

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the Law on the Rules governing Teachers in the Länder (*Landeslehrer-Dienstrechtsgesetz*), contrary to the requirements of Article 18(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, and by failing to implement, or to implement in full, Article 2(1), in respect of compulsory education teachers in the Tyrol, and Articles 7(3), 8(2), 11(2)(c) and (d) and 13(2)(b) of that directive, the Republic of Austria has failed to fulfil its obligations under those provisions of the Directive;
2. Dismisses the remainder of the action;
3. Orders the Republic of Austria to bear its own costs and five sixths of the costs of the Commission of the European Communities.

(¹) OJ C 314, 18.12.2004.

Judgment of the Court (Third Chamber) of 27 April 2006 (references for a preliminary ruling from the Hoge Raad der Nederlanden) — H.A. Solleveld (C-443/04) and J.E. van den Hout-van Eijnsbergen (C-444/04) v Staatssecretaris van Financiën

(Joined Cases C-443/04 and C-444/04) (¹)

(Sixth VAT Directive — Article 13A(1)(c) — Exemptions — Provision of medical care in the exercise of the medical and paramedical professions — Therapeutic treatments given by a physiotherapist and a psychotherapist — Definition by the Member State concerned of paramedical professions — Discretion — Limits)

(2006/C 143/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: H.A. Solleveld, J.E. van den Hout-van Eijnsbergen

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 13A(1)(c) of Directive 77/388/EEC: Sixth Council Directive 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) — Exemption for medical care provided in the exercise of the medical and paramedical professions, as defined by the Member State concerned — Activities carried out by a physiotherapist outside the scope of the national medical and paramedical activities

Operative part of the judgment

Article 13A(1)(c) 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 must be interpreted as meaning that it confers on the Member States the discretion to define the paramedical professions and the medical care coming within the scope of such professions for the purpose of the exemption laid down by that provision. However, the Member States must, in the exercise of that discretion, comply with the objective pursued by the said provision, which is to ensure that the exemption applies solely to services provided by persons with the required professional qualifications, and the principle of fiscal neutrality.

National legislation which excludes the profession of psychotherapist from the definition of the paramedical professions is contrary to the said objective and principle only to the extent that psychotherapeutic treatments would, if carried out by psychiatrists, psychologists or any other medical or paramedical profession, be exempt from value added tax, whereas, carried out by psychotherapists, they can be regarded as being of equivalent quality having regard to the professional qualifications of the latter, a matter which it is for the referring court to determine.

National legislation which excludes certain specific medical-care activities, such as treatments using disturbance field diagnostics, carried out by physiotherapists from the definition of that paramedical profession is contrary to the said objective and principle only to the extent that such treatments carried out in the context of the said activities would, if carried out by doctors or dentists, be exempt from value added tax, whereas, carried out by physiotherapists, they can be regarded as being of equivalent quality having regard to the professional qualifications of the latter, a matter which it is for the referring court to determine.

(¹) OJ C 6, 8.1.2005.