Case C-281/06

Hans-Dieter Jundt and Hedwig Jundt

v

Finanzamt Offenburg

(Reference for a preliminary ruling
from the Bundesfinanzhof)

(Freedom to provide services — Secondary teaching activity — Concept of 'remuneration' — Allowances for professional expenses — Legislation concerning tax exemption — Conditions — Remuneration paid by a national university)

Summary of the Judgment

1. *Freedom to provide services — Provisions of the Treaty — Scope (Arts 45, first para., EC, 49 EC and 50 EC)*

2. *Freedom to provide services — Restrictions — Tax legislation (Art. 49 EC)*

1. A teaching activity carried out by a taxpayer of one Member State for a legal person established under public law, such as a university, situated in another Member State comes within the scope of Article 49 EC, even if it is carried out on a secondary basis and in a quasi-honorary capacity.

The decisive factor which brings an activity within the ambit of the Treaty provisions on the freedom to provide services is its economic character, that is to say, the activity must not be provided for nothing. By contrast, there is no need in that regard for the person providing the services to be seeking to make a profit. Moreover, the fact that a remunerated teaching activity is carried out on behalf of a university, a legal person established under public law, does not have the effect of removing the service provided from the scope of Article 49 EC, since university teaching activities, being activities of civil society, do not fall within the scope of the derogation provided for in the first paragraph of Article 45 EC, in conjunction with Article 50 EC, that derogation being restricted to activities which in themselves are directly and specifically connected with the exercise of official authority.

(see paras 32, 33, 35, 37-39, operative part 1)

2. The restriction on the freedom to provide services constituted by the fact that national legislation confines the application of an exemption from income tax to remuneration paid by universities, that is to say, public-law legal persons, established on national territory, in return for teaching activities carried out on a secondary basis, and refuses to apply that exemption where that remuneration is paid by a university established in another Member State, is not justified by overriding reasons relating to the public interest.

Such legislation, which applies in the same way to nationals and to foreign nationals who carry out activities for national legal persons established under public law, results in less favourable

treatment of the services provided to beneficiaries in other Member States in comparison with the treatment reserved for services provided on national territory. That restriction on the freedom to provide services cannot be justified by the promotion of teaching, research and development, since it infringes the freedom of teachers exercising their activity on a secondary basis to choose where within the European Community to provide their services, without it having been established that, in order to achieve the supposed objective of promoting education, it is necessary to limit the enjoyment of the tax exemption at issue to those taxpayers working on a secondary basis as teachers in universities situated on national territory. Nor can that restriction be justified by the need to safeguard the coherence of the tax system, since there is no direct link, from the point of view of the tax system, between the exemption from tax of expense allowances paid by national universities and an offsetting of that concession by a particular tax levy.

Moreover, the fact that the Member States are themselves competent to organise their respective education systems is not such as to render compatible with Community law that legislation which confines the benefit of a tax exemption to taxpayers carrying out activities for or on behalf of national public universities. That legislation is not a measure which concerns the content of teaching or the organisation of the education system, but a fiscal measure of a general nature which grants a tax concession where an individual engages in activities of benefit to the general public. Even if such legislation were a measure linked to the organisation of the education system, the fact remains that it is incompatible with the Treaty in so far as it influences the choice of persons teaching on a secondary basis with regard to the place in which they provide their services.

(see paras 54, 56, 57, 61, 69, 71, 73, 83-85, 88, 89, operative part 2, 3)