JUDGMENT OF THE COURT
26 March 1987 *

In Case 235/85

Commission of the European Communities, represented by its Legal Adviser, Johannes Føns Buhl, acting as Agent, assisted by Marten Mees, of the Hague Bar, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of the Netherlands, represented by G. M. Borchardt, Deputy Legal Adviser to the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at its embassy,

defendant,

APPLICATION for a declaration that by not subjecting to value-added tax (VAT) the official services performed by notaries and bailiffs, the Kingdom of the Netherlands has failed to fulfil its obligations under the Sixth VAT Directive,

THE COURT

composed of: Lord Mackenzie Stuart, President, C. Kakouris and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, U. Everling, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 2 December 1986,

* Language of the Case: Dutch.

after hearing the Opinion of the Advocate General delivered at the sitting on 12 February 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 30 July 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by not subjecting to the system of value-added tax the official services performed by notaries and bailiffs ('gerechtsdeurwaarders') and remunerated by the persons who have recourse to them, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Article 4 (1), (2) and (4) of the Sixth Council Directive (No 77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p.1; hereinafter referred to as 'the Sixth Directive').

2 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 It should be pointed out *in limine* that the dispute solely concerns the question whether the official services performed by notaries and bailiffs pursuant to statute are subject to value-added tax (VAT) and that the argument set out below concerns only that aspect of their activities.

The economic character of the activities in question

4 The Commission maintains that notaries and bailiffs in the Netherlands should be subject to VAT in accordance with Article 4 of the Sixth Directive since it is not disputed that they carry out independently — that is to say, free from any relationship of subordination and on their own responsibility in law — an economic activity in the sense of a permanent activity of providing services for consideration.

5 In reply to that argument the Kingdom of the Netherlands states that notaries and bailiffs do not carry out activities governed by normal economic laws but, in return for remuneration fixed by statute, provide services which individuals are required to use for reasons of public interest.

6 In determining whether notaries and bailiffs in the Netherlands should be subject to VAT in respect of the official services which they perform for remuneration, it should be borne in mind that, by including amongst the taxable transactions defined in Article 2 not only the importation of goods but also the supply of goods or services effected for consideration within the territory of a country and by defining a 'taxable person' in Article 4 (1) as any person who independently carries out an economic activity, whatever the purpose or results of that activity, the Sixth Directive attributes to VAT a very wide scope.

7 'Economic activities' are defined in Article 4 (2) as all activities of producers, traders and persons supplying services, including *inter alia* the activities of the professions.

8 Those definitions show that the scope of the term 'economic activities' is very wide, inasmuch as it covers all the services provided by the liberal professions, and that the term is objective in character, in the sense that the activity is considered *per se* and without regard to its purpose or results.

9 In view of the wide definition of the term 'economic activities', encompassing all the activities of the professions without any reservation in respect of professions regulated by statute, it must be concluded that, in so far as notaries and bailiffs in the Netherlands provide services to private individuals on a permanent basis and in return for remuneration, they carry out an economic activity within the meaning of the Sixth Directive.

10 In view of the neutral character of the term 'economic activities', the fact that the activities of notaries and bailiffs consist in the performance of duties which are conferred and regulated by law in the public interest is irrelevant. Indeed, Article 6 of the Sixth Directive expressly provides that certain activities carried on in pursuance of the law shall be subject to the system of VAT.

11 The exemptions from VAT expressly laid down in Article 13 of the Sixth Directive for, *inter alia*, activities in the public interest, and the right accorded to the Member States by Article 28 (3) (b), in conjunction with Annex F, to continue to exempt on a transitional basis certain activities, including services supplied by lawyers and other members of the liberal professions, clearly demonstrate that all services effected for consideration by members of the liberal professions or professions considered as such are in principle subject to VAT.

Independent pursuit of the activities

12 Even if it were to be accepted that notaries and bailiffs carry out an economic activity, that activity, according to the Kingdom of the Netherlands, cannot be said to be one that is carried out independently, since the persons exercising those professions are appointed by the Crown, are subject to disciplinary control by the public authorities and, in the performance of their official services, are governed by statute so far as their conditions of work and remuneration are concerned.

13 The Commission submits in reply that notaries and bailiffs in the Netherlands carry out their activities on their own account and on their personal responsiblity and are not subordinate to an employer.

14 Article 4 (4) excludes all persons who are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and employer's liability. Notaries and bailiffs, however, are not bound to the public authorities as employees since they are not integrated into the public administration. They carry out their activities on their own account and on their own responsibility; they are free, subject to certain limits imposed by statute, to arrange how they shall perform their work and they themselves receive the emoluments which make up their income. The fact that they are subject to disciplinary control under the supervision of the public authorities (a situation to be found in other regulated professions) and the fact that their remuneration is determined by statute are not sufficient grounds for regarding them as persons who are bound by legal ties to an employer within the meaning of Article 4 (4).

15 It must therefore be concluded that, inasmuch as they carry out independently economic activities consisting in the supply of services to third parties, in return for which they receive fees for their own account, notaries and bailiffs in the Netherlands must be regarded as taxable persons for VAT purposes, within the meaning of Article 4 (1) and (2) of the Sixth Directive.

Exemption from VAT for bodies governed by public law

16 In support of its case, the Kingdom of the Netherlands further argues that, even assuming that they carry out 'economic activities' within the meaning of Article 4 (1) and (2) of the Sixth Directive, notaries and bailiffs should be covered by the exemption laid down in Article 4 (5) for bodies governed by public law — a status which, in its view, must be attributed to them. Article 4 (5) should not, in its view, be construed according to the formal criterion based on the manner in which the activities are organized but by reference to their nature; in this regard, there is no doubt that notaries and bailiffs perform acts which, by their nature, must be regarded as acts of the public authorities.

17 The Commission argues that the very principle of VAT, which is a general, aggregated tax on consumption, dictates a restrictive interpretation of Article 4 (5); the exemption therefore applies only to acts which are performed by bodies governed by public law and connected with the fundamental powers of public authorities and not to activities which by their nature may be carried on by private individuals with a view to making a profit.

18 In order to determine whether notaries and bailiffs in the Netherlands should, as far as the provision of their official services is concerned, be covered by the exemption set out in Article 4 (5) of the Sixth Directive, that exemption should be placed in the general context of the common system of VAT introduced by that directive.

19 As has been stated in connection with the examination of the term 'economic activities', the Sixth Directive is characterized by its general scope and by the fact that all exemptions must be expressly provided for and precisely defined.

20 In that connection it should be observed that Article 4 (5) provides an exemption only for bodies governed by public law, and even then only for the activities or transactions in which they engage as public authorities.

21 It is clear from that provision, when examined in the light of the aims of the directive, that two conditions must be fulfilled in order for the exemption to apply; the activities must be carried out by a body governed by public law and they must be carried out by that body acting as a public authority. This means that bodies governed by public law are not automatically exempted in respect of all the activities in which they engage but only in respect of those which form part of their specific duties as public authorities (see the judgment of 11 July 1985 in Case 107/84 *Commission* v *Federal Republic of Germany* [1985] ECR 2663) and, secondly, that an activity carried on by a private individual is not exempted from VAT merely because it consists in carrying out acts falling within the prerogatives of the public authority.

22 Consequently, even assuming that in performing their official services notaries and bailiffs exercise the powers of a public authority by virtue of their appointment to public office, it does not follow that they may enjoy the exemption provided for in Article 4 (5). The reason is that they pursue those activities, not in the form of a body governed by public law, since they are not part of the public administration, but in the form of an independent economic activity carried out in the exercise of a liberal profession.

23 It must therefore be concluded that, by not subjecting to the system of VAT the official services performed by notaries and bailiffs and remunerated by the persons having recourse to them, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Article 4 (1), (2), and (4) of the Sixth Directive.

Costs

24 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. Since the Kingdom of the Netherlands has failed in its submissions, it should be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) **Declares that, by not subjecting to the system of VAT the official services performed by notaries and bailiffs, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Article 4 (1), (2) and (4) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment;**

(2) **Orders the Kingdom of the Netherlands to pay the costs.**

Mackenzie Stuart Kakouris Schockweiler Bosco

Koopmans Everling Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 26 March 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President