

Case C-437/97

Evangelischer Krankenhausverein Wien

v

Abgabenberufungskommission Wien

and

Wein & Co HandelsgesmbH, formerly Ikera
Warenhandelsgesellschaft mbH

v

Oberösterreichische Landesregierung

(Reference for a preliminary ruling
from the Verwaltungsgerichtshof (Austria))

(Indirect taxation — Municipal beverage duty —
Sixth VAT Directive — Directive 92/12/EEC)

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| Opinion of Advocate General Saggio delivered on 1 July 1999 | I-1161 |
| Judgment of the Court (Fifth Chamber), 9 March 2000 | I-1189 |

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Prohibition of the levying of other national charges which can be*

characterised as turnover taxes — Purpose — Meaning of 'turnover taxes' — Scope — Duty on the supply of ice cream and beverages — Not included
(Council Directive 77/388, Art. 33)

2. *Community law — Interpretation — Effectiveness*
3. *Community law — Interpretation — Multilingual texts — Discrepancies between the different language versions*
4. *Tax provisions — Harmonisation of laws — Excise duties — Directive 92/12 — Alcohol and alcoholic beverages — Indirect taxes other than excise duty — Conditions — Duty on the supply of alcoholic beverages pursuing an objective other than a purely budgetary one and not according with the general scheme of the rules relating to excise duty or with that of the rules applicable for purposes of value added tax — Not permissible*
(Council Directive 92/12, Art. 3(2))
5. *Preliminary rulings — Interpretation — Temporal effects of judgments ruling on interpretation — Retroactive effect — Limits — Legal certainty — Power of assessment of the Court*
(EC Treaty, Art. 177 (now Art. 234 EC))

1. Although Article 33 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes precludes the maintenance or introduction of stamp duties or other types of taxes, duties or charges which have the essential characteristics of value added tax, it does not preclude the maintenance or introduction of a tax not having those characteristics. Article 33 for that reason does not preclude the maintenance of a tax provided for by the legislation of a Member State which is levied on the supply for consideration of ice cream (including fruits processed therein or added thereto) and of beverages, in each case including the containers and accessories sold with the products. Such a tax, which applies only to a limited category of goods, is not a general tax since it is not intended

to apply to all economic transactions in the Member State concerned.

(see paras 23-25 and operative part 1)

2. Where a provision of Community law is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness.

(see para. 41)

3. Where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

relation to the value of the product and not on the basis of the product's weight, quantity or alcohol content, or with the general scheme of those applicable for purposes of value added tax as far as the rules on calculation and chargeability are concerned.

(see para. 42)

(see paras 30, 31, 47, 48, 49 and 50, operative part 2)

4. Article 3(2) of Directive 92/12 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, which provides that the products listed in Article 3(1) thereof may be subject to indirect taxes other than excise duty if those indirect taxes pursue one or more specific purposes in the sense contemplated by that provision and comply with the tax rules applicable for purposes of excise duty or value added tax as far as determination of the tax base, calculation of the tax, and chargeability and monitoring of the tax are concerned, precludes the maintenance of a tax provided for by the legislation of a Member State which is levied on the supply for consideration of alcoholic beverages and which, on the one hand, does not pursue an objective other than one which is purely budgetary and, on the other, does not accord with the general scheme of the rules relating to excise duty on alcoholic beverages, since its amount is determined in

5. In the exercise of the jurisdiction conferred on it by Article 177 of the EC Treaty (now Article 234 EC), the Court may only exceptionally, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying on a provision interpreted by it with a view to calling in question legal relationships established in good faith. Such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought. In determining whether or not to limit the temporal effect of a judgment it is necessary to bear in mind that although the practical consequences of any judicial decision must be weighed carefully, the Court cannot go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from a judicial decision.

In view of the fact that Article 3(2) of Directive 92/12 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products has not hitherto been the subject of a judgment by way of preliminary ruling on interpretation and that the Commission's conduct may have caused the Member State concerned reasonably to believe that its national legislation governing the duty on alcoholic beverages was in conformity with Community law, overriding grounds of legal certainty preclude calling in question legal relations which have exhausted their effects in the past, since to do so would retroactively cast into confusion the finance system of the Member State concerned.

It is for that reason appropriate for the Court to rule that the provisions of Article 3(2) of the directive cannot be relied on in support of claims relating to such tax paid or chargeable prior to the date of the judgment ruling that it is incompatible with Community law, except by claimants who have, before that date, initiated legal proceedings or raised an equivalent administrative claim.

(see paras 57 to 60, and operative part 3)