

Judgment of the Court of 13 December 1979. - Liselotte Hauer v Land Rheinland-Pfalz. - Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. - Prohibition on new planting of vines. - Case 44/79.

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.

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 FULFILLS 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.