

JUDGMENT OF THE COURT

26 April 1988 *

In Case 74/86

Commission of the European Communities, represented by its Legal Adviser, Peter Karpenstein, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Jutta Peters, Ministerialrätin at the Federal Ministry for Youth, the Family, Women and Health, acting as Agent and Dietmar Knopp and Frank Montag, Rechtsanwälte, Cologne with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany,

defendant,

APPLICATION for a declaration that by statutorily fixing and maintaining a maximum enrichment limit of 4.5% vol. in certain German wine-growing regions, the Federal Republic of Germany has infringed the rules of the common organization of the market in wine, in particular Article 32 of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1), and Articles 5 and 189 of the EEC Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman, Administrator

* Language of the Case: German.

having regard to the Report for the Hearing and further to the hearing on 27 January 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on the same date,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 12 March 1986, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by introducing into its legislation and maintaining in force a provision to the effect that, for certain wine varieties and certain localities in certain German wine-growing regions, alcoholic strength by volume may be increased to 4.5% vol., the Federal Republic of Germany had failed to fulfil its obligations under the rules of the common organization of the market in wine, in particular Article 32 of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1), and Articles 5 and 89 of the EEC Treaty.
- 2 Article 32 (1) of Regulation No 337/79 provides that any increase in alcoholic strength by volume may not exceed 3.5% vol. in wine-growing zone A, 2.5% vol. in wine-growing zone B and 2% vol. in wine-growing zone C. Article 32 (2) provides that in years when climatic conditions have been exceptionally unfavourable, the alcoholic strength by volume provided for in paragraph (1) may be increased to 4.5% vol. in wine-growing zone A and to 3.5% vol. in wine-growing zone B. According to Article 32 (4), decisions authorizing the increases provided for in paragraph (2) are to be adopted by the Commission according to the Management Committee procedure.

- 3 The German Weingesetz (Wine Law) was amended by the Law of 27 August 1982 (*Bundesgesetzblatt* I 1982, p. 1177). This amending law added to paragraph 6 (2) of the Weingesetz the following sentence:

'In respect of certain vine varieties and certain localities of the Mosel-Saar-Ruwer, Mittelrhein and Ahr wine-growing areas, alcoholic strength by volume may be increased to 4.5% vol.'

- 4 The codified version of the Weingesetz, as amended, was published in the *Bundesgesetzblatt* at the same time as the amending law (*Bundesgesetzblatt* I 1982, p. 1196). In that text, paragraph 6 (2) was accompanied by a footnote worded as follows:

'According to Article 32 (1) of Regulation (EEC) No 337/79, the maximum enrichment limit in all wine-growing regions in wine-growing zone A is 3.5% vol. It may be increased by decision of the Commission of the European Communities to 4.5% vol. in years when climatic conditions are exceptionally unfavourable'.

- 5 As early as 8 July 1982 the Commission tried, in a telex message sent to the Government of the Federal Republic of Germany, to prevent the amending law from coming into force because it was incompatible with Article 32 (1) of Regulation No 337/79. On 30 July 1982, the German Government replied that it shared the Commission's view, that its telex message had been sent to the authorities of the *Länder* responsible for the implementation of the wine legislation and to the trade circles concerned and that it undertook to eliminate the incompatibility between paragraph 6 of the Weingesetz and the Community regulation as soon as possible. However, the amending law entered into force on 1 September 1982.
- 6 Since during 1983 and 1984 the Government of the Federal Republic of Germany did not take any steps to repeal the disputed sentence in paragraph 6 (2) of the Weingesetz, the Commission, by letter of 9 October 1984, commenced the procedure provided for by Article 169 of the EEC Treaty. On 11 December 1984 the German Government informed the Commission that the amendment of the

Weingesetz had been delayed but that a draft law was to be finalized by the beginning of 1985. After having established that at the beginning of 1985 the procedure for amending the law had not been commenced, the Commission delivered a reasoned opinion on 1 July 1985. Since the German Government did not respond to that opinion, the Commission brought the present action.

- 7 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute 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 In support of its application the Commission submits in particular that the disputed sentence added to Article 6 of the Weingesetz has created an ambiguous legal position inasmuch as it introduces into German legislation a rule which is incompatible with the relevant Community regulation. Neither an administrative practice consistent with Community rules nor the footnote in the notice of the amended version of the Weingesetz is capable of remedying that incompatibility. Such a situation leaves the persons to whom the law is directed in some doubt as to the law in force.
- 9 The German Government acknowledges that the disputed provision is incompatible with Community law. However, it stresses that in the Federal Republic of Germany the provisions of Community law on the increase of alcoholic strength by volume are strictly applied in practice, so that there is no legal uncertainty.
- 10 As the Court has pointed out on a number of occasions, in particular in its judgment of 15 October 1986 (in Case 168/85 *Commission v Italian Republic* [1986] ECR 2945), if a provision of national law that is incompatible with a provision of the Treaty, even one directly applicable in the legal order of the Member States, is retained unchanged, this creates an ambiguous state of affairs by keeping the persons concerned in a state of uncertainty as to the possibility of relying on Community law; maintaining such a provision in force therefore amounts to a failure by the State in question to comply with its obligations under the Treaty.

- 11 It follows from the foregoing that the Federal Republic of Germany was obliged not only to refrain from introducing into its legislation rules contrary to provisions of Community law but also to repeal such rules immediately after they had been adopted.
- 12 It must therefore be held that by introducing into its legislation and maintaining in force a provision to the effect that, for certain wine varieties and certain localities of the Mosel-Saar-Ruwer, Mittelrhein and Ahr wine-growing areas, alcoholic strength by volume may be increased to 4.5% vol., the Federal Republic of Germany has failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty and under Article 32 of Council Regulation No 337/79 on the common organization of the market in wine.

Costs

- 13 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that by introducing into its legislation and maintaining in force a provision to the effect that, for certain wine varieties and certain localities of the Mosel-Saar-Ruwer, Mittelrhein and Ahr wine-growing areas, alcoholic strength by volume may be increased to 4.5% vol., the Federal Republic of

Germany has failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty and under Article 32 of Council Regulation No 337/79 on the common organization of the market in wine;

(2) Orders the Federal Republic of Germany to pay the costs.

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|------------------|----------|---------------------|------------------------|
| Mackenzie Stuart | Due | Moitinho de Almeida | Rodríguez Iglesias |
| Koopmans | Everling | Galmot | Kakouris and O'Higgins |

Delivered in open court in Luxembourg on 26 April 1988.

J. G. Giraud
Registrar

A. J. Mackenzie Stuart
President