

Avis juridique important

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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.

European Court reports 1979 Page 03727

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Swedish special edition Page 00621

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

1 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - WINE - PROHIBITION ON NEW PLANTINGS OF VINES - COUNCIL REGULATION NO 1162/76 -TEMPORAL APPLICATION

(COUNCIL REGULATION NO 1162/76 , ART . 2 (1) , AS AMENDED BY REGULATION NO 2776/78)

2 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - WINE - PROHIBITION ON NEW PLANTINGS OF VINES - SCOPE

(COUNCIL REGULATION NO 1162/76 , ART . 2 (1))

3 . MEASURES OF THE INSTITUTIONS - VALIDITY - INFRINGEMENT OF FUNDAMENTAL RIGHTS - ASSESSMENT IN THE LIGHT OF COMMUNITY LAW ALONE - COMMUNITY LAW - GENERAL LEGAL PRINCIPLES - FUNDAMENTAL RIGHTS - OBSERVANCE ENSURED BY THE COURT - LEGISLATIVE POINTS OF REFERENCE - CONSTITUTIONS OF THE MEMBER STATES - INTERNATIONAL INSTRUMENTS

4 . COMMUNITY LAW - GENERAL LEGAL PRINCIPLES - FUNDAMENTAL RIGHTS - RIGHT TO PROPERTY - OBSERVANCE WITHIN THE COMMUNITY LEGAL ORDER

5 . COMMUNITY LAW - GENERAL LEGAL PRINCIPLES - FUNDAMENTAL RIGHTS - RIGHT TO PROPERTY - OBSERVANCE WITHIN THE COMMUNITY LEGAL ORDER - LIMITS - RESTRICTIONS ON THE NEW PLANTING OF VINES - PERMISSIBLE - CONDITIONS

6 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - WINE - PROHIBITION ON NEW PLANTINGS OF VINES - TEMPORARY CHARACTER - OBJECTIVES OF GENERAL INTEREST - INFRINGEMENT OF THE RIGHT TO PROPERTY - NONE

(COUNCIL REGULATION NO 1162/76 , ART . 2 (1))

7 . COMMUNITY LAW - GENERAL LEGAL PRINCIPLES - FUNDAMENTAL RIGHTS - FREEDOM TO PURSUE A TRADE OR PROFESSION - OBSERVANCE WITHIN THE COMMUNITY LEGAL ORDER - LIMITS - SOCIAL FUNCTION OF THE PROTECTED ACTIVITIES

Summary

1 . BY PROVIDING THAT THE MEMBER STATES SHALL NO LONGER GRANT AUTHORIZATIONS FOR NEW PLANTING ' ' AS FROM THE DATE ON WHICH THIS REGULATION ENTERS INTO FORCE ' ' , THE SECOND SUBPARAGRAPH OF ARTICLE 2 (1) OF COUNCIL REGULATION NO 1162/76 ON MEASURES DESIGNED TO ADJUST WINE GROWING POTENTIAL TO MARKET REQUIREMENTS , AS AMENDED BY REGULATION NO 2776/78 , RULES OUT THE POSSIBILITY OF TAKING INTO CONSIDERATION THE TIME AT WHICH AN APPLICATION WAS SUBMITTED AND INDICATES THE INTENTION TO GIVE IMMEDIATE EFFECT TO THE REGULATION .

REGULATION NO 1162/76 MUST THEREFORE BE INTERPRETED AS MEANING THAT THE SECOND SUBPARAGRAPH OF ARTICLE 2 (1) THEREOF ALSO APPLIES TO APPLICATIONS FOR AUTHORIZATION OF NEW PLANTING OF VINES MADE 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 .

3 . 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 .

FUNDAMENTAL RIGHTS FORM AN INTEGRAL PART OF THE GENERAL PRINCIPLES OF THE LAW , THE OBSERVANCE OF WHICH IS ENSURED BY THE COURT . IN SAFEGUARDING THOSE RIGHTS , THE LATTER 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 . INTERNATIONAL TREATIES FOR THE PROTECTION OF HUMAN RIGHTS ON WHICH THE MEMBER STATES HAVE COLLABORATED OR OF WHICH THEY ARE SIGNATORIES , CAN ALSO SUPPLY GUIDELINES WHICH SHOULD BE FOLLOWED WITHIN THE FRAMEWORK OF COMMUNITY LAW .

IN THESE CIRCUMSTANCES , THE DOUBTS EVINCED BY A NATIONAL COURT AS TO THE COMPATIBILITY OF THE PROVISIONS OF AN ACT OF AN INSTITUTION OF THE COMMUNITIES WITH THE RULES CONCERNING THE PROTECTION OF FUNDAMENTAL RIGHTS FORMULATED WITH REFERENCE TO NATIONAL CONSTITUTIONAL LAW MUST BE UNDERSTOOD AS QUESTIONING THE VALIDITY OF THAT ACT IN THE LIGHT OF COMMUNITY LAW .

4 . 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 .

5 . TAKING INTO ACCOUNT THE CONSTITUTIONAL PRECEPTS COMMON TO THE MEMBER STATES , CONSISTENT LEGISLATIVE PRACTICES AND ARTICLE 1 OF THE FIRST PROTOCOL TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS , THE FACT 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.

Parties

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 DURKHEIM

AND

LAND RHEINLAND-PFALZ

Subject of the case

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 UBER MASSNAHMEN AUF DEM GEBIETE DER WEINWIRTSCHAFT (WEINWIRTSCHAFTSGESETZ),

Grounds

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 DURKHEIM. 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 .

Decision on costs

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 .

Operative part

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 .