

Italian Constitutional Court

Legal summary

Judgment No 137/2024

ECLI:IT:COST:2024:137

THE BAN ON NEW LICENSES FOR PRIVATE HIRE VEHICLES IS UNCONSTITUTIONAL

In Judgment No 137/2024, the Constitutional Court (the “**Court**”) declared that the ban on issuing new licenses for private hire vehicles (PHV), which was intended to remain in effect until an electronic register of transportation service providers became operational, was unconstitutional and violated **Articles 3, 41 and 117 IC**, the latter in conjunction with the freedom of establishment under **Article 49 TFEU**.

More than five years since the adoption of the ban, the register was yet to become operational, resulting in an indefinite halt to the issuance of much-needed licenses. This had irrational, competition-reducing effects. In the context of a scarcity of passenger transport-on-demand services, the prolonged ban harmed consumers and had the sole tangible effect of protecting taxi operators, who compete with PHV operators.

On these grounds, the Court declared that the ban was unreasonable and breached Article 3 IC. Additionally, the limitations that the ban imposed on new operators were not justified by the pursuit of public interests, and therefore infringed Article 41 IC. Finally, the ban hindered the establishment of new operators while favouring existing PHV and taxi operators, in breach of Article 117 IC, in conjunction with Article 49 TFEU.

Main proceedings

In 2023, the Calabria Region adopted a regional law¹ that granted a local company – already a supplier of railway and coach rental with driver services – as many as two hundred licenses to operate passenger transport on demand using a fleet of private hire vehicles (PHVs).² The Italian Government contested the constitutionality of this law before the Court, arguing that it violated the Italian Constitution (IC).

Specifically, the Government claimed that the regional law encroached on the State’s exclusive legislative authority over competition matters, as outlined in Article 117(2)(e) IC.³ The Government also argued that the law breached Article 118 IC, which establishes the

¹ Regional Law No 16/2023 (Authorisation of PHV operators).

² In Italy, PHV services are referred to as “*Noleggio con Conducente*” (literally: rental with driver) or the acronym *NCC*.

³ Under Article 134 IC, the Court settles disputes concerning the constitutional legitimacy of laws issued by the Regions. Under Article 127, the Government can question the constitutional legitimacy of a regional law, if it deems that the law exceeds the Region’s competence, and can seise the Constitutional Court within sixty days from the law’s publication.

principles of subsidiarity, differentiation and proportionality in the exercise of administrative functions. The Government asserted that the regional law conflicted with existing State legislation regulating PHV services, thus overstepping the boundaries of regional legislative competence.

In these constitutional proceedings (the “**main proceedings**”⁴), the compliance of the regional law with State law was in question, particularly in relation to Article 10-*bis*(6) of Decree-Law No 135 of 14 December 2018, converted into Law No 12 of 11 February 2019.⁵ This measure stipulated that no new PHV licenses could be issued until a national electronic register of providers offering passenger transport-on-demand services – including taxi drivers – became fully operational.⁶ The implementation of the electronic register and the decision as to when it would be deemed fully operational were left to a ministerial decree, which was adopted in 2020.⁷ However, the decree was suspended immediately after adoption due to incomplete technical arrangements, which were never finalised thereafter. This delay extended the ban on issuing new PHV licenses indefinitely.

In the main proceedings, the Court determined that, in order to establish the regional law’s compliance with the ban provided by the State law, the constitutionality of the latter had to be determined first. Hence the Court decided to suspend the main proceedings related to the regional law and issued a referral order to itself,⁸ thus assuming the role of the “**referring court**”,⁹ and initiated a **proceedings incidental to the main one**. This referral, which culminated in Judgment No 137/2024, aimed at assessing whether the ban on issuing new PHV licenses, established by to Article 10-*bis*(6) of Decree-Law No 135 of 14 December 2018 (the “**challenged measure**”), violated the Constitution, especially given the extended delay in implementing the electronic register for passenger transport-on-demand operators.

Complaints

According to the referral order,¹⁰ the five-year delay in implementing the electronic register, which entailed an ongoing ban on issuing new PHV licenses, constituted a violation of several constitutional principles. These are **Articles 3 (Principle of equality), 41 (Freedom of private economic enterprise), and 117(1) IC (Compliance with the obligations**

⁴ These proceedings were initiated by an application of the President of the Council of Ministers, submitted to the Court on 23 June 2023. After judgment No 137/2024, the Constitutional Court resumed the proceedings and delivered judgment No 206/2024, on 19 December 2024.

⁵ Decree-Law No 135 of 2018 (Urgent provisions for the simplification of bureaucracy in the interest of companies and public administration), converted into Law No 12/2019.

⁶ The Electronic Registry for Taxis and NVPs (“*Registro Elettronico NCC Taxi*”, or “*RENT*”) was finally opened for registration on 9 September 2024, after the adoption of Ministerial Decree No 203/2024 of the Ministry of Infrastructures and Transportation. All operators licensed for transport-on-demand services could apply for registration by the end of September 2024.

⁷ Ministry of Infrastructures and Transportation, Decree of the Head of Department No 4/2020.

⁸ Constitutional Court, Order No 35/2024.

⁹ When the Constitutional Court hears a dispute between the State and a Region, it qualifies as a court in the course of judicial proceedings (pursuant to Article 1 of Constitutional Law No 1/1948 regulating the system of constitutional justice) and, accordingly, it can refer to itself questions of constitutionality relating to the statute that it must interpret and apply in the main proceedings. **In these cases, it operates a “self-referral” which initiates incidental proceedings relating to the statute at issue, while the main proceedings are suspended.**

¹⁰ The order was issued by the Court itself. To ensure the fairness of incidental constitutional proceedings, the Court motioned the parties in the main proceedings (the State and the Calabria Region) to submit their views on the question of constitutionality raised in the referral order.

deriving from European Union law), with specific reference to Article 49 (Freedom of establishment) of the Treaty on the Functioning of the European Union (TFEU).

Firstly, **the ban contravened the principles of reasonableness and proportionality** derived from Article 3 IC. While the establishment of an electronic register for passenger transport-on-demand operators is a legitimate goal, the delay in its implementation did not justify an indefinite postponement of issuing new licenses. The purpose of the register was not to obstruct the issuance of new licenses, and the prolonged delay was disproportionate.

Secondly, **the prolonged ban on new licenses created an undue barrier to market access for new private operators**, violating Article 41 IC, which protects economic freedom. This restriction did not serve any significant social or collective interest, and rather appeared to be a protectionist measure in a market that already limited access to new operators.

Lastly, the challenged measure breached Article 117 IC, in conjunction with Article 49 TFEU, by **restricting the freedom of establishment for transport-on-demand operators**. The ban was unjustified since it did not pursue a legitimate social goal by proportionate means.

Decision of the Court

The Court declared that the challenged measure violated Articles 3 (Principle of equality), 41 (Freedom of private economic enterprise) and 117(1) (Compliance with the obligations deriving from European Union law) IC, the latter in conjunction with Article 49 TFEU (Freedom of establishment).

Reasons for the decision

In 2019, the Court had been involved in reviewing the constitutionality of the challenged measure, as it had been already argued that the ban unjustly restricted competition and favoured taxi drivers. In Judgment No 56/2020, the Court declared that the question as to the constitutionality of the ban was unfounded, but only under the condition that it would remain in place for the time strictly necessary to implement the new register.¹¹ The delay in the implementation of the register continued, and the Court reached the opposite decision in Judgment No 137/2024.

The design of the challenged measure allowed for the potential indefinite extension of the ban on issuing new PHV licenses. This risk materialised, as more than five years had passed since the issuance of Decree-Law No 135/2018 without the electronic register intended to manage these licenses becoming operational. In practice, this allowed executive authorities to create a barrier for new PHV operators to enter the market simply by delaying or preventing the implementation of the new register.

As a result, **the contested measure significantly hindered efforts to expand the availability of transport-on-demand services, which were already in short supply.** Since 1995, the Italian Competition Authority (*Autorità garante della concorrenza e del mercato*) had repeatedly criticised this systemic scarcity, attributing it to the limited number

¹¹ Constitutional Court, Judgment No 56/2020.

of licenses issued for taxis and PHVs, which compete in this sector. In 2017, the Competition Authority explicitly reminded the legislature that increasing the supply of passenger transport-on-demand services would help meet the needs of a large, largely unmet demand, especially in large cities.

Regarding Article 3 IC, in the present case the Court expressly adopted a different approach compared to the one whereby it deemed the contested measure constitutional in Judgment No 56/2020. In that earlier ruling, it had used an approach that, in retrospect, it described as static (“*statico*”), while in the present case the Court opted for a dynamic (“*dinamico*”) approach. It took into account the significant delay over several years, thus highlighting the inherent contradiction between the indefinite ban and its intended purpose. The rationale behind the measure was to swiftly survey all passenger transport-on-demand operators, including taxis and PHVs, with a view to issuing new licenses, but the measure ended up stifling the process instead. On these grounds, **the Court found the ban unreasonable and criticised it for lacking proportionality.**

The ban had negative consequences for both consumers and new operators and failed to bring any positive outcomes for the broader community. Instead, it shielded established operators from competition in an industry where supply is significantly lower than demand, thus hindering the country’s economic growth. Furthermore, the unavailability of passenger transport-on-demand services restricted the exercise of fundamental rights linked to individuals’ freedom of movement. These include the right to medical care for the elderly and frail who cannot use public transportation, the right to work for those needing fast transportation options, and the right to conduct business, particularly in the tourism sector, which often relies on reaching destinations only served by such transport services.

The challenged measure also violated Article 41 IC. It permitted administrative authorities to impose additional barriers to market access on new operators in a sector already characterised by high entry barriers. Furthermore, the limitations on private economic enterprise imposed by the challenged measure did not serve any public interest, but protected existing operators at the expense of public welfare and the broader public interest.

Finally, the Court upheld the complaint relating to Article 117(1) IC, in conjunction to Article 49 TFEU. The Court of Justice of the European Union (CJEU) has clarified that Article 49 TFEU prohibits obstacles to the freedom of establishment of PHV operators deriving from preferential treatment afforded to taxi operators.¹² For the same reasons discussed above regarding Article 41 IC, the challenged measure constituted an obstacle to the freedom of establishment, lacking a proportionate justification tied to the pursuit of public interests.

As a result of this judgment, the challenged measure was vacated.

Type of proceedings	Incidental constitutional judgment following self-referral ⁺
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¹² CJEU, judgment of 8 June 2023 in Case C-50/21, *Prestige and Limousine SL*. In this case, the CJEU scrutinised a set of Spanish measures in this field. Namely, Spain granted only a small number of licenses to PHV operators compared to the number of taxi licenses (which were thirty times more numerous). The CJEU considered this differential treatment as an obstacle to freedom of establishment, which can only be justified in light of the measure’s public purpose and its ability to enhance such purpose in a proportionate way.

President of the Court	Augusto Antonio Barbera
Judge rapporteur	Luca Antonini
Composition of the Court	Augusto Antonio Barbera (President), Franco Modugno, Giulio Prosperetti, Giovanni Amoroso, Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi
Delivery of the judgment	19 July 2024
Challenged measure	Article 10- <i>bis</i> (6) of Decree-Law No 135 of 14 December 2018, converted into Law No 12 of 11 February 2019