

Press and Information Division

PRESS RELEASE No 28/03

3 April 2002

Judgment of the Court of Justice in Case C-144/00

Criminal proceeding against Matthias Hoffmann

**THE PRINCIPLE OF FISCAL NEUTRALITY REQUIRES THAT
INDIVIDUAL PERFORMERS SHOULD NOT BE TREATED
DIFFERENTLY FROM CULTURAL GROUPS IN RESPECT OF
EXEMPTION FROM VAT**

The Member States may, for individual artists as for cultural groups, make the exemptions for certain cultural services subject to certain conditions (for example, the absence of a systematic profit-making aim and the essentially voluntary nature of the organisation of cultural services,).

Mr Matthias Hoffmann, a concert promoter, organised a world tour of three renowned solo singers. In the course of that tour two concerts were arranged in Germany.

Mr Hoffmann made no deduction of VAT from the fees paid for the two concerts to the soloists and paid no VAT to the German administration. He was required under the Umsatzsteuergesetz (German Law on VAT) to make such deduction and payment himself since the performers were established abroad.

On those facts, Mr Hoffmann was prosecuted for tax evasion and convicted by judgment of 22 December 1998 of the Landgericht Mannheim.

The Landgericht's decision rests primarily on the ground that, according to the German legislation, the exemption from VAT for cultural activities applies only to "bodies", which excludes individual artists.

In support of his appeal to the Bundesgerichtshof (Federal Court of Justice, Germany) against his conviction, Mr Hoffmann argued that the refusal to apply the

VAT exemption infringed Community law. There was, according to him, unjustified discrimination.

The Bundesgerichtshof asked the Court of Justice of the European Communities how to interpret the provisions of the Sixth VAT Directive¹ and whether soloists must be able to benefit from the VAT exemptions under the same conditions as cultural groups.

The Court recalls, first, that in *Gregg*,² it held that the term "organisation" within the meaning of the Sixth VAT Directive could include natural persons. Accordingly, the benefit of the exemptions for "bodies" is not confined to activities carried on by legal persons, but may extend to activities carried on by individuals.

The Court states that there is no reason to depart from that view in relation to cultural services, with regard to performers supplying individual services such as solo singers. In particular, such performers may, in the same way as a cultural group, carry on their activity professionally, semi-professionally or on an amateur basis and do so either on a profit-making basis, or without payment or, as the case may be, on an expenses-only basis.

Consequently, **the principle of fiscal neutrality requires that individual performers, as long as their services are recognised as cultural, may be regarded, like cultural groups, as bodies similar to public-law bodies, which are in general exempt from VAT.**

However, the Court points out that the Member States may, for individual artists as for cultural groups other than public-law groups, make the exemptions subject to one or more conditions, for example, the absence of a systematic profit-making aim and the essentially voluntary nature of the organisation of the cultural services in question.

Finally, the Court considers the question whether the title of Article 13A, "Exemptions for certain activities in the public interest", imposes restrictions on the exemption where the services are provided primarily for commercial purposes. The Court holds that the activities which are to be exempted, those which may be exempted by the Member States and those which may not, as well as the conditions for the exemption are specifically defined by the content of Article 13A of the Sixth VAT Directive which does not, in principle, exclude from the benefit of exemption activities which it covers on the ground that they are of a commercial nature.

In essence, the commercial nature of an activity does not in itself exclude it from being in the public interest. The directive however authorises the Member States to make the exemption for private entities subject to certain conditions, in particular to the absence of a systematic profit-making aim.

¹ 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.

² Case C-216/97 *Gregg* [1999] ECR I-4947.

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