



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 121/13**  
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Judgment in Case C-539/11  
Ottica New Line

## **The demographic and geographical limitations laid down in the Italian legislation on the opening of new opticians' shops constitute a restriction on the freedom of establishment**

*Nonetheless, those limitations may be compatible with EU law if the competent authorities use their discretionary powers in accordance with transparent and objective criteria, with a view to attaining, in a coherent and systematic manner, the objective of the protection of public health throughout the territory*

In order to ensure, in Sicily, a rational distribution of the supply of opticians, Sicilian regional law makes the opening of new opticians' shops subject to prior administrative authorisation. Such authorisation is issued under two conditions: (i) there may be only one optician's shop per 8 000 residents and, (ii) the distance between one optician's shop and another must not be less than 300 metres. Derogations from those conditions are possible where territorial requirements have been satisfied. In that case, the municipality may issue authorisation, by way of derogation, after having obtained the opinion of a special committee of the local chamber of commerce, which is made up of representatives of opticians.

In 2009, the Comune di Campobello di Mazara (Trapani, Sicily) authorised Fotottica to open a new optician's shop in its territory, in infringement of the regional law.

A competitor business, Ottica New Line, thus challenged that decision before the administrative courts, and the Consiglio di giustizia amministrativa per la Regione siciliana (Higher Administrative Court for the Sicily Region) then made a request for a preliminary ruling to the Court of Justice.

The Court has already held that the profession of optician is associated with the protection of public health<sup>1</sup>. Moreover, the opticians at issue not only supply, check and adjust devices to correct sight defects, but may also themselves correct sight defects by using corrective visual devices or acting to prevent eye problems.

In today's judgment, the Court finds that the two conditions imposed under **Sicilian regional law** prevent opticians from freely choosing where to exercise their independent activity. Consequently, that legislation **hinders and renders less attractive the exercise by opticians from other Member States of their activities in Italian territory through a fixed place of business**<sup>2</sup>.

The Court then examines whether such a restriction on the freedom of establishment is justified by overriding reasons in the general interest relating to the protection of health which are appropriate for securing attainment of the general objective of ensuring even distribution of healthcare providers throughout the national territory, and which do not go beyond what is necessary for attaining that objective.

In pursuing such an objective, the Court has already held that **the establishment of pharmacies may be subject to planning**. That may include prior authorisation for the establishment of a pharmacy, where that planning proves indispensable for filling in possible gaps in access to public

<sup>1</sup> Case [C-108/09 Ker-Optika](#); see also Press Release No [117/10](#).

<sup>2</sup> Joined Cases [C-570/07 and C-571/07 Blanco Pérez and Chao Gómez](#); see also Press Release No [49/10](#).

health services and for avoiding the duplication of structures, so as to ensure the provision of public health care which is adapted to the needs of the population, which covers the entire territory and which takes account of geographically isolated or otherwise disadvantaged regions.

**Those principles may also apply to opticians' shops**, in so far as opticians who provide services aimed at assessing, maintaining or restoring the state of health of patients fall within **the protection of public health**.

Thus, the ratio between the number of opticians' shops and the number of residents facilitates the **even distribution of such shops throughout the territory concerned** and ensures that the entire population has **appropriate access to the services offered by them**. The rule imposing a minimum distance between two opticians' shops, together with the rule referred to above, leads members of the public to be more confident that they have access to a healthcare provider nearby.

It is true that the need for rapid access to the products sold in opticians' shops is less great than is inherently the case for medicinal products, with the result that the interest in having an optician's shop close by is not as acute as is the case with the distribution of medicinal products. However, **it is for the Member States to decide on the degree of protection which they wish to afford to public health and on the way in which that protection is to be achieved**, which is why EU law grants them a margin of discretion in that respect.

In exercising that margin of discretion, it is permissible for the Member States to organise the planning of opticians' shops in a way comparable to that provided for the distribution of pharmacies, notwithstanding the differences which exist between the two types of healthcare service.

Nonetheless, rules seeking to ensure the even distribution of opticians' shops throughout the territory and to ensure access to them must genuinely reflect a concern to attain that objective in a consistent and systematic manner.

In that regard, the Court notes that, given the differences which exist between the rules applicable depending on the size of municipalities, and the lack of regulation of the **significant margin of discretion entrusted in the Sicilian municipal authorities, the legislation concerned risks bringing about unequal access to the establishment of opticians' shops**.

However, as that legislation empowers the competent authorities to adopt measures to ensure the equal distribution of opticians' shops throughout their territory, **it is for the national court to examine, using specific statistical data or other means, whether those authorities use appropriately, in accordance with transparent and objective criteria, the powers made available under the legislation, with a view to attaining, in a coherent and systematic manner, the objectives pursued relating to the protection of public health throughout the territory concerned**.

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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: Christopher Fretwell ☎ (+352) 4303 3355