JUDGMENT OF THE COURT (Fifth Chamber)

14 December 2000 *

In Case C-99/99,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, and G. Castellani Pastoris, Ambassador, acting as Agents, assisted by O. Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by F.P. Ruggeri Laderchi, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for the annulment of Commission Regulation (EC) No 2815/98 of 22 December 1998 concerning marketing standards for olive oil (OJ 1998 L 349 p. 56) or, in the alternative, of Articles 1, 2(1) and the third subparagraph of 2(2), the third subparagraph of Article 3(2), and Article 3(3) of that regulation,

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: S. Alber,
Registrar: H. von Holstein, Deputy Registrar

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 July 2000, at which the Italian Republic was represented by O. Fiumara and the Commission by V. Di Bucci, of its Legal Service, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 21 September 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 March 1999, the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the annulment of Commission Regulation (EC) No 2815/98 of 22 December 1998 concerning marketing standards for olive oil (OJ 1998 L 349 p. 56, hereinafter 'the contested regulation') or, in the alternative, of Articles 1, 2(1) and the third subparagraph of 2(2), the third subparagraph of Article 3(2), and Article 3(3) of that regulation.

2 The contested regulation was adopted on the basis of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition Series-I, 1965-66, p. 221), as amended by Council Regulation (EEC) No 1915/87 of 2 July 1987 (OJ 1987 L 183, p. 7, hereinafter 'Regulation No 136/66'), and in particular Article 35a thereof. That provision authorises the Commission to adopt marketing standards for, *inter alia*, olive oil. According to paragraph 1 of that article, those standards may cover 'in particular quality grading, packaging and presentation'. Under paragraph 3 of that same provision, those marketing standards are to be adopted 'tak[ing] into account technical production and marketing requirements and changes in the methods used for determining the physical, chemical and organoleptic characteristics of the products referred to ...'.

3 The contested regulation regulates designations of origin relating to olive oil intended for consumers in the Member States.

4 The first paragraph of Article 1 of the contested regulation provides:

'The designation of the origin of extra virgin and virgin olive oil as defined in points 1(a) and (b) of the Annex to Regulation No 136/66/EEC on packagings intended for consumers in the Member States or on labels attached to those packagings shall be optional. If that option is taken up by an operator, designation of the origin shall be authorised solely in accordance with the provisions of this Regulation.'

5 Article 2 of the contested regulation provides:

'1. The designation of origin shall relate to a geographical area and may mention only:

(a) a geographical area whose name has been registered as a protected designation of origin or protected geographical indication in accordance with Regulation (EEC) No 2081/92;

and/or

(b) for the purposes of this Regulation:

— a Member State,

— the European Community,

— a third country.

2. Without prejudice to the national rules adopted pursuant to Directive 79/112/EEC, the labelling and presentation of the designation of origin for the final consumer shall be in accordance with this paragraph.

The designation of origin shall be indicated on the packaging or the label attached to the packaging within the meaning of Article 1(3) of Directive 79/112/EEC in such a way that it can be easily understood by the final consumer.

Any reference to a geographical area on the packaging or the label attached to the packaging shall be regarded as a designation of origin bound by the provisions of this Regulation, with the exception of:

— the names of brands or firms whose registration was applied for before 1 January 1999 in accordance with Directive 89/104/EEC,

— designations granted pursuant to Regulation (EEC) No 2081/92.'

6 Under Article 3 of the contested regulation:

'1. In the case of oils benefiting from a protected designation of origin or from a protected geographical indication, the designation of origin shall be in accordance with the provisions laid down pursuant to Regulation (EEC) No 2081/92.

2. The designation of origin, where this indicates the European Community or a Member State, in cases other than those referred to in paragraph 1, shall correspond to the geographical area in which the "extra virgin olive oil" or "virgin olive oil" was obtained.

However, in the case of blends of "extra virgin olive oils" or "virgin olive oils" in which more than 75% originates in the same Member State or in the Community, the main origin may be designated provided that it is followed by the indication "selection of (extra) virgin olive oils more than (75)% of which was obtained in ... (designation of origin)".

An extra virgin or virgin olive oil shall be deemed to have been obtained in a geographical area for the purposes of this paragraph only if that oil has been extracted from olives in a mill located within that area.

3. In the case of an extra virgin or virgin olive oil imported from a third country, the designation of origin shall be determined in accordance with the provisions regarding non-preferential origin contained in Articles 22 to 26 of Regulation (EEC) No 2913/92.'

7 In support of its action, the Italian Government puts forward two pleas in law, alleging respectively

— infringement and misapplication of Articles 35a of Regulation 136/66, 2(1) of 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) and 22 and 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and

— infringement and misapplication of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

The first plea in law

8 The Italian Government claims that the Commission made illogical and erroneous use of the discretion conferred on it by Article 35a of Regulation No 136/66 when it decided that the origin, where this indicates the Community or a Member State, of an 'extra virgin olive oil' or 'virgin olive oil' must be defined by reference to the place where that oil was obtained, that is, the place where it was extracted from the olives. According to the Italian Government, that choice is 'clearly inconsistent with the policy adopted with regard to the rules on the designation of other products'.

9 First, the Italian Government submits that the criterion in question fails to have regard to the principle of territorial connection enshrined, according to it, in the

Community legislation on the origin of agricultural products. It refers in this regard, in particular, to Directive 79/112, to Article 2(2) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), which links designations of origin and geographical indications with the region in which the product concerned originated, and to Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13), the 12th recital in the preamble to which states that natural conditions at the place where the vineyard is situated are a factor determining the quality of wine and must.

10 Second, the Italian Government claims that the two grounds put forward by the Commission to justify the choice of the criterion in question are illogical and inconsistent.

11 The first ground — that extraction techniques influence the quality and taste of virgin oils — is, it claims, inconsistent with the statement, contained in the first recital in the preamble to the contested regulation, that agricultural traditions or practices influence the quality and taste of the oils obtained. In any event, according to the Italian Government, olive-growing is the most important stage of the production process.

12 The second ground put forward by the Commission — that the place of extraction of the oil is the same as that of harvesting of the olives, since transfers of olives from one country to another are extremely limited — is, in the Italian Government's submission, incorrect.

13 Third, the Italian Government claims that the measures adopted by the Commission infringe Article 2(1) of Directive 79/112 in so far as they could mislead consumers as to the origin of the oil.

14 Fourth, the Italian Government submits that Article 3(3) of the contested regulation incorrectly refers to Articles 22 to 26 of Regulation No 2913/92. Application of the criterion mentioned in Article 24 of the latter regulation, namely, determination of the origin of goods according to the place where they underwent their last processing, could lead to a situation in which the blending of oils of different origins in a particular Member State would alone suffice to confer on an oil the designation of origin of that State.

15 As a preliminary observation, the Commission points out that the institutions have a discretion in pursuing the objectives of the common agricultural policy and that review by the Court must be confined to verifying that they have not committed any manifest errors, misused their powers or manifestly exceeded the bounds of their discretion (Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25).

16 With regard to the first argument put forward by the Italian Republic, the Commission submits that the attempt by the applicant to extrapolate from the legislation a single concept of origin for different agricultural products is a fruitless exercise.

17 As regards the second argument, the Commission points out, first, the importance of the pressing for the quality of the oil. Second, it notes that, since transporting olives entails certain precautions, it is much more expensive than transporting the oil obtained from those same olives. The risk that olives not originating in Italy might be imported into that Member State for pressing in order to benefit from the designation of origin is therefore insignificant. If new circumstances were nevertheless to bring about a growth in such transfers, the Commission insists that it could amend the contested regulation so as to obviate any disturbances on the market which might result therefrom to the detriment of consumers.

18 In reply to the third argument, the Commission contends that the contested regulation mentions the place of extraction only in respect of oils the designation of origin of which relates to the territory of an entire Member State or of the Community. The diversity of climates, of agricultural practices and of varieties grown in each Member State is such that those factors could not have a clear influence on the characteristics of the product. In those circumstances, the fact of knowing that an oil is produced from olives originating in a particular Member State would not provide the consumer with any additional information concerning the quality of the product.

19 As for the fourth argument, the Commission contends that the sole purpose of the reference in Article 3(3) of the contested regulation to Regulation No 2913/92 is to determine the third country of origin in the case of oils imported from a third country.

20 The Commission adds that the criterion adopted in the contested regulation facilitates checks. Whilst the number of olive producers is very high, the number of presses, which are already subject to a range of requirements and checks under Community legislation, is more limited.

21 As a preliminary point, it must be borne in mind that Article 3(2) of the contested regulation concerns only the designation of origin of 'extra virgin olive oil' and 'virgin olive oil' where this indicates the European Community or a Member State.

22 The contested regulation was adopted on the basis of Article 35a of Regulation No 136/66. In paragraph 1 of that provision, the Council conferred on the Commission the power to lay down marketing standards for, *inter alia*, olive oil. Under paragraph 3 of that same article, the Commission, when adopting such measures in accordance with the 'management committee' procedure, must take

into account 'technical production and marketing requirements and changes in the methods used for determining the physical, chemical and organoleptic characteristics' of the products in question.

23 Contrary to what the Italian Government claims, neither Article 35a nor any other provision of Regulation No 136/66 sets any other limits to the discretion of the Commission as regards the determination of the origin of the products concerned.

24 Directive 79/112 is silent in this regard. As for the specific criteria laid down by Regulation No 2081/92 with regard to geographical indications and designations of origin for agricultural products, they refer to specified homogeneous geographical areas and cannot be converted into general rules applicable irrespective of the size and heterogeneity of the areas concerned. Similarly, the rules laid down by Regulation No 2392/89 with regard to wines and grape musts were established having regard to the specific characteristics of those products and cannot be regarded as applicable to all agricultural products in general. It follows that it is not possible to derive from the legislation relied on by the Italian Government a general principle that the origin of different agricultural products should be defined in uniform and mandatory terms by reference to the geographical area in which they were grown.

25 It must therefore be held that the Commission had a wide discretion for the purpose of regulating the designation of origin of olive oil within the scope of the powers conferred on it by Article 35a of Regulation No 136/66.

26 In so far as an assessment of a complex economic situation is involved, it must be borne in mind that, as the Court has held, where, as in this case, the Commission enjoys significant freedom of assessment, the Community judicature, when examining the lawfulness of the exercise of such freedom, cannot substitute its

own assessment of the matter for that of the competent authority but must restrict itself to examining whether the assessment of the competent authority contains a manifest error or constitutes a misuse of powers (Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 39).

27 In this case, the Italian Government has not demonstrated the existence of such an error or misuse of powers. The reasons set out by the Commission in the preamble to the contested regulation, and clarified in these proceedings, in order to justify the choice of the place where the oil is obtained as the basis for designating the origin of an 'extra virgin olive oil' or 'virgin olive oil', where that origin refers to a Member State or to the European Community, are neither illogical nor inconsistent.

28 First, the Commission took into consideration the fact that the manner in which the oil is extracted from the olives plays an important role in determining the quality of the oil, in particular its taste, flavour and colour. It considered that role to be more important than that played by the climatic and environmental conditions of the place where the olives are grown or by the different varieties of olive grown. That assessment is based on the fact that those factors vary considerably both from one Member State to another and within a single Member State, and that they may therefore have a clearly identifiable influence on the physical, chemical and organoleptic characteristics of oils the origin of which refers to the entire territory of a Member State or to the European Community, which are the oils referred to by Article 3(2) of the contested regulation.

29 Second, the Commission took into account the fact that transfers of olives between countries are limited in view of the costs entailed by the need to take certain precautions in order avoid substantial reductions in quality.

30 In the light of those considerations, it cannot be maintained that the choice of the place where the oil is obtained as a criterion for determining the origin, where this

indicates the Community or a Member State, of an 'extra virgin olive oil' or 'virgin olive oil' fails to have regard to the requirements of proper consumer information. Furthermore, as the Commission submits, that criterion considerably facilitates checks.

31 Finally, the combination of that criterion and that of the 'last, substantial ... processing or working', laid down in Article 24 of Regulation No 2913/92, cannot give rise to the abuses mentioned by the Italian Government. The reference to that regulation in Article 3(3) of the contested regulation concerns only the determination of the place adopted in order to determine the designation of origin of an oil imported from a third country. In order to be marketed as goods originating in a Member State or in the Community, an 'extra virgin olive oil' or 'virgin olive oil' must therefore satisfy the requirements of Article 3(2) of the contested regulation.

32 In those circumstances, the plea alleging infringement and misapplication of Articles 35a of Regulation No 136/66, 2(1) of Directive 79/112 and 22 and 24 of Regulation No 2913/92 must be rejected.

The second plea in law

33 The Italian Government claims that, by providing in the first indent of the third subparagraph of Article 2(2) of the contested regulation that the names of brands whose registration was applied for before 1 January 1999 are not covered by the provisions of that regulation, the Commission misapplied Directive 89/104. Such an exception is liable to facilitate real abuses by reason of the fact that it authorises the registration of brands after the publication of the contested regulation.

34 According to the Commission, registration in bad faith of a brand prior to 1 January 1999, with the object of avoiding the application of the contested regulation, would be contrary to Article 3 of Directive 89/104 and therefore illegal.

35 It is sufficient to note in this regard that the risk of unlawful registrations during the period from 24 December 1998, the date of publication of the contested regulation, to 1 January 1999 appears theoretical in view, first, of the shortness of that period and, second, of the length and complexity of the procedures necessary for the registration of a brand. In the absence of any *prima facie* evidence produced by the Italian Government, the mere assertion of such a risk by the latter is insufficient to establish the existence of a manifest error or misuse of powers on the part of the Commission.

36 The plea based on misapplication of Directive 89/104 must therefore be rejected.

37 Since neither of the pleas in law put forward by the Italian Republic in support of its action is well founded, the application must therefore be dismissed in its entirety.

Costs

38 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Italian Republic to pay the costs.**

La Pergola Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 14 December 2000.

R. Grass — A. La Pergola

Registrar — President of the Fifth Chamber