

JUDGMENT OF THE COURT

22 September 1988 *

In Case 286/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel (Court of Appeal), Colmar, for a preliminary ruling in the proceedings pending before that court between

Ministère public (Public Prosecutor's Office)

and

Gérard Deserbais

on the interpretation of Article 30 *et seq.* of the EEC Treaty, having regard to national legislation protecting the trade name of a type of cheese in accordance with the International Convention on the Use of Designations of Origin and Names for Cheeses signed at Stresa on 1 June 1951,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodriguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Gérard Deserbais, the accused and appellant in the main proceedings, by Messrs Merckel, Ambach et associés, of the Strasbourg Bar, in the written procedure, and by P. Peguet at the hearing,

* Language of the Case: French.

the Commission of the European Communities, by its Legal Adviser, Peter Kalbe, acting as Agent, in the written procedure, and by C. Durand, a member of its Legal Department, acting as Agent, at the hearing,

the Government of the Netherlands, by E. F. Jacobs, Secretary-General of the Ministry of Foreign Affairs, acting as Agent, in the written procedure, and by Mr Fiestra, acting as Agent, at the hearing,

having regard to the Report for the Hearing and further to the hearing on 2 February 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 March 1988,

gives the following



Judgment

- 1 By judgment of 30 October 1986, which was received at the Court on 20 November 1986, the cour d'appel, Colmar, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 30 *et seq.* of the EEC Treaty, having regard to national legislation protecting the trade name of a type of cheese.
- 2 The question was raised in criminal proceedings brought against Gérard Deserbais, the director of a dairy products undertaking, for importing into and marketing in France under the name 'Edam' a cheese from the Federal Republic of Germany having a fat content of 34.3%, whereas under French legislation the use of the name 'Edam' is restricted to a type of cheese having a minimum fat content of 40%. That legislation was adopted pursuant to the International Convention on the Use of Designations of Origin and Names for Cheeses signed, *inter alios*, by France, at Stresa on 1 June 1951 (published in France in the *Official Journal of the French Republic* (JORF) of 11 June 1952, p. 5821, hereinafter referred to as 'the Stresa Convention').

- 3 It appears from the documents before the Court that Mr Deserbais was found guilty of and fined under the applicable French legislation for the offence of unlawful use of a trade name ('usurpation de dénomination').
- 4 The accused in the main proceedings brought an appeal before the cour d'appel, Colmar, contending in substance that since German Edam was lawfully and traditionally produced and marketed in the Federal Republic of Germany the French authorities could not prevent its importation into France, provided that the consumer was given sufficient information, or rely upon the Stresa Convention in order to avoid the application of the Community provisions.
- 5 The cour d'appel noted that it was undisputed that the product at issue was lawfully and traditionally produced and marketed in the Federal Republic of Germany under the name 'Edam' and that adequate information for consumers was assured by the provision of the requisite information on the label affixed to the product.
- 6 Considering that the decision to be given depended on the interpretation of Article 30 *et seq.* of the EEC Treaty 'having regard to the International Convention on the Use of Names for Cheeses' the cour d'appel, Colmar, stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Must Article 30 *et seq.* of the EEC Treaty be interpreted as meaning that national legislation which, for the purpose of protecting a trade name,

(1) restricts that trade name to national products or those of another State, to the exclusion of the products of other Member States,

(2) makes the right to use the trade name of a cheese imported from a Member State conditional on the observance of a minimum fat content, even though the imported cheese is lawfully and traditionally produced and marketed in its country of origin in accordance with different technical and quality requirements

constitutes a quantitative restriction on imports or a measure having equivalent effect thereto?'

- 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 submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 8 The Court is requested to expound, with respect to circumstances such as those of the present case, its previous decisions on the prohibition of measures having equivalent effect within the meaning of Article 30 of the Treaty. According to those decisions, in the absence of common rules on the marketing of the products in question, obstacles to free movement within the Community resulting from disparities in national legislation must be accepted in so far as the national rules, applying without distinction to domestic and imported products, can be justified as being necessary in order to satisfy imperative requirements relating *inter alia* to consumer protection and fair trading.
- 9 In order to reply to the question submitted by the national court, it must be observed in the first place, as is apparent from the order for reference, that the designation 'Edam' is not an appellation of origin or an indication of origin, terms which, as has been held by the Court (see the judgment of 20 February 1975 in Case 12/74 *Commission v Germany* [1975] ECR 181), describe products coming from a specific geographical area. It is merely the name under which a type of cheese is sold. Moreover, in the Stresa Convention, the word 'Edam' does not appear among the appellations of origin but among the 'names' of cheeses.
- 10 In that connection, the national court starts from the premise that the cheese in question, containing 34% fat, has been lawfully and traditionally produced in the Federal Republic of Germany under the name 'Edam' in accordance with the laws and regulations applicable to it there, and that consumers' attention is adequately drawn to that fact by the labelling.
- 11 It must also be stated that at the present stage of development of Community law there are no common rules governing the names of the various types of cheeses in the Community. Accordingly, it cannot be stated in principle that a Member State

may not lay down rules making the use by national producers of a name for a cheese subject to the observance of a traditional minimum fat content.

- 12 However, it would be incompatible with Article 30 of the Treaty and the objectives of a common market to apply such rules to imported cheeses of the same type where those cheeses have been lawfully produced and marketed in another Member State under the same generic name but with a different minimum fat content. The Member State into which they are imported cannot prevent the importation and marketing of such cheeses where adequate information for the consumer is ensured.
- 13 The question may arise whether the same rule must be applied where a product presented under a particular name is so different, as regards its composition or production, from the products generally known by that name in the Community that it cannot be regarded as falling within the same category. However, no situation of that kind arises in the circumstances described by the national court in this case.
- 14 The Netherlands Government points out in this regard that consumer protection and fair trading require observance of international agreements concerning the use of the name of a particular product. Consequently, each Member State could make the right to use the name 'Edam' subject to compliance with the requirements laid down by the Stresa Convention and the *Codex Alimentarius*, drawn up jointly by the Food and Agriculture Organization and the World Health Organization, both of which instruments lay down a minimum fat content of 40% for that type of cheese.
- 15 It must be observed that the rules of the *Codex Alimentarius* on the composition of certain foodstuffs are in fact intended to provide guidance for defining the characteristics of those foodstuffs. However, the mere fact that a product does not wholly conform with the standard laid down does not mean that the marketing of it can be prohibited.

- 16 The Stresa Convention, it should be recalled, was signed before the EEC Treaty entered into force and, of the present Member States, only Denmark, France, Italy and the Netherlands are parties to it.
- 17 It must also be borne in mind that, as the Court has already held, the purpose of the first paragraph of Article 234 of the Treaty is to lay down, in accordance with the principles of international law, that the application of the Treaty does not affect the duty of the Member State concerned to respect the rights of non-member countries under a prior agreement and to perform its obligations thereunder (see in particular the judgment of 14 October 1980 in Case 812/79 *Attorney General v Burgoa* [1980] ECR 2787).
- 18 Consequently, provided that, as in the present case, the rights of non-member countries are not involved, a Member State cannot rely on the provisions of a pre-existing convention of that kind in order to justify restrictions on the marketing of products coming from another Member State where the marketing thereof is lawful by virtue of the free movement of goods provided for by the Treaty.
- 19 It must therefore be stated, in reply to the question submitted, that Article 30 *et seq.* of the Treaty must be interpreted as precluding a Member State from applying national legislation making the right to use the trade name of a type of cheese subject to the observance of a minimum fat content to products of the same type imported from another Member State when those products have been lawfully manufactured and marketed under that name in that Member State and consumers are provided with proper information.

Costs

- 20 The costs incurred by the Netherlands Government and the Commission of the European Communities, 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 action before the national court, the decision on costs is a matter for that court.

On those grounds

THE COURT,

in reply to the question submitted to it by the cour d'appel, Colmar, by judgment of 30 October 1986, hereby rules:

Article 30 *et seq.* of the Treaty must be interpreted as precluding a Member State from applying national legislation making the right to use the trade name of a type of cheese subject to the observance of a minimum fat content to products of the same type imported from another Member State when those products have been lawfully manufactured and marketed under that name in that Member State and consumers are provided with proper information.

Mackenzie Stuart

Bosco

Due

Moitinho de Almeida

Rodríguez Iglesias

Koopmans

Everling

Bahlmann

Galmot

Kakouris

Joliet

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 22 September 1988.

J.-G. Giraud

Registrar

A. J. Mackenzie Stuart

President