JUDGMENT OF THE COURT (Second Chamber)
5 May 1988 *

In Case 91/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) Neustadt an der Weinstraße for a preliminary ruling in the proceedings pending before that court between

Erzeugergemeinschaft Gutshof-Ei GmbH, Bad Segeberg (Federal Republic of Germany),

and

Land Rheinland-Pfalz,

on the interpretation of Articles 6 (1) and 21 of Regulation No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs (Official Journal 1975, L 282, p. 56),

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Erzeugergemeinschaft Gutshof-Ei, by Mr Volkmann-Schluck,

the Commission of the European Communities, by Mr Karpenstein, Legal Adviser, and Mr Klemm, Principal Administrator,

* Language of the Case: German.

having regard to the Report for the Hearing and further to the hearing on 10 December 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 March 1988,

gives the following

Judgment

1 By an order of 20 March 1987, which was received at the Court on 24 March 1987, the Verwaltungsgericht Neustadt an der Weinstraße referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Regulation No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs (Official Journal 1975, L 282, p. 56).

2 That question arose in the context of proceedings between Erzeugergemeinschaft Gutshof-Ei GmbH, a company incorporated under German law (hereinafter referred to as 'the plaintiff'), which markets eggs of Grade A quality in small packs on which are printed the words 'Güteklasse A "frisch"' (Grade A 'fresh eggs'), and *Land* Rheinland-Pfalz (hereinafter referred to as 'the defendant'). The competent officers of the defendant considered, following a check carried out in 1985, that that marking was contrary to Regulation No 2772/75 and that the plaintiff was therefore liable to be fined on the ground that Article 6 (1) of the said regulation authorizes only the alternative use of the designations 'Grade A' or 'fresh eggs'.

3 The national court before which the plaintiff brought an action for a declaration that the marking used by it, that is to say, the cumulative use of the two designations at issue, is in accordance with the applicable Community marking standards, considers that Regulation No 2772/75 is ambiguous on that point. It therefore asked the Court of Justice to give a preliminary ruling on the question whether:

'Regulation (EEC) No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs (Official Journal 1975, L 282, p. 56), as amended by Council Regulation (EEC) No 1831/84 of 19 June 1984 (Official Journal 1984, L 172, p. 2, corrected in Official Journal 1984, L 197, p. 66), and by Council Regulation (EEC) No 3341/84 of 28 November 1984 (Official Journal 1984, L 312, p. 7) and by Council Regulation (EEC) No 3791/85 of 20 December 1985 (Official Journal 1985, L 367, p. 6), must be interpreted as meaning that, according to Article 6 (1) and Article 21 of that regulation, read together with the preamble thereto, small packs of Grade A eggs may be marked only "Grade A" or "fresh eggs", or whether both markings may be used together.'

4 Reference is made to the Report for the Hearing for a fuller account of the facts and the legal background to the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 As regards the question as to which markings indicating quality may lawfully be placed on small packs containing Grade A eggs, it must be observed first that Article 18 (1) (c) of Regulation No 2772/75 provides that small packs must show 'in clearly visible and legible type . . . the quality' of the eggs packed. The first paragraph of Article 21 of the same regulation, as amended by Council Regulation No 1831/84 of 19 June 1984 amending Regulation No 2772/75 (Official Journal 1984, L 172, p. 2) strictly limits the choice of indications concerning grading by providing that 'packs shall not bear any indications other than those laid down in this regulation'. Finally, Article 6 (1) of the same regulation is drafted in the following terms:

'Eggs shall be graded by quality as follows:

Grade A or "fresh eggs",

Grade B or "second-quality or preserved eggs",

Grade C or "non-graded eggs intended for the food industry"'.

6 In that context, the plaintiff considers that the cumulative use of the two markings at issue is nowhere prohibited in the regulation at issue, the purpose of such cumulative utilization being to make more concrete, in the interest of better consumer understanding, the abstract designation of the grade by adding to it an indication of the characteristic of the eggs, namely the expression 'fresh eggs'. The indications are synonymous and are intended to describe one and the same set of facts, namely that the eggs involved are of the highest quality.

7 On the other hand, the Commission argues essentially that the use of the coordinating conjunction 'or' between the indications 'Grade A' and 'fresh eggs' shows that although producers and distributors have a choice between the two expressions, they may not join them to each other. Furthermore, the joint use of the expressions at issue could lead consumers into error and would consequently be contrary to the purpose of the Community regulation. Consumers confronted with packs of eggs of the same grade and price some of which were marked 'Grade A' and others of which were marked 'Grade A — Fresh eggs' would, if the eggs were of exactly the same quality, choose, in most cases, the pack which emphasizes freshness.

8 It must be pointed out by way of a preliminary observation in regard to those arguments that the obligations concerning marking set out above are imposed on the traders concerned under pain of sanctions, since, according to Article 29 of Regulation No 2772/75, Member States are to take all appropriate measures to punish infringements of that regulation. In an area in which any uncertainty as to the scope of an obligation may give rise to the application of penalties to those subject to it, the principle of legal certainty and clarity requires that the interpretation which the Court is called upon to give should be based on the wording and apparent objectives of the relevant provisions.

9 With regard to the wording of the abovementioned provisions, it should be pointed out that cumulative use of the two indications at issue is not expressly excluded. Although the first paragraph of Article 21 permits packs to bear only the indications 'laid down in this regulation', it has to be acknowledged that Article 6 (1) contains, that is to say 'provides for', precisely those two indications to designate eggs of the highest quality.

10 That finding is not contradicted by the fact that, in the text of Article 6 (1), the two indications are separated by the conjunction 'or'. The purpose of that provision is not to determine the various types of marking which traders may lawfully use but to lay down an abstract classification of eggs in three quality grades chosen by the legislature, the letters A, B and C being in each case made clearer, so as to be better understood, by more concrete explanations.

11 That analysis is supported by a comparison of the terms of Article 11 (2) with those of Article 12 (2) concerning the marking of eggs. Those provisions permit in regard to Grade A and B eggs only certain precisely defined distinguishing marks (for Category A, a circle of a certain diameter and figures of a certain height; for Category B, a circle of a certain diameter in which is to appear the letter B in Roman type, an equilateral triangle with sides of a determined length or a rhombus with diagonals of a certain length). That clearly shows how the legislature proceeded when it did intend to lay down a single type of lawful mark to the exclusion of all others.

12 With regard to the objectives of the rules at issue, it must be observed, as can be seen from the first, second and 16th recitals in the preamble to Regulation No 2772/75, that the application of marketing standards relating in particular to the grading of eggs by quality, and to their packing and their marking, is intended, in the interest of producers, traders and consumers, to contribute to an improvement in the quality of eggs and, consequently, facilitate their sale and the supervision of compliance with those standards. However, there is no indication in the regulation which, going beyond the scope of the first paragraph of Article 21, refers to specific protection of the consumer, against the cumulative use of the indications at issue in these proceedings on packs containing eggs of one and the same grade.

13 As can be seen from the third and 12th recitals in the preamble to the said regulation, the legislature obviously did not consider it necessary to draw a clear distinction 'between eggs suitable for human consumption and eggs which are not' or that consumers should be able to 'distinguish between eggs of different quality',

and even stated in the third recital that 'the marking of "fresh eggs" can be optional, since the obligatory marking of other eggs enables them to be easily distinguished'.

14 Finally, with regard to the Commission's argument to the effect that the cumulative use of the two indications at issue on small packs is likely to give rise in the mind of the consumer to the erroneous idea that within the same grade, some eggs are fresher than others, it should be borne in mind that, according to the terms of Article 6 (1), both of those indications designate in a precise manner the same quality of the eggs packed. Consequently, it does not appear that the consumer could thereby be led into error as to an essential characteristic of the eggs concerned.

15 It should be added that Article 20 of Regulation No 2772/75, which provides that eggs offered for sale in the retail trade must be presented separately according to quality, also does not require a distinction to be drawn between the marking of shelves containing Grade A eggs according to the different designations applied to such eggs, as the argument put forward by the Commission concerning the danger of confusion ought logically to require.

16 The reply to the question referred by the national court should therefore be that Regulation No 2772/75 of the Concil of 29 October 1975 on marketing standards for eggs, as amended by Regulation No 1831/84, must be interpreted as meaning that the provisions of Article 6 (1) in conjunction with Article 18 (1) and the first paragraph of Article 21 permit the markings 'Grade A' and 'fresh eggs' to be used together on small packs of Grade A eggs.

Costs

17 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Verwaltungsgericht Neustadt an der Weinstraße, by order of 20 March 1987, hereby rules:

Regulation No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs, as amended by Regulation No 1831/84, must be interpreted as meaning that the provisions of Article 6 (1) in conjunction with Article 18 (1) (c) and the first paragraph of Article 21 permit the markings 'Grade A' and 'fresh eggs' to be used together on small packs of Grade A eggs.

Due Bahlmann O'Higgins

Delivered in open court in Luxembourg on 5 May 1988.

J.-G. Giraud
Registrar

O. Due
President of the Second Chamber