JUDGMENT OF THE COURT (Fourth Chamber)
23 February 1995 *

In Joined Cases C-54/94 and C-74/94,

REFERENCES to the Court under Article 177 of the EEC Treaty by the investigating judge of the Pretura Circondariale (District Magistrate's Court), Macerata, Italy, for a preliminary ruling in the criminal proceedings before that court against

Gino Stanghellini

and

Ulderico Cacchiarelli,

on the interpretation of Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris (Rapporteur) and J. L. Murray, Judges,

* Language of the case: Italian.

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Commission of the European Communities, by E. de March, Legal Adviser, and by G. Berscheid, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1994,

gives the following

Judgment

1 By orders of 22 December 1993 and 13 January 1994, received at the Court on 8 and 28 February 1994 respectively, the investigating judge of the Pretura Circondariale (District Magistrate's Court), Macerata, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71).

2 Those questions were raised in the course of investigations by the competent judge concerning the possible instigation of criminal proceedings against two Italian

nationals accused of contravening Italian legislation transposing into the domestic legal order Community directives on residues of active substances of plant-protection products permitted on or in products intended for human consumption.

3 It is apparent from the orders for reference that checks carried out in March and April 1993 by the Health Authority in the Marche region in one case revealed a concentration of Chlorpropham and Propham on samples of frozen chipped potatoes considerably in excess of the maximum permissible level set by order of the Minister of Health of 18 July 1990 (*Official Gazette*, ord. suppl. No 202 of 30 August 1990). In the second case checks on samples of potatoes which had been sold wholesale showed Propham to be present on the product before peeling at a level clearly in excess of that permitted, whereas the peeled product observed the maximum permissible level.

4 The national court entertained doubts as to whether the Italian legislation under which the facts alleged constituted an offence correctly transposed the applicable Community directives. It therefore stayed the proceedings before it and referred the following questions to the Court for a preliminary ruling:

'1. Is Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables, to be understood as applying also to the herbicides at issue in these proceedings?

2. Has the Government of the Italian Republic, by means of the measure implementing the aforesaid directive, namely the Decree of the Minister for Health

of 23 December 1992, and having regard to the Italian Government's official interpretation, correctly and precisely transposed the directive into domestic law so far as concerns the procedure for sampling and analysing potatoes in order to check whether the maximum levels for residues of active substances of plant-protection products have been observed?'

5 By order of the President of 11 March 1994 the two cases were joined, in accordance with Article 43 of the Rules of Procedure, for the purposes of the oral procedure and judgment.

The applicable Community legislation

6 In the first place, the Council adopted on 23 November 1976 Directive 76/895/EEC relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables (OJ 1976 L 340, p. 26). Under Article 6(1) thereof it was for the Member States to ensure compliance with the maximum levels laid down therein.

7 In accordance with Article 1 thereof, that directive 'concerns products intended for human consumption listed under the Common Customs Tariff headings set out in Annex I and in or on which are found the pesticide residues listed in Annex II.' However, potatoes are not listed under the Common Customs Tariff headings set out in Annex I. Moreover, neither Chlorpropham nor Propham originally

appeared in Annex II. It was only by Council Directive 82/528/EEC of 19 July 1982 (OJ 1982 L 234, p. 1) adopted under Article 5 of Directive 76/895 that Chlorpropham, a herbicide, was included in Annex II to the latter directive.

8 Secondly, the Council adopted on 27 November 1990 Directive 90/642 whose Article 3(2) requires the Member States to ensure compliance with the maximum levels of pesticide residues referred to therein.

9 In the words of Article 1(1) thereof, this directive is 'to apply to products within the groups specified in column 1 of the Annex ...' and 'the list of pesticide residues concerned and their maximum levels shall be established by the Council ...'. Although potatoes are in fact mentioned in the annex to that directive, on the other hand, the list of pesticides contained in the list under consideration, drawn up only by Council Directive 93/58/EEC of 29 June 1993 (OJ 1993 L 211, p. 6), includes neither Chlorpropham nor Propham.

10 As to the relationship between the two directives it is apparent from the thirteenth and sixteenth recitals in the preamble to Directive 90/642 and Article 1 thereof that it is without prejudice to Directive 76/895 but is intended to replace it progressively as and when the pesticide residues mentioned in Directive 76/895 are included in Directive 90/642 and maximum levels are fixed.

11 It follows therefore that Directive 76/895 does not apply to the main proceedings since potatoes are not included in Annex I thereto. It is evidently for that reason that the questions submitted by the national court do not refer to that directive.

12 Similarly, Directive 90/642 does not apply in the present case. In fact, although potatoes are mentioned in the annex thereto, Chlorpropham and Propham are not included in the list drawn up under Directive 93/58 mentioned above.

The questions

13 It appears from the orders for reference that by its questions, which must be taken together, the national court is seeking essentially to ascertain whether Directive 90/642 precludes national legislation from setting maximum permissible levels for residues of Chlorpropham and Propham on potatoes and providing for the requisite checks to be carried out after peeling and not before.

14 It follows from the reasoning set out above that Directive 90/642 is not applicable to the residues of plant-protection products at issue in the main proceedings. Accordingly, in the absence of Community harmonization in the matter, it is for the national legislature to set the maximum permissible levels for the residues of the products in question and to provide for the checking procedures relating thereto, subject however to compliance with the provisions of Articles 30 and 36 of the EC Treaty.

15 The reply to the national court must therefore be that Directive 90/642, in the version applicable at the material time, does not preclude national legislation from setting maximum permissible levels for residues of Chlorpropham and Propham on potatoes and providing for procedures for checking compliance with those levels, subject to the provisions of Articles 30 and 36 of the EC Treaty.

Costs

16 The costs incurred by the Commission of the European Communities, which has 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 (Fourth Chamber),

in answer to the questions referred to it by the examining judge at the Pretura Circondariale, Macerata, by orders of 22 December 1993 and 13 January 1994, hereby rules:

Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71), does not preclude national legislation from setting maximum permissible levels for residues of Chlorpropham and Propham on potatoes and providing for procedures for checking compliance with those levels, subject to the provisions of Articles 30 and 36 of the EC Treaty.

Kapteyn Kakouris Murray

Delivered in open court in Luxembourg on 23 February 1995.

R. Grass
Registrar

P. J. G. Kapteyn
President of the Fourth Chamber