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Advocate General's Opinion in Case C-50/21 | Prestige and Limousine

According to Advocate General Szpunar, the limit on the number of private hire vehicle licences in the Metropolitan Area of Barcelona violates the freedom of establishment

The economic viability of taxi services cannot in itself justify this licencing system

Both taxis and 'private hire vehicles' (PHVs) carry out local private transport services. In Spain, PHVs traditionally catered for the *inter*-urban transport market, but they have found their way into *intra*-urban transport in recent years. As a result, the traditional taxi model, shielded from competition thanks to State regulation, has come under challenge. As more and more suppliers of PHV services appeared, the Spanish regulator stepped in at national and local level.

In the Metropolitan Area of Barcelona ('the AMB') (Spain), specific licences are required to be able to provide urban PHV services and such licences are limited to 1 licence for every 30 taxi licences. In practice, as the number of taxi licences has remained stable for the past 35 years, this means that newcomers to the PHV market are prevented from accessing them. Regarding the additional licence required, at the material time, licences to operate as a PHV allowed for the provision of 'urban and inter-urban services throughout the national territory'.

Prestige and Limousine S.L. (P&L) is a holder of licences to operate a PHV service within the AMB. It challenges before the High Court of Justice, Catalonia (Spain) and seeks to have annulled the local regulation concerning PHV services in the whole AMB. There are several such cases pending before the national court. Fourteen of the companies that were already providing PHV services in the area, including P&L and companies linked to international platforms, consider that the purpose of the limitations and restrictions imposed on them by the local regulation is to hinder their activity and to protect the interests of the taxi sector.

The national court has doubts about the compatibility with EU Law of both the limit imposed on the number of PHV licences and the 'dual licence' regime PHVs have been subject to in the AMB, which could be seen as a strategy aimed at minimising competition from PHV services vis-à-vis taxis.

The Court of Justice is thus invited to assess whether that local regulation meets the requirements of the freedom of establishment under Article 49 TFEU, which applies to services in the field of transport.

In today's Opinion, Advocate General Maciej Szpunar stresses the fact that, although local passenger transport-on-demand services are not currently subject to harmonisation in the European Union –which means Member States are, in principle, free to intervene and regulate that field –, the freedom of establishment must be respected. The Advocate General states that **both the licence requirement as such and the ratio of 1 to 30 constitute a restriction on that freedom.**

As a restriction on the freedom of establishment cannot be justified unless it serves, in the first place, **an overriding reason relating to the public interest**, the Advocate General examines the reasons invoked as grounds of

justification by the AMB.

According to Advocate General Szpunar, **the economic viability of taxi services cannot in itself constitute an overriding reason relating to the public interest.** In his opinion, it is questionable whether *taxi* services can be regarded as a service of general economic interest and it is doubtful that taxi service operators carry out a public service obligation. He asserts that, while it is true that private local transport can sometimes fill the gap not covered by local public transport, enlarging the *supply* of local transport services would contribute to having a functioning system in place. The Advocate General raises the question of why such supply should not include PHVs. He states that the AMB can pursue its desire to guarantee the quality, security and accessibility of taxi services only in so far as it does not pursue economic objectives in doing so. **What it cannot do is to shield taxi services** from any further scrutiny **just because they could constitute a service of general economic interest.**

In a similar vein, Advocate General Szpunar underlines that **maintaining an equilibrium between PHV and taxi services cannot be regarded as a valid overriding reason relating to the public interest.** He reiterates that, **if the real intention is to provide for an adequate system of local private transport, enlarging supply by admitting more PHVs would be more helpful to solving the issue.**

Instead, the Advocate General accepts the reasons based on the managing of local transport, traffic and the use of public space and on the protection of the environment. He then examines **whether the measures in question are suitable** to attain these overriding reasons relating to the public interest.

Advocate General Szpunar does not, in principle, see any problem with the justification of an additional licence requirement, as such a licence may cater for the specificities of the region in question, particularly in terms of congestion and pollution. Still, the additional licence **must not require a duplication of controls already carried out** in the context of other procedures, either in the same State or in another Member State.

By contrast, the Advocate General cannot see any argument in favour of the suitability of the ratio of 1 PHV licence to 30 taxi licences to attain the above-mentioned overriding reasons relating to the public interest. He raises the question of why taxi services and PHV services are subject to different legal regimes if they cater for one and the same demand (private individual local transport) and if they are, as established by the national court, in competition with each other. He points out that, whereas access to the PHV market is restricted to the point of being made impossible, the problems of the regime applicable to taxis are not addressed. He mentions the fact that taxi licences that were initially obtained from the State for less than EUR 100 trade nowadays on the secondary market for more than EUR 100 000. He understands that genuinely reforming and liberalising the entire system of taxi and PHV services may place those who dearly paid for a licence and seek to recover the costs by way of fixed (high) taxi charges at a considerable disadvantage. However, the Advocate General suggests that there are other ways to offset the risk of such people being left out in the cold than doing this to the detriment of PHVs and the freedom of establishment.

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 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 Opinion is published on the CURIA website on the day of delivery.

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