

Case C-744/23 [Zlakov] ⁱ

Request for a preliminary ruling

Date lodged:

1 December 2023

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

29 November 2023

Applicant:

T.P.T.

Defendant:

‘Financial Bulgaria’ EOOD

ORDER

No 42767

Sofia, 29 November 2023

The SOFIYSKI RAYONEN SAD (DISTRICT COURT, SOFIA)

[...] [formation of the court]

in the decision in [...] civil case No 20221110142769, entered in the court’s list of cases for 2022,

[...] [repetition]

takes into account the following:

- 1 The proceedings are governed by the first paragraph of Article 267 TFEU and Chapter 5[9] of the Grazhdanski protsesualen kodeks (Code of Civil**

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Procedure; ‘the GPK’) (requests for a preliminary ruling) read in conjunction with Article 248 of the GPK (variation of the judgment in relation to costs).

- 2 These proceedings, instituted by the one-person law firm ‘Dimitar Milev’, Sofia [...], arise from an application, bearing registration number [...] and dated 13 October 2023, by which [the applicant’s legal representative] seeks a variation of the judgment in question in relation to costs. [The applicant’s legal representative] claims that the court incorrectly awarded him costs for lawyers’ fees without value added tax (VAT). He argues that the VAT payable on lawyers’ fees must be included. He has submitted evidence of his registration for VAT.
- 3 The defendant, ‘Financial Bulgaria’ EOOD [...] opposes that application and contends that it is unfounded. The defendant relies on the case-law (order 917/02.05.2023 of the Varhoven kasatsionen sad (Supreme Court of Cassation; ‘the VKS’) in civil case No 1323/2023), according to which [...] VAT is not payable on remuneration for legal aid provided free of charge in accordance with Article 38 of the Zakon za advokaturata (Law on the Legal Profession; ‘the ZA’).
- 4 The request for a preliminary ruling concerns the question whether VAT is payable on lawyers’ remuneration in respect of legal aid provided free of charge, which person is the taxable person, and who must pay the tax. It is unclear to this court whether the provision of legal aid free of charge is subject to VAT.

PARTIES TO THE MAIN PROCEEDINGS

- 5 Applicant: T.P.T., unique personal identifier [...], Sofia, [...] represented by the one-person law firm ‘Dimitar Milev’ [...] [address of the legal representative], acting as legal representative.
- 6 **Defendant:** ‘Financial Bulgaria’ EOOD, unique company identifier [...], Sofia [...] [data concerning the defendant and its legal representative].

FACTS

- 7 These proceedings have been brought by way of an application made by the applicant vis-à-vis the defendant for a declaration of nullity of the contract concluded between the parties in relation to the security for a consumer credit agreement.
- 8 The applicant is represented by the one-person law firm ‘Dimitar Milev’ – adv. Dimitar Milev (‘Dimitar Milev’ – Dimitar Milev, lawyer). In accordance with the power of attorney which has been submitted and the contract for legal protection and assistance in legal matters, that law firm is providing legal aid to its client free of charge, pursuant to Article 38(1)(2) of the ZA, which states that a lawyer may provide legal aid free of charge to persons in financial difficulties.
- 9 The defendant is represented by legal counsel.

- 10 Through its legal representative, the one-person law firm ‘Dimitar Milev’ – adv. Dimitar Milev, the applicant requested that the court award lawyers’ fees including VAT. The applicant’s lawyer has submitted evidence of his registration under the Zakon za danak dobavena stoynost (Law on Value Added Tax; ‘the ZDDS’).
- 11 By judgment No 13461/03.08.2023 in civil case No 20221110142769, entered on the case list for 2022, the District Court, Sofia upheld the abovementioned action. With reference to Naredba No 1 ot 9 yuli 2004 g. za minimalnite razmeri na advokatskite vaznagrazhdenia (Regulation No 1 of 9 July 2004 on the minimum amount of lawyers’ remuneration; ‘the NMRAV’), that court found that, in the case of an economic interest of 185.52 leva (BGN) (the value of the contract concerned), the minimum lawyers’ remuneration is BGN 400.00. Since the applicant was represented by a lawyer providing legal aid free of charge, that court ordered the defendant to pay the amount of BGN 400.00, without VAT, not to the applicant but directly to the one-person law firm ‘Dimitar Milev’ – adv. Dimitar Milev.
- 12 No appeal was brought against that judgment and it became final on 25 September 2023.
- 13 The application (*in casu*, bearing registration number [...] and dated 13 October 2023) by which the applicant’s legal representative, the one-person law firm ‘Dimitar Milev’ – adv. Dimitar Milev, seeks a variation of the abovementioned judgment in relation to costs was received within the time limit for bringing an appeal. The applicant’s legal representative asks the court to award VAT on the sum of [BGN] 400.00 in the amount of BGN 80 (tax at a rate of 20% on a taxable amount of BGN 400.00).
- 14 The defendant opposes that application and contends that the court should not award VAT on the lawyer’s fees in question because legal aid was provided by the applicant’s lawyer free of charge. It relies on case-law.

PROVISIONS OF NATIONAL LAW RELIED ON

1. GRAZHDAANSKI PROTSESUALEN KODEKS (CODE OF CIVIL PROCEDURE)

15 Decision on costs

Article 78(1) The charges paid by the applicant, costs and the lawyers’ remuneration, if the applicant had a lawyer, shall be borne by the defendant in proportion to the part of the claim which was upheld.

16 Variation of the judgment in relation to costs

Article 248(1) Within the time limit for lodging an appeal, or within one month of delivery in the case of judgments not open to appeal, the court may, on application by a party, supplement or vary the judgment in relation to costs.

(2) The court shall inform the opposing party of the requested supplement or variation and alert it to the opportunity to submit observations within one week.

(3) The order on costs shall be made in closed session and shall be served on the parties. It shall be open to appeal in accordance with the rules governing appeals against judgments.

2. ZAKON ZA ADVOKATURATA (Law on the Legal Profession) ('the ZA')

17 Article 36(1) (supplemented – DV [State Gazette] No. 97 of 2012) The lawyer or lawyer from the European Union shall be entitled to remuneration for his or her work.

(3) (supplemented – DV No. 97 of 2012) In the absence of a contract, the bar council shall, at the request of the lawyer, lawyer from the European Union or client, set remuneration in accordance with the Regulation of the [Vissh advokatski savet (Supreme Bar Council, Bulgaria)].

18 Article 38(1) (supplemented – DV No. 97 of 2012) The lawyer or lawyer from the European Union may provide legal aid free of charge to:

1. persons entitled to maintenance;
2. persons in financial difficulties;
3. relatives, close associates or another legal professional.

(2) (supplemented – DV No. 97 of 2012) In the cases referred to in paragraph 1, if the opposing party has been ordered to pay the costs, the lawyer or lawyer from the European Union shall be entitled to remuneration. The court shall set the remuneration at least in the amount laid down by the Regulation [of the Supreme Bar Council] in accordance with Article 36(2) of [the ZA] and shall order the opposing party to pay that remuneration.

19 Art. 71. (1) (supplemented – DV No 17 of 2021) For the purposes of defence and representation in court, before the authorities in the pre-trial stage of the proceedings, before the administrative authorities and offices and before natural and legal persons, the client shall grant a power of attorney to the firm. The managing partner of the firm shall grant a subordinate power of attorney to one or more partners. If the law firm is a one-person company, the lawyer who founded the firm shall also be deemed to hold a power of attorney.

3. NAREDBA № 1 OT 9 YULI 2004 G. ZA MINIMALNITE RAZMERI NA ADVOKATSKITE VAZNAGRAZH DENIA (Regulation No 1 of 9 July 2004 on the minimum amounts of lawyers' remuneration; 'the NMRAV')

20 Fee in civil and administrative proceedings in respect of a single instance

Article 7(2) [...] [as last] amended – DV No 88 of 2022) For legal representation, defence and participation in proceedings involving a particular interest, the fee shall be as follows:

1. in the case of an interest of up to BGN 1 000: BGN 400;

21 **Supplementary provisions (DR)**

Paragraph 2a (new – DV No 43 of 2010, amended – DV No 28 of 2014, supplemented – DV No 84 of 2016) In the case of lawyers not registered under [the ZDDS], the amount of the remuneration may not include VAT, whereas, in the case of registered lawyers, the VAT owed shall be levied on the basis of the remuneration determined in accordance with this Regulation and shall be deemed to be an inseparable component of the lawyer's remuneration payable by the client, the VAT owed to be established in accordance with the provisions of the ZDDS.

4. ZAKON ZA DANAK [VARHU] DOBAVENA[TA] STOYNOST (Law on Value Added Tax; 'the ZDDS')

22 **Supply of services**

Article 9(1) A supply of services shall be the performance of any service.

(2) A supply of services shall be deemed to include:

2. entering into an obligation not to perform acts or not to exercise rights;

(3) The following shall be treated as a supply of services for consideration:

1. (supplemented – DV No 101 of 2013, in force since 1 January 2014, supplemented – DV No 96 of 2019, in force since 1 January 2020) the supply of a service for the private use of the taxable person, the proprietor, his or her employees or generally for purposes other than for the self-employed economic activity of the taxable person, the supply of which entails the use of a product in respect of which, at the time of the production, importation or acquisition, input tax was deducted in full or in part;

2. (amended – DV No 101 of 2013, in force since 1 January 2014, supplemented – DV No 96 of 2019, in force since 1 January 2020) the supply of a service free of charge for the private use of the taxable person, the proprietor, his or her employees or generally for purposes other than the self-employed economic activity of the taxable person;

3. (new – DV No 94 of 2012, in force since 1 January 2013) the supply of a service free of charge by an owner/user to improve an asset leased or transferred for use.

(4) Paragraph 3 does not apply to:

1. the supply free of charge by the employer to his or her employees, including those employed as managers, of transport services from home to the workplace, where that service is provided for the purposes of the economic activity of the taxable person;

2. (amended – DV No 94 of 2012, in force since 1 January 2013) the supply free of charge by an owner/user of a service for the repair of an asset leased or transferred for use;

3. (repealed – DV No 94 of 2012, in force since 1 January 2013)

4. the supply free of charge of a service of extremely low value for advertising purposes;

5. (new – DV No 95 of 2015, in force since 1 January 2016) the supply of a service for the private use of the taxable person, the proprietor, his or her employees or generally for purposes other than for the self-employed economic activity of the taxable person in circumstances of extreme urgency or force majeure.

(5) (new – DV No 97 of 2016, in force since 1 January 2017) Paragraph 3(1) may not apply to second-hand goods in respect of which the right to tax credit has been exercised in accordance with Articles 71a, 71b and 73b.

EU LAW

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

23 TITLE I SUBJECT MATTER AND SCOPE

Article 2

(1) The following transactions shall be subject to VAT:

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

24 [TITLE IV] CHAPTER 3 Supply of services

Article 24

(1) ‘Supply of services’ shall mean any transaction which does not constitute a supply of goods.

25 Article 26

(1) Each of the following transactions shall be treated as a supply of services for consideration:

(b) the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business.

26 Article 28

Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.

27 [TITLE VII] CHAPTER 2 Supply of goods or services

Article 75

In respect of the supply of services, as referred to in Article 26, where goods forming part of the assets of a business are used for private purposes or services are carried out free of charge, the taxable amount shall be the full cost to the taxable person of providing the services.

CASE-LAW OF THE VKS

28 **Some** formations of the VKS take the view that the remuneration set in accordance with the provisions of Article 38 of the ZA must also include VAT. According to them, the remuneration set by the court for the provision of legal aid free of charge [is not for the] supply of services carried out free of charge, and therefore VAT is charged. There are further decisions of the VKS to this effect: order No 50207 of the VKS of 11 October 2023 in commercial case No 1940/2022; order No 50139 of the VKS of 10 May 2023 in civil case No 5156/2021.

29 **Other** formations of the VKS take the view that VAT is not to be awarded on the remuneration provided for in Article 38 of the ZA. They consider that the supply of services carried out free of charge is not subject to VAT. This follows from Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. That activity does not constitute a taxable supply of goods or services within the meaning of the ZDDS or Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. That is the purport of order No 917 of the VKS of 10 May 2023 in civil cassation case No 1323/2023.

**REASONS WHY THE COURT CONSIDERS A REQUEST FOR A
PRELIMINARY RULING TO BE RELEVANT TO THE CORRECT
DISPOSAL OF THE MAIN PROCEEDINGS**

- 30 The application for a variation to the judgment in question in relation to costs was received within the prescribed time limit and was filed by a person duly authorised to bring proceedings. The opposing party has submitted observations. The application is admissible and must be decided on the merits.
- 31 In order to give judgment, the court must answer the following substantive question: does the legal aid provided free of charge constitute a taxable service within the meaning of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, where the court orders the unsuccessful party to pay directly to the lawyer the amount equivalent to that which the lawyer would have received had the service not been provided free of charge [?]
- 32 The principle of unjust enrichment is enshrined in Bulgarian law. If a party has received legal aid free of charge and is successful in the dispute concerned, the court awards the lawyer's fees directly to the lawyer, at the expense of the unsuccessful party. This is because the [successful] party has not incurred any costs in connection with the lawyer's fees. Nonetheless, the lawyer must not work pro bono, with the result that his or her remuneration is payable by the unsuccessful party, which is ordered to pay the fees for the specific case type directly to that lawyer. The question that arises in [the present case] is whether VAT is payable on the fees for legal aid which the lawyer provided pro bono, where the fees are set by the court at the expense of the unsuccessful party.
- 33 The requirements laid down in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax have been transposed into Bulgarian law. The Bulgarian ZDDS states that the supply of services is a taxable supply for the purposes of VAT. A part of Article 9 of the ZDDS reproduces verbatim Article 26(1)(b) and Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. At the same time, Bulgaria has availed itself of the derogation from the obligation to charge VAT on the supply of services by lawyers that is provided for in Part B of [Annex X to] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. However, that rule does not apply where, as in this case, the lawyer providing the service is registered for VAT purposes. If the lawyer were to conclude a contract for consideration for legal protection and assistance in legal matters, VAT would be applicable to his remuneration. The position is different where the lawyer has worked pro bono. It is for this very reason that the court wishes to know whether those services come within the scope of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and who the taxable person is.
- 34 The court is finding it difficult to determine whether the abovementioned provisions of Council Directive 2006/112/EC of 28 November 2006 on the

common system of value added tax are applicable to legal aid provided free of charge.

- 35 VAT is a type of indirect tax. The taxable person (tax subject) is the end consumer, i.e. the recipient of the goods or services. The person bearing the tax (revenue payer) is the person who provides the service, and the tax object is the service provided itself. The taxable amount is the remuneration for the service provided.
- 36 In the case of a contract for consideration for legal protection and assistance in legal matters, the tax object is the service itself. The customer party to the contract is the tax subject (taxable person), who is liable for the payment of VAT. The tax payer is the lawyer who provides the service for consideration and pays the VAT on behalf of the customer. The taxable amount is formed of the lawyer's (law firm's) fees agreed in the contract for legal protection and assistance in legal matters. The situation is more complicated in the case of legal aid provided free of charge (pro bono).
- 37 First, it is unclear whether the provision of legal aid free of charge constitutes an activity providing a service which is subject to VAT. It is for this reason that the court is faced with the question whether the provision of legal aid free of charge is covered by [the concept of] service subject to VAT. Does the provision free of charge by a lawyer (a one-person law firm) of legal aid for which fees are awarded for the benefit of that lawyer (one-person law firm) constitute a tax object for VAT purposes[?]. That question is of crucial importance, since it dictates the amount which the unsuccessful party must pay to the lawyer who provided the legal aid free of charge. This determines the flow of cash to the State budget and the eligibility for tax credit.
- 38 Second, a problem exists also as regards the determination of the tax subject (taxable person). The recipient of the service is the applicant. He is the client under the contract for legal [protection] and assistance in legal matters and was successful in the legal dispute. He is not the taxable person (tax subject), however, since the service consists in the provision of legal aid free of charge to a person who is in financial difficulties. In those circumstances, if the action is upheld, the costs for the lawyer's fees are awarded not to the recipient of the service (the customer under the contract) but directly to the person bearing the tax (revenue payer), namely the lawyer or one-person law firm. In that event, the lawyer (one-person law firm) receives the remuneration to which he would have been entitled if a consideration for his services (the taxable amount) had been agreed. It is unclear to this court whether the lawyer (the one-person law firm) is the taxable person (tax subject) for VAT purposes if the court awards to him lawyers' fees in respect of a person to whom he has provided legal aid free of charge and who has been successful in the legal dispute. This question is of crucial importance to the dispute in the main proceedings because it determines the persons in respect of whom the court must charge VAT on the costs of the proceedings.

- 39 It is for this reason that this court is faced with the questions whether each individual provision of Article 2(1)(c), Article 24(1), Article 26(1)(b) and Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax is to be interpreted as meaning that the provision of legal aid free of charge constitutes a service subject to VAT, and whether VAT is charged only once the court awards the fees to the lawyer.
- 40 It is not clear to this court whether the service at issue – consisting of the provision of legal aid free of charge to a party which has been successful in the legal dispute, the fees for which the court awards directly to the lawyer – comes within the scope of the supply of services carried out free of charge within the meaning of Article 24(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
- 41 In order to make it possible to decide the case in accordance with EU law, it is necessary to answer the question whether the service at issue is a supply of services carried out free of charge within the meaning of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. It is important to bear in mind that, in this case, the court awards the fees which the lawyer would have received if remuneration had been agreed in a contract for legal assistance.
- 42 The decision as to who is liable for the VAT calls for an answer to the question as to who the taxable person is in the case where legal aid is provided free of charge and where remuneration is set. It is not clear to the court which person in the main proceedings is the taxable person within the meaning of the abovementioned directive.
- 43 It is important to answer the question whether a service such as that in the main proceedings constitutes a supply of services carried out free of charge and [at the same time] a supply of services for consideration within the meaning of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The reason for this is that some services carried out free of charge are treated as services provided for consideration which are in turn subject to VAT.
- 44 In the light [of] the foregoing considerations, these proceedings must be stayed, in accordance with Article 631(1) of the GPK read in conjunction with the first paragraph of Article 267 TFEU, pending a ruling from the Court of Justice of the European Union on the questions concerning the interpretation of EU law which are set out in the operative part of this order.

On the foregoing grounds, this COURT makes the following

ORDER:

1 The following questions are **REFERRED** to the Court of Justice of the European Union for a preliminary ruling **under Article 267 TFEU and Article 269 of the GPK:**

1. Is a **'supply of services'** within the meaning of Article 2(1)(c), Article 24(1), Article 26(1)(b) and Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax to be interpreted as including:

1. the provision of legal aid free of charge (pro bono) by a lawyer to a party in court proceedings[?]
2. the provision of legal aid free of charge (pro bono) by the lawyer of a party which has been successful in a legal dispute, where the court awards **that party's lawyer** the remuneration which he or she would have received if remuneration had been agreed under a contract for legal assistance[?]

2. Is a **'supply of services carried out free of charge'** within the meaning of Article 26(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax to be interpreted as covering:

1. the provision of legal aid free of charge (pro bono) by a lawyer to a party in court proceedings[?]
2. the provision of legal aid free of charge (pro bono) by the lawyer of a party which has been successful in a legal dispute, where the court awards that party's lawyer the remuneration which he or she would have received if remuneration had been agreed under a contract for legal assistance[?]

3. Is a **'supply of services for consideration'** within the meaning of Article 2(1)(c), Article 24(1) and Article 26(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax to be interpreted as covering the provision of legal aid free of charge (pro bono) by a lawyer to a party which has been successful in the legal dispute, where the court awards that party's lawyer the remuneration which he or she would have received if remuneration had been agreed under a contract for legal assistance[?]

4. Is **'taxable person'** within the meaning of Article 28 and Article 75 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax to be interpreted as covering:

1. a lawyer (a one-person law firm) who has provided legal aid free of charge (pro bono) to a party in court proceedings[?]
2. a lawyer (a one-person law firm) who has provided legal aid free of charge (pro bono) to a party which has been successful in a legal dispute, where the court awards that party's lawyer (the one-person law firm) the remuneration which he or she would have received if remuneration had been agreed under a contract for legal assistance[?]

36. [...] [stay of proceedings]

37. [...]

[...] [procedural questions]

40. **THIS ORDER** is final and not open to appeal, in accordance with Article 631 of the GPK.

WORKING DOCUMENT