JUDGMENT OF THE COURT (First Chamber)
13 March 1997 *

In Case C-358/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura di Pordenone (Italy) for a preliminary ruling in the proceedings pending before that court between

Tommaso Morellato

and

Unità Sanitaria Locale (USL) No 11, Pordenone

on the interpretation of Articles 30 and 36 of the EC Treaty,

THE COURT (First Chamber),

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

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

* Language of the case: Italian.

after considering the written observations submitted on behalf of:

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Sabine Maass, Regierungsrätin in the same ministry, acting as Agents,

— the French Government, by Catherine de Salins, Assistant Director in the Directorate for Legal Affairs of the Ministry of Foreign Affairs, and Régine Loosli-Surrans, Chargé de Mission in the same directorate, acting as Agents,

— the Commission of the European Communities, by Antonio Aresu and Paolo Stancanelli, of its Legal Service, and by Richard B. Wainwright, Legal Adviser, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 December 1996,

gives the following

Judgment

1 By order of 18 October 1995, received at the Court Registry on 21 November 1995, the Pretore (Magistrate), Pordenone, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Articles 30 and 36 of that Treaty.

2 Those questions were raised in three actions in which Mr Morellato, the person empowered to represent Soveda Srl in legal proceedings (hereinafter 'Soveda'), challenged three orders issued by Unità Sanitaria Locale (USL) No 11, Pordenone, requiring him to pay certain sums by way of fines for infringement of Italian Law No 580/67 of 4 July 1967 laying down rules for the processing and marketing of cereals, flour, bread and pasta (GURI No 189 of 29 July 1967).

3 Soveda is the exclusive distributor in Italy of deep-frozen bread lawfully manufactured and marketed in France by BCS, an undertaking whose registered office is in Tarascon (France). The bread is covered by a certificate issued by the Marseilles Inter-regional Laboratory on 7 February 1992 to the effect that it is a 'good-quality, healthy product, fit for human consumption'.

4 In 1993, Soveda supplied several consignments of deep-frozen bread manufactured by BCS to the Iperstanda supermarket in Porcia, Italy.

5 On 26 July 1993, the USL determined that Soveda had thereby infringed Law No 580/67 in three respects. First, the moisture content of the bread marketed by Soveda was 38.4% (37.5% in a second analysis), whereas the statutory limit under Article 16 of Law No 580/67 was 34%; second, the ash content of the bread in question, as a proportion of dry matter, was 1.05% (or 1.13% in a second analysis), whereas the statutory minimum content under Article 7 of Law No 580/67 was 1.40%; and, finally, the bread contained bran, whereas Article 18 of Law No 580/67 did not allow that ingredient to be used.

6 Consequently, on 13 and 18 January 1994, the USL issued three orders against Mr Morellato, requiring him to pay certain sums by way of administrative fines.

7 On 16 February, Mr Morellato challenged those three orders before the Pretore, Pordenone, who, considering that an interpretation of Articles 30 and 36 was necessary to enable him to give a decision, stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Are Articles 30 and 36 of the Treaty establishing the EEC to be interpreted as precluding the Italian legislation on the processing of cereals, flour, bread and pasta (Law No 580 of 4 July 1967), in so far as such legislation prohibits the sale of deep-frozen special wholemeal bread having:

— a moisture content in excess of the percentages referred to in Article 16;

— an ash content lower than that prescribed by Article 16 in conjunction with Article 7(3);

— an admixture of bran, which is not a permitted ingredient;

accordingly, are those legislative provisions to be regarded as a quantitative restriction or a measure having equivalent effect thereto within the meaning of Article 30?

2. In the event of an affirmative answer to that question, is the Italian State, in circumstances such as those of this case, entitled to rely on the derogation provided for in Article 36 of the EEC Treaty, for the purpose of protecting public health?

3. Is the Italian legislation to be disapplied by the Italian courts?

4. Is the free movement on Italian territory of bread produced in France and described as aforesaid to be permitted?'

The first and second questions

8 The point of the national court's first and second questions is whether the application to products lawfully manufactured and marketed in other Member States of national legislation prohibiting the marketing of bread with a moisture content exceeding 34% or an ash content lower than 1.40% or containing bran constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and whether such a measure is justified under Article 36 of the Treaty by the need to protect public health.

9 It should be noted at the outset that, as Community law stands at present, the manufacture and marketing of bread are not covered by common or harmonized rules. Each Member State must therefore, when enacting legislation, keep within the limits set by Article 30 of the Treaty.

10 However, it must also be borne in mind that the Court has already interpreted that provision in relation to national rules concerning the composition of bread.

11 In Case 130/80 *Kelderman* [1981] ECR 527, paragraph 7, it stated that the extension to imported products of the requirement that they contain a specific amount of dry matter may prevent bread originating in other Member States from being marketed in the State concerned. Such extension may make it necessary to vary the method of manufacture according to the place where the bread is to be sold and thus impede the movement of bread lawfully produced in the Member State of origin if identical manufacturing standards are not prescribed in that State. The Court thus held that the rules of a Member State imposing such conditions concerning composition were liable to hinder Community trade and fell within the prohibition laid down in Article 30 of the Treaty.

12 Similarly, in Case C-17/93 *Van der Veldt* [1994] ECR I-3537, paragraph 11, the Court stated that the extension to imported products of the requirement that they contain no more than a specific amount of salt, calculated by reference to the dry matter, may prevent bread and other bakery products originating in other Member States from being marketed in the State concerned. Such extension may make it necessary, if identical manufacturing standards are not prescribed in those States of origin, to vary the method of manufacture according to the place where the bread or bakery product in question is to be sold and thus impede the movement of products lawfully manufactured and marketed in those States. The Court therefore held that the application of legislation of a Member State prohibiting the marketing of bread and other bakery products whose salt content by reference to the dry matter exceeded the maximum permitted level of 2% to products which had been lawfully manufactured and marketed in another Member State constituted a measure having equivalent effect to a quantitative restriction within the meaning of Article 30 of the Treaty.

13 The same considerations apply to the extension to imported products of national rules prohibiting the marketing of bread with a moisture content exceeding, or an ash content falling short of, specified levels, or containing ingredients such as bran. Since such an extension will also make it necessary to vary the method of manufacture according to the place where the bread is to be sold and thus impede the movement of products lawfully manufactured and marketed in other Member States, it constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 30 of the Treaty.

14 It is settled case-law that an exception to the principle of the free movement of goods may be justified under Article 36 only if the national authorities show that it is necessary in order to attain one or more objectives mentioned in that article — in this case the protection of public health — and that it is in conformity with the principle of proportionality.

15 In this case, no justification for such a restriction has been put to the Court. On the contrary, it is clear from Circular 131150/R of the Italian Ministry for Industry, Commerce and Crafts of 2 November 1992, forwarded by the Commission to the Court, that the Italian authorities themselves have authorized the import of bread and similar products conforming to standards other than those laid down by Italian law. That circular states:

'The importation from other Member States of the EC and the marketing of bread and similar products conforming to standards other than those laid down by the Italian legislation in force is authorized provided that those products are manufactured and marketed lawfully in those Member States and conform, as regards labelling, with the requirements of Decree No 109 of the President of the Republic of 27 January 1992 implementing in Italy Directive 79/112/EEC, as amended'.

16 The answer to the first and second questions must therefore be that the application to products lawfully manufactured and marketed in other Member States of national legislation prohibiting the marketing of bread with a moisture content exceeding 34% or an ash content lower than 1.40% or containing bran constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and is not justified under Article 36 of the Treaty by the need to protect public health.

The third and fourth questions

17 The point of the third and fourth questions is whether the national court is under an obligation to give full effect to Article 30 of the Treaty by disapplying on its own initiative domestic legislation conflicting with that provision.

18 According to settled case-law, where provisions of national law are incompatible with Community law, the national court is under a duty to give full effect to Community law by disapplying on its own initiative conflicting provisions of national law (Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR 629).

19 It follows that, in the circumstances described above, the marketing of bread with a moisture content exceeding 34% or an ash content lower than 1.40% or containing bran lawfully manufactured and marketed in a Member State must also be allowed in another Member State.

20 The answer to the third and fourth questions must therefore be that the national court is under a duty to give full effect to Article 30 of the Treaty by disapplying on its own initiative provisions of national law conflicting with it.

Costs

21 The costs incurred by the German and French Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 questions referred to it by the Pretura di Pordenone by order of 18 October 1995, hereby rules:

1. **The application to products lawfully manufactured and marketed in other Member States of national legislation prohibiting the marketing of bread with a moisture content exceeding 34% or an ash content lower than 1.40% or containing bran constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EC Treaty and is not justified under Article 36 of the Treaty by the need to protect public health.**

2. **The national court is under a duty to give full effect to Article 30 of the Treaty by disapplying on its own initiative provisions of national law conflicting with it.**

Sevón Edward Jann

Delivered in open court in Luxembourg on 13 March 1997.

R. Grass L. Sevón

Registrar President of the First Chamber