



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 April 2014*

(Reference for a preliminary ruling — Regulation (EC) No 1191/69 — Public passenger transport services — Article 4 — Application for termination of public service obligation — Article 6 — Right to compensation in respect of the financial burdens resulting from the performance of a public service obligation)

In Joined Cases C-516/12 to C-518/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 3 July 2012, received at the Court on 15 November 2012, in the proceedings

CTP — Compagnia Trasporti Pubblici SpA

v

Regione Campania (C-516/12 to C-518/12),

Provincia di Napoli (C-516/12 and C-518/12),

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 20 November 2013,

after considering the observations submitted on behalf of:

- CTP — Compagnia Trasporti Pubblici SpA, by M. Malena, avvocato,
- the Regione Campania, by L. Buondonno, M. Lacatena and M. d'Elia, avvocati,
- the Provincia di Napoli, by L. Scetta and A. Di Falco, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the European Commission, by E. Montaguti and N. Yerrell, acting as Agents,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General at the sitting on 6 February 2014,
gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ 1991 L 169, p. 1) ('Regulation No 1191/69').
- 2 The requests have been made in proceedings between CTP — Compagnia Trasporti Pubblici SpA ('CTP') and (i) the Regione Campania (the Campania Region) (Cases C-516/12 to C-518/12) and (ii) the Provincia di Napoli (the Province of Naples) (Cases C-516/12 and C-518/12), concerning Regione Campania and Provincia di Napoli's refusal to grant CTP compensation in respect of financial burdens resulting from the provision of local public transport services.

Legal context

European Union law

- 3 Article 1(1) to (5) of Regulation No 1191/69, included in Section I thereof entitled 'General provisions', provides:

'1. This Regulation shall apply to transport undertakings which operate services in transport by rail, road and inland waterway.

Member States may exclude from the scope of this Regulation any undertakings whose activities are confined exclusively to the operation of urban, suburban or regional services.

2. For the purposes of this Regulation:

- "urban and suburban services" means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and surrounding areas,
- "regional services" means transport services operated to meet the transport needs of a region.

3. The competent authorities of the Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

4. In order to ensure adequate transport services which in particular take into account social and environmental factors and town and country planning, or with a view to offering particular fares to certain categories of passenger, the competent authorities of the Member States may conclude public service contracts with a transport undertaking. The conditions and details of operation of such contracts are laid down in Section V.

5. However, the competent authorities of the Member States may maintain or impose the public service obligations referred to in Article 2 for urban, suburban and regional passenger transport services. The conditions and details of operation, including methods of compensation, are laid down in Sections II, III and IV.

...

- 4 In the original version of Regulation No 1191/69, prior to the amendments introduced by Regulation No 1893/91, Article 1 was worded as follows:

‘1. Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

2. Nevertheless, such obligations may be maintained in so far as they are essential in order to ensure the provision of adequate transport services.

3. Paragraph 1 shall not apply, as regards passenger transport, to transport rates and conditions imposed by any Member State in the interests of one or more particular categories of person.

4. Financial burdens devolving on transport undertakings by reason of the maintenance of the obligations referred to in paragraph 2, or of the application of the transport rates and conditions referred to in paragraph 3, shall be subject to compensation made in accordance with common procedures laid down in this Regulation.’

- 5 Article 2(1) of Regulation No 1191/69 provides:

“Public service obligations” means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions.’

- 6 Section II of that regulation, entitled ‘Common principles for the termination or maintenance of public service obligations’, includes Articles 3 to 8.

- 7 Article 4 of that regulation is worded as follows:

‘1. It shall be for transport undertakings to apply to the competent authorities of the Member States for the termination in whole or in part of any public service obligation where such obligation entails economic disadvantages for them.

2. In their applications, transport undertakings may propose the substitution of some other form for the forms of transport being used. Undertakings shall apply the provisions of Article 5 to calculate what savings could be made as a means of improving their financial position.’

- 8 Under Article 6 of Regulation No 1191/69:

‘1. Within one year of the date of the entry into force of this Regulation transport undertakings shall lodge with the competent authorities of the Member States the applications referred to in Article 4.

Transport undertakings may lodge applications after the expiry of the aforementioned period if they find that the provisions of Article 4(1) are satisfied.

2. Decisions to maintain a public service obligation or part thereof, or to terminate it at the end of a specified period, shall provide for compensation to be granted in respect of the financial burdens resulting therefrom; the amount of such compensation shall be determined in accordance with the common procedures laid down in Articles 10 to 13.

3. The competent authorities of the Member States shall take decisions within one year of the date on which the application is lodged as regards obligations to operate or to carry, and within six months as regards tariff obligations.

The right to compensation shall arise on the date of the decision by the competent authorities but in any event not before 1 January 1971.

4. However, if the competent authorities of the Member States consider it necessary by reason of the number and importance of the applications lodged by each undertaking, they may extend the period prescribed in the first subparagraph of paragraph 3 until 1 January 1972 at the latest. In such case, the right to compensation shall arise on that date.

Where they intend to avail themselves of this power, the competent authorities of the Member States shall so inform the undertakings concerned within six months following the lodging of applications.

Should any Member State meet with special difficulties, the Council may, at the request of that State and on a proposal from the Commission, authorise the State concerned to extend until 1 January 1973 the time limit indicated in the first subparagraph of this paragraph.

5. If the competent authorities have not reached a decision within the time limit laid down, the obligation in respect of which the application under Article 4(1) for termination was made shall stand terminated.

6. The Council shall, on the basis of a report submitted by the Commission before 31 December 1972, study the situation in each Member State with regard to the implementation of this Regulation.'

- 9 Section V of Regulation No 1191/69, entitled 'Public service contracts', includes a single article, namely Article 14, which provides:

'1 "A public service contract" shall mean a contract concluded between the competent authorities of a Member State and a transport undertaking in order to provide the public with adequate transport services.

A public service contract may cover notably:

- transport services satisfying fixed standards of continuity, regularity, capacity and quality,
- additional transport services,
- transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger or on certain routes,
- adjustments of services to actual requirements.

2. A public service contract shall cover, inter alia, the following points:

- (a) the nature of the service to be provided, notably the standards of continuity, regularity, capacity and quality;
- (b) the price of the services covered by the contract, which shall either be added to tariff revenue or shall include the revenue, and details of financial relations between the two parties;
- (c) the rules concerning amendment and modification of the contract, in particular to take account of unforeseeable changes;
- (d) the period of validity of the contract;
- (e) the penalties in the event of failure to comply with the contract.

3. Those assets involved in the provision of transport services which are the subject of a public service contract may belong to the undertaking or be placed at its disposal.

4. Any undertaking which intends to discontinue or make substantial modifications to a transport service which it provides to the public on a continuous and regular basis and which is not covered by the contract system or the public service obligation shall notify the competent authorities of the Member State thereof at least three months in advance.

The competent authorities may decide to waive such notification.

This provision shall not affect other national procedures applicable as regards entitlement to terminate or modify transport services.

5. After receiving the information referred to in paragraph 4 the competent authorities may insist on the maintenance of the service concerned for up to one year from the date of notification and they shall inform the undertaking at least one month before the expiry of the notification.

They may also take the initiative of negotiating the establishment or modification of such a transport service.

6. Expenditure arising for transport undertakings from the obligations referred to in paragraph 5 shall be compensated in accordance with the common procedures laid down in Sections II, III and IV.'

¹⁰ In the original version of Regulation No 1191/69, prior to the amendments introduced by Regulation No 1893/91, Article 14 was worded as follows:

'1. Save for cases falling within Article 1(3), after the date of entry into force of this Regulation Member States may impose public service obligations on a transport undertaking only in so far as such obligations are essential in order to ensure the provision of adequate transport services.

2. Where obligations thus imposed entail for transport undertakings economic disadvantages within the meaning of Article 5(1) and (2) or financial burdens within the meaning of Article 9, the competent authorities of the Member States shall, when deciding to impose such obligations, provide for grants of compensation in respect of the financial burdens resulting therefrom. The provisions of Articles 10 to 13 shall apply.'

Italian law

¹¹ Article 17 of Legislative Decree No 422 on the transfer to regions and local bodies of functions and tasks concerning local public transport, in accordance with Article 4(4) of Law No 59 of 15 March 1997 (decreto legislativo n. 422 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, a norma dell'articolo 4, comma 4, della legge 15 marzo 1997, n. 59), of 19 November 1997 (GURI No 287, 10 December 1997, p. 4) provides:

'With a view to ensuring mobility for public transport users, the regions, provinces and municipalities shall determine public service obligations, for the purpose of Article 2 of [Regulation No 1191/69], and, in the service contracts referred to in Article 19, shall provide for the corresponding financial compensation to be paid to the undertakings providing the services, taking into account, for the purpose of the Community provision referred to above, revenue from fares and also, as the case may be, revenue deriving from the management of complementary mobility services.'

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

- 12 CTP provides local public transport services in the province of Naples. In this regard, it submitted several applications to the Regione Campania and the Provincia di Napoli, which rejected them, seeking compensation in respect of the economic disadvantage which it claimed to have suffered as a result of the provision of those services.
- 13 CTP sought annulment of those administrative decisions before the Tribunale amministrativo regionale per la Campania (Regional Administrative Court, Campania). That court considered that, in accordance with Article 4 of Regulation No 1191/69, the right to compensation in respect of such an economic disadvantage can arise only where a transport undertaking has previously made an application for termination of the public service obligation to which it is subject, and only where the competent authorities reject that application. Since it found that CTP had not brought such an application for termination, the Tribunale amministrativo regionale per la Campania adopted three judgments rejecting CTP's actions.
- 14 CTP appealed to the referring court against the three judgments adopted by the Tribunale amministrativo regionale per la Campania. The referring court takes the view that Articles 1, 4 and 6 of Regulation No 1191/69 lend themselves to two different interpretations as regards when the right to compensation arises with respect to a transport undertaking subject to a public service obligation.
- 15 According to an interpretation described as 'purposive', adopted by the Tribunale amministrativo regionale per la Campania, the right to compensation can arise only after an application for termination of the public service obligation has been made by the transport undertaking concerned to the competent authorities. In that respect, the referring court cites Article 17 of Legislative Decree No 422 of 19 November 1997, which provides for the conclusion of service contracts, and specifies in that regard that, unlike the old concessions system, the current system has a resemblance to the service contract, since the sum granted by the public authorities may be treated in the same way as consideration given in return for an obligation voluntarily assumed. However, it adds that that right to compensation, although contractual, can arise only after an application for termination of the public service obligation has been made.
- 16 According to an interpretation described as 'systemic', the right to compensation arises automatically, without the need for the transport undertaking to make an application for termination, in so far as that right concerns a public service obligation the maintenance of which is permitted under Article 1(5) of Regulation No 1191/69, which refers to urban, suburban and regional passenger transport services.
- 17 In those circumstances, the Consiglio di Stato (Council of State) has decided to stay the proceedings and to refer the following question, which is set out in the same wording in Cases C-516/12 to C-518/12, to the Court of Justice for a preliminary ruling:
- 'Does the right to compensation arise, for the purposes of Article 4 of [Regulation No 1191/69], only where, following the submission of an appropriate application, the competent authorities have not terminated the public service obligation which imposes an economic disadvantage on the transport undertaking, or does that provision apply only to service obligations that are to be terminated and may not be maintained under the regulation?'
- 18 By order of the President of the Court of 29 November 2012, Cases C-516/12 to C-518/12 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the question referred

- 19 Before addressing the substance of the question, it is necessary to establish the context in which the requests for a preliminary ruling have been made.
- 20 First, nothing in the documents before the Court suggests that the Italian Republic has made use of the option, provided for in the second subparagraph of Article 1(1) of Regulation No 1191/69, of excluding from the scope of that regulation any undertakings whose activities are confined exclusively to the operation of urban, suburban or regional services. Consequently, the provisions of that regulation are fully applicable to the cases in the main proceedings and the question referred for a preliminary ruling must be examined in the light of those provisions (see, by analogy, Case C-504/07 *Antrop and Others* EU:C:2009:290, paragraph 17).
- 21 Second, it must be borne in mind that, according to settled case-law, the referring court alone can determine the subject-matter of the questions it proposes to refer to the Court. It is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need of a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (Case C-154/05 *Kersbergen-Lap and Dams-Schipper* EU:C:2006:449, paragraph 21 and the case-law cited).
- 22 According to the particulars produced by the parties at the hearing, the local public transport services at issue in the disputes in the main proceedings provided by CTP can derive either from a public service obligation within the meaning of Article 2(1) of Regulation No 1191/69 or from a public service contract within the meaning of Article 14(1) of that regulation.
- 23 As the Advocate General noted in points 34 and 35 of his Opinion, Article 4 of Regulation No 1191/69, which is the subject of the question referred, and Article 6 of that regulation are intended to apply only if the local public transport services provided by CTP derive from a public service obligation within the meaning of Article 2(1) of the regulation. On the other hand, those Articles are inapplicable if the local public transport services provided by CTP derived from a public service contract within the meaning of Article 14(1) of Regulation No 1191/69, which it is for the referring court to establish.
- 24 In the present case, the question submitted by the referring court relates to an interpretation of Article 4 of Regulation No 1191/69, but that court does not refer to a situation covered by Article 14(1) of the regulation. In the light of the case-law set out at paragraph 21 above, it is therefore necessary to examine the question submitted to the Court on the premiss that the local public transport services provided by CTP derive from a public service obligation within the meaning of Article 2(1) of Regulation No 1191/69.
- 25 By its question, the referring court asks, in essence, whether Articles 4 and 6 of Regulation No 1191/69 must be interpreted as meaning that acquisition of a right to compensation in respect of the financial burdens resulting from the performance of a public service obligation, within the meaning of Article 2(1) of that regulation, is subject to, first, the submission of an application for termination of that obligation by the undertaking concerned and, second, a decision to maintain the obligation or to terminate it at the end of a specified period being made by the competent authorities.
- 26 In this respect, it should be noted that, under Article 4(1) of Regulation No 1191/69 read in conjunction with Article 6(2) thereof, compensation in respect of the financial burdens resulting from a public service obligation is granted to transport undertakings only if they apply for the termination of all or part of that obligation and if the competent authorities decide, notwithstanding that application, to maintain that public service obligation or part thereof, or to terminate it at the end of a specified period.

- 27 It should be noted that, in its original version and before the amendments introduced by Regulation No 1893/91, Article 14 of Regulation No 1191/69 permitted Member States to impose new public service obligations but obliged the competent authorities, when deciding to impose such obligations, to provide for grants of compensation in respect of the financial burdens resulting from their performance.
- 28 Thus, in the original version of Regulation No 1191/69, the obligation to apply for the termination of a public service obligation in order to give rise to the right to compensation, pursuant to Article 4 in conjunction with Article 6 of that regulation, was applicable only to obligations that came into existence before it entered into force, while that right to compensation arose automatically for the public service obligations that came into existence subsequently under Article 14 of that regulation.
- 29 It is true that Regulation No 1893/91 replaced that provision with the current version of Article 14 of Regulation No 1191/69, which provides for the conclusion of public service contracts. Furthermore, Regulation No 1893/91 inserted a new Article 1(5), according to which public service obligations are maintained and are imposed in accordance with the conditions and details of operation provided for in Sections II to IV of Regulation No 1191/69.
- 30 According to the Italian Government, Regulation No 1893/91 thus amended the system applicable to the imposition of public service obligations, to the effect that the right to compensation in respect of the financial burdens resulting from such obligations was thereafter subject to the submission of an application for termination thereof, pursuant to Articles 4 and 6 of the regulation. In support of that interpretation, the Italian Government relies on the fact that, after the entry into force of Regulation No 1893/91, the new Article 1(5) of Regulation No 1191/69, which enables Member States to impose new public service obligations, makes an express 'renvoi' to Section II of the regulation, which includes Articles 4 and 6.
- 31 However, as the Advocate General noted in point 53 of his Opinion, there is nothing to support the conclusion that Regulation No 1893/91 amended the system applicable to public service obligations that came into existence after the entry into force of Regulation No 1191/69 as described in paragraph 28 above. On the contrary, it is apparent from the recitals in the preamble to Regulation No 1893/91 that Member States may not only establish, in the context of a contract concluded between the competent national authorities and a transport undertaking, the details of operation of the public services in the transport sector, but also that they retain the possibility of maintaining or imposing certain public service obligations. Thus, the original system was supplemented by a second system based on a new legal instrument, namely, the public service contract, for the purposes of the new Article 14 of Regulation No 1191/69.
- 32 Furthermore, it must be stated that Regulation No 1893/91 made no amendment to Articles 4 and 6 of Regulation No 1191/69. Thus, Article 6(1) of that regulation provides that applications for termination referred to in Article 4 must be made within one year of the date of the entry into force of that regulation, that is to say 1 January 1969. Moreover, the time-limits laid down in Article 6(3) to (6) are based in particular on the dates 1 January 1971, 1 January 1972, 1 January 1973 or 31 January 1972. It follows from the foregoing that Article 6 of Regulation No 1191/69 is intended to apply only to public service obligations that came into existence before the entry into force of that regulation, namely 1 January 1969.
- 33 Furthermore, and as the Advocate General stated in point 55 of his Opinion, it cannot be deduced from the wording of Article 1(5) of Regulation No 1191/69 that every provision in Sections II to IV thereof applies to both the maintenance and imposition of public service obligations. Thus, some of those provisions, such as Articles 3 or 7(1) apply exclusively to the maintenance of those obligations. The same is true of Articles 4 and 6 of that regulation which, as is apparent from their wording, apply

only to public service obligations that came into existence before 1 January 1969. Consequently, the Italian Government's argument that Article 1(5) of that regulation must be interpreted as meaning that Articles 4 and 6 thereof apply to the imposition of new public service obligations cannot be upheld.

- ³⁴ In the light of the foregoing, the answer to the question referred is that Articles 4 and 6 of Regulation No 1191/69 must be interpreted as meaning that, for public service obligations that came into existence before the entry into force of that regulation, acquisition of a right to compensation in respect of the financial burdens resulting from the performance of such obligations is subject to the submission of an application for termination of those obligations by the undertaking concerned and to a decision to maintain the obligations or to terminate them at the end of a specified period being made by the competent authorities. By contrast, as regards public service obligations that came into existence after that date, acquisition of such a right to compensation is not subject to the same conditions.

Costs

- ³⁵ 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 (Fifth Chamber) hereby rules:

Articles 4 and 6 of Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 must be interpreted as meaning that, for public service obligations that came into existence before the entry into force of that regulation, acquisition of a right to compensation in respect of the financial burdens resulting from the performance of such an obligation is subject to the submission of an application for termination of that obligation by the undertaking concerned and to a decision to maintain the obligation or to terminate it at the end of a specified period being made by the competent authorities. By contrast, as regards public service obligations that came into existence after that date, acquisition of such a right to compensation is not subject to those conditions.

[Signatures]