Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 10 March 2016[1]

Case C-543/14

Ordre des barreaux francophones et germanophone and Others
Vlaams Netwerk van Verenigingen waar armen het woord nemen ASBL and Others
Jimmy Tessens and Others
Orde van Vlaamse Balies
Ordre des avocats du barreau d'Arlon and Others
v
Conseil des ministres
(Request for a preliminary ruling from the

Cour constitutionnelle (Constitutional Court, Belgium))

(VAT — Directive 2006/112/EC — Validity and interpretation — Services provided by lawyers — Non-exemption from VAT — Access to justice — Right to assistance by a lawyer — Equality of arms — Legal aid)

1. By virtue of a transitional provision dating from the Sixth VAT Directive,[2] which was originally intended to apply for five years from 1 January 1978 but is still present in the current VAT Directive,[3] Belgium exempted services supplied by lawyers from VAT until 31 December 2013. It was the only Member State to make use of that derogation.

2. A number of Belgian bar councils, together with several human rights and humanitarian associations and a number of individuals having incurred lawyers' fees subject to VAT, have brought proceedings before the Cour constitutionnelle (Constitutional Court) challenging the abolition of that exemption with effect from 1 January 2014. The main thrust of their arguments is that the resulting increase in the cost of litigation breaches various guarantees of the right of access to justice.

3. Before deciding on those arguments, the Cour constitutionnelle (Constitutional Court) requests a preliminary ruling on the interpretation and validity of certain provisions of the VAT Directive.

1 — Original language: English.

2 — 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).

3 — Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Legal background

International agreements

4. Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') [4] provides, in particular: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' Among the minimum rights guaranteed by Article 6(3) to anyone charged with a criminal offence is the right 'to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'.

5. Article 14(1) of the International Covenant on Civil and Political Rights ('the ICCPR') [5] provides, in particular: 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.' Under Article 14(3)(b) and (d), in the determination of any criminal charge against him, everyone is to be entitled, in full equality, to 'communicate with counsel of his own choosing' and 'be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it'.

6. Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters ('the Aarhus Convention') [6] concerns access to justice.

7. Paragraphs 1 to 3 of that article require procedures to be available to allow members of the public to obtain administrative and/or judicial review of certain types of act or omission in the field of the environment. Paragraphs 1 and 2 specify that each party to the convention is to provide the procedures in question 'within the framework of its national legislation', while paragraph 3 refers to 'criteria, if any, laid down in its national law' and to contravention of 'provisions of its national law relating to the environment'.

8. Paragraph 4 requires the procedures referred to in paragraphs 1 to 3 to 'provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive', while paragraph 5 requires parties to 'consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice'.

Treaty on European Union

9. Article 9 TEU provides: 'In all its activities, the Union shall observe the principle of the equality of its citizens …'

4 — Signed at Rome on 4 November 1950. All the Member States are signatories to the ECHR, but the European Union has not yet acceded as such; see Opinion 2/13, EU:C:2014:2454.

5 — Adopted on 16 December 1966 by the General Assembly of the United Nations, *United Nations Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407. All Member States of the European Union are parties to the Covenant, which entered into force on 23 March 1976.

6 — Signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1). It was implemented in EU law by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing-up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

Charter of Fundamental Rights of the European Union

10. Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter') [7] provides: 'Everyone is equal before the law.'

11. Article 47, entitled 'Right to an effective remedy and to a fair trial', provides:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

12. Article 51(1) states that the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

13. In the words of Article 52(1):

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

14. Article 52(3) provides:

'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

The VAT Directive

15. Article 1(2) of the VAT Directive provides:

'The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.'

7 — OJ 2010 C 83, p. 389.

16. Article 2(1)(c) states that 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is to be subject to VAT.

17. Under Article 97, the standard rate of VAT is to be not less than 15%. However, under Article 98, Member States may apply either one or two reduced rates to supplies of goods or services in the categories set out in Annex III. The list in Annex III does not include the services of lawyers. However, under point 15, it includes the 'supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States and engaged in welfare or social security work, in so far as those transactions are not exempt pursuant to Articles 132, 135 and 136'. [8]

18. Article 132(1) lists a number of 'Exemptions for certain activities in the public interest'. Again, those activities do not include the services of lawyers. They do include, under (g), 'the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing'.

19. Article 168 provides:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

20. Under Article 371, 'Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date'. Part B of Annex X, entitled 'Transactions which Member States may continue to exempt', includes, under (2), 'the supply of services by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions', subject to certain exceptions which are not relevant to the present proceedings. [9]

Belgian law

21. Article 23(2) of the Belgian Constitution guarantees for all, inter alia, the right to legal aid.

22. Until 31 December 2013, Article 44(1)(1) of the Belgian VAT Code provided that supplies of services made by lawyers [10] in the course of their usual activities were to be exempt from VAT. Such supplies had been exempt since the introduction of VAT in Belgium on 1 January 1971. From parliamentary documents cited in the order for reference, it appears that the aim of establishing and subsequently maintaining the exemption was to avoid placing an additional burden on the costs of access to the courts.

8 — Exemptions under Articles 135 and 136 are not in issue in the present case.

9 — Until 1 January 2007, the same provisions were contained in Article 28(3)(b) of, and Annex F to, the Sixth VAT Directive.

10 — That is to say, advocates (*avocats/advokaten*). The services of notaries and bailiffs had also been exempt until 31 December 2011, when that exemption was abolished.

23. Articles 60 and 61 (together, 'the contested measure') of the Law of 30 July 2013 [11] abolished that exemption with effect from 1 January 2014. From parliamentary documents cited in the order for reference, it appears that the aim was broadly to regularise an anomalous situation, to bring Belgian law into line with that of the other Member States and to end distortions of competition, while at the same time pursuing a budgetary purpose.

24. The standard rate of VAT in Belgium is 21%.

25. Pursuant to Article 446 *ter* of the Belgian Judicial Code, lawyers are to fix their fees freely 'with the discretion that is to be expected of them in the exercise of their duties'. The amount may not be dependent solely on the outcome of the proceedings. Fees which exceed what is 'fair and moderate' are to be reduced by the competent Bar Council.

26. In practice, fees are fixed, by agreement between the lawyer and the client, by one of four methods: an hourly charge; a flat-rate charge according to the nature of the case; an amount determined by reference to the value of the claim but variable between a defined minimum and maximum, according to the outcome of the proceedings; and (for habitual clients) a renewable fee to be paid every so often or once so much work has been done. [12]

Procedure and questions referred

27. Between November 2013 and February 2014, four applications, each challenging the contested measure, were received by the Cour constitutionnelle (Constitutional Court).

28. The first was submitted by the Ordre des barreaux francophones et germanophone (Council of French- and German-language Bars), together with a number of associations whose aims fall broadly within the area of justice, including human rights, and the defence of workers and less-privileged members of society, and which are not taxable persons in a position to deduct VAT if they use the services of lawyers. The second application was made by a number of individuals ('Jimmy Tessens and Others') who were using the services of a specialist lawyer in order to pursue challenges to expropriations of land, and found the lawyer's fees now increased by 21% which, as individuals acting in a private capacity, they are not in a position to deduct. The third applicant was the Orde van Vlaamse Balies (Council of Flemish Bars). The fourth application was submitted jointly by 11 French-language bar councils and an individual lawyer. The Conseil des barreaux européens (Council of Bars and Law Societies of Europe, 'the CCBE') was granted leave to make submissions in intervention in the second to fourth cases.

29. In its order for reference, the Cour constitutionnelle (Constitutional Court) sets out the applicants' arguments relevant to the request for a preliminary ruling.

30. First, they submit that, in the context of the right to a fair hearing, the contested measure impedes the right of access to the courts and the right to the assistance of a lawyer, and is not counterbalanced by any adjustment of the system of legal aid.

31. Second, the contested measure places the services of lawyers on the same footing as supplies of ordinary goods and services, while supplies which relate to the exercise of fundamental rights are exempt from VAT, for reasons of financial accessibility.

32. Third, the services of lawyers are not comparable to those of other liberal professions, being characteristic of, and essential to, the rule of law.

11 — Loi du 30 juillet 2013 portant des dispositions diverses.

12 — See, for example, the website of the Ordre des barreaux francophones et germanophone, http://www.avocats.be/fr/combien-ça-coûte.

33. Fourth, the contested measure discriminates against litigants who are not taxable persons using lawyers' services for the purpose of their taxed transactions, and who are thus unable to deduct the VAT on those services; such persons are, moreover, often economically weaker.

34. Fifth, in the alternative, a reduced rate of VAT should have been applied to reflect the nature of lawyers' services, which are comparable to those of doctors and access to which is a fundamental right, not a luxury.

35. Finally, the legislature should have provided for a dispensation in the case of proceedings brought by individuals against a public authority, in order to ensure an equitable balance between parties.

36. The Cour constitutionnelle (Constitutional Court) examines a number of judgments of the European Court of Human Rights ('the Strasbourg Court') concerning Articles 6 and 14 of the ECHR, and concludes that the legislature must give concrete effect to general principles such as the right of access to the courts and equality of arms between litigants.

37. It then notes that an increase of 21% in the cost of lawyers' services could, for some litigants, interfere with the right of access to legal advice. Moreover, the fact that some litigants are able to deduct the VAT on the supply of such services while others are not (although some of the latter will benefit from legal aid), and that opposing litigants may be in different positions in that regard, is liable to interfere with the equality of arms between litigants.

38. The Cour constitutionnelle (Constitutional Court) takes the view that the aim of the contested measure was principally budgetary. In that regard, the legislature had a broad discretion, but such an aim could not reasonably justify discrimination in matters of access to the courts and to legal advice or as regards equality of arms between litigants. It notes also that, in *Commission* v *France*,[13] the Court took the view that, even supposing that services provided by lawyers under the legal aid scheme are related to social wellbeing and can be classified as 'engagement in welfare or social security work', that is not sufficient to conclude that such lawyers may be classified as 'organisations … devoted to social wellbeing … and engaged in welfare or social security work' within the meaning of point 15 of Annex III to the VAT Directive. However, the Court did not in that case examine the compatibility of the directive with the right to a fair hearing. Finally, the Cour constitutionnelle (Constitutional Court) notes that, since the VAT Directive is a harmonising directive, it is not for the Belgian legislature to devise its own, different rules but that the phrase 'in accordance with the conditions applying in the Member State concerned on that date' in Article 371 of that directive might allow some leeway in that regard.

39. Having regard to those considerations, therefore, the Cour constitutionnelle (Constitutional Court) seeks a preliminary ruling on the following questions:

'(1) (a) By making services supplied by lawyers subject to VAT without taking account, having regard to the right to the assistance of a lawyer and the principle of equality of arms, of whether or not a client who does not qualify for legal aid is subject to VAT, is [the VAT Directive] compatible with Article 47 of the [Charter] in conjunction with Article 14 of the [ICCPR] and with Article 6 of the [ECHR], in so far as that article recognises that everyone is entitled to a fair hearing and has the possibility of being advised, defended and represented and that there is a right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice?

13 — Judgment in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraphs 45 to 47.

(b) For the same reasons, is [the VAT Directive] compatible with Article 9(4) and (5) of the [Aarhus Convention], in so far as those provisions establish a right of access to justice without the cost of those procedures being prohibitively expensive through "the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice"?

(c) May services provided by lawyers under a national legal aid scheme be included in the services referred to in Article 132(1)(g) of [the VAT Directive] which are closely linked to welfare and social security work, or may they be exempted under another provision of the directive? If that question is answered in the negative, is [the VAT Directive], interpreted as not permitting a VAT exemption for services supplied by lawyers for clients who qualify for legal aid under a national legal aid scheme, compatible with Article 47 of the [Charter] in conjunction with Article 14 of the [ICCPR] and with Article 6 of the [ECHR]?

(2) If the questions mentioned in paragraph 1 are answered in the negative, is Article 98 of [the VAT Directive], in so far as it does not provide for the possibility of applying a reduced rate of VAT to services supplied by lawyers, as the case may be depending on whether or not a client who does not qualify for legal aid is subject to VAT, compatible with Article 47 of the [Charter] in conjunction with Article 14 of the [ICCPR] and with Article 6 of the [ECHR], in so far as that article recognises that everyone is entitled to a fair hearing and has the possibility of being advised, defended and represented and that there is a right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice?

(3) If the questions mentioned in paragraph 1 are answered in the negative, is Article 132 of [the VAT Directive] compatible with the principle of equality and non-discrimination enshrined in Articles 20 and 21 of the [Charter] and Article 9 TEU, in conjunction with Article 47 of the Charter, in so far as it does not provide, among activities in the public interest, for VAT exemption for services of lawyers, when other supplies of services are exempted as activities in the public interest, such as the supply of services by the public postal services, various medical services or services connected with education, sport or culture, and when that difference in treatment between services of lawyers and services exempted by Article 132 of the [VAT Directive] raises sufficient doubts because services of lawyers contribute to respect for certain fundamental rights?

(4) (a) If the questions mentioned in paragraphs 1 and 3 are answered in the negative, can Article 371 of [the VAT Directive] be interpreted, in accordance with Article 47 of the [Charter], as authorising a Member State of the European Union partially to maintain the exemption for services supplied by lawyers where those services are performed for clients who are not subject to VAT?

(b) Can Article 371 of [the VAT Directive] also be interpreted, in accordance with Article 47 of the [Charter], as authorising a Member State of the European Union partially to maintain the exemption for services supplied by lawyers where those services are performed for clients who qualify for legal aid under a national legal aid scheme?'

40. Written observations have been submitted to the Court by the Ordre des barreaux francophones et germanophone and Others, by the Orde van Vlaamse Balies, by the CCBE, by the Belgian, French and Greek Governments, by the Council of the European Union and by the European Commission. At the hearing on 16 December 2015, the same parties — with the exception of the French and Greek Governments but with the addition of Jimmy Tessens and Others — presented oral argument.

Assessment

41. I consider it preferable to address first those aspects of the questions referred which concern the interpretation of the VAT Directive as it stands, then to consider the various issues raised with regard to the compatibility of the provisions of that directive which preclude the exemption of services provided by lawyers, or their taxation at a reduced rate, with certain fundamental principles expressed in instruments which are binding on the institutions of the Union.

Question 4 (possibility of maintaining an exemption with reduced scope)

42. Although this question is raised by the referring court only in the event of a negative answer to Questions 1 and 3, it may conveniently be addressed first, independently of the answers to those two questions.

43. It is undisputed that, pursuant to, initially, Article 28(3)(b) of the Sixth Directive, then Article 371 of the VAT Directive, Belgium was entitled to maintain its existing exemption for lawyers' services for, in effect, an indefinite period after 1 January 1978, and that it did so until 31 December 2013, when it abolished the exemption.

44. The referring court asks essentially whether a Member State, having thus lawfully maintained its full exemption for the services of lawyers, could then, having regard to Article 47 of the Charter, maintain the exemption in a more limited form.

45. The answer to that question, as posed, must clearly be yes — without there being any need to refer to Article 47 of the Charter.

46. The Court has held that, since Article 28(3)(b) of the Sixth Directive authorised Member States to continue to apply certain existing exemptions from VAT, it also allowed them to maintain such exemptions with a reduced scope, but not to introduce new exemptions or extend the scope of existing exemptions. [14] The same must apply now to Article 371 of the VAT Directive.

47. However, as the French Government and the Commission point out, the question is posed at a time when the exemption had already been abolished, in its entirety, in Belgium.

48. If the question is construed at face value, therefore, it cannot be relevant to the main proceedings, since there is no longer any material possibility for the exemption to be maintained at all, whether its scope is reduced or not. On that basis, I agree with the French Government and the Commission that the question is inadmissible.

49. If, however, it is construed as asking whether the exemption, having once been abolished, may be reintroduced in a more limited form, the answer is clearly no. That would amount to introducing what would now be a new exemption not provided for in the VAT Directive, a move which is not authorised by Article 371.

14 — See judgments in *Kerrutt*, 73/85, EU:C:1986:295, paragraph 17; *Norbury Developments*, C-136/97, EU:C:1999:211, paragraph 19; and *Idéal tourisme*, C-36/99, EU:C:2000:405, paragraph 32. See also, by way of analogy, judgment in *Danfoss and AstraZeneca*, C-371/07, EU:C:2008:711, paragraphs 24 to 44 (concerning the comparable possibility of maintaining exclusions from the right to deduct input VAT).

Question 1(c), first part (possibility of exemption for services provided under a national legal aid scheme)

50. The referring court asks whether services provided by lawyers under a national legal aid scheme are to be exempted either under Article 132(1)(g) of the VAT Directive as services which are closely linked to welfare and social security work, or under any other provision of that directive.

51. The answer must clearly be no.

52. As regards, first, Article 132(1)(g) of the VAT Directive, the Court has consistently held that the exemptions provided for in Article 132 are intended to encourage *certain* activities in the public interest; they do not concern every such activity, but only those which are listed there and described in great detail. The terms used to specify those exemptions are to be interpreted strictly, since the exemptions constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. However, the requirement of strict interpretation does not mean that the terms used in Article 132 should be construed in such a way as to deprive the exemptions of their intended effect. Accordingly, those terms must be interpreted in the light of the context in which they are used and of the aims and the scheme of the VAT Directive, having particular regard to the underlying purpose of the exemption in question. [15]

53. Article 132(1)(g) of the VAT Directive exempts 'the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing'.

54. The Court has not previously had occasion to consider the application of that provision to services provided by lawyers under a national legal aid scheme.

55. It has, however, considered whether point 15 of Annex III to the VAT Directive (which, read in conjunction with Article 98 of that directive, allows Member States to apply a reduced rate of VAT to the 'supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States and engaged in welfare or social security work, in so far as those transactions are not exempt pursuant to Articles 132 …'), could apply to the supply of services by lawyers for which they are paid in full or in part by the State under the legal aid scheme. [16]

56. In that context, it relied on case-law relating to the exemption now in Article 132(1)(g) of the VAT Directive to conclude that, under the legal aid scheme, lawyers are not automatically excluded from the category in point 15 of Annex III solely because they are private profit-making entities, and that Member States have a discretion to recognise certain organisations as being devoted to social wellbeing, although that discretion must be exercised within the limits laid down in the VAT Directive. [17]

57. As regards those limits, the Court noted that the legislature intended to make the option of applying a reduced rate of VAT refer only to supplies of services provided by organisations meeting the dual requirement of being themselves devoted to social wellbeing and being engaged in welfare or social security work. It considered that that intention would be frustrated if a Member State were free to classify private profit-making entities as organisations within the meaning of point 15 merely because they provided inter alia services related to social wellbeing. Therefore, in order to comply with the wording of that point, a Member State may not apply a reduced rate to supplies of services provided by private profit-making entities merely on the basis of an assessment of the nature of those

15 — See, for example, judgment in *Žamberk*, C-18/12, EU:C:2013:95, paragraphs 17 to 20 and the case-law cited.

16 — Judgment in *Commission* v *France*, C-492/08, EU:C:2010:348.

17 — Judgment in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraphs 36 to 41 and the case-law cited.

services, without taking into account the objectives pursued by those entities viewed as a whole and whether they are engaged in welfare work on a permanent basis. The professional category of lawyers as a whole could not be regarded as devoted to social wellbeing. Thus, even supposing that services provided by lawyers under the legal aid scheme were related to social wellbeing and could be classified as 'engagement in welfare or social security work', that would not be sufficient to conclude that those lawyers could be classified as 'organisations … devoted to social wellbeing … and engaged in welfare or social security work', within the meaning of point 15 of Annex III. [18]

58. It is clear from that case-law, and from the need in general to interpret similarly-worded provisions of the VAT Directive consistently, that Article 132(1)(g) does not allow a Member State to exempt services provided by lawyers under a national legal aid scheme.

59. As regards, second, 'any other provision of the directive', the answer must be the same. As the French Government points out, on the one hand, the referring court has not suggested any other provision which might permit such an exemption and, on the other hand, if any such provision existed, it would be in contradiction with Article 371 of the VAT Directive, in that it would allow a Member State to *introduce a new exemption* for services provided by lawyers, while Article 371 permits only the *maintenance of a pre-existing exemption* which is otherwise not provided for in the directive.

Questions 1 to 3 (compatibility of the VAT Directive with international instruments and fundamental principles, in so far as it does not permit Member States either to exempt services provided by lawyers or to tax such services at a reduced rate)

60. In Questions 1 to 3, the referring court queries whether the fact that services provided by lawyers are not exempt from VAT, nor can they be subject to a reduced rate of VAT, is compatible with a number of fundamental principles enshrined in the ECHR, the ICCPR, the Aarhus Convention, the Treaty on European Union and the Charter. [19]

61. Questions 1(a) and 2 refer to the right to a fair hearing, including the rights to legal assistance and representation, and the right to legal aid for those who lack sufficient resources. Question 1(b) refers to the right of access to justice which is not 'prohibitively expensive', in the context of the Aarhus Convention, and Questions 1(a) and 1(b) refer to equality of arms as between litigants, while Question 1(c) concerns the right to legal aid for those who lack sufficient resources. Question 3 concerns the general principle of equality and non-discrimination (which may also be expressed as 'fiscal neutrality') in the context of differing VAT treatment of supplies of possibly comparable services.

62. To address Questions 1(a), 1(b), 1(c), 2 and 3 individually and successively would involve a certain amount of repetition, since the same or similar issues are raised several times in only slightly differing contexts. I prefer therefore to approach those issues in terms of the different fundamental principles involved, which are all aspects of the underlying right to a fair hearing.

18 — Judgment in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraphs 43 to 47.

19 — It is true that the ECHR and the ICCPR have not been formally incorporated into the law of the Union (see judgment in *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 45 and the case-law cited). However, the fact that the meaning and scope of the rights guaranteed by the Charter are the same as those of the same rights guaranteed by the ECHR has led the Court consistently to refer to the latter and to the case-law of the Strasbourg Court when interpreting the Charter. Moreover, the Court has pointed out that, in the field of human rights, the ECHR has special significance and the ICCPR is among the international instruments of which it takes account in applying the general principles of the law of the Union (see, for example, judgment in *Parliament* v *Council*, C-540/03, EU:C:2006:429, paragraphs 35 to 38 and the case-law cited).

63. Let me state at the outset that I both understand and sympathise with the concerns expressed and the aims pursued by the applicants in the main proceedings. Access to justice is indeed a fundamental right, which must be guaranteed (even though it can never be absolute or take precedence over all other considerations) in the laws of both the Member States and the Union. The exercise of that right is inevitably rendered more difficult if the cost of obtaining legal advice or representation goes up because a tax exemption is abolished.

64. Nevertheless, for the reasons which I shall explain, I do not consider that there is any incompatibility between the principle of subjecting lawyers' services to VAT and any aspect of the fundamental right of access to justice.

65. In that regard, a number of submissions made before the Court have focussed on the manner more than the fact of Belgium's abolition of its exceptional exemption of lawyers' services from VAT. It has, for example, been suggested that transitional or accompanying measures should have been adopted to alleviate difficulties arising out of the sudden change, or that the legal aid system should have been reformed.

66. In my view, steps to mitigate the impact of introducing VAT on lawyers' services on the pecuniary cost of access to justice in Belgium would have been desirable and might well have been beneficial in ensuring compliance with that Member State's obligations under the Charter and the ECHR. However, the Court is asked to determine the compatibility with the fundamental rights invoked of the principle, in the VAT Directive, that lawyers' services should be subject to VAT, not of the manner in which Belgium brought an end to the exemption it had previously applied by way of derogation.

The right to legal aid

67. The right to legal aid, for those who lack sufficient resources to pay for the services of a lawyer, is enshrined in Article 6(3) of the ECHR, Article 14(3)(d) of the ICCPR and Article 47 of the Charter. It is referred to also, rather less assertively, in Article 9(5) of the Aarhus Convention, which requires parties to 'consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice'.

68. National legal aid schemes — as opposed to legal expenses insurance or the voluntary provision of free legal services by lawyers acting *pro bono publico* — are overwhelmingly, if not exclusively, funded from State resources. That certainly appears to be the case in Belgium, from the provisions of the Judicial Code cited by the Belgian Government. Lawyers who supply services under such a scheme are thus paid by the State. If their fees are increased by 21% as a result of levying VAT on those fees, the State will have to pay 21% more. However, it is the State which levies those 21%, so that the cost to the State of funding the national legal aid scheme is unaffected.

69. Indeed, it became apparent at the hearing that, in order to avoid such circular payments, Belgium has, in effect, subjected legal aid fees to VAT at the rate of 0%. [20]

70. Consequently, it would appear that the abolition of the exemption for services provided by lawyers has not affected the extent of the provision of legal aid in Belgium.

20 — Whilst such an approach reaches the same result, from the State's point of view, as charging VAT and feeding the amounts collected back into the legal aid system, I have some doubts as to whether it is compatible with the VAT Directive. In addition to being formally incompatible, it might also affect the collection of the Union's own resources, which include a percentage of the harmonised VAT assessment bases (see Article 2(b) of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17)). However, that issue is not raised in, or relevant to, the national court's questions in the present case.

71. However, although the application of VAT to lawyers' services is, in essence, cost-neutral to the State in terms of the funding of the legal aid scheme, it is likely to generate additional revenue in the case of services provided outside that scheme. Consequently, a Member State in Belgium's position is likely to have greater resources which could, if that Member State chose to do so, be used to increase funding for the legal aid scheme, for example by raising the thresholds for entitlement to benefit from the scheme if the application of VAT proved unduly burdensome for those whose financial situation was slightly above those thresholds. I stress, however, that such a choice would fall to be exercised by the Member State concerned, in the light of all the circumstances surrounding the funding of litigation costs within its legal system, and is in no way either dictated or precluded by the application of the common system of VAT as set out in the VAT Directive. [21]

72. I would add, finally, that the application of VAT to services provided by lawyers is without effect on services provided *pro bono*, which are not provided for consideration, and that any increase in the cost of legal expenses insurance is a matter which falls under my next heading, concerning the costs of access to justice in the absence of legal aid.

73. I am therefore of the view that the application of VAT to services provided by lawyers is without effect on the right to legal aid guaranteed by Article 47 of the Charter or by any other instrument binding on the institutions of the Union.

Cost of access to justice in the absence of legal aid

74. It is clear that the right to a fair hearing in legal proceedings presupposes that a litigant or an accused person is not prevented by cost from obtaining proper legal advice and representation.

75. It is also a fact that (apart from services provided *pro bono* at the discretion of individual lawyers) legal advice and representation have to be paid for.

76. In some cases, impecunious litigants or defendants will have the cost defrayed in whole or in part from the public purse and, as I have demonstrated, there is no reason why the application of VAT to the services concerned should in any way compromise that situation.

77. By contrast, where a litigant or defendant has to pay for the services of a lawyer wholly or in part out of his own pocket, any increase in the cost of those services will to a greater or lesser extent increase the financial burden of exercising the right of access to a court and to a fair hearing. In that context, the application of VAT to lawyers' fees where no VAT was charged before is liable to increase the cost of their services to non-taxable persons, or to taxable persons who are unable to recover that amount as input tax because the services in question are not cost components of their taxable outputs.

78. However, a number of points must be made in that regard.

21 — The legal aid schemes in the Member States vary enormously in terms of funding and cover. See, for example, *Study on the functioning of judicial systems in the EU Member States, Facts and figures from the CEPEJ 2012-2014 evaluation exercise*, produced by the European Commission for the Efficiency of Justice (CEPEJ), from which it appears that in 2012 Austria's legal aid budget was EUR 2.25 per inhabitant, totalling rather less than the State's income from court fees or taxes, whereas Sweden's budget was EUR 24.74 per inhabitant, of which only 1% was covered by court fees or taxes. However, such matters are, as the law of the Union currently stands, entirely a matter for each Member State, provided that the Charter, the ECHR and the case-law of the Strasbourg Court are respected; see, for example, recital 48 of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1).

79. First, the referring court itself notes, and the French and Greek Governments stress, that, in the context of the ECHR, the Strasbourg Court has held that the right of access to a court is not absolute. It may be subject to limitations, since the right of access by its very nature calls for regulation by the State, which enjoys a certain margin of appreciation, provided that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired, and that they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. [22]

80. This Court too has held that the principle of effective judicial protection, as enshrined in Article 47 of the Charter, may — as regards possible exemption from payment of procedural costs and/or lawyers' fees — be subject to conditions, provided that they do not constitute a restriction of the right of access to justice which infringes the very essence of that right, that they pursue a legitimate aim and that there is a reasonable degree of proportionality between the means used and the aim pursued. [23]

81. It seems to me that an increase in the cost of lawyers' services, even if it were to amount to 21%, cannot be described as infringing the very essence of the right of access to justice. Nor, as regards the aim pursued, can either a budgetary purpose (which is, after all, the fundamental aim of any taxation) or the desire to align Belgian law with that of the other Member States (and the scheme of a harmonising directive) and to end distortions of competition be regarded as other than legitimate for purposes of EU law. Finally in that regard, the imposition of the national standard rate of VAT cannot be said to be in any way disproportionate to those aims.

82. Second, as the Belgian Government in particular points out, Belgian lawyers whose services became subject to VAT on 1 January 2014 also gained the right to deduct input VAT on goods and services acquired for the purposes of the services which they provide. Their own costs were therefore reduced by the amount of VAT which they paid on such acquisitions. On the assumption that they made no other adjustment, but merely applied the standard rate of VAT to their net fees and deducted their input tax, then those fees should have increased not by 21%, but by 21% minus a proportion representing the amount of input VAT which they became able to deduct. Admittedly, lawyers may not have such high taxable input costs as many other economic operators, but the effect cannot be entirely disregarded.

83. Third, it is well known that, despite the fiscal theory underlying the VAT system, economic operators supplying goods or services to non-taxable persons (that is to say, to final consumers) do not normally determine their pre-tax prices independently and then mechanically add the applicable rate of VAT to those prices. In any competitive consumer market, they must take account of — to take but two examples — the highest level of tax-inclusive prices which the market will bear or the lowest level which will provide them with sufficient turnover to make a lower profit margin worthwhile. Thus, when VAT rates rise or fall, economic operators often do not pass on the (full) impact of those changes to consumers.

84. In practice, therefore, it cannot be asserted that there is an automatic and close correlation between an increase in the applicable rate of VAT (in the present case from a situation in which no VAT is chargeable but with no right of deduction to 21% with a full right of deduction) and an increase in the cost of goods and services provided to consumers.

22 — See, for example, judgment in *Jones and Others v. the United Kingdom*, nos. 34356/06 and 40528/06, § 186, ECHR 2014.

23 — See, for example, order in *GREP*, C-156/12, EU:C:2012:342, paragraph 35 et seq. and operative part. See also, as regards the right to an effective remedy laid down in Article 47 of the Charter, judgment in *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraph 49.

85. In Belgium, lawyers' fees are not regulated by law but are agreed between the lawyer and the client. In that context lawyers must act with 'the discretion to be expected of them in the exercise of their functions', and fees must not 'exceed the bounds of just moderation'.[24] Possible methods of calculation include fixing an hourly rate for work done, a flat-rate fee according to the type of litigation concerned or a percentage of the amount at stake in the litigation, and it is permissible to vary the amount charged according to the result of the litigation (though not to make fees wholly dependent on that result). Other criteria may be taken into account to adjust the level of fees — for example, the client's financial situation or the lawyer's experience, specialist expertise or reputation.[25] Even before such adjustments, fee levels appear to vary greatly in Belgium.[26]

86. It seems unlikely, therefore, that the abolition of the exemption of lawyers' fees from VAT will inevitably result in an across-the-board increase in the costs of access to justice. And (as the Commission has pointed out) litigants are likely to regard the quality of the service provided, and the 'value for money' offered, as more important criteria than the mere (negotiable) cost of the service.

87. Fourth, it is sometimes possible for individual lawyers to operate a degree of cross-subsidisation within their practices by adjusting their fees in order to take account of the introduction of VAT on their services and to alleviate its effect on litigants for whom the cost of those services might otherwise be a deterrent. According to the website of the Ordre des barreaux francophones et germanophone, the client's financial situation is the first element which lawyers take into account when determining their fees within the bounds of just moderation; it may therefore be possible to operate, for clients who do not qualify for legal aid, a scale of fees such as to ensure that none are denied, by cost, their fundamental right of access to justice. That said, I fully accept the point made at the hearing by counsel for Jimmy Tessens and Others that such an option is not equally open to all lawyers but will depend on the make-up of each lawyer's clientele.

88. I therefore find nothing in the VAT Directive, or in Belgium's decision to end the exercise of its option under that directive to exempt the services of lawyers, which is liable to infringe Article 47 of the Charter on the ground that the imposition of VAT on such services increases the costs of access to justice.

89. Essentially the same considerations may be applied to Article 9(4) and (5) of the Aarhus Convention. However, a number of further specific points may be made in that regard.

90. First, the notion of 'not prohibitively expensive' (used in Article 9(4) of the Aarhus Convention) has been interpreted by the Court in the context of Article 10a of Directive 85/337[27] as meaning that the persons concerned should not be prevented from seeking, or pursuing a claim for, a review by the courts by reason of the financial burden that might arise as a result. In assessing issues relating to that requirement, national courts must take into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment. In doing so they may not act solely on the basis of the claimant's financial situation but must also carry out an objective analysis of the amount of the costs, and may take into account the situation of the parties concerned, whether the

24 — Article 446 *ter* of the Belgian Judicial Code.

25 — See the website of the Ordre des barreaux francophones et germanophone, http://www.avocats.be/fr/combien-ça-coûte.

26 — Thus, the *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union* completed for the European Commission in December 2007 indicates that average hourly pre-tax rates for lawyers' fees in Belgium were between EUR 100 and EUR 250 (see https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do). In 2015, consultation of a number of lawyers' websites indicates basic hourly rates outside Brussels which appear to vary between at least EUR 80 and EUR 150, while a recent news item concerning a Brussels law firm employed by the Belgian Government indicated that the firm's rates were between EUR 225 and EUR 600 per hour, after discounts but before tax (see http://www.rtbf.be/info/belgique/detail_la-ministre-galant-appelee-a-s-expliquer-a-la-chambre-sur-ses-frais-d-avocats?id= 9120926).

27 — Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40); see footnote 6 above. The fifth paragraph of Article 10a requires procedures to be 'fair, equitable, timely and not prohibitively expensive'.

claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime.[28]

91. It is thus clear that the actual assessment of compliance with the requirement that remedies should not be prohibitively expensive is to be carried out on a case-by-case basis. The Court has none the less held that the requirement cannot be concluded to have been transposed correctly into national law unless 'national courts are obliged by a rule of law to ensure that the proceedings are not prohibitively expensive for the claimant'.[29] In the present case, none of the parties to the main proceedings has submitted that the requirement has been incorrectly transposed into Belgian law.

92. Article 9(4) of the Aarhus Convention relates, moreover, to the procedures referred to in Article 9(1) to (3), which each refer to criteria of national law. The Court has held, on that ground, that Article 9(3) does not contain any unconditional and sufficiently precise obligation capable of regulating the legal position of individuals directly and is subject, in its implementation or effects, to the adoption of a subsequent measure. Consequently, it cannot be relied upon to call into question the validity of a provision of Union legislation.[30]

93. As regards Article 9(5) of the Aarhus Convention, it need only be noted that that provision merely requires parties to 'consider' the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. It therefore cannot be relied upon to challenge the validity of any provision of Union legislation actually adopted.

Equality of arms between litigants

94. Essentially, the issue here concerns the fact that taxable persons who use the services of lawyers for the purposes of their taxable transactions are entitled to deduct the (input) VAT payable on those services from the (output) VAT for which they must account to the tax authorities, whereas final consumers (or taxable persons who use the services of lawyers for purposes other than those of their taxable transactions) enjoy no such right of deduction. Consequently, say the applicants in the main proceedings, those in the latter category find themselves at a (financial) disadvantage in any legal dispute with those in the former category.

95. As the Strasbourg Court has recognised in the context of Article 6 of the ECHR, the notion of a fair hearing includes the requirement of equality of arms, in the sense of a fair balance between parties to litigation, and implies that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.[31]

28 — Judgment in *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraph 36 et seq. and operative part.

29 — Judgment in *Commission* v *United Kingdom*, C-530/11, EU:C:2014:67, paragraph 55.

30 — See, for example, judgment in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraphs 54 and 55 and the case-law cited.

31 — See, for example, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, no. 14448/88, § 33, Series A no. 274; *Ankerl v. Switzerland*, 23 October 1996, § 38, Reports of Judgments and Decisions 1996-V; *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001; and *Komanický v. Slovakia*, no. 32106/96, § 45, 4 June 2002. In its analysis of the principle of equality of arms, the Court of Justice has adopted an identical position: see judgments in *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 71, and *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 31.

That court has dealt in its case-law with various instances in which the requirement of equality of arms has been breached,[32] but has never to my knowledge had to consider a situation in which the cost of legal services was subject to an *ad valorem* levy which definitively affected one party but not the other.

96. The nearest analogy to such a situation seems to be the '*McDonald's Two*' case,[33] in which two individuals, sued for defamation by the McDonald's fast food chain for having published a leaflet critical of the chain, were denied legal aid for the conduct of their defence.[34] The Strasbourg Court relied in particular on the unusual length and legal complexity of the proceedings to find that the denial of legal aid deprived the defendants of the opportunity to present their case effectively and contributed to an unacceptable inequality of arms with McDonald's; there was, therefore, a breach of Article 6(1) of the ECHR.

97. However, I do not find that decision particularly helpful to the applicants in the main proceedings here. True, it concerns a situation in which one party is more easily able than the other to afford the services of a lawyer. However, it is clear that the Strasbourg Court accepted in its judgment that a degree of inequality of arms due to differences in the ability to pay for such services could and even must be tolerated. The finding of a breach of Article 6(1) of the ECHR was based on the particular circumstances of the case, involving long and complex proceedings brought by a rich multinational corporation against two low-earning individuals who were denied legal aid despite the possibility of a discretionary grant of such aid.

98. As I have already pointed out, the rules governing legal aid are quite independent from those governing the application of VAT to services provided by lawyers. However, Member States can use legal aid to offset inequality of arms and may be required to do so in certain cases (as, for example, in the *McDonald's Two* case). But the case-law of the Strasbourg Court cannot in my view be read as requiring Member States to refrain from applying a 21% tax which can be recovered by some litigants and not by others.

99. Moreover, it seems to me that, whilst a maximum cost differential of 121:100 indeed places one litigant at a disadvantage vis-à-vis his opponent, it does not infringe the very essence of the right of access to justice. In any event, there is no obligation for the State to ensure absolute equality of arms.

100. I observe also that actual inequality of arms is likely to be conditioned by other factors, in particular differences in 'value for money' provided by different lawyers and in the overall financial resources of each party. For example, if a wealthy consumer is in litigation with a tradesman in financial difficulty, the fact that the tradesman can deduct the VAT on his lawyer's fees is unlikely to place him at an advantage compared to the consumer if he cannot afford to retain a lawyer of the same quality as the one representing his opponent. By contrast, if a man in the street is battling with a ruthless multinational giant, the fact that the multinational can deduct VAT on outside lawyers' fees is unlikely to be the decisive factor in the obvious inequality of arms.

32 — For example, where: one party's appeal was not served on the other party (*Beer v. Austria*, no. 30428/96, § 19, 6 February 2001); time had ceased to run against one of the parties only (*Platakou v. Greece*, no. 38460/97, § 48, ECHR 2001-I; *Wynen v. Belgium*, no. 32576/96, § 32, ECHR 2002-VIII); only one of the two key witnesses was permitted to be heard (*Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, no. 14448/88, §§ 34 and 35, Series A no. 274); one party enjoyed significant advantages as regards access to relevant information, occupied a dominant position in the proceedings and wielded considerable influence with regard to the court's assessment (*Yvon v. France*, no. 44962/98, § 37, ECHR 2003-V); or one of the parties held positions or functions which put them at an advantage and the court made it difficult for the other party to challenge them seriously by not allowing it to adduce relevant documentary or witness evidence (*De Haes and Gijsels v. Belgium*, 24 February 1997, no. 19983/92, §§ 54 and 58, *Reports of Judgments and Decisions* 1997-I).

33 — *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59 to 72, ECHR 2005-II.

34 — Although the defendants met the general financial criteria for the grant of legal aid, defamation proceedings were in principle excluded from the legal aid system and a discretionary power to grant such aid in exceptional cases was not exercised.

Equal treatment, non-discrimination and fiscal neutrality

101. Question 3 asks whether the failure to exempt lawyers' services from VAT constitutes prohibited discrimination vis-à-vis those services as compared with other 'activities in the public interest' listed in Article 132(1) of the VAT Directive.

102. According to settled case-law, 'the principle of equal treatment, of which the principle of fiscal neutrality is the reflection in matters relating to VAT, requires similar situations not to be treated differently unless differentiation is objectively justified'. [35]

103. I have already noted that the object of the exemptions laid down in Article 132(1) of the VAT Directive is not to encourage all activities in the public interest but only certain of them, namely those that are 'listed there and described in great detail'. [36] In that regard, I observed in my Opinion in the *Horizon College and Haderer* case that the list of exemptions is not of a systematic nature, so that inferences as to intention cannot necessarily be extrapolated from one exemption to another. [37]

104. For the sake of argument, however, let us suppose that my conclusion in that case was wrong or at least expressed in unduly general terms. Is it possible to discern some kind of internal logic underlying the exemptions set out in Article 132(1)?

105. Those exemptions cover, in summary: postal services (subparagraph (a)), various health and health-related services (subparagraphs (b) to (e) and (p)), associations of persons carrying out exempt activities (subparagraph (f)), welfare and social security (subparagraph (g)), the welfare and education of children and young people (subparagraphs (h) to (j)) together with their sporting activities (subparagraph (m)), religious, cultural and related activities (subparagraphs (k), (l) and (n)), fund-raising for the activities referred to in subparagraphs (b), (g) to (i) and (l) to (n) (subparagraph (o)) and activities carried out by public radio and television bodies (subparagraph (q)).

106. Some of the activities in question are exempted on condition that they be non-profit-making (see, for example, subparagraphs (g) and (h)), while other activities are capable of being carried on for commercial purposes (see, for example, subparagraph (j)). In some cases, there is a requirement that no distortion of competition is likely to arise (subparagraphs (f), (l) and (o)).

107. To the extent that it can be said that there is some kind of thread linking those activities, it could be observed that they fall into four groups, namely public communication, health and welfare, education and culture in the broad sense. There is no basis on which it can be said, globally, that the services of lawyers fall within, or are in competition with or indeed are similar to, [38] any of the broad groups described above, still less within any of the activities that are listed in detail.

108. In any event, to consider that activities other than those listed and described in Article 132(1) should benefit from exemption by analogy would imply a fundamental change to the case-law that 'the terms used to specify those exemptions are to be interpreted strictly, since the exemptions constitute exceptions to the general principle that VAT is to be levied on all services applied for consideration by a taxable person'. [39]

35 — See, for a recent example, judgment in *Jetair and BTW-eenheid BTWE Travel4you*, C-599/12, EU:C:2014:144, paragraph 53.

36 — See point 52 above.

37 — C-434/05 and C-445/05, EU:C:2007:149, point 64.

38 — See, in that regard, judgment in *Marks & Spencer*, C-309/06, EU:C:2008:211, paragraph 49, where the Court observed that 'although infringement of the principle of fiscal neutrality may be envisaged only as between competing traders … infringement of the general principle of equal treatment may be established, in matters relating to tax, by other kinds of discrimination which affect traders who are not necessarily in competition with each other but who are nevertheless in a similar situation in other respects'.

39 — See point 52 above.

109. It follows in my view that there are no grounds for considering that the fact that the services of lawyers are not included in the list set out in Article 132(1) of the VAT Directive involves different treatment of similar situations.

Conclusion

110. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the questions raised by the Cour constitutionnelle (Constitutional Court, Belgium) to the following effect:

(1) On a proper construction of Article 371 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, a Member State which, in accordance with that provision, has continued to exempt the supply of services by lawyers from VAT, may limit the scope of that exemption without abolishing it in its entirety. However, having once abolished the exemption in its entirety, such a Member State may not reintroduce the same exemption with a more limited scope.

(2) Neither Article 132(1)(g) nor any other provision of Directive 2006/112 authorises Member States to exempt from VAT the supply of services by lawyers under a national legal aid scheme as services which are closely linked to welfare and social security work.

(3) Examination of the questions referred has disclosed nothing capable of affecting the validity of Directive 2006/112.