

ECJ REPORTS

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***Staatssecretaris van Financiën v Stichting Kinderopvang Enschede* (Case C 415/04), European Court of Justice, 9th February 2006**

Stichting Kinderopvang Enschede is a non-profit-making organisation which provides childcare, at a variety of locations, for children under school age and for children of school age outside school hours. It also maintains a list of host parents who, after screening by the Foundation, look after children in their own homes. Host parents may attend a training course paid for by the Foundation. For parents opting to have their child looked after by a host parent, the Foundation puts them in touch with the host parents on its list who are most appropriate for the parents' needs. The Foundation then acts as intermediary in the conclusion of a written agreement between the parents and the host parents. If, after a period of time, one of the parties wishes to discontinue the agreement or the terms of the agreement are breached, the parents of the child may again make use of the services of the Foundation. The Foundation does not accept any liability for damage arising from any breach of the agreement. Nor does it guarantee that the host parents will indeed be able to mind the child during the hours requested.

On the basis of that provision of services, the Foundation paid NLG 6,424 in respect of VAT for the period from 1 January to 31 March 1998 pursuant to a tax demand. The Foundation, however, lodged an objection with the Tax Inspectorate, seeking reimbursement of the tax paid on the basis of Article 11(1)(f) of the 1968 Law, Article 7(1) of the Implementing Regulation and item 6 of Annex B(b) thereto, arguing that the effect of those provisions was to exempt those services from VAT. The Tax Inspectorate dismissed that objection.

Consequently, the Court was to consider the question whether Article 13A(1)(g), (h) and (i) of the Sixth Directive must be construed as meaning that the service provided as described [in the decision of the national court], consisting in intermediary activities in connection with the care of children under school age and

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of schoolchildren outside of school hours in the homes of host parents, falls to be regarded as a service covered by one or more of those provisions?

By its question the national court is essentially asking whether services as an intermediary between the parents of a child and the host parents looking after that child, such as those provided by the Foundation, are exempt from VAT as being services closely linked to welfare and social security work, the protection of children or young persons and/or children's or young people's education.

The Court stated that the childcare provided by host parents is capable of being covered at the very least by the two categories of exemption provided for in Article 13A(1)(g) and (h) of the Sixth Directive.

Moreover, the Advocate General noted that the mere fact of keeping a list of all people known to offer childcare and making that list available to parents cannot be described as an essential service. Conversely, if the Foundation's screening of host parents' past records, and the fact of providing them with training, result in the selection only of host parents who are competent, trustworthy and such as to provide a higher quality of childcare than parents could otherwise have obtained without using the Foundation's services, these services could then be regarded as essential to the provision of quality childcare.

On the other hand, the Netherlands Government maintained that those services should be excluded from exemption under Article 13A(2)(b) of the Sixth Directive because their basic purpose is to obtain additional income for the Foundation by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.

Consequently, the Court stated that that Article 13A(1)(g) and (h) of the Sixth Directive, read together with Article 13A(2)(b) thereof, must be interpreted as meaning that services as an intermediary between persons seeking, and persons offering, a childcare service, provided by a body governed by public law or an organisation recognised as charitable by the Member State concerned, may benefit from exemption under those provisions only where the following conditions are fulfilled:

- the childcare service itself meets the conditions for exemption laid down in those provisions;
- that service is of such a nature or quality that parents could not be assured of obtaining a service of the same value without the assistance of an intermediary service such as that which is the subject-matter of the dispute in the main proceedings;

- the basic purpose of the intermediary services is not to obtain additional income for the service provider by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.