

Case C-246/08

Commission of the European Communities

v

Republic of Finland

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — Articles 2(1) and 4(1) and (2) — Meaning of ‘economic activities’ — Public legal aid offices — Legal aid services provided in legal proceedings in return for a part contribution paid by the recipient — Meaning of ‘direct link’ between the service rendered and the consideration received)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 7 July
2009 I - 10607
Judgment of the Court (Third Chamber), 29 October 2009 I - 10625

Summary of the Judgment

Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Economic activities within the meaning of Article 4(1) and (2) of the Sixth Directive (Council Directive 77/388, Arts 2(1), and 4(1), (2) and (5))

A Member State does not fail to fulfil its obligations under Article 2(1) and Article 4(1), (2) and (5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes when it fails to levy value added tax on legal advice services provided by public legal aid offices in the context of legal proceedings in return for part payment from the recipient, where the link between the legal aid services and the payment to be made by the recipient is not sufficiently direct for that payment to be regarded as consideration for those services and, accordingly, for those services to be regarded as economic activities subject to value added tax for the purposes of Article 2(1) and Article 4(1) and (2) of the Sixth Directive.

proceedings is not calculated solely on the basis of the fees but also depends upon the recipient's income and assets, there is no such direct link, for that payment depends only in part on the actual value of the services provided — the more modest the recipient's income and assets, the less strong the link with that value will be. That finding is borne out by the fact that there is a substantial difference between the part payments made in the course of one year by those recipients and the gross operating costs of the legal aid offices, such a difference suggesting that the part payment borne by the recipients must be regarded more as a fee, receipt of which does not, per se, mean that a given activity is economic in nature, than as consideration in the strict sense.

As the amount of the part payment made to the public offices by recipients of legal aid services provided in the context of legal

(see paras 48-51)