

Yearbook decision KHO 2018:28
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State aid – SGEI – Fulfilment of the conditions for State aid – Economic advantage – Selectivity of the economic advantage – Emergency care service

In accordance with the decision being appealed and a service-level proposal for an emergency care service attached to it, a Hospital District Municipal Authority (Municipal Authority) had signed essentially identical cooperation agreements with two regional rescue departments concerning the organisation and provision of an emergency care service as of 1 January 2015.

Contrary to the findings of the regional Administrative Court acting as the Court of first instance, the Supreme Administrative Court held that the case did not concern a service of a general economic interests (SGEI) within the meaning of the Altmark case law and the Commission Decision of 20 December 2011 (2012/21/EU). The Supreme Administrative Court further held that by its decision the Municipal Authority had not in fact imposed on the rescue departments public service obligations within the meaning of the Altmark case law and the Commission Decision. Therefore, it was not necessary to assess whether the cumulative criteria for imposing public service obligations (judgment of 24 July 2003, *Altmark Trans*, C-280/00, ECLI:EU:C:2003:415, paragraphs 87 to 94) on the basis of which compensation for such service would not constitute State aid were fulfilled. Neither had the Municipal Authority claimed of having been imposing public service obligations to regional rescue departments.

The competence of these rescue departments to organise emergency care services in cooperation with the Municipal Authority followed from the national Health Care Act and Rescue Act. The Supreme Administrative Court held that the provisions on emergency medical care of the Health Care Act and the Rescue Act, along with the emergency care cooperation agreements, imposed special obligations on the rescue departments. Therefore, the position of the rescue departments as the providers of emergency care services differed from that of the appellant private undertakings. While, in accordance with the obligation to provide health care under the Health Care Act, the Municipal Authority may obtain emergency care services from other providers, this does not constitute cooperation in the provision of emergency medical care comparable to that of rescue departments.

Rescue departments, unlike other service providers operating on the emergency care service market, were not allowed to offer emergency care services to others than the said Municipal Authority, nor were they allowed to participate in competitive tendering procedures to offer emergency medical care or to market emergency care services in a manner that would impair the cooperation agreement. The provisions of the Health Care Act and the Rescue Act on emergency medical care, along with the cooperation agreements, imposed obligations on the rescue departments concerning major accidents, incidents and preparedness for exceptional circumstances. In addition, under the cooperation agreements the rescue departments were responsible for implementing the emergency care service in accordance with the net cost principle defined in the agreements. Under the cooperation agreement, all income from emergency medical care was allocated to emergency medical care, therefore reducing its net costs.

Due to the differences described above, the Supreme Administrative Court stated that within the meaning of the case-law of the Court of Justice of the European Union, in a legal and factual situation the rescue departments were not comparable to the providers offering their emergency care services on the open market. Hence the appealed decision of the North Ostrobothnia Hospital District Joint Municipal Authority was not considered to confer a selective advantage on the said rescue departments over the appellant private undertakings for the purposes of the Union's State aid rules. Based on what has been explained above, in providing emergency care services the rescue departments could not have been considered to have received economic advantage within the meaning of Article 107(1) TFEU.

Since the criteria laid down in Article 107 TFEU are cumulative, it was not necessary for the purposes of the case to assess whether the other criteria referred to in the Article were fulfilled. The appealed decision of the Hospital District Joint Municipal Authority had therefore been made in proper order and there were no grounds to repeal it on account of the appeal.

Article 106(1) and (2), Article 107(1) and Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)

Commission Decision 2012/21/EU on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest

Health Care Act (1326/2010), section 39, subsection 2

Rescue Act (379/2011), section 27, subsection 2 and subsection 3, paragraph 1

Local Government Act (365/1995), section 90 (1375/2007), subsection 2

Judgments of the Court of Justice of the European Union, judgment of 24 July 2003, C-280/00, *Altmark Trans*, ECLI:EU:C:2003:415, judgment of 18 July 2013, C-6/12, *P*, ECLI:EU:C:2013:525, judgment of 19 March 2015, C-672/13, *OTP Bank*, ECLI:EU:C:2015:185, judgment of 21 December 2016, C-524/14 P, *Commission v Hansestadt Lübeck*, ECLI:EU:C:2016:971, judgment of 20 December 2017, C-70/16 P, *Comunidad Autónoma de Galicia and Retegal v Commission*, ECLI:EU:C:2017:1002, and judgment of 2 September 2010, C-399/08 P, *Commission v Deutsche Post*, ECLI:EU:C:2010:481