JUDGMENT OF THE COURT (Third Chamber)
27 February 1986 *

In Case 238/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bayerisches Oberstes Landesgericht [Bavarian Supreme Regional Court] for a preliminary ruling in the criminal proceedings pending before that court against

Hans Röser

on the interpretation of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine,

THE COURT (Third Chamber)

composed of U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Commission of the European Communities, by Peter Karpenstein, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By order of 30 August 1984, which was received at the Court on 20 September 1984, the Bayerisches Oberstes Landesgericht referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of the first sentence of the first subparagraph of Article 36 (1) of 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).

2 That question was raised in criminal proceedings instituted against Mr Hans Röser ('the defendant') for infringing the provisions of Paragraph 67 (1) (1) of the German Wine Law, which makes it an offence knowingly to manufacture a product in breach of the first sentence of the first subparagraph of Article 36 (1) of Regulation No 337/79; that provision lays down that the increasing of natural alocoholic strength by volume 'shall [not] be authorized unless carried out as a single operation at the time when the fresh grapes, grape must, grape must in fermentation or new wine still in fermentation are being turned into wine suitable for yielding table wine or into table wine and in the wine-growing zone where the fresh grapes used have been harvested'.

3 It appears from the order for reference and from the documents before the Court that in 1982 the defendant, in his wine cellars at Kitzingen (wine-growing zone A), enriched 1 659 litres of 'Federweißer' by adding to it grape-must concentrate produced from grapes harvested in Italy (wine-growing zone C II, according to the second subparagraph of Article 32 (1) of Regulation No 337/75), thereby increasing its alcoholic strength by volume. 'Federweißer', which is currently sold in Germany under that name, is grape must in fermentation which is generally supplied to the final consumer in unsealed containers for immediate consumption. Unless it is consumed at once, the process of fermentation continues and the product turns first into young wine and then into table wine or into wine suitable for yielding table wine, within the meaning of the first subparagraph of Article 36 (1) of Regulation No 337/79. Accordingly, 'Federweißer' as such is not wine.

4 Charged with knowingly infringing the first sentence of the first subparagraph of Article 36 (1) of Regulation No 337/79, the defendant contended that that provision did not apply to the processing of basic and intermediate products except where such products were to be turned into table wine or into wine suitable for yielding table wine.

5 On hearing the appeal on a point of law brought by the public prosecutor against the defendant's acquittal at first instance by the Amtsgericht [Local Court], Würzburg, the Bayerisches Oberstes Landesgericht took the view that, although the defendant's interpretation was not implausible, there were other considerations suggesting that the provision in question applied even in cases where processing led to the manufacture of a basic or an intermediate product and did not have as its purpose the production of the wines referred to in the first sentence of the first subparagraph of Article 36 (1).

6 In that regard the national court observed that Article 36 of Regulation No 337/79 was closely linked to Articles 32 and 33; the latter provisions governed the manner and extent of the permissible increase in the natural alcoholic strength by volume of the basic and intermediate products of the end products, and their applicability did not depend on the use to which the products concerned were ultimately put.

7 Moreover, according to the national court, a strict interpretation which precluded the application of the provision to intermediate products also seemed to be contrary to the purpose of Article 36, which, in its view, was to permit better supervision in the production zone and to ensure that production took place as close as possible to the place of origin of the grapes used.

8 Finally, the national court maintained that, since 'Federweißer' was capable, as grape must in fermentation, of being turned into wine suitable for yielding table wine or into table wine, it was difficult to distinguish between 'Federweißer' intended as an end product and 'Federweißer' intended as an intermediate product.

9 In those circumstances, the national court stayed the proceedings and requested the court to give a preliminary ruling on the following question:

'Is the first sentence of Article 36 (1) of Council Regulation (EEC) No 337/79 to be interpreted to the effect that the requirement that increases in natural alcoholic

strength at the time when grape must in fermentation is being processed must take place in the wine-growing zone where the fresh grapes used have been harvested apply even where the must is not intended to be turned into wine suitable for yielding table wine or into table wine but is intended for sale, as "Federweißer", to the final consumer?'

10 Only the Commission has submitted observations to the Court.

11 The Commission observes that Articles 32 and 33 of Regulation No 337/79 authorize the alcoholic strength to be increased only subject to certain strict conditions concerning the methods of enrichment and the minimum and maximum alcoholic strength by volume before and after enrichment.

12 The Commission considers that the first sentence of the first subparagraph of Article 36 (1) of Regulation No 337/79 has as its purpose to facilitate supervision of the application of those provisions by allowing enrichment to be carried out only in the wine-growing zone in which the grapes have been harvested. If that territorial limitation were inapplicable to basic and intermediate products, supervision would be practically impossible since the process would not have to be notified to the competent authorities, in view of the fact that the obligation to notify them, laid down by the second subparagraph of Article 36 (1), depends on the applicability of the first subparagraph of Article 36 (1).

13 The Commission points out, however, that notwithstanding the purpose of the provision, its wording does not refer to intermediate products, such as the product at issue in this case. It takes the view that this constitutes an omission in the existing version of the provision, which needs to be rectified by redrafting the provision so that it expressly includes intermediate beverages which have not yet been turned into table wine or into wine suitable for yielding table wine.

14 The Commission considers that the fact that compliance with the contested provision in Article 36 is enforced by provisions of criminal law in the Member States makes it necessary to exclude a broad interpretation of the provision, even if such an interpretation is in conformity with the scheme of Regulation No 337/79 and its purpose, as set out above; instead it is necessary to adopt a restrictive interpretation in conformity with the strict wording of the provision and to rule that it is applicable only to wine suitable for yielding table wine and to table wine.

15 In the first place, it must be emphasized that, as the Court stated in its judgment of 21 March 1972 in Case 82/71 (*Pubblico Ministero* v *SAIL* [1972] ECR 119), Article 177 of the EEC Treaty 'draws no distinction according to the nature, criminal or otherwise, of the national proceedings within the framework of which the preliminary questions have been formulated [since] the effectiveness of Community law cannot vary according to the various branches of national law which it may affect'.

16 Next, it must be pointed out that the product described as 'Federweißer' is merely grape must at a certain stage of fermentation and therefore falls within the scope of Regulation No 337/79. According to Article 1 (2) of Regulation No 337/79, grape must in fermentation is subject to the rules laid down in the regulation; it is included in the list of products referred to in Article 1 (4) of the regulation and is defined in Annex II thereto.

17 It should also be noted that it is clear from the scheme of the provisions set out in Title IV of Regulation No 337/79, which is headed 'Rules concerning oenological processes and conditions for release to the market', that those provisions lay down the conditions in which the Member States may permit the natural alcoholic strength by volume of vine products to be increased. The general rule, therefore, is that increases in alcoholic strength are prohibited.

18 It follows from the scheme of the aforesaid provisions that authorization to increase alcoholic strength by volume may be given only if all the conditions laid down by Articles 32, 33 and 36 of Regulation No 337/79 are satisfied and that, consequently, if one of those conditions is not satisfied, the prohibition on increasing alcoholic strength prevails.

19 The purpose of Article 32 of Regulation No 337/79 is to lay down the first of the conditions which must be met before an exception can be made to the general rule; it provides that an increase in natural alcoholic strength by volume may not be authorized unless the natural alcoholic strength corresponds to a certain minimum percentage, which is determined according to the wine-growing zone, and that the increase may not exceed certain limits, which are also determined according to the wine-growing zones concerned.

20 In addition, Article 33 of Regulation No 337/79, to which Article 32 refers, lays down another condition, namely that the increase in alcoholic strength by volume may be effected only by one of the methods listed, which are mutually exclusive, and in accordance with traditional oenological practices peculiar to each region.

21 Article 36 of Regulation No 337/79 lays down further conditions for the grant of authorization to increase the alcoholic strength by volume. It provides that the relevant processing chain is that whereby 'the fresh grapes, grape must, grape must in fermentation or new wine still in fermentation are being turned into wine suitable for yielding table wine or into table wine' and that the process in question is to be carried out as a single operation at the time of processing and only in the wine-growing zone where the fresh grapes used have been harvested. It follows that, in cases where the operation is not carried out as part of a processing chain resulting in the production of 'wine suitable for yielding table wine' or 'table wine', authorization to increase the alcoholic strength by volume may not be granted.

22 It is true that the German version of Article 36 is unclear in that regard and is open to another interpretation, namely that the prohibition on carrying out the process of enrichment more than once or outside the wine-growing zone in which the grapes have been harvested applies only to the specified processing of the products mentioned in that article. However, it is apparent from a comparative examination of the different language versions, and in particular of the English, French and Italian versions, in which there is no ambiguity, that Article 36 must be understood as authorizing such processes, carried out as a single operation in the wine-growing zone where the grapes have been harvested, only in so far as they take place at the time when the products referred to in that provision are turned into wine suitable for yielding table wine or into table wine. Moreover, that interpretation is compatible with the aim of that provision, which forms part of a body of rules which strictly regulate practices involving enrichment.

23 Since 'Federweisser' is merely grape must at a relatively advanced stage of fermentation, an increase in its natural alcoholic strength may be authorized, according to the wording of Article 36, only if the end product resulting from the processing chain is table wine or wine suitable for yielding table wine.

24 The question submitted by the national court seeks in substance to ascertain whether, by means of a broad interpretation of Article 36, authorization to increase the alcoholic strength by volume may be granted even where the processing chain does not culminate in the production of table wine or wine suitable for yielding table wine but ends at an earlier stage with the production of 'Federweißer', which is sold to consumers as an end product.

25 In that regard, it should be noted that the purpose of Article 36 precludes a broad interpretation of its wording. The purpose of that article is to contribute to the regulation's general aim of encouraging the production of quality wines by making it easier to monitor compliance with the conditions laid down by Articles 32 and 33 and in other provisions of the regulation. That aim would be jeopardized if it were accepted that a product's alcoholic strength could be increased in all cases in which the processing chain was interrupted after obtaining, at a stage prior to that at which wine suitable for yielding table wine was produced, a product intended for sale to consumers.

26 The answer to the question submitted by the Bayerisches Oberstes Landesgericht must therefore be that the first sentence of the first subparagraph of Article 36 (1) of Regulation (EEC) No 337/79 must be interpreted as meaning that an increase in natural alcoholic strength by volume at the time when grape must in fermentation is being processed may not be authorized if the must is not intended to be turned into wine suitable for yielding table wine or into table wine but is intended for sale to the final consumer as 'Federweißer' (new wine still in fermentation).

Costs

27 The costs incurred by the Commission of the European Communities, which has 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 (Third Chamber),

in answer to the question referred to it by the Bayerisches Oberstes Landesgericht, by order of 30 August 1984, hereby rules:

The first sentence of the first subparagraph of Aricle 36 (1) of Regulation (EEC) No 337/79 must be interpreted as meaning that an increase in natural alcoholic strength by volume at the time when grape must in fermentation is being processed may not be authorized if the must is not intended to be turned into wine suitable for yielding table wine or into table wine but is intended for sale to the final consumer as 'Federweißer' (new wine still in fermentation).

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 27 February 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber