



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 49/10**

Luxembourg, 1 June 2010

Judgment in Joined Cases C-570/07 and C-571/07  
José Manuel Blanco Pérez and María del Pilar Chao Gómez v Consejería de  
Salud y Servicios Sanitarios, Principado de Asturias

## **The demographic and geographical limits set by Asturian legislation for the opening of new pharmacies constitute a restriction on the freedom of establishment**

*Nevertheless, they are compatible with European Union law, provided that they can be adjusted so as not to prevent, in areas with special demographic characteristics, the setting up of a sufficient number of pharmacies to ensure adequate pharmaceutical services*

In Spain, national legislation makes the setting up of a new pharmacy conditional upon prior administrative authorisation. That legislation is implemented by the Autonomous Communities, which set specific criteria for the licensing of new pharmacies.

In 2002, the Autonomous Community of Asturias (Spain) decided to launch a call for applications with a view to issuing new pharmacy licences. That decision was based on the Asturian decree regulating pharmacies and pharmaceutical services. This establishes a licensing system which limits the number of pharmacies in an area by reference to the population of that area (in this way, only one pharmacy may be opened, as a rule, per unit of 2 800 inhabitants and a supplementary pharmacy cannot be opened until that threshold has been exceeded, that pharmacy being established for the fraction above 2 000 inhabitants). Furthermore, the system prohibits the opening of a pharmacy within 250 metres of another pharmacy. Lastly, the decree also sets out criteria for making a selection from among pharmacists competing for a licence, with points awarded on the basis of their professional and teaching experience.

José Manuel Blanco Pérez and María del Pilar Chao Gómez, both qualified pharmacists, wish to open a new pharmacy in Asturias, without, however, having to comply with the territorial planning rules established pursuant to the Asturian decree. Consequently, they brought an action against the call for applications launched by Asturias and against that decree.

Uncertain whether the Asturian decree is compatible with the principle of freedom of establishment laid down in the Treaty, the Tribunal Superior de Justicia de Asturias (Spain), before which the proceedings were brought, turned to the Court of Justice.

*The conditions linked to population density and the minimum distance between pharmacies*

In its judgment today, **the Court finds that the conditions, established by the Asturian decree, linked to population density and the minimum distance between the pharmacies** (that is to say, a minimum number of 2 800 or 2 000 inhabitants per pharmacy and a minimum distance of 250 metres between pharmacies) **constitute a restriction on the freedom of establishment**. However, the Court observes that such measures can be justified, provided that the following four conditions are satisfied: the measures must apply in a non-discriminatory manner; they must be justified by overriding reasons relating to the general interest; they must be appropriate for attaining the objective pursued; and they must not go beyond what is necessary for attaining that objective.

First, the Court finds that the conditions linked to population density and the minimum distance between pharmacies in the region apply without discrimination on grounds of nationality.

Secondly, the Court holds that **the objective of the demographic and geographical restrictions laid down by the Asturian decree is to ensure that the provision of medicinal products to the public is reliable and of good quality. Accordingly, that objective constitutes an overriding reason relating to the general interest and is capable of justifying national legislation such as that at issue in the main proceedings.**

Moreover, the Court considers that the Asturian legislation is appropriate to the attainment of that objective. The Court considers that, if that field were wholly unregulated, it is not inconceivable that pharmacists would become concentrated in the areas considered to be attractive, so that certain other, less attractive areas would suffer from a shortfall in the number of pharmacists needed to ensure a pharmaceutical service which is reliable and of good quality.

Nevertheless, **the Court examines the consistency of the Asturian legislation in the light of the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality.** In this respect, the Court observes that the uniform application of the basic '2 800 inhabitants' and '250 metres' rules fixed by the Asturian decree might well be unsuccessful in ensuring adequate access to pharmaceutical services in areas which have certain special demographic features. First, if the '2 800 inhabitants' rule were uniformly applied in certain rural areas where the population is generally scattered and less numerous, certain inhabitants would find themselves beyond reasonable reach of a pharmacy and would thus be denied adequate access to pharmaceutical services. Secondly, in certain densely populated areas, the strict application of the '250 metres' rule could well give rise to a situation in which more than 2 800 inhabitants live inside the perimeter laid down for a single pharmacy.

In so doing, the Court observes that the Asturian decree implements the national legislation. The Court points out that that national legislation provides for certain adjustment measures which make it possible to mitigate the consequences of applying the basic '2 800 inhabitants' rule. Under the national legislation, the Autonomous Communities may establish units of population smaller than 2 800 inhabitants per pharmacy for areas where, by reason of their characteristics, it is not possible, through application of the general criteria, to make a pharmacy situated in that special area more accessible for the local population. Furthermore, under that national legislation, the Autonomous Communities are able, depending on the concentration of the population, to authorise a distance shorter than 250 metres between pharmacies and thereby increase the number of pharmacies available in areas with a very high population density. **In those circumstances, the Court finds that it is for the referring court to determine whether, in any geographical area with special demographic characteristics, the competent authorities make use of the power conferred by the national legislation.**

Lastly, the Court finds that the Asturian legislation does not go beyond what is necessary to attain the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality.

**The Court concludes, therefore, that the conditions, fixed by the Asturian decree, linked to population density and the minimum distance between pharmacies are not in breach of the freedom of establishment, provided that the basic '2 800 inhabitants' and '250 metres' rules do not, in any geographical area which has special demographic features, prevent the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain.**

*The selection criteria for licensees for new pharmacies established by the Asturian decree*

As a preliminary point, the Court points out that the freedom of establishment requires that the criteria applicable in the context of an administrative authorisation scheme should not be discriminatory.

On that issue, the Court observes that, under the Asturian decree, a further 20% is to be added for professional qualifications for professional experience obtained within the Autonomous Community of Asturias. Moreover, under that legislation, where several candidates score an equal number of points, licences are to be granted in accordance with an order of priority in which precedence is given to certain categories of candidate. Among those categories, in third place, is that of pharmacists who have pursued their professional activities within the Autonomous Community of Asturias. The Court finds that those two criteria can be met more easily by pharmacists from the Member State concerned, who more often pursue their economic activities on the national territory, than by pharmacists who are nationals of other Member States, who more frequently pursue those activities in another Member State. **The Court concludes, therefore, that those two selection criteria are discriminatory and hence precluded by the freedom of establishment.**

---

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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106