# OPINION OF ADVOCATE GENERAL JACOBS

delivered on 24 October 1996 *

1. The present cases concern the prosecution of four individuals in France in respect of the marketing of various products which were made from pork meat and bore references to the word 'mountain' or to the mountains of Lacaune. The French authorities objected that the accused had not obtained the authorizations required under French law for the use of such references. The French Court of Cassation, Criminal Division, wishes to know whether the requirement of such authorizations constitutes a breach of Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1] (referred to hereafter as 'the Origin Regulation', or simply 'the Regulation'), or Article 30 of the EC Treaty. No questions have been raised in relation to Council Directive 89/189/EEC concerning the notification of technical standards and regulations [2] or Council Directive 79/112/EEC concerning the labelling, presentation and advertising of foodstuffs. [3]

## The facts and legislative background

2. It appears from the orders for reference that all four cases concern French nationals and French products. The French Government confirms that the four appellants in the main proceedings — Mr Pistre, Mr Milhau, Mr Oberti, and Mrs Barthes — are all French nationals; that they manage companies established in Lacaune in France; and that the products in question are manufactured by those companies in France and marketed only on French territory.

3. The products in question are cooked meats. They are marketed under various different denominations, all of which make reference, in one way or another, to the word 'mountain' or to a mountain region: for example, 'saucisson de montagne pur porc (...) séché à la montagne', and 'saucisson Monts de Lacaune'. Each of the four appellants was prosecuted by the French authorities for having marketed the products in 1991 without the authorization required by French law for the use of such denominations.

4. The national provisions in question are Articles 11 and 13 of the Law of 1 August 1905; [4] Article 3 of Decree No 84-1147 of

* Original language: English.

1 — OJ 1992 L 208, p. 1.

2 — Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1983 L 109, p. 8.

3 — Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, OJ 1979 L 33, p. 1.

4 — Now included in the 'Code de la Consommation' by Law No 93-949 of 26 July 1993, *Official Journal of the French Republic*, 27 July 1993.

7 December 1984 ('Decree No 84-1147'); [5] Law No 85-30 of 9 January 1985 relating to the development and protection of mountain regions [6] ('Law No 85-30'); and Decree No 88-194 of 26 February 1988 fixing the conditions for use of reference to mountain origin in respect of agricultural products and foodstuffs [7] ('Decree No 88-194'). At the time of the alleged offences that legislation provided as follows.

5. Article 3 of Decree No 84-1147 stipulated, *inter alia*, that the labelling of foodstuffs must not be of such a nature as to create confusion in the mind of the purchaser or consumer, notably as to the characteristics of the foodstuff and more particularly as to its nature, identity, qualities, composition, quantity, durability, conservation, origin or provenance, or its method of production.

6. Law No 85-30 and Decree No 88-194 established an authorization system for products bearing references to mountain origin. Article 3 of Law No 85-30 defined the meaning of a mountain area. In essence, Article 3 stated that mountain areas were characterized by significant disadvantages resulting from very difficult climatic conditions and/or the fact that the existence of steep slopes made it more difficult to work the land. It provided that each area was to be defined by joint ministerial order. Article 4 defined the mountain areas in the French overseas departments by reference to altitude or the steepness of the slopes.

7. Article 5 provided that in metropolitan France each mountain area and the areas immediately surrounding it which formed with it a single geographical, economic, and social entity, constituted a massif. It listed the massifs as 'Alpes du Nord, Alpes du Sud, Corse, Massif central, Massif jurassien, Pyrénées, et Massif vosgien'. The demarcation of each massif was to be made by decree.

8. Article 34 provided, in summary, that indications of mountain origin and specific geographical references to mountain areas were protected. It further provided that such indications and references could only be used, for all products placed on the market, under the conditions laid down by decree. That decree was to determine in particular the manufacturing methods, place of manufacture, and the origin of raw materials.

9. Decree No 88-194 was adopted in implementation of Law No 85-30. Article 2 of that Decree provided that, as a general rule, the various stages of production had to occur in the mountain areas and the raw materials had to come from those areas. However,

5 — *Official Journal of the French Republic*, 21 December 1984, p. 3925.

6 — *Official Journal of the French Republic*, 10 January 1985, p. 320.

7 — *Official Journal of the French Republic*, 27 February 1988, p. 2747.

Article 3 allowed certain derogations from the obligation to localize the production process. For example, it was acceptable for raw materials to come from outside the geographical area if, for natural reasons, they were not produced in that area. Article 4 provided in essence that the products had to comply with manufacturing methods determined by joint ministerial orders of the Minister for Agriculture and the Minister for Consumer Affairs. Those orders were to be adopted following advice from the National Labelling Commission and the Regional Commissions for Quality Food Products. In relation to cooked meats, those orders were to specify the choice of raw materials; the method of cutting up, boning, mincing and trimming; the method of salting, drying, or smoking; the mixture of ingredients and the cooking method.

10. Article 5 provided that authorization to refer to mountain origin or any other geographical reference which was specific to mountain areas was to be granted by means of a joint ministerial order. That order was to be adopted by the Minister for Agriculture and the Minister for Consumer Affairs following advice from the Regional Commission for Quality Food Products. Article 5 also provided that the beneficiary of the authorization had to place a distinctive sign upon his products as specified by the Minister of Agriculture.

11. The French Government admits that the above legislation could in theory apply to imports but states that it has not been so applied in practice.

## The proceedings before the national courts

12. The appellants were prosecuted before the police tribunal, Castres, for having marketed products under a label 'liable to cause confusion in the mind of the purchaser or consumer, notably as to the characteristics of the foodstuff and more particularly as to ... its qualities, in breach of Article 3 of Decree No 84-1147 of 7 December 1984 concerning the labelling and presentation of foodstuffs', [8] and in breach of Law No 85-30 and Decree No 88-194. The tribunal found that the prosecutions were unlawful. The requirement to obtain an authorization to use the term 'mountain origin' constituted a measure having equivalent effect to a quantitative restriction on imports, contrary to Articles 3, 5 and 30 of the Treaty; and authorizations could not be required in respect of national products, because of a risk of reverse discrimination. It accordingly acquitted the appellants. However, on appeal by the Public Prosecutor's Office, the Court of Appeal held that, although the impugned provisions confined the use of references to mountain origin to certain national products, they were not, despite the resulting difference in treatment between national and imported products, such as to hinder imports. The Court of Appeal concluded that the plea of reverse discrimination was, therefore, unfounded.

8 — Cited in note 5.

13. The appellants accordingly appealed to the Court of Cassation. The Court of Cassation considered that the Court of Appeal had erred in finding that Article 30 was not infringed because (a) it had reasoned that the aim of the French rules was to safeguard the interest of producers against unfair competition and to safeguard consumers against designations likely to mislead them, without considering whether that aim might not be attained by an examination of the truthfulness of the labelling; and (b) the Treaty prohibited Member States from discriminating against imported products and the Court of Appeal had expressly admitted that the rules in question introduced such discrimination. The Court of Cassation also noted that the Origin Regulation, which had entered into force on 26 July 1993, established a special procedure for Community authorization of existing geographical indications and designations of origin. It questioned the compatibility of Law No 85-30 and Decree No 88-194 with that Regulation, considering that the pre-conditions for protection under the Regulation appeared to be more restrictive than those required for the grant of a French authorization.

14. The Court of Cassation accordingly referred the following question to the Court: 'Do the combined provisions of Articles 30 and 36 of the Treaty and Article 2 of Regulation (EEC) No 2081/92 of 14 July 1992 preclude the application of national legislation such as that comprised in Law No 85-30 of 9 January 1985 and its implementing Decree No 88-194 of 26 February 1988?'

## The Origin Regulation

15. The Origin Regulation, which is based on Article 43 of the Treaty, seeks, according to its preamble, to lay down special rules in relation to Directive 79/112 which concerns the labelling, presentation and advertising of foodstuffs. [9] That directive harmonizes labelling requirements to facilitate the free movement of foodstuffs between Member States. Member States may not prohibit trade in products complying with the directive, subject to certain exceptions including protection of indications of provenance and registered designations of origin (Article 15). The Member States are nevertheless required by the directive to lay down rules preventing misleading information, including information as to origin or provenance (Article 2). Designations of origin and indications of provenance were not, prior to the Origin Regulation, governed by Community legislation, and imports could be excluded on the basis of protection of such designations or indications subject only to Articles 30 and 36 of the Treaty.

16. According to Article 2(1) of the Origin Regulation its essential purpose is to set up a system of registration at Community level for 'Community protection of designations

9 — Cited in note 3.

of origin and of geographical indications of agricultural products and foodstuffs'.

17. The general definition of 'designation of origin' and 'geographical indication' for the purposes of the Regulation appears in Article 2(2): [10]

'(a) *designation of origin*: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

(b) *geographical indication*: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area'.

18. Article 5(1) specifies who may apply for registration:

'Only a group, or, subject to certain conditions to be laid down in accordance with the procedure provided for in Article 15, a natural or legal person, shall be entitled to apply for registration.

10 — Compare the account of indications of provenance and designations of origin in Case C-3/91 *Exportur* [1992] ECR I-5529, paragraph 11 of the judgment.

For the purposes of this Article, "Group" means any association, irrespective of its legal form or composition, of producers and/or processors working with the same agricultural product or foodstuff. Other interested parties may participate in the group.'

19. Article 1 of the Commission's implementing regulation, [11] however, provides that applications may be made by a natural or legal person 'in exceptional, duly substantiated cases where the person concerned is the only producer in the geographical area defined at the time the application is submitted'.

20. Applications for registration are made via Member States to the Commission. [12] If the Commission considers that a notified name qualifies for protection, details of the application are published in the *Official Journal of the European Communities*. [13] Any Member State and any 'legitimately concerned natural or legal person' may object to the proposed registration. [14] Detailed rules govern the procedure to be followed after receipt of a statement of objection. [15]

21. By virtue of Article 8 of the Origin Regulation, 'The indications PDO [protected designation of origin], PGI [protected geographical indication] or equivalent traditional national indications may appear only on agricultural products and foodstuffs that comply with [the] Regulation.'

22. The nature of the protection afforded by registration made pursuant to the Regulation is set out in Article 13(1). This provides, *inter alia*, that:

'Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration insofar as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;

11 — Commission Regulation (EEC) No 2037/93 of 27 July 1993 laying down detailed rules of application of Council Regulation (EEC) No 2081/82 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ 1993 L 185, p. 5.

12 — Article 5 of the Origin Regulation.

13 — Article 6 of the Origin Regulation.

14 — Article 7 of the Origin Regulation.

15 — Articles 7(5) and 15 of the Origin Regulation.

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.

...'

23. Pursuant to Article 17(1) of the Regulation, Member States were obliged 'within six months of the entry into force of the Regulation, [to] inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation'. Furthermore, Article 17(3) provides that 'Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

24. The Regulation entered into force on 26 July 1993.

25. There are three possible reasons why the Regulation might not preclude the application of the provisions of French law in question:

— first, because the Regulation did not come into force until 26 July 1993, after the alleged offences had been committed;

— secondly, if, as the Italian Government argues, the Regulation provides merely for an optional additional system of protection at Community level, so that a Member State is not precluded from adopting, or maintaining in force, national measures;

— thirdly, if the French law does not fall within the subject-matter of the Regulation.

26. The relevance of the Regulation cannot be dismissed out of hand simply on the ground that it was not in force at the time of the alleged offences. This is because of the possible application of a rule of French law to the effect that a new law enacted after the alleged commission of a criminal offence which is more favourable to the accused can be given retroactive effect to the benefit of the accused. In response to a written question posed by the Court in the present cases, the French Government confirmed that that was the position under French law. [16] It pointed out that the entry into force of the Regulation would produce the same effects as the introduction of more lenient penal provisions if the consequence of its entry into force was to render Law No 85-30 and Decree No 88-194 incompatible with Community law. It is, therefore, necessary to consider the effect of the Regulation. [17]

27. As to the second point, concerning the alleged right to maintain national protection, Article 17 of the Origin Regulation is relevant. As set out at paragraph 23 above, that article provides that Member States must apply to register nationally protected names within six months of the date upon which the Regulation entered into force and that the national protection may be maintained until such time as a decision on registration has been taken. The Commission appears to consider that this means that the Regulation leaves no scope for national measures. In its Communication relating to the application of the Regulation, [18] the Commission states that 'names which are protected at national level but have not been communicated to the Commission within the six-month period and those which have been communicated but have been refused registration will cease to be protected'. However, the Italian Government argues to the opposite effect. According to one commentary, 'the relationship between the Regulation and national protection of geographical indications is not dealt with in the Regulation and remains open'. [19]

28. I do not, however, consider it necessary to decide that issue for the purpose of the present cases, save in so far as to say that in my view the effect of the Regulation is not to render automatically invalid any type of geographical designation which does not fall within the Regulation's definitions of 'desig-

16 — It quoted judgments of the Court of Cassation, Criminal Division, dated 25 January 1988, 8 February 1988, 10 October 1988, 13 February 1989 and 8 March 1993.

17 — The fact that a provision of Community law may thus be given retroactive effect by virtue of national law does not preclude the Court from answering a question on the meaning of that provision; the Court is not thereby required to interpret the provision out of its appropriate context in the way discussed at paragraphs 32 to 42 below. That the Court does have jurisdiction in the present situation is confirmed by Joined Cases C-358/93 and C-416/93 *Bordessa and Others* [1995] ECR I-361, at paragraphs 8 to 10 of the judgment and Joined Cases C-163/94, C-165/94 and C-250/94 *Sanz de Lera and Others* [1995] ECR I-4821, at paragraphs 13 to 15. See also Case C-341/94 *Allain*, judgment of 26 September 1996, paragraphs 9 to 13.

18 — Communication to enterprises which use designations of origin and geographical indications for agricultural products and foodstuffs on the simplified registration procedure provided for in Article 17 of Regulation (EEC) No 2081/92, OJ 1993 C 273, p. 4.

19 — Beier and Knaak, 'The Protection of Direct and Indirect Geographical indications of source in Germany and the European Community', *IIC*, Vol. 25, No 1/1994.

nation of origin' and 'geographical indication'. It is clear in my view — and that is also the view of the French Government and of the Commission — that the French rules do not fall within the subject-matter of the Regulation since they do not fall within either of those definitions.

29. The term 'mountain' or 'mountain origin' is of an entirely general character. It cannot therefore be assimilated to a particular area (in the words of the Regulation, 'a region, a specific place or, in exceptional cases, a country'). Moreover the term 'mountain' or 'mountain origin' is envisaged by the French legislation as capable of extending to agricultural products and foodstuffs of all relevant kinds. Decree No 88-194 encompasses meat products of all kinds; dairy products of all kinds; alcoholic beverages; fruits, vegetables and plants; and honey. It is true that authorizations will be granted under the legislation for specific products, but the designation 'mountain' or 'mountain origin' remains general. It is thus a designation of a kind far removed from what is contemplated by the Origin Regulation, as can be seen by referring to the first list of names registered under the Origin Regulation. [20] All are highly specific, including, on a random selection, Orkney beef (UK), jambon d'Ardennes (Belgium), Roquefort cheese (France) and Jersey Royal potatoes (UK). The term 'mountain', even if applied to specific categories of products, could not properly feature in such a list.

30. As the Commission and France suggest, the French legislation appears to be more in the nature of a quality control measure than a measure relating to origin in the traditional sense. Admittedly, the name 'Monts de Lacaune' is the name of a specific mountain area and could accordingly be the subject of a registration under the Regulation were the links between the characteristics of a particular product and that area to fulfil the requirements of the Regulation. [21] However, it appears that such links were not necessary prerequisites to the grant of an authorization for such a name under the French legislation. Indeed it seems that the name 'Monts de Lacaune' is not protected in itself, but only in so far as it suggests mountain origin.

31. I conclude, therefore, that the Origin Regulation has no application to the present cases.

20 — Annex to Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of region under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92, OJ 1996 L 148, p. 1.

21 — See, for example, the registration of 'Cerezas de la Montaña de Alicante' (PGI), OJ 1996 L 148, p. 8.

Article 30

32. The national court also asks whether the legislation at issue in these cases is contrary to Article 30 of the Treaty. It is accepted by the French Government that the French legislation does apply in theory, albeit not in practice, to imported products. The Commission argues that the way in which the legislation is framed makes it impossible for the necessary authorizations to be obtained in respect of products originating outside France. It points out that a law which violates Community law cannot be remedied by a simple administrative practice.

33. It should be noted at the outset, however, that the facts of the present cases appear to be confined wholly to the national territory. In each of the four cases a French national is being prosecuted for failing to obtain the requisite authorization in relation to products produced in France and marketed solely on French territory. As the French Government observed at the hearing, there is no evidence to suggest that any of the ingredients are imported from other Member States. It is well established that Article 30 is not infringed in purely internal situations. In *Waterkeyn*, [22] for example, the Court ruled that its earlier ruling in *Commission* v *France*, [23] to the effect that a French law infringed Article 30, applied only in so far as that law applied to imports and that Article 30 did not affect the law in so far as it applied to national products. Similarly, in *Oosthoek's Uitgeversmaatschappij*, [24] which concerned encyclopaedias typeset and manufactured partly by Oosthoek in the Netherlands and partly by a company affiliated to Oosthoek in Belgium, the Court stated that 'the application of the Netherlands legislation to the sale in the Netherlands of encyclopaedias produced in that country is in no way linked to the importation or exportation of goods and does not therefore fall within the scope of Articles 30 and 34 of the EEC Treaty. However, the sale in the Netherlands of encyclopaedias produced in Belgium and the sale in other Member States of encyclopaedias produced in the Netherlands are transactions forming part of intra-Community trade.' [25]

34. Since in the present cases we are concerned solely with national products, it is necessary to consider whether the Court should answer the question relating to Article 30 as regards its application to imports. Clearly the Court can and should rule that Article 30 has no application to situations which are purely internal in the sense that they concern only domestic products marketed on national territory. However, the question put by the national court is in general terms and is not limited expressly to the particular circumstances of the present cases. It would be open to the Court, therefore, to answer the question

22 — Joined Cases 314/81 to 316/81 and 83/82 [1982] ECR 4337.
23 — Case 152/78 [1980] ECR 2299.
24 — Case 286/81 [1982] ECR 4575.
25 — Paragraph 9 of the judgment.

along the same lines as its rulings in *Waterkeyn* and *Oosthoek's Uitgeversmaatschappij*: i.e. to consider the application of Article 30 in relation to both domestic products and imports. However, in contrast to the factual situation in those cases, none of the products in the present cases is imported. The question in the present cases appears to be prompted by the need for the national court to assess the appellants' argument on reverse discrimination: i. e. their argument that if the national law is unenforceable *vis-à-vis* imports by virtue of being in breach of Article 30 it should also be rendered unenforceable *vis-à-vis* domestic products since domestic products would otherwise be in a less favourable situation than imports.

35. It is clear that such reverse discrimination is not prohibited by Community law. As the Court stated in *Ministère public* v *Mathot*, [26] 'treatment which works to the detriment of national products as compared with imported products and which is put into effect by a Member State in a sector which is not subject to Community rules or in relation to which there has been no harmonization of national law does not come within the scope of Community law'. The appellants' argument before the national court might, however, be based on a principle of national law prohibiting reverse discrimination. Although the order for reference is silent as to the basis of the reverse discrimination argument, it appears that the principle results from an earlier case decided by the Criminal Division of the Court of Cassation itself. [27] The question then arises whether the Court should exercise jurisdiction where the Treaty provision can only apply indirectly and the matter is purely internal.

36. In the case of *Smanor* [28] the Court did accept jurisdiction to rule on the application of Article 30 to imports in circumstances similar to those of the present cases. As the Court recognized at paragraph 7 of its judgment, the French Government had argued that the situation from which the main proceedings originated did not fall within Article 30 of the Treaty and that there was accordingly no need to reply to the question on Article 30. The Court noted that that argument was based on the grounds that the case involved the application of French law to a French company manufacturing and marketing deep-frozen yoghurt on French territory. However, the Court found that the possibility could not be ruled out that such products might be imported into France and that the French legislation would apply to them. [29] It reasoned that 'as to whether Smanor may validly plead before the national court a barrier to imports of deep-frozen yoghurt created by the French regulations, it should be pointed out that the Court has consistently held that it is for the

26 — Case 98/86 [1987] ECR 809, paragraph 9 of the judgment.

27 — See the report in RJDA 1/95 No 96, annexed to Mr Pistre's observations.

28 — Case 298/87 [1988] ECR 4489.

29 — Paragraph 8 of the judgment.

national courts, within the systems established by Article 177 of the Treaty, to weigh the relevance of the questions which they refer to the Court, in the light of the facts of the cases before them'. [30] The Court accordingly turned to consider the Article 30 question and found that Article 30 did preclude national legislation of the kind at issue in so far as it applied to imports from other Member States.

37. It seems that the Court has tended to decline to address questions relating to Article 30 on the grounds that a situation is purely internal only where the domestic provision concerns domestic products exclusively and would have no application in any circumstances to imported products. [31]

38. In my view, however, the Court should decline to rule on the application of Article 30 to imports when it is clear from the facts that a situation is wholly confined to national territory. As Advocate General Cosmas suggested in his Opinion in *Belgapom*, [32] it can be argued that 'the connecting factor bringing a given situation within the ambit of Article 30 of the Treaty should be sought in the provenance of the goods allegedly affected in *the specific case*, by a given national measure. The application of Article 30 would thus be excluded if the situation which gave rise to the *proceedings* before the national court *exclusively and solely* concerned goods produced or manufactured in the Member State in which they were marketed and in which the dispute at issue arose.' [33]

39. I appreciate that, as Advocate General Elmer pointed out in his Opinion in *CIA Security* v *Signalson and Securitel*, [34] a product is often very much a compound and its different components may accordingly have come from a number of different Member States even if its assembly occurred in the Member State in question. In some cases it may not be clear from the order for reference whether the goods are produced nationally or imported, let alone from where their component parts originate. However, when, as in the present cases, it is not suggested that Article 30 is infringed in relation to the products directly in issue or their component parts, but only that it might be infringed in so far as the national measures are or might be applied to other, imported products, I consider that the Court should regard that

30 — Paragraph 9 of the judgment.

31 — See the Opinion of Advocate General Cosmas in Case C-63/94 *Belgapom* v *ITM and Vocarex* [1995] ECR I-2467 at paragraph 13.

32 — Cited in note 31.

33 — Paragraph 14 of the Opinion (emphasis in original).

34 — Case C-194/94, delivered on 24 October 1995, at paragraph 28.

situation as purely internal and rule that, on that basis, Article 30 has no application.

40. Furthermore, that seems to me to be the correct approach even when the relevance of the question referred is clear, for example because the referring court explains that a national provision prohibits reverse discrimination. In my view, it is important that the Court should rule under Article 177 of the Treaty in the appropriate factual context, as I have argued in my Opinion in *Leur-Bloem* and *Giloy*.[35] I appreciate that in some instances it may seem easy for the Court to give a ruling on a Community point which, albeit relevant for reasons of national law, does not arise directly from the facts of a particular case: for example in cases such as those presently before the Court where the legislation may seem manifestly contrary to Article 30 in so far as it applies to products imported from other Member States. It may even seem unnecessarily uncooperative of the Court not to assist the national court in such cases. However, for the reasons set out in my Opinion in *Leur-Bloem* and *Giloy*, it will often be hazardous to address a Community law question out of context. It is easy to see that, even in cases of the present kind, complex issues could arise. Suppose for example that a Member State contended that a particular indication of provenance ought to be protected against imports from other Member States. That might raise difficult issues such as

(1) whether the indication of provenance in question fell within the scope of the Origin Regulation;

(2) whether, if so, the effect of the Regulation might be to preclude reliance on Article 36 of the Treaty;

(3) whether in any event reliance on Article 36 could be justified on the facts of the case.

It is plain in my view that such issues can and should only be addressed in a factual context which genuinely raises them.

41. It is important that the Court should adopt a consistent approach when deciding whether to exercise jurisdiction. In my view, the most coherent approach is to decline to rule on a question of Community law in all cases in which the relevance of the question arises from the fact that national law has transposed Community rules into a purely domestic context in which they do not apply as a matter of Community law. Whether that transposition arises by means of specific national legislation mirroring or extending

35 — Case C-28/95 *Leur-Bloem* v *Inspecteur der Belastingdienst/Ondemingen Amsterdam 2* and Case C-130/95 *Giloy* v *Hauptzollamt Frankfurt am Main-Ost* [1996] ECR I-4161, I-4165.

the scope of the Community rules, as in *Leur-Bloem* and *Giloy*, or by means of a general provision of national law prohibiting reverse discrimination or unfair competition, as might be the case here, should make no difference.

42. I accordingly consider that the Court should decline to rule on a hypothetical question and confine its ruling as follows: 'Article 30 of the Treaty has no application to a national law in so far as that law applies to national products.'

## Conclusion

43. I am accordingly of the opinion that the question put by the Court of Cassation, Criminal Division, should be answered as follows:

(1) Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs does not preclude the application of national measures which protect the designation 'mountain' or 'mountain origin' for agricultural products and foodstuffs.

(2) Article 30 of the Treaty has no application to a national law in so far as that law applies to national products.