JUDGMENT OF THE COURT (Fourth Chamber)
14 May 1985 *

In Case 89/84

Reference to the Court under Article 177 of the EEC Treaty by the Cour d'appel [Court of Appeal], Montpellier, for a preliminary ruling in the action pending before that court between:

(1) **Fédération nationale des producteurs de vins de table et vins de pays, Confédération des associations viticoles de France,**

(2) **Procureur général** [Procurator General] **attached to the Cour d'appel, Montpellier,**

(3) **Service de la répression des fraudes et du contrôle de la qualité** [anti-fraud and quality control department]

and

(1) **Pierre Ramel,**

(2) **Charles Cristofaro,**

(3) **Les fils de Henri Ramel SARL,**

(4) **Bachet et fils SARL**

on the interpretation of the provisions of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine, in relation to the mixing within the territory of the Community of red and rosé Community wines,

THE COURT (Fourth Chamber),

composed of: Lord Mackenzie Stuart, President, G. Bosco (President of Chamber), P. Pescatore, T. Koopmans and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: French.

after hearing the observations submitted on behalf of:

— Fédération nationale des producteurs de vins de table et vins de pays, the civil party claiming damages in the main proceedings, represented by M. Cros, of the Montpellier Bar, and S. Radot, of the Metz Bar,

— P. Ramel, C. Cristofaro and Bachet et fils SARL, by J. Imbach, of the Strasbourg Bar,

— the Government of the Italian Republic, represented by P. G. Ferri, Avvocato dello Stato,

— the Commission of the European Communities, represented by its Legal Adviser J.-C. Séché,

after hearing the opinion of the Advocate General delivered at the sitting on 12 February 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By judgment of 7 March 1984, which was received at the Court on 29 March 1984, the Cour d'Appel, Montpellier, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the Community rules on the common organization of the market in wine for the purpose of determining whether the production of certain table wines by means of coupage and the sale of such wines under particular appellations was compatible with those Community rules.

2 The question was raised in criminal proceedings instituted jointly by the Service de la répression des fraudes et du contrôle de la qualité (hereinafter referred to as 'the anti-fraud department') and the Ministère public ([Public Prosecutor's Office]), in which the Fédération nationale des producteurs de vins de table et vins de pays (hereinafter referred to as 'the Federation') is claiming damages as a civil party, against Pierre Ramel and Charles Cristofaro, who are wine dealers and directors of the commercial companies Les fils de Henri Ramel SARL and Bachet et fils SARL (hereinafter referred to as 'the accused'), for producing and selling as 'rosé

table wines' wines obtained by coupage of rosé table wines from Italy and red table wines originating in various countries of the European Community, without observing traditional French practices for the production of rosé wine.

3 Under those practices, which the anti-fraud department and the Public Prosecutor's Office seek to safeguard, rosé wines may only be the product of a crop of grapes with coloured skin and white or coloured pulp which has undergone fermentation off skins resulting in wines with a weak colour. The marketing under the appellation 'rosé wine' of a wine which is obtained otherwise other than by fermentation off skins, and in particular wine obtained by the coupage of a rosé wine with a wine of another colour such as red wine, constitutes deception.

4 The accused in the main proceedings produced and marketed in the course of 1981, and in particular on 29 April 1981, 6 470 hectolitres of rosé-coloured wine obtained by the coupage of 5 970 hectolitres of three categories of rosé table wines from Italy and 500 hectolitres of red table wine from various countries of the Community and, on 2 July 1981, 1 210 hectolitres of rosé-coloured wine resulting from the coupage of 1 160 hectolitres of rosé table wine and 50 hectolitres of red table wine from various countries of the Community.

5 In their defence, the accused claimed, *inter alia*, that the proceedings against them had no legal basis under the rules on the organization of the common market in wine as they stood (as laid down in Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1)), which did not prohibit the mixtures at issue or the marketing thereof.

6 The Tribunal correctionnel [Criminal Court] Montpellier, acquitting the accused, held that there was no definition of rosé wines under either French or Community legislation and that there was nothing to prevent the production of rosé table wines by the coupage of rosé wines and red wines both belonging to the same category of products. The Public Prosecutor and the Federation appealed to the Cour d'appel, Montpellier.

7 The Cour d'appel observes in its order for reference in the first place that the wines in question were marketed under the appellation 'vin rosé de table DPCE', meaning rosé table wine 'from the European Community', so that the purchaser could be in no doubt as to their origin and their principal, traditional qualities. Therefore, in the view of the Cour d'Appel, the problem raised concerns essentially the legality of coupage within the territory of the Community of red and rosé table wines from various countries of the Community. In the second place, considering that serious doubt exists regarding a question of principle, namely the legality of the coupage carried out, and that it is in the general and public interest to remove any ambiguity which may persist in that connection, the Cour d'Appel has decided that the matter should be referred to the Court of Justice and has submitted the following question for a preliminary ruling:

'Do the Community rules, as they stand at present, authorize the coupage within the Community of red wines and rosé wines from any area of the said Community and the marketing thereof in any such area under the appellation "vin rosé DPCE" or "vin rouge DPCE"?'

8 It is apparent from the documents before the Court that the question submitted relates only to the coupage of red and rosé table wines originating in various Member States and the marketing of the wine resulting from such coupage under the description 'rosé table wine from various countries of the European Community'.

9 The Federation claims, in substance, that although Article 43 (3) of Regulation No 337/79 lays down the general rule that the coupage of a white table wine with a red table wine may not yield a table wine, that regulation does not lay down exhaustive rules for the coupage of table wines. Thus the regulation contains nothing about rosé wine produced by special vinification, the characteristics of which would not be those of red wine. In the absence of any Community rules prohibiting or permitting the coupage of rosé wine with red wine, the fair and consistent practices whereby the sale is prohibited of the product resulting from the coupage of rosé wine with red wine under the appellation 'rosé wine' are compatible with Community law. The Federation does not deny that such coupage may, in certain circumstances, be lawful but it insists that such a mixture must never be sold under the description 'rosé wine'. The lacuna in the Community rules cannot therefore prevent the application of a national law or regulation or of a decision of a national court, a view which is confirmed by the decisions of the

Court, in particular its judgments of 30 September 1975 (Joined Cases 10 to 14/75 *Procureur de la République* v *Lahaille* [1975] ECR 1053) and of 16 February 1982 (Case 204/80 *Procureur de la République* v *Vedel* [1982] ECR 465).

10 On the other hand, the accused, the Italian Government and the Commission consider that although the rules on the market in wine do not expressly authorize the coupage of red table wines and rosé table wines from different countries of the Community and contain no definition of rosé wine, Article 43 of Regulation No 337/79 lays down complete and exhaustive rules regarding the coupage of table wine and is therefore also applicable to rosé table wines. Consequently, the coupage in question is lawful and so is the offering of such a wine to the consumer under the appellation 'rosé wine'.

11 In their observations the accused draw attention to the fact that there is an infinite variety of rosé wines. In their view the adjective 'rosé' means only that the wine is light in colour. They state that rosé wines are to be regarded as forming part of the same family as red wines. Therefore, the mixing of rosé wine and red wine is not prohibited. As regards fermentation, the accused state that oenologists do not all agree as to the rules for the production of rosé wines since those rules vary from one Member State to another. Finally, the accused rely upon Regulation No 3282/73 of the Commission of 5 December 1973 defining the terms 'coupage' and 'the turning into wine' (Official Journal 1973, L 337, p. 20), which treats rosé wine as red wine for the application of that regulation.

12 According to the Italian Government, the requirements which a wine must satisfy in order to be classified as 'table wine' are laid down, pursuant to Article 48 (1) of Regulation No 337/79, in paragraph 11 of Annex II to that regulation. It follows that the characteristics of table wine are laid down without any distinction based on colour. Moreover, it is apparent from Articles 1 and 2 of Council Regulation No 340/79 of 5 February 1979 determining the types of table wine (Official Journal 1979, L 54, p. 60) that under the Community rules the colour of table wine is not treated as a final characteristic of the product. Referring to the judgment of the Court of 13 March 1984 (Case 16/83 *Prantl* [1984] ECR 1299), the Italian Government considers that it is impossible to say that Article 30 of the EEC Treaty is not infringed where national legislation prevents the marketing

under the appellation 'table wine' of a wine produced in accordance with the Community rules which is accepted as a table wine by the legislation of another Member State. Finally, the Italian Government refers to Article 2 of Council Regulation No 355/79 of 5 February 1979 laying down general rules for the description and presentation of wines and grape musts (Official Journal 1979, L 54, p. 99) and infers therefrom that a wine which satisfies the criteria laid down for table wine and intrinsically displays the rosé colour may lawfully be marketed under the appellation 'rosé table wine'.

13 The Commission comments on the various ways of making wine and considers the rules relating specifically to red, rosé and white wines, and states that national practices are applicable only to the extent to which the Community legislature has not exercised its power to adopt measures with respect to the coupage of wines. It considers that certain provisions of Community law, in particular Article 43 of Regulation No 337/79 and Article 2 of Regulation No 355/79, imply that the coupage of red table wine and rosé table wine is a lawful operation. Since the accused complied with the provisions governing the description and presentation of products (namely Article 43 (1) of Regulation No 355/79), the Commission considers that the accused could not be criticized merely because the wine put on to the market had been mixed.

14 In view of this divergence of views, it is appropriate first to note that there are two limbs to the question submitted. The first limb concerns the question whether the Community rules are to be interpreted as authorizing the coupage of a red table wine with a rosé table wine, where those wines originate in more than one Member State, and the marketing of the product resulting from such coupage (blended wine) within the Community. The second limb concerns the question whether the Community rules permit blended wine to be described as rosé table wine from various countries of the European Community.

Coupage and marketing of blended table wine

15 As regards the coupage of table wine, the first point to be noted is that the 28th recital in the preamble to Regulation No 337/79 states that 'coupage is a widespread oenological practice; ... in view of its possible consequences, its control is necessary in order to prevent abuse'. Then Article 43 (i) of the same regulation, which is in Title IV, 'Rules concerning oenological processes and

conditions for release to the market' provides that, as a general rule: 'Where coupage takes place . . . only products resulting from coupage between table wines . . . shall be considered as table wines . . . '. On the other hand, in the terms of the first subparagraph of Article 43 (3), as a general rule: 'Coupage of . . . a white table wine with . . . a red table wine may not yield a table wine'. Under Article 48 (2) of the same regulation, as a general rule, only wine which satisfies, as a minimum, the criteria for a 'table wine' may be offered or disposed of for direct human consumption within the Community.

16 In addition to those rules concerning the coupage of table wine, Regulation No 3282/73 also applies; the first recital in the preamble defines its purpose, which is to ensure that the terms 'coupage' and 'the turning into wine' are interpreted consistently in all Community regulations, and Article 2 (1) provides that coupage means the mixing together of wines or musts coming from: '(a) different States, or . . . (d) wines or musts of different categories'. Article 2 (2) provides that the following are to be considered to be 'different categories of wine or must': 'red wine, white wine and the musts of wines suitable for yielding one of these categories of wine' (first indent) and 'table wine or quality wine p.s.r. [quality wine produced in specified regions] and the musts or wines suitable for yielding one of these categories of wine' (second indent). The last sentence of Article 2 (2) provides that: 'For the purposes of this paragraph, rosé wine is to be regarded as red wine.' By virtue of that provision, rosé wine does not, as far as coupage is concerned, constitute a category distinct from red wine.

17 Finally, the second subparagraph of Article 46 (1) of Regulation No 337/79 provides that 'in particular, blending or coupage shall be prohibited: of table wines with each other . . . if any one of the ingredients does not comply with the requirements of this regulation or with those adopted pursuant to this regulation'.

18 In view of those provisions, it must be acknowledged that, as stated by the accused, the Italian Government and the Commission, under the Community rules the coupage of table wines with each other is regarded as a lawful operation except in certain cases, which include in particular the coupage of red wine with white wine. Since for such purposes rosé wine is treated as falling within the category of red wine, it must be stated that the coupage of red table wine with rosé table wine, where the two types of wine originate in more than one Member State, is authorized under the Community rules. Moreover, since the product resulting from such coupage is a table wine, it must be allowed to move freely

within the Community and the marketing thereof for direct human consumption within the Community must be authorized.

The description of the blended table wine

19 It must first be stated that, although the Community rules lay down certain binding criteria for the various categories of wines, in particular with regard to their acidity and sulphur dioxide content, they contain no oenological definition of red wine, white wine or rosé wine. The Federation therefore claims that the Member States are free to lay down their own rules in that connection.

20 It must be pointed out that Article 2 (1) of Regulation No 355/79, as amended by Council Regulation (EEC) No 1016/81 of 9 April 1981 amending Regulation (EEC) No 355/79 laying down general rules for the description and presentation of wines and grape musts (Official Journal 1981, L 103, p. 7), provides that 'In the case of table wines, the description on the labelling shall include the following information: (a) the words "table wine' ... (d) in the case of ... (iii) table wine resulting from coupage ... of products originating in more than one Member State ... the words "wine from different countries of the European Community"'. By virtue of Article 2 (1) (a) and (d), wine resulting from coupage of red table wine and rosé table wine from different Member States, like the wine at issue in the present case, must bear the words 'table wine' and 'wine from different countries of the European Community' in order to conform to the rules laid down in that regulation.

21 As regards more particularly the appellation 'rosé wine', Article 2 (2) of Regulation No 355/79 provides that 'In the case of table wines, the description on the labelling may be supplemented by the following information: (a) a statement as to whether the wine is red, rosé or white ...'. As stated in the second recital in the preamble to that regulation, the purpose of that information 'should be to supply potential buyers and public bodies responsible for organizing and supervising the marketing of the products concerned with information which is sufficiently clear and accurate to enable them to form an opinion of the products'. The third recital

draws a distinction 'between mandatory information necessary to identify the product and optional information designed mainly to indicate the special properties of the product or to characterize it'.

22 It is for the purpose of giving the consumer the best possible information that Article 43 (1) of Regulation No 355/79 provides that the description and presentation, including any form of advertising, of products held for disposal on the market 'must not be liable to cause confusion as to the nature, origin and composition of the product; this shall apply to the information referred to in Articles 2 . . .'.

23 It is to be inferred from those provisions relating to the description of wines that the Community rules allow a table wine to be described as a rosé wine, provided that it is objectively rosé in colour and may thereby be distinguished from a red wine or a white wine without consumers or other persons being led into error as to the characteristics and properties of the product. However, it is for the national court to say whether the criterion of rosé colour is satisfied in the case of the wine in question.

24 In those circumstances, the Federation's contention that to sell a wine resulting from the coupage of red table wines with rosé table wines under the appellation rosé wine constitutes a deception because that wine does not comply with the requirements of French practice cannot be accepted.

25 As the Court held in its judgment of 13 March 1984 (Case 16/83 *Prantl, supra*), the provisions of Community law on the common organization of the market in wine may be regarded as forming a complete system, 'especially as regards prices and intervention, trade with non-member countries, rules on production and oenological practices and as regards requirements relating to the designation of wines and labelling'. Therefore, subject to any special Community provision to the contrary, the Member States no longer have any powers in that field.

26 It should be noted that no such special provision exists. Although Article 2 (2) (h) of Regulation No 355/79, according to which, in the case of table wines, the description on the labelling may be supplemented by 'details as to the type of product, [and] the particular colour of the table wine, in so far as this information is governed by implementing rules or, failing this, by provisions of the Member State concerned', enables Member States, in the absence of Community rules, to lay down binding rules regarding additional details about wine offered for consumption, that provision does not however grant any authority to Member States to prescribe that a table wine may not be described as 'rosé wine' or be marketed, solely on the ground that the table wine in question is not produced in accordance with local, regional or national practices.

27 Consequently, the answer to the question submitted by the national court must be that the combined provisions of Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine, in particular Articles 43 and 48 thereof, of Commission Regulation No 3282/73 of 5 December 1973 defining the terms 'coupage' and 'the turning into wine', and of Council Regulation No 355/79 of 5 February 1979 laying down general rules for the description and presentation of wines and grape musts, in particular Articles 2 and 43 thereof, must be interpreted as authorizing the coupage of a red table wine with a rosé table wine, where the two wines concerned originate in more than one Member State, and the marketing of the resultant mixture within the Community under the description 'rosé table wine from various countries of the European Communities' in so far as the term 'rosé' is not inconsistent with an objective characteristic of the wine which enables it to be distinguished from red wine or white wine solely by reason of its colour.

Costs

28 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since, so far as the parties to the main proceedings are concerned, these proceedings are in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions submitted to it by the Cour d'appel, Montpellier, by judgment of 7 March 1984, hereby rules:

The combined provisions of Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine, in particular Articles 43 and 48 thereof, of Commission Regulation No 3282/73 of 5 December 1973 defining the terms 'coupage' and 'the turning into wine', and of Council Regulation No 355/79 of 5 February 1979 laying down general rules for the description and presentation of wines and grape musts, in particular Articles 2 and 43 thereof, must be interpreted as authorizing the coupage of a red table wine with a rosé table wine, where the two wines concerned originate in more than one Member State, and the marketing of the resultant mixture within the Community under the description 'rosé table wine from various countries of the European Communities' in so far as the term 'rosé' is not inconsistent with an objective characteristic of the wine which enables it to be distinguished from red wine or white wine solely by reason of its colour.

Mackenzie Stuart Bosco

Pescatore Koopmans Bahlmann

Delivered in open court in Luxembourg on 14 May 1985.

P. Heim
Registrar

G. Bosco
President of the Fourth Chamber