. Grass,*

*having regard to the report of the Judge-Rapporteur,*

*after hearing the Opinion of the Advocate General at the sitting on 3 February 1998,*

*gives the following*

*Judgment*

## **Grounds**

*1 By application lodged at the Court Registry on 17 April 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by providing that exemption from value added tax ('VAT') for services closely linked to sport or physical education applied only to private establishments whose membership fees did not exceed a specified amount, the Kingdom of Spain had infringed Article 13(A)(1)(m) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; 'the Sixth Directive').*

*The Sixth Directive*

*2 Article 13(A) of the Sixth Directive provides that certain activities in the public interest are exempt from VAT. In particular, in Part A, headed 'Exemptions for certain activities in the public interest', Article 13 of the Sixth Directive provides:*

*'1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:*

*...*

*(m) certain services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education;*

*...*

*2. (a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b), (g), (h), (i), (l), (m) and (n) of this article subject in each individual case to one or more of the following conditions:*

*- they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,*

*- they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,*

*- they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those*

*charged for similar services by commercial enterprises subject to value added tax,*

*- exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.'*

#### *The national legislation*

*3 The relevant Spanish legislation is Article 20 of Law No 37 of 28 December 1992 on Value Added Tax ('Law No 37/92'), as amended by Article 13 of Law No 42 of 30 December 1994 ('Law No 42/94'). The relevant provision is Article 20(1), point 13, which exempts:*

*'Services supplied to individuals taking part in sport or physical education, whoever the person or body in charge of supplying the service may be, provided that such services are directly linked to sport or physical education and are supplied by the following persons or bodies:*

*...*

*(d) private sports bodies or establishments of a social nature whose entry fees do not exceed the following amounts:*

*admission or entry fees: PTA 265 000 periodic fees: PTA 4 000 monthly.'*

#### *The pre-litigation procedure*

*4 By letter of 22 December 1992, the Commission informed the Kingdom of Spain that it regarded the provisions of Article 8, point 13, of the Spanish Law on Value Added Tax (Law No 30/85 of 2 August 1985, amended by Law No 10/90 of 15 October 1990) as incompatible with Article 13(A)(1)(m) of the Sixth Directive.*

*5 By letter of 28 May 1993, the Spanish authorities replied that the Spanish legislation applicable was Article 20(1), point 13, of Law No 37/92, and that the latter did not infringe the Sixth Directive.*

*6 Taking account of that reaction and the arguments put forward by the Kingdom of Spain, the Commission addressed a reasoned opinion to the Kingdom of Spain on 10 October 1994, in which it maintained that the Spanish provisions were incompatible with the Sixth Directive.*

*7 By letter of 10 April 1995, the Kingdom of Spain essentially reiterated the arguments already put forward in its reply to the letter of 22 December 1992.*

*8 Subsequently, by Law No 42/94, the Kingdom of Spain partially amended Article 20(1), point 13, of Law No 37/92. The Commission took the view that that amendment removed only part of the failure to fulfil obligations and did nothing to alter the quantitative restrictions imposed on private sports bodies or establishments.*

#### *Substance*

*9 In support of its action, the Commission maintains that the restriction of VAT exemption by Article 20(1), point 13, of Law No 37/92 to private sports establishments charging membership fees not exceeding the amounts specified in that article is contrary to Article 13(A) of the Sixth Directive. It submits that the additional requirement imposed by the Spanish legislation is not authorised either by the introductory sentence of Article 13(A)(1), or by the wording of Article 13(A)(1)(m), or by the third indent of Article 13(A)(2)(a) of the Sixth Directive.*

10 The Spanish Government, supported by the United Kingdom Government, begins by arguing that the introductory sentence of Article 13(A)(1) of the Sixth Directive shows that Member States have a wide discretion in implementing the exemptions provided for.

11 It should be observed in that regard that the conditions which may be laid down pursuant to Article 13(A)(1) of the Sixth Directive to do not in any way affect the definition of the subject-matter of the exemptions envisaged by that provision (Case 8/81 *Becker v Finanzamt Münster-Innenstadt* [1982] ECR 53, paragraph 32).

12 Those conditions are intended to ensure the correct and straightforward application of the exemptions and refer to measures intended to prevent any possible evasion, avoidance or abuse (*Becker*, cited above, paragraphs 33 and 34).

13 The argument based on the introductory sentence of Article 13(A)(1) must therefore be rejected.

14 The Spanish Government then argues, concerning the exemption of supplies of services referred to in Article 13(A)(1)(m), that, unlike other exemptions envisaged by that provision, letter (m) provides for the exemption of 'certain' supplies of services. In its submission, that permits Member States to limit the scope of Article 13(A)(1)(m), not only by expressly excluding certain services provided by sports establishments from the exemption, but also by applying 'other criteria', such as the amount of the consideration for the services in question.

15 On that point, it is clear from Article 13(A)(1)(m) of the Sixth Directive that the exemption in question concerns supplies of services closely linked to sport or physical education provided by non-profit-making bodies.

16 It is undisputed that, under the Spanish legislation, the exemption envisaged under Article 13(A)(1)(m) of the Sixth Directive is granted only to private sports bodies or establishments of a social nature which charge membership fees not exceeding certain amounts.

17 To apply the criterion of the amount of membership fees may lead to results contrary to Article 13(A)(1)(m). As the Advocate General has pointed out at paragraph 5 of his Opinion, to apply such a criterion may result, first, in a non-profit-making body being excluded from the benefit of the exemption provided for by the provision and, secondly, in a profit-making body being able to benefit from it.

18 Moreover, there is nothing in that provision to the effect that a Member State, when granting an exemption for a certain supply of services closely linked to sport or physical education provided by non-profit-making bodies, may make that exemption subject to any conditions other than those laid down in Article 13(A)(2).

19 It follows that the limitation of the exemption for supplies of services closely linked to sport or physical education to private sports bodies or establishments of a social nature whose membership fees do not exceed a certain amount is contrary to Article 13(A)(1)(m) of the Sixth Directive.

20 Finally, the Spanish Government argues that the fixing of a ceiling on the amount of fees in respect of the exemption of the supply of services envisaged in Article 13(A)(1)(m) falls within the concept of prices approved by the public authorities within the meaning of the third indent of Article 13(A)(2)(a), and is therefore justified by virtue of that latter provision.

21 On that point, it is sufficient to note that that provision does not imply that a Member State, by making the exemption envisaged in Article 13(A)(1)(m) subject to one or more conditions laid down in paragraph 2(a) of that provision, may alter the scope of the latter.

22 Moreover, as the Commission has rightly pointed out, Article 13(A)(2)(a) of the Sixth Directive provides that Member States may make the grant of the exemptions envisaged subject to compliance with one or more of the conditions mentioned by that provision. The latter therefore excludes a restriction of the exemption of supplies of services closely linked to sport or physical education to private sports bodies or establishments of a social nature which charge membership fees not exceeding a certain amount without taking into account the nature and particular circumstances of each sporting activity.

23 Accordingly, by providing that the exemption from VAT in respect of supplies closely linked to sport or physical education applies only to private establishments whose membership fees do not exceed a certain amount, the Kingdom of Spain has failed to fulfil its obligations under Article 13(A)(1)(m) of the Sixth Directive.

## **Decision on costs**

### *Costs*

24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, Member States and institutions which intervene in the proceedings are to bear their own costs.

## **Operative part**

*On those grounds,*

**THE COURT**

*(Sixth Chamber),*

*hereby:*

1. Declares that, by providing that the exemption from value added tax in respect of supplies closely linked to sport or physical education applies only to private establishments whose membership fees do not exceed a certain amount, the Kingdom of Spain has failed to fulfil its obligations under Article 13(A)(1)(m) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.

2. Orders the Kingdom of Spain to pay the costs.

3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.