Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

12 November 2019*

(Reference for a preliminary ruling — Regulation (EU) No 1169/2011 — Provision of food information to consumers — Mandatory indication of the country of origin or place of provenance of a foodstuff where failure to indicate this might mislead the consumer — Requirement that foodstuffs originating in territories occupied by the State of Israel bear the indication of their territory of origin, accompanied, where those foodstuffs come from an Israeli settlement within that territory, by the indication of that provenance)

In Case C-363/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 30 May 2018, received at the Court on 4 June 2018, in the proceedings

Organisation juive européenne,

Vignoble Psagot Ltd

v

Ministre de l'Économie et des Finances,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, P.G. Xuereb and L.S. Rossi, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský (Rapporteur), D. Šváby, C. Lycourgos and N. Piçarra, Judges,

Advocate General: G. Hogan,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 9 April 2019,

after considering the observations submitted on behalf of:

– Organisation juive européenne, by J. Buk Lament, avocate,

– Vignoble Psagot Ltd, by F.-H. Briard, Y.-A. Benizri and E. Weiss, avocats,

– the French Government, by D. Colas, B. Fodda, S. Horrenberger, L. Legrand, A.-L. Desjonquères, C. Mosser and E. de Moustier, acting as Agents,

* Language of the case: French.

– Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by S. Kingston, Barrister-at-law,

– the Netherlands Government, by M.K. Bulterman and P. Huurnink, acting as Agents,

– the Swedish Government, by A. Falk, C. Meyer-Seitz and H. Shev, acting as Agents,

– the European Commission, by A. Bouquet, B. De Meester, F. Clotuche-Duvieusart and K. Herbout-Borczak, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

2 The request has been made in proceedings between, on the one hand, Organisation juive européenne and Vignoble Psagot Ltd and, on the other hand, the ministre de l'Économie et des Finances (the French Minister for the Economy and Finance) in relation to the legality of a notice concerning the indication of origin of goods originating in the territories occupied by the State of Israel since June 1967.

Legal context

European Union law

Legislation concerning foodstuffs

3 Recitals 3, 4 and 29 of Regulation No 1169/2011 state:

'(3) In order to achieve a high level of health protection for consumers and to guarantee their right to information, it should be ensured that consumers are appropriately informed as regards the food they consume. Consumers' choices can be influenced by, inter alia, health, economic, environmental, social and ethical considerations.

(4) According to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [OJ 2002 L 31, p. 1] it is a general principle of food law to provide a basis for consumers to make informed choices in relation to food they consume and to prevent any practices that may mislead the consumer.

…

(29) The indication of the country of origin or of the place of provenance of a food should be provided whenever its absence is likely to mislead consumers as to the true country of origin or place of provenance of that product. In all cases, the indication of country of origin or place of provenance should be provided in a manner which does not deceive the consumer …'

4 Article 1 of that regulation, entitled 'Subject matter and scope' provides, in paragraph 1:

'This Regulation provides the basis for the assurance of a high level of consumer protection in relation to food information, taking into account the differences in the perception of consumers and their information needs whilst ensuring the smooth functioning of the internal market.'

5 Article 2(2)(g) of Regulation No 1169/2011 provides that, for the purposes of that regulation, the 'place of provenance' means any place where a food is indicated to come from, and that is not the 'country of origin' as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the Community Customs Code'), before specifying that the name, business name or address of the food business operator on the label shall not constitute an indication of the country of origin or place of provenance of food. In addition, paragraph 3 of that article provides that the 'country of origin' of a food shall refer to the origin of a food as determined in accordance with Articles 23 to 26 of the Community Customs Code.

6 Article 3 of that regulation, entitled 'General objectives', provides, in paragraph 1:

'The provision of food information shall pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, social and ethical considerations.'

7 Under Article 9 of Regulation No 1169/2011, entitled 'List of mandatory particulars':

'1. In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

…

(i) the country of origin or place of provenance where provided for in Article 26;

…'

8 Article 26 of that regulation, entitled 'Country of origin or place of provenance', provides, in paragraph 2:

'Indication of the country of origin or place of provenance shall be mandatory:

(a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;

…'

Customs legislation

9 The Community Customs Code was repealed by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1 and corrigendum OJ 2013 L 287, p. 90; 'the Union Customs Code'), the relevant provisions of which have been applicable since 1 May 2016, in accordance with Article 288(2) thereof.

10 Since that date, references to the Community Customs Code in other Union acts, such as Regulation No 1169/2011, must be construed as references to the corresponding provisions of the Union Customs Code, as is clear from Article 286(3) of the latter.

11 Article 60 of the Union Customs Code, which corresponds to Articles 23(1) and 24 of the Community Customs Code, provides:

'1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.

2. Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.'

The Commission Notice

12 On 12 November 2015, the European Commission published, in the *Official Journal of the European Union*, a notice entitled 'Interpretative Notice on indication of origin of goods from the territories occupied by [the State of] Israel since June 1967' (OJ 2015 C 375, p. 4; 'the Commission Notice').

13 In paragraph 1 of that notice, the Commission states that 'the European Union, in line with international law, does not recognise Israel's sovereignty over the territories occupied by Israel since June 1967, namely the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem, and does not consider them to be part of Israel's territory'.

14 In paragraph 2 of that notice, the Commission states that there is 'a demand for clarity from consumers, economic operators and national authorities about existing Union legislation on origin information of products from Israeli-occupied territories' and that 'the aim is also to ensure the respect of Union positions and commitments in conformity with international law on the non-recognition by the Union of Israel's sovereignty over the territories occupied by Israel since June 1967'.

15 In paragraph 3 of that notice, the Commission states that 'this Notice does not create any new legislative rules' and 'reflects the Commission's understanding of the relevant Union legislation', 'without prejudice to … the interpretation which the Court of Justice may provide'.

16 After referring, in paragraphs 4 to 6 of its notice, to several provisions of EU legislation which require that the origin of various types of products be indicated on those products, the Commission states the following in paragraphs 7 to 10 of that notice:

'(7) Since the Golan Heights and the West Bank (including East Jerusalem) are not part of the Israeli territory according to international law, the indication "product from Israel" is considered to be incorrect and misleading in the sense of the referenced legislation.

(8) To the extent that the indication of the origin is mandatory, another expression will have to be used, which takes into account how these territories are often known.

(9) For products from Palestine that do not originate from settlements, an indication which does not mislead about the geographical origin, while corresponding to international practice, could be "product from the West Bank (Palestinian product)", "product from Gaza" or "product from Palestine".

(10) For products from the West Bank or the Golan Heights that originate from settlements, an indication limited to "product from the Golan Heights" or "product from the West Bank" would not be acceptable. Even if they would designate the wider area or territory from which the product originates, the omission of the additional geographical information that the product comes from Israeli settlements would mislead the consumer as to the true origin of the product. In such cases the expression "Israeli settlement" or equivalent needs to be added, in brackets, for example. Therefore, expressions such as "product from the Golan Heights (Israeli settlement)" or "product from the West Bank (Israeli settlement)" could be used.'

French law

17 The notice to economic operators concerning the indication of origin of goods originating in the territories occupied by the State of Israel since June 1967 ('Avis aux opérateurs économiques relatifs à l'indication de l'origine des marchandises issues des territoires occupés par [l'État d']Israël depuis juin 1967'), published by the French Minister for the Economy and Finance on 24 November 2016 (JORF 2016, No 273, text No 81; 'the Ministerial Notice'), reads as follows:

'Regulation [No 1169/2011] provides that the labelling particulars must be fair. They must not risk misleading the consumer, particularly as to origin of the products. Foodstuffs from the territories occupied by Israel must therefore be labelled to reflect this origin.

Consequently, the [Direction générale de la Concurrence, de la consommation et de la répression des fraudes (Directorate-General for Competition, Consumer Affairs and Fraud Control) (DGCCRF) of the French Ministry of the Economy and Finance] draws the attention of operators to [the Commission Notice].

In particular, it specifies that under international law the Golan Heights and the West Bank, including East Jerusalem, are not part of Israel. Consequently, in order not to mislead the consumer, the labelling of food products must accurately indicate the exact origin of the products, whether their indication is mandatory under Community rules or voluntarily affixed by the operator.

For products from the West Bank or the Golan Heights which originate in settlements, an indication limited to "product originating in the Golan Heights" or "product originating in the West Bank" is not acceptable. Although these terms do refer to the wider area or territory in which the product originates, the omission of the additional geographical information that the product originates from Israeli settlements is likely to mislead the consumer as to the true origin of the product. In such cases, it is necessary to add, in brackets, the term "Israeli settlement" or equivalent terms. Thus, terms such as "product originating in the Golan Heights (Israeli settlement)" or "product originating in the West Bank (Israeli settlement)" may be used.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

18 By two applications lodged on 24 and 25 January 2017, Organisation juive européenne and Vignoble Psagot each brought an action before the Conseil d'État (Council of State, France) seeking the annulment of the Ministerial Notice. In support of their respective claims, they both relied on various pleas in law alleging, inter alia, that that notice did not take into account Regulation No 1169/2011.

19 The Conseil d'État (Council of State) considered, in essence, that the questions raised by the examination of the pleas alleging that the Ministerial Notice disregarded Regulation No 1169/2011 were decisive for the outcome of the two disputes pending before it and that they raised serious difficulties.

20 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does EU law and in particular Regulation No 1169/2011, where indication of the origin of a product falling within the scope of that regulation is mandatory, require, for a product from a territory occupied by the State of Israel since 1967, an indication of that territory and an indication that the product comes from an Israeli settlement if that is the case?

(2) If not, do the provisions of the regulation, in particular those in Chapter VI thereof, allow a Member State to require those indications?'

Consideration of the questions referred

The first question

21 By its first question, the national court asks, in essence, whether Article 9(1)(i) of Regulation No 1169/2011, read in conjunction with Article 26(2)(a) of that regulation, must be interpreted as meaning that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from an Israeli settlement within that territory, the indication of that provenance.

22 In that respect, it should be noted, first, that it follows from Article 9(1)(i) of Regulation No 1169/2011 that the indication of the country of origin or the place of provenance of a food is mandatory where provided for in Article 26 of that regulation.

23 Article 26(2)(a) provides that that indication is mandatory where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of a food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance.

24 In addition, recital 29 of Regulation No 1169/2011, in the light of which that provision must be read, states that, in all cases, an indication of origin or provenance should not deceive consumers.

25 It follows that the country of origin or the place of provenance of a foodstuff must be indicated where failure to indicate this might mislead consumers into believing that that foodstuff has a country of origin or a place of provenance different from its true country of origin or place of provenance. Furthermore, where the origin or provenance is indicated on that foodstuff, it must not be deceptive.

26 Secondly, the concept of 'country of origin' in Article 26(2)(a) of Regulation No 1169/2011 is defined in Article 2(3) of that regulation by reference to the Community Customs Code, which was succeeded by the Union Customs Code, as indicated in paragraph 9 above.

27 Under Article 60 of the Union Customs Code, goods which have either been wholly obtained in a particular 'country' or 'territory' or have undergone their last substantial processing or working in that country or territory are to be regarded as having their origin in that country or territory.

28 As regards the term 'country', it should be noted that it is used numerous times in the TEU and the TFEU as a synonym for the term 'State'. Therefore, in order to ensure the consistent interpretation of EU law, the same meaning should be given to that term in the Union Customs Code and in Regulation No 1169/2011.

29 In addition, the notion of 'State' must itself be understood as referring to a sovereign entity exercising, within its geographical boundaries, the full range of powers recognised by international law (see, to that effect, judgment of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraph 95).

30 As regards the term 'territory', it follows from the alternative nature of the wording in Article 60 of the Union Customs Code that that term refers to entities other than 'countries' and, therefore, other than 'States'.

31 As the Court has already held, such entities include, inter alia, geographic spaces which, whilst being under the jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law (see, to that effect, judgments of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraphs 92 and 95, and of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraphs 62 to 64).

32 In the light of the content of Article 60 of the Union Customs Code, the obligation laid down in Article 26(2) of Regulation No 1169/2011 to indicate the country of origin of a foodstuff, where failure to indicate this might mislead the consumer, thus applies not only to foodstuffs originating in 'countries', as described in paragraphs 28 and 29 above, but also to those originating in 'territories', as referred to in paragraph 31 above.

33 In the present case, the referring court states that the foodstuffs at issue in the main proceedings originate in 'territories occupied by the State of Israel since 1967' and, more specifically, as stated in the Ministerial Notice, in the West Bank, including East Jerusalem, and the Golan Heights.

34 Under the rules of international humanitarian law, these territories are subject to a limited jurisdiction of the State of Israel, as an occupying power, while each has its own international status distinct from that of that State.

35 The West Bank is a territory whose people, namely the Palestinian people, enjoy the right to self-determination, as noted by the International Court of Justice in its Advisory Opinion of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Reports 2004, p. 136, paragraphs 118 and 149). The Golan Heights form part of the territory of a State other than the State of Israel, namely the Syrian Arab Republic.

36 In the light of the foregoing, it must be held that displaying, on foodstuffs such as those at issue in the main proceedings, the indication that the State of Israel is their 'country of origin', when those foodstuffs actually originate in one of the territories referred to in paragraph 33 above, would be liable to deceive consumers.

37 In addition, in order to prevent consumers being misled as to the fact that the State of Israel is present in those territories as an occupying power and not as a sovereign entity within the meaning of paragraph 29 above, it appears necessary to inform them that those foodstuffs do not originate in that State.

38 Consequently, the indication of the territory of origin of foodstuffs such as those at issue in the main proceedings cannot be omitted and must therefore be regarded as mandatory under Articles 9 and 26 of Regulation No 1169/2011.

39 Thirdly and lastly, the concept of 'place of provenance' in Article 26(2)(a) of Regulation No 1169/2011 refers — according to the first sentence of Article 2(2)(g) of that regulation — to the place from which a food comes, but which is not the 'country of origin' of that food. The latter provision specifies, however, that the indication of the name, business name or address of the producer cannot act as an indication of the provenance of that foodstuff.

40 Moreover, in view of the considerations in paragraphs 26 to 32 above, a place of provenance likewise cannot correspond to the 'territory of origin' of a foodstuff.

41 In view of these elements, the concept of 'place of provenance' must be understood as referring to any specific geographical area within the country or territory of origin of a foodstuff, with the exception of a producer's address.

42 In the present case, the question raised by the national court involves, first, determining whether Regulation No 1169/2011 must be interpreted as meaning that the indication that a foodstuff comes from an 'Israeli settlement' located in one of the territories referred to in paragraph 33 above may be regarded as an indication of the place of provenance within the meaning of that regulation.

43 The term 'settlement', because of its generic nature, is likely to refer not to a single place, but to a number of localities. Moreover, that term, in its usual sense, has a demographic dimension beyond its geographical meaning, since it refers to a population of foreign origin.

44 However, these factors do not prevent the term 'settlement' from contributing to the designation of a 'place of provenance' within the meaning of Regulation No 1169/2011, provided that, in a given case, it refers to a specific geographical area, as defined in paragraph 41 above.

45 It follows, in the present case, that the indication that a foodstuff comes from an 'Israeli settlement' located in one of the territories referred to in paragraph 33 above may be regarded as an indication of 'place of provenance' within the meaning of Article 26(2)(a) of Regulation No 1169/2011.

46 In those circumstances, it must be determined, secondly, whether the indication 'Israeli settlement' is mandatory, in the case of foodstuffs such as those at issue in the main proceedings. More specifically, since, as follows from paragraph 38 above, such foodstuffs must bear the indication of their territory of origin, the Court must determine whether they must also bear the indication 'Israeli settlement'.

47 As stated in paragraph 25 above, it is necessary, for that purpose, to verify whether the omission of that indication, with the result that only the territory of origin is mentioned, might mislead consumers as to the true place of provenance of the foodstuffs concerned.

48 In that regard, it should be noted that the settlements established in some of the territories occupied by the State of Israel are characterised by the fact that they give concrete expression to a policy of population transfer conducted by that State outside its territory, in violation of the rules of general international humanitarian law, as codified in the sixth paragraph of Article 49 of the Convention relative to the Protection of Civilian Persons in Time of War, signed in Geneva on 12 August 1949 (*United Nations Treaty Series*, vol. 75, No 973, p. 287), as noted by the International Court of Justice,

with respect to the Occupied Palestinian Territory, in its Advisory Opinion of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Reports 2004, p. 136, paragraph 120). Moreover, that policy has been repeatedly condemned by the United Nations Security Council, as the Advocate General noted in points 53 and 54 of his Opinion, and by the European Union itself. In that context, it should be underlined that, in accordance with Article 3(5) TEU, the European Union is to contribute to the strict observance of international law, including the principles of the United Nations Charter.

49 It should be pointed out that, if a foodstuff from an Israeli settlement bore the indication of one of the territories referred to in paragraph 33 above, without however mentioning that place of provenance, consumers could be led to believe that it comes, in the case of the West Bank, from a Palestinian producer or, in the case of the Golan Heights, from a Syrian producer.

50 Consumers cannot be expected to guess, in the absence of any information capable of enlightening them in that respect, that that foodstuff comes from a locality or a set of localities constituting a settlement established in one of those territories in breach of the rules of international humanitarian law.

51 To that extent, the omission of the indication that a foodstuff comes from an 'Israeli settlement' located in one of the territories referred to in paragraph 33 above is likely to mislead consumers, by suggesting that that food has a place of provenance other than its true place of provenance.

52 That conclusion is supported by the objective of Regulation No 1169/2011, which is, as stated in Article 1(1) thereof, to ensure a high level of consumer protection in relation to food information, taking into account the differences in perception of consumers.

53 It follows from Article 3(1) of Regulation No 1169/2011, and from recitals 3 and 4 of that regulation, in the light of which that provision must be read, that the provision of information to consumers must enable them to make informed choices, with particular regard to health, economic, environmental, social and ethical considerations.

54 However, given the non-exhaustive nature of this list, it should be emphasised that other types of considerations, such as those relating to the observance of international law, may also be relevant in that context.

55 In the present case, it must be acknowledged — as the Advocate General noted, in essence, in points 51 and 52 of his Opinion — that consumers' purchasing decisions may be informed by considerations relating to the fact that the foodstuffs in question in the main proceedings come from settlements established in breach of the rules of international humanitarian law.

56 In addition, the fact that a foodstuff comes from a settlement established in breach of the rules of international humanitarian law may be the subject of ethical assessments capable of influencing consumers' purchasing decisions, particularly since some of those rules constitute fundamental rules of international law (Advisory Opinion of the International Court of Justice of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports 2004, p. 136, paragraphs 155 to 159).

57 Thus, although Articles 9(1)(i) and 26(2)(a) of Regulation No 1169/2011 refer to the indication of the country of origin 'or' the place of provenance, those provisions require, in a situation such as that at issue in the main proceedings, both the indication that a foodstuff originates in one of the territories referred to in paragraph 33 above and the indication that it comes from an 'Israeli settlement', where that foodstuff comes from a settlement within one of those territories, since the omission of that second indication is liable to mislead consumers as to the place of provenance of that foodstuff.

58 In the light of all the foregoing considerations, the answer to the first question must be that Article 9(1)(i) of Regulation No 1169/2011, read in conjunction with Article 26(2)(a) of that regulation, must be interpreted as meaning that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from a locality or a group of localities constituting an Israeli settlement within that territory, the indication of that provenance.

The second question

59 In the light of the answer given to the first question, there is no need to answer the second question.

Costs

60 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 (Grand Chamber) hereby rules:

Article 9(1)(i) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, read in conjunction with Article 26(2)(a) of that regulation, must be interpreted as meaning that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from a locality or a group of localities constituting an Israeli settlement within that territory, the indication of that provenance.

[Signatures]