



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 June 2015*

(Reference for a preliminary ruling — Community plant variety rights — Regulation (EC) No 2100/94 — Derogation provided for in Article 14 — Use by farmers of the product of the harvest for propagating purposes without the holder's authorisation — Farmers under an obligation to pay equitable remuneration for such use — Period within which that remuneration must be paid in order to be able to benefit from the derogation — Whether it is possible for the holder to have recourse to Article 94 — Infringement)

In Case C-242/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Mannheim (Germany), made by decision of 9 May 2014, received at the Court on 19 May 2014, in the proceedings

SaatgutTreuhandverwaltungs GmbH

v

Gerhard und Jürgen Vogel GbR,

Jürgen Vogel,

Gerhard Vogel,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos (Rapporteur), Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Saatgut-Treuhandverwaltungs GmbH, by K. von Gierke and E. Trauernicht, Rechtsanwälte,
- Gerhard und Jürgen Vogel GbR, Mr G. Vogel and Mr J. Vogel, by J. Beismann, and M. Miersch, Rechtsanwälte,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,

* Language of the case: German.

— the Netherlands Government, by M. Bulterman, C. Schillemans and J. Langer, acting as Agents,

— the European Commission, by G. von Rintelen and I. Galindo Martín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 March 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of certain provisions of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14).
- 2 The request has been made in proceedings between Saatgut-Treuhandverwaltungs GmbH ('STV'), which represents the interests of the holder of Community plant variety rights in respect of the winter barley variety 'Finita', and Gerhard und Jürgen Vogel GbR, an agricultural company, Mr G. Vogel and Mr J. Vogel, the personally liable partners in that company (together, 'the Vogels') concerning the Vogels' planting of that variety.

Legal context

Regulation No 2100/94

- 3 Article 13 of Regulation No 2100/94, which is entitled 'Rights of the holder of a Community plant variety right and prohibited acts', provides as follows:

'1. A Community plant variety right shall have the effect that the holder or holders of the Community plant variety right, hereinafter referred to as "the holder", shall be entitled to effect the acts set out in paragraph 2.

2. Without prejudice to the provisions of Articles 15 and 16, the following acts in respect of variety constituents, or harvested material of the protected variety, both referred to hereinafter as "material", shall require the authorisation of the holder:

(a) production or reproduction (multiplication);

...

The holder may make his authorisation subject to conditions and limitations.

...'

- 4 Article 14 of Regulation No 2100/94, entitled 'Derogation from Community plant variety right', is worded as follows:

'1. Notwithstanding Article 13(2), and for the purposes of safeguarding agricultural production, farmers are authorised to use for propagating purposes in the field, on their own holding, the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right.

2. The provisions of paragraph 1 shall only apply to agricultural plant species of:

...

(b) Cereals:

...

Hordeum vulgare L. — Barley

...

3. Conditions to give effect to the derogation provided for in paragraph 1 and to safeguard the legitimate interests of the breeder and of the farmer shall be established, before the entry into force of this Regulation, in implementing rules pursuant to Article 114, on the basis of the following criteria:

...

— small farmers shall not be required to pay any remuneration to the holder;

...

— other farmers shall be required to pay an equitable remuneration to the holder, which shall be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area; the actual level of this equitable remuneration may be subject to variation over time, taking into account the extent to which use will be made of the derogation provided for in paragraph 1 in respect of the variety concerned;

— monitoring compliance with the provisions of this Article or the provisions adopted pursuant to this Article shall be a matter of exclusive responsibility of holders; in organising that monitoring, they may not provide for assistance from official bodies;

— relevant information shall be provided to the holders on their request by farmers and by suppliers of processing services; relevant information may equally be provided by official bodies involved in the monitoring of agricultural production, if such information has been obtained through ordinary performance of their tasks, without additional burden or costs. ...'

5 Article 94 of Regulation No 2100/94, which deals with the civil law actions which may be brought in the event of use of a plant variety in a manner which amounts to an infringement, provides as follows:

'1. Whosoever:

(a) effects one of the acts set out in Article 13(2) without being entitled to do so, in respect of a variety for which a Community plant variety right has been granted;

...

may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both.

2. Whosoever acts intentionally or negligently shall moreover be liable to compensate the holder for any further damage resulting from the act in question. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement.'

Regulation No 1768/95

6 Article 1(1) of Regulation No 1768/95 states that the regulation establishes the implementing rules on the conditions to give effect to the derogation provided for in Article 14(1) of Regulation No 2100/94.

7 Article 2 of Regulation No 1768/95 is worded as follows:

‘1. The conditions referred to in Article 1 shall be implemented both by the holder, representing the breeder, and by the farmer in such a way as to safeguard the legitimate interests of each other.

2. The legitimate interests shall not be considered to be safeguarded if one or more of these interests are adversely affected without account being taken of the need to maintain a reasonable balance between all of them, or of the need for proportionality between the purpose of the relevant condition and the actual effect of the implementation thereof.’

8 Article 6 of Regulation No 1768/95, entitled ‘Individual obligation to payment’, provides in paragraph 1 thereof as follows:

‘Without prejudice to the provisions of paragraph 2, the individual obligation of a farmer to pay the equitable remuneration shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field.

The holder may determine the date and the manner of payment. However, he shall not determine a date of payment which is earlier than the date on which the obligation has come to existence.’

9 Article 7 of Regulation No 1768/95, entitled ‘Small farmers’, states in paragraph 2 thereof as follows:

‘Areas of the holding of the farmer on which plants have been grown, but which are land set aside, on a temporary or permanent basis, in the marketing year starting on 1 July and ending on 30 June of the subsequent calendar year (“the marketing year”), in which the payment of the remuneration would be due, shall be considered to be areas on which plants are still grown, if subsidies or compensatory payments are granted by the Community or by the Member State concerned in respect of that set aside.’

10 Article 17 of Regulation No 1768/95, entitled ‘Infringement’, provides as follows:

‘The holder may invoke the rights conferred by the Community plant variety right against a person who contravenes any of the conditions or limitations attached to the derogation pursuant to Article 14 of the basic Regulation as specified in this Regulation.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 STV is an association of plant variety right holders that manages, inter alia, the rights of the holder of the winter barley variety ‘Finita’, which is protected under Regulation No 2100/94. STV publishes on its website a list setting out all the protected plant varieties the rights to the administration of which it has been granted in the course of various marketing years, as well as the planting fees payable for those varieties. Moreover, each year STV asks farmers, without specifying a particular variety, to provide information on any planting of protected plant varieties for which STV administers the rights, sending to them planting declaration forms for that purpose, together with a guide listing all the protected varieties for which it administers the rights in the relevant marketing year and the corresponding right holders and persons enjoying rights of exploitation. The Vogels, which do not have any contractual relations with STV, did not respond to those requests for information.

- 12 On 16 December 2011, STV became aware, through a processor, that in the marketing year 2010/11 the Vogels had, among other things, arranged for 35 quintals of seed of the winter barley variety 'Finita' to be processed.
- 13 By letter of 31 May 2012, STV asked the Vogels to verify the information concerning the planting of the winter barley variety 'Finita' disclosed by that processor and to send it information concerning that planting, directing them to reply by 20 June 2012 at the latest. The Vogels did not reply to that reply.
- 14 By letter of 27 July 2012, STV claimed from the Vogels payment of EUR 262.50, corresponding to the full fee that would be due for licensed use of seeds of the winter barley variety 'Finita', known as the 'C-Licence', as compensation for the damage suffered as a result of the undisclosed planting of that protected variety. As no such payment was forthcoming, STV brought an action on 18 March 2013 seeking such compensation on the basis of Article 94(1) and (2) of Regulation No 2100/94.
- 15 In support of its action, STV argues that the Vogels are required to pay to it reasonable compensation in an amount equivalent to the full C-Licence fee, pursuant to Article 94(1) of Regulation No 2100/94, because they carried out planting 'without being entitled to do so' within the meaning of that provision, and were not entitled to avail themselves of the derogation provided for in Article 14(1) of the regulation as they had failed to comply with the requirement to pay equitable remuneration laid down in the fourth indent of Article 14(3) of that regulation. STV also claims that that payment requirement is enforceable irrespective of whether a request for information has been made by the holder of the protected plant variety concerned and that the farmer must make the payment prior to sowing and, in any event, by the end of the marketing year in which the protected variety was planted. STV is also of the view that the information published on its website and the guide listing all the protected varieties the rights to the management of which it has been granted, which is sent each year to farmers, enables the Vogels to calculate themselves, and therefore pay, the amount due for planting those varieties.
- 16 The Vogels claim that they are not liable for payment of an amount equivalent to the full C-Licence fee by way of compensation. They submit that they owe, at the most, a reduced fee, on the ground that the planting was 'authorised' within the meaning of Article 14(1) of Regulation No 2100/94. They also contend that they were not under any obligation to reply to the request for information of 31 May 2012, as that request did not relate to the current marketing year. According to the Vogels, there would have to be an infringement of the obligation to provide information in order for the conditions governing entitlement to compensation to be satisfied.
- 17 The referring court has expressed doubts concerning STV's claim that the farmer is required to pay, of his own initiative, the remuneration referred to in the fourth indent of Article 14(3) of Regulation No 2100/94 before sowing, in particular in the light of Article 6(1) of Regulation No 1768/95. It observes that the latter provision would appear to preclude the inference that the farmer is required to pay that remuneration in advance, before sowing. Furthermore, that court states that if that remuneration could be paid after planting the protected variety, the question then arises as to the date by which the farmer is required to pay that remuneration in order to be able to benefit from the derogation provided for in Article 14 of Regulation No 2100/94 and thus fall outside the infringement provisions laid down in Article 94 of the regulation. According to the referring court, the provisions of Regulation Nos 2100/94 and 1768/95 do not provide a clear and unambiguous answer to that question, which the Court has not had occasion to address.
- 18 In those circumstances, the Landgericht Mannheim decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Is a farmer who has planted propagating material obtained from a protected plant variety without having concluded a contract for so doing with the plant variety right holder required to pay reasonable compensation, as provided for in Article 94(1) of Regulation No 2100/94, and — if he

has acted intentionally or negligently — to compensate the holder for any further damage resulting from the infringement of the plant variety right in accordance with Article 94(2) of that regulation, where he has not yet fulfilled his obligation under the fourth indent of Article 14(3) of that regulation, in conjunction with Articles 5 and 6 of Regulation No 1768/95, to pay an equitable remuneration (planting fee) at the time when he actually made use of the product of the harvest for propagating purposes in the field?

- (2) If the first question is to be answered to the effect that the farmer can still fulfil his obligation to pay an equitable planting fee even after he has actually made use of the product of the harvest for propagating purposes in the field, are the aforementioned provisions to be interpreted as fixing a period within which a farmer who has planted propagating material obtained from a protected plant variety must fulfil his obligation to pay an equitable planting fee in order for the planting to be capable of being regarded as “authorised” for the purposes of Article 94(1) of Regulation No 2100/94 in conjunction with Article 14 of that regulation?”

Consideration of the questions referred

- 19 By its questions, which it is appropriate to consider together, the referring court seeks to ascertain, in essence, the period within which a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder of the plant variety right concerned must comply with the requirement to pay the equitable remuneration due under the fourth indent of Article 14(3) of Regulation No 2100/94 (‘the equitable remuneration by way of derogation’) in order to be able to benefit from the derogation from the obligation to obtain the holder’s authorisation provided for in Article 14.
- 20 It should be noted, first, that Article 13(2) of Regulation No 2100/94 provides that the authorisation of the holder of the plant variety right is required, in respect of variety constituents or harvested material of the protected variety, inter alia, for production or reproduction (multiplication). In that context, Article 14(1) of that regulation establishes a derogation from that rule, insofar as use of the product of the harvest obtained by farmers, on their own holding, for propagating purposes in the field is not conditional upon authorisation by the holder of the right where they fulfil certain conditions expressly set out in Article 14(3) of that regulation (see judgment in *Geistbeck*, C-509/10, EU:C:2012:416, paragraphs 21 and 22).
- 21 One of those conditions, set out in the fourth indent of Article 14(3) of Regulation No 2100/94, requires payment to be made, by way of derogation from the authorisation requirement, to the holder of the plant variety right concerned of equitable remuneration in respect of such use.
- 22 A farmer who does not pay equitable remuneration to the holder when he uses the product of the harvest obtained by planting propagating material of a protected variety cannot rely on Article 14(1) of Regulation No 2100/94 and, therefore, must be regarded as having undertaken, without being entitled to do so, one of the acts set out in Article 13(2) of that regulation. Accordingly, it follows from Article 94 of that regulation that an action may be brought against such a farmer by the holder for an injunction in respect of the infringement or for payment of fair compensation, or both. If the infringement is intentional or negligent, the farmer is also obliged to pay damages to make good the loss suffered by the holder (judgment in *Schulin*, C-305/00, EU:C:2003:218, paragraph 71).
- 23 The referring court is uncertain, first, whether the farmer concerned must pay the equitable remuneration by way of derogation before actually using the product of the harvest for propagating purposes in the field.

- 24 In that regard, Article 6 of Regulation No 1768/95, which establishes the implementing rules in respect of the obligation to pay equitable remuneration by way of derogation, provides in the second subparagraph of paragraph 1 thereof that while the holder of the protected plant variety concerned may determine the date and manner of payment, he may not determine a date for payment which is earlier than the date on which the obligation to pay such equitable remuneration arose. In accordance with the first subparagraph of Article 6(1) of that regulation, that obligation arises when the farmer actually makes use of the product of the harvest of the protected variety for propagating purposes in the field. It follows that such a farmer may still fulfil that obligation after he has sown the product of the harvest of the protected variety, as that date of actual use of the product for propagating purposes in the field is not the deadline by which payment of equitable remuneration by way of derogation must be made but the date from which that remuneration becomes payable.
- 25 While that provision makes it possible to assert that a farmer may still fulfil his obligation to pay equitable remuneration by way of derogation after he has actually sown the product of the harvest of the protected variety, there is no indication whatsoever in that provision of the period within which the farmer is required to pay that remuneration when no date for payment has been set, under the second subparagraph of Article 6(1) of Regulation No 1768/95, by the holder of the right to the protected variety.
- 26 In that regard, the Vogels and the Spanish Government maintain, in essence, that that period may run indefinitely. They rely specifically on Article 6(1) of Regulation No 1768/95, stating in that regard that, while that provision governs the date on which the payment obligation arises, it does not lay down any deadline for payment.
- 27 That interpretation cannot be accepted, however.
- 28 In the first place, as the Advocate General observed at point 39 of his Opinion, to allow a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) to fulfil, without any time-limit, the obligation to pay equitable remuneration by way of derogation and, thereby, avail himself indefinitely of the derogation under Article 14 of Regulation No 2100/94 would deprive the legal proceedings provided for in Article 94 of that regulation of any useful purpose. Moreover, since it provides that proceedings may be brought against any infringer who has failed to comply with that payment obligation, Article 94 of Regulation No 2100/94 precludes such a person from being able to regularise his situation at any time, including after the holder of the plant variety right has discovered an undisclosed use of the protected plant variety. It follows that only by defining a payment period is it possible to ensure that such proceedings are effective.
- 29 In the second place, it should be recalled that the holders of plant variety rights alone are responsible for the control and supervision of the use of the protected varieties in the context of authorised planting and they depend, therefore, on the good faith and cooperation of the farmers concerned (judgment in *Geistbeck*, C-509/10, EU:C:2012:416, paragraph 42). Accordingly, the absence of a precisely defined period within which farmers are required to comply with the obligation to pay equitable remuneration by way of derogation is liable to encourage farmers to defer that payment indefinitely, in the hope of avoiding payment altogether. To allow farmers to avoid complying with their own obligations towards holders in such a way would be at odds with the objective set out in Article 2 of Regulation No 1768/95 of maintaining a reasonable balance between the legitimate interests of the farmers and the holders concerned.
- 30 For the purpose of examining whether the relevant provisions actually make provision for a payment period, it should be noted that it is apparent from Article 7(2) of Regulation No 1768/95 that the marketing year during which payment of the remuneration is due starts on 1 July and ends on 30 June of the subsequent calendar year. Although that provision concerns the definition of areas dedicated to growing plant varieties by small farmers, it clearly shows that the marketing year during which propagating material obtained from a protected plant variety (farm-saved seed) was planted was

regarded by the institution responsible for that regulation, when establishing the implementing rules for Article 14(3) of Regulation No 2100/94, as the relevant period in which the equitable remuneration by way of derogation is to be paid.

- 31 Thus, if he has failed to pay the equitable remuneration by way of derogation within the period that expires at the end of the marketing year during which he planted propagating material obtained from a protected plant variety, without having concluded a contract for so doing with the plant right holder, a farmer must be regarded as having effected, without being entitled to do so, one of the acts set out in Article 13(2) of Regulation No 2100/94, which entitles the holder to bring the forms of action provided for in Article 94 of that regulation.
- 32 In the light of the foregoing considerations, the answer to the questions referred is that, in order to be able to benefit from the derogation provided for in Article 14 of Regulation No 2100/94 from the obligation to obtain the authorisation of the holder of the plant variety right concerned, a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder, is required to pay the equitable remuneration by way of derogation within the period that expires at the end of the marketing year during which that planting took place, that is, no later than 30 June following the date of reseeded.

Costs

- 33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

In order to be able to benefit from the derogation provided for in Article 14 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights from the obligation to obtain the authorisation of the holder of the plant variety right concerned, a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder is required to pay the equitable remuneration due under the fourth indent of Article 14(3) of that regulation within the period that expires at the end of the marketing year during which that planting took place, that is, no later than 30 June following the date of reseeded.

[Signatures]