JUDGMENT OF THE COURT (Fifth Chamber)
6 October 1987 *

In Case 118/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Gerechtshof, Arnhem, the Netherlands, for a preliminary ruling in the proceedings pending before that court between

Openbaar Ministerie

and

Nertsvoederfabriek Nederland BV, a company governed by Netherlands law, whose registered office is in Veenendaal, the Netherlands,

on the interpretation of Articles 30, 34, 36 and 37 of the EEC Treaty, of Regulation No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I), p. 209) and Council Regulation (EEC) No 2777/75 on the common organization of the market in poultry-meat (Official Journal 1975, L 282, p. 77),

THE COURT (Fifth Chamber),

composed of: Y. Galmot, President of Chamber, F. Schockweiler, G. Bosco, U. Everling and R. Joliet, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Nertsvoederfabriek Nederland BV, the defendant in the main proceedings, by H. J. Bronkhorst in the written procedure and by D. J. Drijber, of the Hague Bar, at the hearing;

* Language of the Case: Dutch.

the government of the Kingdom of the Netherlands, by E. F. Jacobs in the written procedure;

the Commission of the European Communities, by its Legal Adviser, R. C. Fischer, in the written procedure and at the hearing;

having regard to the Report for the Hearing and further to the hearing on 17 March 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 May 1987,

gives the following

Judgment

1 By order of 27 March 1986, which was received at the Court Registry on 21 May 1986, the Gerechtshof (Regional Court of Appeal), Arnhem, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 30, 34, 36 and 37 of the EEC Treaty, Regulation No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I), p. 209) and Regulation (EEC) No 2777/75 of the Council of 20 October 1975 on the common organization of the market in poultry-meat (Official Journal 1975, L 282, p. 77).

2 The question was raised in criminal proceedings against Nertsvoederfabriek Nederland BV, a company governed by Netherlands law, which was accused of having, between January 1984 and 23 October 1984 in Veenendaal, kept in operation without a licence, in breach of Article 5 of the Destructiewet (Netherlands Law on the destruction of animal carcasses and offal) of 21 February 1957 (*Staatsblad* 1957/84, p. 155) a plant intended mainly for rendering offal innocuous by processing it into useful products and of having processed poultry offal in the abovementioned plant (rendering plant) into an end-product (a brownish powder), suitable for incorporation in animal feedingstuffs, by means of heating in a drying plant.

3 Considering that the dispute raised a question of interpretation of Community law, the Gerechtshof stayed the proceedings and submitted the following question to the Court:

'Assuming that

the legislation of a Member State construes: "destruction" as meaning rendering waste material innocuous by processing it into useful products in a rendering plant; "rendering plant" as meaning an installation exclusively or mainly intended to render waste material of animal origin innocuous by processing it into useful products; "waste material" as meaning *inter alia* game and poultry offal manifestly unfit for human consumption which arises in establishments where game and poultry are slaughtered by way of trade, with the exception of offal having another useful purpose;

where poultry is slaughtered approximately 18% of the poultry consists of slaughter offal, of which about a quarter can be put to another useful purpose;

under the legislation it is prohibited to withhold animal waste from destruction;

under the legislation it is prohibited to set up, to bring into operation, to keep in operation, to extend or to alter a rendering plant without a licence and such a licence may be granted in order to ensure that there are adequate facilities for destruction;

in the Member State concerned four licences have been issued: ;

the holder of a licence is obliged to collect and destroy (or have destroyed) free of charge all waste material in the territory assigned to him;

the destruction of poultry offal — which is a remunerative activity — is therefore restricted to licence-holders;

according to the government concerned the legislation entails a prohibition on the exportation of waste materials;

how should the following be interpreted: Article 30, Article 34, Article 36 and Article 37 of the EEC Treaty, singly or in combination, Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty and Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultry-meat, singly or in combination, in view of the fact that the destruction of poultry offal is restricted solely to a few licence-holders?'

4 Reference is made to the Report for the Hearing for an account of the facts, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice, which are referred to or mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

5 The essential purpose of the question submitted by the national court is to determine whether national rules which provide that only holders of a licence issued by the administrative authorities for the operation of a rendering plant, who are responsible for disposing of all animal waste, may process poultry offal and that the producers of such offal must dispose of it only to those approved rendering plants in return for payment by the latter, are compatible with the provisions of the Treaty concerning quantitative restrictions on imports and exports and measures having an equivalent effect and with those concerning national monopolies of a commercial character, and also the regulations on the common organization of the market by which such offal is covered.

6 It is necessary in the first place to determine which of the Community provisions listed by the national court are applicable to the situation described above.

7 Article 37 of the Treaty is not applicable in this case. By making a licence compulsory for the operation of a rendering plant and providing that animal waste, including poultry offal, may be disposed of and processed only by the holders of such a licence, to whom all animal waste must be delivered, the national rules described by the Netherlands court do not set up a State monopoly of a

commercial character, the only kind covered by that provision. It need merely be stated that it is undisputed that the rules in question allow any person who fulfils the conditions laid down by the rules and agrees to be bound by the obligations which they impose to apply for and obtain the required licence.

8 As regards the regulations on the common organization of the market, it need merely be stated, without its being necessary to determine whether in this case poultry offal is covered by the common market organization governed by Regulation No 827/68 or by that governed by Regulation No 2777/75, that the only provisions liable to affect the rules in question are Article 4 of Regulation No 827/68 and Article 11 of Regulation No 2777/75 which merely prohibit, in intra-Community trade, any quantitative restriction or measure having an equivalent effect, subject only to the reservations laid down in those regulations.

9 Since those provisions reproduce the prohibitions laid down by Articles 30 and 34 of the Treaty, the rules described by the national court must be appraised exclusively in the light of those articles, which prohibit quantitative restrictions on imports and exports and any measures having equivalent effect, and which are regarded as forming an integral part of the common organization of the markets.

10 Since the rules described do not disclose any prohibition of imports, there is no need to consider Article 30. The allegation that rendering plants pay only minimal prices for poultry offal does not detract from that finding since it merely concerns the way in which a business is conducted.

11 As regards Article 34, it is applicable to the extent to which the national rules, by imposing an obligation on producers to deliver poultry offal to their local authority, involve by implication a prohibition of exports. It is therefore necessary to consider whether such a restriction on trade is justified having regard to Article 36 of the Treaty, upon which the Netherlands government relies in support of its view that the Destructiewet, as is apparent from its preamble, pursues objectives relating to health, namely prevention of the spread of animal diseases and any pollution liable to endanger the quality of life.

12 Since there are no Community provisions designed to harmonize all the measures necessary to provide, in respect of poultry offal and in particular poultry offal which is unfit for human consumption, for protection of the life and health of humans and animals, and to establish Community procedures to ensure compliance therewith, Article 36 of the Treaty may be relied upon by Member States to justify certain restrictions on intra-Community trade in poultry offal, and in particular poultry offal unfit for human consumption. The mere establishment of a common organization of the market does not have the effect of exempting agricultural producers from any national provisions intended to attain objectives other than those covered by the common organization, even though such provisions may have an impact on the operation of the market in the sector concerned (see judgment of 1 April 1982 in Joined Cases 141 to 143/81 *Holdijk and Others* [1982] ECR 1299).

13 But national rules fall within the derogation provided for in Article 36 only where the health and life of humans and animals cannot be as effectively protected by measures less restrictive of intra-Community trade.

14 With respect, in the first place, to the obligation to deliver poultry offal only to licensed rendering plants to the exclusion of any other operator carrying on business within the national territory, the Netherlands Government argued convincingly that that obligation was essential in order to maintain the overall effectiveness of the system set up by the Destructiewet, with a view to ensuring that all animal waste was removed and disposed of in a manner providing all the required safeguards for the life and health of humans and animals.

15 In those circumstances, it is irrelevant that the poultry offal can, after processing, yield a product which can be marketed by the rendering plants, thus ensuring their profitability. As the Court acknowledged in its judgment of 10 July 1984 in Case 72/83 *Campus Oil Ltd* v *Minister for Industry and Energy and Others* [1984] ECR 2727, the mere fact that national provisions, justified by objective circumstances corresponding to the needs of the interests referred to therein, enable other objectives of an economic nature to be achieved as well, does not exclude the application of Article 36. That applies with greater force where the objective of an economic nature necessarily enables the objective relating to health to be attained.

16 With respect, in the second place, to the implied prohibition of exports, it must be stated that, in order to attain the objective pursued by provisions which are designed to ensure that all the measures required to safeguard health are taken when animal waste is disposed of, it does not appear necessary to prohibit the exportation of poultry offal, provided that the conditions relating to health laid down by those provisions are satisfied with respect to removal and transport on national territory.

17 Consequently, it must be stated in reply to the question submitted by the Gerechtshof, Arnhem, that it is not incompatible with Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty and Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultry-meat for national rules laid down in the interests of the protection of the health and life of humans and animals to provide that only holders of a licence to operate a rendering plant licence issued by the administrative authorities may collect and process all waste products of animal origin and that producers of poultry offal must dispose of it, as a waste product of animal origin, only to authorized licence-holders. However, in so far as they affect intra-Community trade, such rules are compatible with Articles 30, 34 and 36 of the Treaty only in so far as they do not place in the way of imports from and exports to other Member States barriers other than those justified under Article 36 of the Treaty by a concern to secure compliance, in the national territory, with health provisions governing the collection and transportation of products regarded as harmful to health.

Costs

18 The costs incurred by the Government of the Kingdom of the Netherlands 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 action before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in reply to the question submitted to it by the Gerechtshof, Arnhem, by order of 27 March 1986, hereby rules:

It is not incompatible with Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty and Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultry-meat for national rules laid down in the interests of the protection of the health and life of humans and animals to provide that only holders of a licence to operate a rendering plant issued by the administrative authorities may collect and process all waste products of animal origin and that producers of poultry offal must dispose of it, as a waste product of animal origin, only to authorized licence holders. However, in so far as they affect intra-Community trade, such rules are compatible with Articles 30, 34 and 36 of the Treaty only in so far as they do not place in the way of imports from and exports to other Member States barriers other than those justified under Article 36 of the Treaty by a concern to secure compliance, in the national territory, with health provisions governing the collection and transportation of products regarded as harmful to health.

Galmot Schockweiler

Bosco Everling Joliet

Delivered in open court in Luxembourg on 6 October 1987.

P. Heim
Registrar

Y. Galmot
President of the Fifth Chamber