



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-74/16
Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de
Getafe

In the view of Advocate General Kokott, tax exemptions for Church-run schools do not, as a rule, breach the prohibition on State aid

A tax exemption for the Catholic Church in Spain in respect of building work on a school building does not breach that prohibition where the Church uses the building for compulsory education and is thus using it in pursuance of its social, cultural and educational mission, but does breach it where it uses the building for providing education on a commercial basis

An agreement between Spain and the Vatican dating from before Spain's accession to the EU provides for various tax exemptions for the Catholic Church. In reliance on that agreement, the Catholic Church, as the body running a Church school near Madrid in this case, seeks repayment of municipal tax amounting to €23 000 which it had to pay in respect of building work on the school building. It uses the premises predominantly for compulsory education, which is equivalent to the education provided by State schools and the major part of which is financed by public funds. However it also uses the premises for voluntary education, for which it charges a fee.

The Spanish court hearing the case has asked the Court of Justice whether the tax exemption at issue is to be regarded as unlawful State aid where that tax exemption is applied to school buildings. That also raises the fundamental question whether the exemption from certain taxes granted by a Member State to a religious community, even in respect of activities which have no strictly religious purpose, constitutes State aid.

In today's Opinion Advocate General Juliane Kokott reaches the conclusion that a tax exemption, such as that at issue in this case, does not contravene the prohibition on State aid where it affects a school building which is used by the Catholic Church for the provision of educational services in the context of its social, cultural and educational mission. On the other hand, that tax exemption would constitute State aid if the building concerned were used for genuinely commercial objectives.

The EU Treaties require the EU to respect the status of churches in the Member States and not to prejudice that status. However, that does not mean that the activity of the churches is excluded from the scope of EU law generally but rather that, in the interpretation and application of EU law, the status of the Church has to be respected and may not be prejudiced.

To determine whether the prohibition on State aid is applicable to the tax exemption at issue a distinction must be made between the use of the building for compulsory education and its use for voluntary education.

As the compulsory education provided is fully integrated into the public education system in Spain and the school is in that respect pursuing its specific social, cultural and educational mission (the pursuit of a strictly religious objective is not required), it must be assumed that, to that extent, the activity is a non-economic one. EU competition law and thus the prohibition on State aid is not applicable to that situation.

On the other hand, the voluntary education offered does appear to be commercial in nature, so that it must be assumed to be an economic activity, to which the prohibition on State aid applies. Only where it constitutes less than 10% and is thus entirely ancillary may an activity be regarded as a non-economic activity.

If there is an economic activity (which is a matter for the Spanish court to determine) and the prohibition on State aid is therefore applicable, then – according to Advocate General Kokott – the tax exemption at issue does constitute State aid.

As the Spanish tax on constructions, installations and works in question was introduced only after the accession of Spain to the EU, the tax exemption at issue (for an economic activity) must, in Mrs Kokott's view, be regarded not as existing¹ aid but as new aid. It must, accordingly, be notified to the Commission and may not be granted without the Commission's authorisation.

The particular circumstance that the tax exemption at issue arises from an international agreement with the Vatican dating from before the accession of Spain to the EU, however, allows a temporary derogation from the prohibition on State aid in EU law. In so far as the agreement allows a margin of discretion to remove the economic activity of the Catholic Church from the scope of the tax exemption at issue it must be exercised. If there is not (yet) such a discretion Spain must seek an appropriate arrangement with the Vatican. If such an arrangement is not possible within a reasonable time, Spain must terminate the agreement.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 European Union law or the validity of a European Union 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 a similar issue is raised.

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

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¹ Existing aid provision is subject merely to constant review by the Commission and may ordinarily be implemented, provided that the Commission has not determined it to be incompatible with the Treaties.