

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CONGREGACIÓN DE ESCUELAS PÍAS PROVINCIA BETANIA [2017] EUECJ C-74/16

Court of Justice of the European Union, K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, E. Juhász, M. Berger, A. Prechal, M. Vilaras and E. Regan, Presidents of Chambers, A. Rosas, A. Arabadjiev (Rapporteur), M. Safjan, D. Šváby and E. Jarašiūnas, Judges, 27 June 2017

How the EU law on State aid applies to religious charities in relation to taxation exemptions

Key words: Church, European Union, Religious Purposes, Municipal Tax, Activity, Building, Undertaking

1. This was a request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU) from the Administrative Court No 4, Madrid, Spain.
2. The Congregación de Escuelas Pías Provincia Betania owns a complex of buildings in Getafe, a southern part of Madrid. La Inmaculada school, which is run by the Congregation, is part of that complex. The Congregation applied for planning permission to renovate and extend the building used by the school as a hall for, among other things, meetings, courses and conferences with a view to providing seating for 450 persons. Planning permission was granted in April 2011.
3. The Congregation paid 23,730 euros in tax under ICIO, an indirect municipal tax chargeable on the carrying out, in the municipal area, of any building, installation or construction work. It then applied for a refund of tax paid on the ground that it was exempt under Article IV(1)(B) of the Agreement of 3 January 1979 between the Spanish State and the Holy See concerning financial matters (the Agreement). The refund was refused because the municipal tax office took the view that the exemption did not apply because it had been requested in respect of an activity that had no religious purpose.
4. Article IV of the Agreement provides that:
 1. The Holy See, the Bishops' Conference, dioceses, parishes and other territorial units, religious orders and congregations and 'institutes of consecrated life' and their provinces and houses shall be entitled to the following exemptions:

(A) ...

(B) full and permanent exemption from taxes on property and earnings from property, as regards income and assets.

This exemption shall not apply to income arising from economic activities or from assets belonging to the Church in respect of which use has been assigned to third parties; nor shall it apply to capital gains or to income which is subject to deduction at source of income tax.

5. The Municipality contended that exemption from ICIO applies solely to buildings which, because they are intended to be used for religious purposes of the Catholic Church, are exempted from the tax on immovable property. It submitted that, in the absence of such a limitation, an exemption of this kind could be incompatible with EU law on state aid. The referring court remarked that this point was not settled in European law.

6. Article 107 TFEU deals with the state aid question. Article 107 (1) states:

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

7. There are four requirements in the provision (at [38] of the ECJEU judgement):

1. there must be intervention by the State or through State resources
2. the intervention must be liable to affect trade between Member States
3. it must confer a selective advantage on the recipient
4. it must distort or threaten to distort competition

8. The application of this provision to charities is by no means fully clarified in the EU. The provision deals with competition law and trade. Was there such an aspect in this case? The Municipality contended that the Catholic Church in Spain was so much involved with the provision of schools and hospitals that to fully exempt it from taxes would be to deprive the revenue of substantial taxes. However, it was not engaged in trade between member states of the EU. Nor are most charities and nonprofits in Europe.

9. The Court of Justice considered whether:

(i) the Congregación could be classified as an 'undertaking' for the purposes of Article 107(1) TFEU;

(ii) the tax exemption at issue in the main proceedings conferred a selective economic advantage on the Congregación;

(iii) whether that measure represented intervention by the Spanish State or through resources of that Member State; and

(iv) the exemption was liable to affect trade between Member States and distort or threaten to distort competition within the internal market.

10. The Court ruled that (i), (ii) and (iv) possibly applied, and (iii) definitely applied, and referred the matter back to the Spanish court (at [90]):

A tax exemption such as that at issue in the main proceedings, to which a congregation belonging to the Catholic Church is entitled in respect of works on a building intended to be used for activities that do not have a strictly religious purpose, may fall under the prohibition in Article 107(1) TFEU if, and to the extent to which, those activities are economic, a matter which it is for the referring court to determine.

11. The matter of the application of Article 107(1) TFEU to religious organisations is thus yet to be settled by the Spanish courts, but has wider implications for the EU generally. The decision will turn on the extent to which the activities in this case are classed as economic, rather than religious.

IMPLICATIONS



Refer: Frank Cranmer, "Religion, real property, the EU and State aid: *Congregación de Escuelas Pías Provincia Betania*" in *Law & Religion UK*, 3 July 2017, <http://www.lawandreligionuk.com/2017/07/03/religion-real-property-the-eu-and-state-aid-congregacion-de-escuelas-pias-provincia-betania/>

VIEW THE CASE



This case may be viewed at: https://curia.europa.eu/jcms/jcms/j_6/en/

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