



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 March 2014*

(Maritime transport — Regulation (EEC) No 3577/92 — Concept of ‘maritime cabotage’ — Cruise services — Cruise crossing the Venetian lagoon, Italian territorial sea and the river Po — Departure from and arrival at the same port)

In Case C-17/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 20 November 2012, received at the Court on 14 January 2013, in the proceedings

Alpina River Cruises GmbH,

Nicko Tours GmbH

v

Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C. G. Fernlund, A. Ó Caoimh, C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 24 October 2013,

after considering the observations submitted on behalf of:

- Alpina River Cruises GmbH and Nicko Tours GmbH, by A. Clarizia, A. Veronese and R. Longanesi Cattani, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by M. Salvatorelli, avvocato dello Stato,
- the European Commission, by G. Conte and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 December 2013,

gives the following

* Language of the case: Italian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).
- 2 The request has been made in proceedings between Alpina River Cruises GmbH, a company incorporated under Swiss law, and Nicko Tours GmbH, a company incorporated under German law (together ‘Alpina and Nicko Tours’), on the one hand, and the Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia (Senior Ministry for Infrastructure and Transport — Chioggia Port Authority (Italy)), on the other, concerning that authority’s refusal to allow Alpina and Nicko Tours to sail a tourist vessel flying the Swiss flag through Italian territorial sea.

Legal context

Regulation No 3577/92

- 3 Under Article 1(1) of Regulation No 3577/92:

‘As from 1 January 1993, freedom to provide maritime transport services within a Member State (maritime cabotage) shall apply to Community shipowners who have their ships registered in, and flying the flag of a Member State, provided that these ships comply with all conditions for carrying out cabotage in that Member State ...’

- 4 Article 2 of that regulation provides:

‘For the purposes of this Regulation:

- (1) “maritime transport services within a Member State (maritime cabotage)” shall mean services normally provided for remuneration and shall in particular include:

- (a) mainland cabotage: the carriage of passengers or goods by sea between ports situated on the mainland or the main territory of one and the same Member State without calls at islands;
- (b) off-shore supply services: the carriage of passengers or goods by sea between any port in a Member State and installations or structures situated on the continental shelf of that Member State;
- (c) island cabotage: the carriage of passengers or goods by sea between:
 - ports situated on the mainland and on one or more of the islands of one and the same Member State,
 - ports situated on the islands of one and the same Member State;

...’

- 5 Under Article 3(1) of that regulation, ‘[f]or vessels carrying out mainland cabotage and for cruise liners, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (flag State), except for ships smaller than 650 gt, where host State conditions may be applied’.

6 Article 6(1) of Regulation No 3577/92 provides:

‘By way of derogation, the following maritime transport services carried out in the Mediterranean and along the coast of Spain, Portugal and France shall be temporarily exempted from the implementation of this Regulation:

— cruise services, until 1 January 1995,

...’

Italian law

7 Under Article 224 of the Italian Shipping Code (Royal Decree No 327 of 30 March 1942, as amended) (‘the ISC’):

‘1. The provision of cabotage services between the ports of the Republic is reserved, pursuant to [Regulation No 3577/92], for Community shipowners who have their ships registered in, and flying the flag of, a Member State of the European Union, provided that these ships comply with all conditions for carrying out cabotage in that Member State.

2. The provisions of point 1 shall apply to vessels providing port, estuary and coastal maritime services.’

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

8 Alpina and Nicko Tours are, respectively, the shipowner and user company of the tourist vessel *MS Bellissima* which flies the Swiss flag.

9 Those companies had arranged a cruise of approximately one week which would depart from Venice (Italy) on 16 March 2012 and would involve crossing the Venetian lagoon to Chioggia (Italy), crossing territorial sea between Chioggia and Porto Levante (Italy), travelling for approximately 60 kilometres up the river Po (Italy) to the town of Polesella (Italy) and returning to Venice following the reverse itinerary.

10 Crossing the stretch of Italian territorial sea between the ports of Chioggia and Porto Levante was necessary due to the size of the *MS Bellissima*, which prevented it from navigating the canal connecting Chioggia with the river Po.

11 Before that journey, Alpina and Nicko Tours had submitted to the Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia an application for authorisation to cross that stretch of sea. By decision of 12 March 2012, that authority rejected the application on the ground that maritime cabotage was reserved for ships flying the flag of a Member State of the European Union.

12 Alpina and Nicko Tours contested that decision before the Tribunale amministrativo regionale per il Veneto (Veneto Regional Administrative Court). The latter dismissed the action by judgment of 12 April 2012, finding that the service at issue falls within the concept of ‘maritime cabotage’ referred to in Regulation No 3577/92 and is therefore subject to the reservation of cabotage services ‘for Community shipowners who have their ships registered in, and flying the flag of, a Member State of the European Union’, stated in Article 224 of the ISC.

- 13 Alpina and Nicko Tours appealed against that judgment to the Consiglio di Stato (Council of State), claiming that the concept of ‘maritime cabotage’ applies only to services that involve true sea transport. The cruise at issue does not involve such transport for, with the exception of the short passage through territorial sea between Chioggia and Porto Levante, it takes place in internal waters.
- 14 The Consiglio di Stato stayed enforcement of that judgment. For the rest, it decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must [Regulation No 3577/92] be interpreted as applying to cruises carried out between ports within a Member State without different passengers embarking and disembarking in those ports, in that those cruises start and end with the same passengers embarking and disembarking in the same port within that Member State?’

Consideration of the question referred

- 15 By its question the referring court asks, in essence, whether a cruise which starts and ends, with the same passengers, in the same port of the Member State in which it takes place, is covered by the term ‘maritime cabotage’ within the meaning of Regulation No 3577/92.
- 16 While the Italian Government and the European Commission submit that the question referred should be answered in the affirmative, Alpina and Nicko Tours consider that a reply to that question is unnecessary. They note that Regulation No 3577/92 relates to sea transport and that, consequently, that regulation does not apply to a river cruise such as that at issue in the main proceedings. Therefore, instead of giving the interpretation sought by the referring court, it would be appropriate to find that Regulation No 3577/92 does not at all events concern cruises whose itinerary takes place mainly in non-maritime waters.
- 17 In that regard, it is true that it is apparent from Article 1(1) of Regulation No 3577/92 that that regulation relates only to transport services within a Member State (cabotage) which are of a maritime nature. Consequently, as Alpina and Nicko Tours correctly note, inland waterway transport services provided within a Member State and not of a maritime nature are not governed by that regulation. By contrast, those services fall within the scope of Council Regulation (EEC) No 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State (OJ 1991 L 373, p. 1).
- 18 However, contrary to what Alpina and Nicko Tours claim, it does not appear that the cruise which is the subject of the dispute in the main proceedings has a mainly non-maritime nature.
- 19 The term ‘sea’ referred to by Regulation No 3577/92 is not limited to territorial sea within the meaning of the United Nations Convention on the Law of the Sea, signed in Montego Bay (Jamaica) on 10 December 1982, entered into force on 16 November 1994 and approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1), but also covers internal maritime waters which are on the landward side of the baseline of the territorial sea (see, to that effect, Case C-323/03 *Commission v Spain* EU:C:2006:159, paragraphs 25 to 27).
- 20 Consequently, even if Alpina and Nicko Tours are correct in claiming that the crossing of the stretch of sea between Chioggia and Porto Levante is in itself too short to confer a maritime nature on the cruise at issue in the main proceedings, their argument that that cruise has a mainly non-maritime nature appears, subject to verification by the referring court, at all events to be unfounded in that, besides that stretch, other sections of the itinerary, such as the areas of navigation in the Venetian lagoon and in the mouth of the river Po, form part of the internal maritime waters of the Italian Republic.

- 21 The relevance of the interpretation of Regulation No 3577/92 sought by the referring court is not, moreover, affected by the fact that the vessel used for the cruise at issue in the main proceedings flies the Swiss flag.
- 22 The solution to that dispute depends on whether the reservation of the cabotage services between the Italian ports ‘for Community shipowners who have their ships registered in, and flying the flag of, a Member State of the European Union’ set out in Article 224 of the ISC, was lawfully applied against Alpina and Nicko Tours in relation to the cruise using the vessel flying the Swiss flag. As the order for reference confirms, it is apparent from Article 224 that the reservation which it sets out relates only to cabotage services covered by Regulation No 3577/92. Consequently, in order for it to determine whether a cruise which starts and ends in the same port constitutes a cabotage service within the meaning of Article 224 of the ISC, the referring court must first know whether such a cruise comes under the cabotage services covered by Regulation No 3577/92.
- 23 In the light of the foregoing considerations, it is appropriate for the Court to provide the interpretation sought by the referring court without its being necessary to amend or extend the scope of the question referred for a preliminary ruling in the way suggested by Alpina and Nicko Tours.
- 24 In order to reply to the question referred, it is necessary to note at the outset that it is unambiguously apparent from the reference to ‘cruise liners’ in Article 3(1) of Regulation No 3577/92 and from the derogation provided until 1 January 1995 for some cruise services in Article 6(1) of that regulation that cruises are among the types of transport covered by that regulation.
- 25 However, since Regulation No 3577/92 concerns ‘maritime cabotage’ alone, only cruises covered by that concept fall within the ambit of that regulation.
- 26 That concept being defined, in Article 1(1) and Article 2(1) of Regulation No 3577/92, by the phrase ‘maritime transport services within a Member State’, it must be considered that all cruise services normally provided for remuneration in the maritime waters of a Member State fall within the ambit of that regulation.
- 27 When such a cruise starts and ends, with the same passengers, in the same port, the fact that the departure and arrival ports are one and the same and that the passengers are the same throughout the itinerary cannot render Regulation No 3577/92 inapplicable.
- 28 It is true that the transport services listed in Article 2(1)(a) to (c) of Regulation No 3577/92 are described as having different departure and arrival ports. However, that list, which is introduced by the term ‘in particular’, is not exhaustive and cannot have the effect of excluding from the scope of that regulation transport services having all the essential characteristics of maritime cabotage contained in the above-mentioned phrase ‘maritime transport services within a Member State’ (see, to that effect, Case C-251/04 *Commission v Greece* EU:C:2007:5, paragraphs 28 and 32).
- 29 Consequently, the answer to the question referred is that a maritime transport service consisting of a cruise which starts and ends, with the same passengers, in the same port of the Member State in which it takes place, is covered by the term ‘maritime cabotage’ within the meaning of Regulation No 3577/92.

Costs

- 30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

A maritime transport service consisting of a cruise which starts and ends, with the same passengers, in the same port of the Member State in which it takes place, is covered by the term ‘maritime cabotage’ within the meaning of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

[Signatures]