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Judgment of the Court (Sixth Chamber) of 10 September 2002. - Ambulanter Pflegedienst Kügler GmbH v Finanzamt für Körperschaften I in Berlin. - Reference for a preliminary ruling: Bundesfinanzhof - Germany. - Article 13(A)(1)(c) and (g) of the Sixth Directive (77/388/EEC) - Exemption of care provided by capital companies - Services closely linked to welfare and social security work supplied by organisations, not being bodies governed by public law, recognised as charitable by the Member State concerned - Direct effect. - Case C-141/00.

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Summary

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Keywords

1. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Exemption for medical care provided in the exercise of the medical and paramedical professions - Legal form of the taxable person - Not relevant

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

2. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Exemption for medical care provided in the exercise of the medical and paramedical professions - Place where the services are supplied and their type - Services of a therapeutic nature provided outside a hospital environment

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

3. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Exemption of services linked to welfare and social security supplied by bodies governed by public law or other organisations recognised as charitable - Scope - Provision of general care and domestic help - Included

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

4. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Exemption of services linked to welfare and social security supplied by bodies governed by public law or other organisations recognised as

charitable - Direct effect - Limits - Discretion of national authorities with regard to the concept of organisations recognised as charitable - Review by national courts

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

Summary

§§1. The exemption from value added tax envisaged in Article 13(A)(1)(c) of the Sixth Directive (77/388) in respect of the provision of medical care in the exercise of the medical and paramedical professions is not dependent on the legal form of the taxable person supplying the medical or paramedical services referred to in that provision.

The principle of fiscal neutrality, inherent in the common system of value added tax, in compliance with which the exemptions provided for in Article 13 of the Sixth Directive (77/388) must be applied, precludes, inter alia, economic operators carrying on the same activities from being treated differently as far as the levying of the tax. That principle would therefore be disregarded if the possibility of relying on the aforementioned exemption were dependent on the legal form in which the taxable person carries on his activity.

(see paras 29-31, operative part 1)

2. The exemption from value added tax envisaged in Article 13(A)(1)(c) of the Sixth Directive (77/388) in respect of the provision of medical care in the exercise of the medical and paramedical professions applies to the provision of care of a therapeutic nature by a capital company running an out-patient service under which care, including home care, is provided by qualified nursing staff, to the exclusion of the provision of general care and domestic help.

As regards the place where the services must be supplied, the aforementioned provision is designed to exempt medical services provided outside a hospital environment, both at the private address of the person providing the care and at the patient's home or at any other place. As regards the type of care falling within the provision of medical care, that concept does not lend itself to an interpretation which includes medical interventions carried out for a purpose other than that of diagnosing, treating and, in so far as possible, curing diseases or health disorders.

(see paras 35-38, 41, operative part 2)

3. The provision of general care and domestic help by an out-patient care service to persons in a state of physical or economic dependence amounts to the supply of services closely linked to welfare and social security work within the meaning of Article 13(A)(1)(g) of the Sixth Directive (77/388).

(see para. 61, operative part 3(a))

4. The exemption in respect of the supply of services and of goods closely linked to welfare and social security work by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned, provided for in Article 13(A)(1)(g) of the Sixth Directive (77/388), may be relied upon by a taxable person before national courts in order to oppose national rules incompatible with that provision.

However, as regards the question whether the taxable person is in fact an organisation recognised as charitable by the Member State concerned, the aforementioned provision grants the Member States a discretion for the purpose of according certain organisations such recognition and persons cannot rely on the provision in order to acquire that status as against the Member State concerned as long as the latter observes the limits of its discretion.

It is for the national court to examine whether the competent authorities have observed those limits while applying Community principles, in particular the principle of equal treatment, and thus to establish, in the light of all relevant factors, whether the taxable person is an organisation recognised as charitable within the meaning of the provision in question.

(see paras 54-56, 61, operative part 3(b))

Parties

In Case C-141/00,

REFERENCE to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Ambulanter Pflegedienst Kügler GmbH

and

Finanzamt für Körperschaften I in Berlin,

on the interpretation of Article 13(A)(1)(c) and (g) 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: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissechot, R. Schintgen and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Ambulanter Pflegedienst Kügler GmbH, by U. Behr, Rechtsanwalt,*
- the Finanzamt für Körperschaften I in Berlin, by W. Lang, acting as Agent,*
- the German Government, by W.-D. Plessing and T. Jürgensen, acting as Agents,*
- the Swedish Government, by A. Kruse, acting as Agent,*
- the Commission of the European Communities, by E. Traversa and K. Gross, acting as Agents,*

having regard to the Report for the Hearing,

after hearing the oral observations of Ambulanter Pflegedienst Kügler GmbH, represented by U. Behr; the Finanzamt für Körperschaften I in Berlin, represented by H.-J. Klees, acting as Agent;

the German Government, represented by W.-D. Plessing; and the Commission, represented by K. Gross, at the hearing on 28 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 27 September 2001,

gives the following

Judgment

Grounds

1 By order of 3 February 2000, received at the Court on 14 April 2000, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 13(A)(1)(c) and (g) 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).

2 The questions were raised in proceedings between Ambulanter Pflegedienst Kügler GmbH (Kügler) and the Finanzamt für Körperschaften I in Berlin (Tax Office for Corporate Bodies I in Berlin; the Finanzamt) concerning the charging of value added tax (VAT) at a reduced rate on out-patient care provided by Kügler from 1988 to 1990 when, according to Kügler, those services had to be exempt from VAT.

Legal context

Community legislation

3 Under Article 2(1) of the Sixth Directive, VAT is chargeable on the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.

4 Article 4(1) and (2) of the Sixth Directive provides:

1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

5 Article 13(A)(1)(b), (c) and (g) of the Sixth Directive states:

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:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

...

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned.

6 Article 13(A)(2) of the Sixth Directive provides:

(a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1) ... (g) ... 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.

(b) The supply of services or goods shall not be granted exemption as provided for in (1) ... (g) ... above if:

- it is not essential to the transactions exempted,

- its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.

National legislation

7 Paragraph 4(14) and (16) of the Umsatzsteuergesetz 1980 (Law on Turnover Tax; the UStG) provides:

The following transactions covered by Paragraph 1(1)(1) to 1(1)(3) are exempt:

...

14. transactions arising from pursuit of the profession of doctor, dentist, natural medical practitioner, physiotherapist, midwife or a similar professional medical activity for the purposes of Paragraph 18(1)(1) of the Einkommensteuergesetz or pursuit of the profession of clinical chemist. Other supplies of goods and services by associations whose members belong to the professions set out in the first sentence are also exempt vis-à-vis their members in so far as those supplies are directly used to carry out transactions exempt under the first sentence.

...

16. transactions closely linked with the operation of hospitals, diagnostic clinics and other bodies providing medical care, diagnoses or clinical results and of old people's homes, residential accommodation for the elderly and nursing homes, where:

(a) those bodies are run by legal persons governed by public law or

(b) in the case of hospitals ...

(c) in the case of diagnostic clinics and other bodies providing medical care, diagnoses or clinical results, the services are supplied under medical supervision ...

(d) in the case of old people's homes, residential accommodation for the elderly and nursing homes

8 Paragraph 4(16) of the UStG was amended by the Steueränderungsgesetz 1992 (Tax Amendment Law; the StÄndG) which added in particular a subparagraph (e) providing:

16. transactions closely linked with the operation of hospitals, diagnostic clinics and other bodies providing medical care, diagnoses or clinical results and of old people's homes, residential accommodation for the elderly, nursing homes, bodies for the temporary admission of those in need of care and bodies providing out-patient care for those who are sick or in need of care where:

...

(e) in the case of bodies for the temporary admission of those in need of care and bodies providing out-patient care for those who are sick or in need of care, the costs of the care have been borne in at least two-thirds of cases wholly or mainly by the statutory social security or social welfare authorities in the previous calendar year.

9 Paragraph 18(1)(1) of the Einkommensteuergesetz (Law on Income Tax; EStG) defines what is to be understood by income from professional activities. It is apparent from the case-law of the Bundesfinanzhof that the reference in Paragraph 4(14) of the UStG to Paragraph 18(1)(1) of the EStG concerns only appraisal of the nature of the activities and not the classification of income under the law on taxation of earnings. The tax exemption laid down in Paragraph 4(14) of the UStG is thus not restricted to professional persons themselves as natural persons but may also be claimed by a partnership or capital company.

10 With regard to home care, the tax exemption laid down in the first sentence of Paragraph 4(14) of the UStG relates only to the provision of care of a therapeutic nature, that is to say to medical treatment rendered necessary by illness and provided by nursing staff as part of home care, because only then is there a similarity between the activity carried out and the professions listed in Paragraph 4(14). That provision therefore excludes, first, the provision of general care, that is to say care consisting in the washing of those receiving care, the preparation and giving of meals and helping the sick to get dressed, get up and go to bed and, secondly, domestic help, which encompasses shopping, cooking, cleaning and clothes washing.

11 Home-care services supplied by bodies providing out-patient care have fallen within Paragraph 4(16) of the UStG only since its amendment by the StÄndG. The tax authorities refused to apply the provision retroactively on the basis of objective reasons of equity.

The facts and the main proceedings

12 Kügler is a limited liability company governed by German law which ran an out-patient care service from 1988 to 1990. Under its statutes Kügler directly pursued exclusively benevolent aims by supporting people who as a result of their physical condition were dependent on the assistance

of others or were in need of economic assistance within the meaning of Paragraph 53(1)(2) of the Abgabenordnung (Tax Code) 1977.

13 K gler sought to attain the object laid down in its statutes in particular through the provision of medical care, general care and domestic help.

14 The Finanzamt certified by a notice of 23 August 1988 whose validity expired on 31 December 1989 that K gler pursued benevolent objectives.

15 By several notices, the Finanzamt assessed K gler to turnover tax at a reduced rate for the years 1988, 1989 and 1990 on the basis of estimated taxable amounts.

16 K gler lodged an objection on the ground that the transactions which it had carried out had to be exempt from turnover tax under Paragraph 4(14) and (16) of the UStG. Following the dismissal of its objection it brought an action before the Finanzgericht Berlin (Finance Court, Berlin) which was also unsuccessful.

17 The Finanzgericht Berlin found that K gler did not exercise any of the professions referred to in the first sentence of Paragraph 4(14) of the UStG because, as a legal person, it did not meet the conditions for professional activity. Nor did it carry out transactions exempt under Paragraph 4(16) of the UStG because it did not run a body providing medical care within the meaning of Paragraph 4(16)(c) of the UStG and the tax exemption for the transactions of bodies providing out-patient care for those who are sick or in need of care which is laid down in Paragraph 4(16)(e) of the UStG as amended was not introduced until 1992.

18 The Finanzgericht Berlin further held that, since the exemption provisions set out in Article 13(A)(1)(c) and (g) of the Sixth Directive had been transposed into national law in conformity with the directive, K gler could not rely on them. First, only natural persons fulfilling the conditions for exercise of the medical or paramedical professions met the requirements of Article 13(A)(1)(c) of the Sixth Directive. Second, K gler was not an organisation recognised as charitable within the meaning of Article 13(A)(1)(g) of the Sixth Directive since providers of private care had not been included in the list of bodies in Paragraph 4(16) of the UStG.

19 It was in those circumstances that K gler appealed to the Bundesfinanzhof on a point of law. The Bundesfinanzhof decided to stay proceedings and refer the following three questions to the Court of Justice for a preliminary ruling:

1. Does the tax exemption provided for in Article 13(A)(1)(c) of Directive 77/388/EEC apply only where the medical care is provided by an "individual" or is it independent of the legal form of the person providing the care?

2. If the exemption is also applicable to capital companies, does it cover wholly or partially the activities of a capital company in the form of out-patient nursing (therapeutic care, general care and domestic help) which is provided by qualified nurses?

3. Do the abovementioned services fall within the scope of Article 13(A)(1)(g) of Directive 77/388/EEC and can a taxable person rely on that provision?

Question 1

20 By its first question, the national court essentially seeks to ascertain whether the exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive is dependent on the legal form of the taxable person supplying the medical or paramedical services referred to in that provision.

21 The Finanzamt submits that, in accordance with the case-law of the Court of Justice stating that the exemptions provided for in Article 13 of the Sixth Directive constitute independent concepts of

Community law and that the terms used to specify those exemptions are to be interpreted strictly, the care must be provided in the exercise of the medical and paramedical professions, so that the field of application of Article 13(A)(1)(c) is necessarily limited to natural persons.

22 On the other hand, K gler, the German and Swedish Governments and the Commission essentially contend that the exemption envisaged in Article 13(A)(1)(c) is not dependent on the legal form of the business providing the care, so that even services supplied by legal persons are exempt.

23 The German Government points out that, in light of the principle of fiscal neutrality, natural and legal persons should be treated in the same way.

24 According to the German Government, it is clear from the wording of Article 13(A)(1)(c) of the Sixth Directive, which refers to medical care, that it is the type of activity at issue which matters for the exemption. That interpretation is, in its submission, borne out by the general principles of the Sixth Directive and in particular by Articles 2 and 4. Furthermore, the justification for the tax exemption is *inter alia* the need to reduce medical costs and promote access to health care.

25 It must be borne in mind that, in accordance with settled case-law, the exemptions constitute independent concepts of Community law which must be placed in the general context of the common system of VAT introduced by the Sixth Directive (see, in particular, Case 235/85 *Commission v Netherlands* [1987] ECR 1471, paragraph 18, Case 348/87 *Stichting Uitvoering Financi le Acties* [1989] ECR 1737, paragraph 11, and Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 21).

26 In addition, Article 13(A)(1)(c) of the Sixth Directive defines the exempt transactions by reference to the nature of the services supplied without mentioning the legal form of the person supplying them.

27 On a literal interpretation, that provision does not require medical services to be supplied by a taxable person endowed with a particular legal form in order for them to be exempt. Just two conditions need to be met: medical services must be involved and they must be supplied by persons who possess the necessary professional qualifications.

28 That interpretation is not contradicted by the Court's case-law according to which the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, in particular, *SDC*, cited above, paragraph 20).

29 Exemption of medical services supplied by legal persons is consistent with the objective of reducing the cost of medical care (see, to that effect, Case C-76/99 *Commission v France* [2001] ECR I-249, paragraph 23), and with the principle of fiscal neutrality, inherent in the common system of VAT, in compliance with which the exemptions provided for in Article 13 of the Sixth Directive must be applied (see, in particular, Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 19).

30 The principle of fiscal neutrality precludes, *inter alia*, economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned. It follows that that principle would be disregarded if the possibility of relying on the exemption which is envisaged for the provision of medical care referred to in Article 13(A)(1)(c) were dependent on the legal form in which the taxable person carries on his activity (see, to that effect, *Gregg*, cited above, paragraph 20).

31 The answer to the first question must therefore be that the exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive is not dependent on the legal form of the taxable person

supplying the medical or paramedical services referred to in that provision.

Question 2

32 By its second question, the national court essentially seeks to ascertain whether the exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive applies to the provision of care of a therapeutic nature and to the provision of general care and domestic help by a capital company running an out-patient service under which home care is provided by qualified nursing staff.

33 Disagreeing with Kügler's submissions, the Finanzamt, the German Government and the Commission contend that the exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive applies only to treatment of a therapeutic nature, that is to say to the provision of care linked to the prevention, diagnosis or treatment of illness. The other activities relating to general care and domestic help are not covered by that derogation since, not directly serving a therapeutic purpose, they do not in themselves contribute towards the patient's recovery.

34 In order to provide the national court with a useful answer, it is necessary to consider in turn the place where services must be supplied in order to benefit from the exemption referred to in Article 13(A)(1)(c) of the Sixth Directive and the type of services which are covered by that provision.

35 As regards the place where the services must be supplied, the Court has already held, in Case 353/85 Commission v United Kingdom [1988] ECR 817, at paragraphs 32 and 33, that, in contrast to Article 13(A)(1)(b) of the Sixth Directive which concerns services encompassing a whole range of medical care normally provided on a non-profit-making basis in establishments pursuing social purposes such as the protection of human health, Article 13(A)(1)(c) applies to services provided outside hospitals and similar establishments and within the framework of a confidential relationship between the patient and the person providing the care, a relationship which is normally established in the consulting room of that person.

36 It follows that Article 13(A)(1)(b) and (c) of the Sixth Directive, which have separate fields of application, are intended to regulate all exemptions of medical services in the strict sense. Article 13(A)(1)(b) exempts all services supplied in a hospital environment while Article 13(A)(1)(c) is designed to exempt medical services provided outside such a framework, both at the private address of the person providing the care and at the patient's home or at any other place.

37 With regard to determination of the type of care falling within the concept of the provision of medical care used in Article 13(A)(1)(c) of the Sixth Directive, as noted in paragraph 28 of this judgment the terms employed to specify the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly (see, in particular, Stichting Uitvoering Financiële Acties, cited above, paragraph 13).

38 The Court has already held, in Case C-384/98 D. [2000] ECR I-6795, at paragraph 18, that the concept of provision of medical care does not lend itself to an interpretation which includes medical interventions carried out for a purpose other than that of diagnosing, treating and, in so far as possible, curing diseases or health disorders.

39 Accordingly, services not having such a therapeutic aim must, having regard to the principle that any provision establishing an exemption from VAT is to be interpreted strictly, be excluded from the scope of Article 13(A)(1)(c) of the Sixth Directive (D., cited above, paragraph 19).

40 It follows that only medical care provided in the exercise of the medical and paramedical professions, outside a hospital setting, for the purpose of prevention, diagnosis or treatment qualifies for exemption under Article 13(A)(1)(c) of the Sixth Directive, to the exclusion of other activities relating to general care and domestic help.

41 The answer to the second question must therefore be that the exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive applies to the provision of care of a therapeutic nature by a capital company running an out-patient service under which care, including home care, is provided by qualified nursing staff, to the exclusion of the provision of general care and domestic help.

Question 3

42 By its third question, the national court essentially seeks to ascertain whether the provision of general care and domestic help by an out-patient care service to persons in a state of physical or economic dependence amounts to the supply of services closely linked to welfare and social security work within the meaning of Article 13(A)(1)(g) of the Sixth Directive and, if so, whether Article 13(A)(1)(g) may be relied upon by an individual.

43 As regards the first part of this question, all the parties which submitted observations on the point take the view that general care and domestic help provided by an out-patient care service fall within Article 13(A)(1)(g).

44 In this connection, it need only be stated that it is clear from the terms in which Article 13(A)(1) of the Sixth Directive is couched that, while the provision of care of a therapeutic nature is exempt by virtue of Article 13(A)(1)(c), the provision of general care and domestic help by an out-patient care service to those in a state of physical or economic dependence, as the persons to whom Kügler supplied services were, is in principle linked to social assistance, so that it falls within the concept of services closely linked to welfare and social security work referred to in Article 13(A)(1)(g) of the Sixth Directive.

45 As regards the second part of the question, the Bundesfinanzhof is asking whether Article 13(A)(1)(g) of the Sixth Directive has direct effect, so that it may be relied upon by a taxable person before the national courts.

46 It is to be remembered first of all that this question arises, so far as concerns the Federal Republic of Germany, only in respect of the period prior to 1992 inasmuch as, since then, the tax exemption has also applied to the supply of services by bodies providing out-patient care for those in need of care.

47 Kügler contends that it is an organisation recognised as charitable, within the meaning of Article 13(A)(1)(g) of the Sixth Directive, and that it was therefore able to rely on that provision even before the German legislature exercised its discretion by inserting subparagraph (e) into Paragraph 4(16) of the UStG. Kügler maintains that it could be accorded recognition as a charitable organisation even outside tax law and thereby be entitled to the exemption. The applicable national provisions (federal law, law of the Länder, administrative practice) enable the persons concerned by them to be determined, so that those persons may rely directly on Article 13(A)(1)(g) of the Sixth Directive.

48 The German Government and the Finanzamt contest any notion that Article 13(A)(1)(g) of the Sixth Directive has direct effect, pointing out that while the tax exemption for which it provides may apply to organisations other than bodies governed by public law, they must first have been recognised as charitable by the Member State concerned. Thus, as long as an organisation lacks recognition, which can be granted only in a legislative process, that provision cannot be relied upon by an individual because it is not unconditional.

49 The Commission, on the other hand, states that if there is evidence indicating that an organisation is in one way or another regarded by the Member State concerned as charitable, it will be for the competent authorities of that State to assess whether that is sufficient to fulfil the condition laid down in Article 13(A)(1)(g) of the Sixth Directive. In the Commission's submission it is not necessary, as the German Government asserts, for recognition to occur through a legislative process.

50 In addition, the Commission maintains that Article 13(A)(2) of the Sixth Directive, which confers on the Member States the power to make the grant of, *inter alia*, the exemption envisaged in Article 13(A)(1)(g) subject to certain conditions, cannot have the slightest effect on the position that the subject-matter of the latter provision is unconditional and sufficiently precise where the Member State in question has not exercised that power.

51 It must be borne in mind that, in accordance with settled case-law (see, in particular, Case 8/81 Becker [1982] ECR 53, paragraph 25, Case C-193/91 Mohsche [1993] ECR I-2615, paragraph 17, and Case C-134/99 IGI [2000] ECR I-7717, paragraph 36), wherever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State.

52 First, although Article 13(A)(1) of the Sixth Directive provides that the Member States are to apply the exemptions prescribed by that provision 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, a Member State may not rely, as against a taxpayer who is able to show that his tax position actually falls within one of the categories of exemption laid down in the Sixth Directive, upon its failure to adopt the very provisions which are intended to facilitate the application of that exemption (see, in relation to Article 13(B) of the Sixth Directive, Becker, cited above, paragraph 33).

53 Second, Article 13(A)(1)(g) of the Sixth Directive indicates in a sufficiently precise and unconditional manner the activities to which the exemption applies.

54 Finally, with the regard to the concept of organisations recognised as charitable by the Member State concerned, it is correct, as the German Government has stated, that Article 13(A)(1)(g) of the Sixth Directive grants the Member States a discretion for the purpose of according certain organisations such recognition.

55 As long as the Member States observe the limits of the discretion which is accorded to them by Article 13(A)(1)(g) of the Sixth Directive, persons cannot rely on that provision in order to acquire the status of charitable organisation as against the Member State concerned.

56 Where a person seeks the status of charitable organisation, it is for the national courts to examine whether the competent authorities have observed those limits while applying Community principles, in particular the principle of equal treatment.

57 It will accordingly be for the national authorities, in accordance with Community law and subject to review by the national courts, to determine, in the light in particular of practice followed by the competent administrative body in analogous situations, which organisations should be recognised as charitable within the meaning of Article 13(A)(1)(g) of the Sixth Directive.

58 In the main proceedings, the national court will thus be able to take into account the existence of specific provisions, be they national or regional, legislative or administrative, or tax or social security provisions, the fact that associations carrying on the same activities as the claimant in the main proceedings are already entitled to a similar exemption, given the public interest inherent in those activities, and the fact that the costs of the services supplied by the claimant in the main proceedings may be largely met by statutory health funds or by social security bodies with which private operators such as the claimant in the main proceedings have contractual relations.

59 This conclusion cannot be affected by the possibility under Article 13(A)(2) of the Sixth Directive of making the grant of the exemptions provided for in Article 13(A)(1) subject to one or more conditions.

60 That limitation on the rule excluding liability to tax is purely contingent in nature and a Member State which has omitted to adopt the measures necessary for that purpose cannot rely on its own omission in order to refuse a taxpayer entitlement to an exemption which he may legitimately claim under the Sixth Directive.

61 The answer to the third question must therefore be that the provision of general care and domestic help by an out-patient care service to persons in a state of physical or economic dependence amounts to the supply of services closely linked to welfare and social security work within the meaning of Article 13(A)(1)(g) of the Sixth Directive. The exemption provided for in Article 13(A)(1)(g) of the Sixth Directive may be relied upon by a taxable person before national courts in order to oppose national rules incompatible with that provision. It is for the national court to establish, in the light of all relevant factors, whether the taxable person is an organisation recognised as charitable within the meaning of the aforesaid provision.

Decision on costs

Costs

62 The costs incurred by the German and Swedish Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 3 February 2000, hereby rules:

1. The exemption envisaged in Article 13(A)(1)(c) 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 is not dependent on the legal form of the taxable person supplying the medical or paramedical services referred to in that provision.

2. The exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive (77/388) applies to the provision of care of a therapeutic nature by a capital company running an out-patient service under which care, including home care, is provided by qualified nursing staff, to the exclusion of the provision of general care and domestic help.

3. (a) The provision of general care and domestic help by an out-patient care service to persons in a state of physical or economic dependence amounts to the supply of services closely linked to welfare and social security work within the meaning of Article 13(A)(1)(g) of the Sixth Directive (77/388).

(b) The exemption provided for in Article 13(A)(1)(g) of the Sixth Directive (77/388) may be relied upon by a taxable person before national courts in order to oppose national rules incompatible with that provision. It is for the national court to establish, in the light of all relevant factors, whether the taxable person is an organisation recognised as charitable within the meaning of the aforesaid provision.