JUDGMENT OF THE COURT
15 October 1985 *

In Case 281/83

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Pier Giorgio Ferri, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that by continuing to restrict the designation 'vinegar' exclusively to wine vinegar, although such a designation was held to be incompatible with Article 30 of the EEC Treaty by the Court of Justice in its judgment of 9 December 1981 in Case 193/80, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty,

THE COURT

composed of: U. Everling, President of Chamber, acting as President, K. Bahlmann (President of Chamber), G. Bosco, T. Koopmans, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 12 June 1985,

gives the following

* Language of the Case: Italian.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 19 December 1983, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by continuing to restrict the designation 'vinegar' exclusively to wine vinegar, although such a designation was held to be incompatible with Article 30 of the EEC Treaty by the Court of Justice in its judgment of 9 December 1981 in Case 193/80 (*Commission* v *Italian Republic* [1981] ECR 3019), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

2 In that judgment, the Court held that:

'by prohibiting the marketing and importation of vinegars of agricultural origin other than those originating in the acetic fermentation of wine and by restricting the designation "vinegar" to wine vinegar, the Italian Republic has failed to fulfil its obligations under Article 30 *et seq.* of the EEC Treaty'.

3 It is clear from the grounds of that judgment that under the Italian legislation in force at the time, namely Decree No 162 of the President of the Italian Republic of 12 February 1965 (*Gazzetta Ufficiale* No 73 of 23 March 1965), it was prohibited upon penalty of a fine or imprisonment to transport, hold for sale or deal with in any manner whatsoever for use, directly or indirectly, for human consumption, *inter alia*, products containing acetic acid not originating in the acetic fermentation of wine (Article 51). Furthermore, the designation 'aceto' (vinegar) was restricted exclusively to the product obtained from the acetic fermentation of wine (Article 41). Those provisions were also applicable to products imported from abroad.

4 The aforesaid judgment led to the enactment of Law No 527 of 2 August 1982 laying down 'Rules relating to the production and marketing of "agri" (vinegars)' (*Gazzetta Ufficiale* No 221 of 12 August 1982). Article 1 of that law is worded as follows:

'By derogation from the prohibition laid down in Articles 51 and 60 of Decree No 162 of the President of the Republic of 12 February 1965 ... it shall be permitted to import, transport, hold for sale, market or deal with in any manner whatsoever for use, directly or indirectly, for human consumption, under the designation "agro di . . . " (vinegar made from . . .) followed by the raw material from which it is obtained, the product derived from the acetic fermentation of alcohol of agricultural origin fit for human consumption ...

...

The designation "aceto" (vinegar) or "aceto di vino" (wine vinegar) as defined in Article 41 of Decree No 162 of the President of the Republic of 12 February 1965 ... must be accompanied by the designation "agro di vino" (vinegar made from wine). The term "aceto" must also be used in connection with "agro di vino".'

5 The abovementioned provision has therefore amended the legislation hitherto in force in two respects, in the first place by authorizing the marketing and importation of vinegars of agricultural origin other than those derived from the acetic fermentation of wine, and secondly by changing the designation of the products in question. In that regard, the term 'aceto' has been replaced by the term 'agro', followed by the raw material from which the product is obtained. However, the addition of the term 'aceto' is authorized and is compulsory only in connection with 'agro di vino'.

6 The Commission considers that those rules are incapable of bringing Italian legislation fully into line with the principles laid down by the Court in its judgment of 9 December 1981 since the designation 'aceto' continues to be restricted to wine vinegar alone, and that the Italian Republic has therefore failed to 'take the necessary measures to comply with the judgment of the Court of Justice', contrary to Article 171 of the EEC Treaty. Accordingly, following an exchange of letters with the Italian Government, the Commission delivered on 1 September 1983 a

reasoned opinion pursuant to the first paragraph of Article 169 of the Treaty. Since the Italian Government failed to comply with the terms of that opinion, the Commission brought the action which is the subject of these proceedings.

7 According to the Commission, Italian Law No 527 of 2 August 1982 is contrary both to the letter and to the spirit of the judgment of the Court of 9 December 1981. That law has created a new designation, 'agro', which was hitherto unknown, whilst restricting exclusively to wine vinegar the traditional designation 'aceto', to which Italian consumers are accustomed. The Commission points out that in its aforesaid judgment the Court held that 'aceto' was a generic term and that it was incompatible with the objectives of the common market to restrict the use of that term to a single typical national variety, to the detriment of other varieties produced, in particular, in other Member States. With regard to consumer protection, the Court indicated that such protection could be provided equally effectively by adding to the generic designation additional information specifying the type of vinegar offered for sale.

8 The Italian Government, however, maintains that the abolition by Law No 527 of 2 August 1982 of the prohibition on the importation and marketing of vinegars other than wine vinegar made it necessary to regulate at the same time the question of the designation of those products in such a way as to provide accurate and impartial information to consumers who, owing to the legislation previously in force, were familiar only with wine vinegar. In the first place the Italian rules introduce a new generic designation known as 'agro', which is applicable to all vinegars of agricultural origin, and secondly they restrict the term 'aceto', as a specific designation, to 'agro di vino'. The term 'aceto' is therefore no more than a trade description used to identify in common parlance a product to which Italian consumers are traditionally accustomed. Those rules are in conformity with the spirit of the judgment of 9 December 1981 which applies only where the term 'aceto', within the meaning of the customs nomenclature, constitutes the generic designation.

9 It is necessary to examine in the first place the wording of the operative part of the judgment of 9 December 1981 in which the Court held that the Italian Republic had failed to fulfil its obligations under Article 30 *et seq.* of the EEC Treaty 'by restricting the designation "vinegar" to wine vinegar'. Since the Italian Republic was obliged, under Article 171 of the Treaty, to take the necessary measures to

comply with that judgment, it should have adopted appropriate measures to abolish in their entirety any rules or practices in national law which restricted the designation 'aceto' exclusively to wine vinegar.

10 It is common ground that Law No 527 of 2 August 1982, which was adopted as a result of the judgment of 9 December 1981 in order to bring Italian legislation into line with the principles laid down in that judgment, has replaced the term 'aceto' by the term 'agro' as the generic designation. None the less, the fact remains that Law No 527 also authorizes the use of the designation 'aceto' by way of additional information and that the addition of such information is not only authorized exclusively for wine vinegar, but is also compulsory in respect of that product.

11 The Italian Government's argument to the effect that the substitution of the term 'agro' for the term 'aceto' as the generic designation is such as to eliminate the restrictive effect on trade resulting from the application of the term 'aceto' exclusively to wine vinegar, cannot be accepted.

12 The effect of the amended legislation is still that the traditional designation 'aceto', which is known to and appreciated by Italian consumers, may lawfully be applied only to a category of products which are produced in substantial quantities in Italy, to the detriment of other categories of comparable products originating in other Member States. Consequently, that legislation has the effect of creating marketing conditions which are more favourable to domestic production than to comparable products imported from other Member States.

13 Nor can such legislation be justified on grounds relating to the protection of consumers who, according to the explanation given by the Italian Government, traditionally regard all vinegars as wine vinegar. In that regard, it is sufficient to refer to the grounds of the judgment of 9 December 1981, in which the Court pointed out that consumers may be protected only by means enabling national and imported products to be treated alike.

14 It follows that the amendment of the Italian legislation in question by the Law of 2 August 1982 cannot be regarded as complying precisely and in full with the judgment of 9 December 1981, in so far as that amendment still restricts the traditional designation 'aceto' to wine vinegar, whilst other categories of natural vinegars may only be designated by terms which are less well known to, and less appreciated by, Italian consumers.

15 In the light of those considerations, it must be held that by continuing to restrict, by Law No 527 of 2 August 1982, the designation 'aceto' (vinegar) exlusively to wine vinegar, although that restriction was held to be incompatible with Article 30 of the EEC Treaty by the Court of Justice in its judgment of 9 December 1981 in Case 193/80 (*Commission* v *Italian Republic* [1981] ECR 3019), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

Costs

16 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by continuing to restrict, by Law No 527 of 2 August 1982, the designation 'aceto' (vinegar) exclusively to wine vinegar, although that restriction was held to be incompatible with Article 30 of the EEC Treaty by the Court of Justice in its judgment of 9 December 1981 in Case 193/80 (*Commission* v *Italian Republic* [1981] ECR 3019), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Everling Bahlmann Bosco

Koopmans Due Galmot Kakouris

Delivered in open court in Luxembourg on 15 October 1985.

P. Heim
Registrar

U. Everling
President of Chamber,
Acting as President