



Press and Information

Court of Justice of the European Union

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Judgment in Case C-74/16

Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe

## **Tax exemptions for the Catholic Church in Spain may constitute unlawful State aid if and to the extent to which they are granted for economic activities**

An agreement between Spain and the Holy See dating from before Spain's accession to the European Communities provides for various tax exemptions for the Catholic Church. In this case, a religious congregation of the Spanish Catholic Church ("the Congregación"), as the body responsible for a Church school near Madrid, is relying on that agreement to claim a refund of almost €24 000 paid by way of a municipal tax on construction, installations and works: the tax was paid in respect of work on a building used by the school as a hall. The premises in question are used for State-regulated primary and secondary education, which is equivalent to the education, provided in State schools and is financed entirely from public funds. The premises are also used for non-compulsory education — early-years teaching, extra-curricular activities and post-compulsory education — which is not subsidised from public funds and for which fees are charged.

The tax authority refused the claim for a refund. In its view, the exemption does not apply, given that it is requested in respect of an activity of the Catholic Church which does not have a strictly religious purpose. The Juzgado de lo Contencioso-Administrativo nº 4 de Madrid (Administrative Court No 4, Madrid, Spain), which is hearing the action brought by the Congregación, has asked the Court of Justice whether the tax exemption at issue — applied here to a school building — must be regarded as State aid prohibited by EU law. The case also raises the fundamental question whether the exemption from certain taxes granted by a Member State to a religious community, including for activities which do not have a strictly religious purpose, may constitute unlawful State aid.

In today's judgment the Court states that **the tax exemption at issue may constitute unlawful State aid if and to the extent to which the activities carried on in the premises in question are economic activities**, a matter which is for the Spanish court to determine.

The Court notes in that regard that **only the educational activities that are not subsidised by the Spanish State appear to be economic in character**, since they are financed essentially by private contributions, particularly from students and their parents, to school costs. It also states that it will be for the national court to determine whether and to what extent the premises in question are used, at least in part, for such economic activities.

The Court adds that **the exemption** from the municipal tax in question appears in any event to satisfy two of the four conditions for classification as unlawful State aid, inasmuch as **(1) it would confer a selective economic advantage on the congregation running the school** and **(2) it entails a reduction in the municipal council's revenue** and hence the use of State resources.

So far as the other two conditions are concerned (that is, (i) the condition relating to the effect of the economic advantage on trade between Member States and (ii) the condition relating to distortion of competition), the Court points out that the exemption at issue might make the Congregación's educational service provision more attractive by comparison with that of establishments that are also active on the same market. On the other hand, it observes that **under**

EU law,<sup>1</sup> aid not exceeding a ceiling of €200 000 over any period of three years is deemed not to affect trade between Member States and not to distort or threaten to distort competition; such measures are therefore excluded from the concept of State aid. The national court will thus have to determine whether that threshold is reached in the present case, taking into account only the advantages that the Congregación has obtained in respect of any economic activities it may carry on.

Finally, the Court considers that, although the agreement between Spain and the Holy See dates from before Spain's accession to the EU, the tax exemption at issue, were it classified as State aid, should not be considered to be existing aid,<sup>2</sup> but **new aid**. The Spanish **tax** on construction, installations and works was in fact **introduced only after that accession**. Consequently, if the national court were to find there to be State aid, that aid would thus have to be notified to the Commission and could not be implemented without its agreement.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

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<sup>1</sup> Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles [107 and 108 TFEU] to de minimis aid (OJ 2006, L 379, p. 5).

<sup>2</sup> Existing aid schemes are subject only to regular review by the Commission and may be lawfully implemented so long as the Commission has not declared them to be incompatible with the internal market.