In Case 60/75

Reference to the Court under Article 177 of the EEC Treaty by the Pretura di Bovino for a preliminary ruling in the action pending before that court between

CARMINE ANTONIO RUSSO

and

AZIENDA DI STATO PER GLI INTERVENTI SUL MERCATO AGRICOLO (AIMA) (National Body for Interventions on the Agricultural Market),

on the interpretation of the provisions of Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, Special Edition 1967, p. 33),

THE COURT

composed of: R. Lecourt, President, R. Monaco and H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order for reference and the written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. In the context of its anti-inflationary policy the Italian Government decided in July 1973 to freeze the wholesale and retail prices of widely-consumed products, including pasta products made from durum wheat.

At the same time, the Azienda di Stato per gli Interventi sul Mercato Agricolo (the National Body for Interventions on the Agricultural Market, hereinafter referred to as 'the AIMA') was authorized

to 'take measures for the organization of the domestic market in wheat... involving the acquisition and stocking of products in Italy and abroad for subsequent sale under supervision on the domestic market' on the conditions laid down by the Comitato Interministeriale per la Programmazione Economica (the Italian Inter-Ministerial Committee for Economic Planning, hereinafter referred to as the 'CIPE').

2. Between March and August 1973 prices of durum wheat on the world market underwent a very significant increase, bringing them to a level twice as high as they had been previously. This high level of prices continued until the beginning of 1975, although it was subject to certain fluctuations.

Prices of durum wheat on the Italian market to a certain extent followed this world-wide trend and rose above Community target prices.

3. In this situation and on the basis of the abovementioned authorization the AIMA acquired on the world market in September 1973 large quantities of durum wheat which it sold to Italian manufacturers of pasta products at prices below the purchase price.

4. Mr Russo, an Italian producer of durum wheat, considers himself injured by those operations of the AIMA, against whom he has brought an action for damages. He asserts that in January 1975 he was obliged to sell a quantity of durum wheat at a price of Lit. 17 000 per quintal whilst his legitimate expectation had been that under the system of the common organization of the market he would obtain a price of approximately Lit. 18 500 lire per quintal.

5. Since the Pretura di Bovino considered that the outcome of this dispute depends upon the interpretation of Community law it decided by an order of 2 May 1975 to suspend judgment and, in accordance with Article 177 of the EEC Treaty, to submit the following questions to the Court of Justice:

'1. Does the existence of a common organization of the market in cereals allow the Member States to adopt unilateral measures which, through commercial operations in fact carried out by the intervention agency established for the implementation of Regulation No 120/67, result in an alteration of the price formation machinery laid down in Community provisions and in a distortion of intra-Community trade?
2. Do the purchase of a quantity of durum wheat by an intervention agency of a Member State on the world market at a given price level and its subsequent resale within a Member State at a lower price than the purchase price, and substantially lower than the intervention price, have the effect of a subsidy on the importation of the product in question (in this case durum wheat)?
3. Since the provisions of Regulation No 120/67 of the Council and the subsequent detailed rules for their application are directly applicable within the Italian legal system, do they create for traders in this sector a right that there shall be no disturbance of the normal operation of the machinery provided for by the common organization of the market with regard to the formation of prices — a right which the national courts must directly protect?
4. If affirmative replies are given to the foregoing questions, the Court is asked to rule whether the abovementioned intervention by the Member State is to be considered as an illegal action and consequently constitutes an infringement of the legal position accorded by Community rules to private traders.
5. If an affirmative reply is given to the foregoing question, does there exist in Community law a principle allowing private persons occupying the legal position described in the

provisions of Regulation No 120/67 to be completely and in every way exempt from the harmful pecuniary consequences resulting from the unlawful action of the Member State, in particular as regards the intervention agency?

6. The order making the reference was received at the Court Registry on 7 July 1975.

The plaintiff in the main action, represented by E. Cappelli and P. de Caterini, and the Commission, represented by its Legal Adviser, G. Marenco, lodged written observations.

Upon 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.

II — Written observations submitted to the Court

1. Observations submitted by Mr Russo

Mr Russo explains the Community rules relating to the cereals sector, recalling that their main function is to regulate prices, and then gives an account of the position on the world market in cereals during 1973 and 1974. He emphasizes that the common organization of the market in cereals permits Italy to have recourse to Community measures to counter shortages and to intervene to temper the rise in prices.

However, the Italian Government adopted unilateral national measures; the CIPE decided, by orders of 7 September 1973, 29 March 1974 and 7 December 1974, to carry out an operation untended to obtain durum wheat for the Italian pasta-producing industry at predetermined prices. In implementation of those decrees the AIMA acquired large quantities of durum wheat on the world market in the course of 1974 at a price of approximately Lit. 20 000 per quintal, which it subsequently passed on to pasta producers at a price of Lit. 13 000 per quintal, that is to say, below the Community intervention price. The operations carried out by the AIMA had an appreciable effect on the formation of market prices for durum wheat in Italy.

With regard to *the first question* Mr Russo maintains that in accordance with the established case-law of the Court, the transfer of powers in connexion with a common policy implies that all future decisions are to be taken by the Community institutions and he recalls in this connexion that in the judgment delivered on 23 January 1975 in Case 31/74 *(Galli* [1975] ECR 47) the Court stated that 'Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation as established under the common organization'.

Mr Russo consequently suggests that the Court should reply to the first question as follows:

'Any act or course of action by a Member State carried out either directly or through public bodies or authorities, which is capable of modifying the machinery of price formation for which provision is made by the common organization or which brings about such modification, is incompatible with the common organization of the market in cereals. In particular there is a prohibition on any sale or purchase by the intervention authority other than in the context of the strict and punctual fulfilment of the duties entrusted to it by Regulation No 120/67 and the implementing provisions thereof.'

With regard to *the second question* Mr Russo maintains that the system of trade with third countries established by Regulation No 120/67 prohibits all forms of import subsidies even if prices on the world market exceed the Community threshold price. It is clear that a Member

State which buys at a certain price on the world market and subsequently sells on its own domestic market at a price below the purchase price, rendering the public purse liable for the financial loss incurred, is granting an import subsidy. Mr Russo considers that there is no doubt as to the illegality of this operation. No Community provision, and certainly not Article 19 of Regulation No 120/67, can be invoked to justify the operations of the AIMA.

With regard to *the third question* Mr Russo considers that it relates to the same problems as those already raised by other Italian courts (Cases 13/68, *Salgoil,* [1968] ECR 453 and 93/71, *Leonesio,* Rec. 1972, p. 287).

Although it is clear that the question reflects the distinction between individual rights and legitimate interests which is peculiar to the Italian legal system and that this distinction may not be taken into consideration before the Court of Justice, it is none the less true that, since individual situations are involved which originate exclusively in Community law, it is for the Court to provide the national court with the factors necessary to define with regard to the domestic legal system the type of individual situation corresponding to the sort of protection which the Community system intended to provide for individuals.

The first factor which must consequently be established is whether the Community provisions expressly guarantee, in relation to the intervention agencies, the interest of farmers in having prices freely based on supply and demand or whether on the contrary such provisions refer only indirectly to the position of private operators and accord to the national authorities an independent power of action which involves a certain discretionary power.

In this respect Mr Russo observes first of all that in this case there exist regulations, that is to say, measures which as such are capable of creating individual rights which the national courts must protect, but he concedes that this fact does not of itself suffice to allow final conclusions to be drawn as to the actual effects of such regulations within the national legal systems. It should be considered whether, in appropriate cases, the legal effects for individuals do not rather depend on any discretionary powers which the national authorities may possess.

After considering the role of the national authorities Mr Russo concludes that the Community provisions prescribe for the intervention authorities a clear, precise and unconditional prohibition on behaviour which tends to modify the machinery of price formation. He considers that this conclusion is substantiated by recent decisions of the Court and in particular by the aforesaid judgment in the *Galli* case.

To deny the existence of an individual right in relation to a course of action adopted by a State would contradict the objectives of the general interest of the Community and would in the opinion of the plaintiff abandon the operation of the market to the whim of national authorities and to the considerations of a political nature which, according to the circumstances, prompt the Commission to institute proceedings for failure to fulfil an obligation under the Treaty.

For these reasons Mr Russo suggests that the Court should reply to the third question as follows:

'The provisions of Regulation No 120/67 of the Council and the implementing provisions issued subsequently are directly applicable within the legal systems of the Member States. In particular those provisions impose upon the national authorities a clear, precise and unconditional obligation to refrain from any act or course of action which would result in or entail a modification

of the machinery of price formation; there is an individual right corresponding to that obligation which is protected directly and in its entirety by Community law and as such must be afforded direct protection by the national courts.'

With regard to the *fourth question* Mr Russo asserts that the reply can only be the logical outcome of the replies to the three foregoing questions.

With regard to the *fifth question* Mr Russo considers that although a new and difficult problem is raised it merely constitutes a development of the foregoing questions, in particular, of the third question. The relevant question remains that of determining the status, the limits and the content of the individual right conferred upon private persons.

In this connexion the plaintiff maintains in particular that although, in developing the concept of direct applicability, the Court has come to recognize the concept of an 'individual right' stemming from Community law which the national courts must protect, it has done so for reasons of uniformity, that is to say, in order to guarantee everywhere the same effects and the same degree of effectiveness for Community provisions. This regard for uniformity must lead the Court to define in outline the guarantees provided by Community law for situations arising within that law. If not, there would be little point in proclaiming the existence of interests protected by Community provisions if it had subsequently to be admitted that the consequences of any infringement of them varied from one Member State to another. Article 7 of the EEC Treaty can provide the necessary basis for this. The prohibition on discrimination would thus acquire a more substantive meaning if it were backed by the principle of the obligation to make good 'Community' legal situations which have been adversely affected by a course of action which is illegal under Community law.

It is self-evident that only the principle of the obligation to make reparation is established in this case. The rules for effecting reparation must continue to fall within the competence of the national court.

Mr Russo consequently suggests that the Court should reply to the fifth question as follows:

'The infringement of individual rights originating in directly applicable Community law and governed by the latter in any event requires the national courts to provide for compensation — having recourse to the means open to them under the respective national legal systems — of the adverse financial consequences suffered by the holders of those rights owing to infringement of the law.'

2. Observations of the Commission

The Commission considers that *the first two questions* raise the problem of whether the course of action of a Member State in acquiring durum wheat on the world market and reselling it at prices below the purchase price is compatible with the common organization of the market in cereals. This problem must be considered under three heads.

First, it must be considered whether such course of action does not conflict with the machinery of prices and interventions on the Community market which are intended to maintain prices on that market. In this connexion the Commission maintains that if the level of the market price exceeds the target price the measure adopted by the Member State would be incompatible with the machinery in question only if the resale price were lower than the target price, since in this case it would tend to bring the market price below the target price which might oblige the Community machinery to come into operation again. If-on the other hand the

market price were below the target price the action of the Member State would undoubtedly be incompatible with the existence of the common organization.

Secondly, the Commission wonders whether the activity in question does not conflict with the machinery prescribed for cases where prices on the world market reach the level of Community prices in order to avoid a resultant excessive increase in market prices and in order to ensure supplies.

The Commission examines the legal foundation of the machinery laid down in Articles 19 and 20 of Regulation No 120/67 and the general provisions in implementation thereof (Regulations Nos 1968/73, OJ L 201, p. 10, and 2591/69, L 324, p. 1); it then explains that for the period during which the operations of the AIMA were carried out it prohibited the export of durum wheat from 4 August 1973 until 9 April 1975, by way of a protective measure.

In the opinion of the Commission the operations of the AIMA are incompatible with that machinery. The Community provisions do not confer any independent power on the Member States in this matter. Those provisions describe a system which is complete in itself, and since they fix the powers of the Community institutions they expressly exclude the right of Member States to adopt contrary or even supplementary measures.

Thirdly, the Commission raises the question whether the activity of the AIMA does not conflict with the system for the formation of market prices arising from the common organization as a whole. It follows from the judgment in *Galli* that the very existence of a common organization of the market presupposes that apart from the machinery for which provision is expressly made market prices must depend solely on the forces of free competition.

In the opinion of the Commission the incompatibility of the activity of the AIMA with the common organization therefore seems incontestable and following the *Galli* judgment it did not fail to point this out to the Italian Government.

With regard to *the third and fourth questions* the Commission asserts that the Pretura is justified in asking whether the Community provisions must be interpreted as conferring on individuals a right whereby the Member States must refrain from adopting measures incompatible with those provisions. This problem does not in fact concern the direct applicability of Community provisions, which is incontestable since they are provisions in the form of regulations, but rather their interpretation.

According to the case-law of the Court a Community provision gives rise to individual rights to the extent to which that provision is intended to protect the particular interests of individuals. It is true that the Court has laid down this condition and justified it with reference to the Communities' non-contractual liability. This is the first occasion on which the question has been raised with regard to the liability of the Member States. Nevertheless, since a matter of interpretation of Community law is at issue, the Commission does not consider that the solution can differ in the two cases. Furthermore, any other solution would involve a serious risk of differences in the application and scope of Community law depending on the legal system within which it is invoked.

Consequently, the Commission considers whether the relevant Community rules have as their objective the protection of the interests of individuals.

It is already clear from what has just been said regarding the system of price formation resulting from the common organization as a whole that the rule

which may be derived therefrom by definition protects all operators whether supplying or obtaining cereals on the market. From this it must be concluded that the rules regarding the common organization of the market confer upon individuals a right that Member States shall abstain from adopting measures of the kind applied by the AIMA.

The fifth question is whether there is a Community principle whereby, if an infringement by the Member States adversely affects the rights of individuals, the latter must be able to obtain complete compensation for the financial loss suffered.

The Commission recalls that the Court has already stated that Community law 'does not restrict the powers of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for the purpose of protecting the individual rights conferred by Community law' (Judgment of 4 April 1968 in Case 34/67, *Lück,* [1968] ECR 245). This presupposes that national law must provide procedures for the protection of rights arising from Community rules. The obligation devolving upon Member States on this ground is already in existence owing to the fact that the rule in question has given the protected interest the status of a 'right'.

The existence of such an obligation was confirmed by the Court when, in its judgment of 19 December 1968 in Case 13/68 *(Salgoil,* [1968] ECR 453), it ruled that such rules 'require the authorities, and in particular the relevant courts of the Member States, to protect the interests of those persons subject to their jurisdiction who may be affected by any possible infringement of the said provisions'.

Thus it does not even appear necessary to trace back to Article 5 of the EEC Treaty the obligation on the Member States to provide a system for the protection of individual rights created by Community rules. With regard to the extent of the protection, the principles of efficiency and of the uniform application of Community law require that this protection should be appropriate and effective, without prejudice to the neutral stance of Community law with regard to the procedure chosen.

Mr Russo, represented by Mr Cappelli and Mr Caterini, the Italian Government, represented by Mr Marzano, and the Commission, represented by Mr Marenco, presented oral argument at the public hearing on 18 November 1975.

In the course of this hearing the interveners submitted the additional evidence summarized below:

According to the *Italian Government* the third question is the essential one, since in the event of a negative reply to it the Court may refrain from replying to the other questions.

The problem raised by this question is whether the Community provisions confer upon individuals the right to obtain a certain price level.

It is impossible to accept that durum wheat producers enjoy so extensive a right. If it is conceded that the Community provisions on the common organization of the market confer such a right upon individuals this reasoning must be followed to its most extreme conclusions. This implies first of all that the producer can supervise by judical means the exercise of the powers conferred upon the Commission; but since the Community rules also protect the consumer the latter must be granted the same right. Consumers who consider that a right analogous to that enjoyed by producers (that is to say, the right to pay a fair price) has been infringed could initiate proceedings against the Community institutions.

The Italian Government maintains that the only right enjoyed by producers which gains complete protection under the Community provisions in question is the right to sell products to the intervention agency at the intervention price. Apart from this right, either it must be accepted that any producer or consumer can supervise the exercise of the powers conferred upon the Commission or one must consider which of the directly applicable provisions in question can give rise to an individual right.

The Italian Government considers that the consequences of an affirmative reply to the question are so unacceptable as to render a negative reply mandatory.

With regard to the fifth question the Italian Government recalls that Article 215 of the EEC Treaty only governs the liability of the Community. In relation to citizens the liability of the State must of necessity still be governed by the national legal systems. It is not enough for the Court to assert that States are liable to individuals as it may make this assertion concerning the Community. The uniformity envisaged by such a judgment does not exist. The objective of attaining a uniform system of rules is in reality jeopardized by the systems both of evidence and of estoppel prevailing in each State.

With regard to the questions of substance the Italian Government considers that it is necessary to consider what the powers of the Community are in the relevant sphere, particularly in cases of disturbance of the market, that is to say, particular attention must be given to Articles 19 and 20 of Regulation No 120/67. In its opinion it is clear from such consideration that those powers relate exclusively to disturbances which affect the common market and the territory of the Community and which arise as a result of imports and exports. Account must also be taken of the fact that disturbances may also consist for example in a shortage in a particular country or region.

In this connexion the Italian Government adds that there can be no measure which does not ultimately influence prices, whether it is an increase in the wages of civil servants, the adoption of different criteria for taxes, and so on. However, if the Member States no longer exercise powers within the framework of a common organization of the market it must be concluded from this that the Member States may no longer take measures in any of the spheres governed by that organization, and this holds good even with regard to short-term economic policy.

The Italian Government considers that a ruling must be given that national measures which affect neither the movement of goods nor the formation of prices on the European market (and the measures of the AIMA have not affected either, as the Commission found in Case 40/75 *(Bertrand)*) cannot be contrary to Community rules. Otherwise the competent national authority would have to apply to the Community authorities in every case in which a product subject to an organization of the market was in short supply in a country, a region or indeed a town, even if the shortage did not arise for the reasons laid down in Articles 19 and 20 of Regulation No 120/67. Such an outcome would be illogical since it would prevent, for example, any remedial action: the acquisition of stocks and their distribution to those in a weak economic position, which also affect prices.

The Italian Government recalls that the Commission decided to prohibit exports of durum wheat, which by no means resolved the Italian problem. It wonders whether the Commission could have reduced the price to consumers. In this connexion the Government asserts that Article 103 of the EEC Treaty retains its validity so long as there is no common economic policy in a sphere in which

short-term economic measures operate at a different level from that of the production or marketing of wheat. It is inconceivable that short-term economic measures should be limited to industrial products, ignoring the market in agricultural products.

The Italian Government concludes that the Commission has no power to adopt regulations or to intervene in disturbances other than those for which provision is made by the Community rules.

In the course of the hearing the *Commission* emphasized in particular that in the judgment delivered in *Galli* the Court based itself on the existence of a common organization of the market and that therefore it cannot be accepted that this judgment was exclusively based on the fact that the fixing of minimum prices could constitute an obstacle to trade.

The Advocate-General delivered his opinion at the hearing on 9 December 1975.

Law

1 By an order of 2 May 1975 which was registered at the Court on 7 July 1975 the Pretore di Bovino submitted to the Court of Justice, pursuant to Article 177 of the EEC Treaty, various questions on the interpretation of Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33).

The questions were referred in the context of an action initiated by an Italian producer of durum wheat against the State agency for intervention on the agricultural market (AIMA).

The producer claims that he has been injured by the actions of the AIMA in that it purchased large quantities of durum wheat on the world market and resold them to Italian producers of macaroni, spaghetti and similar products ('pasta products') at prices considerably below the purchase prices and indeed below the intervention price fixed pursuant to the provisions concerning the common organization of the market in cereals.

2 The purpose of this action, which was undertaken in the context of the anti-inflation policy of the Italian Government, was to provide supplies for the pasta industry at prices which would ensure that production was profitable despite the maximum prices imposed on the finished products at the wholesale and retail stages.

The action was taken at a period when prices on the world market were appreciably higher than prices fixed under Community rules, whereby all

exports of durum wheat, Community production of which is insufficient to meet requirements, were prohibited to third countries.

It is clear from the file that, on the one hand, the resale price charged by AIMA to the pasta industry was approximately Lit. 13 000 per quintal, that is to say, it was below the target price of about Lit. 16 400 and indeed below the intervention price of about Lit. 15 000 and that, on the other hand, the plaintiff in the main action obtained a price of Lit. 17 000 per quintal for a quantity of durum wheat sold in January 1975.

3 In the first two questions the national court asks essentially whether the purchase of durum wheat by a Member State on the world market and its resale at prices below the purchase price, and even below the intervention price is compatible with the common organization of the market in cereals.

The third, fourth and fifth questions concern the individual position of traders in the event of unlawful interference by the State in the machinery of price formation prescribed by the common organization of the market and the consequences to be drawn if such interference were to result in an infringement of the rights accorded to those traders by Community rules.

4 These questions have been referred to the Court as a result of non-compulsory intervention by the State on the market in cereals, the aim of which was not to influence directly the formation of prices on that market but to check the rise in prices of certain foodstuffs made from durum wheat at consumer level.

5 Such intervention by a Member State is compatible with the common organization of the market in cereals only in so far as it does not jeopardize the objectives or operation of that organization.

Since one of the principal objectives of the organization is to guarantee to producers a price based on the target price this objective is jeopardized where the actions of the State agency are of such a nature as to influence conditions on the market and to induce a tendency to force prices below that level.

It must therefore be concluded that the action of a Member State in purchasing durum wheat on the world market and subsequently reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the market in cereals.

6 This situation does not however imply that a specific producer can claim that he has suffered damage where he has sold his products above the target price, thereby obtaining the advantages which the regulation is intended to produce.

In fact under Community rules an individual producer may claim that he should not be prevented from obtaining a price approximating to the target price and in any event not lower than the intervention price.

Regulation No 120/67 is in fact intended to shield the development of Community agricultural production from fluctuations in world prices and thereby to ensure a fair standard of living for the agricultural community and to stabilize markets by means of Community levies and refunds, protecting the operation of the common agricultural market against the risks of the world market.

7 That regulation is therefore not intended to guarantee to persons concerned the right to profit from random market trends when the level of world prices exceeds that considered desirable for the attainment of the objectives of the common organization.

Consequently, an individual farmer may not claim that he has suffered damage under Community law if the price which he has actually obtained on the market exceeds the target price.

8 It is for the national court to decide on the basis of the facts of each case whether an individual producer has suffered such damage.

9 If such damage has been caused through an infringement of Community law the State is liable to the injured party of the consequences in the context of the provisions of national law on the liability of the State.

Costs

10 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretore di Bovino by an order of 2 May 1975, hereby rules:

The provisions of Regulation No 120/67 of 13 June 1967 on the common organization of the market in cereals must be interpreted to mean that:

(a) The action of a Member State in purchasing durum wheat on the world market and subsequently reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the markets;

(b) Under Community rules an individual producer may claim that he should not be prevented from obtaining a price approximating to the target price and in any event not lower than the intervention price;

(c) If an individual producer has suffered damage as a result of the intervention of a Member State in violation of Community law it will be for the State, as regards the injured party, to take the consequences upon itself in the context of the provisions of national law relating to the liability of the State.

Lecourt Monaco Kutscher

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 22 January 1976.

A. Van Houtte
Registrar

R. Lecourt
President