Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

14 October 2021 *

(Reference for a preliminary ruling – Community plant variety rights – Regulation (EC) No 2100/94 – Article 96 – Calculation of the period of prescription for claims pursuant to Articles 94 and 95 – Point from which time starts to run – Date of grant of Community rights and of knowledge of the act and of the identity of the party liable – Date on which the course of action in question ceased – Repeated acts – Continuous acts – Restricted to acts carried out more than three years ago)

In Case C-186/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 7 March 2018, received at the Court on 9 March 2018, in the proceedings

José Cánovas Pardo SL

v

Club de Variedades Vegetales Protegidas,

THE COURT (Seventh Chamber),

composed of I. Ziemele (Rapporteur), President of the Sixth Chamber, acting as President of the Seventh Chamber, T. von Danwitz and A. Kumin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– José Cánovas Pardo SL, by V. Venturini Medina, procurador, and by A. Scasso Veganzones, abogada,

– Club de Variedades Vegetales Protegidas, by P. Tent Alonso, V. Gigante Pérez, I. Pérez-Cabrero Ferrández and G. Navarro Pérez, abogados,

* Language of the case: Spanish.

– the Greek Government, by G. Kanellopoulos, E. Leftheriotou and A. Vasilopoulou, acting as Agents,

– the European Commission, by B. Eggers, I. Galindo Martín and G. Koleva, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 April 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 96 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

2 The request has been made in proceedings between José Cánovas Pardo SL ('Pardo') and Club de Variedades Vegetales Protegidas (CVVP) concerning Pardo's cultivation of mandarin trees of the Nadorcott variety without CVVP's consent.

Legal context

3 Under Article 1 of Regulation No 2100/94, 'a system of Community plant variety rights is hereby established as the sole and exclusive form of Community industrial property rights for plant varieties'.

4 Article 13 of Regulation No 2100/94, which is entitled 'Rights of the holder of a Community plant variety right and prohibited acts', provides:

'1. Community plant variety right shall have the effect that the holder or holders of the Community plant variety right, hereinafter referred to as "the holder", shall be entitled to effect the acts set out in paragraph 2.

2. Without prejudice to the provisions of Articles 15 and 16, the following acts in respect of variety constituents, or harvested material of the protected variety, both referred to hereinafter as "material", shall require the authorisation of the holder:

(a) production or reproduction (multiplication);

(b) conditioning for the purpose of propagation;

(c) offering for sale;

(d) selling or other marketing;

(e) exporting from the Community;

(f) importing to the Community;

(g) stocking for any of the purposes mentioned in (a) to (f).

The holder may make his authorisation subject to conditions and limitations.

3. The provisions of paragraph 2 shall apply in respect of harvested material only if this was obtained through the unauthorised use of variety constituents of the protected variety, and unless the holder has had reasonable opportunity to exercise his right in relation to the said variety constituents.

…'

5 Under Article 94 of Regulation No 2100/94, entitled 'Infringement':

'1. Whosoever:

(a) effects one of the acts set out in Article 13(2) without being entitled to do so, in respect of a variety for which a Community plant variety right has been granted;

or

(b) omits the correct usage of a variety denomination as referred to in Article 17(1) or omits the relevant information as referred to in Article 17(2);

or

(c) contrary to Article 18(3) uses the variety denomination of a variety for which a Community plant variety right has been granted or a designation that may be confused with it;

may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both.

2. Whosoever acts intentionally or negligently shall moreover be liable to compensate the holder for any further damage resulting from the act in question. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement.'

6 Article 95 of that regulation, entitled 'Acts prior to grant of Community plant variety rights', reads as follows:

'The holder may require reasonable compensation from any person who has, in the time between publication of the application for a Community plant variety right and grant thereof, effected an act that he would be prohibited from performing subsequent thereto.'

7 Under Article 96 of Regulation No 2100/94, entitled 'Prescription':

'Claims pursuant to Articles 94 and 95 shall be time barred after three years from the time at which the Community plant variety right has finally been granted and the holder has knowledge of the act and of the identity of the party liable or, in the absence of such knowledge, after 30 years from the termination of the act concerned.'

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

8 Following an application lodged by Nadorcott Protection SARL on 22 August 1995 with the Community Plant Variety Office ('the CPVO'), the CPVO granted it a Community plant variety right in respect of the Nadorcott variety of mandarin tree on 4 October 2004. An appeal with suspensive effect was brought against that decision before the Board of Appeal of the CPVO but was dismissed by a decision of 8 November 2005 published in the Official Gazette of the CPVO on 15 February 2006.

9 Since 2006, Pardo has cultivated a grove of 4 457 mandarin trees of the Nadorcott variety.

10 Geslive, on whom the management of the rights over the Nadorcott variety had been conferred, sent Pardo formal notice on 30 October 2007 demanding that, in the absence of the appropriate licence, it cease the cultivation of that plant variety.

11 On 30 March 2011, CVVP, to whom the management of those rights had been transferred with effect from 13 December 2008, sent Pardo a new letter demanding that, if it were cultivating some 5 000 mandarin trees of the Nadorcott variety, it cease that activity.

12 Having applied in November 2011 to the Juzgado de lo Mercantil (Commercial Court, Spain) for preliminary measures for a declaration of infringement of the exclusive rights over the Nadorcott variety, CVVP brought two actions against Pardo, one for 'provisional protection' in respect of the acts of Pardo prior to the grant of those rights, that is, before 15 February 2006, the other for infringement in respect of acts after that date. In particular, CVVP sought a declaration of infringement of the exclusive rights over the Nadorcott variety from 15 February 2006 until the cessation of cultivation. CVVP also applied for an injunction that Pardo be ordered to bring its unlawful cultivation to an end, to remove and, if necessary, destroy any plant material of that variety in Pardo's possession, and to pay it compensation in respect of such cultivation.

13 Having found that a period of time of more than three years had elapsed between the date on which the holder of the rights over the Nadorcott variety had identified Pardo as an unlawful cultivator of that variety, that is, at the latest by 30 October 2007, when Geslive gave formal notice to Pardo, and the date on which CVVP brought its action in November 2011, that court of first instance dismissed the action on the ground that the action for infringement was time barred under Article 96 of Regulation No 2100/94.

14 Following CVVP's appeal against that decision, the Audiencia Provincial de Murcia (Provincial Court of Murcia, Spain) found that Pardo did not dispute either the cultivation of the trees of the Nadorcott variety or the lack of consent of the holder of the rights in that variety. That court decided that Pardo's operations resulted in certain acts of infringement which were of an ongoing nature since the trees at issue were continuing to be cultivated. In addition, it held that Article 96 of Regulation No 2100/94 should be interpreted as meaning that the claims relating to those acts of infringement which took place less than three years before CVVP's action was brought were not time barred but that those relating to acts of infringement which took place more than three years before the claims had been brought were time barred.

15 Accordingly, Pardo was ordered to pay EUR 31 199 for its acts of infringement and as appropriate compensation for acts performed without the consent of the holder of the Community plant variety right during the period of its provisional protection. In addition, Pardo was ordered to cease all acts of infringement.

16 Pardo brought an appeal on a point of law before the referring court, the Tribunal Supremo (Supreme Court, Spain) against that decision of the Audiencia Provincial de Murcia (Provincial Court of Murcia), challenging the latter's interpretation of Article 96 of Regulation No 2100/94.

17 The referring court states that, according to the national case-law on matters of intellectual property, occasional acts of infringement must be distinguished from ongoing acts. In the case of the latter, the period of prescription is extended for as long as the act of infringement continues. That court asks whether such case-law can be applied to the rules on prescription set out in Article 96 of Regulation No 2100/94 and, in particular, whether all claims relating to acts of infringement are time barred on the ground that the holder of the Community plant variety right brought his or her action more than three years after becoming aware of those acts of infringement and of the identity of the party liable for them or if only those claims relating to acts of infringement which took place more than three years before the action was brought are time barred.

18 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is an interpretation according to which, provided that the period of three years has elapsed since the holder, once Community protection of the plant variety right was granted, became aware of the infringing act and the identity of the party liable, the actions provided for under Articles 94 and 95 [Regulation No 2100/94] would be time barred, although the infringing acts were continuing until the time the action was brought, contrary to Article 96 of [that regulation]?

(2) If the first question is answered in the negative, is it to be considered that, in accordance with Article 96 of [the regulation], the limitation period operates only in respect of infringing acts committed outside the three-year period, but not in respect of those taking place within the last three years?

(3) If the answer to the second question is in the affirmative, in such a situation could the action for an injunction and also for damages succeed only in relation to those latter acts taking place within the last three years?'

Procedure before the Court

19 By decision of the President of the Court of 13 February 2019, the proceedings in the present case were stayed pending delivery of the judgment in Case C-176/18 concerning a request for a preliminary ruling from the Tribunal Supremo (Supreme Court) on the interpretation of Article 13 of Regulation No 2100/94 in proceedings between CVVP and Mr Adolfo Juan Martínez Sanchís in respect of Mr Martínez Sanchís's cultivation of mandarin trees of the Nadorcott variety.

20 Following the delivery of the judgment of 19 December 2019, *Club de Variedades Vegetales Protegidas* (C-176/18, EU:C:2019:1131), the Court Registry sent a copy of that judgment to the referring court by letter of 7 January 2020 and asked it to state whether, in the light of that judgment, it wished to maintain its request for a preliminary ruling in the present case.

21 By letter of 16 October 2020, that court informed the Court that it wished to maintain its request for a preliminary ruling.

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 96 of Regulation No 2100/94 must be interpreted as meaning that the three-year period of prescription set out in that provision in respect of claims pursuant to Articles 94 and 95 of that regulation starts to run, after the Community plant variety right has finally been granted, from the time at which the holder has knowledge of the act and of the identity of the party liable, irrespective of whether or not the act of infringement continues until such time as a claim is brought.

23 In that regard, it should be recalled that, according to the Court's settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording, but also its context and the objectives of the rules of which it is part (judgment of 20 January 2021, *Heavyinstall*, C-420/19, EU:C:2021:33, paragraph 27 and the case-law cited).

24 First, as regards the wording of Article 96 of Regulation No 2100/94, it is clear from the express wording of that provision that claims pursuant to Articles 94 and 95 thereof are to be time barred after three years from the time at which the Community plant variety right has finally been granted and at which the holder of that right has knowledge of the act and of the identity of the party liable or, in the absence of such knowledge, after 30 years from the termination of the act concerned.

25 Thus, in the first place, it follows from that wording that Article 96 of Regulation No 2100/94 lays down two conditions for determining the time from which the three-year period of prescription of claims pursuant to Articles 94 and 95 of that regulation starts to run, one preceding the other.

26 The time for such a period to start to run is determined, first, by an objective event, namely when the Community plant variety right has finally been granted, and, second, by a subjective event, namely when the holder of that right has knowledge of the act of infringement and of the identity of the party liable for it.

27 As to whether there is any priority between those events in triggering the prescription period, it must be held that the starting point for that period is the date of the event that last occurs, namely the grant of the Community plant variety right or knowledge of the act and of the identity of the party liable (see, by analogy, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 47).

28 It follows that Article 96 of Regulation No 2100/94 cannot be interpreted as meaning that the end of the act of infringement be regarded as the event from which the period of prescription for claims pursuant to Articles 94 and 95 of that regulation starts to run.

29 Such an interpretation, advocated by CVVP in its written observations, would not only run counter to the wording of Article 96, but would, as the Advocate General stated in point 46 of his Opinion, amount to the addition of a condition to those set out in paragraph 26 above, not provided for by the EU legislature.

30 In the second place, the wording of Article 96 of Regulation No 2100/94 merely states that the three-year period of prescription starts to run once the holder of the right has knowledge of the 'act' of infringement as such and of the party liable for it. That provision does not, however, specify further whether the extent of the duration of the acts of infringement of the holder's rights or the ongoing nature of such acts should be taken into account. That wording makes clear only that the 'act' is one for which a claim may be brought pursuant to Articles 94 and 95 of Regulation No 2100/94.

31 In that regard, it should be noted, first, that, as of the grant of Community plant variety rights, effecting one of the unauthorised acts referred to in Article 13(2) of Regulation No 2100/94 in respect of a protected plant variety constitutes an 'unauthorised use' within the meaning of Article 13(3) of that regulation. Thus, in accordance with Article 94(1)(a) of that regulation, any person who, in those circumstances, effects one of those acts may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both (judgment of 19 December 2019, *Club de Variedades Vegetales Protegidas*, C-176/18, EU:C:2019:1131, paragraph 41).

32 Second, as regards the period prior to the grant of such rights, a right holder may, pursuant to Article 95 of Regulation No 2100/94, require reasonable compensation from any person who has, in the time between publication of the application for a Community plant variety right and grant thereof, effected an act that he or she would be prohibited from performing subsequent to that period on account of such rights (judgment of 19 December 2019, *Club de Variedades Vegetales Protegidas*, C-176/18, EU:C:2019:1131, paragraph 42).

33 Accordingly, it follows from paragraphs 24 to 32 above that, according to the wording of Article 96 of Regulation No 2100/94, the three-year period of prescription set out in that provision for claims pursuant to Articles 94 and 95 of that regulation starts to run, not from the time when the acts of infringement on account of which those claims are brought have come to an end, but from the date on which the holder of the Community plant variety right has knowledge of those acts and of the identity of the party liable, since that wording contains no reference or even allusion to the notions of duration of the infringement or of the ongoing nature of the act of infringement.

34 Such an interpretation is supported, second, by the legislative scheme of which Article 96 of Regulation No 2100/94 is part.

35 It should be made clear that claims pursuant to Articles 94 and 95 of that regulation are brought, inter alia, in respect of the acts referred to in Article 13(2) thereof. Article 13(2) of the regulation relates to individually identified acts, so that the fact that an act may be ongoing is not conclusive for the purposes of setting the point from which time starts to run in respect of the period laid down in Article 96 of the regulation.

36 Third, the interpretation of that provision, as referred to in paragraph 33 above, is borne out by the objective pursued by Regulation No 2100/94 by way of that provision in positing a rule of prescription.

37 It should be noted that, in general, periods of limitation and prescription fulfil the function of ensuring legal certainty (judgment of 30 April 2020, *Nelson Antunes da Cunha*, C-627/18, EU:C:2020:321, paragraph 44 and the case-law cited).

38 In order to fulfil their function effectively, such periods must be fixed in advance and any application 'by analogy' of a limitation period must be sufficiently foreseeable for a person (judgment of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, paragraph 71 and the case-law cited).

39 However, if Article 96 of Regulation No 2100/94 were interpreted to the effect that the period of prescription provided for therein starts to run only when the act of infringement in question has come to an end, that would mean that, for as long as the infringement continued, the holder of the Community plant variety right could bring claims pursuant to Articles 94 and 95 of that regulation up to three years after the end of that act, irrespective of the dates on which the infringement began or the holder had knowledge of it and of the identity of the party liable.

40 Such an interpretation would give rise to constant uncertainty for the party liable for acts of infringement, since the holder of the Community plant variety right, despite having tolerated acts to the extent of giving the party liable the impression of acting in good faith, could legitimately bring one of the actions referred to in Articles 94 and 95 of Regulation No 2100/94 in respect of all acts of infringement, irrespective of when each took place.

41 Accordingly, the answer to the first question referred is that Article 96 of Regulation No 2100/94 must be interpreted as meaning that, irrespective of the ongoing nature of an act of infringement of a protected variety or of the date on which that act ended, the three-year period of prescription set out in that provision in respect of claims pursuant to Articles 94 and 95 of that regulation starts to run from the date on which, first, the Community plant variety right was finally granted and, second, the holder of the right had knowledge of the act and of the identity of the party liable.

The second and third questions

42 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 96 of Regulation No 2100/94 must be interpreted as meaning that all claims pursuant to Articles 94 and 95 of that regulation in respect of a set of acts of infringement of a protected variety brought after more than three years have elapsed from when, first, the Community plant variety right was finally granted and, second, the holder had knowledge of that set of acts and of the identity of the party liable for them, irrespective of the date of each individual act forming part of that set of acts, are time barred, or whether only claims in respect of acts which took place more than three years before those claims were brought are time barred.

43 As appears from paragraph 35 above, Article 96 of Regulation No 2100/94 concerns the prescription of claims pursuant to Articles 94 and 95 of that regulation in respect of individually identified acts of infringement.

44 As stated in paragraphs 31 and 32 above, the acts referred to in Article 13(2) of that regulation are those which would have required authorisation of the holder of the Community plant variety right, namely, production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting from the European Union, importing to the European Union and stocking for any of the acts in respect of variety constituents, or harvested material of the protected variety.

45 Therefore, for the purposes of applying Article 96 of Regulation No 2100/94, each act of infringement corresponding to the acts listed in Article 13(2) of that regulation must be taken into account individually, irrespective of whether it is repeated, ongoing or forms part of a set of acts.

46 Furthermore, as the Advocate General stated in point 61 of his Opinion, the fact that Article 96 of Regulation No 2100/94 provides for the time-bar of an 'act', not the time-bar of a course of action conceived as a 'set of acts', supports the view that each act of infringement forming part of a 'set of acts' should be examined individually in respect of the rules of prescription.

47 It follows that it is the date at which the holder of the Community plant variety right had knowledge of an individual act of infringement and of the identity of the party liable which is conclusive of whether claims pursuant to Articles 94 and 95 of Regulation No 2100/94 are time barred by virtue of the three-year period laid down in Article 96 of that regulation.

48 In the circumstances of the case in the main proceedings, it is therefore for the referring court to ascertain, for each of the acts of infringement claimed against Pardo, whether CVVP had knowledge of those acts and of the party liable more than three years before it brought its claims for compensation in the case in the main proceedings, which, as appears from the order for reference, were brought in November 2011.

49 Any interpretation to the contrary of Article 96 of Regulation No 2100/94, according to which the end of the three-year period laid down in that provision were to result in the prescription of all acts of infringement of the holder's rights, as maintained by Pardo in its written observations, would run counter to the objective of that provision.

50 It would follow from such an interpretation that the prescription of claims pursuant to Articles 94 and 95 of that regulation relating to an act of infringement which were regarded either as the beginning of a course of action or as being at the source of a set of acts of infringement in respect of a protected variety would also have the effect of time-barring claims relating to any other subsequent act capable of being attributed to that course of action or connected with such a set of acts, irrespective of the date at which the holder of the Community plant variety right had knowledge of that act or of the party liable for it.

51 However, as the Advocate General stated in point 56 of his Opinion, rules of prescription can refer only to claims in respect of acts which took place in the past and not those which could be undertaken in the future.

52 Furthermore, if claims pursuant to Articles 94 and 95 of Regulation No 2100/94 were required to be declared time barred on the ground that that those relating to the 'initial act' at the source of the infringing course of action, the holder's Community plant variety right would be meaningless in respect of acts of infringement taking place after the period of prescription applicable to that initial act had elapsed.

53 Such an interpretation of the period of prescription laid down in Article 96 of that regulation would be incompatible with the very purpose of that regulation which is, according to Article 1 thereof, to establish a system of Community plant variety rights.

54 In the light of the foregoing considerations, the answer to the second and third questions is that Article 96 of Regulation No 2100/94 must be interpreted as meaning that claims pursuant to Articles 94 and 95 of that regulation in respect of a set of acts of infringement of a protected variety brought after more than three years have elapsed are time barred only from when, first, the Community plant variety right was finally granted and, second, the right holder had knowledge of each individual act forming part of that set of acts and of the identity of the party liable for them.

Costs

55 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

1. **Article 96 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights must be interpreted as meaning that, irrespective of the ongoing nature of an act of infringement of a protected variety or of the date on which that act ended, the three-year period of prescription set out in that provision in respect of claims pursuant to Articles 94 and 95 of that regulation starts to run from the date on which, first, the Community plant variety right was finally granted and, second, the holder of the right had knowledge of the act and of the identity of the party liable.**

2. **Article 96 of Regulation No 2100/94 must be interpreted as meaning that claims pursuant to Articles 94 and 95 of that regulation in respect of a set of acts of infringement of a protected variety brought after more than three years have elapsed are time barred only from when, first, the Community plant variety right was finally granted and, second, the right holder had knowledge of each individual act forming part of that set of acts and of the identity of the party liable for them.**

[Signatures]