Reports of Cases

ORDER OF THE COURT (First Chamber)

12 May 2016*

(Reference for a preliminary ruling — Rules of Procedure of the Court of Justice — Article 53(2) — Freedom of establishment and freedom to provide services — Purely internal situation — Court's manifest lack of jurisdiction)

In Joined Cases C-692/15 to C-694/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decisions of 12 November 2015, received at the Court on 21 December 2015, in the proceedings

Security Service Srl (C-692/15),

Il Camaleonte Srl (C-693/15),

Vigilanza Privata Turris Srl (C-694/15)

v

Ministero dell'Interno (C-692/15 and C-693/15),

Questura di Napoli,

Questura di Roma (C-692/15),

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, C.G. Fernlund, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: Italian.

Order

1 These requests for a preliminary ruling concern the interpretation of Articles 49 and 56 TFEU.

2 The requests have been made in three sets of proceedings between, on the one hand, Security Service Srl (Case C-692/15), Il Camaleonte Srl (Case C-693/15) and Vigilanza Privata Turris Srl (Case C-694/15) (together 'the security companies') and, on the other, the Ministero dell'Interno (Ministry of the Interior) (Cases C-692/15 and C-693/15), the Questura di Napoli (Office of the Commissioner for Police, Naples, Italy) and the Questura di Roma (Office of the Commissioner for Police, Rome, Italy) (Case C-692/15) regarding the lawfulness of the requirements relating to the provision of certain security services.

Legal context

Italian law

3 Article 2 of the regio decreto legge n. 1952/1935 (convertito in legge n. 508/1936) (Royal Decree-Law No 1952/1935 (converted into law by Law No 508/1936)) requires any person who intends to run a private security service to submit the regulations of that service for the approval of the police department of the province in whose territory that person intends to offer such services.

4 Article 3 of Royal Decree No 1952/1935 states:

'The Questore (Commissioner for Police) shall have the power to amend the rules on the provision of security services submitted in accordance with Article 2 and to add to those rules all such obligations as he may consider called for in the general interest.'

5 The regulation laying down rules governing the minimum characteristics for the structure of, and minimum quality requirements for, security undertakings and services, adopted by the decreto ministeriale n. 269 (Ministerial Decree No 269) of 1 December 2010, lays down, according to the referring court, the 'minimum' characteristics and conditions which a security company must satisfy in order to be allowed to carry on its activity. The Questore retains the right to impose special provisions for specific circumstances or specific territorial areas.

The cases in the main proceedings

6 With a view to operating in the Province of Naples, the security companies each asked the Questura of Naples to approve their 'technical regulations regarding the provision of security services'. By decrees of 10 February, 4 September and 7 July 2014, respectively, the Questura of Naples approved those regulations on condition, inter alia, that they provided that those companies should assign at least two agents to every security operation in respect of random on-site action, services provided in response to an alarm and the transport of valuables with a value not exceeding EUR 100 000 ('the requirements in question').

7 Security Service challenged the decision of the Questura of Naples concerning it before the Tribunale amministrativo regionale per il Lazio (Lazio Regional Administrative Court, Italy). Il Camaleonte and Vigilanza Privata Turris too brought such actions before the Tribunale amministrativo regionale per la Campania (Campania Regional Administrative Court, Italy).

8 Those three actions were dismissed by the courts concerned.

9 The security companies lodged an appeal before the referring court against those decisions dismissing their actions asserting, in particular, that the requirements in question ran counter to the relevant national regulations laying down the minimum requirements for the organisation of and provision of services by those undertakings, on the one hand, and to the fundamental principles of EU law relating to freedom of establishment and freedom to provide services, as interpreted by the Court in its judgment of 13 December 2007 in *Commission* v *Italy* (C-465/05, EU:C:2007:781), on the other.

10 The referring court takes the view that the requirements in question are not vitiated by illegality under national law.

11 In respect of EU law, the referring court considers that it is not certain that the solutions adopted in the judgment of 13 December 2007 in *Commission* v *Italy* (C-465/05, EU:C:2007:781) are applicable in order for the compatibility of the requirements in question with Articles 49 and 56 TFEU to be assessed.

12 According to that court, the requirements in question all relate to private security services in the territory of the Provinces of Naples and Caserta (Italy) and have therefore no discriminatory effects contrary to principles such as the principle of free competition, the right of establishment and freedom to provide services.

13 Moreover, the increase in operating costs created by the requirements in question does not seem unsustainable for the security companies and the measures adopted by the Questura of Naples, although discretionary, are not disproportionate in the light of the objective requirements of the Provinces of Naples and Caserta either. In addition, the action of the security companies helps supplement the crime prevention and crime fighting activities of the police. Consequently, organising the activities of those companies according to certain yardsticks of efficiency and efficacy meets not only the interests of those undertakings' customers but also those of the local authority and of the State.

14 While considering that the appeals pending before it could be rejected, the referring court submits that the conditions for making a reference to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU have been satisfied.

The Court's jurisdiction to hear and determine requests for a preliminary ruling

15 In accordance with Article 53(2) of the Rules of Procedure of the Court, where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

16 That provision should be applied in the present joined cases.

17 In accordance with the settled case-law of the Court of Justice, the procedure established in Article 267 TFEU is an instrument of cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of European Union law which they need in order to decide the disputes before them (see, inter alia, judgment of 27 November 2012 in *Pringle*, C-370/12, EU:C:2012:756, paragraph 83 and the case-law cited).

18 The requirements concerning the content of a request for a preliminary ruling are explicitly set out in Article 94 of the Rules of Procedure of which the referring court is supposed, in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound scrupulously to observe (see, to that effect, order of 3 July 2014 in *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21).

19 The Court has observed time and again that the necessity of providing an interpretation of EU law that will be of use to the national court means that the national court must define the factual and legislative context of the questions it asks or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, order of 18 April 2013 in *Adiamix*, C-368/12, not published, EU:C:2013:257, paragraph 20 and the case-law cited).

20 The court making the reference must also set out the precise reasons that led it to raise the question of the interpretation of certain provisions of EU law and to consider it necessary to refer questions to the Court for a preliminary ruling. The Court has previously held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and on the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (see, inter alia, order of 4 June 2015 in *Argenta Spaarbank*, C-578/14, not published, EU:C:2015:372, paragraph 15 and the case-law cited).

21 It is important to note that the information supplied and the questions asked in orders for reference must enable the Court not only to give useful answers, but also to give the governments of the Member States and other interested parties the chance to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union. It is for the Court to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties, accompanied by a translation in the official language of each Member State, to the exclusion of any case file that may be sent to the Court by the referring court (judgment of 11 June 2015 in *Base Company and Mobistar*, C-1/14, EU:C:2015:378, paragraph 48 and the case-law cited).

22 According to settled case-law, the Court may decline to rule on a question referred for a preliminary ruling by a national court only when, in particular, it is quite obvious that the provision of EU law referred to the Court for interpretation cannot be applied (judgment of 17 September 2015 in *van der Lans*, C-257/14, EU:C:2015:618, paragraph 20 and the case-law cited).

23 In that regard, in so far as the requests for a preliminary ruling concern the compatibility of the requirements in question with the provisions of the TFEU on freedom of establishment and freedom to provide services, it should be observed that they are not applicable in a situation all the elements of which are confined within a single Member State (see, to that effect, order of 3 July 2014 in *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 37 and the case-law cited).

24 It should be stated that it is by no means apparent from the requests for a preliminary ruling that the security companies are established anywhere other than Italy or that there are other elements linked to the activities of those security companies that are not confined within that single Member State.

25 Therefore, the requests for a preliminary ruling do not provide specific elements making it possible to establish that Articles 49 and 56 TFEU may be applicable to the circumstances of the cases in the main proceedings.

26 Nevertheless, it should be recalled that, in certain circumstances, the purely internal nature of the situation concerned does not prevent the Court answering a question referred pursuant to Article 267 TFEU.

27 This could be the case, in particular, if national law were to require the referring court to allow a national of the Member State of its jurisdiction to enjoy the same rights as those which a national of another Member State would derive from EU law in the same situation, or if the request for a preliminary ruling concerned provisions of EU law to which the national law of a Member State refers in order to determine the rules applicable to a purely internal situation within that State (order of 3 July 2014 in *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 39 and the case-law cited).

28 However, although the Court may, in such circumstances, give the requested interpretation, it is not for it to take such an initiative if it is not apparent from the request for a preliminary ruling that the referring court is actually under such an obligation (see order of 30 January 2014 in *C.*, C-122/13, EU:C:2014:59, paragraph 15).

29 In the order for reference, there is no mention of any evidence to suggest that Italian law requires the referring court to ensure that the security companies established in Italy benefit from the same rights as those which a company established in another Member State would derive from EU law in the same situation, or that Italian law makes a reference to EU law in order to determine the rules applicable to a purely internal situation within that State.

30 It should be noted, however, that the referring court retains the right to submit a new request for a preliminary ruling when it is in a position to provide the Court with all the information enabling the Court to give a ruling (see, to that effect, orders of 14 March 2013 in *EBS Le Relais Nord-Pas-de-Calais*, C-240/12, not published, EU:C:2013:173, paragraph 22; 18 April 2013 in *Adiamix*, C-368/12, not published, EU:C:2013:257, paragraph 35; and 5 November 2014 in *Hunland-Trade*, C-356/14, not published, EU:C:2014:2340, paragraph 24).

31 In those circumstances, it should be held, on the basis of Article 53(2) of the Rules of Procedure, that the Court manifestly has no jurisdiction to answer the questions referred by the Consiglio di Stato (Council of State, Italy).

Costs

32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby orders:

The Court of Justice of the European Union manifestly has no jurisdiction to answer the questions referred by the Consiglio di Stato (Council of State, Italy) by decisions of 12 November 2015.

[Signatures]