

ORDER OF THE COURT (Fifth Chamber)

28 April 1998 *

In Case C-116/96 REV,

Reisebüro Binder GmbH,

APPLICATION for revision of the judgment of the Court of 6 November 1997 in Case C-116/96 *Reisebüro Binder v Finanzamt Stuttgart-Körperschaften* [1997] ECR I-6103,

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida, D. A. O. Edward, J.-P. Puissochet (Rapporteur) and P. Jann, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

after hearing the views of the Advocate General,

* Language of the case: German.

makes the following

Order

- 1 By applications dated 15 December 1997 and 29 January 1998, lodged at the Court Registry on 2 February 1998, Reisebüro Binder GmbH (hereinafter 'Binder') brought proceedings under Article 41 of the EC Statute of the Court of Justice for revision of the judgment of the Court of 6 November 1997 in Case C-116/96 *Reisebüro Binder v Finanzamt Stuttgart-Körperschaften* [1997] ECR I-6103.
- 2 In that judgment, the Court gave a preliminary ruling on a question referred to it under Article 177 of the EC Treaty by the Bundesfinanzhof (Federal Finance Court), concerning the interpretation of Article 9(2)(b) of 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 (OJ 1977 L 145, p. 1). That question was raised in proceedings between Binder and the Finanzamt Stuttgart-Körperschaften concerning the determination of the taxable amount for VAT purposes in respect of transport services supplied in the context of cross-frontier motor-coach package tours.
- 3 On lodging its first application, Binder was advised by the Registrar of the Court that, as expressly stated in the order of 5 March 1986 in Case 69/85 *Wünsche v Germany* [1986] ECR 947, paragraph 14, Article 41 of the EC Statute of the Court of Justice does not apply to a judgment given by way of a preliminary ruling. However, Binder lodged a fresh application claiming that the Court should:
 - transmit both applications for revision of the judgment to the other parties to the dispute and to the Advocate General, so that they can submit their observations;

- declare the application for revision admissible and undertake a review of the case in the light of the observations already lodged during the written procedure as supplemented by the summary of the oral argument annexed to the application;
- give a new judgment in accordance with the Rules of Procedure;
- if it dismisses the new application for revision, do so by order.

- 4 In support of the form of order which it seeks, Binder relies in particular on the fact that, before giving judgment on the reference for a preliminary ruling, the Court had not been fully informed as to the legal situation which is the subject of the proceedings because Binder's '2nd representative' had withheld some written observations from its '1st representative'. Binder also maintains that no limitation or bar is provided for in either Article 41 of the EC Statute of the Court of Justice or Articles 98 to 100 of the Rules of Procedure, and that those provisions can therefore be regarded as applying to all decisions of the Court, including those given in proceedings for a preliminary ruling.
- 5 Article 92(1) of the Rules of Procedure provides that '[w]here it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action'.
- 6 As the Court pointed out in paragraph 14 of the order in *Wünsche*, cited above, Articles 38 to 41 of the EC Statute of the Court of Justice list exhaustively the

exceptional review procedures available for challenging the authority of the Court's judgments and, since there are no parties to proceedings in which the court gives judgment by way of a preliminary ruling, the aforesaid provisions do not apply to such a judgment.

- 7 Article 177 of the Treaty establishes a procedure for direct cooperation between the Court of Justice and the national courts, in the course of which the parties concerned are merely invited to submit observations within the legal framework set out by the court making the reference (see, to that effect, the order of 18 October 1979 in Case 40/70 *Sirena v EDA and Others* [1979] ECR 3169).
- 8 Within the limits established by Article 177 of the Treaty, it is thus for the national courts alone to decide on the principle and purpose of any reference to the Court of Justice and it is also for those courts alone to judge whether they have obtained sufficient guidance from the preliminary ruling delivered in response to their reference or whether it appears to them necessary to refer the matter once more to the Court. Accordingly, the parties to the main proceedings cannot rely on Article 40 of the EC Statute of the Court of Justice or on Article 102 of the Rules of Procedure in order to request the Court to interpret judgments delivered in pursuance of the said Article 177 (*Sirena*, cited above).
- 9 Similarly, the parties to the main proceedings cannot rely on Article 41 of the EC Statute of the Court of Justice or on Articles 98 to 100 of the Rules of Procedure in order to seek revision of judgments delivered in the same circumstances. Only the national court to which such a judgment is addressed may, if appropriate, submit new considerations to the Court which might lead it to give a different answer to a question submitted earlier (*Wünsche*, cited above, paragraph 15).
- 10 It follows that the application for revision is manifestly inadmissible and must therefore be dismissed pursuant to Article 92(1) of the Rules of Procedure.

Costs

- 11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. There being no defendant, the applicant for revision, which has been unsuccessful, must be ordered to bear its own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby orders:

1. The application for revision is dismissed as inadmissible.
2. Reisebüro Binder GmbH shall bear its own costs.

Luxembourg, 28 April 1998.

R. Grass

Registrar

C. Gulmann

President of the Fifth Chamber