



Press and Information

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Advocate General's Opinion in joined cases C-570/07 and C-571/07  
José Manuel Blanco Pérez & María del Chao Gómez v.  
Consejería de Salud y Servicios Sanitarios & Principado de Asturias

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**ADVOCATE GENERAL POIARES MADURO CONSIDERS THAT THE LEGISLATION  
OF THE SPANISH REGION OF ASTURIAS REGULATING PHARMACEUTICAL  
SERVICES IS CONTRARY TO COMMUNITY LAW**

*The rules limiting the number of pharmacies by reference to the population in an area do not apply in a coherent and consistent manner so as to be capable of justification in the interests of public health.*

José Manuel Blanco Pérez and Maria del Pilar Chao Gómez, both Spanish citizens, are qualified pharmacists but are not accredited to open a pharmacy. Wanting to open a pharmacy, they requested permission from the Autonomous Community of Asturias in Spain. The permit was denied by a decision of the local Council of Health and Sanitary Services, which was confirmed by the Asturian Government Council in 2002. Both Mr Blanco Pérez and Ms Chao Gómez have challenged this decision before the Tribunal Superior de Justicia de Asturias.

The decisions were based on the Asturian law regulating pharmacies and pharmaceutical services. This establishes a system of licensing including certain restrictions on the setting up of new pharmacies within the Autonomous Community. These restrictions include a limit on the number of pharmacies in an area by reference to the population of that area and a geographical restriction preventing the opening of a pharmacy within 250 metres of another pharmacy. The legislation also sets out criteria for distinguishing between competing candidate pharmacists, awarding points based on the professional and teaching experience of the candidates. More points are awarded for professional experience gained in towns with a population under 2800, however professional experience can only be used once to gain a licence so that once a licence has been awarded, the professional experience of the licence holder is effectively reset to zero. Where several candidates achieve the same number of points, licences are granted in the following order: firstly to those who have not been accredited to open a pharmacy; secondly to those who have been accredited to operate a pharmacy in a town with a population of fewer than 2800 inhabitants; thirdly to those pharmacists who have practised in Asturias; and finally to those pharmacists with the best academic qualifications.

Uncertain as to whether these rules are compatible with the principle of freedom of establishment enshrined in the EC Treaty, the national court has referred questions to the Court of Justice.

In the opinion of Advocate General Miguel Poiares Maduro, the national legislation is a restriction on the freedom of establishment. However, he recalls that such measures may be justified if they satisfy four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.

The Advocate General states that, for the most part, the legislation is non-discriminatory, treating all pharmacists equally, regardless of origin. However, the criteria giving additional priority to applicants who have practised as pharmacists within the territory of Asturias, amount to impermissible discrimination on grounds of nationality contrary to the principle of freedom of establishment.

Next, Advocate General Poiares Maduro notes that the aim of the population and geographical restrictions is to protect public health by ensuring good pharmaceutical services are provided in all areas of Asturias. Consequently, he concludes that ensuring a distribution of pharmacies throughout the territory should be considered an overriding requirement in the general interest .

The Advocate General then examines whether the legislation is appropriate for the achievement of this goal. He notes that a system that induces pharmacists to establish themselves in smaller, less profitable areas by prioritising such pharmacists when more lucrative licences are available may be an appropriate way to ensure the provision of pharmaceutical services throughout a territory. However, Advocate General Maduro opines that the Asturian legislation is not coherent and consistent in its pursuit of this goal.

Whilst a pharmacist who operates a pharmacy in a smaller town is favoured in one aspect in the allocation of points, he is penalised by the fact that his professional experience used to attain that licence does not count when applying for a new, more lucrative licence. Moreover, a pharmacist who has yet to be granted a licence and has chosen not to open in a less profitable area, takes priority over a pharmacist who has “served his time” in a smaller town. Finally, the fact that pharmacists have a proprietary interest in their licence and can sell the more profitable ones to a person of their choosing, limits the availability of such licences and merely enriches individual pharmacists on the basis of precisely the kind of restriction of competition that the EC Treaty is designed to prevent.

Therefore, the population restrictions as applied in Asturias not being apt for their stated purpose, the Advocate General considers that they are contrary to Community law.

Finally, as to the requirement imposing a minimum distance between pharmacies, Advocate General Poiares Maduro considers that it is for the national court to determine whether the specific distance imposed is justified, bearing in mind the degree of interference with the right of establishment, the nature of the public interest invoked and the degree to which, in the light of the number and distribution of pharmacies within the region and the distribution and density of the population, universal coverage could be achieved through less restrictive means.

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**NOTE:** The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Community law or the validity of a Community 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 the same issue is raised.

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

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