

Judgment of the Dutch Council of State 202202112/1/A3 - ECLI:NL:RVS:2024:3732 - 25 September 2024

**Permits for the operation of passenger boats - Principle of proportionality - Articles 4 and 11 of Directive 2006/123/EC (Services Directive) - Article 1 of Protocol No 1 to the ECHR - Article 17 of the Charter of Fundamental Rights of the European Union**

*(Paradis Private Boat Tours v the City of Amsterdam)*

Amsterdam needs to come up with a different policy for passenger shipping in the city centre.

The Administrative Jurisdiction Division of the Council of State (Division) has put an end to the decisions of the City of Amsterdam to change operating permits of shipping companies that had been granted for an indefinite period of time to permits for a definite period.

To combat the growing crowds in Amsterdam's city centre and on the canals, the municipality of Amsterdam has opted for a new permit system that will take effect from 2024. A maximum of 550 operating permits are granted for passenger boats. All permits for an indefinite period will be changed to permits for a fixed period. The municipality argues that if it does not do so, it is in violation of the Services Directive, which stipulates that access to the passenger shipping market must remain possible.

The Division ruled that a maximum number of operating permits can be justified if there are 'overriding reasons in the public interest'. Amsterdam has not made it plausible that the quality of life in the city, the prevention of nuisance, and the importance of the quality of the canals as historical heritage are served by a volume policy. The interests of smooth and safe passage and a fair distribution of the available space are at stake. However, the volume policy is neither appropriate nor necessary to protect the overriding reasons in the public interest alleged.

Furthermore, Amsterdam has chosen not to let the old permits all expire at the same time, but to do so according to a certain ranking. As a result, the permits of shipowners with large tour boats and shipowners with many permits in particular are subsequently amended at the expense of other, often smaller, shipowners. This is contrary to the principle of proportionality.

The municipality of Amsterdam loses the case.

As a result of today's ruling, the old permits of (among others) Paradis Private Boat Tours are revived and are valid for an indefinite period of time. The Division is aware that, as long as a permit ceiling applies, this is in conflict with the Services Directive. However, these old permits were not up for review in the current procedure.

*N.B. A total of 51 lawsuits are pending before the Division concerning the temporary operating permits for passenger transport in Amsterdam. All the appellants are operators of passenger shipping companies. On 25 September 2024, the Division made public and published 27 judgments.*