

# Anonymised version

Translation

C-190/23 – 1

## Case C-190/23

### Request for a preliminary ruling

**Date lodged:**

17 February 2023

**Referring court:**

Tribunal Judiciaire de Paris (France)

**Date of the decision to refer:**

17 February 2023

**Applicant:**

Le Procureur de la République de Paris: Section S2

**Defendants:**

VGG AG

VGG ENTERTAINMENT INC

Dan A.

SAS M. Trade

SASU D.

SAS T. Logistique

Arthur C.

SAS S.

Grégory B.

David C.

David M.

IE

CID

---

**REQUEST FOR A  
PRELIMINARY RULING  
FROM THE COURT OF JUSTICE  
OF THE EUROPEAN UNION**

[...]

**ANONYMISATION OF THE REQUEST**

The investigating judges decided to submit this request anonymously pursuant to Article 95 of the Rules of Procedure of the Court of Justice. The request concerns a question formulated at the pre-trial judicial investigation stage, and thus in a procedure which is not public and whose content is accessible only to the parties, in accordance with Article 11 of the code de procédure pénale (French Code of Criminal Procedure).

The defendants in the pre-trial judicial investigation are ticket resale websites for sporting, cultural and commercial events. Their names will be abbreviated in this request.

**I. PARTIES TO THE MAIN PROCEEDINGS AND THEIR REPRESENTATIVES**

1. The Procureur de la République de PARIS (State Prosecutor, Paris) [...]
2. VGG AG [...]
3. VGG ENTERTAINMENT INC [...]
4. A. Dan and SAS M. TRADE
5. SASU D. represented by its chairman A. Dan
6. K. Armand [...]
7. SAS T. LOGISTIQUE and its legal representative C. Arthur
8. SASU S. and its representative Grégory B
9. C. David

10. M. David

11. SARL C, legal representative: A. Michel as managing director

[...]

## II. SUBJECT MATTER OF THE DISPUTE AND RELEVANT FACTS

5. Investigations have been carried out into the ticketing sector for cultural and sporting events following numerous complaints filed by event organisers and producers or individuals who consider themselves aggrieved by the commercial practices employed on the websites [www.\\_\\_\\_\\_.fr](http://www.____.fr) and [www.\\_\\_\\_\\_.com](http://www.____.com). These websites are owned by the VGG Group, a corporate group that includes, inter alia, VGG Entertainment Incorporated and VGG AG.

6. VGG Entertainment Inc. is a company incorporated in the United States, registered in the state of Delaware, which only hosts the website [www.\\_\\_\\_\\_.fr](http://www.____.fr).

7. VGG AG is a company incorporated in Switzerland, registered in the Canton of Geneva since 5 January 2012, which hosts, inter alia, the website [www.\\_\\_\\_\\_.com](http://www.____.com).

8. The abovementioned companies host various websites offering two types of services:

- where VGG has obtained the express permission of the event organisers, those event organisers may use its websites to sell tickets directly for events at whatever price they choose;
- the various websites can be used to trade ‘second-hand’ tickets, where buyers and sellers buy and sell tickets to different sporting, cultural and commercial events.

9. VGG’s rapid growth was contentious.

On the one hand, there were problems with consumers, since VGG did not always perform the necessary checks given the significant growth in transactions. Between 30 January 2017 and 3 January 2018, hundreds of consumers filed complaints with the Service National des Enquêtes (French National Investigation Service) at the Direction générale de la concurrence, de la consommation et de la répression des fraudes (French Directorate-General for Competition Policy, Consumer Affairs and Fraud Control) (DGCCRF) and/or directly with the Public Prosecutor’s Office, in connection with sales on the websites [www.\\_\\_\\_\\_.fr](http://www.____.fr) and [www.\\_\\_\\_\\_.com](http://www.____.com). The complaints concerned, inter alia:

- bank accounts being debited by more than the amount stated at the end of the ordering process;
- tickets with a much lower face value than the price paid;

- the names of third parties featuring on the tickets received.

10. Second, the emergence of VGG companies in the ticketing sector has prompted a reaction from the various players in the ‘primary market’, namely the producers, organisers or owners of the rights of exploitation of the shows or events.

11. These primary market players include organisations such as Prodiss (French national union of producers, broadcasters, festivals and performance venues), UEFA (European Union of Football Associations), Foot Unis, UFC QUE CHOISIR (a consumer association) and Théâtre du Châtelet.

12. Those entities have filed complaints or have brought civil actions by joining the pre-trial judicial investigation. They consider the activities of the VGG companies to be detrimental to the certainty of both the market and consumers.

13. The background to this dispute, which is before the criminal courts, is the liberalisation of the highly lucrative ticketing market. The VGG companies contest the legal framework for that market.

14. After completing its enquiries and interviews, the National Investigation Service at the DGCCRF forwarded a report to the State Prosecutor of Paris under Article 40 of the French Code of Criminal Procedure. The report, which is dated 4 January 2018, alleges conduct characterised as:

- the sale and attempted sale of tickets at a price higher than the price fixed and advertised at concerts subsidised by the State, departments or municipalities (Article 1 of the loi du 27 juin 1919 (Law of 27 June 1919) prohibiting the touting of theatre tickets);
- the sale, offer for sale or presentation with a view to sale or provision of the means for the sale of admission tickets to a sporting, cultural or commercial event or a live show, in the usual way and without the authorisation of the producer, organiser or owner of the rights of exploitation of that event or show (Article 313-6-2 of the code pénal (French Criminal Code)).

15. By bills of indictment and supplementary applications of 4 June, 8 August, 6 December 2018, 31 May 2019, 15 March and 6 November 2020, the public prosecutor referred the case to an investigating judge to gather evidence on misleading commercial practices and the unlawful resale of tickets. Another case file prepared for an earlier complaint seeking to join a civil action to proceedings was the subject of a joinder.

16. On 27 September 2021, a judicial investigation was opened after strong or concordant evidence was found which made it probable that the VGG companies could have committed or been complicit in the commission of the abovementioned offences.

17. On that basis, they [...] were heard on the substance of the case on 10 December 2021.

18. The VGG companies acknowledged the complaints of misleading commercial practices and were taking steps to compensate consumers who had purchased tickets. However, they contested the merits of the prosecution for unlawful resale.

19. [...].

21. Furthermore, the VGG companies contested the conventionality of the French legal texts prohibiting ticket resale – namely Article 1 of the Law of 27 June 1919 prohibiting the touting of theatre tickets and Article 313-6-2 of the French Criminal Code, derived from loi No 2012-348 (Law No 2012-348) of 12 March 2012 aimed at facilitating the organisation of sporting and cultural events – on the grounds that they were likely to infringe several principles and legal texts derived from EU law. In their observations of 4 May 2022 and 14 November 2022, the VGG companies produced academic reports and set out their arguments for partial removal of the need to adjudicate according to which:

- The ticket sales that the VGG companies are alleged to have made, in so far as they are based on a prohibition on the sale of such tickets, interferes with the exercise of economic activities within the European Union and falls within the scope of EU law, entitling the VGG companies to rely on the provisions of Article 49 of the Charter of Fundamental Rights and Articles 52 and 56 TFEU;
- Article 1 of the Law of 27 June 1919 and Article 313-6-2 of the French Criminal Code are contrary to Articles 52 and 56 TFEU in so far as they prohibit the resale or facilitation of the resale between European natural or legal persons, situated in two different Member States, of tickets purchased on the primary market, and this in a disproportionate manner in view of the legitimate justifications provided for in Article 52 TFEU and the overriding reasons in the public interest;
- Article 313-6-2 of the French Criminal Code is contrary to Article 49(3) of the Charter of Fundamental Rights of the European Union because it provides for excessive penalties in view of the minor nature of the offences committed;
- Article 1 of the Law of 27 June 1919 is contrary to Article 49(1) of the Charter of Fundamental Rights of the European Union because it does not allow interested parties to know whether their sale or transfer relates to a subsidised ticket or a ticket offered on favourable terms or the defendants to know the exact penalty incurred, since the penalty is expressed in old francs without a specific reference to the applicable legal texts;

- Article 313-6-2 of the French Criminal Code is contrary to Article 49(3) of the Charter of Fundamental Rights of the European Union because it creates uncertainty for a person providing the means for the sale of admission tickets to an event or a show, since that person is unable to know whether the seller has obtained the authorisation of the producer, organiser or owner of the rights of exploitation, even though the concept of organiser is not clearly defined by the applicable legal texts.

22. The VGG companies therefore proposed that the questions referred for a preliminary ruling as set out below should be referred to the Court of Justice of the European Union, since the principle of primacy and direct effect of EU law requires the criminal court to establish that the criminal legislation applicable to the case complies with the Treaties, and in particular the guarantees, freedoms and legal texts of the European Union, where they are directly applicable.

### III. REGULATION

23. Classification of the charges brought against the VGG companies by the investigating judge on 27 September 2021 and for which they remain under prosecution:

- ‘having sold, above face value, tickets for subsidised concerts or events’; an offence under Article 1 of the Law of 27 June 1919 prohibiting the touting of theatre tickets;
- ‘having sold, offered for sale and presented with a view to sale of admission tickets to live shows in the usual way and without the authorisation of the producers; to the detriment, inter alios, of UEFA, Théâtre du Châtelet, Prodiss and Première Ligue’; an offence under Article 313-6-2 of the French Criminal Code;
- ‘having substantially altered the economic behaviour of the consumer, in this case by offering for sale admission tickets for events with misleading information such as:
  - a reduced price throughout the booking process,
  - the fact that the tickets will only be available for a limited period,
  - the seller’s status, or
  - the absence of any explanation that the ticket sold will not be in the consumer’s name but in the name of a third party, without mentioning that the tickets are being resold’; an offence under Articles L. 121-2 to L. 121-4 and L. 132-2 of the code de la consommation (French Consumer Code) on misleading commercial practices.

24. The prevention of misleading commercial practices is recognised in principle by the VGG companies, which have taken the steps of offering consumers compensation and changing the layout of their platform to provide consumers with more information.

25. By contrast, the following provisions are contested in the light of EU law and principles, and require the interpretation of the Court of Justice of the European Union.

#### IV. PROVISIONS OF NATIONAL LAW APPLICABLE TO THE FACTS OF THE DISPUTE

##### **26. Article 1 of the Law of 27 June 1919 prohibiting the touting of theatre tickets:**

‘Anyone convicted of having sold or transferred, or of having attempted to sell or transfer, at a price higher than the price fixed and advertised in theatres and at concerts subsidised or otherwise offered on favourable terms by the State, departments or municipalities, or in return for a premium of any kind, tickets purchased from the box office or sales office of said theatres or concerts, shall be liable to a fine of between sixteen (old) francs and five hundred (old) francs. In the event of a repeat offence within three years of the last conviction, the fine may be increased to 3 750 francs.’

##### **27. Article 313-6-2 of the French Criminal Code, derived from Law No 2012-348 of 12 March 2012 aimed at facilitating the organisation of sporting and cultural events:**

‘The act of selling, offering for sale or presenting with a view to sale or transfer or providing the means for the sale or transfer admission tickets to a sporting, cultural or commercial event or to a live show, in the usual way and without the authorisation of the producer, organiser or owner of the rights of exploitation of such event or show, shall be liable to a fine of EUR 15 000. Said fine shall increase to EUR 30 000 in the event of a repeat offence.’

For the application of the first subparagraph, any ticket, document, message or code, in any form or medium, serving as proof of having obtained from the producer, organiser or owner of the rights of exploitation the right to be admitted to the event or show, shall be deemed an admission ticket.’

#### V. RELEVANT NATIONAL CASE-LAW AND PENDING QUESTION REFERRED FOR A PRELIMINARY RULING FROM THE COURTS OF OTHER MEMBER STATES OF THE EUROPEAN UNION

28. [...] [Arguments on a priority question of constitutionality, a question of French constitutional law irrelevant to these proceedings.]



35. To our knowledge, the national criminal courts have not given a ruling on the conventionality of Article 313-6-2 of the French Criminal Code or Article 1 of the Law of 27 June 1919.

36. Conversely, it should be pointed out that the Italian Council of State, in proceedings initiated by the Autorità per le garanzie nelle comunicazioni (Italian Communications Regulatory Authority) (AGCOM) against VGG, referred three questions to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU (Case C-70/22, currently pending before the Court).

37. However, it is worth noting that the questions referred for a preliminary ruling concern the conflict between Italian legal provisions and Directive 2000/31/EC and Articles 102 and 106 TFEU.

## **VI. GROUNDS FOR THE ORDER FOR REFERENCE**

### **38. Position of the VGG companies:**

39. The VGG companies take the view that they cannot be prosecuted or sent for trial for the offences provided for and prohibited by Article 1 of the Law of 27 June 1919 and Article 313-6-2 of the French Criminal Code, since they are manifestly contrary to EU law and in particular Articles 52 and 56 TFEU, Article 49(1) and (3) of the Charter of Fundamental Rights of the European Union and the principle of legal certainty enshrined by the Court of Justice of the European Union as a general principle of EU law.

## **VII. QUESTIONS REFERRED**

40. Must Article 56 TFEU be interpreted as allowing the national authorities to apply legislation derived from Article 1 of the French Law of 27 June 1919 prohibiting the touting of theatre tickets and Article 313-6-2 of the French Criminal Code introduced by the Law of 12 March 2012, in so far as those provisions have the effect of prohibiting, save in exceptional cases, the resale or facilitation of the resale between European natural or legal persons, situated in two different Member States, of tickets purchased on the primary market?

41. Must Articles 56 and 52 TFEU and the associated overriding requirements in the public interest be interpreted as allowing the national authorities, on the basis of legislation derived from Article 1 of the French Law of 27 June 1919 prohibiting the touting of theatre tickets and Article 313-6-2 of the French Criminal Code introduced by the Law of 12 March 2012, to justify restrictions that do not seem capable of effectively protecting the objectives relied on, such as the protection of public policy and consumer protection, or that are disproportionate in view of the alternative measures that could be envisaged?



42. Must Article 49(3) of the Charter of Fundamental Rights of the European Union be interpreted as permitting fines of EUR 15 000 and, in the event of a repeat offence, EUR 30 000 to be imposed on anyone infringing Article 313-6-2 of the French Criminal Code, introduced by the French Law of 12 March 2012, in view of the restrictive nature of the legislative measures put in place and the minor nature of the offences committed?

43. Must the principle of legal certainty enshrined by the Court of Justice of the European Union as a general principle of European Union law, and Article 49(1) of the Charter of Fundamental Rights of the European Union enshrining the principle that offences and penalties must be defined by law, be interpreted as allowing Article 1 of the French Law of 27 June 1919 to be maintained, which does not allow interested parties to know whether their sale or transfer relates to a subsidised ticket or a ticket sold on favourable terms, when they could be criminally liable for that fact, and does not allow the defendants to know the exact penalty incurred, since that penalty is expressed in old francs without a specific reference to the applicable legal texts?

44. Must the principle of legal certainty enshrined by the Court of Justice of the European Union as a general principle of European Union law, and Article 49(1) of the Charter of Fundamental Rights of the European Union enshrining the principle that offences and penalties must be defined by law, be interpreted as precluding the application of Article 313-6-2 of the French Criminal Code, which creates uncertainty for a person presenting or providing the means for the sale of admission tickets to an event or a show since that person is unable to know whether the seller has obtained the authorisation of the producer, organiser or owner of the rights of exploitation, even though the concept of organiser is not clearly defined in the applicable legal texts?

45. Does Article 313-6-2 of the French Criminal Code contribute to a high level of consumer protection as required by EU law and enshrined in Article 38 of the Charter of Fundamental Rights of the European Union, since that provision of criminal law makes it possible to tackle ticket speculation by unauthorised intermediaries?

46. Is the prohibition of the resale of tickets by a person who is not the organiser or producer of the event or a person authorised to do so, established by Article 313-6-2 of the French Criminal Code, not contrary to the principle of open competition enshrined in EU law (Articles 101 to 109 TFEU)?

47. Does Article 313-6-2 of the French Criminal Code not grant an exclusive right to the organisers of events contrary to Article 106(1) TFEU, in so far as it confers on those organisers a monopoly over the sale of their tickets?

[...]