JUDGMENT OF THE COURT
15 JUNE 1972[1]

Fratelli Grassi fu Davide v Italian Finance Administration (Reference for a preliminary ruling by the Corte d'Appello, Brescia)[2]

Case 5/72

Summary

1. *Questions referred to the Court for a preliminary ruling — Reference to the Court — Exclusive jurisdiction of national court*
   (EEC Treaty, Article 177)

2. *Agriculture — Common organization of the markets — Cereals — Exports to third countries — Refunds — Payment — Time-limit — Determination according to national law*
   (Regulation No 19 of the Council, Article 20)

3. *Agriculture — Common organization of the markets — Cereals — Regulations Nos 19 and 120/67/EEC of the Council — Scope*

1. According to Article 177 of the Treaty it is for the national court and not the parties to the main action to bring a matter before the Court of Justice. Since the power to formulate the questions to be referred is vested in the national court alone the parties cannot alter the wording of those questions.

2. Under the system instituted by Regulation No 19 of the Council, that is, up to and including 30 June 1967, the Member States were free to decide whether or not to grant refunds on exports of cereals to third countries. Where a Member State exercised this power, the question of determining the period within which the refunds were to be paid was a matter for national law alone.

3. In so far as the system instituted by Regulation No 120/67/EEC of the Council concerning cereals differs from that resulting from Regulation No 19, the new rules relate solely to commercial transactions effected after 30 June 1967.

In Case 5/72

Reference to the Court under Article 177 of the EEC Treaty by the Corte d'Appello, Brescia, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Italian.
2 — CMLR.

FRATELLI GRASSI FU DAVIDE, having its registered office in Cavatigozzi (Province of Cremona in Italy),

and

ITALIAN FINANCE ADMINISTRATION,

on the interpretation

— of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (JO No L 30 of 20 April 1962, p. 933 *et seq.*);

— of Article 16 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33),

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher (Rapporteur) Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco and P. Pescatore, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. According to the first sentence of Article 20(2) of basic Regulation No 19 'in order to permit of exports [of cereals] to third countries on the basis of quotations ruling on the world market, the difference between such quotations and prices in the exporting Member State may be made good by a refund, on terms laid down in accordance with the provisions of Article 26', namely by decision of the Commission after hearing the Management Committee.
This regulation gave rise to a number of implementing measures, and in particular to Regulations Nos 90 and 91 of the Commission of 25 July 1962 on refunds payable in respect of cereal exports and of certain kinds of flour, groats and meal (JO No 66 of 28 July 1962, pp. 1902, 1904).

On 13 June 1967 the Council adopted the basic Regulation No 120/67 which, by establishing from thenceforward a single market for cereals for the whole Community, repealed Regulation No 19 with effect from 1 July 1967 (at Article 33). According to this provision, it was also with effect from that date that 'the system established by this regulation shall apply'. Article 16 of the new regulation provides that 'To the extent necessary to enable the products listed in Article 1 to be exported [to third countries] ... on the basis of quotations or prices for those products on the world market, the difference between those quotations or prices and prices in the Community may be covered by an export refund', which 'shall be granted on application'.
In implementation of Regulation No 120/67, the Council adopted, on 21 June 1967, Regulation No 139/67/EEC (OJ, English Special Edition 1967, p. 88), Article 7 of which provides that the refund is to be paid upon proof that the products have been exported from the Community.

2. The Italian undertaking Fratelli Grassi fu Davide (hereinafter referred to as 'Grassi'), the appellant in the main action, exported several consignments of cereals to third countries during the period between October 1965 and August 1968. On 8 November 1968 it brought an action before the Tribunale di Brescia against the Finance Administration of the Italian Republic for compensation for the damage which it, Grassi, had suffered by reason of the delay in payment of the refunds which it had claimed in respect of the aforementioned exports under the Community rules.
By judgment of 18 March 1971 the Tribunale di Brescia dismissed the action on the ground, *inter alia*, that the relevant Community regulations did not oblige Member States to make the payments in question within a particular period but allowed them to exercise a discretion in this regard. In this matter, the Tribunale held that the judgment of the Court of Justice of 17 February 1970 (Case 31/69, *Commission* v *Italy*, [1970] ECR 25 *et seq.*) —which dismissed the Commission's action for a declaration that the Italian Republic had not paid, within the stipulated period, refunds relating to exports made after 1 July 1967—had merely found that the aforementioned rules 'involve a duty for the States to make the payment within a reasonable period'.

3. Grassi appealed against this judgment to the Corte d'Appello, Brescia, which, by judgment of 24 November 1971, distinguished between exports effected before 1 July 1967, the date of entry into force of Regulation No 120/67, and exports effected after that date. In fact, as regards imports of the former sort, it decided to ask the Court:

'Whether, until 1 July 1967, the provisions of the Treaty and of Community Regulations Nos 19 and 20 of 1962, in conjunction with Article 16 of Regulation No 120/67, required the authorities of Member States to grant refunds, or whether they only authorized them to do so, and whether the said provisions of the Treaty and of the regulations cited allowed the said authorities any right to delay payment'.

As for exports made after 1 July 1967, the Corte d'Appello, overruling in part the contested judgment, ordered the Italian Republic to pay Grassi legal interest on the amounts owed, on the basis of broad principles of national law, without prejudice to the question of liability.

4. The decision making the reference was lodged at the Court Registry on 31 January 1972. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, Grassi, the Government of the Italian Republic and the Commission of the European Communities filed written observations.
After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided that there was no need for any preparatory inquiry.
Grassi, the Government of the Italian Republic and the Commission of the European Communities presented oral argument at the hearing on 17 May 1972.

The Advocate-General delivered his opinion at the hearing on 6 June 1972.

Grassi was represented by Antonio Astolfi and Fausto Capelli, of the Milan Bar, the Italian Government by Adolfo Maresca, Minister Plenipotentiary, assisted by Giorgio Zagari, Deputy Avvocato Generale dello Stato, and the Commission by its Legal Adviser, Armando Toledano-Laredo.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

Grassi submits first that the Corte d'Appello, Brescia, was wrong in basing its decision, in respect of exports effected after 1 July 1967, largely on national law, and in interpreting the judgment of the Court in Case 31/69 as laying down that the Community rule did not, in regard to those exports, prescribe specific time-limits for the payment of refunds.

The national court should have formulated its questions in a manner more suited to the true subject-matter of the dispute, by requesting the Court to give a ruling on whether the systems introduced by Regulations Nos 19 and 120/67 respectively, in conjunction with Articles 5, 40 and 215 of the Treaty, conferred on all exporters of cereals the individual right to require the Member State in question to pay them the refunds as soon as the prescribed formalities have been completed. Despite the restrictive wording of the decision making the reference, the Court is also entitled to reply to the question put in this manner, so as to enable the national court to come to a proper decision.

It is clear from Article 7 of Regulation No 139/67 that the Member States have no discretion whatsoever as to the time-limit for payment and are obliged to pay refunds as soon as the person concerned has supplied proof of export. Moreover, if the Community rules gave such a discretion, they would conflict with the principle of non-discrimination sanctioned by Article 40 of the Treaty.

The judgment of the Court in Case 31/69, already cited, is not inconsistent with these assertions. In fact, that case, which related to Article 169 of the Treaty, concerned the allegation that the Italian Republic had failed in its 'international' obligations, whereas in this case it is the conduct of the State in the field of private law which is in point. The Tribunale and the Corte d'Appello, Brescia, have misinterpreted the reference contained in the said judgment to the 'reasonable period' within which the payment of the refunds must be made. In the same judgment the Court declared that the relevant provisions 'allow the Member States a certain area of discretion, *inter alia*, in fixing the documents which constitute proof of the right to the refund'. The area of discretion is therefore very limited and it has, moreover, in this case, become inapplicable since Grassi has supplied all the necessary documents.

Citing numerous provisions in support of its argument, Grassi states that according to a principle common to all the systems of private law of the Member States, where there is no provision for a specific period within which a payment must be made, it is due immediately.

The *Italian Government* emphasizes first of all that the questions referred to the Court of Justice by the Corte d'Appello, Brescia, concern exclusively the system applicable prior to 1 July 1967.

Under that system, Member States were not required, but merely empowered, to grant refunds to exporters. That emerges clearly from Articles 19(2)(a) and 20(2) of Regulation No 19 and from the recitals in the preamble to and from Article 1 of Regulation No 90. The Italian legislature has in fact exercised this power.

It was only after 1 July 1967, when the system provided for by Regulation No 120/67 entered into force, that the granting of refunds for exports to third countries became compulsory.

Since the Community provisions in force before that date did not create individual

rights, the question of the Corte d'Appello, Brescia, as to whether the national authorities have the power to delay payment is 'thereby rendered nugatory'.

The *Commission* shares, in substance, the opinion expressed by the Italian Government regarding the period before 1 July 1967. Besides the legal provisions cited by the Italian Government, the Commission mentions, in particular, Article 1 of Regulation No 91 and the judgment of the Court of 27 October 1971 (Case 6/71, *Rheinmühlen Düsseldorf* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, [1971] ECR 837) where it is stated that, under the system set up by Regulation No 19, 'the Member States were free ... to refrain from granting refunds, which *a fortiori* included the right to add conditions for the grant of the refund to those prescribed by the Community regulations'. As for the period after 1 July 1967, the judgment of the Court in Case 31/69, already cited, should be interpreted as meaning that exporters are entitled to require the payment of refunds 'within a reasonable period', a term which refers to the period strictly necessary for the accomplishment of the administrative formalities intended to verify that the requirements for payment have been satisfied.

Grounds of judgment

1 By judgment of 24 November 1971, which was received at the Court Registry on 31 January 1972, the Corte d'Appello, Brescia, has referred to the Court of Justice two questions on the interpretation of, *inter alia*, Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals and of Regulation No 120/67/EEC of the Council of 13 June 1967 which finally established such an organization.

2 The first question seeks to ascertain whether in the period before 1 July 1967 the provisions of the Treaty and of Regulation No 19, in conjunction with Article 16 of Regulation No 120/67/EEC, obliged, or merely authorized, Member States to grant refunds on exports to third countries. By the second question the Court is requested to rule whether those provisions allowed the said Member States 'any right to delay payment'.

I — The jurisdiction of the Court

3 Grassi considers that although the questions put relate solely to the period prior to 1 July 1967, the Court should give a ruling also on the system of refunds applicable since that date so as to enable the national court to come to a proper decision.

4 According to Article 177 of the Treaty it is for the national court and not the parties to the main action to bring the matter before the Court of Justice. Since

the power to formulate the questions to be referred is vested in the national court alone the parties cannot alter the wording of those questions. In the present case, it is clear from the text of the judgment in which the Corte d'Appello, Brescia, decided to make the reference to the Court of Justice that the national court has itself reached a decision on the questions relating to the period after 30 June 1967. There is therefore no reason to examine the problems relating to that period.

II — The questions referred to the Court

5 According to Article 20(2) of Regulation No 19, a refund 'may' be granted on exports to third countries. Consequently, Member States were free to refrain entirely from granting the refund. This interpretation is confirmed by Article 1 of Regulation No 90 of the Commission of 25 July 1962 implementing Regulation No 19 which provides that Member States 'may' allow a refund on exports to third countries.

6 As for the second question, neither Regulation No 19 nor the provisions implementing it indicate the period within which refunds were to be paid in the event of a Member State's exercising the power to grant refunds. This problem was therefore a matter for national law alone, since Community law is not concerned with the procedure for a payment which it permitted but did not make compulsory.

7 Article 16 of Regulation No 120/67, to which reference is also made by the national court, has no bearing on the system applicable before 1 July 1967. In fact, according to Article 33 of the said regulation, the system which it prescribes is applicable only as from 1 July 1967, the date of repeal of Regulation No 19 and its implementing provisions. Consequently, in so far as the system instituted by Regulation No 120/67 differs from that resulting from Regulation No 19, the new rules relate solely to commercial transactions effected after 30 June 1967.

III — Costs

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

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of Grassi, the Government of the Italian Republic and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals and Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals;
Having regard to Regulation No 90 of the Commission of 25 July 1962 on refunds payable in respect of cereal exports;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Corte d'Appello, Brescia, by judgment of 24 November 1971, hereby rules:

1. **Under the system instituted by Regulation No 19, that is, up to and including 30 June 1967, the Member States were free to decide whether or not to grant refunds on exports of cereals to third countries;**

2. **Where a Member State exercised this power, the question of determining the period within which the refunds were to be paid was a matter for national law alone.**

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 15 June 1972.

A. Van Houtte
Registrar

R. Lecourt
President