Court of Justice of the European Union
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Judgment in Joined Cases C-724/18 Cali Apartments v Procureur général près la cour d'appel de Paris et ville de Paris and C-727/18 HX v Procureur général près la cour d'appel de Paris et ville de Paris

Press and Information

National legislation making the repeated short-term letting of accommodation to a transient clientele which does not take up residence there subject to authorisation is consistent with EU law

Combating the long-term rental housing shortage constitutes an overriding reason relating to the public interest justifying such legislation

Cali Apartments SCI and HX each own a studio apartment located in Paris (France). Those studio apartments, which had been offered for rent on a website, had, repeatedly and without prior authorisation from the local authorities, been let for short periods to a transient clientele.

The tribunal de grande instance de Paris (Regional Court, Paris, France), hearing an application for interim relief, then, subsequently, the cour d'appel de Paris (Court of Appeal, Paris, France), on the basis of the French Construction and Housing Code, ordered the two owners to pay a fine and ordered that the use of the properties in question be changed back to residential. That code provides, inter alia, that, in municipalities with more than 200 000 inhabitants and in the municipalities in Paris' three neighbouring departments, change of use of residential premises is subject to prior authorisation and the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there constitutes such change of use. That code also provides that that authorisation, granted by the mayor of the municipality in which the property is located, may be subject to an offset requirement in the form of the concurrent conversion of non-residential premises into housing. Again according to that code, a decision adopted by the municipal council sets the conditions for granting authorisations and determining the offset requirements by quartier (neighbourhood) and, where appropriate, by arrondissement (district), in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage.

In the context of appeals brought by the two owners against the judgments delivered by the cour d'appel de Paris (Court of Appeal, Paris), the Cour de cassation (Court of Cassation, France) made a reference to the Court of Justice for a preliminary ruling, in order to be able to ascertain the compatibility of the national legislation in question with Directive 2006/123 on services in the internal market. [1]

By its judgment of 22 September 2020, the Grand Chamber of the Court held, in the first place, that Directive 2006/123 applies to legislation of a Member State relating to activities consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there. In that regard, it emphasised that such activities are covered by the concept of 'service' within the meaning of Article 4(1) of Directive 2006/123 and do not, moreover, correspond to any of the activities that are excluded from the scope of that directive by Article 2(2) thereof. In addition, it held that the legislation in question was not excluded from the scope of Directive 2006/123 on the ground that it would constitute legislation of general application which applies indiscriminately to all persons in the field of the development or use of land and, in particular, town planning. Although

[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).

that legislation is intended to ensure a sufficient supply of affordable long-term rental housing, it is aimed only at persons engaging in a particular type of letting activity.

In the second place, the Court ruled that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to prior authorisation is covered by the concept of 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123, and not by the concept of 'requirement' within the meaning of Article 4(7) thereof. An 'authorisation scheme' is distinct from a 'requirement' inasmuch as it involves steps being taken by the service provider and a formal decision whereby the competent authorities authorise that service provider's activity, which is the case for the legislation in question.

In the third place, the Court stated that an 'authorisation scheme', such as that established by the legislation in question, must comply with the requirements set out in Section 1 of Chapter III of Directive 2006/123, and in particular in Article 9(1) and Article 10(2) of that directive, which requires an assessment, first, of whether the very principle of establishing such a scheme is justified, in light of Article 9 of that directive, and, then, of the criteria for granting the authorisations provided for by that scheme, in the light of Article 10 thereof.

Regarding the conditions laid down by Article 9(1) of Directive 2006/123, in particular the conditions that the authorisation scheme must be justified by an overriding reason relating to the public interest and that the objective pursued by that scheme cannot be attained by means of a less restrictive measure (proportionality criterion), the Court noted, first, that the legislation in question is intended to establish a mechanism for combating the long-term rental housing shortage, the objective of which is to deal with the worsening conditions for access to housing and the exacerbation of tensions on the property markets, which constitutes an overriding reason relating to the public interest. Second, the Court found that the national legislation concerned is proportionate to the objective pursued. Its material scope is limited to a specific letting activity, it excludes from its scope housing which constitutes the lessor's main residence, and the authorisation scheme which it establishes is of limited geographical scope. In addition, the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection, for example by way of a declaratory system accompanied by penalties, would not enable authorities to put an immediate and effective end to the rapid conversion trend which is creating a long-term rental housing shortage.

As regards the requirements applicable, under Article 10(2) of Directive 2006/123, to the authorisation criteria laid down by the legislation concerned, the Court noted, concerning, first, the requirement that those criteria must be justified by an overriding reason relating to the public interest, that they must, in principle, be regarded as justified by such a reason, inasmuch as they regulate the arrangements for determining, at local level, the conditions for granting the authorisations provided for by a scheme adopted at national level which itself is justified by that same reason.

Regarding, second, the requirement that those criteria be proportionate, the Court noted that the national legislation concerned provides the option to make the grant of authorisation sought subject to an offset requirement in the form of the concurrent conversion of non-residential premises into housing, the quantum of which is to be defined by the municipal council of the municipalities concerned in the light of the objective of social diversity and according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage. Although such an option constitutes, in principle, a suitable instrument for pursuing those objectives, as it leaves it to the local authorities to decide whether to lay down an offset requirement and, if necessary, to determine the quantum of that requirement, it is for the national court to verify, first of all, whether that option is an effective response to the shortage of long-term rental housing that has been observed in the territories of those municipalities. Next, the national court must make sure that that option is not only appropriate for the local rental market situation, but also compatible with the exercise of the letting activity in question. To that end, it must take into consideration the generally observed additional profitability of that activity as compared to the letting of residential premises and the practical arrangements enabling the offset requirement to be met in the local authority concerned, making sure that that requirement may be

met by a number of offset mechanisms that are in line with reasonable, transparent and accessible market conditions.

Regarding, third, the requirements of clarity, non-ambiguity and objectivity, the fact that the legislation in question does not define, in particular using numeric thresholds, the concept of the 'repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there' does not, in itself, constitute an element capable of demonstrating disregard for those requirements, provided that the local authorities concerned specify the terms corresponding to that concept in a way that is clear, unambiguous and objective. In the same vein, the fact that the national legislature confines itself to regulating the arrangements for a local authority determining the conditions for granting the authorisations provided for by a scheme by referring to the objectives which that authority must take into consideration cannot, in principle, lead to a finding that those conditions are insufficiently clear and objective, especially if the national legislation in question lays down not only the aims that must be pursued by the local authorities concerned but also the objective factors on the basis of which those authorities must determine those granting conditions.

Lastly, regarding, fourth, the requirements that the conditions for granting the authorisations be transparent and accessible and be made public in advance, the Court emphasised that it was sufficient, for those requirements to be met, that all owners wishing to let furnished accommodation to a transient clientele which does not take up residence there be in a position to familiarise themselves fully with the conditions for granting an authorisation and any offset requirements laid down by the local authorities concerned, before committing to the letting activities in question, which the display of the minutes of municipal council meetings in the town hall and online via the website of the municipality concerned enables them to do.

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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