JUDGMENT OF THE COURT (FIRST CHAMBER)
17 DECEMBER 1981[1]

Criminal proceedings against Albert Clément, Gérard Ces and Others (reference for a preliminary ruling from the Tribunal de Grande Instance, Paris)

(Common organization of the market in wine — Coupage of wines)

Case 2/81

Agriculture — Common organization of the markets — Wine — Coupage of wines imported from non-member countries — Prohibition — Wines intended for vinegar-making — Exclusion

(Regulation No 816/70 of the Council, Art. 26 (4))

Article 26 (4) of Regulation No 816/70, which prohibits the coupage of wines imported from non-member countries, is one of a set provisions relating to the coupage of wines intended to be marketed with a view to direct human consumption and must consequently be interpreted as applying to wines intended for the same purpose, to the exclusion of wines intended for vinegar-making.

In Case 2/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Paris, (Eleventh Criminal Chamber) for a preliminary ruling in the criminal proceedings brought against

ALBERT CLÉMENT, GÉRARD CES AND OTHERS

on the interpretation of Article 26 (4) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234),

1 — Language of the Case: French

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Mr Clément and Mr Ces, wine merchants, are being prosecuted before the Tribunal de Grande Instance, Paris, for having "imported without a declaration prohibited goods with the help of invoices, certificates or any other false, inaccurate, incomplete or inapplicable documents", an offence under Article 426 (3) of the Code Français des Douanes [French Customs Code].

The accused are charged with having imported from the Netherlands between 19 October 1970 and 3 August 1971 20 834.32 hectolitres of wine "intended for vinegar-making" with a customs value of FF 1 316 056 under internal Community transit documents (Form "T 2") issued by the Netherlands authorities and with having declared them as originating in the country from which they had come, whereas they ought to have been declared as originating in "non-member countries".

The wines were derived from Greek and Algerian wines which had been imported into the Netherlands before 1 June 1970 (the date on which the Community rules in question came into force) and had been blended in an Amsterdam warehouse.

The French customs authorities referred to Article 26 (4) of Regulation No 816/70 in support of their charge. They took the view that wines intended for vinegar-making should be regarded as table wines for the purposes of that provision.

2. According to the twelfth recital in the preamble to Regulation No 816/70 "... a precise definition of products, in

particular of table wine, which come within the scope of this regulation is indispensable for the efficient application thereof; ... since compliance with the conditions laid down for the production of table wine is only controllable within the Community, the description 'table wine' should be reserved for Community-grown produce".

The fifteenth recital in the preamble states that "coupage is a widespread oenological practice" and that "in view of its possible consequences, its control is advisable to prevent abuse".

Article 26 (4) of the regulation provides as follows:

"The coupage of an imported wine with a Community wine and the coupage on Community territory of imported wines shall be prohibited except by way of derogation to be decided by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission."

Paragraphs (1), (2) and (3) of that article read as follows:

"(1) Where coupage takes place, only products resulting from the coupage between table wines and from the coupage of table wines with wines suitable for yielding table wines shall be considered as table wines, provided that the suitable wines in question have a total natural alcoholic strength not exceeding 17° and subject to the provisions of the following paragraphs.

(2) The coupage of a wine suitable for yielding a table wine from a given wine-growing zone with a table wine produced in another wine-growing zone may yield a table wine only if that process takes place in the wine-growing zone where the wine suitable for yielding a table wine was produced.

Coupage between wines suitable for yielding table wines shall be authorized only if they are produced in the same wine-growing zone and if coupage is carried out in the said zone.

(3) Coupage of a wine suitable for yielding a white table wine or of a white table wine with a wine suitable for yielding a red table wine or with a red table wine may not yield a table wine.

However, that provision shall not prevent, in certain cases to be determined, the coupage of a wine suitable for yielding a white table wine or of a white table wine with a wine suitable for yielding a red table wine or with a red table wine, provided that the resultant product has the characteristics of a red table wine."

Pursuant to paragraph (4) derogations from the prohibition contained in that provision were provided for by the following regulations, certain of which, moreover, no longer apply:

— Regulation No 1021/70 of the Commission of 29 May 1970 authorizing coupage between imported wines (Journal Officiel 1970, L 118, p. 19) and Regulation No 1430/70 of the Commission of 20 July 1970 on imported wines coming from Algeria (Journal Officiel 1970, L 159, p. 18): those regulations were intended to authorize the Member States to

maintain the national systems in force for a transitional period;

— Regulation (EEC) No 959/70 of the Council of 26 May 1970 authorizing the coupage of German red wines with imported red wines (Official Journal, English Special Edition 1970 (I), p. 284); Council Regulation (EEC) No 352/79 of 5 February 1979 (Official Journal 1979, L 54, p. 93) reintroduced that exception and applied until 30 June 1979;

— Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1) which by Article 43 (4) permits coupage in free zones provided that the resultant wine is intended for consignment to a third country.

3. Whilst sharing the view of the customs authorities regarding the prohibition of the blending of table wines from non-member countries, the Tribunal de Grande Instance, Paris (Eleventh Criminal Chamber) considered, on the other hand, that since the wines were intended for vinegar-making, a question of interpretation of Community law arose. Since its decision depended upon that interpretation, by a judgment of 24 January 1980 the said Tribunal decided to stay the proceedings on the charge and refer to the Court the question asking:

"whether the provisions of Article 26 (4) of Regulation (EEC) No 816/70 of 28 April 1970 apply to wines intended for vinegar-making".

The order for reference reached the Court on 12 January 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by Mr Clément and Mr Ces, parties to the proceedings, represented by J.-P. Karsenty of the Paris Bar, the Government of the French Republic, represented by its Agent, T. Le Roy, and the Commission of the European Communities, represented by its Agent, J. C. Séché.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it asked Mr Clément and the Commission certain questions.

By order of 13 May 1981 the Court, in pursuance of Article 95 (1) and (2) of its Rules of Procedure, decided to assign the case to the First Chamber.

II — Written observations submitted to the Court

1. *Mr Clément and Mr Ces* take the view that there are no grounds in this case for the application of the prohibition laid down by Article 26 (4) of Regulation No 816/70 as the goods in question had been put into free circulation within the Community prior to the date on which the regulation came into force and, in any event, the regulation does not apply to wines intended for vinegar-making.

It is clear from Article 5 of Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (Official Journal, English Special Edition 1968 (I), p. 165) that a product in the production of which two or more countries were concerned is to be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the

purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture. The substantial process constituted by the blending of wines was carried out in the Netherlands.

It is clear from the report drawn up by the Netherlands customs authorities following an inquiry that "all the constituent wines of the product exported were already in this country before the Community rules on the market in wine came into force". The processes in question are therefore lawful and cannot be affected by a prohibition which is retroactive in nature. If the Court were to declare that the prohibition laid down by Article 26 (4) of Regulation No 816/70 applied, such a decision would result in the withdrawal from the exporting country in favour of the importing country of the authority which the former has to determine a product's origin or would at least give rise to the risk of a difference of opinion between those authorities which would be contrary to the principles of the Treaty. If the processes of coupage were unlawful, proceedings should have been brought by the Netherlands authorities.

A consideration of the regulation in question enables it to be established beyond doubt that the prohibition contained in Article 26 (4) applies only to table wines as opposed to industrial wines intended for vinegar-making. In particular, Title IV, under which the provision in question falls, defines the "rules concerning oenological processes and conditions for release to the market" and the various paragraphs of that article deal only with coupage between table wines and coupage of table wines with wines suitable for yielding table wines. If the Court decided that paragraph 4 applied to wines intended for vinegar-making, it would be the only provision, as far as concerns the process of coupage dealt with in that article, which did not apply solely to table wines.

2. The *French Government* takes the view that the answer to be given to the question put to the Court must be in the affirmative in the sense that wines obtained by coupage could not enter Community territory as wine within the meaning of Regulation No 816/70.

The prohibition of coupage laid down by Article 26 (4) of that regulation applies to wines irrespective of their intended use, unless they fall within one of the exceptions provided for by Regulations Nos 1021/70 and 1430/70, which is not the case here. Indeed, it is clear from Regulation No 816/70 that the definition of wine and of coupage rests on the criterion of the (Community) origin of the products in question and not on their intended use.

Under Regulation No 816/70, wine is "a product obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape musts" (Annex II, item (7)). On the other hand, vinegar is defined (Annex II, item (16)) as the product which "is obtained exclusively by acetous fermentation of wine and has a total acidity of not less than 60 g/l expressed in acetic acid". That stage of the cycle of transformation of the wine into vinegar ("acetous fermentation") occurred subsequently to the importation thereof into

France and, consequently, inasmuch as the product in question had not undergone that transformation, it remained "wine" within the meaning of Community law on agriculture and customs.

The products in question were moreover imported under tariff subheading 22.05 C I (b) which affirms their nature as wine and not vinegar (heading 22.10). On this point Community customs law displays absolute parallelism with the provisions on the common organization of the market in wine: there is no tariff heading covering "wines intended for vinegar-making", a term which, moreover, is not represented by any technical stage in the production cycle.

The French Government is not in a position to give an opinion on the compatibility of the process of coupage performed in Amsterdam with Netherlands law, of which it has no knowledge. However, it recalls that Article 1 of Regulation No 1021/70 required that coupage was to be carried out "between red wines (white or rosé)" and that it has not been shown that the processes in question fulfilled that requirement; it recalls also that under the second subparagraph of Article 2 (1) of that regulation, wines so obtained by coupage could be re-exported only until 31 December 1970, whereas it is clear from the facts of the case that consignments destined for France were made between 19 October 1970 and 3 August 1971.

On the other hand, the unlawfulness of the importation into France of the blended wines concerned is beyond dispute. Indeed, Article 306 of the Code des Vins [Wine Code] and Order No 67-678 of 12 September 1967 lay down the principle that "wines originating in or coming from abroad (except from the Member States of the Community) must be kept without coupage or blending" subject to the exception provided for by the order of 1967 which states that coupage may be used as an oenological method for two purposes only: the coupage of French wines exclusively with Algerian wines for a limited period (modernization or reconversion of wine production: identical aim to Regulation No 1430/70) and the preparation of aperitifs falling under the fiscal system for spirits, excluding any other industrial purpose (use falling within the scope of the derogation provided for by Regulation No 1021/70). The first case cited does not permit the importation into France of the wines blended in Amsterdam and, secondly, the French State did not at the time make use of the derogation provided for under Regulation No 1021/70 in favour of an industrial use such as that envisaged by the accused, namely vinegar-making.

3. In the view of the *Commission*, the difference in the system for the coupage of wines intended for human consumption produced respectively in the Community or in non-member countries can be explained by the fact that the control exercised by the national authorities over the former ensures that they actually meet the requirements laid down by Community rules, whereas the latter do not necessarily bear the same guarantees because they do not fulfil

common criteria of quality and are not subject to comparable control by the national authorities. The guarantees regarding the quality of each are therefore likely to become ineffective if the wines are blended.

It is of prime importance to maintain and improve the quality of products intended for consumption and to direct towards other uses such as distillation and the production of wine vinegars those which do not fulfil those requirements of quality. It is for that reason that the Community rules draw a clear distinction between wines offered or disposed of for direct human consumption and others. Thus, Title IV of Regulation (EEC) No 337/79 is concerned with "rules concerning oenological processes and conditions for release to the market" and, even more explicitly, Article 48 (3) (a) of Regulation No 337/79 (Article 28 of Regulation No 816/70) provides that "wine ... not corresponding to the definitions contained in items 10 to 16 of Annex II may be used only for consumption in the families of individual wine-growers, for the production of wine-vinegar or for distillation".

Although Article 43 of Regulation No 337/79 does not expressly mention wines intended for direct human consumption, it is applicable only to such wines: it falls under Title VI (cited above) concerning conditions for release to the market and in fact applies only to wines (table wine, wine suitable for producing table wine) intended for human consumption. Furthermore, the precautions taken in that provision in order to maintain the quality of wines obtained by coupage do not apply, since the wines are intended for distillation or vinegar-making. Nor is there any justification in the case of wines obtained by coupage intended for vinegar-making for a specific prohibition applying solely to wines imported from non-member countries. Since the prohibition of coupage which applies solely to those wines is due to the difficulty in controlling their quality when they are blended, the sole criterion of quality control is no longer decisive seeing that the wines are not intended for direct human consumption.

III — Oral procedure

At the sitting on 9 July 1981 oral argument was presented by the following: J.-P. Karsenty, of the Paris Bar, for Mr Clément and Mr Ces; A. Carnelutti, acting as Agent, for the French Government; and J. C. Séché, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 19 November 1981.

Decision

1 By judgment of 24 January 1980, which was received at the Court on 12 January 1981, the Tribunal de Grande Instance [Regional Court], Paris,

referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 26 (4) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (1), p. 234).

2 The question was raised in the course of criminal proceedings instituted at the instance of the customs authorities against Albert Clément and Gérard Ces for having "imported without a declaration prohibited goods with the help of invoices, certificates or any other false, inaccurate, incomplete or inapplicable documents".

3 The accused are charged with having imported from the Netherlands between 19 October 1970 and 3 August 1971 wine intended for vinegar-making under internal Community transit documents (Form "T 2") issued by the Netherlands authorities and with having declared them as originating in the country from which they had come, whereas they ought to have been declared as originating in "non-member countries".

4 It appears from the judgment making the reference that the wines in question were Greek and Algerian wines which were imported into the Netherlands before 1 June 1970 (the date on which the above-mentioned regulation of the Council entered into force) and were blended in the Netherlands. The wines were in free circulation in the Netherlands and were sold by a Netherlands company to the French companies, Albert Clément and Gérard Ces, which imported them into France and declared them as being intended for vinegar-making.

5 Article 26 (4) of Regulation No 816/70 cited above, which concerns wines from non-member countries, provides that "the coupage of an imported wine with a Community wine and the coupage on Community territory of imported wines shall be prohibited except by way of derogation to be decided by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission".

6 Regulation No 1021/70 of the Commission of 29 May 1970 (Journal Officiel 1970, L 118, p. 19) authorized coupage between imported wines until 31 December 1970 on the territory of the Member States which had

availed themselves of the authorization accorded as a transitional measure. However, under Article 2 of the regulation wines produced by such coupage could be marketed only on the territory of the Member State in which they had been subject to coupage and until 31 December 1970 on the territory of other Member States which had availed themselves of the authorization thus accorded as a transitional measure. It is established that France did not avail itself of that authorization.

7 The accused maintained before the national court that Article 26 (4) of Regulation No 816/70 did not apply to wines intended for vinegar-making.

8 In those circumstances the national court referred to the Court of Justice for a preliminary ruling on the question "whether the provisions of Article 26 (4) of Regulation (EEC) No 816/70 of 28 April 1970 apply to wines intended for vinegar-making".

9 Before the question raised is considered, it should be pointed out that it is clear from the information which was supplied to the Court during the proceedings that wines intended for vinegar-making imported into France are the subject of a special customs declaration and remain under customs control until they are processed into vinegar. Those controls therefore ensure that there is no possibility of such wines being marketed with a view to direct human consumption.

10 In order to reply to the question raised, it is necessary to consider the general scheme of Article 26 of the regulation. Paragraph (1) provides that where coupage takes place, only products resulting from the coupage between table wines and from the coupage of table wines with wines suitable for yielding table wines are to be considered as table wines, provided that the suitable wines in question have a total natural alcoholic strength not exceeding 17° and subject to the provisions of the following paragraphs. Paragraph (2) provides that the coupage of a wine suitable for yielding a table wine from a given wine-growing zone with a table wine produced in another wine-growing zone may yield a table wine only if that process takes place in the wine-growing zone where the wine suitable for yielding a table wine was produced. Coupage between wines suitable for yielding table wines is to be authorized only if they are produced in the same wine-growing zone and if coupage is carried out in the said zone.

11 Paragraph (3) adds that coupage of a wine suitable for yielding a white table wine or of a white table wine with a wine suitable for yielding a red table wine or with a red table wine may not yield a table wine, except in certain cases to be determined and in which the resultant product has the characteristics of a red table wine.

12 According to Annex II to the regulation, the descriptions "wine suitable for yielding table wine" and "table wine" appearing in those three paragraphs and also in paragraph (6) concerning the detailed rules for the application of Article 26 are reserved for wines produced in the Community.

13 Paragraph (4), which concerns the coupage of imported wines, is therefore one of a set of provisions relating to the coupage of wines intended to be marketed with a view to direct human consumption and must consequently be interpreted as applying to wines intended for the same purpose, to the exclusion of wines intended for vinegar-making.

14 Support for that interpretation is to be found in the provisions of Articles 27 and 28 of the regulation. According to Article 27, wine derived from the wine varieties referred to in Article 16 (vine varieties approved for cultivation in the Community) but not corresponding to the definitions of "wine suitable for yielding table wine" and "table wine" may be only used for consumption in the families of individual wine growers, for the production of wine vinegar or for distillation. Article 28 provides in turn that imported wines, except for liqueur wines and sparkling wines, may be released for direct human consumption only on certain conditions (paragraph (1)) and that imported wines other than those referred to in paragraph (1) may be used only for purposes permitted for correlated Community vines.

15 Consequently, the reply which must be given to the question put to the Court is that Article 26 (4) of the regulation does not apply to wines intended for vinegar-making.

Costs

16 The costs incurred by the Government of the French Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question submitted to it by the Tribunal de Grande Instance, Paris, by judgment of 24 January 1980, hereby rules:

The provisions of Article 26 (4) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (1), p. 234) do not apply to wines intended for vinegar-making.

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber