

Judgment of the Court (Third Chamber) of 12 November 2009 – Commission v Spain

(Case C-154/08)

Failure of a Member State to fulfil obligations – Sixth VAT Directive – Article 2 and Article 4(1), (2) and (5) – Harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment – Taxable persons – Activities or operations carried out by ‘registradores de la propiedad’ (land registrars) acting as settlement agents in charge of settlement offices of a mortgage district – Economic activities – Activity carried out independently – Public-law bodies carrying out activities in connection with their public duties – Infringement of Community law attributable to a national court

1. *Actions for failure to fulfil obligations – Application initiating proceedings – Statement of subject-matter and pleas in law – Formal requirements – Unambiguous wording of the form of order sought by the applicant (Art. 226 EC, Statute of the Court of Justice, Art. 21; Rules of Procedure of the Court of Justice, Art. 38(1)(c)) (see paras 60, 63, 67)*

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Economic activities carried on independently for the purpose of Article 4 of the Sixth Directive (Council Directive 77/388, Arts 2 and 4(1) and (2)) (see paras 90, 93, 97, 103, 107, 109, 118, 127 and operative part)*

3. *Member States – Obligations – Failure to fulfil obligations – Liability (Art. 226 EC) (see paras 125-126)*

Re:

Failure of a Member State to fulfil obligations – Infringement of Articles 2 and 4(1) and (2) of 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) – Taxable persons – Activities or operations carried out by ‘registradores de la propiedad’.

Operative part

The Court:

1.

Declares that, by considering that the services supplied to an Autonomous Community by ‘registradores de la propiedad’ acting as settlement agents in charge of a settlement office of a mortgage district (‘oficina liquidadora de distrito hipotecario’) are not subject to value added tax, the Kingdom of Spain has failed to fulfil its obligations under Article 2 and Article 4(1) and (2) of

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.