Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 26 September 2013 [1]

Joined Cases C-162/12 and C-163/12

Airport Shuttle Express scarl and Giovanni Panarisi (C-162/12),
Società Cooperativa Autonoleggio Piccola arl and
Gianpaolo Vivani (C-163/12)
v
Comune di Grottaferrata
and
Joined Cases C-419/12 and C-420/12
Crono Service scarl and Others
v
Roma Capitale (C-419/12)
and
Anitrav
v
Roma Capitale and Regione Lazio (C-420/12)

(Requests for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio (Italy))

(Requests for a preliminary ruling — Admissibility — Discrimination against own nationals — Freedom of establishment — Car and driver hire service — National legislation which makes the provision of that service dependent, in particular, on authorisation and on the fulfilment of certain requirements in respect of the garage of the vehicle)

I – Introduction

1. The present requests for a preliminary ruling concern Italian legal provisions on the transportation of passengers by certain car hire firms. [2] These firms use vehicles for passenger transport in which a maximum of eight persons can be conveyed in addition to the driver. [3] Unlike in the case of self-drive hired cars, in this particular form of passenger transport, the passenger hires the vehicle in question together with a driver engaged by the car hire firm for a specific journey. The 'car and driver hire' therefore supplements the provision of public passenger transport, in particular scheduled services.

1 — Original language: German.

2 — The term used in the Italian legislation is 'car and driver hire'.

3 — See page 9 of the order for reference in Case C-162/12 and the reference therein to Article 47 of the Legislative Decree of 30 April 1992.

2. The referring court seeks to ascertain whether Italian legal provisions laying down the rules for the operation of such a business activity in the Lazio region and the city of Rome are compatible with European Union law, in particular the freedom of establishment. However, as the facts notified by the referring court do not contain any cross-border element, doubts remain as to the admissibility of the requests for a preliminary ruling. The question also arises whether the Court should also assess the main proceedings in these cases in the light of the principle prohibiting discrimination against nationals, although the referring court has made no observations in this regard.

II – Legal context

A – *European Union law*

Council Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State [4]

3. Regulation No 12/98 was repealed with effect from 4 December 2011 and replaced by Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006. [5]

4. According to Article 2(4) thereof, Regulation No 12/98 applied to 'motor vehicles which, by virtue of their type of construction and equipment, are suitable for carrying more than nine persons – including the driver – and are intended for that purpose'.

B – *National law*

5. Under Italian law, 'car and driver hire' is subject to authorisation. The necessary authorisation is issued by a municipality in a public procedure [6] and is vehicle-specific. However, a firm may obtain several authorisations for several vehicles. [7] The registered office [8] of the carrier and the garage must be located, exclusively, in the territory of the municipality which issued the authorisation. [9] A rented car park may suffice as a garage. The passenger transport authorisation is not limited to the territory of the municipality. However, the booking of the journey must take place at the garage of the vehicle in question [10] to which the vehicle must return after the transport of passengers has been completed irrespective of the place at which the passengers have got on and off. [11]

6. The provisions of the Lazio region [12] also require the passenger to be picked up within the territory of the municipality issuing the authorisation.

4 — OJ 1998 L 4, p. 10.

5 — OJ 2009 L 300, p. 88.

6 — Article 8(1) of Law No 21 of 15 January 1992 (Legge quadro per il trasporto di persone mediante autoservizi pubblici non di linea, GURI No 18 of 23 January 1992) in the version relevant to the main proceedings, as amended by Decree-Law No 207 of 30 December 2008 (GURI No 304 of 31 December 2008) and by Law No 14/2009 (GURI No 49 of 28 February 2009, Ordinary Supplement No 28) ('Law No 21/1992').

7 — Article 8(2) of Law No 21/1992.

8 — The term used in the Italian legislation is 'sede'. However, according to the observations of many of the parties, a second establishment appears to be sufficient, which, as the representative of the Italian Government, among others, indicates, makes it possible to operate in different municipalities at the same time.

9 — Article 3(3) of Law No 21/1992.

10 — Article 11(4) of Law No 21/1992.

11 — According to Article 11(4) of Law No 21/1992, this may also take place in the territory of other municipalities.

12 — Article 5 of Regional Law No 58/1993 in the version relevant to the main proceedings.

7. Moreover, special provisions apply in respect of the city of Rome which provide, inter alia, for the car hire firms of other municipalities to pay charges when entering areas of the territory of the city of Rome where traffic is restricted.

III – Facts in the main proceedings and consideration of the questions referred

A – *Joined Cases C-162/12 and C-163/12*

8. The applicants in the main proceedings are natural persons resident in Italy ('car hire firms') or cooperative companies incorporated under Italian law whose registered office is in Italy. The car hire firms in question have not used the garages authorised for their vehicles in the territory of the municipality of Grottaferrata (Italy, Lazio region), which issued the authorisation. Instead, they have based their vehicles at a garage of a cooperative outside the territory of Grottaferrata. They evidently left the vehicles in question for use by the cooperative after transferring the passenger transport authorisation issued to them.[13] The police reported this and the authorisations issued to the car hire firms were suspended in February 2011. The firms concerned are bringing an action in the main proceedings against the administrative decisions by which their authorisations were suspended. They are also claiming damages and allege, in particular, infringements of European Union law.

9. In these circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Article 49 TFEU, [Articles 3, 4, 5 and 6 TEU], Articles 101 and 102 TFEU and Regulation (EEC) No 2454/92 and Regulation (EC) No 12/98 preclude the application of Articles 3(3) and 11 of Law No 21 of 1992 in so far as the latter provisions respectively state that "3. The registered office of the carrier, and the garage, must be located, exclusively, within the territory of the municipality which issued the authorisation" and that "… Bookings of car and driver hire shall take place at the garage. Each individual car and driver hire must begin and end at the garage located in the municipality where the authorisation was issued, returning to that garage, although the collection of the user and the user's arrival at his destination may take place also in other municipalities. …"?

(2) Do Article 49 TFEU, [Articles 3, 4, 5 and 6 TEU], Articles 101 and 102 TFEU and Regulation (EEC) No 2454/92 and Regulation (EC) No 12/98 preclude the application of Articles 5 and 10 of Lazio Regional Law No 58 of 26 October 1993, in so far as the latter provisions respectively state that "… Users shall be collected, or the service shall begin, within the territory of the municipality which issued the authorisation" and that "… Users shall be collected and the service shall begin exclusively within the territory of the municipality which issued the licence or authorisation and the service shall be provided to any destination, subject to the consent of the driver in the case of destinations beyond the municipal boundaries. …"?'

B – *Joined Cases C-419/12 and C-420/12*

10. The matters at issue in the main proceedings are applications for the annulment of several acts concerning the city of Rome. The acts in question are Rome City Council Decision No 68/2011 on the adoption of the order regulating public passenger transport services outside the scheduled network, Rome City Council Decision No 403/2011 on the rules and procedures for authorisation of

13 — See Article 7(2) of Law No 21/1992 and page 12 of the order for reference in Case C-162/12.

entry into the territory of the city of Rome and the areas where access is restricted for vehicles authorised by another municipality for car and driver hire and two further acts of Rome's city administration requiring non-Roman car hire firms to pay a specific amount for the issue of an entry permit.

11. The applicants in the main proceedings are Italian car hire firms which do not have authorisations issued by the city of Rome.

12. They infer the unlawfulness of the said acts from European Union law, in particular from the fundamental freedom granted to undertakings to be able also to establish themselves in any country of the European Union by setting up a second establishment, as firms established in a Member State are, without exception, required, in breach of that freedom, to receive requests for transportation at a single garage which must be located in the municipality which issued the authorisation and also to begin and end the service there.

13. They claim that this results in the unequal treatment of firms based solely on a geographical circumstance. Such unequal treatment exists, firstly, between car hire firms with an authorisation issued by the city of Rome and car hire firms with an authorisation issued by another municipality (in Lazio) and, secondly, between the latter and car hire firms not established in Lazio, to which the Regional Law does not apply and which are not therefore subject to any restriction in respect of the collection point.

14. In these circumstances, the referring court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Article 49 TFEU, Article 3 TEU, Articles 3 TFEU, 4 TFEU, 5 TFEU, 6 TFEU, 101 TFEU and 102 TFEU preclude the application of Articles 3(3), 8(3) and 11 of Law No 21 of 1992 in so far as the latter provisions respectively provide that "[t]he registered office of the carrier, and the garage, must be located, exclusively, within the territory of the municipality which issued the authorisation", that "[i]n order to obtain and maintain an authorisation for a car and driver hire service it is necessary to have the use, pursuant to a valid legal title, of a registered office, a garage or a vehicle rank located in the territory of the municipality which issued the authorisation" and that "[b]ookings for car and driver hire services shall take place at the garage. Each individual car and driver hire service must begin and end at the garage located in the municipality in which the authorisation was issued, returning to that garage, although the collection of the user and the user's arrival at his destination may take place also in other municipalities"?'

IV – Assessment of the questions referred

15. The admissibility of the requests for a preliminary ruling must first be assessed.

A – *Admissibility of the requests for a preliminary ruling*

16. The questions referred concern, firstly, two acts of secondary law, namely Regulation No 12/98 and Regulation No 2454/92,[14] and, secondly, provisions of primary law, in particular Articles 101 and 102 TFEU concerning anti-competitive practices and Article 49 TFEU, which guarantees freedom of establishment.

14 — Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ 1992 L 251, p. 1).

17. Doubts exist as to the admissibility of matters of both primary and secondary law, as their relevance to the decision in the main proceedings is not apparent.

18. Although it is essentially for the national court to determine in the light of the particular circumstances of each case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions to be submitted to the Court, the Court may refuse to rule on a question referred by a national court where it is quite obvious that the interpretation that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [15]

1. No connection with the subject-matter of the dispute as regards Regulation No 2454/92 and Regulation No 12/98

a) Regulation No 2454/92

19. Regulation No 2454/92 was already annulled by the Court in 1994. [16] It can therefore have no relevance to the main proceedings, which relate to events which occurred in 2011. In so far as they clearly bear no relation to the subject-matter of the main proceedings, the requests for a preliminary ruling are inadmissible.

b) Regulation No 12/98

20. Regulation No 12/98 ceased to have effect on 4 December 2011 [17] and, in view of its temporal scope, might still be relevant to the facts in the main proceedings. However, those facts have no aspects in common with the regulation in question for the simple reason that Regulation No 12/98, according to Article 2(4) thereof, applied to 'motor vehicles which, by virtue of their type of construction and equipment, are suitable for carrying more than nine persons – including the driver – and are intended for that purpose'. The facts in the main proceedings relate to smaller vehicles carrying a maximum of nine persons (including the driver). In so far as Regulation No 12/98 clearly bears no relation to the subject-matter of the main proceedings, the requests for a preliminary ruling are inadmissible.

2. Insufficient factual or legal material relating to Articles 101 and 102 TFEU in conjunction with Articles 3, 4, 5 and 6 TEU and Articles 3, 4, 5 and 6 TFEU

21. The referring court assumes that the Italian legal provisions may result in territorial partitions and distortions of competition. It seeks to ascertain in this regard whether the Italian legal provisions in question run counter to Articles 101 and 102 TFEU in conjunction with Articles 3, 4 and 5 TEU and Articles 3, 4, 5 and 6 TFEU. It also cites in this connection Article 6 TEU, which lays down the commitment of the European Union to fundamental rights.

22. However, the referring court does not state in detail what relevance the said primary law provisions on jurisdiction are supposed to have to the questions raised by it and to the main proceedings. The same applies in respect of the commitment of the European Union to fundamental rights.

15 — Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Case C-544/07 *Rüffler* [2009] ECR I-3389, paragraph 37; Case C-314/08 *Filipiak* [2009] ECR I-11049, paragraph 41; Case C-310/10 *Agafiței and Others* [2011] ECR I-5989, paragraph 26; and Case C-416/10 *Križan and Others* [2013] ECR, paragraph 54.

16 — Case C-388/92 *Parliament* v *Council* [1994] ECR I-2067.

17 — See Articles 30 and 31 of Regulation No 1073/2009.

23. As regards Articles 101 and 102 TFEU, the referring court must also, in view of the complexity of the considerations to be applied to situations governed by competition law, define in detail for the Court the factual and legal context of its questions or, at the very least, explain the factual circumstances on which those questions are based. [18]

24. The information provided by the referring court in the present cases falls short of these requirements. Articles 101 and 102 TFEU prohibit anti-competitive arrangements and practices and abuse of a dominant position. These are not mentioned in the main proceedings in question, which relate rather to national and regional legislation regulating car and driver hire and not to conduct of undertakings which is incompatible with competition law. Since there has been no anti-competitive conduct on the part of the undertakings concerned in the main proceedings, it is also not apparent to what extent such conduct is encouraged by the national legislation in question and to what extent the effectiveness of the competition law of the European Union might thereby be called into question. Irrespective of that, the facts communicated by the referring court do not contain any elements which might have relevance to the internal market.

25. Therefore, in the absence of sufficient information on the factual and legal position which would enable the Court and the parties to the proceedings to usefully adopt a position on the cited provisions in respect of the main proceedings, this element of the questions raised in the requests for a preliminary ruling is also inadmissible.

3. Hypothetical nature of the questions based on Article 49 TFEU

26. The relevance of Article 49 TFEU to the present requests for a preliminary ruling is also questionable.

27. It is doubtful, firstly, because the main proceedings contain no cross-border elements and, secondly, because it is not apparent from the requests for a preliminary ruling whether, and, if so, to what extent, a requirement under national law to apply Article 49 TFEU might be relevant in the context of a purely domestic situation.

a) Absence of cross-border elements

28. In principle, freedom of establishment can be relevant only where it is linked to the application of European Union law. [19] Such a connection exists where the situation contains cross-border elements. The provisions of the Treaty on freedom of establishment do not therefore apply to purely internal situations in a Member State. [20]

29. In view of this, it is doubtful whether the main proceedings in question here can be examined on the basis of Article 49 TFEU. In fact, the main proceedings, although they concern Italian provisions which, according to their wording, are applicable without distinction to Italian economic operators and economic operators of other Member States, take on a purely Italian, regional complexion, because they appear to be limited to the Lazio region without revealing any connection to trade between Member States. According to the wording of the Italian provisions, it cannot be ruled out that the car hire firms in question might also use their vehicles for journeys to neighbouring Member States. The referring court has provided no information in that regard. However, it has outlined to the Court situations which concern passenger transport only within Italy. This is consistent with the

18 — Case C-384/08 *Attanasio Group* [2010] ECR I-2055, paragraph 32.

19 — See Joined Cases C-54/88, C-91/88 and C-14/89 *Nino and Others* [1990] ECR I-3537, paragraphs 9 to 11.

20 — See inter alia Case C-17/94 *Gervais and Others* [1995] ECR I-4353, paragraphs 24 to 26; Case C-84/11 *Susisalo and Others* [2012] ECR, paragraph 18; and Joined Cases C-357/10 to C-359/10 *Duomo Gpa and Others* [2012] ECR, paragraph 26 and the case-law cited.

statements made by the parties at the hearing, namely that, in Italy, car hire firms are typically used for short journeys. The present proceedings do not therefore concern issues relating to international passenger transport, but rather access by Italian firms resident on the periphery of Rome to the Roman market.

30. However, the Court has applied Article 49 TFEU as the criterion even to main proceedings in which no nationals of other Member States were involved in the facts to be assessed by the referring court and no significant cross-border elements were otherwise apparent. This occurred when, in the view of the Court, it was 'far from inconceivable' that, irrespective of the specific procedural situation, nationals of other Member States might also be confronted in identical cases in the course of exercising their freedom of establishment with the legal provisions of the Member State in question in the main proceedings. [21]

31. At first sight, this approach, which admits the potential, though 'far from inconceivable', involvement of nationals of other Member States, appears to be at odds with the general rule reiterated in settled case-law that hypothetical legal questions should not be submitted for clarification by the Court in proceedings for a preliminary ruling because they are irrelevant to the main proceedings. The scope of that which, though not real, is 'far from inconceivable' (and must therefore be examined by the Court) and is consequently no longer purely hypothetical needs to be clarified in a manner which can be administered in practice.

32. The Court seems to have begun to resolve the tension between the 'hypothetical' and 'far from inconceivable' in its recent case-law. In *Duomo Gpa and Others*, [22] it did not settle for a general, unsupported and not further substantiated statement that nationals of other Member States might have an 'interest' [23] in the activity in question in the main proceedings, but clarified the 'interest' on the basis of which a cross-border element exists and Article 49 TFEU therefore becomes applicable with reference to specific factors. It derives these factors not only from orders for reference, but also, going further, from the submissions of parties. [24]

33. This more specific approach makes it possible to distinguish between the purely hypothetical and the far from inconceivable in the legal practice of the Court. Reference is made ultimately to the allocation of functions between the Court of Justice and the referring court. Apart from self-evident cases, it is not for the Court to consider, without any points of reference, in respect of apparently non-cross-border situations whether and, if so, to what extent it might be 'far from inconceivable' that nationals of other Member States may have an 'interest' in the main proceedings in question. The referring court [25] and, where appropriate, the parties to the proceedings and also, in the case of requests for a preliminary ruling, the Member States are clearly in a better position to consider these questions.

34. Against this background, it must first be examined in the present cases what relevance should be attributed to the fact that the Italian provisions at issue were (in part) the subject of a Commission complaint (i) and it must then be considered whether the public allocation of car hire authorisations by the Italian municipalities may be relevant in this regard (ii).

21 — See in particular Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 40, and *Attanasio Group*, cited in footnote 18, paragraph 24, concerning operation of pharmacies and fuel distribution.

22 — Cited in footnote 20.

23 — *Duomo Gpa and Others*, cited in footnote 20, paragraph 40.

24 — For the Commission's submission, see *Duomo Gpa and Others*, cited in footnote 20, paragraph 28.

25 — See in this regard point 38 of the Opinion of Advocate General Wahl of 5 September 2013 in Joined Cases C-159/12 to C-161/12 *Venturini and Others*.

i) Relevance of the European Commission's EU Pilot 623/09/TREN procedure?

35. Both the referring court and the applicants in the main proceedings in Case C-162/12 have referred to the European Commission's EU Pilot 623/09/TREN procedure. This procedure essentially concerns the compatibility of Law No 21/1992, in the version in force at the time, with the freedom of establishment. According to the files before the Court, the procedure in question relates to a complaint which Federnoleggio, intervening in support of the applicants in the main proceedings giving rise to Case C-162/12, appears to have lodged with the Commission in 2009. At the hearing, the Commission stated in connection with this procedure that it had been initiated after the Italian authorities had informed the Commission that the application of the provisions at issue had been suspended and that the legislation in question was being revised. The Commission therefore considers that there is no reason to initiate Treaty infringement proceedings. [26]

36. It is doubtful whether the fact that such a complaint has been lodged with the Commission is sufficient for the application of Article 49 TFEU in main proceedings with an otherwise purely national content.

37. Otherwise, parties would be able to have Article 49 TFEU applied arbitrarily by lodging a complaint in order to give rise to a request for a preliminary ruling. The proceedings for a preliminary ruling and the procedure before the Commission authorities must be considered separately from each other. The existence of a Commission procedure does not introduce a cross-border element into the situation in the main proceedings even if provisions are to be applied to it which are the subject of a Commission investigation.

38. The situation is different where nationals of other Member States lodge a complaint with the Commission concerning freedom of establishment that takes issue with national legislation in that regard. In such a case, it may be readily concluded that the complainants have a real interest in exercising their freedom of establishment in a specific area and that it therefore seems to the referring court to be 'far from inconceivable' that nationals of Member States other than that of the parties in question may also be affected in comparable situations. The situation to be assessed does not leave the realms of the purely hypothetical only when nationals of other Member States are already taking concrete steps to establish themselves in another Member State or even contesting the conditions of their activity there before the courts. An 'interest' in exercising freedom of establishment is also 'far from inconceivable' where it can be verified by third parties that nationals of other Member States are initially sounding out the factual and legal situation and are contesting provisions unfavourable to them with the serious intention of establishing themselves in the Member State concerned.

39. However, the EU Pilot 623/09/TREN procedure displays special features. It was obviously initiated in the first place by the undertaking Federnoleggio resident in Italy. According to the files before the Court, a number of non-Italian undertakings in the same sector have also declared their interest (in essentially identical letters) in supporting Federnoleggio's complaint to Federnoleggio's representative in the proceedings, who also appeared as the applicants' representative in the main proceedings in Case C-162/12. Why they have done so is not, however, explained in the said letters. In particular, they do not give any indication that the undertakings in question wish to establish themselves in Italy and are hindered in this regard by the legislation at issue. It should be noted that the letters in question emphasise that any costs arising from the proceedings should be borne in full by Federnoleggio. This conveys the impression that the non-Italian undertakings are supporting the Italian complaint out of solidarity rather than leading one to the necessary conclusion that they are in any way affected themselves. The participation of foreign undertakings in the Commission procedure in question therefore gives no significant indication that the interest of nationals of other Member States in exercising their freedom of establishment in Italy is 'far from inconceivable'.

26 — The orders for reference do not comment in detail on the progress of the Commission procedure and the relevance of the measures envisaged by the Italian Republic.

ii) Relevance of the public allocation of car hire authorisations

40. The interest of nationals of other Member States in establishing themselves in Italy as owners of car hire firms would possibly be 'far from inconceivable' on the basis of verifiable facts if the authorisations of the municipalities were put out to tender Europe-wide in appropriate procurement procedures or the economic value of the respective authorisation were so considerable that cross-border participation would be likely regardless of how the procedure was publicised. The requests for a preliminary ruling state nothing in this regard. At the hearing, one party did not rule out the possibility of Europe-wide interest in the allocation of the authorisations but gave no further explanation.

41. However, a European dimension to the allocation of car hire authorisations would appear to be extremely unlikely simply because the authorisations are allocated to specific vehicles, which limits their economic significance. The situation might be different in Italy's border regions where, however, as the referring court and parties have explained, the trade in question is not necessarily subject to the same legal framework as in the Lazio region; those regions are, in any event, not concerned in the present proceedings.

42. In the absence of any specific cross-border elements, Article 49 TFEU is not, therefore, applicable in the present cases.

43. Finally, it must be examined whether the present requests for a preliminary ruling provide any basis for assessing the facts in the light of the principles applicable in respect of discrimination against nationals and for examining Article 49 TFEU in this regard.

b) Whether there is discrimination against nationals

44. Even where it is established that all aspects of the case before the referring court relate to a single Member State, it may still be useful to answer questions on fundamental freedoms if the national law in the main proceedings requires that a national must be allowed to enjoy the same rights as those which a national of another Member State would derive from European Union law in the same situation. [27]

45. However, the referring court did not establish in its request for a preliminary ruling that a prohibition of so-called 'reverse discrimination' or discrimination against nationals could be inferred from Italian law in the present cases. [28] It must therefore be made clear, first of all, what consequences may be drawn from this for the examination of freedom of establishment in the context of the Italian legal provisions.

46. In its case-law, the Court has sometimes conducted an examination of fundamental freedoms even in situations which do not contain a cross-border element solely on the basis of the not further substantiated possibility that the respective national law might contain a prohibition on discrimination against nationals and in consideration of the referring court's prerogative to determine the relevance of the referred questions to the decision in the main proceedings. [29]

27 — See inter alia Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 29.

28 — There is therefore, in particular, no specific indication as to whether and to what extent it might be required according to the principle of equality laid down by Italian constitutional law in the circumstances prevailing in the main proceedings to proceed from the principle of non-discrimination against nationals and whether and to what extent the constitutional case-law developed in the 1990s on Article 28 EC might be transferable to the present cases. See, on that case-law, footnote 57 to the Opinion of Advocate General Maduro in Case C-72/03 *Carbonati Apuani* [2004] ECR I-8027.

29 — On the free movement of goods, see Case C-448/98 *Guimont* [2000] ECR I-10663, paragraphs 21 to 23; on the freedom to provide services, see Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraphs 30 and 31; on the freedom of establishment and the freedom to provide services, see *Servizi Ausiliari Dottori Commercialisti*, cited in footnote 27, paragraphs 29 and 30; and on the freedom of establishment, see *Blanco Pérez and Chao Gómez*, cited in footnote 21, paragraph 36.

47. However, a more restrictive tendency has become apparent recently in so far as, in situations which clearly do not contain a cross-border element, the Court is sometimes subjecting the issues concerning discrimination against nationals, beyond a general mention of the phenomenon, to more intensive examination with regard to the admissibility of requests for a preliminary ruling.

48. Thus, the Court, in its judgment of 21 February 2013, affirmed that it is 'clearly in the European Union's interest that the Court interpret' certain provisions of European Union law in an otherwise purely internal (Italian) situation only after it had established that 'it is apparent from the order for reference that the referring court considers that it would infringe principles of national law, as confirmed by constitutional case-law, to enable reverse discrimination'.[30] In a judgment of 22 December 2010, the Court similarly focused on the content of the request for a preliminary ruling, from which 'it does not appear … that, in circumstances such as those of the dispute in the main proceedings, the referring court has a duty to grant undertakings established in Belgium the same rights [as undertakings of another Member State under European Union law]'.[31] However, in a judgment of 21 June 2012, the Court simply stated in the case of a Finnish request for a preliminary ruling that, at the hearing, 'the representative of the applicants in the main proceedings argued that in Finnish administrative law there are rules which ensure that Finnish nationals do not suffer reverse discrimination. In those circumstances, it is not obvious that the interpretation of European Union law … would be of no use to the referring court'.[32]

49. It can be inferred from the aforementioned case-law that the acceptance of a national prohibition on discrimination against nationals primarily depends on the information supplied by the referring court on the legal situation prevailing in its Member State in this regard. In order to enable the Court to conduct an examination in a manner useful to the referring court, this information should be as detailed as possible and ideally contain indications as to precisely which national situation must be treated on the same basis as which situation governed by European Union law pursuant to the application requirement laid down by the national law.

50. Where the referring court has failed to provide such information, the Court has deemed the (undisputed) information provided by parties on discrimination against nationals to be sufficient.

51. In the main proceedings, however, the referring court has made no statement on discrimination against nationals and the information provided by the parties is inconsistent. The representative of Airport Shuttle and Crono Service refers to Article 14a of Law No 88 of 7 July 2008, which states that provisions of Italian law which have a discriminatory effect against nationals of other Member States should not be applied to Italian nationals. The representative of the Italian Republic, on the other hand, cites different provisions without clarifying their exact content.

52. Two conclusions can be drawn from this. Firstly, to avoid misunderstandings and lack of clarity, it must be the task of the referring court itself to adopt a detailed position on discrimination against nationals, where required, in any request for a preliminary ruling if it considers examination by the Court to be necessary for its decision.[33] Secondly, if it does not do so, questions on fundamental freedoms from the viewpoint of discrimination against nationals may remain unexamined by the Court where, in particular, the observations of the parties in this regard are unclear or contradictory.

30 — Case C-111/12 *Ordine degli Ingegneri di Verona e Provincia and Others* [2013] ECR, paragraphs 34 and 35.

31 — Case C-245/09 *Omalet* [2010] ECR I-13771, paragraph 17.

32 — *Susisalo and Others*, cited in footnote 20, paragraph 21.

33 — See in this regard points 42 and 45, 58 and 60 of the Opinion of Advocate General Wahl in *Venturini and Others*, cited in footnote 25.

53. In view of the allocation of tasks between the Court and the national court, it cannot be for the Court itself to make enquiries about and apply considerations to the relevant national legal order and its assessments in matters of discrimination against nationals. Nor does it appear useful for the Court to make statements, as it were, for the sake of completeness, on any prohibition of discrimination against nationals without having sufficient information on the national factual and legal situation, especially where it is unfamiliar with the national parameters applicable in this regard and is reliant on guesswork.

54. Where no clear and comprehensible information on discrimination against nationals which is relevant to the main proceedings can be obtained from the request for a preliminary ruling in question, there are even good grounds for not examining it where the principle of non-discrimination against nationals has already been affirmed in respect of the relevant national law in earlier requests for a preliminary ruling concerning the same Member State. Nor can it be the task of the Court to comprehensively follow legal developments on that matter, which may be subject to change and have special features which are complex and case-specific, in each Member State. It is rather for the referring court in each individual case to provide the Court with up-to-date, reliable and useful information in this regard. The present cases clarify the otherwise cloudy issue in that the only provision of national law on discrimination against nationals cited textually (by a party to the main proceedings), the applicability of which to the main proceedings remains in doubt owing to the lack of a clear statement by the referring court, requires nationals to be treated equally in cases of 'discrimination' without clarifying which areas of law and factual situations are thereby specifically addressed.

55. There is also the risk that, where the Court adopts a position on the basis of its own specialist knowledge of the national law in question even without a specific reference by the referring court to prohibition of discrimination against nationals, not all Member States are treated equally where the Court is familiar with the legal situation regarding discrimination against nationals in a certain Member State but not in another.

56. Irrespective of that, it is also not easy to determine for other reasons to what extent the referring court considers Article 49 TFEU to be relevant to the present requests for a preliminary ruling.

57. As regards Cases C-419/12 and C-420/12, the issue of permanent establishment in Italy seems less important than the charges which are imposed on car hire firms established outside Rome when they occasionally wish to enter the territory of the city of Rome. In so far as such charges are imposed on comparable undertakings from other Member States, it would seem more appropriate to cite freedom to provide services as the comparator rather than freedom of establishment.

58. As regards Cases C-162/12 and C-163/12, it is natural to draw a parallel with the judgment in *Sbarigia*,[34] in which the Court considered a request for a preliminary ruling to be inadmissible which asked in particular, in the context of a purely Italian situation, whether provisions of Italian law (on summer holidays of pharmacies) were compatible with the fundamental freedoms. The Court stated in this regard that freedom of establishment was 'not relevant' for the simple reason that the owner of the pharmacy affected by the holiday provision 'by definition a national of another Member State, would already be pursuing a professional activity on a continuous basis'. For this reason, the 'right of establishment' was 'clearly not at issue in the main proceedings'. This approach may be transposed accordingly to the case of car hire firms already pursuing their professional activity on a continuous basis, whose authorisations were suspended owing to infringements of the vehicle garage requirement.

34 — Case C-393/08 [2010] ECR I-6337, paragraphs 27 and 28.

59. Not least, that judgment is evidence of the Court's increasingly restrictive approach where questions on freedom of establishment are raised in a purely national situation. This tendency is also appropriate to the issues involved in the present cases for the reasons stated in the preceding points.

60. In the light of all the foregoing, the questions relating to freedom of establishment are inadmissible and the requests for a preliminary ruling are inadmissible in their entirety.

V – Conclusion

61. I therefore propose that the Court should:

declare inadmissible the requests for a preliminary ruling in Joined Cases C-162/12 and C-163/12 and Joined Cases C-419/12 and C-420/12.