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Court of Justice of the European Communities
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Judgment in Case C-169/08
Presidente del Consiglio dei Ministri v Regione Sardegna

The Sardinian regional tax on touristic stopovers by aircraft and boats, levied on those domiciled for tax purposes outside Sardinia, infringes Community law

It is contrary to the freedom to provide services and constitutes State aid

Legislation adopted by the Region of Sardinia ¹ introduced, as from 2006, a regional tax on stopovers for tourist purposes by aircraft used for the private transport of persons or by pleasure boats over fourteen metres in length. The tax is payable by natural or legal persons who have their tax domicile outside the territory of the region.

In the course of two actions brought against that law by the President of the Council of Ministers, the Italian Constitutional Court, suspecting an infringement of the Community rules on the freedom to provide services and free competition, made its first reference to the Court of Justice for a preliminary ruling.

Breach of the principles relating to the freedom to provide services

With regard to the pleasure boats, the tax applies to undertakings which carry out transport operations *for remuneration or free of charge*. With regard to the aircraft, on the other hand, the tax is payable only by undertakings which carry out air transport operations *free of charge*, for reasons connected with their business activities.

The Court points out that, even though the tax relating to the aircraft does not apply to the provision of transport services, that does not mean that it has no connection at all with the freedom to provide services. While, in principle, the concept of 'services' applies only to those provided for remuneration, it also covers the freedom of the persons for whom the services are intended to go to the Member State where the provider is, in order to enjoy a number of services (such as those provided at airports and ports). In that sense, therefore, the stopover – which is the chargeable event for tax purposes – is a necessary condition for receiving services other than that provided free of charge.

Thus, the services on which the regional tax on stopovers has an impact may have a **cross-border character**, since that tax affects the services offered by undertakings established in Sardinia to nationals or undertakings established in another Member State, as well as the services offered by undertakings established in a Member State other than Italy which operate recreational craft in Sardinia.

The application of that tax legislation makes the services concerned more costly for the persons liable for that tax, who have their tax domicile outside the region and who are established in other Member States, than they are for operators established in the region. The additional costs relating to stopover operations which are borne by operators who have their tax domicile outside the region and are established in other Member States creates an **advantage** for undertakings established in Sardinia.

¹ Law No 4 of 11 May 2006.

The Court considers that the difference between residents and non-residents constitutes a restriction on freedom of movement since there is **no objective difference in their situations** which could justify the difference in treatment as **between the various categories of taxpayer**.

The fact that taxpayers in Sardinia contribute, through income tax, to the activities of the region, even those for the protection of the environment, is irrelevant since the tax on stopovers is not of the same nature and does not pursue the same objectives as the other taxes paid by Sardinian taxpayers, which serve to finance all regional activities. Protection of the environment cannot therefore be relied upon as justification for the fact that operators whose tax domicile is outside the territory of the region – who are the only persons liable to the tax – are treated differently. Private aircraft and boats are certainly a source of pollution, but that pollution is caused regardless of the place of origin or tax domicile of their operators. The aircraft and boats of residents and non-residents alike contribute to the environmental damage.

Furthermore, the regional tax on stopovers does not pursue the same objectives as the taxes paid by taxpayers who are resident in Sardinia, which serve to fund the regional budget in a general way. The non-imposition of that tax on those residents cannot therefore be regarded as offsetting the other taxes imposed on them and cannot be justified on grounds of the cohesion of the tax system of that region.

The infringement of the principles of free competition

The Court states that the categorisation of a measure as State aid requires that four cumulative conditions be met: there must be an intervention by the State or *through State resources*, liable to *affect trade between Member States*, which confers an *advantage* and distorts or threatens to distort *competition*.

According to the Court, it is common ground that **the tax concerns trade between Member States** (since it applies to services provided in connection with stopovers by aircraft and recreational craft and concerns intra-Community trade) and it **may distort competition** (since it grants an economic advantage to operators established in Sardinia). In addition, the regional tax law which grants certain undertakings exclusion from the obligation to pay the tax in question involves a **renunciation by the region of tax revenue** which it would normally have received. Lastly, the tax confers a **selective fiscal advantage only on enterprises established on the territory of the region**, as compared with undertakings which do not have their tax domicile there, since those two categories of undertaking are in a comparable factual and legal situation when they receive stopover services in Sardinia.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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