



Court of Justice of the European Union

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Advocate General's Opinion in joined cases C-724/18 and C-727/18
Cali Apartments v Procureur général près la cour d'appel de Paris, Ville de Paris, and HX v Procureur général près la cour d'appel de Paris, Ville de Paris

Press and Information

In the opinion of Advocate General Bobek the Services Directive is applicable to the short-term letting of furnished accommodation in the peer-to-peer economy

A shortage of long-term housing constitutes an overriding reason of public interest capable of justifying a national measure, which requires authorisation to be obtained for the repeated letting of residential accommodation for short periods to a transit clientele, which does not take up residence there.

Cali Apartments and HX (the appellants) are each the owners of one studio apartment located in Paris. In 2015, the municipal services of the City of Paris conducted an investigation in order to determine whether the appellants were letting their studios as short-stay furnished accommodation on the Airbnb platform without authorisation to do so. As a result of the investigation Cali Apartments and HX were sentenced to pay a fine and to change the use of the property back to residential. The City of Paris intervened in the proceedings initiated by the *Procureur de la République* (Public Prosecutor). Having lost their original appeal, Cali Apartments and HX filed appeals on points of law before the *Cour de cassation* (Court of Cassation, France), the referring court.

The referring court seeks clarification as to whether national legislation that makes the letting of furnished accommodation for short stays subject to an administrative authorisation falls within the scope of the Services Directive¹.

In today's Opinion Advocate General Michal Bobek concludes that the Services Directive is applicable to national and municipal provisions governing access to the service consisting in the repeated letting for short periods, for consideration, including on a non-professional basis, of accommodation for residential use to a transient clientele, which does not take up residence there. The objective of tackling a shortage of long-term housing can, however, constitute an overriding reason relating to the public interest capable of justifying a national measure which requires authorisation to be obtained. Such national and municipal provisions are allowed by the Services Directive provided that they comply with the conditions of proportionality and non-discrimination, which is for the referring court to verify.

According to Advocate General Bobek, the necessary analysis needs to be conducted by reference to the applicable national and municipal provisions since the authorisation scheme at issue is a package of both sets of rules.

As regards the scope of application of the Services Directive, the Advocate General is of the opinion that rules subjecting to authorisation changes of use of property intended for housing fall within the scope of the Services Directive. In particular, the provisions at issue amount to an authorisation scheme within the meaning of the directive. Property owners who would like to let their furnished accommodation for short stays must follow an administrative procedure to obtain from the mayor, subject to the fulfilment of conditions, a formal administrative authorisation.

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. (OJ 2006 L 376, p. 36).

As regards the compatibility of that authorisation scheme with the Services Directive, neither the freedom to conduct business nor the right to property are absolute and that both can be limited. In other words, if the control of use is not so severe a limitation that it *de facto* amounts to expropriation or depreciation of the property by stealth, limitations of those rights are allowed.

According to Advocate General Bobek, combating a housing shortage and seeking to ensure the availability of sufficient and affordable (long-term) housing (in particular in touristic hot spots), as well as the protection of the urban environment, are valid justifications for the establishment of authorisation schemes broadly based on social policy. Thus, the authorisation scheme in issue is clearly a means permitted by the Services Directive.

Whilst the establishment of the authorisation scheme is proportionate, the proportionality of the offset requirement, in the form of the concurrent conversion of non-residential premises into housing, is somewhat more questionable, in particular as devised by the City of Paris with regard to non-professional owners. However, it is primarily for the referring court to assess the compatibility of the conditions for authorisation with the Services Directive. According to Advocate General Bobek, local diversity as to the specific authorisation conditions is not only permissible; it is even desirable. If it is accepted that the local level is allowed to adopt rules and flesh out the conditions for authorisation schemes, the proportionality of such rules is likely to depend on the taking into account of the local circumstances and specificities.

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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