JUDGMENT OF THE COURT (Fourth Chamber)

2 December 2004 *

In Case C-398/03,

REFERENCE for a preliminary ruling under Article 234 EC

from the Helsingin hallinto-oikeus (Finland), made by judgment of 22 September 2003, received at the Court on 24 September 2003, in the proceedings brought by

E. Gavrielides Oy,

THE COURT (Fourth Chamber),

composed of: K. Lenaerts (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues and K. Schiemann, Judges,

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

* Language of the case: Finnish.

having regard to the written procedure and further to the hearing on 16 September 2004,

after considering the observations submitted on behalf of:

— E. Gavrielides Oy, by E. Gavrielides,

— the Greek Government, by K. Marinou and V. Kontolaimos, acting as Agents,

— the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent,

— the Commission of the European Communities, by E. Paasivirta, B. Doherty and P. Aalto, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 September 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns 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), as amended by Commission Directive 2000/42/EC of 22 June 2000 (OJ 2000 L 158, p. 51) ('Directive 90/642').

2 The reference was made in the course of proceedings between E. Gavrielides Oy ('Gavrielides') and the Finnish customs authorities, following decisions by the latter preventing Gavrielides from importing vine leaves into Finland.

Legal background

3 Directive 90/642 provides in the first subparagraph of Article 1(1):

'This Directive shall apply to products within the groups specified in column 1 of Annex I, examples of which are given in column 2, in so far as products in those groups, or the parts of product described in column 3, may contain certain pesticide residues.'

4 According to the first subparagraph of Article 3(1) of Directive 90/642:

'The products in the groups or, where applicable, the parts of products referred to in Article 1 shall not contain, from the time they are put into circulation, pesticide residue levels higher than those specified in the list referred to in Annex II.'

5 Annex I to Directive 90/642 contains a list of the groups of products and the products referred to by Article 1.

6 In column 1 of that annex features, in particular, the group 'Berries and small fruit'. Among the products in this group, mentioned in column 2, are table and wine grapes. In accordance with column 3, the maximum pesticide residue levels apply to 'the whole product after removal of caps and stems'.

7 Column 1 of Annex I also includes the group 'Leaf vegetables and fresh herbs'. Among the products in this group, mentioned in column 2, are herbs. In accordance with column 3, the maximum residue levels apply to 'the whole product after removal of decayed outer leaves, root and soil (if any)'.

8 Annex II to Directive 90/642 fixes the maximum pesticide residue levels for the various products or parts of products referred to in Article 1 of the Directive. Mentioned in particular in that annex in the berries and small fruits group are table and wine grapes and, in the leaf vegetables and fresh herbs group, the sub-group herbs. The latter comprises a list of products, namely chervil, chives, parsley and celery leaves, and an entry entitled 'Others'.

9 In Annex II, the maximum levels for chlorpyrifos are fixed at 0.5 mg/kg for table and wine grapes and at 0.05 mg/kg for herbs.

10 Also in Annex II, the maximum levels of fenarimol are fixed at 0.3 mg/kg for table and wine grapes and at 0.02 mg/kg for herbs.

11 Directive 90/642 was transposed into Finnish law by Decision No 896/1999 of the Ministry of Trade and Industry on the maximum levels of pesticides in fruit and vegetables, cereals and eggs and egg products.

12 Article 3(1) of that decision refers, for the determination of the maximum pesticide residue levels, to a list of substances annexed to that decision. That list repeats the levels mentioned in paragraphs 9 and 10 of this judgment in respect of the maximum levels for chlorpyrifos and fenarimol authorised for grapes and herbs.

Facts forming the basis of the dispute and the questions referred for a preliminary ruling

13 Gavrielides sought to import into Finland, in March 2002, a consignment of vine leaves stuffed with rice and, in July 2002, a consignment of vine leaves in brine.

14 The laboratory of the Finnish customs authorities took samples from those products in order to measure their pesticide residue levels. Its analysis showed 0.28 mg/kg of chlorpyrifos in the stuffed vine leaves and 0.11 mg/kg of chlorpyrifos and 0.14 mg/kg of fenarimol in the vine leaves in brine.

15 In the light of the results of that analysis and taking the view that, for the application of the rules on maximum pesticide residue levels, vine leaves fell within the leaf vegetables and fresh herbs group and should be treated as herbs, lthe Finnish customs authorities, by decisions of 29 July and 12 August 2002, prohibited the import, export, holding with the intention of resale, offering for sale or any other form of transfer of those products, on the ground that the pesticide residue levels discovered in those products exceeded the maximum levels set for the residues of chlorpyrifos and fenarimol in respect of herbs.

16 Gavrielides brought an action before the Helsingin hallinto-oikeus asking that the decisions of the Finnish customs authorities be set aside.

17 The Helsingin hallinto-oikeus, which found that the national rules were identical to the Community rules on this matter, held that the resolution of the dispute in the main proceedings depended on whether Directive 90/642 was to be interpreted as fixing in mandatory terms the maximum levels for chlorpyrifos and fenarimol residues in respect of vine leaves.

18 In the absence of case-law on this matter, the Helsingin hallinto-oikeus decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 1(1) 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, as subsequently amended, to be interpreted as meaning that the directive applies to vine leaves?

(2) If that is the case:

(a) Is Annex I to the directive to be interpreted as meaning that vine leaves are classified in the "Leaf vegetables and fresh herbs" group of products and Annex II as meaning that vine leaves are classified under the entry "Others [Herbs]"?

(b) In which product group and under which entry are vine leaves to be classified if they are not to be classified under the entry "Others [Herbs]"?'

Findings of the Court

19 It is common ground that vine leaves are not mentioned either in Directive 90/642 or in its annexes.

20 By the questions referred, the national court asks, essentially, whether, despite the fact that they are not mentioned there, Directive 90/642 must be interpreted as applying to vine leaves and, if so, under which category of products and heading should this product be classified.

21 In that regard, it must be observed that Article 1(1) of Directive 90/642, which defines the scope of the directive, describes the products falling within the groups set out in Annex I to the directive as 'examples'. Furthermore, in Annex II to the

directive, the first column is entitled 'Groups and examples of individual products to which the [maximum residue levels] apply' and many groups or sub-groups of products mentioned in that annex include, at the end of a list of products, an entry for 'Others'.

22 It follows that, as the Finnish Government and the Commission of the European Communities assert, and contrary to the principal submission of Gavrielides and the Greek Government, the fact that a product is not mentioned in the annexes to Directive 90/642 does not, of itself, preclude the latter's application to that product. It is nevertheless necessary to consider whether, in the context of the rules on maximum pesticide residue levels, the product in question can be included with a product or a group of products expressly referred to by Directive 90/642.

23 Such an examination requires account to be taken of the general objective of that directive, which consists, according to the first six recitals in its preamble, and as the Advocate General pointed out in points 32 and 33 of her Opinion, in reconciling the need effectively to protect plants and plant products from harmful organisms and weeds, in order to safeguard the yield from crop production and agricultural productivity in the Community, with the need to protect human or animal health as well as the environment against the harmful effects of pesticides.

24 Accordingly, the inclusion of a product not mentioned in the annexes to Directive 90/642 in a group or sub-group of products listed there presupposes, as the Commission states in its written submissions, that that product has previously been the subject of a scientific assessment which balances the two requirements referred to in the previous paragraph of this judgment and demonstrates, in respect of those two requirements, that it is permissible to apply to the product concerned the maximum levels for pesticide residues fixed for the group or sub-group of products in which it is envisaged to include it.

25 That need for a prior scientific assessment is confirmed by the 13th recital in the preamble to Directive 90/642, according to which the determination of mandatory maximum levels for pesticide residues 'requires lengthy technical consideration'.

26 As regards the case in the main proceedings it must be observed that, according to the information provided by the Commission, the beneficial and detrimental effects of pesticides on vine leaves have not been the subject of any scientific study to date, so that it is not permissible to classify vine leaves under the entry 'Others' in the herbs sub-group of the leaf vegetables and fresh herbs group, as the Finnish Government wishes, or in the table and wine grapes sub-group of the berries and small fruits group, as Gavrielides and the Greek Government argue in the alternative.

27 With respect to the claim that vine leaves should be included in the herbs sub-group, it should be added that, as compared with the examples of herbs mentioned in Annexes I and II of Directive 90/642, namely chervil, chives, parsley and celery leaves, vine leaves are different from the point of view of morphology, method of consumption and conditions of cultivation and exposure to harmful organisms. Those differences preclude application of the maximum pesticide residue levels fixed for fresh herbs, since there are at present no scientific grounds for applying them.

28 In support of its arguments, the Finnish Government relies on a document entitled 'Classification of (minor) crops not listed in the appendix of Council Directive 90/642/EEC', at pages 107 and 108 of which vine leaves are treated as herbs.

29 That document is an annex to a Commission guidance document dated 22 July 1997, entitled 'Guidelines for the generation of data concerning residues as provided in Annex II, part A, section 6 and Annex III, part A, section 8 of Directive 91/414/EEC concerning the placing of plant protection products on the market'.

30 However, the document relied on by the Finnish Government does not call into question the foregoing assessment.

31 As is clear from the information provided by the Commission, that document expresses only the opinion of the Commission's services and not that of the Standing Committee on Plant Health, which has not yet taken a decision on the matter. The proposed treatment is not, therefore, supported by any scientific assessment.

32 Furthermore, as shown by the title of the guidance document of 22 July 1997 to which the document relied on is appended, such treatment forms part of a specific legal framework, namely that of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

33 Annex I to that directive contains a list of active substances authorised for incorporation in plant protection products. Unlike Directive 90/642, Directive 91/414 does not, however, fix maximum levels for residues of the active substances to which it applies. As the Commission states in its written observations, Directive

91/414 lays down the principle, in Article 4(1), that the placing on the market of plant protection products containing such substances is to be subject to prior authorisation by the Member State concerned which, if it has provisionally established maximum residue levels, is obliged to notify them to the Commission so that the latter may examine whether those levels are acceptable.

34 In that context, the treatment of vine leaves as herbs, proposed by the document referred to in paragraph 28 of this judgment, concerns again, as is clear from the title 'Guidelines' to which the document is appended, the provision, when a dossier for the inclusion of an active substance in Annex I of Directive 91/414 or a dossier for authorising the placing on the market of a plant protection product is submitted, of information collected during supervised trials relating to the behaviour of the residues of the substance or product in question in or on treated products, food and feed, in accordance with Annex II, Part A, section 6, and Annex III, Part A, section 8, of Directive 91/414.

35 Such treatment, envisaged solely for the purpose of the collection of information, in the context of Directive 91/414, on trials relating to the behaviour of residues of active substances or plant protection products on food or treated products, cannot, in the absence of a scientific basis, be extended to the area covered by Directive 90/642 which is the fixing of maximum levels for pesticide residues.

36 It follows that, in the context of Directive 90/642, vine leaves cannot be treated as herbs.

37 As regards the claim that vine leaves might be treated in the same way as grapes, it must again be noted, first of all, that the sub-group 'table and wine grapes' covers 'table grapes' and 'wine grapes'. There is no heading 'Others', which suggests that the list of products contained in that sub-group is exhaustive, precluding the inclusion of other products such as vine leaves.

38 Second, it must be observed that, as regards the 'Berries and small fruit' group, which includes the sub-group 'table and wine grapes', the maximum pesticide residue levels apply to 'the whole product', in the words of column 3 of Annex I to Directive 90/642. That detail precludes the inclusion in that group of products of parts of a plant, such as vine leaves, which are detached from the berry or small fruit concerned.

39 Third, that interpretation is supported by the differences between vine leaves and grapes. Apart from the fact that the way in which they are consumed is very different, those two products differ from each other, as the Commission submits in its written observations, as regards their morphology and, therefore, their capacity to retain pesticide residues, as well as the conditions in which they are harvested and, therefore, the duration of their exposure to harmful organisms.

40 It follows that, in the context of Directive 90/642, vine leaves cannot be treated as table or wine grapes.

41 In the light of the foregoing, it must be held that Directive 90/642 is not applicable to vine leaves.

42 Accordingly, the answer to the national court must be that Directive 90/642 is not applicable to vine leaves.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings before the national court, the decision on costs is a matter for that court. The costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) rules as follows:

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, as amended by Commission Directive 2000/42/EC of 22 June 2000, is not applicable to vine leaves.

Signatures.