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Judgment of the Court (Second Chamber) of 11 October 2001. - Christiane Adam, épouse Urbing v Administration de l'enregistrement et des domaines. - Reference for a preliminary ruling: Tribunal d'arrondissement de Luxembourg - Grand Duchy of Luxemburg. - Sixth VAT directive - Concept of liberal profession - Managing agent of buildings in co-ownership. - Case C-267/99.

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Keywords

1. Preliminary rulings - Jurisdiction of the Court - Limits - Manifestly irrelevant questions and questions regarding hypothetical problems in a context which precludes any useful answer - Questions not related to the purpose of the main proceedings

(Art. 234 EC)

2. Preliminary rulings - Jurisdiction of the Court - Limits - Interpretation sought owing to the use of a concept in a provision of Community law adopted with a view to the transposition of a directive into internal law, but in circumstances different from those envisaged by the corresponding Community provision - Jurisdiction to provide such an interpretation

(Art. 234 EC)

3. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Discretion for Member States to apply a reduced rate - Exercise - Limits - Observance of principle of fiscal neutrality

(Council Directive 77/388, Arts. 12(4) and 28(2)(e))

4. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for by the Sixth Directive - Liberal professions mentioned in paragraph 2 of Annex F - Meaning - Criteria - Activity of managing agent of buildings in co-ownership - Assessment by the national court

(Council Directive 77/388, Art. 28(3)(b) and Annex F(2))

Summary

1. In the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling.

Nevertheless, in exceptional circumstances, the Court can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal information necessary to give a useful answer to the questions submitted to it.

(see paras. 23-24)

2. The Court has jurisdiction to reply to questions referred for a preliminary ruling bearing on provisions of Community law where, in regulating internal situations, domestic legislation adopts the same solutions as those adopted in Community law so as to provide for a single procedure in comparable situations. It is clearly in the Community interest that, in order to forestall future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply. That reasoning applies even more when the national legislation which uses a concept in a provision of Community law has been adopted with a view to the transposition into internal law of the directive of which the said provision forms part.

It follows that, in such a situation, the fact that the concept of Community law whose interpretation is requested is to be applied, in the context of national law, in circumstances different from those envisaged by the corresponding Community provision does not of itself exclude all links between the interpretation sought and the subject-matter of the main proceedings.

(see paras. 27-29)

3. It is for each Member State to determine and define the transactions to which may be applied a reduced rate of value added tax under Article 12(4) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, until 31 December 1992, and under Article 28(2)(e) of that directive, as amended by Directive 92/77 supplementing the common system of value added tax and amending Directive 77/388 (approximation of VAT rates), as from 1 January 1993, subject to the necessity to respect the principle of neutrality of the value added tax.

That principle precludes in particular treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes, so that those goods or supplies must be subjected to a uniform rate.

(see paras. 36, 41 and operative part)

4. Annex F to the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes lists the activities exempted from value added tax under Article 28(3)(b) of the directive. The liberal professions mentioned in Annex F(2) to that directive are activities which involve a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities. It is for the referring court to decide whether, having regard to those criteria, the activity of managing agent of buildings in co-ownership, as envisaged by the relevant domestic legislation, must be regarded as a liberal profession.

(see paras. 39-41 and operative part)

Parties

In Case C-267/99,

REFERENCE to the Court under Article 234 EC by the Tribunal d'arrondissement de Luxembourg (Luxembourg) for a preliminary ruling in the proceedings pending before that court between

Christiane Urbing-Adam,

and

Administration de l'enregistrement et des domaines,

on the interpretation of Annex F(2) 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 (Second Chamber),

composed of: N. Colneric, President of the Chamber, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

- Mrs Urbing-Adam, by F. Entringer, avocat,

- l'Administration de l'enregistrement et des domaines, by A. Kronshagen, avocat,

- the Danish Government, by J. Molde, acting as Agent,

- the Commission of the European Communities, by E. Traversa and G. Berscheid, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2001,

gives the following

Judgment

Grounds

1 By judgment of 15 July 1999, received at the Court of Justice on 19 July 1999, the Tribunal d'arrondissement de Luxembourg referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Annex F(2) 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) (hereinafter the Sixth Directive).

2 The two questions have been raised in proceedings between Christiane Urbing-Adam, a managing agent (syndic) of buildings held in co-ownership, and the Luxembourg Administration de l'enregistrement et des domaines (hereinafter the Administration), concerning the rate of value-added tax (hereinafter VAT) to be applied to the professional transactions carried out by Mrs Urbing-Adam during the financial years 1991 to 1994.

The legal background

The Sixth Directive

Provisions of the Sixth Directive referring to the liberal professions

3 Article 28(3)(b) of the Sixth Directive provides that the Member States may, during the transitional period, continue to exempt the activities set out in Annex F under conditions existing in the Member State concerned.

4 Annex F(2) of the Sixth Directive refers to the the liberal professions. This provision is worded thus:

Services supplied by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967.

Provisions of the Sixth Directive relating to rates of tax

5 In its version prior to 1 January 1993, Article 12 of the Sixth Directive, which governs rates of tax, provided in paragraph 4:

In certain cases, the supply of goods or services may be made subject to increased or reduced rates. Each reduced rate shall be so fixed that the amount of value added tax resulting from the application thereof shall be such as in the normal way to permit the deduction therefrom of the whole of the value added tax deductible under the provisions of Article 17.

6 Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388 (approximation of VAT rates) (OJ 1992 L 316, p. 1), which was to have been transposed by 31 December 1992 at the latest, deleted the first sentence of Article 12(4) of the Sixth Directive, rewrote its Article 28(2), and inserted in it a new Annex H.

7 Article 28(2)(e) of the Sixth Directive, in the version resulting from Directive 92/77, which is the relevant provision in this case, provides:

Member States which at 1 January 1991 applied a reduced rate to supplies of goods and services other than those specified in Annex H may apply the reduced rate or one of the two reduced rates provided for in Article 12(3) to such supplies, provided that the rate is not lower than 12%.

8 The aforementioned Annex H, which sets out a list of supplies of goods and services which are eligible for reduced rates of VAT, does not include the liberal professions among them.

National law

National legislation concerning VAT

9 Prior to 1 January 1993, the Grand Duchy of Luxembourg applied a reduced rate of VAT of 6% to the liberal professions.

10 Under Article 40(4)(b) of the Law of 5 August 1969, as amended and supplemented by the Law of 12 February 1979 (hereinafter the VAT Law), the reduced rate of VAT applies, within the limits and under the conditions to be established by Grand Ducal regulation, to services provided in the exercise of a liberal profession.

11 Article 4 of the Grand Ducal Regulation of 7 March 1980, which establishes the limits and conditions of application of the reduced rate of VAT, provides that services provided in the exercise of a liberal profession covered by Article 40(4)(b) of the VAT Law are the services arising from the activities of lawyers, notaries, bailiffs, property administrators, engineers, architects, quantity surveyors, inspectors, technicians, chemists, inventors, consultants, accountants, veterinary surgeons, journalists, photo-journalists, interpreters, translators, and other similar activities, whether such activities are carried on as primary or secondary occupations by natural or legal persons.

12 In compliance with the Community legislation mentioned in paragraph 7 of this judgment, the Grand Duchy of Luxembourg fixed, with effect on 1 January 1993, a reduced intermediate rate of VAT, of 12%, for the liberal professions.

13 Article 40(3) of the VAT Law, in its version resulting from the Finance Law of 20 December 1991, provides that the intermediate rate of 12% applies to the goods and services mentioned in Annex C of that law. Paragraph 8 of Annex C covers services provided in the exercise of a liberal profession.

14 Article 7(1) of the Grand Ducal Regulation of 21 December 1991, laying down the limits and conditions of application of the reduced, additionally-reduced and intermediate rates of the tax on added value, defines the services arising from the practice of a liberal profession mentioned in Paragraph 8 of Annex C of the VAT Law as amended, in the same terms as Article 4 of the Grand Ducal Regulation of 7 March 1980.

National legislation on the activity of managing agent

15 Under the Law of 16 May 1975, governing co-ownership of buildings, all the co-owners of a building or of a group of buildings, the ownership of which is shared by several persons in lots

comprising a private part and a share of the common parts, must belong to an association, which is the legal representative of the group endowed with legal personality.

16 In accordance with the provisions of the Grand Ducal Regulation of 13 June 1975, laying down the measures for implementing the law on co-ownership, the managing agent, whose duties may be undertaken by any natural or legal person, is appointed by the general meeting of the co-owners. The managing agent is responsible for carrying out the provisions of the legislation on co-ownership and the decisions of the general meeting. He manages the building and attends to its preservation, security and maintenance. In an emergency he must see to the carrying out, on his own initiative, of all the works necessary for the protection of the building. He represents the association in formal legal transactions and, generally after authorisation by the co-owners' meeting, in legal proceedings.

The main proceedings and the questions referred for a preliminary ruling

17 Taking the view that her activity involved the parctice of a liberal profession, Mrs Urbing-Adam submitted her VAT returns for the years 1991 and 1992 on the basis of a reduced rate of 6% and those relating to the years 1993 and 1994 on the basis of the intermediate rate of 12%. Since the Administration considered that Mrs Urbing-Adam's activity was not that of a property administrator and was therefore not a liberal profession, but a commercial activity, it adjusted the tax and applied the normal VAT rate of 15% to the transactions in issue.

18 Mrs Urbing-Adam appealed against that decision before the Tribunal d'arrondissement. Emphasising the independence enjoyed by managing agents under the Luxembourg legislation in carrying on their activity, she submitted that she practised a liberal profession within the meaning of Article 4 of the Grand Ducal Regulation of 7 March 1980 and Article 7 of the Grand Ducal Regulation of 21 December 1991. She argued that, on that basis, she was entitled to the reduced rate for the years 1991 and 1992, by virtue of Article 40(4)(b) of the VAT Law, and to the intermediate rate for the years 1993 and 1994, by virtue of Article 40(3) of that law, in its version resulting from the Finance Law of 20 December 1991.

19 The Administration disputed that the activity of managing agent was a liberal profession as envisaged by the Luxembourg legislation, arguing that it was an activity different from that of property administrator, that its exercise did not require the possession of a special qualification and that it consisted of the simple management of the common parts of a building, under the supervision of the meeting of co-owners.

20 Since the Luxembourg legislation relating to VAT does not define the concept of liberal profession but merely lists various activities which constitute liberal professions, as well as other similar activities, the Tribunal d'arrondissement de Luxembourg decided that the case before it required an interpretation of Annex F(2) of the Sixth Directive. It therefore decided to refer to the Court for a preliminary ruling the following questions:

(1) Is the concept of a liberal profession mentioned in Annex F(2) to the Sixth Council Directive (77/388/EEC), on the harmonisation of the laws of the Member States relating to turnover taxes, an independent concept of Community law?

If the answer to the first question is in the affirmative:

(2) Does the concept of a liberal profession cover the activity of a managing agent of buildings in co-ownership?

Jurisdiction of the Court of Justice

21 The Administration argues that Article 28(3) and Annex F(2) of the Sixth Directive, whose interpretation is requested, are not relevant in the main proceedings because they govern VAT exemptions and not the application by the Member States of a reduced rate of VAT. The latter aspect is governed by Articles 12 and 28(2) of the Sixth Directive, as amended by Directive 92/77, and it was precisely on the basis of those provisions that the Grand Duchy of Luxembourg applied a reduced rate of 6% prior to 1 January 1993, and 12% after that date, to the transactions arising from the practice of a liberal profession. Further, the provisions of the Luxembourg legislation applicable to the main proceedings make no reference to the Community legislation.

22 The national court has thus requested this Court to give a preliminary ruling on the interpretation of a concept in a provision of Community law which obviously does not apply to the main proceedings. Therefore, in accordance with the judgments in Joined Cases C-297/88 and C-197/89 Dzodzi [1990] ECR I-3763, paragraph 40, Case C-231/89 Gmurzynska-Bscher [1990] ECR I-4003, paragraphs 18 and 19, and Case C-28/95 Leur-Bloem [1997] ECR I-4161, paragraph 26, the Court has no jurisdiction to respond to the questions referred.

23 With regard to that argument, it should remembered that it is settled law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, inter alia, Case C-379/98 PreussenElektra [2001] ECR I-2099, paragraph 38).

24 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal information necessary to give a useful answer to the questions submitted to it (see, inter alia, PreussenElektra, cited above, paragraph 39).

25 In this case, it is true that the questions referred involve the interpretation of the concept of liberal profession in a provision of the Sixth Directive relating to VAT exemptions, whereas, in the main proceedings, the meaning of that concept must be established, not with a view to deciding on a VAT exemption, but so as to determine the rate of VAT applicable to the activity of managing agent, which is more a matter for the Luxembourg legislation relating to VAT.

26 However, those circumstances do not of themselves lead to the conclusion that the interpretation requested by the national court bears no relation to the main proceedings and that, therefore, the Court of Justice has no jurisdiction to answer the questions referred.

27 It follows from the case-law of the Court that where, in regulating internal situations, domestic legislation adopts the same solutions as those adopted in Community law so as to provide for a single procedure in comparable situations, it is clearly in the Community interest that, in order to forestall future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, inter alia, Case C-130/95 Giloy [1997] ECR I-4291, paragraph 28, and Case C-1/99 Kofisa Italia [2001] ECR I-207, paragraph 32).

28 That reasoning applies even more when the national legislation which uses a concept in a provision of Community law has been adopted with a view to the transposition into internal law of the directive of which the said provision forms part.

29 It follows that, in such a situation, the fact that the concept of Community law whose interpretation is requested is to be applied, in the context of national law, in circumstances different from those envisaged by the corresponding Community provision does not of itself exclude all links between the interpretation sought and the subject-matter of the main proceedings.

30 The national court, in its judgment, states that the [Luxembourg] legislation relating to tax on added value transposes into Luxembourg law the relevant Community directives and that therefore, [the] Luxembourg legislation on the rates which apply to the practice of the liberal professions must be interpreted in accordance with the provisions of Community law relating to VAT, and in particular Annex F(2) of the Sixth Directive, which includes that concept.

31 In those circumstances and in view of the considerations set out in paragraphs 27 to 29 of this judgment, the Administration's argument that there is no connection between the questions referred and the matter being litigated in the main proceedings must be rejected.

32 The Court therefore has jurisdiction to reply to the questions referred.

The questions referred for a preliminary ruling

33 By its two questions, which can be dealt with together, the referring court is asking essentially whether the liberal professions mentioned in Annex F(2) of the Sixth Directive include an activity such as that of a managing agent of buildings in co-ownership.

34 Since the question which arises in the main proceedings is whether such an activity is to be treated, for the purposes of the application of VAT, in the same way as the liberal professions which are subjected to a reduced rate rather than the normal rate of VAT, it should first be explained that Article 12(4) of the Sixth Directive, in its version prior to Directive 92/77, allowed the Member States to apply reduced rates to certain supplies of goods and services and that Article 28(2)(e) of the Sixth Directive, in its version resulting from Directive 92/77, authorised those Member States which, on 1 January 1991, were applying a reduced rate to supplies of goods and services other than those mentioned in Annex H, to continue to apply that rate on condition that it was not lower than 12%. It is an accepted fact that Annex H does not mention the liberal professions as such.

35 It follows that the determination and the definition of the transactions to which a reduced rate may be applied under those provisions of the Sixth Directive are matters for the Member States concerned.

36 Nonetheless, in exercising that power, the Member States must respect the principle of fiscal neutrality. That principle precludes in particular treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes, so that those goods or supplies must be subjected to a uniform rate (see, to that effect, Case C-481/98 Commission v France [2001] ECR I-3369, paragraph 22).

37 That must also be the case for the treatment applied by the Grand Duchy of Luxembourg to the liberal professions, which, in accordance with the provisions of the Sixth Directive mentioned in paragraph 34 of this judgment, were subject, until 31 December 1992, to a reduced rate of 6%, which was raised from 1 January 1993 to 12%.

38 As to the meaning of liberal professions, it must be noted that the Sixth Directive uses this term in its Annex F(2) without giving any general definition. Further, under Article 28(3)(b) of the Sixth

Directive, to which Annex F relates, it is under the conditions existing in the Member State concerned that the transactions referred to in that Annex may, during the transitional period, be exempted from VAT.

39 However, with a view to providing guidance to the referring court, certain factors which characterise the liberal professions, within the meaning of Annex F(2) to the Sixth Directive, should be emphasised. As the Commission has pointed out in its written observations, the liberal professions mentioned in that provision are activities which, inter alia, are of a marked intellectual character, require a high- level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities.

40 It is for the referring court to decide whether, having regard to those criteria, the activity of managing agent, as envisaged by the relevant Luxembourg legislation, must be regarded as a liberal profession.

41 In view of the foregoing, the questions referred must be answered to the effect that it is for each Member State to determine and define the transactions to which may be applied a reduced rate under Article 12(4) of the Sixth Directive, until 31 December 1992, and under Article 28(2)(e) of the Sixth Directive, as amended by Directive 92/77, as from 1 January 1993, subject to the necessity to respect the principle of VAT neutrality.

The liberal professions mentioned in Annex F(2) to the Sixth Directive are activities which involve a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities.

Decision on costs

Costs

42 The costs incurred by the Danish Government and by 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 (Second Chamber),

in answer to the questions referred to it by the Tribunal d'arrondissement de Luxembourg by judgment of 15 July 1999, hereby rules:

It is for each Member State to determine and define the transactions to which may be applied a reduced rate under Article 12(4) 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, until 31 December 1992, and under Article 28(2)(e) of that directive as amended by Council Directive 92/77/EEC of 19 October 1992 supplementing

the common system of value added tax and amending Directive 77/388 (approximation of VAT rates), as from 1 January 1993, subject to the necessity to respect the principle of neutrality of the value added tax.

The liberal professions mentioned in Annex F(2) to the Sixth Directive 77/388 are activities which involve a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities.