OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 14 July 1998 *

1. This reference for a preliminary ruling from the Pretore Circondariale di Bari (District Magistrates' Court) (Italy) concerns the interpretation of the Community rules governing the wine market in order to determine whether the prohibition on the planting of new vines intended for the production of table grapes was in force in 1991 and 1992.

2. The national court considers that a reply from the Court of Justice is necessary to give judgment in an action brought by Mr Giuseppe Manfredi against the fine (and against enforcement of the order to grub out the vineyard) imposed on him by the Italian Regional Authority on finding him guilty of an administrative offence consisting in planting unauthorised vineyards.

Facts, main proceedings and question referred

3. The facts are stated very briefly in the order for reference. In 1991 and 1992 the plaintiff planted, without administrative authorisation, a vineyard for the production of 'Italia' variety table grapes on a piece of land owned by him at Mola di Bari, with an approximate area of 2.7331 hectares (as stated by inspectors of the State Forestry Authority, Bari Division, in Report No 19 of 9 April 1996).

4. On those grounds the Regional Litigation Office, Puglia Region, by order No 2387/96/A of 3 December 1996,

(a) found that Mr Manfredi had contravened Article 6 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (Regulation No 822/87), [1] conduct which was made a statutory offence by Article 4 of Decree-Law No 370/1987, converted into Law No 460/1987;

(b) ordered him to pay a fine of ITL 2 763 100 and to grub out the offending vineyard.

* Original language: Spanish.

1 — OJ 1987 L 84, p. 1.

5. Mr Manfredi appealed against the administrative decision to the Pretore di Bari who, in view of the doubt as to the interpretation of the Community law on which the penalty was based, has asked the Court whether the prohibition on the planting of new vines laid down in Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 also applies to vineyards intended for the production of table grapes.

Community law

6. Regulation No 822/87, which is the key measure for regulating the wine market, was the second attempt to codify the Community measures on the wine sector, which up to then had been characterised by 'their number, complexity and dispersal'. The first attempt had been Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organisation of the market in wine, [2] but subsequent amendments made further codification necessary.

7. Regulation No 822/87 brought together provisions which until then had appeared in measures from different sources. Sometimes it did so without preserving the requisite consistency and without regard to the reasons set out in its very lengthy preamble. [3] So far as the prohibition on planting new vineyards is concerned, the legislation has undergone a number of changes, which I shall now summarise.

(i) *The situation prior to Regulation No 822/87: the prohibition and exceptions to it up to 1990*

8. The rule existing prior to Regulation No 822/87 was Article 30 of Regulation No 337/79, cited above, which was amended a number of times. Specifically, in the version set out in Article 1 of Council Regulation (EEC) No 454/80 of 18 February 1980, [4] Article 30 prohibited 'all new planting of vines' until 30 November 1986, 'except on areas intended for the production of grapes obtained from varieties which, for the administrative unit concerned, are classified solely as table grape varieties'.

9. Article 1(11) of Council Regulation (EEC) No 1208/84 of 27 April 1984 amending Regulation (EEC) No 337/79 on the common organisation of the market in wine [5] extended

2 — OJ 1979 L 54, p. 1.

3 — In a memorandum of 30 April 1997 addressed to the Italian Government, which has produced the document, the Commission admits that the 16th recital of Regulation No 822/87 must be regarded as a material mistake which occurred in the codification of the previous regulations. With regard to this recital and its use as a criterion of interpretation, see paragraph 36 below.

4 — OJ 1980 L 57, p. 7.

5 — OJ 1984 L 115, p. 77.

this general prohibition until 31 August 1990 and, at the same time, removed the exception for table grape varieties with effect from 1 May 1984. It is true that the amended version allowed specified authorisations to be granted for new planting of certain types of vine, but they did not include those intended for table grapes.

(ii) *The codification effected by Regulation No 822/87*

10. In codifying the previous provisions, Article 6(1) of Regulation No 822/87 provided as follows:

'All new planting of vines shall be prohibited until 31 August 1990.

However, authorisations for new planting may be granted by Member States in respect of areas intended for the production of quality wines psr production of which the Commission has recognised, because of their qualitative features, as being far below demand.'

11. Article 6(2) permitted the Member States to authorise certain other new plantings in respect of specified areas intended for certain purposes, but these did not include the planting of vineyards for table grapes.

(iii) *The position from 1990 to 1996*

12. The general prohibition on planting new vines in force until 31 August 1990 was again extended to 31 August 1996 by Article 1 of Council Regulation (EEC) No 1325/90 of 14 May 1990 amending Regulation No 822/87. [6] As, pursuant to Article 2 thereof, this regulation entered into force on 1 September 1990, there was no interruption in the prohibition on planting before and after 31 August 1990.

13. The extension obviously meant that the substantive scope of the prohibition itself, in the pre-existing terms, and the exceptions thereto, remained the same, only the time aspect being changed.

6 — OJ 1990 L 132, p. 19.

14. The preamble to Regulation No 1325/90 justified the continuation of the general ban as follows: 'The ban on new planting laid down in Article 6 of Regulation No 822/87 ... expires at the end of the 1989/90 wine year; ... in view of the structural surpluses affecting the sector, arrangements for the voluntary abandonment of wine-growing areas on payment of a premium to absorb that surplus were introduced to last until 1995/96; ... in order not to cancel out the effects of the abandonment measure, *the ban on new planting and the accompanying derogations, with the exception of that referring to certain quality wines psr,* in respect of which the extension may be limited to a single year pending the introduction of definitive arrangements, *should be extended until at least the same date ...* .' [7]

The Italian penal legislation

15. Article 4(3) of Decree-Law No 370/1987, converted into Law No 460/1987, lays down a fine 'for any person who contravenes the provisions concerning new planting of vines referred to in Articles 6 and 8 of Regulation (EEC) No 822/87' and requires the vines wrongfully planted to be grubbed out.

The reply to the question from the national court

16. First of all, it is necessary to establish the period to which the question relates. The Court is asked to interpret the Community rules as they stood in 1991 and 1992. Consideration of the changes in the legislation from 1979 to 1996 may offer some reliable guidance in interpretation, but it must not be forgotten that the material events (and, therefore, the legislation applicable *ratione temporis*) are confined to 1991 and 1992.

17. An analysis of the Community provisions set out in the preceding paragraphs shows the following:

— Originally the prohibition on planting new vines, which was introduced in 1979 and amended in 1980, did not prevent the planting of varieties intended for table grapes. These, by way of exception, benefited from permissive arrangements until 1 May 1984, as is clear from the 1980 amended version of Article 30 of Regulation No 337/79. [8]

7 — Emphasis added.

8 — See paragraph 8.

— However, with effect from 1 May 1984 Regulation No 1208/84 abolished the exception for table grapes and brought the planting of vines for this purpose within the general prohibition, which continued as such, without interruption, initially until 31 August 1990 [9] and, later, to 31 August 1996. [10] In that year significant changes were made to the rules and I shall refer to these later.

18. I think it is important to emphasise the change in the trend of the legislation, the key year for which is 1984. Until then, the decision to prohibit new planting of vines had expressly excluded (always by way of a specific exception to the wider general ban) varieties intended for table grapes. However, from May 1984 the exception was withdrawn and consequently the planting of vines for table grapes was brought within the general prohibition. The new direction was not only reflected in the actual wording of Regulation No 1208/84, to which I have already referred, but was expressly justified in the preamble to the regulation, the eighth recital of which states that 'since the present table grape production exceeds requirements, the ban on new planting should be extended to all vines'. [11]

19. Accordingly there seems to me to be no doubt that the Community legislature intended in 1984 expressly and definitively to prohibit the new planting of vines for table grapes. This decision, which took the legal form of removing the exception for such vines from the scope of the general ban, was in principle to be in force for a term of five years, but it was extended successively until 1996.

20. In 1991 and 1992, therefore, the ban on new vines included those intended for the production of table grapes. In view of the situation in the wine market, the Community legislature did not consider it appropriate to exempt them from the general prohibition (as had occurred in previous years), so that it covered also varieties intended for table grapes. Furthermore, the ban was consistent with another series of measures adopted at the same time (i. e. premiums for grubbing out vines producing table grapes) to limit surplus production in the sector.

21. The actual wording, the intrinsic meaning of the provision, the declared intention of its author and the incorporation of that intention in a unitary framework of structural measures all point to the same thing: the ban applying in 1991 and 1992 was strict and, unlike the previous ban from 1979 to 1984, the exceptions to it had nothing to do with table grapes.

9 — See paragraph 9.

10 — See paragraph 12.

11 — The preamble adds: '... it is, however, appropriate that provision be made for derogations to be granted for areas intended for the production of quality wine psr for which demand could by far exceed supply'. Consequently the exception does not contemplate table grape varieties.

22. Article 6(1) of Regulation No 822/87, which maintained the general prohibition on planting new vines until 31 August 1990 (subsequently extended to 1996 by Regulation No 1325/90) [12] is worded in the broadest possible terms. It prohibits 'all' new planting of vines, irrespective of variety. Consequently there is no ambiguity in this connection and, if the same article immediately has to lay down certain exceptions to the ban (none of which affects table grapes), that is precisely because of the comprehensive nature of the ban.

23. From the viewpoint of the inclusion of the ban in a coherent system of agricultural policy measures, the conclusion is also in favour of the interpretation which I propose. An authorisation to plant new vines intended for table grapes would be inconsistent with a Community policy of premiums for grubbing out vines of that kind. It would be illogical to authorise the planting of such vines and at the same time to offer economic aid as an incentive for grubbing them out.

24. The aim of reducing the surplus production of table grapes is apparent in the policy of aid for grubbing out vines. Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas, [13] fixes the premium per hectare applicable to, *inter alia*, 'areas cultivated with varieties classified in the administrative unit concerned either as table grapes or as both table and wine grapes' [Article 2(1)(c)].

25. If during the wine years 1988/89 to 1995/96 premiums were granted for the permanent abandonment of wine-growing areas intended for the production of table grapes, it is logical that new planting of the same grapes should not be authorised during that period. I should like to bring out the parallels between the two aspects:

(a) On the one hand, the restrictive policy aims to reduce the production of table grapes by means of simultaneous action in relation to existing vines of that type (the grubbing-up of which is encouraged) and future vines (new planting of which is banned). This was the line taken from 1984 to 1996.

(b) On the other hand, the policy in favour of the production of table grapes lifts the ban on new planting and also abolishes the measures encouraging the grubbing-up

12 — See paragraphs 9 and 10.

13 — OJ 1988 L 132, p. 3.

of existing vines. This was the line before 1984 (and it was resumed from 1996, as I shall show later).

26. To sum up, in the absence of reliable grounds for rejecting the interpretation of the rule which follows naturally from its actual wording, from the declared intention of its author and from the incorporation of that intention in a homogeneous series of structural measures, it must be accepted that the planting of new vines intended for the production of table grapes was prohibited during the period in question.

The arguments against this interpretation

27. The Commission and the French Government, which has participated in the preliminary ruling proceedings, agree with the interpretation which I propose. The Greek Government and the plaintiff in the main proceedings, however, have raised arguments against it while the Italian Government appears to consider that the ban does not apply, although it has not taken a definite position on the question. In the order for reference the national court for its part sets out four possible arguments summarising the opinions of those who consider that the ban on new planting did not affect the table grape variety. [14]

(i) *The inclusion of table grapes in the common organisation of the wine market*

28. The first of these four arguments is that Community intervention in the wine sector must affect only grapes intended for wine-making, not table grapes, which are not intended for making wine. The plaintiff in the main proceedings relies heavily on this argument. In support, he refers to the purpose of the common organisation of the wine market and the fact that Article 1(2) of Regulation No 822/87 does not include table grapes in the list of products governed by that organisation.

29. In my view this argument must be rejected for several reasons. The first has to with

14 — The national court points out that the Italian courts (in particular, the Regional Administrative Court, Sicily, and various magistrates whose judgments are cited in the order for reference) have taken different, and even conflicting, approaches to the interpretation of the provision in question. In their observations, the Commission and the Italian Government also refer to these differences of interpretation. This shows the need for a uniform interpretation of the Community provision and justifies the reference for a preliminary ruling which has rightly been made by the Pretore di Bari. On the other hand, during the hearing the plaintiff cited a judgment of the Corte di Cassazione of 20 march 1997 (No 7625/97, RGN 3106/96) which, giving judgment at last instance, found it unnecessary to obtain a preliminary ruling and decided that the ban did not apply, solely on the ground of the 16th recital in the preamble to Regulation No 822/87.

considerations of a general nature: the common organisation of the wine market may logically provide for the regulation of vines intended for table grapes, which can easily be converted into wine. [15] To allow for this factor (and to prevent the resulting increase in wine production, which is already in surplus), there is nothing to prevent Community intervention in the sector from extending to vines of that type. Although it is probably obvious, in view of the emphasis which the plaintiff in the main proceedings places on the second part of the term '[vine and] wine-growing', the first part refers to the vine, the only product of which is used at one and the same time to produce wine or simply as a table fruit.

30. Indeed, the successive regulations adopted within the framework of the common organisation of the market in wine have introduced rules intended to regulate various aspects of the production of table grapes. The Community legislation on the wine-growing sector includes numerous references to table grapes either for the purpose of classifying them, [16] or, exceptionally, authorising their new planting, [17] or limiting their production, [18] or prohibiting their use in wine-making, [19] or the compulsory distillation of the wine produced in that way. [20]

31. This shows that those regulations, although their primary purpose is to define the legal arrangements for Community intervention in the production of wine, may affect, and do in fact affect, products such as table grapes, given the influence which they may have on the production of wine.

32. As regards the argument derived from the non-inclusion of table grapes in Article 1(2) of Regulation No 822/87, that is to say in the list of products regulated by the organisation of the wine market, the references in the legislation which I have mentioned above show precisely the opposite. That omission must not be considered in isolation, but in the overall context of a body of legislation which is certainly complex, but contains specific provisions (with regard to table grapes) which show beyond doubt that Community intervention in the wine sector also covers the production and other secondary aspects of grapes of that variety.

15 — Indeed, Article 4(2) of Council Regulation (EEC) No 2389/89 of 24 July 1989 on the general rules for the classification of vine varieties (OJ 1989 L 232, p. 1) states that 'one and the same variety may, exceptionally, be classified as both a table grape variety and a wine grape variety'.

16 — See Article 2 of Regulation No 2389/89, cited above.

17 — See the provisions cited in paragraph 8.

18 — See the eighth recital in the preamble to Regulation No 1208/84, set out in paragraph 18 above.

19 — Article 6(1) of Regulation No 822/87, as amended by Council Regulation (EC) No 1592/96 of 30 July 1996 (OJ 1996 L 206, p. 31), provides as follows:
'Until 31 July 1997, wine made from grapes belonging to varieties not listed as wine grape varieties in the classification of vine varieties for the administrative unit where they were harvested, and which is not exported during the wine year concerned, shall be distilled by a date to be determined. Except by derogation, it may not be moved except to a distillery.
As from 1 August 1997, the grapes referred to in the first subparagraph may not be turned into wine.'

20 — The original version of Article 36(1) of Regulation No 822/87 was worded as follows: 'Wine made from grapes belonging to varieties not listed as wine grape varieties in the classification of vine varieties for the administrative unit where they were harvested, and which is not exported shall be distilled before the end of the wine year in which it was produced. ...'

(ii) *The 16th recital in the preamble to Regulation No 822/87*

33. The second argument against the interpretation which I propose is found in the 16th recital in the preamble to Regulation No 822/87, which states that 'an exemption from this ban [on new planting] is justified, owing to their small size, in the case of new planting operations carried out in the Member States which produce annually less than 25 000 hectolitres of wines and, in view of their intended use, in the case of new planting of vine varieties classified solely as table grape varieties'.

34. This recital tries to explain why vines producing table grapes must be exempted from the general ban on new planting. Therefore, its potential use in interpretation is linked with the introduction and/or maintenance of the exemption in the corresponding Community provision. Once the exemption ceases to exist, it makes no sense to retain the explanation for it in another legislative measure of contrary purport.

35. This recital formerly appeared in the preamble to Regulation No 454/80 cited above, [21] with Article 1 of which it was entirely consistent: the article excepted from the general ban the new planting of vines intended for table grapes, and the recital merely explained the reason for the exception.

36. The repetition of the same recital in Regulation No 822/87 is, however, inconsistent. This is why the Commission admits that the addition of the last sentence in the recital was an error which occurred in the codification of the pre-existing provisions. Certainly this part of the preamble does not fit in with any of the provisions of Regulation No 822/87, so that it cannot assist in interpreting a measure which had the constant purpose, from 1984 to 1996, of continuing the general ban on new planting, leaving aside certain exceptions which did not include table grapes.

37. In short, the addition of the last sentence in the 16th recital in the preamble to Regulation No 822/87 resulted from the error of including, in a consolidating measure, part of the preamble of an earlier regulation, overlooking the fact that the positive requirement to which it related had been previously amended.

21 — See footnote 4.

(iii) *The effect of the new Regulation No 1592/96*

38. Finally, the third and fourth arguments which would confirm that the ban did not apply to vines producing table grapes are based on the new material introduced by Regulation No 1592/96, amending Regulation No 822/87.

39. Regulation No 1592/96 permits, with effect from 1 September 1996, new planting of table grapes from that date, [22] thus lifting in relation to them the previous general ban. It thus amends, yet again, Article 6(1) of Regulation No 822/87, which it replaces with the following wording: 'Any new planting of vine varieties other than those classified, for the administrative unit concerned, solely amongst table grape varieties shall be banned until 31 August 1998. ...'

40. It can easily be seen that the new regulation reflects a direction in agricultural policy in the wine sector which is the opposite of that which prevailed from 1984 to 1996 because it allows an exception to the ban on planting new vines for the production of table grapes (although in return it prohibits the making of wine from them, [23] which was previously allowed as an exception).

41. As I have already pointed out, the authorisation for planting new vines intended for table grapes from 1996 is consistent with the abandonment of the policy of premiums for grubbing up vines of that kind. This was provided for by Council Regulation (EC) No 1595/96 of 30 July 1996 amending Regulation No 1442/88. [24] The payment of premiums must logically end when a policy encouraging the production of table grapes, which includes the authorisation of new planting, is adopted. [25]

42. In my opinion, the change brought about by Regulation No 1592/96 (and supplemented by Regulation No 1595/96 with regard to premiums for grubbing up vines) is an additional argument, if one were needed, in favour of my interpretation of Article 6 of Regulation No 822/87, with reference to the years 1991 and 1992, which is the subject of this case.

22 — The preamble gives the following reasons: 'whereas all new planting of vines is prohibited until 31 August 1996; whereas, in view of the situation in the wine sector market the existing ban should be extended by two wine years, pending Council decisions on reforming the sector; whereas, however, on the one hand there should not be included in this ban areas intended for producing table grapes and, on the other hand, derogations from the ban should be introduced for certain wines which are in demand on the market on account of their qualitative characteristics'.

23 — See the amendment to Article 36(1) of Regulation No 822/87, to which I refer in footnotes 19 and 20.

24 — OJ 1996 L 206, p. 36.

25 — Support for this is to be found in the preamble to Regulation No 1595/96: 'because the areas intended for the production of grapes classified solely as table grapes are not included in the scope of the ban on any new vine planting within the meaning of Article 6 of Regulation (EEC) No 822/87, it is necessary to exclude those areas from entitlement to permanent abandonment premiums'.

43. The fact that Regulation No 1592/96 was found necessary in order to introduce express new provisions on the lifting of a ban which had been in force up to then confirms, by contrary inference, that the planting of new vines intended for table grapes had been prohibited during the previous years. If the prior legislative situation had encouraged the authorisation of new planting of such vines, it would have been sufficient to approve a further extension in order to continue it from 1996. Precisely because the previous position in law was that such planting was banned, it became necessary in 1996 to amend the provisions in question.

44. To sum up, I consider that the arguments in favour carry much more weight than the arguments against the interpretation to the effect that the ban was in force during the period in question. I therefore propose that the Court's reply to the national court should be that during 1991 and 1992 Article 6(1) of Regulation No 822/87 prohibited new planting of vines intended for the production of table grapes.

45. Finally, I do not think it appropriate to uphold the alternative submission of the Italian Government, set out in its written observations, that the conduct of national 'operators' who infringed the prohibition on planting new vines in the belief that it did not apply to table grape varieties is 'not punishable'. Like the Commission, I take the view that it is for the national court to decide whether there was a mistake, excusable or not, on their part and, if so, what are the consequences of that mistake as regards examination of liability.

46. The final submission by the same Government concerning exemption from the 'negative financial consequences for Italy ... with regard to the annual audit of accounts' is much less relevant as this problem has no connection with the question referred by the national court for a preliminary ruling or, obviously, with the facts of the main proceedings.

Conclusion

47. I therefore propose that the Court reply as follows to the question referred by the Pretore di Bari:

During 1991 and 1992 Article 6(1) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine prohibited new planting of vines intended for the production of table grapes.