OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 25 April 1996 *

1. By judgment of 4 April 1995, the Tribunal de Police (Local Criminal Court), Toulouse, submitted the following question to the Court for a preliminary ruling:

'Is the procedure for establishing whether an offence has been committed, as laid down in the Law of 1 August 1905 on frauds and falsifications relating to products or services concerning the labelling and presentation of food products, and, more particularly, the fact that a report is not signed by the person concerned by an investigation, compatible with the general principles of law laid down by the Court of Justice, such as observance of the rights of the defence and of the adversarial nature of proceedings?'

2. The facts underlying the main proceedings may be quickly summarized. Mr Maurin is being prosecuted for breach of Article 18 of Decree No 84-1147 of 7 December 1984. More specifically, he has been charged with having offered for sale foodstuffs whose use-by date had expired. The relevant French authorities noted this breach in the course of an inspection carried out on his company premises. The police report of the offence, which was drawn up on 15 June 1993, was forwarded to the Public Prosecutor's Office in Toulouse on 18 June 1993 and was finally notified to Mr Maurin on 22 June 1993. At the hearing before the national court, the accused submitted that the police report was void inasmuch as it had not been signed by the person under investigation. That, in his view, amounted to a breach of the principles enshrined in the European Convention on Human Rights, in particular the principle that the rights of the defence and the adversarial nature of proceedings should be observed.

The order for reference states that the national legislation governing the resolution of the case does not require that a police report be signed by the person concerned. The national court, however, is asking the Court whether such a requirement can be derived from 'the general principles of law laid down by the Court of Justice, such as observance of the rights of the defence and of the adversarial nature of proceedings'.

3. The Commission, the French Government and the United Kingdom argue that the Court lacks jurisdiction to rule on the present request for a preliminary ruling.

* Original language: Italian.

Their contention is that the dispute in the main proceedings is one to which Community law does not apply. The case is therefore, in their view, governed exclusively by national law: the national court is required to apply a sanction provided for under French legislation for breach of a rule also laid down by that legislation. Therefore, according to the view here under consideration, the precondition enabling Community law to be applied and consequently providing a basis for the jurisdiction of the Court is not satisfied.

4. That is a view which I believe deserves to be upheld. In the first place, there is no connecting factor between the facts of the case and the rules of Community law. Directive 79/112/EEC [1] lays down rules with regard to the labelling of foodstuffs, requiring that the presentation of a product should also indicate its use-by date. However, the purpose of that legislative rule, as is clear from the first recital in the preamble to the directive, is to remove the 'differences which exist ... between the laws, regulations and administrative provisions of Member States on the labelling of foodstuffs', and which 'impede the free circulation of these products and can lead to unequal conditions of competition'. To that end, it was considered that 'a list should be drawn up of all information which should in principle be included in the labelling of all foodstuffs'. [2] The directive pursues that objective simply by providing uniform criteria for the labelling of foodstuffs. The only possible breach of its provisions may therefore lie in the marketing of products that are labelled in a manner diverging from the prescribed parameters. However, the directive does not in any way regulate the situation which has arisen in the main proceedings, in which a product, although labelled in accordance with Community-law requirements, is offered for sale at a date subsequent to the use-by date indicated on the packaging. The problem in this case is not that of determining whether the products were labelled in a manner consistent with the requirements laid down by the directive, in which case it would be necessary to hold that the facts are indeed governed by Community law. Rather, the issue is how the offering for sale of foodstuffs whose use-by date has expired is penalized: that, however, is not a matter dealt with either by the directive or by any other provision of Community law. The case falls within the purview of the national legislature. The parties which have submitted observations are therefore right to infer that the proceedings instituted against Mr Maurin relate to a breach of national law which has no connection with Community law.

The Court has consistently held that 'although it is the duty of the Court to ensure observance of fundamental rights in the field of Community law, it has no power to examine the compatibility with the European Convention on Human Rights of national legislation lying outside the scope of

1 — Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1).

2 — See the seventh recital in the preamble to the directive.

Community law'. [3] Since, as already mentioned, the penalty applied to Mr Maurin is provided for by a national law which does not implement any rule of Community law, the Court has no jurisdiction to determine whether or not the procedural arrangements for the application of that penalty are in conformity with the general principles of law, in particular those concerning observance of the rights of the defence and of the adversarial nature of proceedings, compliance with which the Court is required to ensure.

Conclusion

In the light of the foregoing considerations, I propose that the Court answer the question submitted by the Tribunal de Police, Toulouse, as follows:

Although the Court has the task of ensuring compliance with fundamental rights specifically within the sphere of Community law, it is not for the Court to examine whether national legislation which, as in the present case, falls outside the scope of Community law is compatible with the principles concerning observance of the rights of the defence and of the adversarial nature of proceedings.

3 — Judgment in Case 12/86 *Demirel* v *Stadt Schwäbisch Gmünd* [1987] ECR 3719, paragraph 28. See also the judgment in Joined Cases 60/84 and 61/84 *Cinéthèque* v *Fédération Nationale des Cinémas Français* [1985] ECR 2605, paragraph 26.