JUDGMENT OF THE COURT (Fifth Chamber)

16 January 2003 *

In Case C-462/01,

REFERENCE to the Court under Article 234 EC by the Halmstads tingsrätt (Sweden) for a preliminary ruling in criminal proceedings before it against

Ulf Hammarsten

on the interpretation of Articles 28 EC and 30 EC and of the Community legislation applicable to the cultivation and marketing of hemp,

* Language of the case: Swedish.

THE COURT (Fifth Chamber),

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

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Swedish Government, by A. Kruse, acting as Agent,

— Commission of the European Communities, by L. Ström, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 8 October 2002,

gives the following

Judgment

1 By order of 8 November 2001, received at the Court on 3 December 2001, the Halmstads tingsrätt referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Articles 28 EC and 30 EC and of the Community legislation applicable to the cultivation and marketing of hemp.

2 Those questions were raised in the course of criminal proceedings against Mr Hammarsten for infringement of the legislation on narcotic drugs.

Legal framework

Community law applicable to the cultivation and marketing of hemp

Provisions of the EC Treaty

3 Article 32(2) EC provides that, save as otherwise provided in Articles 33 to 38 EC inclusive, the rules laid down for the establishment of the common market are to apply to agricultural products. Those rules include, in particular, the provisions of Articles 28 to 30 EC on the prohibition of quantitative restrictions on imports and exports between Member States.

4 Pursuant to Article 32(3) EC, agricultural products are listed in Annex I to that Treaty. The list, under Chapter 57, reads as follows: 'True hemp (*Cannabis sativa*), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)'.

Regulation (EEC) No 1308/70

5 Regulation (EEC) No 1308/70 of the Council of 29 June 1970 on the common organisation of the market in flax and hemp (OJ, English Special Edition 1970 (II), p. 411), in the version applicable at the material time in the case in the main proceedings, namely that resulting from Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market (OJ 2000 L 328, p. 2, 'Regulation No 1308/70'), provides in Article 4(1):

'A system of aid shall be introduced for flax and hemp grown in the Community.

However, aid shall be granted only for hemp grown from seed of varieties providing certain safeguards to be determined in respect of the content of intoxicating substances in the harvested product.

Such aid, the amount of which shall be uniform throughout the Community for each of these products, shall be fixed each year.'

6 The second subparagraph of Article 4(1) of Regulation No 1308/70 was introduced by Council Regulation (EEC) No 1430/82 of 18 May 1982 providing

for restrictions on the importation of hemp and hemp seed and amending Regulation (EEC) No 1308/70 in respect of hemp (OJ 1982 L 162, p. 27), the first and second recitals of which are worded as follows:

'Whereas the increasing abuse of narcotics in the Community is likely to endanger human health;

Whereas the stalk of true hemp may in some cases contain intoxicating substances; whereas, however, the cultivation of hemp in the Community is of considerable significance in some regions; whereas, to prevent the danger referred to above from being increased by the cultivation of hemp in the Community and by imports of raw hemp and hemp seed, the aid granted under Article 4 of Council Regulation (EEC) No 1308/70... should be limited to varieties providing adequate safeguards in terms of human health, and imports of hemp and hemp seed which do not provide adequate safeguards should be prohibited.'

Regulation (EEC) No 619/71

7 The general rules for the application of Article 4 of Regulation No 1308/70 were laid down in Regulation (EEC) No 619/71 of the Council of 22 March 1971 setting out general rules for granting aid for flax and hemp (OJ, English Special Edition 1971 (I), p. 169). That regulation, in the version applicable at the material time in the case in the main proceedings, namely that resulting from Council Regulation (EC) No 1420/98 of 26 June 1998 (OJ 1998 L 190, p. 7, 'Regulation No 619/71'), provides in the third subparagraph of Article 3(1):

'Aid shall be granted only for hemp harvested after seed formation and grown from certified seed of varieties contained in a list to be drawn up in accordance

with the procedure laid down in Article 12 of Regulation (EEC) No 1308/70. This list shall include only varieties for which a Member State has found by analysis that the weight of THC (tetrahydrocannabinol) in the weight of a sample maintained at constant weight is no more than:

— 0.3% for the purposes of the grant of aid for the marketing years 1998/99 to 2000/2001,

— 0.2% for the purposes of the grant of aid for subsequent marketing.'

Regulation (EC) No 1673/2000

8 Council Regulation (EC) No 1673/2000 of 27 July 2000 on the common organisation of the markets in flax and hemp grown for fibre (OJ 2000 L 193, p. 16), defines the scheme applicable as from the marketing year 2001/2002 to the common organisation of the markets.

9 By Article 13, Regulation No 1673/2000 repealed Regulations No 1308/70 and 619/71 as from 1 July 2001. It made clear in Article 16 that the regulations so repealed were to remain applicable, *inter alia*, to the marketing year 2000/2001, which according to Article 12(3) of Regulation No 1673/2000 ended on 30 June 2001.

Swedish law on narcotic drugs

The Narkotikastrafflagen

10 Article 1 of the Narkotikastrafflagen (1968:64) (Criminal Law on narcotic drugs), prohibits the cultivation or possession, in any manner whatsoever, of narcotic drugs without authorisation. Under Article 6 of that law narcotic drugs which are grown or possessed without authorisation are to be forfeited.

The Lagen om kontroll av narkotika

11 Under Article 2 of the Lagen (1992:860) om kontroll av narkotika ('Law on the control of narcotic drugs'), narcotic drugs may be 'imported, manufactured, exported, offered for sale, transferred or possessed only for medical or scientific purposes or for a specifically identified reason relating to the public interest'.

12 It is clear in particular from Articles 4 to 8 of that law that the cultivation of products falling within the category of narcotic drugs requires authorisation from the Läkemedelsverket (Swedish Pharmaceuticals Authority), which is issued on one of the grounds listed in Article 2.

13 The use of hemp for industrial purposes is not considered to be a reason relating to the public interest which enables authorisation to be obtained for the cultivation of hemp.

The Förordningen om kontroll av narkotika

14 The Förordningen (1992:1554) om kontroll av narkotika (Regulation on the control of narcotic drugs) defines the term 'narcotic drugs' and in particular states that as regards cannabis, 'cannabis shall mean the exposed parts of all plants, whatever their appellation, belonging to the cannabis family (with the exception of the seeds), from which the resin has not been extracted'. The THC content of hemp is not mentioned at all in the regulation as being a relevant criterion for determining whether the hemp falls within the category of narcotic drugs.

15 The prohibition laid down by the Swedish legislation does not cover the importation, marketing and possession of products resulting from the processing of hemp, such as hemp fibre and hemp oil.

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 Mr Hammarsten applied to the Swedish Pharmaceuticals Authority for authorisation to cultivate hemp (*Cannabis sativa*) for industrial purposes, but that authorisation was refused on the ground that his application did not satisfy the conditions laid down in Article 2 of the Law on the control of narcotic drugs.

17 However, Mr Hammarsten grew industrial hemp on his farm in the Laholm district (Sweden). The area under cultivation was approximately 1 hectare.

18 The plants were seized under the Swedish legislation on narcotic drugs.

19 Before the Halmstads tingsrätt, the Public Prosecutor's Office requested the forfeiture of the industrial hemp seized, arguing that it was a narcotic drug, since the Swedish legislation classifies all plants of the hemp family, including industrial hemp, as narcotic drugs. Mr Hammarsten argued that the hemp seized came exclusively from varieties of seeds with a THC content not exceeding 0.3% and was genuinely intended for industrial use. The question was raised as to whether the Swedish legislation on narcotic drugs is contrary to Community law.

20 In that regard, the Halmstads tingsrätt points out in its order for reference that the hemp plants seized are agricultural products covered by the Treaty and that the Community rules on the common organisation of the markets in the flax and hemp sector allow the cultivation of hemp under certain conditions, in particular, the condition that authorised strains are involved whose THC content does not exceed 0.3% (0.2% from the marketing year 2001/2002).

21 In those circumstances the Halmstads Tingsrätt decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 28 of the Treaty of Rome permit a Member State to prohibit the cultivation of or other operations with "industrial hemp" allowed under EC regulations?

(2) If that is not the case, can an exception nevertheless be made under Article 30 of the Treaty of Rome with the result that such a prohibition does not conflict with EC law?

(3) If that is not the case, can the Swedish prohibition be justified on some other ground?'

The questions

22 By its three questions, which it is appropriate to consider together, the national court is asking, essentially, whether Community law must be interpreted as precluding national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp.

23 In order to answer the questions thus reformulated, it is first necessary to determine the provisions of Community law which are applicable in the present case.

24 In that regard, the Court has held that in the case of a dispute concerning a sector governed by a common organisation of the market the problem raised should be examined first from that point of view, taking account of the precedence, by virtue of Article 32(2) EC, of the specific measures taken in the context of the common agricultural policy over the general provisions of the Treaty concerning the establishment of the common market (Case 177/78 *McCarren* [1979] ECR 2161, paragraph 9).

25 It is clear from the order for reference that the dispute in the main proceedings concerns a type of hemp, described as industrial hemp, which has a THC content not exceeding 0.3% and which, according to the Halmstads tingsrätt, is a product authorised by the Community legislation.

26 In light of the national court's findings concerning the characteristics of the hemp at issue in the main proceedings and the time when it was cultivated, namely during the spring of 2001, it must be held that Regulations No 1308/71 and 619/71, which were applicable until 30 June 2001, are relevant to the case in the main proceedings.

27 Consideration must therefore first be given, in the light of the regulations governing, *inter alia*, the common organisation of the market in the hemp sector, to the question whether Community law precludes national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp.

28 In that regard, it is settled case-law that where there is a regulation on the common organisation of the market in a given sector the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it (see, in particular, Case 83/78 *Redmond* [1978] ECR 2347, paragraph 56, Case C-1/96 *Compassion In World Farming* [1998] ECR I-1251, paragraph 41, Case C-428/99 *Van den Bor* [2002] ECR I-127, paragraph 35, and Case C-113/00 *Spain* v *Commission* [2002] ECR I-7601, paragraph 73).

29 It is also settled case-law that the establishment of a common organisation of the agricultural markets does not prevent the Member States from applying national rules intended to attain an objective relating to the general interest other than those covered by the common organisation even if those rules are likely to have an effect on the functioning of the common market in the sector concerned (see, to that effect, Joined Cases 141/81 to 143/81 *Holdijk* [1982] ECR 1299, paragraph 12, Case 118/86 *Nertsvoederfabriek Nederland* [1987] ECR 3883, paragraph 12, and Case C-309/96 *Annibaldi* [1997] ECR I-7493, paragraph 20).

30 It must be observed, first, that the prohibition which arises from Swedish legislation on narcotic drugs, on the cultivation and possession of industrial hemp covered by the common organisation of the market in the hemp sector directly undermines that common organisation.

31 That prohibition deprives farmers in Sweden of any possibility of claiming the benefit of the aid which is provided for by Regulation No 1308/70 and the conditions for the granting of which are laid down by Regulation No 619/71.

32 Second, it must be observed that the Swedish legislation on narcotic drugs does not pursue a public-interest objective which is not covered by the common organisation of the market in the hemp sector.

33 In that regard, the Swedish Government argues that the national legislation at issue is necessary for attainment of the objective of the protection of life and health of humans and is justified by the fact that cannabis is a narcotic drug according to the United Nations' Single Convention on Narcotic Drugs 1961. According to that government, the Community rules on agriculture, such as those concerning the common organisation of the market in the hemp sector, have an objective different from that pursued by the Swedish legislation, which is to guarantee a high level of public-health protection.

34 However, it is clear from the first two recitals in the preamble to Regulation No 1430/82 that the risks to human health constituted by the use of narcotic drugs have been specifically taken into account within the framework of the common organisation of the market in the hemp sector.

35 For that purpose, the second subparagraph of Article 4(1) of Regulation 1308/70 limits the aid granted by the Community to hemp produced from varieties of

seeds offering certain guarantees as to the content of intoxicating substances in the products harvested. Those guarantees are determined by the third subparagraph of Article 3(1) of Regulation No 619/71, which sets the maximum permissible THC content for hemp eligible for Community aid.

36 It follows that Regulations Nos 1308/70 and 619/71 preclude national legislation such as that in point in the main proceedings.

37 In those circumstances, it is not necessary to consider the relevance in this case of other provisions of Community law, such as Articles 28 EC to 30 EC.

38 In the light of the foregoing considerations, the answer to the questions referred for a preliminary ruling, as reformulated, must be that Regulations Nos 1308/70 and 619/71 must be interpreted as precluding national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp covered by those regulations.

Costs

39 The costs incurred by the Swedish Government and by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Halmstads tingsrätt by order of 8 November 2001, hereby rules:

Regulation (EEC) No 1308/70 of the Council of 29 June 1970 on the common organisation of the market in flax and hemp, as amended by Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market and Regulation (EEC) No 619/71 of the Council of 22 March 1971 laying down general rules for granting aid for flax and hemp, as amended by Council Regulation (EC) No 1420/98 of 26 June 1998, must be interpreted so precluding national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp covered by those regulations.

Wathelet Edward La Pergola

Jann Rosas

Delivered in open court in Luxembourg on 16 January 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber