JUDGMENT OF THE COURT (First Chamber)

14 July 2005 *

In Case C-107/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal Supremo (Spain), made by decision of 1 December 2003, received at the Court on 1 March 2004, in the proceedings

Comité Andaluz de Agricultura Ecológica

v

Administración General del Estado,

Comité Aragonés de Agricultura Ecológica,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges,

* Language of the case: Spanish.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 March 2005,

after considering the observations submitted on behalf of:

— the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the Greek Government, by S. Charitaki and V. Kontolaimos, acting as Agents,

— the Commission of the European Communities, by S. Pardo Quintillán, B. Doherty and F. Jimeno Fernandez, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2005,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 2 of Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of

agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ 1991 L 198, p. 1), as amended to include livestock production by Council Regulation (EC) No 1804/1999 of 19 July 1999 (OJ 1999 L 222, p. 1; 'Regulation No 2092/91').

2 The reference was made in the course of proceedings between the Comité Andaluz de Agricultura Ecológica and the Administración General del Estado.

Law

Community legislation

3 Regulation No 2092/91 establishes a framework of Community rules on production, labelling and inspection of organically-produced products. The fifth recital in the preamble states that that regulation seeks to ensure conditions of fair competition between the producers of such products, to ensure transparency at the various stages of production and to improve the credibility of such products in the eyes of consumers.

4 Article 2 of that regulation provides:

'For the purpose of this regulation, a product shall be regarded as bearing indications referring to the organic production method, where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described by the indication in use in each Member State, suggesting to the

purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules of production laid down in Article 6 and in particular the following terms or their usual derivatives (such as bio, eco etc.) or diminutives, alone or combined, unless such terms are not applied to agricultural products in foodstuffs or feedingstuffs or clearly have no connection with the method of production:

— in Spanish: ecológico,

— in Danish: økologisk,

— in German: ökologisch, biologisch,

— in Greek: βιολογικό,

— in English: organic,

— in French: biologique,

— in Italian: biologico,

— in Dutch: biologisch,

— in Portuguese: biológico,

— in Finnish: luonnonmukainen,

— in Swedish: ekologisk.'

5 Article 2 of Regulation No 2092/91, as amended by Council Regulation (EC) No 392/2004 of 24 February 2004 (OJ 2004 L 65, p. 1) and by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 346) now provides:

'For the purposes of this regulation a product shall be regarded as bearing indications referring to the organic production method where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described in terms suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules of production laid down in Article 6. In particular, the following terms or their usual derivatives (such as bio, eco etc.) or diminutives, alone or combined, shall be regarded as indications referring to the organic production method throughout the Community and in any Community language, unless they are not applied to agricultural products in foodstuffs or feedingstuffs or clearly have no connection with this method of production:

— in Spanish: ecológico,

— in Czech: ekologické

— in Danish: økologisk,

— in German: ökologisch, biologisch,

— in Estonian: mahe or /ökoloogiline,

— in Greek: βιολογικό,

— in English: organic,

— in French: biologique,

— in Italian: biologico,

— in Latvian: bioloģiskā,

— in Lithuanian: ekologiškas,

— in Hungarian: ökológiai,

— in Maltese: organiku,

— in Dutch: biologisch,

— in Polish: ekologiczne,

— in Portuguese: biológico,

— in Slovak: ekologické, biologické,

— in Slovenian: ekološki,

— in Finnish: luonnonmukainen,

— in Swedish: ekologisk.'

6 The reasons for that amendment to Article 2 of Regulation No 2092/91 were set out in the second recital in the preamble to Regulation No 392/2004 as follows:

'Regulation (EEC) No 2092/91 also provides for Community-wide protection of certain terms used to indicate to consumers that a food or feed product, or its ingredients, are obtained in accordance with the organic production method laid down in that regulation. That protection also applies to the usual derivatives or diminutives of those terms, whether they are used alone or combined, and independently of which language is used. In order to remove any possibility of misinterpretation as regards the scope of the protection it is appropriate to amend that regulation correspondingly.'

National legislation

7 Article 3(1) of Royal Decree No 1852/1993 of 22 October 1993 on organic agricultural production and indications referring thereto on agricultural products and foodstuffs (BOE (*Boletin Oficial del Estado*) No 283 of 26 November 1993, p. 33528) originally provided:

'In accordance with the provisions of Article 2 of Regulation No 2092/91, a product shall in every case bear indications referring to the organic production method where in the labelling, advertising material or commercial documents such a product or its ingredients are described by the term "ecológico".

Similarly, in addition to the specific indications applicable by the Autonomous Communities, it will be possible to use the words: "obtenido sin el empleo de productos químicos de síntese", "biológico", "orgánico", "biodinámico", and their respective compound nouns, and the terms "eco" and "bio", whether or not used with the name of the product, its ingredients or its brand name.'

8 That decree was amended by Royal Decree No 506/2001 of 11 May 2001 (BOE No 126 of 26 May 2001, p. 18609). Article 3(1) now provides:

'In accordance with the provisions of Article 2 of Regulation No 2092/91, as amended by Regulation (EC) No 1804/1999, a product shall in any event be regarded as bearing indications referring to the organic production method where such a product, its ingredients or feed materials are described in the labelling, advertising

material or commercial documents by the term "ecológico" or its derivative "eco", alone or combined with the name of the product, its ingredients or its brand name.'

9 The third and fifth recitals in the preamble to that royal decree state that that amendment was necessary in order to eliminate any doubt about the terms which, under Community legislation, are reserved for organic production and to eliminate all confusion which may arise from those terms for the consumer, whilst taking into consideration the actual situation of the food sector in Spain, in which use of the term 'bio' has become widespread to describe foodstuffs which have certain characteristics unconnected with organic production methods.

The main proceedings and the questions referred for a preliminary ruling

10 The Comité Andaluz de Agricultura Ecológica brought an action before the Tribunal Supremo (Supreme Court) challenging the lawfulness of Royal Decree No 506/2001.

11 That court considers that the outcome of the main proceedings depends on the true scope and meaning of Regulation No 2092/91, in particular Article 2 thereof. Following a request for clarification from the Court, the Tribunal Supremo requested that the questions referred for a preliminary ruling be extended to that regulation, as amended by Regulation No 392/2004, which came into force after the reference for a preliminary ruling was lodged.

12 The referring court states that it harbours doubts about the compatibility with Community legislation of the national provisions which exclusively reserve the terms 'ecológico', 'eco' and its other derivatives to the organic production method whilst leaving the terms 'biológico', 'bio' and its other derivatives available for products which do not satisfy those requirements.

13 It is for those reasons that the Tribunal Supremo decided to stay the proceedings and refer to the Court for a preliminary ruling the following questions:

'1. Does Regulation [No 2092/1991], supplemented by Regulation [No 1804/1999], regard, in all Member States, the terms "biológico" and "ecológico" and their derivatives "bio" and "eco" as indications which suggest to the purchaser that the product or its ingredients have been obtained in accordance with the rules on organic production?

2. Does Regulation [No 2092/1991], supplemented by Regulation [No 1804/1999] necessarily reserve, in all Member States, the terms "biológico" and "ecológico" and their derivatives "bio" and "eco" for products which have been obtained in accordance with the rules laid down in respect of organic production in that regulation?

3. Does Article 2 of Regulation [No 2092/1991], supplemented by Regulation [No 1804/1999], reserve, in Spanish, only the term "ecológico" and its derivative "eco" for products which have been obtained in accordance with the rules laid down in respect of organic production in the regulation, so that it may not be contrary to European law to use the term "biológico" and its derivative "bio" in Spain for non-organic products, if, through use, that term and its derivative have become a generic term and derivative, because in Spain they do not designate foodstuffs with particular characteristics connected with the organic production method?'

On the questions referred for a preliminary ruling

14 By its questions, which may conveniently be considered together, the referring court asks essentially whether Article 2 of Regulation No 2092/91 and that article as amended by Regulation No 392/2004, must be interpreted as precluding products which have not been organically produced from bearing, in Spain, the indication 'biológico' or its derivative 'bio' in the labelling, advertising material and commercial documents.

15 The Spanish Government submits that Article 2 of Regulation No 2092/91 does not preclude the use of the term 'biológico' or its derivative 'bio' in respect of products which have not been organically produced since the list set out in that article, for Spanish, mentions the term 'ecológico' alone. The Spanish Government acknowledges that Regulation No 2092/91 as amended by Regulation No 392/2004 is open to a different interpretation and states that it intends to amend its national legislation in the light of the outcome of the present proceedings and of that of the infringement proceedings in Case C-135/03 *Commission* v *Spain* [2005] ECR I-6909.

16 The Greek and French Governments and the Commission of the European Communities, in reply to a question from the Court, submit that it follows not only from the latest but also from the preceding version of Regulation No 2092/91 that the terms corresponding to the French terms 'biologique' and 'bio' must be given the same protection throughout the Community. Article 2 of Regulation No 2092/91, as amended by Regulation No 392/2004, in so far as it provides that the terms mentioned or their derivatives 'shall be regarded as indications referring to the organic production method throughout the Community and in any Community language', merely clarifies the approach already present in the earlier version. That interpretation is also supported by the second recital in the preamble to Regulation No 392/2004. Thus, even though, for Spanish, the term 'ecológico' alone appears in

the list set out in Article 2 of Regulation No 2092/91, the term 'biológico' and its derivatives should also be protected in Spain.

17 It is clear from paragraph 33 of the judgment in Commission v Spain, cited above, that Article 2 of Regulation No 2092/91 referred, as regards the labelling of organically-produced products, to 'indications in use in each Member State' and 'in particular to the ... terms or their usual derivatives' which are set out in a list stating, for the 11 official languages of the Community then in force, one or two expressions in that regard. In the case of 5 of the 11 languages, there was only one expression on that list which corresponds to the French term 'biologique'. In the case of three other languages there was only one expression which corresponds to the French term 'écologique'. In respect of German, two expressions corresponding to those two terms were cited without distinction and for each of the two remaining languages another expression was given.

18 In respect of Spanish, the list set out in that article contains the expression 'ecológico' alone, encompassing the derivative 'eco', and since other usages in Spain have not been demonstrated, the Court has not found, in the action brought by the Commission, that by failing to prohibit the producers of products which have not been organically produced from using other expressions such as 'biológico' or 'bio' the Kingdom of Spain had failed to fulfil its obligations (*Commission* v *Spain*, cited above, paragraph 35).

19 Article 2 of Regulation No 2092/91 as amended by Regulation No 392/2004 states that the terms set out in that article in the various language versions are not exclusive for the Member States but have indicative status which also covers translations in other official languages of the Community. In so doing, as Advocate General Kokott pointed out in points 26 to 29 of her Opinion, that version of the regulation achieves a balance between the current needs of the common market for foodstuffs, the objectives of the common agricultural policy, those of environmental policy and those of consumer protection.

20 It follows that from now on, in Spain, in addition to the term 'ecológico', the translation of the term 'biologique', a number of corresponding expressions for which are mentioned in Article 2, must also be reserved to organically-produced products.

21 However, in spite of the wording of the second recital in the preamble to Regulation No 392/2004, which states that it was necessary 'to remove any possibility of misinterpretation', that new formulation has no bearing on the content of Regulation No 2092/91. The adoption of a new version of Article 2 suggests the intention of the legislature to amend Regulation No 2092/91 and not to leave it unchanged. In the absence of such an intention, the adoption of the legislative amendment in question would not have been necessary (see *Commission* v *Spain*, cited above, paragraph 38).

22 The Court therefore replies to the questions referred for a preliminary ruling as follows:

— Article 2 of Regulation No 2092/91 was to be interpreted as not precluding products which were not organically produced from bearing, in Spain, the indication 'biológico' or its derivative 'bio' in the labelling, advertising material and commercial documents;

— that same Article 2, as amended by Regulation No 392/2004, must be interpreted as precluding from now on such products from bearing, in Spain, the indication 'biológico' or its derivative 'bio' in the labelling, advertising material and commercial documents.

Costs

23 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 (First Chamber) hereby rules:

1. **Article 2 of Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, as amended to include livestock production by Council Regulation (EC) No 1804/1999 of 19 July 1999 was to be interpreted as not precluding products which were not organically produced from bearing, in Spain, the indication 'biológico' or its prefix 'bio' in the labelling, advertising material and commercial documents;**

2. **That same Article 2, as amended by Council Regulation (EC) No 392/2004 of 24 February 2004, must be interpreted as precluding from now on such products from bearing, in Spain, the indication 'biológico' or its prefix 'bio' in the labelling, advertising material and commercial documents.**

[Signatures]