JUDGMENT OF THE COURT
14 July 1988 *

In Case 407/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the pretura di Bolzano (Magistrate's Court, Bolzano) (Italy) of a question for a preliminary ruling in the proceedings pending before that court between

3 Glocken GmbH and **Gertraud Kritzinger**

and

USL Centro-Sud (Local health authority, South-central) and **Provincia autonoma di Bolzano** (the autonomous province of Bolzano) on the interpretation of Articles 30 and 36 of the EEC Treaty, in order to determine whether certain provisions of Italian Law No 580 of 4 July 1967 (*Gazzetta Ufficiale* (Official Gazette) No 189 of 29 July 1967) regulating the manufacture and marketing of pasta products are compatible with those articles,

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

3 Glocken GmbH, by B. Rapp Jung, of the Brussels Bar,

Mrs Kritzinger, by R. Riz, of the Bolzano Bar,

* Language of the Case: Italian.

Provincia autonoma di Bolzano, by G. Drioli, of the Bolzano Bar,

the Commission of the European Communities, by E. De March and E. White, members of its Legal Department,

the Italian Government, by Luigi Ferrari Bravo, Head of the Servizio del Contenzioso Diplomatico, acting as Agent, assisted by I. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

the French Government, by its Agent, G. Guillaume, assisted by B. Botte,

the Netherlands Government, by its Agent, A. Fierstra,

having regard to the Report for the Hearing as supplemented further to the hearing on 12 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 April 1988,

gives the following

Judgment

1 By order of 31 October 1985, which was received at the Court Registry on 9 December 1985, the pretura di Bolzano referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 30 and 36 of the EEC Treaty, with a view to determining whether national provisions prohibiting the sale of pasta products made from common wheat or a mixture of common wheat and durum wheat are compatible with Community law.

2 The questions were raised in proceedings between, on the one hand, the Unità Sanitaria Locale and, on the other, a German manufacturer, 3 Glocken, and an Italian retailer, Gertraud Kritzinger. 3 Glocken had exported to Italy pasta made from a mixture of common wheat and durum wheat, which Mrs Kritzinger resold.

The USL imposed on 3 Glocken and Mrs Kritzinger an administrative penalty for contravention of Article 29 of Law No 580 of 4 July 1967 (*Gazzetta Ufficiale* No 189 of 29 July 1967) regulating the manufacture and marketing of pasta products (hereinafter referred to as 'the law on pasta products'), whereupon they brought proceedings before the pretura di Bolzano.

3 Article 29 of the law on pasta products provides that only durum wheat is to be used for the industrial manufacture of dry pasta, which may be stored for some time before it is consumed. On the other hand, Article 33 and the first paragraph of Article 50 of the same law permit the use of common wheat both for the small-scale preparation of fresh pasta, intended for immediate consumption, and for the preparation of pasta intended for export.

4 The first paragraph of Article 36 of the law on pasta products prohibits the sale in Italy of pasta whose characteristics differ from those laid down in that law, in particular, dry pasta made from common wheat or a mixture of common wheat and durum wheat. The second paragraph of Article 50 of the Law provides that the prohibition on sale also applies to imported pasta.

5 As the Italian Government has explained, there were broadly two considerations which prompted the legislature to require pasta manufacturers to use exclusively durum wheat. On the one hand, the legislature wished to guarantee the quality of the pasta, since pasta made solely from durum wheat cooks much better. On the other hand, it wished to promote the development of durum wheat growing, since the producers of durum wheat have hardly any other market outlet within the Community apart from the market for pasta products and have no real possibility of changing over to other crops in the regions of the Mezzogiorno in which they are established.

6 In support of their actions before the court, 3 Glocken and Mrs Kritzinger asserted that the application of Article 29 of the law on pasta products to imported pasta was incompatible with Article 30 of the EEC Treaty. In those circumstances the pretura di Bolzano decided to stay the proceedings and to refer the following two questions to the Court of Justice for a preliminary ruling:

'1. Is the prohibition of measures having an effect equivalent to quantitative restrictions on imports contained in Article 30 of the EEC Treaty to be interpreted as preventing, in regard to the importation of pasta products,

application of the provisions of Italian law concerning foodstuffs which prohibit the use of common wheat flour in the production of pasta products where those products have been lawfully produced and marketed in another Member State of the European Community?

2. Is the prohibition of arbitrary discrimination or disguised restrictions on trade between the Member States contained in the second sentence of Article 36 of the EEC Treaty to be interpreted as preventing the application of the abovementioned national provisions?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The questions raised by the national court relate, in essence, to whether it is compatible with Articles 30 and 36 of the EEC Treaty to extend to imported products a prohibition, such as that contained in the law on pasta products, on the sale of pasta made from common wheat or from a mixture of common wheat and durum wheat.

(a) Existence of any obstacle to the free movement of goods

9 It is appropriate to recall the consistent case-law of the Court (see primarily the judgment of 11 July 1974 in Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837), according to which the prohibition under Article 30 of the Treaty on measures having equivalent effect to quantitative restrictions on imports covers 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade'.

10 The Court has also consistently held (see primarily the judgment of 20 February 1979 in Case 120/78 *Rewe* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649) that, in the absence of common rules, obstacles to movement within the Community resulting from disparities between national laws relating to the composition of the product must be accepted in so far as those national laws, applying

without distinction to domestic and imported products, are necessary to satisfy mandatory requirements such as the protection of the consumer and fair trading. However, the Court has further held that such laws must be proportionate to the goals pursued and that, if a Member State has at its disposal less restrictive means of attaining the same goals, it is under an obligation to make use of them.

11 It should be observed that a prohibition on the sale of pasta products made from common wheat or from a mixture of common wheat and durum wheat is an obstacle to the importation of pasta products lawfully made in other Member States from common wheat or from a mixture of common wheat and durum wheat. It therefore remains to be determined whether that obstacle may be justified on the grounds of the protection of public health under Article 36 of the Treaty or by virtue of imperative requirements such as those referred to above.

(b) Possibility of justifying the obstacle in question on the grounds of the protection of public health

12 The Italian Government has drawn the Court's attention to the problem of the use of chemical additives and colorants which, it claims, are often used to give pasta products made from common wheat or from a mixture of common wheat and durum wheat the organoleptic characteristics, and in particular the amber colour, which occur naturally in pasta products made exclusively from durum wheat. It argues that the ingestion of large quantities of such chemical additives and colorants can have harmful effects on human health.

13 In reply to a question put by the Court, however, the Italian Government admitted that it had no evidence to support the assertion that pasta products made from common wheat or from a mixture of common wheat and durum wheat necessarily contain chemical additives or colorants.

14 A general prohibition on the marketing of imported pasta products made from common wheat or from a mixture of common wheat and durum wheat is thus in any event contrary to the principle of proportionality and is not justified on the grounds of the protection of public health under Article 36 of the Treaty.

(c) Possibility of justifying the obstacle in question on the ground of certain imperative requirements

15 It was contended that a prohibition on the sale of pasta products made from common wheat or from a mixture of common wheat and durum wheat is necessary to protect the consumer, to ensure fair trading and, lastly, to give full effect to the common organization of the market in the cereals sector.

16 The argument put forward in the first place, namely that the law on pasta products seeks to protect the consumer by endeavouring to ensure the superior quality of pasta, which is an Italian product with a long tradition, cannot be accepted. It is admittedly legitimate to seek to enable consumers who attribute specific qualities to pasta products made exclusively from durum wheat to make their choice in the light of that consideration. Nevertheless, as the Court has already emphasized (judgments of 9 December 1981 in Case 193/80 *Commission* v *Italy* [1981] ECR 3019, and of 12 March 1987 in Case 178/84 *Commission* v *Federal Republic of Germany* [1987] ECR 1227), that possibility may be ensured by means which do not prevent the importation of products which have been lawfully manufactured and marketed in other Member States and, in particular, 'by the compulsory affixing of suitable labels giving the nature of the product sold'.

17 It should further be noted that the Italian legislature is not only permitted to require the listing of the ingredients in accordance with the provisions of the Council directive on the labelling and presentation of foodstuffs (Official Journal 1979, L 33, p. 1) but also entirely at liberty to restrict the description 'pasta made from durum wheatmeal' to pasta products made exclusively from durum wheat.

18 In view of the fact that pasta products are products that may be served in restaurants, it should be added that it is possible to establish a system for informing the consumer of the nature of the pasta which is offered to him.

19 The objection was raised that suitable labels regarding the nature of the product sold would not suffice to make Italian consumers properly aware of the nature of the pasta products they are buying, since 'pasta' suggests to them a product made exclusively from durum wheat.

20 That objection must be rejected. On the one hand, as is clear from Articles 33 and 50 of the law on pasta products, the Italian legislature itself uses the term 'pasta' to refer to products prepared from common wheat or from a mixture of common wheat and durum wheat, namely fresh pasta and pasta products intended for export. On the other, Article 29 defines what is meant by 'pasta made from durum wheatmeal'. The Italian legislature itself thus uses the term 'durum wheatmeal' to specify one type of pasta, which demonstrates that the word 'pasta' in itself is a generic term and in no way indicates that durum wheat alone was used in its production.

21 In the second place, it was contended with reference to pasta products made from common wheat or from a mixture of common wheat and durum wheat that a list of ingredients would not ensure fair trading. It was argued that, as analytical techniques now stand, it is not possible to check the accuracy of the information shown, with the result that pasta producers could state a higher proportion of durum wheat than is actually present in the pasta products. In view of the difference in price between durum wheat and common wheat, producers could therefore charge the consumer a higher price than was justified by the proportion of durum wheat actually used. That being so, it was claimed that only a prohibition on the sale of pasta products made from common wheat is such as to prevent such misrepresentation.

22 That argument must also be rejected. It is sufficient to note that in any event the Italian Government has at its disposal a less restrictive means of ensuring fair trading; by restricting the description 'pasta made from durum wheatmeal' to pasta products made exclusively from durum wheat, it will enable Italian consumers to express their preference for the product to which they are accustomed and will guarantee that the difference in price is indeed justified by a difference in quality.

23 In the third place, it was contended that, by securing a market outlet for growers, the law on pasta products supplements the common agricultural policy in the cereals sector, the object of which is both to afford a guaranteed income for durum-wheat growers by the fixing of an intervention price for durum wheat at a level appreciably higher than that for common wheat and to encourage them, by the granting of direct production aid, to grow durum wheat. The repeal of the law

on pasta products would cause Italian producers to use common wheat for pasta products intended for the Italian market. Durum wheat would thereby be gradually deprived of its market outlets, which would lead to surpluses necessitating further intervention purchases financed out of the Community budget.

24 The Italian Government further claims that, without a guaranteed market outlet, the cultivation of durum wheat would disappear from the regions of the Mezzogiorno where it is practised. That disappearance would entail the abandonment of the land, since the options for changing to other types of crop are virtually non-existent, and would give rise to emigration accompanied by grave social and environmental consequences.

25 It should first be stressed that it is the extension of the law on pasta products to imported products which is at issue, and that Community law does not require the legislature to repeal the law as far as pasta producers established on Italian territory are concerned.

26 It should further be pointed out that, as the Court held in its judgment of 23 February 1988 in Case 216/84 (*Commission* v *French Republic* [1988] ECR 793), once the Community has established a common market organization in a particular sector, the Member States must refrain from taking any unilateral measure even if that measure is likely to support the common policy of the Community. It is for the Community and not for a Member State to seek a solution to the problem described above in the context of the common agricultural policy.

27 Finally, it should be observed that trends in the export markets demonstrate that competition based on quality operates in favour of durum wheat. The statistics supplied to the Court show a steady increase in the market share held by pasta products made exclusively from durum wheat in other Member States in which they already face competition from pasta made from common wheat or from a mixture of common wheat and durum wheat. In those circumstances, it is clear that the fears expressed by the Italian Government as to the disappearance of durum-wheat growing are unfounded.

28 Accordingly, the answer to be given to the national court's question is that the extension to imported products of a prohibition on the sale of pasta made from common wheat or from a mixture of common wheat and durum wheat such as is contained in the Italian law on pasta products, is incompatible with Articles 30 and 36 of the Treaty.

Costs

29 The costs incurred by the Italian, French and Netherlands Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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,

in answer to the questions submitted to it by the pretura di Bolzano by order of 31 October 1985, hereby rules as follows:

The extension to imported products of a prohibition on the sale of pasta made from common wheat or from a mixture of common wheat and durum wheat, such as is contained in the Italian law on pasta products, is incompatible with Articles 30 and 36 of the Treaty.

Bosco Due Moitinho de Almeida Rodríguez Iglesias Koopmans

Everling Bahlmann Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 14 July 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President