JUDGMENT OF THE COURT (Sixth Chamber)
25 November 1998 *

In Case C-308/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Bari, Italy, for a preliminary ruling in the proceedings pending before that court between

Giuseppe Manfredi

and

Regione Puglia

on the interpretation of Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1),

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, G. Hirsch, G. F. Mancini, H. Ragnemalm and K. M. Ioannou, Judges,

* Language of the case: Italian.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Manfredi, by Domenico Bellantuono and Gaetano Stea, of the Bari Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and Oscar Fiumara, Avvocato dello Stato,

— the Greek Government, by Ioannis Chalkias, Assistant Legal Adviser in the State Legal Service and by Chrysoula Tsiavou, Court Agent in the State Legal Service, acting as Agents,

— the French Government, by Kareen Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Administrative Attaché in the same directorate, acting as Agents, and

— the Commission of the European Communities, by Ana Maria Alves Vieira and Francesco Ruggeri Laderchi, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Manfredi, represented by Domenico Bellantuono; of the Italian Government, represented by Francesca Quadri, Avvocato

dello Stato; of the Greek Government, represented by Ioannis Chalkias; and of the Commission, represented by Francesco Ruggeri Laderchi, at the hearing on 9 July 1998,

after hearing the Opinion of the Advocate General at the sitting on 14 July 1998,

gives the following

Judgment

1 By order of 19 August 1997, received at the Court on 3 September 1997, the Pretura Circondariale di Bari (Magistrate's Court for the District of Bari) referred for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1).

2 That question was raised in proceedings brought by Mr Manfredi, challenging Ordinanza-ingiunzione (enforcement order) No 2387/96/A of 3 December 1996 whereby the Legal Office of the Puglia Regional Authority ordered the grubbing-up of vines of the 'Italia' table grape variety which he had planted without administrative authorisation in 1991 and 1992 on 2.7331 hectares of land he owned at Mola di Bari and imposed on him an administrative fine of LIT 2 763 100.

3 According to the Italian authorities, Mr Manfredi's conduct constituted an infringement of Article 6(1) of Regulation No 822/87.

The Community legislation

4 Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organisation of the market in wine (OJ 1979 L 54, p. 1) was amended by Council Regulation (EEC) No 454/80 of 18 February 1980 (OJ 1980 L 57, p. 7). Article 1(1) of Regulation No 454/80 substituted a new Title III for the Title III in Regulation No 337/79, headed 'Rules concerning production and control of the development of wine-growing potential'.

5 Article 30 of Regulation No 337/79, as amended by Article 1(1) of Regulation No 454/80, which is part of Title III, provides:

> '1. ... all new planting of vines shall be prohibited until 30 November 1986, except on areas intended for the production of grapes obtained from varieties which, for the administrative unit concerned, are classified solely as table grape varieties.'

6 That provision was amended by Council Regulation (EEC) No 1208/84 of 27 April 1984 (OJ 1984 L 115, p. 77). The eighth recital in the preamble to that amending regulation states:

'Whereas, since the present table grape production potential exceeds requirements, the ban on new planting should be extended to all vines ...'.

7 Article 30 of Regulation No 337/79, as amended by Article 1(11) of Regulation No 1208/84, provides as follows:

'1. All new plantings of vines shall be prohibited until 31 August 1990.

However, authorisations for new plantings may be granted by Member States for areas intended for the production of quality wines psr for which the Commission has recognised that production, because of their qualitative features, is far below demand.'

8 On 16 March 1987, the Council adopted Regulation No 822/87, which, as stated in the first recital in its preamble, consolidates the earlier legislation.

9 Article 6 of that regulation provides:

'1. All new planting of vines shall be prohibited until 31 August 1990.

However, authorisations for new planting may be granted by Member States in respect of areas intended for the production of quality wines psr production of which the Commission has recognised, because of their qualitative features, as being far below demand.

2. Notwithstanding paragraph 1, Member States may grant authorisations for new planting in respect of:

— areas intended for the cultivation of mother plantations,

— areas intended for new planting carried out under measures for the consolidation of holdings or measures concerning compulsory purchase in the public interest adopted under national legislation,

— in Member states whose production of quality wines psr during the 1975/76, 1976/77 and 1977/78 wine years was less than 60% of total wine production, areas intended for new planting to be carried out under development plans meeting the conditions laid down in Council Directive 72/159/EEC,

— areas intended for wine-growing experiments.

3. Grapes obtained from vines planted in violation of Community or national provisions concerning new planting of vineyards within the meaning of Annex V may not be used for producing table wine. Products made from such grapes may be put into circulation only for the purposes of distillation. However, these products may not be used in the preparation of alcohol with an actual alcoholic strength by volume of 80% vol or less.

4. The recognition referred to in the second subparagraph of paragraph 1 shall be decided on, at the request of a Member State, in accordance with the procedure laid down in Article 83.

Detailed rules for the application of this Article shall be adopted in accordance with the same procedure.'

10 Article 6 of Regulation No 822/87 was amended by Council Regulation (EEC) No 1325/90 of 14 May 1990 (OJ 1990 L 132, p. 19). The second recital in the preamble to that regulation states as follows:

'Whereas the abovementioned ban on new planting coupled with the restriction of the exercise of the replanting right on the holding to the production of table wine and table grapes and cultivation of root-stock runs the risk of not allowing supply in those areas to adapt to the development in demand ...'.

11 Article 6(1) of Regulation No 822/87 as amended by Article 1(2) of Regulation No 1325/90 provides:

'1. All new planting of vines shall be prohibited until 31 August 1996.

However, authorisations for new planting for the 1990/91 wine year may be granted by Member States in respect of areas intended for the production of quality wines psr, production of which the Commission has recognised, because of their qualitative features, as being far below demand.'

12 That version of Article 6 of Regulation No 822/87 was then amended by Council Regulation (EC) No 1592/96 of 30 July 1996 (OJ 1996 L 206, p. 31), the first recital in the preamble to which states:

'Whereas all new planting of vines is prohibited until 31 August 1996; whereas, in view of the situation on the wine sector market, the existing ban should be extended by two wine years pending Council decisions on reforming the sector; whereas, however, on the one hand, there should not be included in this ban areas intended for producing table grapes and, on the other hand, derogations from the ban should be introduced for certain wines which are in demand on the market on account of their qualitative characteristics'.

13 Article 6 of Regulation No 822/87 as amended by Article 1(1) of Regulation No 1592/96 provides:

'1. Any new planting of vine varieties other than those classified, for the administrative unit concerned, solely amongst table grape varieties shall be banned until 31 August 1998.

...'

The question referred

14 The Pretura Circondariale di Bari took the view that the action brought by Mr Manfredi challenging Ordinanza-ingiunzione No 2387/96/A raised a question

as to the interpretation of Community law, and therefore stayed proceedings to ask the Court whether the prohibition of the planting of new vines laid down in Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 extended to vines intended for the production of table grapes.

15 In order to reply to that question, it is necessary first of all to consider the amendments made by the Community legislature to Regulation No 337/79 as it stood following Regulation No 454/80.

16 It is clear from Article 30(1) of that regulation that, until 30 November 1986, all new planting of vines was prohibited except the planting of varieties intended to produce table grapes.

17 On 1 May 1984, that exception was repealed by Regulation No 1208/84. Under Article 30 of Regulation No 337/79, as amended by Article 1(11) of Regulation No 1208/84, all new planting of vines was prohibited until 31 August 1990. It is clear from the eighth recital in the preamble to Regulation No 1208/84 that the Community legislature considered that, since table grape production potential exceeded requirements, it was appropriate to extend the ban on new planting to grape varieties intended for the production of table grapes.

18 The ban on all planting of new vines was extended to 31 August 1990 by Article 6 of Regulation No 822/87; that date was changed by Regulation No 1325/90, Article 1(2) of which extended the ban laid down by Article 6 of Regulation No 822/87 until 31 August 1996.

19 It follows that the ban on planting new vines applied to varieties intended for the production of table grapes during the years 1991 and 1992.

20 That interpretation is borne out by Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/1989 to 1995/1996 wine years, of permanent abandonment premiums in respect of wine-growing areas (OJ 1988 L 132, p. 3). Under Article 1 of that regulation, holders of cultivated wine-growing areas for the production of table grapes form one of the categories eligible to receive a permanent abandonment premium. According to the second recital in its preamble, it was necessary to extend the facility for abandonment to all classes of wine-growing areas, in order to reinforce measures to reduce wine-growing potential.

21 To interpret Article 6(1) of Regulation No 822/87, as amended by Regulation No 1325/90, as not prohibiting the planting of new vines intended for the production of table grapes would run counter to the objective of the permanent abandonment measures laid down in Regulation No 1442/88. Indeed, as the Advocate General has noted in points 23 to 26 of his Opinion, it is inconceivable that the Community legislature should have omitted to prohibit the planting of vines intended to produce table grapes and yet have encouraged the grubbing-up of such vines by means of permanent abandonment premiums.

22 The arguments raised before the national court against such an interpretation must now be examined.

23 The applicant in the main proceedings argued first of all that Regulation No 822/87, as amended by Regulation No 1325/90, relates purely to wine grapes, and not to table grapes, on the ground that table grapes are not mentioned in the list of

products to which the common organisation of the market in wine applies as set out in Article 1(2) of Regulation No 822/87.

24 Although Article 1(2) of Regulation No 822/87 does not mention table grapes, that is because it covers products within the common organisation of the market in wine. However, as the Commission has rightly observed, Regulation No 822/87 does not relate to the wine sector alone but to the whole of the vine-growing and wine sector.

25 Regulation No 822/87 is stated in Article 1(1) to contain, *inter alia*, rules governing production and control of the development of wine-growing potential. Such rules include, as the preamble also makes clear, those governing the planting of vineyards and the classification of vines, from which vineyards producing table grapes or varieties of vine intended for the production of table grapes are not excluded.

26 Furthermore, as the Advocate General has observed at point 30 of his Opinion, the Community legislature has, in the context of the common organisation of the market in the wine sector, adopted a number of regulations intended to control certain aspects of table grape production.

27 Secondly, the applicant in the main proceedings relies on the seventeenth recital in the preamble to Regulation No 822/87, according to which an exemption from the ban on new planting operations 'is justified ... in view of their intended use, in the case of new planting of vine varieties classified solely as table grape varieties'.

28 As the Commission has pointed out, Regulation No 822/87, which consolidates the earlier legislation, reproduced the ninth recital in the preamble to Regulation No 454/80, which referred to the derogation provided for in respect of table grapes under Regulation No 337/79 before the ban on planting new vines was extended by Regulation No 1208/84 to varieties intended for the production of table grapes.

29 It must therefore be observed that, since varieties intended for the production of table grapes were no longer exempted from the ban on planting new vines when Regulation No 822/87 was adopted, the relevant part of the seventeenth recital in the preamble to that regulation does not correspond to any of the provisions which it contains. As the Advocate General has noted at point 36 of his Opinion, this is a mistake which was made when consolidating the earlier legislation.

30 In those circumstances, that recital cannot be relied upon to interpret Article 6(1) of Regulation No 822/87, as amended by Regulation No 1325/90, in a manner clearly contrary to its wording.

31 Finally, Mr Manfredi argued that Article 1(1) of Regulation No 1592/96 amended Article 6(1) of Regulation No 822/87 to authorise new plantings of table grape varieties from 1 September 1996.

32 In that connection, it must be noted that the derogation from the ban on planting new vines in respect of table grape varieties inserted by Regulation No 1592/96 provides confirmation that new plantings of such varieties were prohibited prior to 1 September 1996, as is also clear from the first recital in the preamble to Regulation No 1592/96.

33 In addition, Article 1(2) of Council Regulation (EC) No 1595/96 of 30 July 1996 amending Regulation No 1442/88 (OJ 1996 L 206, p. 36) provides for the discontinuance of permanent abandonment premiums for holders of wine-growing areas intended for the production of table grapes. It is clear from the third recital in the preamble to Regulation No 1595/96 that the exclusion of areas intended for the production of table grapes from entitlement to permanent abandonment premiums was necessary because after 1 September 1996 those areas were no longer included in the scope of the ban on any new vine planting within the meaning of Article 6 of Regulation No 822/87, as amended by Regulation No 1592/96.

34 Finally, with regard to the Italian Government's request that sanctions should not apply to wine growers who infringed the ban in Article 6(1) of Regulation No 822/87 in the belief that it did not extend to table grape varieties, it need only be observed that it is for the national court to decide whether there was an excusable error and to determine the consequences.

35 In view of the foregoing, the reply to the question referred is that, for the years 1991 and 1992, Article 6(1) of Regulation No 822/87, as amended by Regulation No 1325/90, prohibited new plantations of vines intended for the production of table grapes.

Costs

36 The costs incurred by the Italian, Greek and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Pretura Circondariale di Bari by order of 19 August 1997, hereby rules:

For the years 1991 and 1992, Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine, as amended by Council Regulation (EEC) No 1325/90 of 14 May 1990, prohibited new plantations of vines intended for the production of table grapes.

Kapteyn Hirsch Mancini

Ragnemalm Ioannou

Delivered in open court in Luxembourg on 25 November 1998.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber