

PRE-BOOKED DRIVER HIRE SERVICE: THE REQUIREMENT TO RETURN TO BASE AFTER EACH JOB IS UNCONSTITUTIONAL

Any person providing a pre-booked driver hire service cannot be obliged to return to the base depot before starting each new job.

This ruling was made by the Constitutional Court in [Judgment no. 56](#) filed today (Judge Rapporteur: Daria de Pretis), holding that this obligation entails an unreasonable organisational and logistical burden for a provider of pre-booked driver hire services, who is always obliged to make a journey “for nothing” in order to return to the base depot. In addition, according to the Court the obligation is disproportionate having regard to the objective of ensuring that the service is provided to specific and non-undifferentiated users as the requirement to return to base each time in order to receive requests submitted there may be superseded - without interfering with taxi services - through the usage of technology, as provided for by law.

The Court thus declared Decree-Law no. 135 of 2018 unconstitutional insofar as it provides for such an obligation (in particular, Article 10-bis(1)(e)), accepting in part the application filed by Calabria Region within a jurisdictional dispute brought against the State.

The Region asserted that various provisions contained in Decree-Law 135/2018, which introduced restrictions for pre-booked driver hire services, encroached upon its own competence over local public transport. In particular, the application asserted that the contested State legislation did not pertain to the protection of competition, and that in any case in terms of its content it did not comply with the limits applicable

to the exercise of the respective competence where that interfered with regional powers.

The Judgment states that the legislation enacted in order to regulate the sector constitutes a legitimate expression of State competence over the “protection of competition” pursuant to Article 117(2)(2) of the Constitution. In fact, the State legislator’s competence to make provision in the area of competition includes the power to strike a balance between the two different non-scheduled local public transportation services, namely pre-booked driver hire services and taxi services.

However, this does not mean that the State legislator is not obliged to comply with the requirements of adequacy and proportionality having regard to the desired objectives. Amongst the various restrictions on the activities of pre-booked driver hire service providers objected to by the Region, the Court held that the requirement to return to the base depot after each job was excessively burdensome and disproportionate having regard to the objectives of regulating competition.

Rome, 26 March 2020