

that an act of an institution of the Community imposes restrictions on the new planting of vines cannot be challenged in principle as being incompatible with due observance of the right to property. However, it is necessary that those restrictions should in fact correspond to objectives of general interest pursued by the Community and that, with regard to the aim pursued, they should not constitute a disproportionate and intolerable interference with the rights of the owner, such as to impinge upon the very substance of the right to property.

6. The prohibition on the new planting of vines laid down for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community, consisting in the immediate reduction of production surpluses and in the preparation, in the longer term, of a restructuring of the European wine

industry. It does not therefore infringe the substance of the right to property.

7. In the same way as the right to property, the right of freedom to pursue trade or professional activities, far from constituting an unfettered prerogative, must be viewed in the light of the social function of the activities protected thereunder.

In particular, this being a case of the prohibition, by an act of an institution of the Communities, on the new planting of vines, it is appropriate to note that such a measure in no way affects access to the occupation of wine growing or the free pursuit of that occupation on land previously devoted to wine-growing. Since this case concerns new plantings, any restriction on the free pursuit of the occupation of wine-growing is an adjunct to the restriction placed upon the exercise of the right to property.

In Case 44/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstraße for a preliminary ruling in the action pending before that court between

LISELOTTE HAUER, residing at Bad Dürkheim

and

LAND RHEINLAND-PFALZ

on the interpretation of Article 2 of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, with regard to Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz),

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and 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:

[Administrative Court] Neustadt an der Weinstraße ending in a settlement on 22 May 1975 whereby the Land Rheinland-Pfalz [Rhineland-Palatinate] undertook to authorize the new planting of vines on several parts of the plots in question.

On 6 June 1975 Mrs Hauer in turn applied for authorization to undertake the new planting of vines on the land which she owns.

I — Facts and written procedure

Liselotte Hauer is the owner of a plot of land forming part of the administrative district of Bad Dürkheim.

The suitability for wine-growing, within the meaning of Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz) [German law on measures relating to the wine industry], of the plots adjacent to Mrs Hauer's was the subject of several actions before the Verwaltungsgericht

The Land Rheinland-Pfalz refused to grant her that authorization on 2 January 1976 on the ground that her land was unsuitable for wine-growing, within the meaning of Article 1 (2) of the Weinwirtschaftsgesetz.

Mrs Hauer lodged an objection against that decision on 22 January 1976.

That objection was overruled by the Land Rheinland-Pfalz by a decision of 21 October 1976 on the grounds that the

land was unsuitable for wine-growing under the terms of the Weinwirtschaftsgesetz and that Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32) had in the meantime prohibited all new planting of vine varieties classified as wine grape varieties for the administrative unit concerned.

Mrs Hauer appealed against that decision on 25 November 1976 to the Verwaltungsgericht Neustadt an der Weinstraße.

In the course of the proceedings the Land Rheinland-Pfalz stated that it was willing to grant the authorization requested after the expiry of the prohibition on new planting imposed by Regulation No 1162/76 for the period from 1 December 1976 to 30 November 1978. [That period was subsequently extended, first to 30 November 1979 by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/76 (Official Journal L 333, p. 1), and by Council Regulation No 348/79 of 5 February 1979, on measures designed to adjust wine-growing potential to market requirements (Official Journal L 54, p. 81), then to 31 December 1979 by Council Regulation No 2595/79 of 22 November 1979, amending Regulation No 348/79 (Official Journal L 297, p. 5)]. For her part Mrs Hauer argued that Regulation No 1162/76 was not applicable to a request for authorization submitted well before its entry into force and that the Land Rheinland-Pfalz should have granted the authorization before the regulation came into force. Mrs Hauer also pleaded the possible incompatibility of the Community regulation with certain provisions, in particular Articles 12 and 14, of the Basic Law of the Federal Republic of Germany.

The Verwaltungsgericht Neustadt an der Weinstraße, by an order of its second chamber of 14 December 1978, stayed proceedings pursuant to Article 177 of the EEC Treaty until the Court of Justice has given a preliminary ruling on the following questions:

- (1) Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?

and if the answer to question 1 is in the affirmative

- (2) Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The order of the Verwaltungsgericht Neustadt an der Weinstraße was received at the Court Registry on 20 March 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 23 March 1979 by the Commission of the European Communities, represented by the Director-General of the Legal Department, Claus-Dieter Ehlermann,

acting as Agent, assisted by Professor Jochen A. Frowein of the University of Bielefeld, on 30 May 1979 by the Council of the European Communities, represented by Bernard Schloh, an Adviser in its Legal Department, and Arthur Brautigam, an Administrator in that department, acting as Agents, and on 11 June 1979 by the Government of the Federal Republic of Germany, represented by Martin Seidel, Departmental Adviser in the Federal Ministry for Economic Affairs, acting as Agent, assisted by Hans Hinrich Boie, Senior Governmental Adviser in the same Ministry.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *Government of the Federal Republic of Germany* considers that the two questions referred to the Court require answers in the affirmative.

(a) *The first question*

Article 2 (1) of Regulation No 1162/76 imposes a general prohibition on all new planting of certain types of vines; it is clear from the second subparagraph thereof that it covers cases in which the authorization for new planting, although not yet granted, has already been applied for. That conclusion follows from the clear terms of the prohibition which does not provide for any derogation in a case where authorization proceedings are pending.

A limitation of the general prohibition on new planting in cases where authorization proceedings were pending would have required — especially in the field of agricultural law — a specific and express provision.

Article 4 of the regulation contains transitional provisions; but they applied only to cases in which rights had already been acquired through the granting of authorizations, and not to the stage of an application preceding the authorization. Moreover, Article 4 results in a restriction of such acquired rights because it suspends the exercise thereof for the duration of the prohibition. That demonstrates the Community legislature's wish to make the prohibition on planting as general in nature as possible.

That is the only interpretation of Article 2 (1) which seems to accord with the aims of Regulation No 1162/76.

The preamble to the regulation states that the measures introduced thereby are intended to put an end to the considerable imbalance in the table wine market and to put a brake on production. In order to attain those objectives the Community legislature had to make the prohibition on planting as general and effective as possible. So the beginning of the period whence the prohibition on granting authorizations was applicable was linked to the issue of the authorization, not to the application for it.

That interpretation of Article 2 (1) of Regulation No 1162/76 is in accordance with superior rules of Community law, in particular the principles of legal certainty and the protection of legitimate expectations. The protection of an acquired legal position can be pleaded

only in cases where the alteration thereof constitutes an "encroachment upon an established position"; that cannot be the case when an individual has requested, but not yet obtained, from the administration some form of benefit.

That interpretation is in accordance with an appraisal of the legal situation with regard to national constitutional law which is also taken into consideration by the Court of Justice. According to national constitutional law the legislature is in principle empowered to enact new law applicable as from a particular date; an infringement of constitutional principles, in this case the guarantee of property rights, embracing the principle of the protection of legitimate expectations, can be held to exist only if there are no clear, relevant reasons justifying the date chosen, which is obviously not so in this case. But the citizen cannot rely absolutely on the continuation without change of a given legal situation; in view of the important objectives, from the point of view of the general interest, of a satisfactory organization of the wine market, the mere opening of a procedure on an application for authorization cannot strengthen the owner's position to the point of rendering mandatory, as regards constitutional law, a derogation from the temporary prohibition on planting.

The first question should be answered as follows:

Regulation No 1162/76, as amended by Regulation No 2776/78, must be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards, which had already been made before the said regulation came into force.

(b) The second question

The prohibition on planting imposed by Article 2 (1) of Regulation No 1162/76 is general in scope: it applies, irrespective of the quality of the land, also to land suitable for wine-growing.

That interpretation alone accords with the wording of the provision in question, which does not contain any reservation, and with the purpose of the regulation. Moreover, no restrictive interpretation is imposed by a superior rule of law; even on a general interpretation the provision in question is in accordance with, in particular, the fundamental rights recognized by Community law.

Article 2 (1) of Regulation No 1162/76 is compatible, in particular, with the right to property, which is a fundamental right guaranteed by the constitutions of all the Member States and which also ranks as a constitutional rule in Community law.

By denying the owner of a piece of land the possibility of using it for wine-growing the prohibition on planting admittedly constitutes a restriction on the owner's powers; however, it does not constitute an unacceptable infringement of a fundamental right. The scope of that right should be measured in relation to its social function; the substance and enjoyment of property rights are subject to restrictions which must be accepted by each owner on the basis of the superior general interest and the general good.

The measure in question does not adversely affect the "substance" of the right to property: it does not restrict the owner's power to make use of his land except in one of the numerous imaginable ways and is of limited duration.

The prohibition on planting decreed by Article 2 (1) of Regulation No 1162/76 is required by the superior general interest. It was decided upon in order to avoid a situation of severe crisis within the common market in agricultural products; so it is, in accordance with the case-law of the Court, "justified by the objectives of general interest pursued by the Community". The last few years have seen considerable surpluses of table wine; the principal cause of the increase in production has been the growth of the cultivated area due to the planting of new vines on the plains. The surplus supply has led to a fall in prices and serious disturbances on the market; that development has threatened not only the objectives of the agricultural policy entailed in the common organization of the market in wine (stabilization of markets, guaranteed existence and income for producers), but also other objectives of general interest contained in the EEC Treaty (free movement of goods, political and social harmony within the Community). The protection of those objectives justified a restriction on the powers of owners.

Such a radical measure was essential for the attainment of those objectives; the development noted could not be tackled by methods less coercive upon the individual. The reduction in wine production has been sought by direct restrictions on production (prohibition on planting, reconversion premiums), measures pertaining to the organization of the market (preventive distillation, extension of private storage of grape must) and measures to improve quality; the prohibition on planting is only one element in a system of co-ordinated measures, closely linked as regards their effectiveness.

The restriction on planting in question did not constitute an excessive burden

for the producers concerned: it was applicable for a limited period and was taken in the interest of the commercial operators themselves.

Article 2 (1) of Regulation No 1162/76 is, moreover, compatible with the fundamental right freely to pursue an economic activity, which is recognized in Community law as having two aspects: the freedom to undertake a professional or trade activity and the freedom to pursue that activity without hindrance.

To the extent to which it affects the second aspect, the prohibition on planting in question does not constitute an unacceptable interference with the fundamental right freely to pursue economic activity; the latter is not an absolute individual right, excluding any restriction; it must be seen in a social context. The rules under challenge do not go beyond what is necessary and constitute, in accordance with the case-law of the Court, a necessary and appropriate method of attaining legitimate objectives. The reasons justifying restrictions on the guarantee of property rights apply equally to the limitations which they imply as regards the freedom to pursue an economic activity.

The principle of proportionality was respected: the fundamental right was only limited as regards the freedom to carry on a professional or trade activity and there was no interference with the free choice of a profession or trade.

A restriction on planting such as that prescribed by Article 2 (1) of Regulation No 1162/76 is also acceptable under national constitutional law; in particular, it is compatible with the fundamental

right to property guaranteed by Article 14 of the Grundgesetz [Basic Law] of the Federal Republic.

The second sentence of Article 14 (1) provides that the substance of the right to property and its limitations shall be fixed by laws; such legislative provisions must be justified by the general interest and must respect the principle of proportionality. The restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective concerned and must not constitute an excessive burden.

The provisions challenged in the main action comply with those criteria.

Their objective shows that they were justified on grounds of the superior general interest; they were inevitable and constituted an appropriate method. Nor do they appear disproportionate; in this regard it is important to take account of the fact that Article 2 (2) (b) of the regulation exempts from the prohibition new planting carried out under development plans which attract investment aid.

The temporary prohibition on planting is also compatible with the fundamental right freely to choose a profession or trade guaranteed by Article 12 of the Grundgesetz.

The second sentence of Article 12 (1) enables the legislature to adopt rules governing the free pursuit of a profession or trade. That power to adopt rules is subject to the principle of proportionality. For the purpose of determining objectives of economic policy and the appropriate measures for the attainment thereof, the Grundgesetz allows the legislature a degree of latitude in its appraisal of the situation and in its choice of action; its intervention must be justified on appropriate and reasonable grounds and founded on regard for the

common good. Those methods must respect, within the context of a general appraisal, the limits of what may be required. The prohibition of new plantings is, admittedly, close to the highest degree of restriction conceivable under Article 12 of Grundgesetz; however, it does not exclude all possibility of entering the trade and it is not imposed for an indefinite period. A general appraisal of the question must take account of the fact that the legislature's freedom of action in order to overcome a serious crisis includes the possibility of adopting temporary, *ad hoc* solutions so as to gain time in order to work out long-term structural solutions. Thus rules prohibiting planting for a limited period and accompanied by the preparation of a comprehensive programme of action are, at all events, legitimate.

The second question should be answered as follows:

The prohibition on the granting of authorizations for new planting laid down in Article 2 (1) of Regulation No 1162/76 as amended by Regulation No 2776/78 is of inclusive application — subject to the exemptions referred to in Article 2 (2) of the regulation — irrespective of the question of the quality of the land.

The *Council*, after clarifying the implications of the main action in domestic constitutional law and recalling the background to Regulation No 1162/76, submits observations which may be summarized as follows:

(a) *The first question*

Regulation No 1162/76 applies also to applications for authorization submitted before its entry into force. That conclusion follows clearly from the first sentence of Article 2 (1) thereof, which

prohibits any new planting during the period from 1 December 1976 to 30 November 1978; moreover, the second sentence provides that Member States shall no longer grant authorizations for new planting as from the date of the regulation's entry into force, namely 27 May 1976. Finally, Article 4 extends by two years the period of validity of rights to plant or re-plant existing under national laws on the date of the regulation's entry into force.

The prohibition contained in the first sentence of Article 2 (1), which therefore also applies to individual rights to plant acquired before the regulation's entry into force, applies *a fortiori* to cases in which an authorization had not yet been granted by the competent national authorities, although an application had been submitted before the regulation's entry into force.

(b) The second question

This question should also be answered in the affirmative.

The purpose of Regulation No 1162/76 is to restrict production of table wines by preventing an increase in wine-growing potential; to limit the prohibition on new planting to land considered unsuitable for wine-growing would seriously impair its effectiveness.

That interpretation is confirmed by the first sentence of Article 2 (1) which lays down a general prohibition on all new planting of vine varieties classified as wine grape varieties, regardless of the suitability of the land for wine-growing; that conclusion is supported by the exhaustive list of exemptions from the principle of total prohibition contained in Article 2 (2).

(c) The validity of Regulation No 1162/76

Since the Verwaltungsgericht has clearly suggested in its order making the reference that Regulation No 1162/76, as interpreted by the Council, might be inapplicable in the German courts as being incompatible with the fundamental rights guaranteed by the German constitution, it is necessary also to express an opinion on the validity of the regulation.

From the point of view of Community law the position is clear: the regulation must be applied by the national authorities, including the courts of each Member State, as long as the Court of Justice has not declared it invalid (under Article 177) or annulled it (under Article 174).

Having regard to the case-law of the Bundesverfassungsgericht [Federal Constitutional Court], it is necessary, when considering the guarantee of fundamental rights, to recall that in the Community legal order it is permissible, according to the case-law of the Court of Justice, to apply, as regards the right of property and the right freely to undertake business, work and other professional or trade activities, certain limitations justified by the objectives of general interest pursued by the Community, provided that the substance of those rights is not impaired. Thus the right of property and the right to undertake business are in principle guaranteed in the Community legal order; but the exercise of those rights may be subjected to limitations, in accordance with the general interest, in order to permit the attainment of the objectives of the Community, provided that the rights in question are not stripped of their substance.

In the present case the temporary restriction imposed by Regulation No 1162/76 on the freedom to pursue the trade of wine-grower and on the right of

property is, taking into account its purpose, very limited in nature; the very substance of those rights is not, in the present case, impaired.

Articles 12 and 14 of the German Grundgesetz also accept the principle that those rights are subject to restrictions justified by the public interest. In that regard it should also be noted that the Community rules do not impair the substance of fundamental rights.

It is also necessary to take account of the fact that the measure in question is a protective measure, adopted because of a sudden and serious imbalance in the market and intended to avoid the formation of structural surpluses while awaiting permanent structural measures.

(d) The questions submitted to the Court call for the following answers:

- The prohibition contained in Article 2 (1) of Regulation No 1162/76 applies also to applications for authorization submitted to the national authorities before the date on which the regulation entered into force, on which those authorities had not at that time taken a final decision.
- That prohibition applies to all land, regardless of its degree of suitability for wine-growing.
- Regulation No 1162/76, the validity of which cannot be challenged from the point of view of fundamental rights, must be applied by the national authorities, including the courts of each Member State, as long as it has not been declared invalid by the Court of Justice.

The *Commission's* observations on the questions of interpretation and validity raised in the main action may be summarized as follows:

(a) The first question

It follows clearly from its terms and its aims that Regulation No 1162/76 must be applied to administrative procedures which have already been commenced.

Article 6 provided for the regulation's entry into force on the third day following its publication in the Official Journal of the Communities; it does not contain any provision whereby applications submitted before that date should be treated differently from the manner prescribed in Article 2. Article 4 contains a provision expressly suspending acquired rights without referring to administrative procedures already commenced; it follows that those procedures are subject to the prohibition on granting new authorizations contained in Article 2 of the regulation.

The purpose of the regulation, as explained in the preamble thereto, was to put an end to a severe crisis which had led to an imbalance in the wine market; given that premise, only a prohibition having general effect, without regard to rights already acquired or administrative procedures already commenced, would have made sense.

That interpretation is strengthened by the fact that the prohibition on new plantings is a measure of limited duration; such temporary measures generally modify market conditions and are intended to have as wide an effect as possible for the duration of their validity.

Therefore Article 2 (1) of Regulation No 1162/76 — since re-enacted, in the amended version of Regulation No 2776/78, by Regulation No 348/79 —

was applicable to applications for new planting of vines submitted before the regulation's entry into force.

(b) The second question

It is clear from the wording of Regulation No 1162/76, in the amended version of Regulation No 348/79, that it is applicable irrespective of the conditions in which a right to plant is acquired by virtue of national provisions on wine-growing; that conclusion follows from Article 4 which suspends the exercise of rights acquired under national legislation. Furthermore, the independence of Community law requires that it should not make reference to rules of national law except by express provision to that effect.

(c) The validity of the prohibition on new planting during a fixed period.

— There is no general principle of law requiring that the applicant, in an administrative procedure already commenced, be protected against a worsening of his legal position. In the absence of any derogation, amending laws govern future aspects of situations arising under the former law; that principle is equally valid in relation to administrative procedures already commenced.

— The plaintiff in the main action did not, at the time when Regulation No 1162/76 came into force, possess a right, acquired under the German law on wine-growing, to plant vines; therefore she cannot claim protection of a duly-acquired right.

— The case-law both of the Court of Justice and of the Bundesverfassungsgericht shows that there does not exist any general principle of the protection of legitimate expectation, whereby every person is entitled to rely on the maintenance of a legal situation which is favourable to him and whereby he is assured of the protection of that expectation.

— Admittedly, rules prohibiting the planting of vines restrict the exercise of property rights over the land in question. But it is permissible that the Community legal order should subject rights, such as the right of property, to certain restrictions justified by the objectives of general interest pursued by the Community, as long as the substance of those rights is not impaired. Restrictions on agricultural production in the general interest form part of the measures, recognized in the Member States of the Community, whereby the right of property is restricted in the public interest. In Community law, such a restriction is accepted by the EEC Treaty: Article 39 (1) (c) describes the stabilization of markets as an objective of the common agricultural policy; Article 43 (2) enables the Council to make regulations for that purpose which, according to Article 40 (3), may include all necessary measures. Those measures include the prohibition for a fixed period on new planting, as provided for in Article 17 (5) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234), on which Regulation No 1162/76 is expressly based. Moreover, a temporary prohibition of new planting is a necessary measure and is in accordance with the principle of proportionality, as is shown by the development of the wine market in the course of recent years. Nor

does it affect land-owners to an intolerable degree. Consequently it must be considered a legitimate restriction of the right of property.

— As far as German constitutional law is concerned, it should be noted that the Bundesverfassungsgericht held in its judgment of 14 February 1967 that restrictions on new planting introduced by the Weinwirtschaftsgesetz constitute legitimate rules in relation to the substance and limits of the right of property under Article 14 (1) of the Grundgesetz. According to the Bundesverfassungsgericht the restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective pursued and must not be abusively coercive and thereby intolerable. The basic difference between the restrictions on new planting laid down in German law and those of Regulation No 1162/76 consists in the fact that, under the Weinwirtschaftsgesetz, authorization for new planting can be refused only if the land is, according to objective criteria, unsuitable for wine-growing. The rule against imposing an excessive burden, which emerges from the case-law of the Bundesverfassungsgericht and which may be relied upon against the Community rules, must be seen in relation to the objective expressly stated by the legislature. Unlike the Weinwirtschaftsgesetz, the Community rules are intended broadly to prevent the new planting of vines for a fixed period. Having regard to that objective, the rule against imposing an excessive burden is not disregarded if a prohibition on new planting may on the whole be considered necessary to maintain a balance on the wine market. A temporary restriction on planting vines on land previously not used for wine-growing must, according to the criteria laid down by the Bundesverfassungsgericht, be accepted as a

legitimate limitation of property rights, if it is dictated by superior economic interests. Restrictions on the right to exploit the soil are not in German law regarded as similar in nature to expropriation; a prohibition, for a period of three years, on new planting of vines on land not previously used for growing vines does not constitute an infringement of the fundamental right of property.

— The fundamental right freely to pursue a profession or trade is also subject to restrictions: reasonable grounds, involving the general interest, may justify restrictive rules. The grounds relied on in the context of the protection of property rights must lead to the conclusion that rules restricting the right freely to pursue a profession or trade are lawful. The Bundesverfassungsgericht must also recognize that, under Article 12 of the Grundgesetz, a restriction on new planting, applying solely to the extension to new land of the pursuit of wine-growing practised hitherto, may be justified by reasonable considerations involving the general interest.

(d) The questions submitted to the Court should be answered as follows:

— Regulation No 1162/76, in the current version thereof contained in Regulation No 348/79, must be interpreted as meaning that Article 2 (1) thereof also applies to applications submitted before its entry into force.

— The validity of the prohibition on new planting is not affected by national provisions.

- The case has disclosed no factor of such a kind as to affect the validity of the prohibition on new planting laid down by Article 2 of Regulation No 1162/76 and Article 2 of Regulation No 348/79.

III — Oral procedure

Mrs Liselotte Hauer, represented by Herbert Drews, Advocate at the Zweibrücken Bar, the Land Rheinland-Pfalz, represented by Josef Koy, Ministerialrat at the Ministry of Agriculture and Wine Production, the Government of the Federal Republic of Germany, represented by Martin Seidel, the Council of the European Communities, represented by Bernhard Schloh and Arthur Brautigam, and the Commission of the European Communities, represented by Professor Jochen A. Frowein, Claus-Dieter Ehlermann and the expert, Alfred Reichardt, Principal Administrator in the Directorate General for Agriculture, presented oral argument and/or replied to questions put by the Court at the Sitting on 11 October 1979.

At the sitting *Mrs Hauer* laid special emphasis on the fact that in the main action, after overruling — illegally — the objection against the refusal to authorize new plantings, the Land Rheinland-Pfalz had, in the course of the proceedings, stated its willingness to grant the authorization requested, but had been prevented from doing so by Regulation No 1162/76. Further, it was necessary to distinguish between a prohibition on the granting of authorizations and a prohibition on new plantings; only the latter had an effect on the market. By prohibiting Member States from granting authorization for new plantings, Regulation No 1162/76 infringes the principle of proportionality as well as Articles 12 and 14 of the Grundgesetz of the Federal Republic. Finally, by providing for the possibility of further extending the period of validity of the prohibition, the regulation did not in fact lay down a temporary rule.

The *Advocate General* delivered his opinion at the sitting on 8 November 1979.

Decision

1 By an order of 14 December 1978, received at the Court on 20 March 1979, the Verwaltungsgericht Neustadt an der Weinstraße submitted two questions to the Court for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, on the interpretation of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32), amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 (Official Journal L 333, p. 1).

- 2 The file on the case shows that on 6 June 1975 the plaintiff in the main action applied to the competent administrative authority of the Land Rheinland-Pfalz for authorization to plant vines on a plot of land which she owns in the region of Bad Dürkheim. That authorization was refused initially owing to the fact that under the provisions of the German legislation applicable to that sphere, namely the Law relating to the wine industry (Weinwirtschaftsgesetz) of 10 March 1977, the plot of land in question was not considered suitable for wine-growing. On 22 January 1976 the person concerned lodged an objection against that decision. While proceedings relating to that objection were pending before the competent administrative authority, Regulation No 1162/76 of 17 May 1976 was adopted, Article 2 of which imposes a prohibition for a period of three years on all new planting of vines. On 21 October of that year the administrative authority overruled the objection, stating two grounds: on the one hand, the unsuitability of the land and, on the other hand, the prohibition on planting as a result of the Community regulation referred to.
- 3 The person concerned appealed to the Verwaltungsgericht. As a result of experts' reports on the grapes grown in the same area and taking into account a settlement reached with various other owners of plots of land adjacent to that of the applicant, the administrative authority accepted that the plaintiff's land may be considered suitable for wine-growing in accordance with the minimum requirements laid down by national legislation. Consequently, the authority stated its willingness to grant the authorization as from the end of the prohibition on new planting imposed by the Community rules. Thus it appears that the dispute between the parties is henceforth solely concerned with questions of Community law.
- 4 For her part, the plaintiff in the main action considers that the authorization applied for should be granted to her on the ground that the provisions of Regulation No 1162/76 are not applicable in the case of an application introduced long before the entry into force of that regulation. Even supposing that the regulation is applicable in the case of applications submitted before its entry into force, its provisions may in the applicant's submission still not be relied upon against her because they are contrary to her right to property and to her right freely to pursue a trade or profession rights which are guaranteed by Articles 12 and 14 of the Grundgesetz of the Federal Republic of Germany.
- 5 In order to resolve that dispute, the Verwaltungsgericht drafted two questions worded as follows:

1. Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?
and if the answer to Question 1 is in the affirmative
2. Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Articles 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The first question (application of Regulation No 1162/76 in time)

- 6 In this regard, the plaintiff in the main action claims that her application, submitted to the competent administrative authority on 6 June 1975, should in the normal course of events have led to a decision in her favour before the entry into force of the Community regulation if the administrative procedure had taken its usual course and if the administration had recognized without delay the fact that her plot of land is suitable for wine-growing in accordance with the requirements of national law. It is, she argues, necessary to take account of that situation in deciding the time from which the Community regulation is applicable, the more so as the production of the vineyard in question would not have had any appreciable influence on market conditions, in view of the time which elapses between the planting of a vineyard and its first production.
- 7 The arguments advanced by the plaintiff in the main action cannot be upheld. Indeed the second subparagraph of Article 2 (1) of Regulation No 1162/76 expressly provides that Member States shall no longer grant authorizations for new planting “as from the date on which this Regulation enters into force”. By referring to the act of granting authorization, that provision rules out the possibility of taking into consideration the time at which an application was submitted. It indicates the intention to give immediate effect to the regulation, to such an extent that even the exercise of

rights to plant or re-plant acquired prior to the entry into force of the regulation is suspended during the period of the prohibition as a result of Article 4 of the same regulation.

- 8 As is stated in the sixth recital of the preamble, with regard to the last-mentioned provision, the prohibition on new plantings is required by an "undeniable public interest", making it necessary to put a brake on the overproduction of wine in the Community, to re-establish the balance of the market and to prevent the formation of structural surpluses. Thus it appears that the object of Regulation No 1162/76 is the immediate prevention of any extension in the area covered by vineyards. Therefore no exception may be made in favour of an application submitted before its entry into force.
- 9 It is therefore necessary to reply to the first question that Council Regulation No 1162/76 of 17 May 1976, amended by Regulation No 2776/78 of 23 November 1978, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines made before the entry into force of the first regulation.

The second question (the substantive scope of Regulation No 1162/76)

- 10 In its second question the Verwaltungsgericht asks the Court to rule whether the prohibition on granting authorizations for new planting laid down by Article 2 (1) of Regulation No 1162/76 is of inclusive application, that is to say whether it also includes land recognized as suitable for wine-growing in accordance with the criteria applied by national legislation.
- 11 In this regard, the text of the regulation is explicit in so far as Article 2 prohibits "all new planting" without making any distinction according to the quality of the land concerned. It is clear from both the text and the stated objectives of Regulation No 1162/76 that the prohibition must apply to new plantings irrespective of the nature of the land and of the classification thereof under national legislation. In fact, the object of the regulation, as is clear in particular from the second recital of the preamble thereto, is to bring

to an end the surplus in European wine production and to re-establish the balance of the market both in the short and in the long term. Only Article 2 (2) of the regulation provides for some exceptions to the general nature of the prohibition laid down by paragraph (1) of the same article, but it is common ground that none of those exceptions applies in this case.

- 12 Therefore the reply to the second question must be that Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.

The protection of fundamental rights in the Community legal order

- 13 In its order making the reference, the Verwaltungsgericht states that if Regulation No 1162/76 must be interpreted as meaning that it lays down a prohibition of general application, so as to include even land appropriate for wine growing, that provision might have to be considered inapplicable in the Federal Republic of Germany owing to doubts existing with regard to its compatibility with the fundamental rights guaranteed by Articles 14 and 12 of the Grundgesetz concerning, respectively, the right to property and the right freely to pursue trade and professional activities.
- 14 As the Court declared in its judgment of 17 December 1970, *Internationale Handelsgesellschaft* [1970] ECR 1125, the question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself. The introduction of special criteria for assessment stemming from the legislation or constitutional law of a particular Member State would, by damaging the substantive unity and efficacy of Community law, lead inevitably to the destruction of the unity of the Common Market and the jeopardizing of the cohesion of the Community.
- 15 The Court also emphasized in the judgment cited, and later in the judgment of 14 May 1974, *Nold* [1974] ECR 491, that fundamental rights form an

integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. That conception was later recognized by the joint declaration of the European Parliament, the Council and the Commission of 5 April 1977, which, after recalling the case-law of the Court, refers on the one hand to the rights guaranteed by the constitutions of the Member States and on the other hand to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Official Journal C 103, 1977, p. 1).

- 16 In these circumstances, the doubts evinced by the Verwaltungsgericht as to the compatibility of the provisions of Regulation No 1162/76 with the rules concerning the protection of fundamental rights must be understood as questioning the validity of the regulation in the light of Community law. In this regard, it is necessary to distinguish between, on the one hand, a possible infringement of the right to property and, on the other hand, a possible limitation upon the freedom to pursue a trade or profession.

The question of the right to property

- 17 The right to property is guaranteed in the Community legal order in accordance with the ideas common to the constitutions of the Member States, which are also reflected in the first Protocol to the European Convention for the Protection of Human Rights.

- 18 Article 1 of that Protocol provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

- 19 Having declared that persons are entitled to the peaceful enjoyment of their property, that provision envisages two ways in which the rights of a property owner may be impaired, according as the impairment is intended to deprive the owner of his right or to restrict the exercise thereof. In this case it is incontestable that the prohibition on new planting cannot be considered to be an act depriving the owner of his property, since he remains free to dispose of it or to put it to other uses which are not prohibited. On the other hand, there is no doubt that that prohibition restricts the use of the property. In this regard, the second paragraph of Article 1 of the Protocol provides an important indication in so far as it recognizes the right of a State “to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”. Thus the Protocol accepts in principle the legality of restrictions upon the use of property, whilst at the same time limiting those restrictions to the extent to which they are deemed “necessary” by a State for the protection of the “general interest”. However, that provision does not, enable a sufficiently precise answer to be given to the question submitted by the Verwaltungsgericht.
- 20 Therefore, in order to be able to answer that question, it is necessary to consider also the indications provided by the constitutional rules and practices of the nine Member States. One of the first points to emerge in this regard is that those rules and practices permit the legislature to control the use of private property in accordance with the general interest. Thus some constitutions refer to the obligations arising out of the ownership of property (German Grundgesetz, Article 14 (2), first sentence), to its social function (Italian constitution, Article 42 (2)), to the subordination of its use to the requirements of the common good (German Grundgesetz, Article 14 (2), second sentence, and the Irish constitution, Article 43.2.2°), or of social justice (Irish constitution, Article 43.2.1°). In all the Member States, numerous legislative measures have given concrete expression to that social function of the right to property. Thus in all the Member States there is legislation on agriculture and forestry, the water supply, the protection of the

environment and town and country planning, which imposes restrictions, sometimes appreciable, on the use of real property.

- 21 More particularly, all the wine-producing countries of the Community have restrictive legislation, albeit of differing severity, concerning the planting of vines, the selection of varieties and the methods of cultivation. In none of the countries concerned are those provisions considered to be incompatible in principle with the regard due to the right to property.
- 22 Thus it may be stated, taking into account the constitutional precepts common to the Member States and consistent legislative practices, in widely varying spheres, that the fact that Regulation No 1162/76 imposed restrictions on the new planting of vines cannot be challenged in principle. It is a type of restriction which is known and accepted as lawful, in identical or similar forms, in the constitutional structure of all the Member States.
- 23 However, that finding does not deal completely with the problem raised by the Verwaltungsgericht. Even if it is not possible to dispute in principle the Community's ability to restrict the exercise of the right to property in the context of a common organization of the market and for the purposes of a structural policy, it is still necessary to examine whether the restrictions introduced by the provisions in dispute in fact correspond to objectives of general interest pursued by the Community or whether, with regard to the aim pursued, they constitute a disproportionate and intolerable interference with the rights of the owner, impinging upon the very substance of the right to property. Such in fact is the plea submitted by the plaintiff in the main action, who considers that only the pursuit of a qualitative policy would permit the legislature to restrict the use of wine-growing property, with the result that she possesses an unassailable right from the moment that it is recognized that her land is suitable for wine growing. It is therefore necessary to identify the aim pursued by the disputed regulation and to determine whether there exists a reasonable relationship between the measures provided for by the regulation and the aim pursued by the Community in this case.

- 24 The provisions of Regulation No 1162/76 must be considered in the context of the common organization of the market in wine which is closely linked to the structural policy envisaged by the Community in the area in question. The aims of that policy are stated in Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (1), p. 234), which provides the basis for the disputed regulation, and in Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal L 54, p. 1), which codifies all the provisions governing the common organization of the market. Title III of that regulation, laying down "rules concerning production and for controlling planting", now forms the legal framework in that sphere. Another factor which makes it possible to perceive the Community policy pursued in that field is the Council Resolution of 21 April 1975 concerning new guidelines to balance the market in table wines (Official Journal C 90, p. 1).
- 25 Taken as a whole, those measures show that the policy initiated and partially implemented by the Community consists of a common organization of the market in conjunction with a structural improvement in the wine-producing sector. Within the framework of the guidelines laid down by Article 39 of the EEC Treaty that action seeks to achieve a double objective, namely, on the one hand, to establish a lasting balance on the wine market at a price level which is profitable for producers and fair to consumers and, secondly, to obtain an improvement in the quality of wines marketed. In order to attain that double objective of quantitative balance and qualitative improvement, the Community rules relating to the market in wine provide for an extensive range of measures which apply both at the production stage and at the marketing stage for wine.
- 26 In this regard, it is necessary to refer in particular to the provisions of Article 17 of Regulation No 816/70, re-enacted in an extended form by Article 31 of Regulation No 337/79, which provide for the establishment by the Member States of forecasts of planting and production, co-ordinated within the framework of a compulsory Community plan. For the purpose of implementing that plan measures may be adopted concerning the planting, re-planting, grubbing-up or cessation of cultivation of vineyards.

- 27 It is in this context that Regulation No 1162/76 was adopted. It is apparent from the preamble to that regulation and from the economic circumstances in which it was adopted, a feature of which was the formation as from the 1974 harvest of permanent production surpluses, that that regulation fulfils a double function: on the one hand, it must enable an immediate brake to be put on the continued increase in the surpluses; on the other hand, it must win for the Community institutions the time necessary for the implementation of a structural policy designed to encourage high-quality production, whilst respecting the individual characteristics and needs of the different wine-producing regions of the Community, through the selection of land for grape growing and the selection of grape varieties, and through the regulation of production methods.
- 28 It was in order to fulfil that twofold purpose that the Council introduced by Regulation No 1162/76 a general prohibition on new plantings, without making any distinction, apart from certain narrowly defined exceptions, according to the quality of the land. It should be noted that, as regards its sweeping scope, the measure introduced by the Council is of a temporary nature. It is designed to deal immediately with a conjunctural situation characterized by surpluses, whilst at the same time preparing permanent structural measures.
- 29 Seen in this light, the measure criticized does not entail any undue limitation upon the exercise of the right to property. Indeed, the cultivation of new vineyards in a situation of continuous over-production would not have any effect, from the economic point of view, apart from increasing the volume of the surpluses; further, such an extension at that stage would entail the risk of making more difficult the implementation of a structural policy at the Community level in the event of such a policy resting on the application of criteria more stringent than the current provisions of national legislation concerning the selection of land accepted for wine-growing.
- 30 Therefore it is necessary to conclude that the restriction imposed upon the use of property by the prohibition on the new planting of vines introduced for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community and does not infringe the substance of the right to property in the form in which it is recognized and protected in the Community legal order.

The question of the freedom to pursue trade or professional activities

- 31 The applicant in the main action also submits that the prohibition on new plantings imposed by Regulation No 1162/76 infringes her fundamental rights in so far as its effect is to restrict her freedom to pursue her occupation as a wine-grower.
- 32 As the Court has already stated in its judgment of 14 May 1974, *Nold*, referred to above, although it is true that guarantees are given by the constitutional law of several Member States in respect of the freedom to pursue trade or professional activities, the right thereby guaranteed, far from constituting an unfettered prerogative, must likewise be viewed in the light of the social function of the activities protected thereunder. In this case, it must be observed that the disputed Community measure does not in any way affect access to the occupation of wine-growing, or the freedom to pursue that occupation on land at present devoted to wine-growing. To the extent to which the prohibition on new plantings affects the free pursuit of the occupation of wine-growing, that limitation is no more than the consequence of the restriction upon the exercise of the right to property, so that the two restrictions merge. Thus the restriction upon the free pursuit of the occupation of wine-growing, assuming that it exists, is justified by the same reasons which justify the restriction placed upon the use of property.
- 33 Thus it is apparent from the foregoing that consideration of Regulation No 1162/76, in the light of the doubts expressed by the Verwaltungsgericht, has disclosed no factor of such a kind as to affect the validity of that regulation on account of its being contrary to the requirements flowing from the protection of fundamental rights in the Community.

Costs

The costs incurred by the Government of the Federal Republic of Germany, by the Council and by 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 action are concerned, in the nature of a step in the action pending before the Verwaltungsgericht Neustadt an der Weinstraße, 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 Verwaltungsgericht Neustadt an der Weinstraße by order of 14 December 1978, hereby rules:

1. Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/76, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines submitted before the entry into force of that regulation.
2. Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.

Kutscher	O'Keeffe	Touffait	Mertens de Wilmars	Pescatore
Mackenzie Stuart	Bosco	Koopmans	Due	

Delivered in open court in Luxembourg on 13 December 1979.

A. Van Houtte
Registrar

H. Kutscher
President