JUDGMENT OF THE COURT (Second Chamber)

1 July 1999 *

In Case C-14/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretore di Torino, Italy, for a preliminary ruling in the proceedings pending before the Pretura Circondariale di Torino between

Battital Srl

and

Regione Piemonte

on the interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (OJ 1977 L 26, p. 20), as amended, in particular, by Council Directive 91/683/EEC of 19 December 1991 (OJ 1991 L 376, p. 29) and Commission Directive 96/14/Euratom, ECSC, EC of 12 March 1996 (OJ 1996 L 68, p. 24), and of Commission Directive 92/76/EEC of

* Language of the case: Italian.

6 October 1992 recognising protected zones exposed to particular plant health risks in the Community (OJ 1992 L 305, p. 12), as amended by Commission Directive 95/40/EC of 19 July 1995 (OJ 1995 L 182, p. 14) and Commission Directive 96/15/EC of 14 March 1996 (OJ 1996 L 70, p. 35),

THE COURT (Second Chamber),

composed of: G. Hirsch, President of the Chamber, G.F. Mancini and R. Schintgen (Rapporteur), Judges,

Advocate General: F.G. Jacobs,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Battital Srl, by Giorgio Finocchio, of the Savona Bar,

— the Regione Piemonte, by Maria Lacognata and Eugenia Salsotto, of the Turin Bar,

— the Commission of the European Communities, by Francesco Ruggeri Laderchi, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Battital Srl, the Regione Piemonte and the Commission at the hearing on 21 January 1999,

after hearing the Opinion of the Advocate General at the sitting on 11 March 1999,

gives the following

Judgment

1 By order of 18 December 1997, received at the Court on 22 January 1998, the Pretore di Torino (Magistrate, Turin) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (OJ 1977 L 26, p. 20), as amended, in particular, by Council Directive 91/683/EEC of 19 December 1991 (OJ 1991 L 376, p. 29) and Commission Directive 96/14/Euratom, ECSC, EC of 12 March 1996 (OJ 1996 L 68, p. 24), and of Commission Directive 92/76/EEC of 6 October 1992 recognising protected zones exposed to particular plant health risks in the Community (OJ 1992 L 305, p. 12), as amended by Commission Directive 95/40/EC of 19 July 1995 (OJ 1995 L 182, p. 14) and Commission Directive 96/15/EC of 14 March 1996 (OJ 1996 L 70, p. 35).

2 The questions were raised in the course of proceedings between Battital Srl, a company incorporated under Italian law (hereinafter 'Battital'), an importer of plant products from non-member countries, and the Regione Piemonte (the Piedmont Region) concerning a fine imposed on Battital by the Regione Piemonte for having committed an offence under administrative law by importing and holding for sale within Italian territory 250 kg of oranges from South Africa and 680 kg of lemons from Argentina.

The relevant Community legislation

3 According to Article 4(2)(a) of Directive 77/93, as amended by Directive 91/683:

'The Member States shall provide that, from 1 January 1993, the introduction of plants, plant products and other objects listed in Annex III, part B, into the relevant protected zones located in their territory is prohibited.'

4 Article 2(1)(h) of Directive 77/93, as amended by Directive 91/683, defines a 'protected zone' as:

'... a zone in the Community:

— in which one or more harmful organisms referred to in this directive, which are established in one or more parts of the Community, are not endemic or established, despite favourable conditions for them to establish there,

— in which there is a danger that certain harmful organisms will establish themselves, given propitious ecological conditions, for particular crops, despite the fact that these organisms are not endemic or established in the Community,

and which has been recognised, in accordance with the procedure laid down in Article 16a, as fulfilling the conditions set out in the first and second indents...'.

5 Article 16a of Directive 77/93, as inserted by Council Directive 89/439/EEC of 26 June 1989 (OJ 1989 L 212, p. 106), lays down the procedure which enables the Commission to adopt provisions concerning the recognition of protected zones.

6 Annex III to Directive 77/93, as amended by Commission Directive 92/103/EEC of 1 December 1992 (OJ 1992 L 363, p. 1), lists the plants, plant products and other objects the introduction of which is prohibited either in all the Member States (Part A) or in certain protected zones (Part B). Part B contains two columns.

7 The left-hand column, which describes the plants, plant products and other objects to which the ban applies, includes in particular '3. Fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, except *Citrus paradisi* Macf., originating in third countries'. The fruits referred to belong to the family of lemons, oranges and grapefruits.

8 The right-hand column, which lists the protected zones where the ban applies, mentions Italy.

9 Article 1 of Directive 92/76 provides:

'The zones in the Community listed in the Annex are hereby recognised for a period expiring on 31 December 1994 as "protected zones" referred to in the first subparagraph of Article 2(1)(h) of Directive 77/93/EEC, in respect of the harmful organism(s) listed against their names in the Annex.'

10 Article 2 of that directive provides:

'The extension of the recognition beyond the date referred to in Article 1, and any amendment to the list of protected zones referred to in Article 1, shall be made in accordance with the procedure laid down in Article 16a of Directive 77/93/EEC... '.

11 The annex to Directive 92/76 includes Italy, at points (a) 17, (b) 3, (c) 5 and (d) 3, among the zones which are protected against the introduction of 'all unknown non-European organisms harmful to fruit of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids', whether the organism infesting the fruit is an insect, mite or nematode, a bacterium, a fungus or a virus or virus-like organism.

12 As is clear from the sixth recital in the preamble to Directive 92/76, recognition of the protected zones listed in that directive was merely provisional. Initially, the zones were recognised provisionally for a period expiring on 31 December 1994. That date was postponed to 1 July 1995 by Commission Directive 94/61/EC of 15 December 1994 extending the period of provisional recognition of certain protected zones provided for in Article 1 of Directive 92/76/EEC (OJ 1994 L 330, p. 63), which also stated that the extension of recognition was provisional. The period was subsequently extended to 1 April 1996 in connection with, *inter alia*, the recognition of Italy as a protected zone as regards the harmful organisms in question by Directive 95/40, which again stated that the extension of the period of recognition was provisional.

13 Article 1 of Directive 96/15 changed the expiry date for the recognition of certain protected areas. However, as regards the recognition of Italy as a zone protected

against the harmful organisms in question, it confirmed that the expiry date was 1 April 1996, Article 1(1) of the directive providing as follows:

'Directive 92/76/EEC is hereby amended as follows:

1. Article 1, first subparagraph shall be replaced as follows:

> "The zones in the Community listed in the Annex are hereby recognised as 'protected zones' referred to in the first subparagraph of Article 2(1)(h) of Directive 77/93/EEC, in respect of [the] harmful organism(s) listed against their names in the Annex; in the case of points (a) 17, (b) 3, (c) 5 and (d) 3, the said zones are recognised for a period expiring on 1 April 1996..."'.

14 The seventh and eighth recitals in the preamble to Directive 96/15 state as follows:

'Whereas it should be established that the extension of the recognition beyond the dates referred to in Article 1, and any amendment to the list of protected zones referred to in Article 1, shall be made in accordance with the procedure laid down in Article 16a of Directive 77/93/EEC...

Whereas in absence of any extension of the recognition beyond the dates referred to in Article 1, the relevant protected zones cease on these dates to be "protected zones" within the meaning of Directive 77/93/EEC, including its Annexes'.

15 The first subparagraph of Article 2(1) of Directive 96/15 provides that that directive was to be implemented by the Member States with effect from 1 April 1996.

The relevant national legislation

16 Article 8 of Legislative Decree No 536 of 30 December 1992 provides:

'The Ministry of Agriculture and Forests [which became the Ministry of Agricultural Resources] shall be responsible for designating the protected zones by decree on the basis of Community directions...'.

17 Article 9 of that decree provides that any person who brings into Italian territory plants whose introduction is prohibited shall be liable to pay an administrative penalty of between ITL 10 million and ITL 60 million.

18 Article 10 of the Decree of the Ministry of Agriculture and Forests of 18 June 1993 provides:

'The introduction into the relevant protected zones of the plants, plant products and other objects listed in Part B of Annex III is prohibited.'

19 Point (3) of Part B of Annex III prohibits the introduction of 'fruits of *Citrus*, *Fortunella* Swingle, *Poncirus* Raf. and their hybrids, with the exception of those

of *Citrus Paradisi* Macf. Merr, originating in non-member countries'. Part B of Annex III lists Italy as a protected zone.

20 Article 10 of the Decree of the Ministry of Agricultural Resources of 31 January 1996 provides:

'The introduction, marketing and holding in the relevant protected zones of the plants, plant products and other objects listed in Part B of Annex III is prohibited.'

21 Pursuant to an opinion issued by the Directorate-General of Agricultural and Agro-Industrial Policy of the Ministry of Agricultural Resources, the ban under Italian law on the introduction into and marketing in Italy of the plants and plant products in question was extended, by reference to the Decree of 31 January 1996, until the adoption by the Commission of new Community provisions.

22 Annex VI to the Decree of 31 January 1996 corresponds to the Annex to Directive 92/76 and designates the zones which are protected against specified harmful organisms. Points (a) 17, (b) 3, (c) 5 and (d) 3, which referred to Italy as a protected zone in respect of the harmful organisms in question, were repealed with effect from 4 January 1998 by the Ministerial Decree of 27 November 1997, which transposed Directives 96/14 and 96/15 into national law.

The main proceedings

23 On 4 October 1996 the criminal investigation authorities in Turin reported Battital, inside the fruit and vegetable market at Turin, for committing an offence

under administrative law on the ground that it had for sale on Italian territory, a zone which is protected against the importation from non-member countries of plant products belonging to the *Citrus* genus, 250 kg of oranges from South Africa and 680 kg of lemons from Argentina. The citrus fruits were subsequently confiscated and destroyed and the President of the Regione Piemonte imposed on Battital an administrative penalty of ITL 20 million.

24 Battital sought the annulment of that decision before the national court arguing that it was clear from Directives 95/40, 96/14 and 96/15 that, as from 1 April 1996, the zones protected from the importation of citrus fruits from non-member countries had been abolished with the result that the oranges and lemons at issue in the main proceedings could be imported into Italy and sold there.

25 The Regione Piemonte, on the other hand, argues that, under Community legislation, Italy remained a protected zone in respect of the citrus fruits in question.

The questions referred for a preliminary ruling

26 In those circumstances, the Magistrate, Turin, resolved to stay proceedings and to refer the following three questions to the Court for a preliminary ruling:

'1. Having regard to Article 1 of Directive 95/40/EC of 19 July 1995, Article 2 of Directive 96/14/Euratom, ECSC, EC of 12 March 1996 and Article 1 of Directive 96/15/EC of 14 March 1996, does the ban on the importation of organisms of the *Citrus* genus still apply in Italy (or in any region of Italy)?

2. Did that ban cease to apply with effect from 1 April 1996?

3. Is the Ministerial Decree of 31 January 1996 of the Ministry of Agricultural Resources, which implemented Directive 95/40/EC, incompatible, so far as the relevant provisions are concerned, with the discontinuance of the ban on imports into Italian territory (or into any part thereof) of plant organisms of the *Citrus* genus, as would appear to result from the combined effect of Directive 95/40/EC of 19 July 1995, Article 2 of Directive 96/14/Euratom, ECSC, EC of 12 March 1996 and Article 1 of Directive 96/15/EC of 14 March 1996?'

27 It should be observed at the outset that, as the Commission was right to point out, Question 3 concerns the compatibility with Community law of the Italian legislation designed to implement the directives at issue in the main proceedings.

28 It is settled case-law (see, *inter alia*, Case 6/64 *Costa* [1964] ECR 585, at p. 593, Case 13/78 *Eggers* [1978] ECR 1935, paragraph 19, and Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 8) that it is not for the Court, in proceedings brought under Article 177 of the EC Treaty, to rule on the compatibility of provisions of national law with Community law. The Court does, however, have jurisdiction to provide the national court with all such factors relating to the interpretation of Community law as may enable that court to determine the compatibility of those provisions with Community law.

29 In order to answer the questions referred, it is necessary to ascertain until what date Directive 77/93, as amended by Directive 96/14, and Directive 92/76, as amended by Directives 95/40 and 96/15, prohibited the introduction of citrus fruits (*Citrus* L., *Poncirus* Raf., *Fortunella* Swingle and their hybrids) into Italy and to establish whether Community law precludes national authorities from keeping in force a ban on the importation of such fruits after that date.

30 The dispute between the parties to the main action essentially concerns the relationship between Directive 77/93, which imposed the initial ban on the importation of citrus fruits into Italy, and Directive 92/76, which conferred upon Italy until 1 April 1996 the status of protected zone as regards certain harmful organisms.

31 The Regione Piemonte argues that the two directives, as amended, differ in scope, with the result that Directive 92/76 did not amend Directive 77/93. Consequently, the ban on introducing citrus fruits from non-member countries remained in force even after 1 April 1996, the date upon which Italy lost its status as a protected zone under Directive 92/76, as amended by Directives 95/40 and 96/15.

32 Battital and the Commission, on the other hand, submit that, because the ban on importing fruit which is a potential carrier of a harmful organism is merely an adjunct to the ban on importing that organism itself, the expiry of the latter ban automatically causes the first to expire as well. Therefore, once Italy lost its status as a zone protected against the harmful organisms in question, that Member State was no longer entitled to prohibit the importation of citrus fruits.

33 As Advocate General Jacobs observed at paragraphs 28 to 35 of his Opinion, the successive amendments to Directive 77/93 and Directive 92/76 show that their respective provisions are closely linked in that Directive 92/76 was intended to complement Directive 77/93.

34 The concept of protected zones was introduced into Directive 77/93 by Directive 91/683 and it was after that amendment that Directive 92/76 established a list of recognised protected zones within the meaning of Article 2(1)(h) of Directive 77/93. The import ban set out in Part B of Annex III to Directive 77/93 is therefore directly dependent upon recognition of a protected zone under Directive 92/76.

35 Moreover, it is clear from the actual wording of Directive 77/93 that recognition of a protected zone is governed by the procedure set out in Article 16a of that directive, as inserted by Directive 89/439, and cannot be inferred from other provisions.

36 That being so, from the date when recognition of a protected zone within the meaning of the Annex to Directive 92/76 ceased by application of Directives 95/40 and 96/15, the import ban arising under Article 4(2)(a) and Annex III, Part B, of Directive 77/93 became devoid of purpose, even if, at that time, Directive 77/93 had not yet been amended.

37 In addition, it is clear from the objective pursued by Directive 77/93 that the Community legislature focused on protection against the introduction or dissemination within the protected zones of harmful organisms, whilst fruits and plants are regulated only in so far as they may be carriers of such organisms.

38 Thus, as Battital and the Commission were right to point out, the prohibitions on importing plants are ancillary in nature and can no longer be justified once temporary recognition of a zone as protected against organisms which may be harmful to plants ceases.

39 It follows that loss of status as a zone protected against the introduction of harmful organisms automatically implies the expiry of the ban on importing fruits of the *Citrus* genus.

40 More specifically, in a case such as that before the national court, the combined provisions of Directives 77/93 and 92/76, as amended, imply that the ban on importing citrus fruits into Italy came to an end on 1 April 1996.

41 It follows from the foregoing that national legislation which keeps the ban on importing citrus fruits in force beyond that date cannot in any way be justified by Community plant health legislation.

42 Furthermore, other than in the exceptional circumstances referred to in Article 15 of Directive 77/93, as amended by Council Directive 90/168/EEC of 26 March 1990 (OJ 1990 L 92, p. 49) and by Directive 91/683, which are of no relevance in this case, Member States have no jurisdiction unilaterally to adopt measures designed to prohibit the importation of citrus fruits into their territory.

43 Lastly, the provisions of Directive 77/93 and Directive 92/76, as amended, which are in issue in the main action create rights which individuals may themselves assert in proceedings before the national courts. Those provisions are formulated in sufficiently precise and unconditional terms for them to be relied upon by individuals in challenging any provision of national law which is incompatible with those directives.

44 In light of all the foregoing considerations, the questions referred must be answered as follows:

The ban on importing fruits of the *Citrus* genus into the protected zone Italy, set out in Article 4(2)(a) of Directive 77/93, ceased to apply in that Member State on 1 April 1996, the date on which recognition of Italy as a protected zone under Directive 92/76 came to an end by application of Directives 95/40 and 96/15.

Those directives preclude the application of national legislation which keeps such a ban in force beyond that date.

Costs

45 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Pretore di Torino by order of 18 December 1997, hereby rules:

The ban on importing fruits of the *Citrus* genus into the protected zone Italy, set out in Article 4(2)(a) of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products, ceased to apply in that Member State on 1 April 1996, the date on which recognition of Italy as a protected zone under Commission Directive 92/76/EEC of 6 October 1992 recognising protected

zones exposed to particular plant health risks in the Community came to an end by application of Commission Directive 95/40/EC of 19 July 1995 and Commission Directive 96/15/EC of 14 March 1996.

Those directives preclude the application of national legislation which keeps such a ban in force beyond that date.

Hirsch Mancini Schintgen

Delivered in open court in Luxembourg on 1 July 1999.

R. Grass

Registrar

G. Hirsch

President of the Second Chamber