JUDGMENT OF THE COURT (Fifth Chamber)
7 May 1997 *

In Joined Cases C-321/94, C-322/94, C-323/94 and C-324/94,

REFERENCES to the Court under Article 177 of the EC Treaty by the French Cour de Cassation for a preliminary ruling in the criminal proceedings pending before that court against

Jacques Pistre (C-321/94),

Michèle Barthes (C-322/94),

Yves Milhau (C-323/94) and

Didier Oberti (C-324/94)

on the interpretation of Article 2 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) and of Articles 30 and 36 of the EC Treaty,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho, President of the Chamber, C. Gulmann (Rapporteur), D. A. O. Edward, J.-P. Puissochet and M. Wathelet, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Michèle Barthes and on behalf of Jacques Pistre, Yves Milhau and Didier Oberti, by Véronique Jeannin, of the Paris Bar,

— the French Government, by Edwige Belliard, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Philippe Martinet, Foreign Affairs Secretary in the same directorate, acting as Agents,

— the Hellenic Government, by Fokion Georgakopoulos, Deputy Legal Adviser to the State Legal Council, and by Christina Sitara, Legal Attorney at the State Law Council, and Sofia Chala, Special Academic Adviser to the Special Department for Contentious Community Affairs of the Ministry of Foreign Affairs, acting as Agents,

— the Italian Government, by Professor Umberto Leanza, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by José Luis Iglesias Buhigues, Legal Adviser, and Jean-Francis Pasquier, a national civil servant on secondment to its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Michèle Barthes and of Jacques Pistre, Yves Milhau and Didier Oberti; of the French Government; of the Hellenic Government; and of the Commission, at the hearing on 13 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1996,

gives the following

Judgment

1 By judgments of 3 October 1994, received at the Court on 9 December 1994, the French Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 2 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) and of Articles 30 and 36 of the EC Treaty.

2 The question has been raised in criminal proceedings brought against Michèle Barthes and against Jacques Pistre, Yves Milhau and Didier Oberti (hereinafter 'the defendants') for using labels liable to mislead consumers as to the qualities or provenance of products.

3 The defendants are French nationals who manage companies established in Lacaune in the *département* of Tarn in France which manufacture and market cured food products. They are being prosecuted for having marketed in 1991 cooked meat products under a label on which appeared the descriptions [*dénomi-*

nations] 'mountain' [*montagne*; hill country] or 'Monts de Lacaune' when they had not been authorized to make, in relation to those products, specific reference to mountain areas, as required by Article 34 of Law No 85-30 of 9 January 1985 on the development and protection of mountain regions (*Journal Officiel de la République Française* (JORF) of 10 January 1985, p. 320, hereinafter 'Law No 85-30') and Decree No 88-194 of 26 February 1988 laying down the conditions governing the use of indications of 'mountain' provenance for agricultural products and foodstuffs (JORF of 27 February 1988, p. 2747, hereinafter 'Decree No 88-194').

4 By judgments of 26 May 1992 the Police Tribunal, Castres, acquitted the defendants on the ground that the legislation relating to indications of 'mountain' provenance was contrary to the principle of free movement of goods laid down by the EEC Treaty, now the EC Treaty, and that that legislation could not be applied even to national producers because of the risk of reverse discrimination.

5 On appeal by the Public Prosecutor, the Court of Appeal, Toulouse, overturned the judgments of the Castres court and found the defendants guilty. They were sentenced to various fines. The Toulouse court considered that the provisions in question, which allowed indications of 'mountain' provenance to be used only for certain domestic products and were intended to safeguard the interests of producers against unfair competition and to protect consumers against indications liable to mislead them, were not of such a nature as to impede imports notwithstanding the difference of treatment to which they gave rise between domestic products and imported products.

6 The defendants appealed in cassation against those judgments. Before the Cour de Cassation they argued in particular that, by requiring prior administrative authorization before products could be put on sale, the provisions in question constituted measures having an effect equivalent to quantitative restrictions on trade between Member States contrary to Articles 30 and 36 of the Treaty.

7 In its orders for reference the Cour de Cassation explains that the relevant provisions of Law No 85-30 and Decree No 88-194 provide that 'mountain areas' are to include upland areas, areas with slopes of a certain degree of steepness and areas more than 100 metres in altitude in overseas *départements* and that those provisions include significant derogations from the requirement that production processes be local by allowing, in particular, the main raw material of which the product is composed to come from outside the geographical area or by allowing the product to be manufactured partly outside that area.

8 The Court of Cassation also refers to Regulation No 2081/92 and points out that this regulation, which entered into force on 26 July 1993, restricts protection of indications of provenance to products which originate in a defined region, which possess a specific quality or other characteristic attributable to that geographical origin and the production of which takes place in the region, and establishes a special procedure for Community authorization of existing names.

9 Considering that the question thus arose as to the compatibility of Law No 85-30 and of Decree No 88-194 with the provisions of Regulation No 2081/92, which appeared to be more restrictive, the Cour de Cassation stayed proceedings and referred the following question to the Court for a preliminary ruling:

'Do the combined provisions of Articles 30 and 36 of the EC Treaty and Article 2 of Council Regulation (EEC) No 2081/92 of 14 July 1992 preclude application of national legislation such as that enacted in Law No 85-30 of 9 January 1985 and in its implementing Decree No 88-194 of 26 February 1988?'

10 In replying to this question, after setting out the main provisions of the domestic legislation at issue, the first point to be considered is the interpretation of Regulation No 2081/92. Although that regulation entered into force after the events giving rise to the prosecutions in the main proceedings, it could affect the outcome of those proceedings because of the principle of French domestic law that a new law, more favourable to the accused, enacted after the events giving rise to the

prosecution, must be given retroactive effect. If it appears that Regulation No 2081/92 does not preclude application of domestic legislation such as that in question in the main proceedings, it will then be necessary to determine whether Articles 30 and 36 of the Treaty preclude their application.

The domestic legislation in question

11 According to Article 1 of Law No 85-30, 'mountain areas form a single geographical, economic and social entity whose terrain, climate and natural and cultural resources require the framing and implementation of a specific development, planning and protection policy ...'. The Law provides for various measures in this regard, including protection of the description 'mountain'.

12 Articles 3 and 4 of Law No 85-30 define 'mountain areas'. Article 3 provides:

'Mountain areas are characterized by significant disadvantages making living conditions more difficult and restricting pursuit of certain economic activities. They comprise, in metropolitan France, municipalities or parts of municipalities characterized by considerable limitation of the possibilities of using, and a considerable increase in the costs of working, the land as a result of:

(i) the existence, owing to altitude, of very difficult climatic conditions resulting in a considerably shortened growing season; or

(ii) the presence, at lower altitudes, in most of the region, of steep slopes making mechanization impossible or requiring the use of very expensive special equipment; or

(iii) a combination of both of these factors when the extent of the disadvantage, resulting from each one of them, taken separately, is less marked; in this case, the disadvantage resulting from this combination of factors must be equivalent to that arising from the situations referred to under (i) and (ii) above.

Each area shall be defined by interministerial order.'

13 Article 4 defines 'mountain areas' in the overseas *départements*.

14 Article 34, which is in Section IV of Title III of the Law, on development of quality agricultural products and foodstuffs, provided, in the version applicable at the material time:

'Indications of "mountain" provenance and geographical references specific to mountain areas within the meaning of this Law, such as the names of a massif, a peak, a valley, a municipality or a *département*, shall be protected. Such indications and references may be used, in respect of any product placed on the market, only under conditions laid down by decree adopted after consulting the Conseil d'État and after hearing the views of the representative trade organizations in matters concerning quality certification. The decree shall lay down, in particular, the manufacturing methods, the place of manufacture and the origin of the raw materials allowing the aforementioned geographical references to be used.'

15 Decree No 88-194 lays down the conditions which products, raw materials and manufacturing methods must satisfy in order to qualify for indications referring to mountains or to a specific geographical area.

16 According to Article 2 of the decree, the geographical area of production, breeding, fattening, slaughter, preparation, manufacture, refining and packaging of the products in question as well as the place of origin of the raw materials used in the making of processed products must be situated in the mountain areas defined in conformity with the conditions laid down in Articles 3 and 4 of the Law.

17 Article 3 of Decree No 88-194 lays down exceptions to Article 2. By virtue of those exceptions, the requirement that raw materials should come from mountain areas does not apply to raw materials which, for natural reasons, are not produced in those areas and the place of slaughter of animals used in the making of processed meat products and the place of slaughter and packaging of meats sold in the fresh state need not be situated in the mountain areas as defined by Articles 3 and 4 of Law No 85-30.

18 According to Article 4 of Decree No 88-194, the products in question must be produced, prepared or elaborated in compliance with manufacturing methods determined by joint ministerial orders of the Minister for Agriculture and the Minister for Consumer Affairs following advice from the National Labelling Commission and the Regional Commissions for Quality Food Products.

19 Article 5 of Decree No 88-194 provides: 'Authorization to use the indication "mountain provenance" or any specific geographical reference to mountain areas shall be granted by means of a joint order of the Minister for Agriculture and the Minister for Consumer Affairs after hearing the views of the Regional Commission for Quality Food Products.' It further provides that 'the beneficiary of the authorization shall place a distinctive sign upon his products as specified by the Minister for Agriculture'.

20 The participants in the proceedings before the Court, and in particular the defendants, the French Government and the Commission, have given their views on how the national legislation in question is to be characterized.

21 The defendants submit that the conditions to which use of the description 'mountain' is subject are too loose and too flexible for that description to be regarded as a geographical indication within the meaning of Article 2 of Regulation No 2081/92. The description is not justified by the intrinsic qualities of the products; it is simply informative, referring to a geographical feature characterized by a greater or lesser altitude. The term is wholly descriptive, generic and undefined. The defendants add that the real purpose of the national legislation is to provide an outlet for products from mountain areas by affording them some protection by means of a fancy name.

22 The French Government submits that the description 'mountain' is more akin to a quality description than to an indication of provenance. The objective and quite strict conditions governing the preparation and manufacture of foodstuffs that may bear the word 'mountain' on their labelling show that the aim of the legislation is to guarantee to the consumer, by the use of that word, that certain requirements concerning the quality of the products have been complied with. The purpose of the conditions laid down by Article 2 of Decree No 88-194 is, in particular, to provide the consumer with the assurance that a product bearing the description 'mountain' does indeed have the qualities associated by the consumer with products coming from mountain areas. The domestic legislation therefore makes grant of authorization to use the description depend on the intrinsic characteristics of the products. It is in fact legislation which is designed to ensure that consumers receive accurate information and at the same time seeks to promote products from mountain areas.

23 The Commission essentially takes the same view of the domestic legislation as the French Government. It considers that the description 'mountain' may be likened to a simple indication of provenance which, having regard to the provisions of

Decree No 88-194, constitutes a quality label aimed at promoting products from mountain areas, since an origin of this kind increases a product's attraction to consumers.

Regulation No 2081/92

24 Since the question raised by the national court is whether the regulation precludes application of domestic legislation such as that at issue in these cases, the purpose and main provisions of the regulation must be examined.

25 The seventh and ninth recitals in the preamble to Regulation No 2081/92 state:

— ... there is diversity in the national practices for implementing registered designations of origin and geographical indications; ... a Community approach should be envisaged; ... a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes;

— ... the scope of this Regulation is limited to certain agricultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists; ... however, this scope could be enlarged to encompass other products or foodstuffs.

26 Article 2(2) of Regulation No 2081/92 provides:

'(a) *designation of origin:* means the name [*dénomination*] of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

(b) *geographical indication:* means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— which possess a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.'

27 Article 4(1) of Regulation No 2081/92 provides: 'To be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification'. According to Article 4(2), the product specification is to include in particular 'the details bearing

out the link with the geographical environment or the geographical origin within the meaning of Article 2(2)(a) or (b), whichever is applicable'.

28 Article 8 of the regulation provides: 'The indications PDO, PGI or equivalent traditional national indications may appear only on agricultural products and foodstuffs that comply with this Regulation'.

29 Article 13 provides that names registered by the Commission are to be protected against, *inter alia*, any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name.

30 Article 13(2) provides that, if certain conditions are complied with, Member States may, however, maintain national measures authorizing the use of the expressions referred to in paragraph 1(b) for a period of not more than five years after the date of publication of the regulation.

31 It is accordingly clear from Regulation No 2081/92 that the protection of designations of origin and of geographical indications presupposes registration, which in turn requires that the products in question fulfil the conditions laid down by the regulation, in particular those relating to the direct link between the quality or characteristics of the product for which authorization is sought and its specific geographical origin.

32 The participants in the proceedings before the Court observe that the domestic legislation at issue in the main proceedings does not make authorization to use the description 'mountain' subject to such a link so that the names which it protects do not correspond to any of the definitions contained in Article 2 of Regulation No 2081/92.

33 According to the defendants, it follows that the regulation precludes application of the domestic legislation in question. In their view, a Member State can no longer allow an indication of provenance not permitted by the regulation to be used in respect of a product.

34 The French Government and the Commission, on the other hand, consider that, if legislation such as that in question in the main proceedings falls outside the ambit of Regulation No 2081/92, it is not contrary to that regulation.

35 As to those arguments, domestic legislation such as that in question in the main proceedings, which lays down conditions governing the use, for agricultural products and foodstuffs, of the description 'mountain', cannot be regarded as covering a designation of origin or a geographical indication within the meaning of Regulation No 2081/92. The description 'mountain' is quite general in character and transcends national frontiers, whereas, according to Article 2 of Regulation No 2081/92, a direct link must exist between the quality or characteristics of the product and its specific geographical origin.

36 Nor, more generally, is the description 'mountain' an indication of provenance as defined by the Court in its case-law on Articles 30 and 36 of the Treaty. According to that case-law, an indication of provenance is intended to inform the consumer that a product bearing such an indication comes from a particular place, region or country (judgment in Case C-3/91 *Exportur* [1992] ECR I-5529, paragraph 11).

37 In those circumstances, as the French Government and the Commission have submitted, domestic legislation such as that in question in the main proceedings, which does no more than confer general protection on a description evoking in the

mind of the consumer qualities linked in an abstract manner with the mountain origin of the products in question, are too remote from the substantive subject-matter of Regulation No 2081/92 for that regulation to preclude the maintenance of such legislation.

38 It makes no difference in that regard that the domestic legislation in question protects not only the general description 'mountain' as such but also protects, under the same conditions, specific geographical references to mountain areas, such as a reference to 'Monts de Lacaune'.

39 As the Advocate General points out in paragraph 30 of his Opinion, although the name 'Monts de Lacaune' is the name of a specific mountain area and could accordingly be registered under Regulation No 2081/92 if the links between the characteristics of the product in question and that area were to fulfil the requirements of the regulation, such links are not necessary for obtaining authorization to use that name under the French legislation in question. In fact, that legislation, as can be seen, protects this type of geographical reference only in so far as the reference suggests 'mountain origin', and not in so far as it relates to specific mountain areas.

40 It must therefore be held that Regulation No 2081/92 does not preclude application of domestic rules, such as those laid down by Article 34 of Law No 85-30 and Decree No 88-194, which lay down the conditions governing the use of the description 'mountain' in relation to agricultural products or foodstuffs.

Articles 30 and 36 of the Treaty

41 As regards the second part of the question, the French Government and the Commission point out that the facts in question in the main proceedings are confined to French territory since the prosecutions in question have been brought against French nationals and concern French products marketed on French territory. According to the French Government, the prosecutions do not therefore fall within the ambit of Articles 30 and 36 relating to the free movement of goods between Member States, so that it is not necessary to answer the question whether domestic legislation such as that in question in the main proceedings is compatible with Articles 30 and 36.

42 That argument cannot be accepted.

43 According to settled case-law (judgment in Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5), the prohibition laid down in Article 30 of the Treaty covers all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.

44 Accordingly, whilst the application of a national measure having no actual link to the importation of goods does not fall within the ambit of Article 30 of the Treaty (judgment in Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575, paragraph 9), Article 30 cannot be considered inapplicable simply because all the facts of the specific case before the national court are confined to a single Member State.

45 In such a situation, the application of the national measure may also have effects on the free movement of goods between Member States, in particular when the

measure in question facilitates the marketing of goods of domestic origin to the detriment of imported goods. In such circumstances, the application of the measure, even if restricted to domestic producers, in itself creates and maintains a difference of treatment between those two categories of goods, hindering, at least potentially, intra-Community trade.

46 The French Government points out that the national legislation in question in the main proceedings is not applied by its authorities to products imported from other Member States. Since its entry into force in 1988, no prosecution has been brought with respect to products imported from Member States bearing the indication 'mountain'. In those circumstances, it cannot be argued that the legislation in question actually constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty. The French Government accepts, however, that Article 34 of Law No 85-30 does not expressly exclude from its scope products imported from other Member States, so that imported products bearing indications referring to mountain areas could be held to have been put on the market in breach of the legislation in question if the relevant authorization has not been obtained for them.

47 The French Government adds that, in so far as application of its domestic legislation may constitute an obstacle to free movement of goods, it is justified on grounds relating to consumer protection and fair trading.

48 Since the French Government has accepted that the domestic legislation in question could be applied to products imported from other Member States, it follows, first, that it constitutes an obstacle to intra-Community trade for the purposes of Article 30 of the Treaty.

49 Next, legislation such as that in question in the main proceedings discriminates against goods imported from other Member States in so far as it reserves use of the description 'mountain' to products manufactured on national territory and made from domestic raw materials (see, to this effect, the judgment in Case 13/78 *Eggers* [1978] ECR 1935, paragraph 25).

50 It is clear from Article 2 of Decree No 88-194 and from Articles 3, 4 and 5 of Law No 85-30 that, in order for the description 'mountain' or specific geographical references to mountain areas to be used in relation to a product, its production, preparation, manufacture and packaging must be carried out in mountain areas situated on French territory. It is thus apparent that the legislation does not enable imported products to fulfil the conditions to which authorization to use the description 'mountain' is subject.

51 Similarly, grant of the authorization is, according to Article 2 of Decree No 88-194, dependent on the use, in the manufacture of processed products, of raw materials which come from mountain areas situated on French territory. According to that provision, imported products may not therefore be used in the manufacture of processed products bearing the description 'mountain'.

52 According to settled case-law, domestic legislation of that kind, since it is discriminatory in character, may be justified only on one of the grounds mentioned in Article 36 of the Treaty (see, to this effect, the judgment in Case 113/80 *Commission* v *Ireland* [1981] ECR 1625, paragraphs 8 and 11).

53 In the present case, the legislation concerned cannot be justified on any of the grounds listed in Article 36. Of those grounds, only protection of industrial and commercial property, in the sense of protection of indications of provenance, could be relevant. However, it is clear from paragraph 36 of this judgment that the description 'mountain', as protected by the domestic legislation in question, cannot be characterized as an indication of provenance.

54 The answer to the second part of the question must therefore be that Article 30 of the Treaty precludes application of domestic rules, such as those laid down by Article 34 of Law No 85-30 and Decree No 88-194, which restrict use of the description 'mountain' to products manufactured on national territory and prepared from domestic raw materials.

55 In these circumstances, there is no need to examine the question whether and, if so, on what conditions domestic rules similar to those contained in the relevant French legislation but not entailing any discrimination against products imported from other Member States could meet the requirements of Articles 30 and 36 of the Treaty.

Costs

56 The costs incurred by the French, Hellenic and Italian Governments and by the Commission of the European Communities, which have 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 (Fifth Chamber),

in answer to the question referred to it by the French Cour de Cassation by judgments of 3 October 1994, hereby rules:

1. **Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs does not preclude application of domestic rules, such as those laid down by Article 34 of Law No 85-30 of 9 January 1985 and Decree No 88-194 of 26 February 1988, which lay down the conditions governing the use of the description 'mountain' in relation to agricultural products and foodstuffs.**

2. **Article 30 of the EC Treaty precludes application of domestic rules, such as those laid down by Article 34 of Law No 85-30 and Decree No 88-194, which restrict use of the description 'mountain' to products manufactured on national territory and prepared from domestic raw materials.**

Moitinho de Almeida Gulmann Edward

Puissochet Wathelet

Delivered in open court in Luxembourg on 7 May 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber