

Case C-446/98

Fazenda Pública

v

Câmara Municipal do Porto

(Reference for a preliminary ruling
from the Supremo Tribunal Administrativo)

(Taxation — Sixth VAT Directive — Taxable persons — Bodies governed by
public law — Letting of spaces for the parking of vehicles)

Opinion of Advocate General Alber delivered on 29 June 2000 I-11439

Judgment of the Court (Fifth Chamber), 14 December 2000 I-11462

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons — Bodies governed by public law — Activities in the exercise of public authority not taxable — Definition — Whether the letting of spaces for the parking of vehicles included — Conditions (Council Directive 77/388, Art. 4(5), first subpara.)*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons — Bodies governed by public law — Activities in the exercise of public authority not taxable — Economic activities which are not negligible taxable — Extent*
(Council Directive 77/388, Art. 4(5), third subpara.)
3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons — Bodies governed by public law — Activities in the exercise of public authority not taxable — Concept of significant distortions of competition and concept of economic activities not negligible in scale — National legislation authorising the competent minister to define those concepts — Whether permissible — Conditions*
(Council Directive 77/388, Art. 4(5), second and third subparas)
4. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons — Bodies governed by public law — Activities in the exercise of public authority not taxable — Letting of spaces for the parking of vehicles — Effect of the absence of an exemption following from Article 13B(b) of the Sixth Directive — None*
(Council Directive 77/388, Arts 4(5), fourth subpara., and 13B(b))
5. *Preliminary rulings — Reference to the Court — Need for a preliminary ruling — Assessment by the national court*
(EC Treaty, Art. 177 (now Art. 234 EC))
6. *Preliminary rulings — Judgment — Effects*
(EC Treaty, Art. 177 (now Art. 234 EC))

1. The letting of spaces for the parking of vehicles is an activity which, where it is carried on by a body governed by public law, is carried on by that body as a public authority within the meaning of the first subparagraph of Article 4(5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes if it is carried on under a special legal regime applicable to bodies governed by public law. That is the case

where the pursuit of the activity involves the use of public powers.

(see para. 24 and operative part 1)

2. The third subparagraph of Article 4(5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that bodies governed by public law are not necessarily regarded as taxable persons in respect of the activities they engage in which are not negligible. Only if those bodies engage in an activity or perform a transaction listed in Annex D to the directive may the criterion of the negligible scale of that activity or transaction be taken into account with the aim, if national law makes use of the option provided for in the third subparagraph of Article 4(5) of the directive, of excluding them from being taxable persons for value added tax where their activities are negligible.

(see para. 28 and operative part 2)

his decisions of application may be reviewed by the national courts.

(see para. 35 and operative part 3)

4. The fourth subparagraph of Article 4(5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that the absence of an exemption for the letting of spaces for the parking of vehicles, which follows from Article 13B(b) of the directive, does not prevent bodies governed by public law which carry out that activity from being treated as non-taxable persons for value added tax in respect of it, where the conditions stated in the first and second subparagraphs of that provision are satisfied.

(see para. 46 and operative part 4)

3. The Finance Minister of a Member State may be authorised by a national law to define what is covered by, first, the concept of significant distortions of competition within the meaning of the second subparagraph of Article 4(5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes and, second, the concept of negligible activities within the meaning of the third subparagraph of Article 4(5) of that directive, provided that

5. National courts are entitled, and in certain cases obliged, to refer a question of the interpretation of Community law to the Court, even of their own motion, if they consider that a decision

on that point by the Court is necessary to enable them to give judgment.

6. A judgment in which the Court gives a preliminary ruling is binding on the national court, as regards the interpretation of the Community provisions and measures concerned, when it gives final judgment in the main proceedings.

(see paras 48, 50 and operative part 5)

(see paras 49-50 and operative part 5)