

Case C-50/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

29 January 2021

Referring court:

Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia, Spain)

Date of the decision to refer:

19 January 2021

Applicant:

Prestige and Limousine, S. L.

Defendant:

Área Metropolitana de Barcelona (Metropolitan Area of Barcelona)

Subject matter of the main proceedings

Administrative-law challenge to a local authority regulation – Passenger transport – Licensing of private hire vehicle (PHV) services – Restrictions – Limiting the number of PHV licences on the basis of the number of taxi licences – Requirement for dual licensing in order to provide a PHV service solely in the metropolitan area of Barcelona

Subject matter and legal basis of the request for a preliminary ruling

Freedom of establishment – State aid – Article 49 TFEU and Article 107(1) TFEU – National legislation restricting the number of licences for private hire vehicles (PHV) in the metropolitan area of Barcelona in accordance with a ratio of one to every 30 taxi licences – National legislation requiring dual licensing and additional requirements for urban private hire vehicle (PHV) services

Questions referred

- 1) Do Article 49 and Article 107(1) TFEU preclude national laws — statutory and regulatory provisions — which, without any reasonable justification, limit PHV licences to one for every 30 taxi licences or fewer?
- 2) Do Article 49 and Article 107(1) TFEU preclude a rule of national law which, without any reasonable justification, requires a second licence and the fulfilment of additional requirements for PHVs wishing to provide urban services?

Provisions of EU law relied upon

Articles 49 and 107 TFEU

Judgment of the Court of Justice of 20 December 2017, *Asociación Profesional Elite Taxi*, C-434/15, EU:C:2017:98120

Provisions of national law relied upon

Under Article 43 of the Ley 16/1987, de 30 de julio, de ordenación de los transportes terrestres (Law 16/1987 of 30 July 1987 on the regulation of land transport) (BOE 182 of 31 July 1987), as amended by Royal Decree-Law 3/2018 of 20 April 2018 (BOE 97 of 21 April 2018), ('the LOTT'), the grant of a public transport licence is conditional on the provision of evidence by the applicant undertaking that, amongst other things, it satisfies such other specific conditions required for the proper performance of the services as may be established by regulation, having regard to principles of proportionality and non-discrimination.

Article 48 of the Law provides as follows:

‘1. The grant of a public transport licence shall be non-discretionary and may therefore be refused only where the necessary requirements are not satisfied.

2. However, in accordance with European Union laws and any other applicable provisions, where the supply of public hire vehicles is subject to quantitative limits within the autonomous community or at a local level, regulations may be made establishing limits on the number of new licences granted for the provision of interurban transport by the aforesaid class of vehicles and for private hire vehicles.

3. Without prejudice to the provisions of the previous paragraph, in order to maintain an appropriate balance in the supply of both forms of transport, the grant of new licences for private hire vehicles may be refused where the proportion of existing licences in the territory of the autonomous community in which the vehicles are intended to be established is more than one for every 30 licences issued for public hire vehicles.

However, those autonomous communities to which responsibility in respect of licences for private hire vehicles has been delegated by the national government may alter the rule on proportionality set out in the previous paragraph, provided that the rule they establish is less restrictive.’

Article 91 of the LOTT provides that public transport licences shall be valid for the provision of services throughout national territory, with no restrictions as regards the starting point or destination of the journey, with the exception, amongst others, of licences for private hire vehicles, which must comply with any conditions imposed by regulations as regards the starting point, destination or route offered by services.

The LOTT is implemented by the Reglamento de la Ley de Ordenación de los Transportes Terrestres (Regulation implementing the Law on the regulation of land transport), which has been amended several times. With regard to this regulation, attention should be drawn to the Orden FOM/36/2008, de 9 de enero, por la que se desarrolla la sección segunda del capítulo IV del título V, en materia de arrendamiento de vehículos con conductor, del Reglamento de la Ley de Ordenación de los Transportes Terrestres (Order FOM/36/2008 of 9 January 2008 implementing the second section of Chapter IV of Title V of the Regulation implementing the Law on the regulation of land transport, concerning private hire vehicles), which was in turn amended by Order FOM/2799/2015 of 18 December 2015. Article 1 of the order, entitled ‘Mandatory licensing requirement’, stipulates that ‘in order to carry on private hire vehicle services, a licence must be obtained for each vehicle that is to be used for such services ...’.

The main proceedings concern a challenge to the *Reglamento de ordenación de la actividad de transporte urbano discrecional de viajeros con conductor en vehículos de hasta nueve plazas que circula íntegramente en el ámbito del Área Metropolitana de Barcelona* (Regulation governing non-scheduled urban transport services provided by private hire passenger vehicles with up to nine seats operating solely within the Metropolitan Area of Barcelona, ‘the RVTC’), approved on 26 June 2018 by the Consejo Metropolitano del Área Metropolitana de Barcelona (Metropolitan Council of the Metropolitan Area of Barcelona, ‘the AMB’ or ‘the defendant’) and published in the Boletín Oficial de la Provincia de Barcelona (Official Gazette of the Province of Barcelona, ‘the BOPB’) on 9 July 2018 and also in the Diari Oficial de la Generalitat de Catalunya (Official Gazette of the Government of Catalonia, ‘the DOGC’) number 7897 of 14 June 2019, which came into force on 25 July 2018.

After citing the legal bases for the regulation in national law and the law of the Autonomous Community of Catalonia, the preamble to the RVTC notes that the passenger transport model in question is subject to government regulation by means of various different techniques, in a manner completely different from the models adopted elsewhere, under which passenger transport in its various different forms is ‘liberalised’ in a way that favours private transport. The model is justified by reference to the pursuit of environmental and financial sustainability

and the provision of new spaces to be used for public purposes other than vehicle traffic. The preamble states that this is incompatible with promoting an increase in urban private hire vehicles hired for individual use or for the total capacity of the vehicle.

Article 1 establishes that the purpose of the RVTC is to regulate non-scheduled urban passenger transport provided by vehicles with up to nine seats operating solely within the metropolitan area. Article 2 establishes that the geographical scope of the regulations is restricted to the Metropolitan Area of Barcelona. In Article 3, private hire vehicle services provided by vehicles with up to nine seats including the driver (PHV) are defined as services which are provided for hire in return for payment, which do not operate in accordance with linear routes or area networks or at pre-determined times, and for which payment is effected by means of a contract with a single user or in respect of the total capacity of the vehicle. Under Article 5, powers of administrative intervention in these services lie with the Metropolitan Area of Barcelona (the local authority), acting through the Instituto Metropolitano del Taxi (Metropolitan Taxi Council, 'IMET').

Under Article 6 of the RVTC, the Metropolitan Area of Barcelona is responsible for issuing licences to provide such services, for reviewing the conditions governing the issue of licences and, where appropriate, for revoking licences. Oversight of the activity includes, amongst other things, regulating the activity, regulating the licensing system and regulating the penalties regime.

Article 7 of the RVTC stipulates that, in order to provide the above service within the unitary urban transport management area comprising the territory of the Metropolitan Area of Barcelona, a licence must first be obtained which authorises the licence-holder in respect of each vehicle that is to provide the service. Pursuant to Article 7(4) and (5), services starting and ending within this geographical area may be provided only under a licence granted by the Metropolitan Area of Barcelona, and that licence must be held in conjunction with any other licences to be issued by other authorities pursuant to their powers.

Article 10 of the RVTC, entitled 'Determining the number of licences', establishes that it is for the Metropolitan Area of Barcelona to fix the maximum number of licences at any given time, having regard to the need to ensure a sufficient supply of high-quality services to the public and to enable operators to remain profitable.

The transitional provision in the RVTC recognises the validity of licences granted previously that were still in effect on the entry into force of the RVTC, and stipulates that they are governed by and subject to the new regulation. Under the first additional provision, the total number of licences is limited to those granted in accordance with the transitional provision. The same provision also establishes that the Metropolitan Taxi Council is responsible for proposing the commencement of the process for determining the maximum number of licences over and above those provided for in the transitional provision, and stipulates that

the number of licences in force at any time may not exceed the ratio of one PHV licence to 30 taxi licences.

Brief statement of the facts and the main proceedings

- 1 For several years now, taxis and private hire vehicles ('PHV') have been competing to provide urban passenger transport services.
- 2 While, strictly speaking, taxi services are not public services, they are services of general interest and, as such, they are subject to regulation and to restrictions on the number of licences, with tariffs being subject to prior administrative approval.
- 3 The number of PHV licences is also limited. At the time of the events in question, PHVs were able to provide 'interurban' and 'urban' transport services throughout Spain (and, in particular, at autonomous community or regional level); tariffs did not require prior authorisation but were subject to a system in which the fare was agreed beforehand, so that the user knew the total cost of the service in advance and, where applicable, could pay for it electronically. Unlike taxis, PHVs could not use bus lanes, did not have ranks on the public highway and could not pick up fares in the street unless the service had been booked in advance via the relevant app.
- 4 The applicant is one of the undertakings that provides PHV services within the Metropolitan Area of Barcelona. On 10 July 2018 the applicant lodged an administrative-law action against the PHV Regulation, seeking to have it annulled. The action was opposed by the local authority of the Metropolitan Area of Barcelona, whose Metropolitan Council had approved the regulation on 26 June 2018.

Main arguments of the parties to the main proceedings

- 5 The applicant argues that, in adopting the RVTC, the Metropolitan Area of Barcelona was purely seeking to hinder the activities of PHV undertakings, with the sole aim of protecting the interests of the 'taxi' sector by imposing restrictive regulations at metropolitan level on PHV services, contrary to both domestic and EU law.
- 6 In essence, the applicant considers that the RVTC has infringed the rights of freedom of establishment, free enterprise and property, in so far as: (i) it has, without justification, introduced a dual licensing system in that, in addition to the PHV licence (governed by national law and administered by the autonomous communities or regions) it has added a metropolitan licence, to be administered by the AMB, which imposes additional requirements on top of those provided for in the national PHV licensing regulations, and (ii) it has excluded the bulk of current and future PHV licence holders from obtaining a metropolitan licence by establishing a limit for which there is no reasonable justification.

- 7 The defendant has taken the view that the RVTC is fully compatible with European Union law.

Brief statement of the reasons for the request for a preliminary ruling

- 8 In the view of this court, in so far as Article 48(3) of the LOTT — which provides the legal basis for the restrictions imposed on the number of PHV licences by the RVTC — establishes a limit on the number of PHV licences without the slightest justification, it could be deemed arbitrary.
- 9 It could also be considered contrary: (i) to freedom of establishment under Article 49 TFEU, in that it affects all PHV undertakings established in the European Union which may at any time be interested in establishing themselves in Spain, which they would be prevented from doing by a combination of Article 48(3) of the LOTT and the number of existing PHV licences, and (ii) to the duty not to impede trade within the European Union, pursuant to Article 107(1) TFEU.
- 10 The court has similar doubts as regards the compatibility of the ‘dual licensing’ system imposed on PHVs within the metropolitan area of Barcelona with the abovementioned precepts of EU law.
- 11 At the time of the events, Article 91 of the LOTT established that PSV licences would supply the authorisation needed to provide ‘urban and interurban services throughout national territory’. The additional requirement to obtain a licence from the Metropolitan Area of Barcelona in order to provide urban PHV services within the metropolitan area (which is, moreover, subject to additional requirements) could perhaps be seen as a stratagem intended to minimise the competition with taxis previously provided by PHV services; and the court has serious doubts over the soundness or rigour of the supporting arguments that have been adduced.
- 12 In its judgment number 921 of 4 June 2018 in appeal No 438/2017, the Tribunal Supremo (Supreme Court) also recognised that there was no justification for the 1/30 ratio.
- 13 Since the administrative-law action that is the subject of the main proceedings was lodged, the LOTT has been amended by Royal Decree-Law 13/2018 of 28 September 2018 (BOE 236 of 29 September 2018), with the following results: (i) the 1/30 quota system provided for in Article 48(3) of the LOTT has been maintained and (ii) PHV services have been restricted to ‘interurban’ transport services, with urban or metropolitan PHV services being due to disappear within 4 years.
- 14 As far as present purposes are concerned, this has resulted in the approval of a new metropolitan regulation, which has also been challenged in this court. However, the interpretation of EU law sought in this application for a preliminary ruling is considered necessary in order to reach a decision in the present

proceedings, particularly in the light of the overall strategic context that has been described, which may very well continue to apply.

- 15 Moreover, there are 14 further actions on the same issue pending before this court, some of which have been lodged by undertakings that are linked to international platforms.

WORKING DOCUMENT