Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

19 March 2020*

[Text rectified by order of 14 May 2020]

(Reference for a preliminary ruling — Regulation (EC) No 1370/2007 — Public passenger transport services by rail and by road — Article 8 — Transitional arrangements — Article 8(3) — Expiry of public service contracts — Calculation of the maximum contractual term set at 30 years — Determination of the date from which the maximum term of 30 years starts to run)

In Case C-45/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo No 2 A Coruña (Administrative Court No 2 of La Coruña, Spain), made by decision of 12 December 2018, received at the Court on 24 January 2019, in the proceedings

Compañía de Tranvías de La Coruña SA

v

Ayuntamiento de A Coruña,

THE COURT (Tenth Chamber),

composed of, I. Jarukaitis, President of the Chamber, E. Juhász (Rapporteur) and C. Lycourgos, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– Compañía de Tranvías de La Coruña SA, by D. Rodríguez Siaba, procurador, A.M. Platas Casteleiro and J. Monrabà Bagan, abogados,

– [As rectified by order of 14 May 2020] the Ayuntamiento de A Coruña, by M.J. Macías Mourelle, letrada,

– the French Government, by P. Dodeller and E. de Moustier, acting as Agents,

– the European Commission, by W. Mölls, G. Gattinara and J. Rius, acting as Agents,

* Language of the case: Spanish.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(3) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

2 The request has been made in proceedings between Compañía de Tranvías de La Coruña SA ('Compañía de Tranvías') and the Ayuntamiento de A Coruña (Municipal Council of La Coruña, Spain; 'the municipality of La Coruña') concerning the term of a public transport contract directly awarded to Compañía de Tranvías.

Legal context

3 Recital 31 of Regulation No 1370/2007 states:

'Given that competent authorities and public service operators will need time to adapt to the provisions of this regulation, provision should be made for transitional arrangements. With a view to the gradual award of public service contracts in line with this regulation, Member States should provide the [European] Commission with a progress report within the six months following the first half of the transitional period. The Commission may propose appropriate measures on the basis of these reports.'

4 The first sentence of Article 5(1) of that regulation provides that public service contracts are to be awarded in accordance with the rules laid down in that regulation.

5 Article 8 of that regulation, entitled 'Transition', provides:

'1. Public service contracts shall be awarded in accordance with the rules laid down in this regulation. However, service contracts or public service contracts as defined in Directive [2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1)] or Directive [2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)] for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those directives where such contracts do not take the form of service concessions contracts as defined in those directives. Where contracts are to be awarded in accordance with Directives [2004/17] or [2004/18], the provisions of paragraphs 2 to 4 of this article shall not apply.

2. Without prejudice to paragraph 3, the award of public service contracts [for transport] by rail and by road shall comply with Article 5 as from 3 December 2019. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

3. In the application of paragraph 2, no account shall be taken of public service contracts awarded in accordance with [EU] and national law:

(a) before 26 July 2000 on the basis of a fair competitive tendering procedure;

(b) before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure;

(c) as from 26 July 2000 and before 3 December 2009 on the basis of a fair competitive tendering procedure;

(d) as from 26 July 2000 and before 3 December 2009 on the basis of a procedure other than a fair competitive tendering procedure.

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Public service contracts may continue until they expire where their termination would entail undue legal or economic consequences and provided that the Commission has given its approval.

…'

6 Pursuant to Article 12 of Regulation No 1370/2007, that regulation entered into force on 3 December 2009.

7 Regulation No 1370/2007 was amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 (OJ 2016 L 354, p. 22), which entered into force on 24 December 2017. In the light of the facts in the main proceedings, Regulation No 1370/2007, in its version prior to its amendment by Regulation 2016/2338, is applicable to this dispute.

The dispute in the main proceedings and the question referred for a preliminary ruling

8 On 1 December 1986, the municipality of La Coruña approved the conclusion of a contract with Compañía de Tranvías, which is an undertaking providing passenger transport services, in order to unify into a single concession all the urban transport routes which it held. That contract, which set 31 December 2024 as the single expiry date for all the services concerned, was signed on 6 February 1987 by Compañía de Tranvías and the municipality of La Coruña. On 5 July 1996, those parties concluded another contract in order to include in that contract a new public transport service by tramway with the same expiry date.

9 On 18 October 2016, the municipality of La Coruña sent Compañía de Tranvías a letter stating that, in accordance with Regulation No 1370/2007, the concession would be terminated automatically after a period of 30 years from the date of its grant. On 2 November 2016, Compañía de Tranvías submitted observations on that letter, in which it claimed, inter alia, that, in accordance with the principles of legal certainty and equal treatment, the maximum period of 30 years laid down in Article 8 of

Regulation No 1370/2007 had to be calculated not from the date on which the contract at issue in the main proceedings was awarded, but from 3 December 2009, the date on which that regulation entered into force, or 26 July 2000, the objective date laid down in Article 8 of that regulation.

10 In the alternative, Compañía de Tranvías argued that, if the maximum term of 30 years had to be regarded as running from the award of the contract at issue in the main proceedings, the amendment made to that contract in 1996 amounted to a new award, so that the term of the contract would be extended until 2026. Also in the alternative, Compañía de Tranvías submitted that the situation could fall within the scope of the final subparagraph of Article 8(3) of Regulation No 1370/2007.

11 On 30 November 2016, the municipality of La Coruña decided to maintain the concession for a maximum period of two years, pursuant to Article 5(5) of Regulation No 1370/2007, and to consult the Commission concerning the proposal by Compañía de Tranvías to apply the exception provided for in Article 8(3) of that regulation, in order to extend the duration of the concession until its expiry date.

12 Following the rejection, on 2 June 2017, by the municipality of La Coruña, of the internal administrative appeal brought by Compañía de Tranvías against that decision, that company lodged an administrative appeal against that decision before the referring court.

13 Taking the view that the resolution of the dispute before it requires an interpretation of Article 8(3) of Regulation No 1370/2007, the Juzgado de lo Contencioso-Administrativo No 2 A Coruña (Administrative Court No 2 of La Coruña, Spain) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In the light of Article 8(3)(b) of Regulation [No 1370/2007], does the maximum term of contracts fixed at 30 years under that provision run from (a) the award or conclusion of the contract, (b) the entry into force of that provision, (c) the day following the expiry of the transitional period provided for in Article 8(2) of that regulation (3 December 2019), or (d) any other date deemed appropriate by the Court of Justice?’

Consideration of the question referred

14 In accordance with settled case-law, it follows from the requirement for the uniform application of EU law and from the principle of equal treatment that the terms of a provision of EU law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope must be given an autonomous and uniform interpretation throughout the European Union, which interpretation must take into account not only the wording of that provision but also its context and the objective pursued by the legislation in question (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 50 and the case-law cited).

15 Under the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007, the contracts referred to in points (b) and (c) of the first subparagraph of Article 8(3) of that regulation ‘may continue until they expire, but for no longer than 30 years’.

16 In the present case, it is common ground that the contract at issue in the main proceedings, since it was awarded ‘before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure’, falls within Article 8(3)(b).

17 The municipality of La Coruña submits that, according to a literal interpretation of the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007, it is the term of each contract covered by point (b) which may not exceed 30 years.

18 It is true that that provision lends itself to such a reading, in so far as the expression '[until] they expire' in it determines the term of the contracts concerned and, therefore, the end of that provision is likely to be understood as precluding the continuation of those contracts beyond a term of 30 years after their award.

19 The fact remains, however, that the wording of the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007 does not expressly specify the starting point from which the maximum period of 30 years must be calculated.

20 In that regard, it should be noted, in the first place, that to interpret that provision as meaning that the starting point of the maximum term of 30 years set therein corresponds to the date on which the public service contract is awarded would mean that that provision prevents the contracts covered by it from having a term of more than 30 years.

21 First, such an interpretation could lead, as the Commission observes, to a situation in which that regulation, by its entry into force, rescinds retroactively, from a date prior to that entry into force, public service contracts legally concluded well before 3 December 1979 and providing for a term of more than 30 years, which would be contrary to the principle of legal certainty.

22 Second, in the case of public service contracts which were in progress when Regulation No 1370/2007 entered into force, such an interpretation could lead to a situation in which the transitional period would be minimal or very reduced, contrary to the objective of Article 8 of Regulation No 1370/2007, as set out in recital 31 thereof, which is to grant the competent authorities and public service operators an adequate transitional period to adapt to the provisions of that regulation.

23 Furthermore, in such situations, the competent authority benefiting from the transitional arrangement provided for in Article 8(2) of Regulation No 1370/2007 could award, directly and without being subject to the obligations laid down in Article 5 of that regulation, a public service contract for the same service, for a period of 10 years, in accordance with Article 4(3) of that regulation. That demonstrates an inconsistency in the transitional arrangements laid down in Regulation No 1370/2007.

24 In the second place, nor can the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007 be interpreted as meaning that the maximum term of 30 years begins to run from the day following the expiry of the transitional period laid down in Article 8(2) of that regulation. It must be recalled, first, that paragraph 2 is introduced by the words 'without prejudice to paragraph 3' and, second, that it is stated at the beginning of paragraph 3 that, for the application of paragraph 2, the public service contracts referred to in points (a) to (d) of that paragraph 3 are not to be taken into account.

25 It follows that the transitional periods laid down in Article 8(2) and (3) of Regulation No 1370/2007 apply independently of each other.

26 In the light of the foregoing, it must be noted, in the third place, that, in order to preserve the effectiveness of the specific transitional period provided for in the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007, the maximum term of 30 years referred to in that provision must begin to run on the date of the entry into force of that regulation. Such a date also makes it possible to set a final identical term for all contracts still in progress at the end of that transitional period, placing the competent authorities and the economic operators concerned on an equal footing.

27 In the light of the foregoing considerations, the answer to the question referred is that the second sentence of the second subparagraph of Article 8(3) of Regulation No 1370/2007 must be interpreted as meaning that the maximum term of 30 years, laid down in that provision for the contracts referred to in point (b) of the first subparagraph of Article 8(3) of that regulation, runs from the date of entry into force of that regulation.

Costs

28 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 (Tenth Chamber) hereby rules:

The second sentence of the second subparagraph of Article 8(3) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 must be interpreted as meaning that the maximum term of 30 years, laid down in that provision for the contracts referred to in point (b) of the first subparagraph of Article 8(3) of that regulation, runs from the date of entry into force of that regulation.

[Signatures]