

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-45/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen ⁽¹⁾

(VAT — Article 13A(1)(b) and (c) of the Sixth Directive 77/388/EEC — Exemption — Psychotherapeutic treatment given in an out-patient facility provided by a foundation governed by private law (charitable establishment) employing qualified psychologists who are not doctors — Direct effect)

(2004/C 7/03)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-45/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Christoph-Dornier-Stiftung für Klinische Psychologie and Finanzamt Gießen, on the interpretation of Article 13A(1)(b) and (c) 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 (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, P. Jann and of A. Rosas (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. Psychotherapeutic treatment given in an out-patient facility of a foundation governed by private law by qualified psychologists who are not doctors is not an activity 'closely related' to hospital or medical care within the meaning of Article 13A(1)(b) 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, except where such treatment is actually given as a service ancillary to the hospital or medical care received by the patients in question and constituting the principal service. However, the term 'medical care' in that provision must be interpreted as covering all provision of medical care envisaged in letter (c) of the same provision, including services provided by persons who are not doctors but who give paramedical services, such as psychotherapeutic treatment given by qualified psychologists.

2. Recognition of an establishment for the purposes of Article 13A(1)(b) of the Sixth Directive 77/388 does not presuppose a formal recognition procedure; nor must such recognition necessarily derive from national tax law provisions. Where the national rules pertaining to recognition contain restrictions which exceed the limits of the discretion allowed to Member States under that provision, it is for the national court to determine, in the light of all the relevant facts, whether a taxable person must none the less be regarded as an 'other duly recognised establishment of a similar nature' within the meaning of that provision.
3. Since the exemption envisaged in Article 13A(1)(c) of the Sixth Directive 77/388 is not dependent on the legal form of the taxable person providing the medical or paramedical services referred to in that provision, psychotherapeutic treatment provided by a foundation governed by private law and given by psychotherapists employed by the foundation may benefit from that exemption.
4. In circumstances such as those in the main proceedings, Article 13A(1)(b) and (c) of the Sixth Directive 77/388 may be relied on by a taxable person before a national court in order to contest the application of rules of national law which are incompatible with that provision.

⁽¹⁾ OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

of 6 November 2003

in Case C-101/01 (Reference for a preliminary ruling from the Göta hovrätt): Bodil Lindqvist ⁽¹⁾

(Directive 95/46/EC — Scope — Publication of personal data on the internet — Place of publication — Definition of transfer of personal data to third countries — Freedom of expression — Compatibility with Directive 95/46 of greater protection for personal data under the national legislation of a Member State)

(2004/C 7/04)

(Language of the case: Swedish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-101/01: Reference to the Court under Article 234 EC by the Göta hovrätt (Sweden) for a preliminary ruling in the criminal proceedings before that court against Bodil Lindqvist, on, inter alia, the interpretation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995

on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), the Court, composed of: P. Jann, President of the First Chamber, acting for the President, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas (Presidents of Chambers), D.A.O. Edward (Rapporteur), J.-P. Puissechet, F. Macken and S. von Bahr, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *The act of referring, on an internet page, to various persons and identifying them by name or by other means, for instance by giving their telephone number or information regarding their working conditions and hobbies, constitutes 'the processing of personal data wholly or partly by automatic means' within the meaning of Article 3(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*
2. *Such processing of personal data is not covered by any of the exceptions in Article 3(2) of Directive 95/46.*
3. *Reference to the fact that an individual has injured her foot and is on half-time on medical grounds constitutes personal data concerning health within the meaning of Article 8(1) of Directive 95/46.*
4. *There is no 'transfer [of data] to a third country' within the meaning of Article 25 of Directive 95/46 where an individual in a Member State loads personal data onto an internet page which is stored on an internet site on which the page can be consulted and which is hosted by a natural or legal person who is established in that State or in another Member State, thereby making those data accessible to anyone who connects to the internet, including people in a third country.*
5. *The provisions of Directive 95/46 do not, in themselves, bring about a restriction which conflicts with the general principles of freedom of expression or other freedoms and rights, which are applicable within the European Union and are enshrined inter alia in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950. It is for the national authorities and courts responsible for applying the national legislation implementing Directive 95/46 to ensure a fair balance between the rights and interests in question, including the fundamental rights protected by the Community legal order.*
6. *Measures taken by the Member States to ensure the protection of personal data must be consistent both with the provisions of Directive 95/46 and with its objective of maintaining a balance between freedom of movement of personal data and the protection of private life. However, nothing prevents a Member State from extending the scope of the national legislation*

implementing the provisions of Directive 95/46 to areas not included in the scope thereof provided that no other provision of Community law precludes it.

(¹) OJ C 118 of 21.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-126/01 (Reference for a preliminary ruling from the Cour administrative d'appel de Lyon): *Ministre de l'économie, des finances et de l'industrie v GEMO SA* (¹))

(State aid — System of financing a public carcass disposal service by a meat purchase tax — Interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC))

(2004/C 7/05)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-126/01: Reference to the Court under Article 234 EC by the Cour administrative d'appel de Lyon (France) for a preliminary ruling in the proceedings pending before that court between *Ministre de l'économie, des finances et de l'industrie* and *GEMO SA*, on the interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC), the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen, F. Macken and N. Colneric, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC), must be interpreted as meaning that a system such as that at issue in the main proceedings, which provides farmers and slaughterhouses with the free collection and disposal of animal carcasses and slaughterhouse waste, must be classified as State aid.

(¹) OJ C 134 of 5.5.2001.