OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 8 NOVEMBER 1979 [1]

Mr President,
Members of the Court,

1. In these proceedings for a preliminary ruling the Court is asked to interpret two provisions contained in Council Regulation No 1162/76 of 17 May 1976 (amended by Regulation No 2776/78 of 23 November 1978), which laid down "measures designed to adjust wine-growing potential to market requirements". More precisely, it is a question of defining the scope of Article 2 (1) of the regulation, the first subparagraph of which prohibited for a certain period of time all new planting of vine varieties classified as wine grape varieties, whilst the second subparagraph forbad Member States to grant authorizations for new planting. The question is made more interesting by the fact that the Court is also called upon to ascertain the validity of the provisions in question from the point of view of their compatibility with the principles of the Community legal system, and in particular with the principles concerning the protection of human rights.

I will briefly summarize the facts of the case.

Mrs Liselotte Hauer, the owner of a plot of agricultural land in the Federal Republic of Germany, applied to the Land Rheinland-Pfalz for authorization to undertake the new planting of vines on her land, in pursuance of the German Law of 10 March 1977, laying down provisions for the wine industry (Weinwirtschaftsgesetz). The authorities rejected the application on the ground that the land did not meet the requirement of suitability for wine-growing, imposed by Article 1 (2) of the aforesaid law, and subsequently it also rejected the objection lodged by Mrs Hauer against the negative decision. The decision to reject the application was based not only on the unsuitability of the land, but also on the "prohibition on the new planting of vine varieties classified as wine grape varieties" which had in the meantime been introduced by Council Regulation No 1162/76.

The matter was then taken by Mrs Hauer before the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstraße, where the defendant Land declared its willingness to grant the authorization requested on the expiry of the Community prohibition which currently prevents it from doing so. For her part the plaintiff argued that the prohibition could not be applied to applications for authorization submitted before Regulation No 1162/76 came into force and that, in any case, it was unlawful, being contrary to Articles 12 and 14 of the Grundgesetz [Basic Law] of the Federal Republic. By order of 14 December 1978 the Verwaltungsgericht referred the following questions to the Court of Justice for a preliminary ruling:

"(1) Is Council Regulation (EEC) No 1162/76 of 17 May 1976 (Official Journal L 135 of 24 May 1976, p. 32), as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 (Official Journal L 333 of 30 November 1978, p. 1), to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards, which

1 — Translated from the Italian.

had already been made before the said regulation entered into force?

and if the answer to Question 1 is in the affirmative

(2) Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry]) in the version of 10 March 1977 (BGBl. I, p. 453)?"

2. I think it appropriate to begin by setting out the sources of Community law which enter into consideration in this case, especially as we are dealing with sources which have been replaced by new provisions with slight amendments in the course of recent years.

Article 17 (5) of Regulation (EEC) No 816/70 of the Council of 28 April 1970, laying down additional provisions for the common organization of the market in wine, provided that if wine production "is tending to exceed foreseeable utilization and, as a consequence, is liable to endanger the income of wine growers, the Council shall adopt ... the provisions regarding new planting and replanting of vines which are necessary to prevent the formation of structural surpluses". Following the line adopted by that provision, the Council six years later adopted Regulation No 1162/76 of 17 May 1976, introducing for the period from 1 December 1976 to 30 November 1978 the prohibition on new plantings of vines with which the present proceedings are concerned. The same regulation then provided (in Article 5) that the Council should adopt, by 1 October 1978, the "measures necessary to ensure that wine-growing potential is adapted to market requirements, taking into account: the suitability for wine production of the various regions of the Community, and the existence in each of these regions of viable alternatives in terms of agricultural crops". But the period laid down expired without the adoption of those measures, which — unlike the temporary prohibition on new plantings — were to provide a long term solution to the problem of structural surpluses in the wine industry. Therefore by Regulation No 2776/78 of 23 November 1978, the Council extended the existing rules until 30 November 1979, and for the adoption of more far-reaching measures it laid down the new time-limit of 1 October 1979 (now expired and apparently not complied with).

During the past year the Council has undertaken a series of steps by way of codification as regards the common organization of the market in wine. Thus Regulation No 816/70 was repealed and replaced by Regulation No 337/79 of 5 February 1979; and in particular Article 17 (5) of Regulation No 816/70 was replaced by Article 31 (5) of Regulation No 337/79. However, that was a purely formal substitution, since the two provisions are identical in content. Likewise, Regulation No 1162/76 was repealed and replaced by Regulation No 348/79 of 5 February 1979: but in that case too there was no alteration of the relevant provisions referred to above, and it therefore follows that there was not alteration in the time-limits laid

down for the prohibition of new plantings of vines and for the adoption of structural measures.

3. The first question submitted to the Court of Justice by the national court concerns a problem of transitional law. It asks, as we have seen, whether Article 2 (1) of Regulation No 1162/76 (corresponding to Article 2 (1) of Regulation No 348/79 which has replaced it) also applies to applications for authorization of new planting of vines which had already been made to the national authorities before the regulation entered into force. In this regard I would observe that the present scheme for the common organization of the market in wine does not provide for a Community authorization for new plantings of vines, nor does it require the Member States to introduce such an authorization into their respective legal systems; however, some States, and in particular the Federal Republic of Germany, make new plantings conditional on an administrative authorization at the request of the individuals concerned, and it is obviously with regard to such situations that this question was drafted. In fact it is clear from the file on the case that the plaintiff in the main action, Mrs Hauer, applied to the German authorities for the authorization on 6 June 1975, on which date the two Community prohibitions did not yet exist; they came into force almost a year later, on 27 May 1976 to be precise (see Article 6 of Regulation No 1162/76), when the administrative proceedings for the issue of the authorization initiated by Mrs Hauer in the Federal Republic were still pending.

In my opinion, the prohibitions contained in the said Article 2 (1) of Regulation No 1162/76 also apply to cases in which the person concerned applied for authorization for new planting before the aforesaid regulation came into force. I will point to a number of factors in favour of that interpretation.

In both its aspects (prohibition on new plantings and on new authorizations thereof) the provision in question is so clear and mandatory that it does not give rise to any doubts whatsoever. I cannot see any grounds for excluding from the scope of those provisions cases in which the persons concerned applied to the national authorities for authorization before the regulation came into force. I think that Article 4 of that regulation confirms the interpretation that I have offered. The article in question provides that "The period of validity of a right to plant or replant existing under national laws on the date this regulation enters into force, shall be extended by a period equivalent" to that of the prohibition, and that "During this period exercise of the right in question shall be suspended". From the terms of that provision it is clear that the Community legislature considered worthy of protection the position of those who had obtained authorization to undertake new plantings before the new rules came into force and had not yet made use of it; but only that position. In fact, whilst there was apparent justification for protecting individuals whose legal position was confirmed, there would not have been the same justification for making a provision in favour of individuals who had merely submitted an application for authorization to the competent national authorities. Moreover, the protection

provided by the said Article 4 consists in the suspension of authorizations granted; that means that the prohibition on new plantings also applies to persons who have already acquired the right to undertake them, and that the only benefit granted to persons in that situation lies in sparing them the necessity of new proceedings for authorization when the prohibition ceases.

If consideration is then given to the purposes of the new provisions, a further confirmation of the interpretation which I have adopted is found. By means of Regulation No 1162/76 the Community legislature intended to bring about in the wine industry the adjustment of the productive potential to the requirements of the market. The instruments employed immediately in order to achieve such results were the prohibition on new plantings (except for the exemptions provided for in Article 2 (2)) and the provision prohibiting Member States from granting new authorizations. Those were clearly measures of a temporary nature, which it was intended to replace in due course by a co-ordinated programme of action: I have already had occasion to emphasize that Article 5 of that regulation provided for the adoption, by 1 October 1978 (which time-limit was later postponed to 1 October 1979), of permanent measures, which were to take into account the suitability for wine production of the various regions of the Community and the existence in each of those regions of viable alternatives in terms of agricultural crops. Since, therefore, the aim pursued was that of containing production with immediate effect pending the adoption of appropriate structural measures, it was logical that the prohibition on new plantings should extend to cases in which authorization proceedings were pending, and even to cases in which authorization had already been granted but not used (as is clear from Article 4). The mechanism for preventing an increase in the production of table wines would have been not only incomplete but contradictory if, on the one hand, it had prohibited new plantings and suspended the validity of authorizations already granted and, on the other hand, had permitted the granting of authorizations in favour of persons who had applied for them before the new provisions came into force.

That is precisely why the second subparagraph of Article 2 (1) prohibited Member States from granting authorizations for new planting as from the date on which the regulation came into force. That prohibition prevents absolutely authorization proceedings initiated before that date from terminating subsequently in the granting of the application. I would add that, in view of the clear wording of the negative obligation imposed on the Member States, it is not possible to suppose that the system of freezing authorizations already granted, under Article 4 of the regulation, makes it permissible to continue with authorization proceedings already initiated to the extent of granting the authorization but merely suspending its validity. It is sufficient to observe that Article 4 extended the period of validity of rights to plant vines *acquired at the date on which the regulation came into force:* that implies that, in accordance with the provisions of Article 2 (1), second subparagraph, every possibility of acquiring such rights subsequently to that date is precluded.

4. The second question submitted to the Court concerns the extent of the prohibition on the authorization of new plantings: it asks whether that prohibition concerns all land or only land not suitable for growing wine grapes.

There is no reason to suppose that Regulation No 1162/76 (like the later Regulation No 348/79) prohibits Member States from granting new authorizations to plant vines only in respect of land which is considered unsuitable for wine-growing. The prohibition is evidently general in scope: that may be inferred from the wording of the second subparagraph of Article 2 (1) which does not refer at all to the suitability of the land for vine growing. Thus it would be quite arbitrary to introduce limitations or exceptions to a provision which does not contain any.

A reference to the quality of the land is to be found in Article 5 (1), which lays down the criteria on which the measures designed to re-establish the balance of the market must be based; at the first indent it is stated that those measures shall take account of "the suitability for wine production of the various regions of the Community". This factor was developed more fully in the action programme 1979-1985 for the progressive establishment of balance on the market in wine, submitted by the Commission to the Council on 7 August 1978; paragraph 9 of that programme proposes the establishment of natural criteria whereby "the areas producing table wine in the Community can be classified according to their natural suitability for wine-growing". On the basis of those criteria areas would be divided into three categories and new planting would be permitted, within certain limits and subject to authorization, only for vineyards in category I (see Bulletin of the European Communities, Supplement 7/78, p. 7 *et seq.*). Thus the "suitability of the land" constitutes an important factor in the structural measures which the Commission proposes to introduce on the basis of a precise indication to that effect contained in the regulations of the Council; but that is absolutely extraneous to the logic of the provisional prohibitions laid down by Regulation No 1162 and subsequently confirmed, in particular the provision prohibiting Member States from granting new authorizations for the planting of vines.

5. Apart from the questions formulated by the national court, the problem of the legality of the prohibitions laid down by Regulation No 1162/76 was raised in the order making the reference (although not in appropriate terms because it referred to German constitutional law) and debated in the course of these proceedings. Therefore I think it necessary to deal with that problem, the more so as the national court seems to consider that the interpretation of the said Article 2 (1) in the way which I have suggested would give rise to doubts about the validity of the provision with regard to fundamental principles. In that connexion the first question which must be examined is whether Article 2 (1) of Regulation No 1162/76 is compatible with the principle of respect for acquired rights or with the principle of legitimate expectations.

I think it inappropriate to speak in this case of an infringement of acquired rights. In fact, according to the case-law of the Court, the unwritten rule of respect for acquired rights concerns the

safeguard of situations which reached maturity before the adoption of the amending provisions; that is to say, it applies to consolidated legal positions (see in particular the judgment of 18 March 1975 in Case 78/74 *Deuka* v *Einfuhr- und Vorratsstelle Getreide* [1975] ECR 422). But in the present case the plaintiff in the main action did not enjoy the advantage of any consolidated legal position at the time of the introduction of the prohibition on new planting of vines and on the granting of authorizations for that purpose; she had merely submitted an application for authorization, and I do not think it can be said that the mere submission of an application places the indiviual in a definitive legal position which is worthy of protection even against subsequent interventions of a legislative nature. Moreover, it is significant that Regulation No 1162 itself refers in Article 4 to acquired rights in relation to authorizations for new plantings, where it provides that "a right to plant ... existing under national laws" on the date on which the regulation enters into force shall be extended for the duration of the prohibition, remaining suspended in the meantime; that shows that the Community legislature recognized as acquired rights only the positions of persons who had already obtained authorizations at the time when the prohibitions in question came into force.

Equally absent in this case are the conditions which must exist before one may speak of legitimate expectations. According to the case-law of the Court, the principle of legitimate expectations may be relied upon by someone who has undertaken a certain activity, relying on the reasonable assumption that the legislative framework in which such activity was to be pursued would not undergo amendment. We know that the plaintiff in the main action has merely submitted an application for authorization to undertake new plantings of vines, and I do not think that the mere intention to undertake new plantings is worthy of protection under the principle of legitimate expectations, when no appreciable economic activity has been carried out or even commenced. That consideration alone would be sufficient to deprive the objection of validity; but a further argument may be added: As I had occasion to remark in my opinion in Case 146/77 *British Beef Company* v *Intervention Board for Agricultural Produce* [1978] ECR at p. 1360, the central criterion which emerges from the case-law of the Court on the subject of legitimate expectations may be summarized in the statement that the aforesaid principle may not be properly relied on "if the possibility of legislative amendments is reasonably foreseeable ...". We know that Regulation No 816/70, after declaring in the 23rd recital of the preamble that "the common organization should ... aim to stabilize markets through an adjustment of resources to needs based, in particular, on the rationalization of wine growing areas", provided, in Article 17 (5), that in the event of surplus production the Council should adopt "the provisions regarding new planting ... of vines which are necessary to prevent the formation of structural surpluses". Therefore the subsequent introduction of a prohibition on new plantings, as a temporary measure pending more co-ordinated action, decided upon in 1976 on the basis of

Article 17 (5) of Regulation No 816/70, could not constitute an unforeseeable innovation for persons concerned in wine production. Therefore from that point of view also the provisions of 1976 seem compatible with the principle of legitimate expectations.

6. Another principle to which the plaintiff's counsel referred in the oral procedure, arguing that it had been infringed by the prohibition on the authorization of new plantings of vines imposed upon Member States, is the principle of proportionality. That prohibition, it is argued, constitutes a limitation which is not necessary and in any case not proportionate to the aims pursued by the regulation. The logical structure of the provision, it is said, would not have been impaired if the national authorities had been permitted to issue authorizations also in the period in which the prohibition on new plantings applies, and the measure had merely provided for the suspension of the validity of authorizations granted during that period, as is done by Article 4 in respect of authorizations issued before the entry into force of the regulation and not yet made use of.

Such a criticism does not seem to me well-founded. In the scheme of Regulation No 1162/76 the prohibition on new plantings is in fact closely connected with the measures concerning authorizations, comprising, on the one hand, the prohibition on the granting of new authorizations and, on the other hand, the suspension of the validity of authorizations granted before the regulation came into force. In order to attain the objective of the regulation, that is to say, to restrain wine production to an appreciable degree, it was essential to intervene both as regards authorizations and as regards plantings, and, as for authorizations, it was expedient to freeze simultaneously the granting and the utilization thereof. To permit the issue of new authorizations, suspending their validity in the meantime, would not in my opinion have been either useful or reasonable. It would not have been useful because it is pointless for a national authority to authorize an activity which for a certain period of time may not be pursued. It would not have been reasonable on account of its incompatibilty with the aims of the Community policy on wine production. In fact we know that the Commission proposes to introduce a form of authorization for new plantings in all the Member States, which will be subject to the satisfaction of a series of conditions (see action programme 1979-1985 on the progressive establishment of balance on the market in wine, referred to above); there would have been a risk of compromising that policy if the national authorities had been left free to continue granting authorizations designed to have effect after the end of the prohibition on new plantings.

Therefore the prohibition on authorizing such plantings imposed upon Member States fits coherently into the scheme of the measure and seems proportionate to the aims pursued. The sacrifice required of individuals — which in this case amounts to no more than a delay in the authorization procedure — corresponds to a greater consistency in the whole system of prohibitions, having regard

also to the future structural measures foreshadowed in Article 5 of Regulation No 1162/76.

7. It remains for me to examine the most interesting point which arises in the context of an appraisal of the validity of the provisions in dispute. I refer to the question of the compatibility of those provisions with the fundamental principle of respect for private property, which is common to the legal systems of the Member States and enshrined in Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Before embarking upon consideration of the substance of that question, I would like to recall and emphasize the fact that the protection of fundamental rights constitutes an integral part of the general legal principles, respect for which is guaranteed by the Court (see the judgments of 12 November 1969 in Case 26/69 *Stauder* [1969] ECR 419 and 17 December 1970 in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125; in addition, see the judgments of 14 May 1974 in Case 4/73 *Nold* [1974] ECR 491; 28 October 1975 in Case 36/75 *Rutili* [1975] ECR 1219, and 15 June 1978 in Case 149/77 *Defrenne* [1978] ECR 1365). On the basis of that case-law, the Court of Justice has jurisdiction to ensure the protection of fundamental rights when measures of the Community authorities may impinge upon them; the *Nold* judgment established that in the performance of this task the Court is obliged to draw inspiration "from constitutional traditions common to the Member States" and must take account of guidelines supplied by the international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. However, it must also be said — still on the basis of the *Nold* judgment — that "it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched".

In accordance with these premises it is necessary to reject the idea that it is permissible to appeal to the highest national courts, rather than to this Court, in order to secure the protection of fundamental rights as against the Communities, in particular when infringements as a result of the legislative activity of the Communities are alleged. It is the exclusive task of the Community Court to guarantee such protection, within the scope of its jurisdiction: the uniform application of Community law and its primacy over the legal orders of the Member States must not be endangered by the intervention of national courts, when it is a question of ascertaining whether or not Community provisions are in conformity with the principles concerning human rights.

As for the substance of the question, it is necessary to establish in what way and to what extent property rights are protected in the Community legal order. The points of reference for the solution to this problem are essentially the principles accepted in the laws of the Member States and the specific provision contained in the First Protocol to the European Convention on Human Rights. As for the Community Treaties, I am of the opinion that the rule expressed in Article 222 of the EEC Treaty, which provides that the Treaty "shall in no way prejudice the rules in Member States governing the system of property

ownership" makes it impossible to hold that in Community law private property is more clearly protected or on the contrary subject to a restrictive conception; the truth is that — apart from the limits expressly imposed by some provisions of the Treaties and particularly by the Treaty establishing the EAEC — the article cited confirms that it was not the intention of the Treaties to impose upon Member States or to introduce into the Community legal order any new conception of property or system of rules appertaining thereto.

Having said that, an examination of the rules in force in the legal systems of the Member States (almost always at the level of constitutional law) reveals that, apart from the many differing ways in which they are formulated as regards language and scope, those rules render property rights subject to three fundamental types of provision: first, that which recognizes private property, guaranteeing it against every from of arbitrary deprivation (see for example Article 14 (1) of the Grundgesetz [Basic Law] of the Federal Republic of Germany, Article 42 (2) of the Italian Constitution, Article 2 of the French Declaration of the Rights of Man and the Citizen of 1789 and Article 43.1 of the Irish Constitution); secondly, that which admits of the possibility of expropriation in the public interest, in return for compensation (see for example the last paragraph of Article 14 of the Grundgesetz, Article 42 (3) of the Italian Constitution, Article 17 of the French Declaration of the Rights of Man and the Citizen, Article 11 of the Belgian Constitution, Article 16 of the Luxembourg Constitution, Article 165 of the Netherlands Constitution and Article 73 of the Danish Constitution) and thirdly, that which leaves the limitations upon the use of property to be determined by the law (see for example Article 14 (1) of the Grundgesetz, Articles 42 (2) and 44 of the Italian Constitution, Article 43.2 of the Irish Constitution). A synthesis of these three fundamental types of provision is to be found in Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is worth citing in full:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The conclusion which may be drawn from this brief analysis is that the three rules enshrined in Article 1 of the First Additional Protocol to the said Convention, which reflect the dominant tendency of the legal systems of the Member States, must be considered to have been incorporated into the Community legal order. In fact that reflection is not faithful as regards one important point, namely the right to compensation of a person whose property is expropriated, given that such a right is not expressly laid down in Article 1 of the First Additional Protocol to the European Convention. The terms of that provision, which as we have seen refers to the conditions laid down by

national laws and to the general principles of international law (traditionally applicable only for the benefit of aliens) may engender doubt as to whether, in order to be lawful under the European system for the protection of human rights, an expropriation must in every case be accompanied by the payment of compensation. The case-law of the European Commission of Human Rights records two contradictory postitions on this question: on the one hand, there is the express denial that it is invariably necessary to compensate nationals (see the Decision of 16 December 1965 in *X* v *Federal Republic of Germany*, Application No 1870/63), whilst, on the other hand, it has been stated that the wording "every natural or legal person is entitled to the peaceful enjoyment of his possessions" protects nationals and aliens in the same way, with the result that nationals too must be accorded the right to compensation (Report of 30 September 1975 on the *Handyside* case — Application No 5493/72 — paragraph 158 *et seq.*). The position adopted in the more recent case indicates a significant change in the case-law; in any event, at the Community level, the obligation to pay fair compensation to the expropriated individual should be recognized in accordance with the tendency widely shared by the legal orders of the Member States.

8. In this case, the principal question is whether the prohibition on new plantings of vines (and the related prohibition on the granting of authorizations for new plantings by Member States) should be classified as an expropriation or merely as a restriction on the right to property. In my opinion the reply is not difficult. The first consideration is this: the individuals affected by that prohibition have certainly not been deprived of their right to property, which they remain free to keep for themselves or to transfer to others, and the content of that right merely appears to have been reduced to the extent to which the prohibitions have temporarily precluded one particular from of enjoyment of that right, namely the planting of vines. In choosing between one or other classification for the prohibitions, the temporary nature of the measure is of some importance, because even if one accepts the concept of expropriation as limited to only one of the uses of property (a concept which in my opinion is ambiguous and in the final analysis erroneous), it would at least be necessary to prove permanent deprivation of that use. I hasten to say that I do not mean thereby that every permanent deprivation of a particular use of a possession falls within the definition of expropriation; I merely note that, if it were a question of expropriation, the latter would have to be of a permanent nature.

With regard to the temporary nature of the measures under consideration, I do not believe that decisive importance should be attached to the fact that the prohibition on new plantings, initially introduced for a period of two years, was subsequently extended for another year and that it is now possible — as the representative of the Commission himself stated — that there will be a further extension. It is necessary to take account of the fact that the measure in question is conjunctural, in the sense that it was adopted as a provisional instrument in order to eliminate a production surplus which was in the process of becoming structural; and that the Member States

are currently negotiating within the Council in order to find a stable remedy to the imbalances between production and market requirements in the wine industry by means of the adoption of a group of far-reaching co-ordinated measures. The adoption of this package of measures understandably requires time in order that the positions of the parties concerned may be brought closer together, so as to converge upon a system for the common organization of the market in wine which will be more comprehensive and also more integrated than the present system. It is clear that, whilst awaiting those wider-reaching measures, it is necessary in the meantime to have recourse to temporary remedies in order to prevent the general situation from deteriorating further. In accordance with this reasoning, it seems to me that the maintenance of the prohibition on new plantings for three years and even the possibility of a further extension thereof are fully justified, that they remain in the nature of temporary measures pending a more integrated organization of the market and that therefore they do not amount to a negation of the right to property.

A further factor which may be taken into consideration in deciding whether a measure restricting the right to property is or is not in the nature of an expropriation is the scale of the economic sacrifice required of the person to whom the measure is addressed. Generally speaking, it is rare that the agricultural exploitation of a piece of land is possible only if it is used for a particular type of cultivation with the result that, if that is impossible, the land is deprived of any appreciable economic value. It is a matter of common experience that agricultural land is mostly capable of being put to various uses, even though not all such uses offer the same degree of profitability (quite apart from the possibility of conversion to non-agricultural use). In this case, therefore, such a claim would be still more incongruous, in view of the fact that Mrs Hauer's land was not previously devoted to wine-growing, so that it may reasonably be supposed that it was put to a different agricultural use. And the fact that the Community prohibitions precluded a more advantageous use is unimportant, since in order to show that the Community measure was not in the nature of an expropriation it is sufficient that in spite of that measure the land retained an appreciable economic value.

Therefore considerations of form and substance both lead to the conclusion that there has not been an expropriating measure in this case. Thus there is no reason to deal in this case with the question of the failure to pay compensation: the conditions under which the person concerned could have claimed compensation do not in fact exist.

9. With regard to the imposition of limits upon the use of property, we have seen that Article 1 of the First Additional Protocol to the European Convention on Human Rights lays down two conditions: namely, that the limits must be laid down by law and that the provisions must be in accordance with the public interest. However, it should be noted that the provision ascribes to a given State a considerable margin of discretion, speaking of "such laws as it deems necessary" to control the use of property. Clearly, if the national authorities are replaced by the Community institutions, the condition of recourse to the law is replaced by that of the

adoption of regulations; which is what occurred in this case. There remains the question of conformity with the public interest, in the appraisal of which the Community institutions have, of course, the same discretionary power as that attributed to States.

In this case, the limitation which was imposed on landowners by the general prohibition on new plantings of vines is undoubtedly justified by reasons of *public interest* connected with the working of the Community system. We have already seen that the restrictive measure in question, envisaged as a possible form of action in Regulation No 816/70, was adopted in 1976 in order to contain production and to restore the balance of the market. Such a measure was certainly necessary in order to attain in the wine industry the objectives of the agricultural policy laid down in Article 39 of the Treaty and in particular in order to ensure the stabilization of the market (an aspect considered in Article 39 (1) (c)). In fact there existed a situation of over-production, as is clear from the Commission's action programme for 1979-1985 for the progressive establishment of balance on the market in wine (Bulletin of the European Communities, Supplement 7/78, in particular p. 19 *et seq.*). Morever, it was a question of a temporary measure, which was linked, it is worth repeating, with a structural reform of the common organization of the market in wine, and applying only to new plantings; affecting, that is to say, only those owners who had not yet planted vines.

I do not believe that the view which I have taken is contrary to the opinion expressed by the Constitutional Court of the Federal Republic in its judgment of 14 February 1967, extensively referred to in the pleadings of the parties. I would merely observe that the decisions of national judicial organs are of no authority in this Court, but in this particular case that objection must be accompanied by the observation that the judgment of the German Constitutional Court was wrongly cited. That judgment declared in fact that the prohibition on new plantings of vines on land objectively unsuitable for production of wine constituted an appropriate means of protecting German wine producers by maintaining the quality of wine. An attempt has been made to infer from that statement that a prohibition not limited to land unsuitable for production, such as that contained in the Community regulation with which we are concerned, is contrary to the German Constitution. But it is clear that the compatibility of a restrictive measure with constitutional principles must be judged in relation to the aims which that measure is intended to pursue. In this case, as we know, the prohibition on new plantings serves to stabilize the market, pending the adoption of more co-ordinated structural measures: such an aim is quite compatible with the right to property, even if it does not take into account the suitability or unsuitability of the land for wine production. It is an extremely incisive form of action, but it is temporary and is in any case linked with a programme for the restructuring of the wine market, which, as we have seen, should take into account the differing quality of land. But the internal legislation, on which the aforesaid judgment of the German Constitutional

Court was based, had a different objective, in a sense a more limited one, an objective which was clearly recognized by that court, namely to ensure the quality of the wine produced in the Federal Republic. Therefore the two objectives are not comparable; indeed it is one thing to stabilize a market suffering from heavy production surpluses, and quite another thing to guarantee that the product is of a certain quality. That is why I do not think that there is any justification for inferring from the decision of the German court a suggestion that a general prohibition on new plantings is incompatible with the constitutional principles regarding property.

10. The legality of the Community provisions with which we are dealing has also been discussed in relation to another fundamental right, namely the right freely to pursue a trade or profession or (more precisely) the freedom to undertake economic activity.

That right is included amongst those protected in the Community legal order, in accordance with the approach common to the legal systems of the Member States. That approach has been echoed in the case-law of this Court (see the *Nold* judgment), which of course has also recognized the possibility of subjecting it to limitations in order to pursue objectives of general interest to the Community. But in my opinion, it is incorrect in this case to refer to the freedom to undertake economic activity. In truth, rather than interference, albeit legitimate, with the choice of trade, profession or commercial activity, we are dealing with a provision which affects the economic pre-conditions for the pursuit by certain methods of a trade or profession. It is true that as a result of the prohibition on new plantings of vines the owner of a plot of land is prevented from pursuing wine-making activity by using the resources of his land hitherto not planted with vines, but it is clear that the owner retains the possibility of growing vines on other plots of land, belonging to him or other persons, on which vineyards already exist. Therefore the limitation imposed affects the exercise of the right to property, not the exercise of the right to undertake economic activity, which is not guaranteed with regard to a particular sphere of application.

11. In conclusion, I am of the opinion that the Court should reply in the following way to the two questions referred to it by the Verwaltungsgericht Neustadt an der Weinstraße by order of 14 December 1978:

"The prohibitions laid down by Article 2 (1) of Council Regulation No 1162/76 of 17 May 1976 apply also to cases in which an application for authorization to plant new vines was submitted to the national authorities before the aforesaid regulation came into force. The prohibition contained in the said provision requiring Member States not to grant new authorizations for the planting of vines extends to all categories of land, whether they be suitable or unsuitable for wine-growing".

Further, should the Court consider it necessary to pronounce in the operative part of its ruling on the question of the legality of the prohibitions in question, it could add that:

"Article 2 (1) of Council Regulation No 1162/76 is not contrary to any of the principles of Community law intended to protect individuals; in particular, it does not infringe the fundamental right to the peaceful enjoyment of private property, which is recognized in Community law both on the basis of the internal legal orders of the Member States, and under Article 1 of the First Additional Protocol to the European Convention on Human Rights".