JUDGMENT OF THE COURT (Fifth Chamber)
13 July 2000 *

In Case C-117/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour de Cassation (France) for a preliminary ruling in the proceedings pending before that court between

Union Nationale Interprofessionnelle des Légumes Transformés (Unilet),

Gilles Le Bars

and

Association Comité Économique Régional Agricole Fruits et Légumes de Bretagne (Cerafel)

on the interpretation of Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables (OJ, English Special Edition 1972(II), p. 437), as amended by Council Regulation (EEC) No 3284/83 of 14 November 1983 (OJ 1983 L 325, p. 1),

* Language of the case: French.

THE COURT (Fifth Chamber),

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

Advocate General: S. Alber,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Union Nationale Interprofessionnelle des Légumes Transformés (Unilet) and Mr Le Bars, by N. Coutrelis, of the Paris Bar,

— Association Comité Économique Régional Agricole Fruits et Légumes de Bretagne (Cerafel), by E. Copper-Royer, *Avocat* before the Conseil d'État and the Cour de Cassation, and J.-P. Cuiec, of the Brest Bar,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Vasak, Assistant Secretary for Foreign Affairs in that Directorate, acting as Agents,

— the Commission of the European Communities, by P. Oliver, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Union Nationale Interprofessionnelle des Légumes Transformés (Unilet) and Mr Le Bars, the French Government, and the Commission at the hearing on 13 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2000,

gives the following

Judgment

1 By judgment of 6 April 1999, received at the Court Registry on 9 April 1999, the Cour de Cassation (Court of Cassation) referred for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question concerning the interpretation of Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables (OJ, English Special Edition 1972(II), p. 437), as amended by Council Regulation (EEC) No 3284/83 of 14 November 1983 (OJ 1983 L 325, p. 1) ('Regulation No 1035/72').

2 That question has arisen in proceedings between the Union Nationale Interprofessionnelle des Légumes Transformés ('Unilet') and Mr Le Bars, on the one hand, and the Association Comité Économique Régional Agricole Fruits et Légumes de Bretagne ('Cerafel'), on the other, concerning the fees for 1994 allegedly due from Mr Le Bars to Cerafel in respect of the production of cauliflower intended for the processing industry.

The Community legislation

3 Within the framework of the common organisation of the market in fruit and vegetables, Article 2 of Regulation No 1035/72 provides for the possibility of establishing 'quality standards' for products to be delivered fresh to the consumer. Article 3(3)(a) of that regulation, however, provides that 'products consigned to processing plants' are not obliged to conform to those quality standards.

4 Article 13 of Regulation No 1035/72 defines 'producers' organisations'. Under Article 13(1)(b), such an organisation requires producer members:

'— to sell through the producers' organisation their total output of the product or products by reason of which they have become members ...

— to apply, with regard to production and marketing, rules which have been adopted by the producers' organisation with a view to improving product quality and adapting the volume of supply to market requirements, and

— to provide the information requested by the organisation on harvests and supplies'.

5 Article 15b(1) of Regulation No 1035/72 provides:

'In cases where

— a producers' organisation or

— an association of producers' organisations having adopted the same rules,

operating in a specific economic area, is considered to be representative of production and producers in that area, the Member State concerned may, at the request of the organisation or association and, during the first three years of application, after consultation with the producers in the area, make the following rules binding on producers established in the area who do not belong to one of the organisations referred to above:

(a) the rules on notifying production referred to in the third indent of Article 13(1)(b);

(b) the rules on production referred to in the second indent of Article 13(1)(b);

(c) the rules on marketing referred to in the second indent of Article 13(1)(b);

(d) for products listed in Annex II, the rules adopted by the organisation or association with regard to market withdrawals ...

on condition that these rules have been in force for at least one year.'

6 Article 15b(8) of Regulation No 1035/72 provides:

'Where paragraph 1 is applied, the Member State concerned may decide that non-member producers are liable to the organisation, or where appropriate the association, for all or part of the membership fees paid by the producer members in so far as these are used to cover:

— administrative costs resulting from application of the scheme referred to in paragraph 1,

— the cost of research, market research and sales promotion measures undertaken by the organisation or association and benefiting all producers in the area.'

The national legislation

7 The provisions of Community law governing the common organisation of the market in fruit and vegetables were implemented in France by, *inter alia*, the Ministerial Decree of 18 June 1992 extending the rules laid down by Cerafel (JORF (Official Journal of the French Republic) of 28 June 1992, p. 8469).

8 Article 1 of that Decree extends to all cauliflower producers established in certain departments the rules on notifying production and those on production and marketing, together with the obligation to comply with the detailed arrangements for intervention and withdrawal prices laid down by Cerafel.

9 Article 3 of that Decree authorises Cerafel to collect fees from producers who are not members of producer groups, the amount of those fees being determined subsequently by decree. Those fees are intended, on the one hand, for the administrative management fund established by Cerafel to ensure its administrative operation and, on the other, for the promotion, study and research fund established by Cerafel to cover, where appropriate, general operations benefiting overall production in the region.

10 The Ministerial Decree of 5 July 1993 laying down the conditions for collecting the fees for Cerafel by reason of the extension of the rules for winter/spring cauliflower (JORF of 16 July 1993, p. 10028) authorises Cerafel to collect fees, the amount of which it fixes, for cauliflower in winter/spring 1993 'except for cauliflower specifically intended for the processing industry'.

11 The Ministerial Decree of 24 June 1994 laying down the conditions for collecting the fees for Cerafel by reason of the extension of the rules for cauliflower (JORF

of 19 July 1994, p. 10403) provides a similar authorisation for the 1994/95 marketing year 'for cauliflower supplied to the market for fresh vegetables'.

The dispute in the main proceedings and the question submitted for preliminary ruling

12 Cerafel brought proceedings before the Tribunal d'Instance (District Court), Saint Brieuc (France), against Mr Le Bars, who produces cauliflower for processing, seeking payment of fees in respect of his cauliflower production for 1994. Unilet was granted leave to intervene in the proceedings in support of Mr Le Bars.

13 By judgment of 11 September 1996, the Tribunal d'Instance ruled that Mr Le Bars was required to pay the fees in question, in particular on the ground that the Decrees of 5 July 1993 and 24 June 1994 were incompatible with Regulation No 1035/72 in so far as they excluded producers of cauliflower specifically intended for the processing industry from the obligation to pay those fees.

14 Mr Le Bars and Unilet appealed in cassation. They submit that Article 15b(8) of Regulation No 1035/72 confers on Member States a simple option to make non-member producers subject to the obligation to pay the fees.

15 Since it was unsure as to the scope of Article 15b(8) of Regulation No 1035/72, the Cour de Cassation decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'[Is] Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables... to be interpreted as meaning that, where a Member State has applied Article 15b(1) of that regulation, that is to say where it has made certain rules on production and marketing adopted by a producers' organisation binding on producers established in the district who do not belong to that organisation, it is entitled to exempt certain non-member producers from the payment of fees, in respect of a given product, in so far as the goods produced by them are intended for industrial processing rather than for the fresh-product market[?]'

The question submitted for preliminary ruling

16 Cerafel points out that the Court has ruled, at paragraph 13 of its judgment in Case 212/87 *Unilec* v *Larroche Frères* [1988] ECR 5075, that the attainment of the objectives pursued by Regulation No 1035/72 requires that that regulation should be able to produce its effects after the fruit and vegetables have been harvested, irrespective of the use to which such products are to be put. Cerafel infers from this a principle that fresh and processed products must be treated uniformly, which precludes a Member State from adopting measures that exempt producers of products intended for processing from the obligation to pay fees.

17 For their part, Unilet, the French Government and the Commission argue that it is for the Member States to decide whether it is appropriate to make the rules drawn up by producers' organisations binding on non-member producers. Noting that Regulation No 1035/72 applies to all producers of fruit and vegetables, irrespective of the use to which the harvested products are to be put (*Unilec*, cited

above, paragraph 13), they point out that the Court has not ruled on the question whether the fee rates for producers have to be fixed uniformly or whether they may vary according to the end use to which those products are put.

18 That being so, they argue that each Member State enjoys a margin of discretion which may be limited only by the general principle of non-discrimination. Cauliflowers specifically intended for processing meet, from the time when they are planted, precise requirements which distinguish them from cauliflowers intended for the fresh-product market. Those differences justify producers of products intended for processing being exempted from payment of membership fees.

19 It must be noted at the outset that Article 15b of Regulation No 1035/72 confers on Member States an enabling power in the form of an option. Under Article 15b(1), the Member State in question may make certain rules adopted by a producers' organisation or an association of producers' organisations binding on non-member producers. Article 15b(8) provides that, where paragraph (1) is applied, the Member State may decide that non-member producers are liable to the organisation or association for all or part of the membership fees paid by the producer members.

20 It follows that, subject to the conditions laid down in Article 15b of Regulation No 1035/72, Member States enjoy a discretion which they may exercise within the limits imposed by Community law.

21 It is in the light of those considerations that the question must be addressed whether a Member State is empowered, when applying Article 15b(1) of Regulation No 1035/72, to exempt producers of products intended for processing from payment of the membership fees to which producers of fresh products are subject.

22 In that regard, it is first of all necessary to reject Cerafel's interpretation of the judgment in *Unilec*. The Court admittedly held in that judgment that products intended for sale to a processor are subject to the same rules as those applicable to fresh products. While it follows from that judgment that the extension of the rules relating to products intended for processing is subject to the same conditions as in the case of fresh products, it does not follow that Member States, in the exercise of their discretion, are obliged to treat all of those products in a strictly identical manner, irrespective of their end use.

23 Second, it is necessary to examine whether a scheme such as that established by the national rules at issue in the main proceedings is compatible with the principle set out in Article 40(3) of the EC Treaty (now, after amendment, Article 34(2) EC) prohibiting all discrimination between Community producers. According to settled case-law of the Court, that principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see Case C-354/95 *The Queen* v *Minister for Agriculture, Fisheries and Food*, ex parte *NFU and Others* [1997] ECR I-4559, paragraph 61).

24 According to Article 15b(8) of Regulation No 1035/72, the possibility for a Member State to decide that non-member producers are to be liable to a producers' organisation or an association of producers' organisations for all or part of the membership fees paid by the producer members relates only to the membership fees intended to cover certain costs, namely administrative costs resulting from the extension of the rules adopted by that organisation or association and those resulting from research, market research and sales promotion measures undertaken by the organisation or association.

25 Unilet, the French Government and the Commission submit, without being challenged on this point by Cerafel, that, in the case of products intended for processing, which, under Article 3(3)(a) of Regulation No 1035/72, are not subject to the quality standards applicable to products supplied to the market in

fresh products, the quality and quantity criteria, cultivation methods, harvesting schedules and methods of packaging are laid down in contracts concluded between producers and processors before the marketing year begins.

26 It follows that the rules on notifying production, on production and marketing and the rules on market withdrawal apply only partially, indeed may not even apply at all, to products intended for processing. Similarly, those products benefit only partially, or indeed not at all, from the research, market research and sales promotion measures undertaken by a producers' organisation or an association of producers' organisations.

27 Since the situations in issue are thus objectively different, the fact that they are treated differently does not therefore infringe the general principle of non-discrimination.

28 In view of the foregoing considerations, the answer to the question must be that Article 15b(8) of Regulation No 1035/72 must be interpreted as meaning that, where a Member State has applied Article 15b(1) of that regulation, that is to say where it has made certain rules on production and marketing adopted by a producers' organisation binding on producers established in the district who do not belong to that organisation, it is entitled to exempt certain non-member producers from the payment of those fees, in respect of a given product, in so far as the goods produced by them are intended for industrial processing rather than for the fresh-product market.

Costs

29 The costs incurred by the French Government and 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 action 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 question referred to it by the Cour de Cassation by judgment of 6 April 1999, hereby rules:

Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables, as amended by

Council Regulation (EEC) No 3284/83 of 14 November 1983, must be interpreted as meaning that, where a Member State has applied Article 15b(1) of that regulation, that is to say where it has made certain rules on production and marketing adopted by a producers' organisation binding on producers established in the district who do not belong to that organisation, it is entitled to exempt certain non-member producers from the payment of fees, in respect of a given product, in so far as the goods produced by them are intended for industrial processing rather than for the fresh-product market.

Edward Sevón Jann

Ragnemalm Wathelet

Delivered in open court in Luxembourg on 13 July 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber