

Court of Justice EU, 16 May 2000, Belgium v Spain



PROTECTED DESIGNATION OF ORIGIN – GEOGRAPHICAL INDICATIONS

Obligation to bottle Rioja-wine in production area constitutes a justified requirement

73. It thus appears that, for Rioja wines transported and bottled in the region of production, the controls are far-reaching and systematic and are the responsibility of the totality of the producers themselves, who have a fundamental interest in preserving the reputation acquired, and that only consignments which have been subjected to those controls may bear the 'denominación de origen calificada'.

74. It can be inferred from the foregoing that the risk to which the quality of the product finally offered to consumers is exposed is greater where it has been transported and bottled outside the region of production than when those operations have taken place within the region.

• 75. Accordingly, it must be accepted that the requirement at issue, whose aim is to preserve the considerable reputation of Rioja wine by strengthening control over its particular characteristics and its quality, is justified as a measure protecting the 'denominación de origen calificada' which may be used by all the producers concerned and is of decisive importance to them.

76. Finally, it must be recognized that the measure is necessary for attainment of the objective pursued, in that there are no less restrictive alternative measures capable of attaining it.

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Court of Justice EU, 16 May 2000

(G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón, R. Schintgen (Presidents of Chambers), C. Gulmann (Rapporteur), J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges)

JUDGMENT OF THE COURT

16 May 2000 ⁽¹⁾

(Article 34 of the EC Treaty (now, after amendment, Article 29 EC) - Regulation (EEC) No 823/87 - Quality wines produced in a specified region - Designations of origin - Obligation to bottle in the region of production - Justification - Consequences of an earlier judgment giving a preliminary ruling - Article 5 of the EC Treaty (now Article 10 EC))

In Case C-388/95,

Kingdom of Belgium, represented by Jan Devadder, General Adviser in the Legal Service of the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins, applicant,

supported by

Kingdom of Denmark, represented by P. Biering, Head of Division in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Danish Embassy, 4 Boulevard Royal,

by

Kingdom of the Netherlands, represented by M. Fierstra and J. van den Oosterkamp, Deputy Legal Advisers in the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C.M. Spoo,

by

Republic of Finland, represented by H. Rotkirch, Ambassador and Head of the Legal Department, Ministry of Foreign Affairs, and T. Pynnä and K. Castrén, Legislative Adviser and Assistant, respectively, in that ministry, acting as Agents, with an address for service in Luxembourg at the Finnish Embassy, 2 Rue Heinrich Heine,

and by

United Kingdom of Great Britain and Northern Ireland, represented by S. Ridley, of the Treasury Solicitor's Department, and by E. Sharpston, Barrister, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

interveners,

v

Kingdom of Spain, represented by Rosario Silva de Lapuerta, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

supported by

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department, Ministry of Foreign Affairs, acting as Agent, assisted by I.M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

by

Portuguese Republic, represented by L. Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, Â. Cortesão Seça Neves, a lawyer in the same service, and L. Bigotte Chorão, an adviser in the Centre for Legal Studies of the Office of the President of the Council of Ministers, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

and by

Commission of the European Communities, represented by J.L. Iglesias Buhigues and H. van Lier, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for a declaration that, by maintaining in force Real Decreto 157/1988, por el que se establece la normativa a que deben ajustarse las denominaciones de origen y las denominaciones de origen calificadas de vinos y sus respectivos Reglamentos (Royal Decree No 157/88 laying down the rules governing designations of origin and controlled designations of origin for wines and regulations implementing it, BOE No 47 of 24 February 1988, p. 5864) and in particular Article 19(1)(b) thereof, the Kingdom of

¹ Language of the case: Spanish

Spain has failed to fulfil its obligations under Article 34 of the EC Treaty (now, after amendment, Article 29 EC), as interpreted by the Court of Justice of the European Communities in its judgment of 9 June 1992 in Case C-47/90 *Delhaize v Promalvin* [1992] ECR I-3669, and Article 5 of the EC Treaty (now Article 10 EC),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón, R. Schintgen (Presidents of Chambers), C. Gulmann (Rapporteur), J.-P. Puissechot, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. Saggio,

Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 October 1998, at which the Kingdom of Belgium was represented by J. Devadder, the Kingdom of Spain by R. Silva de Lapuerta, the Kingdom of Denmark by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent, the Italian Republic by I.M. Braguglia, the Kingdom of the Netherlands by M. Fierstra, the Portuguese Republic by L. Fernandes and L. Bigotte Chorão, the Republic of Finland by T. Pynnä, the United Kingdom by E. Sharpston, assisted by P. Goodband, expert, and the Commission by J.L. Iglesias Buhigues and H. van Lier, assisted by A. Bertrand, Lecturer at the University of Bordeaux II,

after hearing the Opinion of the Advocate General at the sitting on 25 March 1999,

gives the following

Judgment

1. By application lodged at the Registry of the Court on 13 December 1995, the Kingdom of Belgium brought an action under Article 170 of the EC Treaty (now Article 227 EC) for a declaration that, by maintaining in force Real Decreto 157/1988, por el que se establece la normativa a que deben ajustarse las denominaciones de origen y las denominaciones de origen calificadas de vinos y sus respectivos Reglamentos (Royal Decree No 157/88 laying down the rules governing designations of origin and controlled designations of origin for wines and regulations implementing it, BOE No 47 of 24 February 1988, p. 5864, hereinafter 'Decree No 157/88') and in particular Article 19(1)(b) thereof, the Kingdom of Spain has failed to fulfil its obligations under Article 34 of the EC Treaty (now, after amendment, Article 29 EC), as interpreted by the Court of Justice of the European Communities in its judgment of 9 June 1992 in Case C-47/90 *Delhaize v Promalvin* [1992] ECR I-3669, and Article 5 of the EC Treaty (now Article 10 EC).

The Spanish legislation in question

2. Ley 25/1970, Estatuto del la Viña, del Vino y los Alcoholes (Spanish Law laying down the basic rules concerning vines, wines and spirits, hereinafter 'Law No 25/70') and Decree No 157/88 lay down the conditions under which wine can be granted a 'denominación de origen' (designation of origin) or, if certain additional conditions are complied with, a 'denominación de origen calificada' (controlled designation of origin).

3. Under Articles 84 and 85 of Law No 25/70, the Minister for Agriculture may, at the request of wine growers and producers or on his own initiative, establish a 'designación de origen'. A 'Consejo Regulador de la denominación de origen' (Governing Council for designations of origin) is then set up. Under Article 87 et seq. of Law No 25/70 the 'Consejo Regulador', composed for the most part of representatives of the wine growing sector, is authorised, subject to approval by the Minister of Agriculture, to issue rules applicable to wines bearing a 'denominación de origen' and also has the task of

providing guidance for, overseeing and monitoring the production, preparation and quality of such wines, safeguarding the prestige of the designation on domestic and foreign markets and taking proceedings in respect of any unlawful use of the designation.

4. Article 86 of Law No 25/70 authorises the Minister for Agriculture, on a proposal from a 'Consejo Regulador', to grant the designation 'calificada' to wine products already granted a 'denominación de origen' if certain conditions are fulfilled.

5. Those conditions are laid down in Articles 17 to 21 of Decree No 157/88. Article 19(1)(b) of that decree makes use of the description 'calificada' subject to, among other things, the obligation that the wine be bottled in cellars at the place of origin, that is to say in cellars in the region of production. That requirement was declared applicable to wines intended for export only after the expiry of a period of five years after the date of publication of Decree No 157/88, which was 24 February 1988. Article 19(1)(c) of Decree No 157/88 also requires the 'Consejo Regulador' to establish, within the limits of its competence, a procedure, extending from production to marketing, for monitoring of the quantity and the quality of the protected products.

6. Under Article 84 et seq. of Law No 25/70, wine produced in the La Rioja region was granted a 'denominación de origen'. At that time, a 'Consejo Regulador de la denominación de origen Rioja' (Governing Council for the designation of origin Rioja, hereinafter 'the Rioja Governing Council') was set up.

7. By order of the Spanish Minister for Agriculture, Fisheries and Food of 3 April 1991 (BOE No 85 of 9 April 1991, p. 10675), the description 'calificada' was granted to the Rioja 'denominación de origen'.

8. That order also approved the rules applicable to that designation and the Rioja Governing Council (hereinafter 'the Rioja Rules') annexed to it.

9. Article 39 of the Rioja Rules states:

- 'The Rioja Governing Council shall comprise 22 representatives of the wine growing sector, one representative of each of the three autonomous communities in whose territory the production area is located and a representative of the Ministry of Agriculture. However, the four representatives of the public authorities shall not be entitled to vote.

- It shall be chaired by a president appointed by the Minister for Agriculture on a proposal from a qualified majority of its members'.

10. Article 32 of the Rioja Rules is in the following terms:

'1. Wine protected by the "denominación de origen calificada" Rioja shall be bottled exclusively in the registered cellars authorised by the Governing Council, failing which the wine may not bear that designation.

2. Wines protected by the "denominación de origen calificada" Rioja may be put into circulation and be despatched solely from registered cellars, in special bottles which do not detract from their quality or prestige and have been approved by the Governing Council. The bottles must be of glass and of a capacity authorised by the European Economic Community with the exception of one-litre bottles.'

11. Pursuant to Decree No 157/88, the Rioja Governing Council laid down the measures needed progressively to extend to wine intended for export the requirement that it be bottled in cellars in the region of production. Those measures consisted in the allocation to each undertaking exporting wine in bulk of decreasing annual export quotas fixed according to the country of destination.

The Community legislation

The relevant Treaty provisions

12. Article 5 of the Treaty provides:

'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.'

13. Under Article 34(1) of the Treaty, quantitative restrictions on exports and all measures having equivalent effect are to be prohibited between Member States. Article 36 of the EC Treaty (now, after amendment, Article 30 EC) provides that Article 34 of the Treaty is not to preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of, inter alia, the protection of industrial and commercial property.

The provisions of secondary Community law applicable when the action was brought

14. Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (OJ 1987 L 84, p. 59), as amended most recently by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1, hereinafter 'Regulation No 823/87'), lays down a framework of Community rules governing the production and control of quality wines produced in specified regions ('quality wines psr'). The fourth recital in the preamble thereto states that it was adopted in pursuance of a policy of encouraging quality production in agriculture and especially in wine growing.

15. Pursuant to Article 15 of Regulation No 823/87, only wines to which that regulation or other specific regulations or implementing regulations are applicable and which comply with the requirements laid down by the national rules may have applied to them the Community terms laid down by Regulation No 823/87, such as 'quality wine psr', or any specific term traditionally used in wine growing Member States to designate particular wines, such as, in Spain, the term 'denominación de origen' or 'denominación de origen calificada'.

16. The first paragraph of Article 18 of Regulation No 823/87 provides:

'Producer Member States may, taking into account fair and traditional practices:

- ...
- in addition to the other provisions laid down in this Regulation, lay down any additional or more stringent characteristics or conditions of production, manufacture and movement in respect of the quality wines psr produced in their territory'

17. The 22nd recital in the preamble to Regulation No 823/87 states that the purpose of the latter provision is to preserve the particular quality characteristics of quality wines psr.

18. Article 15a of Regulation No 823/87 provides for a procedure for the downgrading of a quality wine psr where it has undergone a change during storage or transport which has caused its properties to deteriorate or alter or where it has been the subject of prohibited treatments or is not legally described as a quality wine psr.

19. In addition, the wine growing sector is governed in particular by:

- Council Regulation (EEC) No 2048/89 of 19 June 1989 laying down general rules on controls in the wine sector (OJ 1989 L 202, p. 32);

- Commission Regulation (EEC) No 2238/93 of 26 July 1993 on the accompanying documents for the carriage of wine products and the relevant records to be kept (OJ 1993 L 200, p. 10), which repealed and replaced Commission Regulation (EEC) No 986/89 of 10 April 1989 on the accompanying documents for carriage of wine products and the relevant records to be kept (OJ 1989 L 106, p. 1);

- Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13), as amended most recently by the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (hereinafter 'Regulation No 2392/89');

- Commission Regulation (EEC) No 3201/90 of 16 October 1990 laying down detailed rules for the description and presentation of wines and grape musts (OJ 1990 L 309, p. 1), as most recently amended by Commission Regulation (EC) No 2603/95 of 8 November 1995 (OJ 1995 L 267, p. 16).

The Delhaize judgment

20. In Delhaize, the Court, in response to a request from the Tribunal de Commerce (Commercial Court), Brussels, for a ruling on the compatibility with Article 34 of the Treaty of national legislation such as Decree No 157/88 and the Rioja Rules adopted under it, held that national provisions applicable to wine of designated origin which limited the quantity of wine that might be exported in bulk but otherwise permitted sales of wine in bulk within the region of production constituted measures having equivalent effect to a quantitative restriction on exports which were prohibited by Article 34 of the Treaty.

21. The Court found, first (paragraphs 12 to 14 of the judgment), that national rules which limited the quantity of wine available for export in bulk to other Member States but imposed no quantitative restriction on sales of wine in bulk between undertakings situated within the region of production had the specific effect of restricting patterns of exports of wine in bulk and, in particular, of procuring a special advantage for bottling undertakings situated in the region of production.

22. As regards the Spanish Government's contention that the obligation to bottle the wine in the region of production, as a condition for the grant of the designation of 'denominación de origen calificada' to that wine, constituted protection of industrial and commercial property within the meaning of Article 36 of the Treaty, the Court stated (paragraph 16) that, as Community law then stood, it was for each Member State to define, within the terms of Council Regulation (EEC) No 823/87, the conditions applicable to the use of a name of a geographical area within its territory as a registered designation of origin for a wine from that area. However, it stressed that, in so far as those conditions constituted one of the measures referred to by Article 34 of the Treaty, they were not justified on grounds of the protection of industrial and commercial property within the meaning of Article 36 of the Treaty unless they were needed in order to ensure that the registered designation of origin fulfilled its specific function.

23. The Court observed (paragraphs 17 and 18) that the specific function of a registered designation of origin was to guarantee that the product bearing it came from a specified geographical area and displayed certain particular characteristics and that, consequently, an obligation like that at issue would be justified by a concern to ensure that the designation of origin fulfilled its specific function only if bottling in the region of production endowed the wine originating in that region with particular characteristics, of such a kind as to give it individual character, or if bottling in the region of production were essential in order to preserve essential characteristics acquired by that wine. The Court then

found (paragraph 19) that it had not been shown that the bottling of the wine in question in the region of production was an operation which endowed it with particular characteristics or was essential in order to maintain the specific characteristics acquired by it.

24. The Spanish Government's argument that the supervisory powers vested in the Rioja Governing Council were limited to the region of production, making it necessary for the wine to be bottled in the region of production, was rejected by the Court on the ground that Regulation (EEC) No 986/89 had established a system for verifying that the authenticity of the wine was not affected during transport (paragraph 21).

25. The Court then held (paragraphs 22 and 23) that the justification claimed by the Spanish Government that the rules at issue formed part of a policy to improve the quality of wine could not be upheld since it had not been established that the confinement of bottling to a specified area was, in itself, capable of affecting the quality of the wine.

26. Finally, it held (paragraphs 25 and 26) that, even though under Article 18 of Regulation No 823/87 the Member States might, taking into account fair and traditional practices, lay down additional or more stringent conditions of movement than those laid down in Regulation No 823/87, that article could not be interpreted as authorizing the Member States to impose conditions contrary to the Treaty rules on the movement of goods.

The present proceedings

27. In 1994, the Belgian Government drew the Commission's attention to the fact that the Spanish rules at issue in *Delhaize* were still in force, despite the interpretation of Article 34 of the Treaty given by the Court in that judgment, and called on it to act. On 14 November 1994, the competent member of the Commission replied that the Commission considered it 'inappropriate to persist with Treaty-infringement cases'.

28. On 8 March 1995, the Belgian Government sent the Commission a letter in which it expressed its intention to commence Treaty-infringement proceedings under Article 170 of the Treaty against the Kingdom of Spain for infringement of Article 34 of the Treaty.

29. On 12 April 1995, the Commission gave notice of that letter to the Kingdom of Spain, which submitted its written observations on 5 May 1995.

30. On 31 May 1995, the two Member States each submitted their own case and their observations on the other party's case orally to the Commission in accordance with Article 170 of the Treaty. Since the Commission did not issue a reasoned opinion, the Kingdom of Belgium commenced the present Treaty-infringement proceedings.

31. By orders of the President of the Court of 21 June 1996, the Kingdom of Denmark, the Kingdom of the Netherlands, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the Kingdom of Belgium, and the Italian Republic, the Portuguese Republic and the Commission were granted leave to intervene in support of the Kingdom of Spain.

Substance

32. The Belgian Government and the Danish, Netherlands, Finnish and United Kingdom Governments, intervening in its support, claim that, by not amending Decree No 157/88 in order to comply with the *Delhaize* judgment, the Kingdom of Spain has failed to fulfil its obligations under Article 5 of the Treaty.

33. In its defense, the Spanish Government contends that, in the *Delhaize* judgment, the Court did not rule on the compatibility of the Spanish provisions with the Community law. It asserts that there are provisions similar to those examined by the Court in the laws of almost all wine-

producing Member States. In its view, the Spanish legislation in force is in conformity with the Court's interpretation of Article 34 of the Treaty in the *Delhaize* judgment and fully complies with Community legislation.

34. In those circumstances, since this is an action to establish a failure to fulfil a Treaty obligation, the Court must examine the pleas thus raised in order to determine whether the Kingdom of Spain has in fact failed to fulfil its obligations under Article 34 of the Treaty.

35. As regards the latter provision, it necessary to consider, having regard to the pleas and arguments of the parties, whether, in the circumstances of this case, the obligation to bottle wine in the region of production in order to be able to use the designation of origin (hereinafter 'the contested requirement') constitutes a restriction on the free movement of goods and, if so, whether it is authorized by the Community rules concerning quality wines psr or whether it is justified by an aim in the general interest such as to override the requirements of the free movement of goods.

The existence of a restriction on the free movement of goods

36. The Belgian Government and the Governments intervening in its support claim that the contested requirement results in a quantitative limitation on exports of Rioja wine in bulk within the meaning of Article 34 of the Treaty, as already held by the court in *Delhaize*.

37. The Spanish Government, supported by the Italian and Portuguese Governments, submits that the Spanish legislation at issue does not in any way limit the quantity of wine produced in the Rioja region which may be exported in bulk. Its sole purpose and effect is to prohibit any improper and uncontrolled use of the Rioja 'denominación de origen calificada'. The Spanish Government emphasizes that the sale of wine in bulk within the region is not authorized on a general basis, in that any dispatch of wine within the region must be authorized in advance by the Rioja Governing Council and be sent exclusively to bottling undertakings authorized by it. In the region there are undertakings which are not authorized and have chosen to engage in the marketing of wines produced in the region but not protected by the 'denominación de origen calificada'. **Thus, in this case, the Spanish rules do not correspond to the situation considered by the Court in *Delhaize*. That case concerned national rules applicable to wines bearing a designation of origin which limited the quantity of wine permitted to be exported in bulk while allowing sales of wine in bulk within the region of production.**

38. It is important to bear in mind that a consequence of the requirement at issue is that wine produced in the region, which fulfils the other conditions laid down for eligibility for the Rioja 'denominación de origen calificada', can no longer be bottled outside the region without being deprived of that designation.

39. Although the fact that the bulk transport of wine qualifying for use of that designation is, to some extent, also limited within the actual region of production may be a factor to be taken into consideration in examining any justification for the contested requirement, it cannot be relied on to show that that requirement has no restrictive effects.

40. That requirement means, in any event, that wine transported in bulk within the region retains entitlement to the 'denominación de origen calificada' when it is bottled in authorized cellars.

41. It is thus a national measure which has the effect of specifically restricting patterns of exports of wine eligible to bear the 'denominación de origen calificada' and thereby of establishing a difference of treatment between trade within a

Member State and its export trade, within the meaning of Article 34 of the Treaty.

42. Accordingly, the Spanish rules at issue constitute a measure having an effect equivalent to quantitative restrictions on exports within the meaning of Article 34 of the Treaty.

The scope of Article 18 of Regulation No 823/87

43. The Spanish Government, supported by the Italian and Portuguese Governments, states that the Community legislation on quality wines *psr* is not exhaustive and allows the Member States to lay down more stringent national rules. It cites Article 18 of Regulation No 823/87, which authorizes the Member States to lay down additional or more stringent conditions for the production and movement of wines within their territory. The use in that provision of the term 'movement' is particularly significant since the contested requirement undeniably forms part of the provisions on the movement of quality wines *psr*.

44. The Belgian Government states that, in *Delhaize*, the Court rejected the argument based on Article 18 of Regulation No 823/87. It also maintains that the contested requirement is contrary to fair and traditional bottling practice in the Member States which import wine.

45. It must be borne in mind that in *Delhaize* the Court held (in paragraph 26) that Article 18 of Regulation No 823/87 could not be interpreted as authorizing the Member States to impose conditions contrary to the Treaty rules on the movement of goods. That provision cannot therefore by itself render the contested requirement lawful.

46. Conversely, and contrary to the Belgian Government's contention, it does not in itself prohibit an obligation that wine be bottled in the region of production merely because it authorizes additional national requirements 'taking into account fair and traditional practices'. The term 'taking into account' does not have the more restrictive sense of an expression indicating a positive requirement, such as the term 'provided that there is', or an expression indicating a prohibition, such as 'without prejudice to'. In circumstances like those of this case, characterized at the date of adoption of Decree No 157/88 by the coexistence, not contested by the parties, of the practice of bottling in the region of production and the practice of exporting wine in bulk, the wording of Article 18 of Regulation No 823/87 merely implies that those practices are to be taken into consideration. This might entail a comparative assessment of the interests involved, after which preference might be accorded, having regard to certain objectives, to one practice rather than another.

Justification for the contested requirement

47. The Spanish, Italian and Portuguese Governments, and also the Commission, consider that bottling forms an integral part of the process of wine production. It is a stage in the processing of the product and therefore only a wine bottled in the region can truly be regarded as having originated in that region.

48. It follows, they submit, that a wine bottled outside the region of La Rioja bearing the Rioja 'denominación de origen calificada' infringes the exclusive right to use that designation, which is vested in the entire group of producers in the region whose wine fulfils the conditions for its use, including that of being bottled in the region. Thus, the restrictive effects of the requirement at issue are justified on grounds relating to the protection of industrial and commercial property referred to in Article 36 of the Treaty. The requirement is needed in order to ensure that the 'denominación de origen calificada' fulfils its specific function, which is, in particular, to guarantee the origin of the product.

49. For the purpose of giving judgment in these proceedings, rather than determining whether or not bottling in the region of production of a wine which may qualify for a 'denominación de origen calificada' should be regarded as a stage in the process of producing that wine, it is necessary to appraise the reasons for which, according to the Spanish Government, that operation should be carried out in the region of production. Only if those reasons are in themselves capable of justifying the requirement at issue may that requirement be regarded as compatible with the Treaty, notwithstanding its restrictive effects on the free movement of goods.

50. As far as those reasons are concerned, the Spanish Government refers to the specific nature of the product and the need to protect the good reputation attaching to the Rioja 'denominación de origen calificada' by preserving, by means of the requirement at issue, the quality and guarantee of the origin of Rioja wine. That requirement is therefore justified by virtue of the protection of industrial and commercial property with which Article 36 of the Treaty is concerned.

51. It is true, as the Belgian Government and the Governments intervening in its support have pointed out, that the Court took the view in *Delhaize* that it had not been shown that bottling in the region of production was an operation needed to preserve particular characteristics of the wine (paragraph 19) or to guarantee the origin of the wine (paragraph 21) or that the confinement of bottling to a specified area was, in itself, capable of affecting the quality of the wine (paragraph 23).

52. However, in the present proceedings, the Spanish, Italian and Portuguese Governments and the Commission have produced new information to demonstrate that the reasons underlying the contested requirement are capable of justifying it. It is necessary to examine this case in the light of that information.

53. Community legislation displays a general tendency to enhance the quality of products within the framework of the common agricultural policy, in order to promote the reputation of those products through, *inter alia*, the use of designations of origin which enjoy special protection. That general tendency has become apparent in the quality wines sector, as has been pointed out in paragraphs 14 and 17 of this judgment. It has also emerged in relation to other agricultural products, in respect of which the Council adopted Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1). The eighth recital in the preamble to that regulation makes it clear that the latter is to apply without prejudice to existing Community legislation on wines and spirits, 'which provide for a higher level of protection'.

54. Designations of origin fall within the scope of industrial and commercial property rights. The applicable rules protect those entitled to use them against improper use of those designations by third parties seeking to profit from the reputation which they have acquired. They are intended to guarantee that the product bearing them comes from a specified geographical area and displays certain particular characteristics (*Delhaize*, paragraph 17).

55. They may enjoy a high reputation amongst consumers and constitute for producers who fulfil the conditions for using them an essential means of attracting custom (see to that effect, in relation to indications of provenance, [Case C-3/91 Exportur](#) [1992] ECR I-5529, paragraph 28).

56. The reputation of designations of origin depends on their image in the minds of consumers. That image in turn depends essentially on particular characteristics and more generally on

the quality of the product. It is on the latter, ultimately, that the product's reputation is based.

57. It must be observed that a quality wine is a very specific product, a fact not in any event contested in relation to Rioja wine. Its particular qualities and characteristics, which result from a combination of natural and human factors, are linked to its geographical area of origin and vigilance must be exercised and efforts made in order for them to be maintained.

58. The rules governing the Rioja 'denominación de origen calificada' are designed to uphold those qualities and characteristics. By ensuring that operators in the wine growing sector of the Rioja region, at whose request the designation of origin was granted, control bottling as well, they pursue the aim of better safeguarding the quality of the product and, consequently, the reputation of the designation, for which they now assume full and collective responsibility.

59. Against that background, the requirement at issue must be regarded as compatible with Community law despite its restrictive effects on trade if it is shown that it is necessary and proportionate and capable of upholding the considerable reputation incontestably enjoyed by the Rioja 'denominación de origen calificada'.

60. The Spanish Government, supported by the Italian and Portuguese Governments, and by the Commission, submits that, without this requirement, the reputation of the Rioja 'denominación de origen calificada' might in fact be undermined. Transport and bottling outside the region of production would, in its view, put the quality of the wine at risk. The requirement at issue contributes decisively to safeguarding the particular characteristics and the quality of the product in that its effect is to entrust the producers and the Rioja Governing Council, that is to say those who have the necessary knowledge and know-how and a fundamental interest in preserving the reputation acquired, with the implementation of, and monitoring of compliance with, all the rules concerning transport and bottling.

61. In the present case, it is undisputed that the bottling of wine is an important operation which, if not carried out in accordance with strict requirements, may seriously impair the quality of the product. Bottling does not involve merely filling empty containers but normally entails, before filling, a series of complex oenological operations (filtering, clarifying, cooling, and so on) which, if not carried out in accordance with the prescribed rules of the trade, may adversely affect the quality and alter the characteristics of the wine.

62. Nor is it contested that bulk transport of wine may seriously impair its quality if not undertaken under optimum conditions. If the conditions of transport are not perfect, the wine will be exposed to oxidation reduction, which will increase with distance and may impair the quality of the product. It will also be subject to the risk of variations in temperature.

63. The Belgian Government and the Governments intervening in its support assert that those risks exist whether the wine is transported and bottled in the region of production or outside it. In their opinion, the bulk transport and bottling of wine outside the region may be carried out under conditions such as to safeguard its quality and reputation. In any event, existing Community legislation contains adequate rules to control the quality and authenticity of wines, in particular those which have been granted a 'denominación de origen calificada'.

64. On the basis of the information produced to the Court in this case, it must be accepted that, in the best conditions, a wine's characteristics and quality may indeed be maintained when it has been transported in bulk and bottled outside the region of production.

65. However, in the case of bottling, the best conditions are more certain to be assured if bottling is done by undertakings established in the region of those entitled to use the designation and operating under their direct control, since they have specialized experience and, what is more, thorough knowledge of the specific characteristics of the wine in question which must not be impaired or lost at the time of bottling.

66. As regards bulk transport of wine, whilst it is true that the phenomenon of oxidation reduction may also occur during bulk transport in the region of production, even though the distance covered is usually less, restoration of the initial characteristics of the product will in those circumstances be entrusted to undertakings which offer all the guarantees of know-how and, again, the most thorough knowledge of wine.

67. Moreover, as the Advocate General has stressed in points 28 to 31 of his Opinion, controls undertaken outside the region of production in accordance with the Community rules provide fewer guarantees as to the quality and authenticity of the wine than those carried out in the region in compliance with the monitoring procedure referred to in paragraph 5 of this judgment.

68. It is to be noted that, in the context of Regulation No 2048/89, controls as to the quality and authenticity of the wine are not required to be carried out systematically in all the Member States. Article 3(2) of that regulation in fact provides that controls are to 'be carried out either systematically or by sampling'.

69. As regards Regulation No 2238/93, this does not, as the Commission observes, guarantee either the origin or the original condition of wine carried in bulk or preservation of its quality during transport since the control for which it provides is essentially documentary control of the quantities transported.

70. As far as Regulation No 2392/89 is concerned, Article 42 provides that the competent authorities of a Member State may call on the competent authorities of another Member State to require the bottler to furnish proof of the accuracy of the information used in the description or the presentation of the product concerning its nature, identity, quality, composition, origin or provenance. However, that mechanism, which is a matter of direct cooperation, is not systematic in character in that it necessarily involves requests being made by the competent authorities concerned.

71. In contrast, the Spanish rules at issue provide that each consignment of wines permitted to bear a 'denominación de origen calificada' must be subjected to organoleptic and analytical examinations (Article 20(4) of Decree No 157/88 and, for Rioja wine, Article 15 of the Rioja Rules).

72. In addition, under the Rioja Rules:

- every bulk despatch of Rioja wine within the region must first be authorised by the Rioja Governing Council (Article 31);
- bottling may be undertaken only by bottling undertakings authorised by the Rioja Governing Council (Article 32);
- the installations in such undertakings must be quite separate from those in which wines not entitled to bear the 'denominación de origen calificada' are produced and stored (Article 24).

73. It thus appears that, for Rioja wines transported and bottled in the region of production, the controls are far-reaching and systematic and are the responsibility of the totality of the producers themselves, who have a fundamental interest in preserving the reputation acquired, and that only consignments which have been subjected to those controls may bear the 'denominación de origen calificada'.

74. It can be inferred from the foregoing that the risk to which the quality of the product finally offered to consumers

is exposed is greater where it has been transported and bottled outside the region of production than when those operations have taken place within the region.

75. Accordingly, it must be accepted that the requirement at issue, whose aim is to preserve the considerable reputation of Rioja wine by strengthening control over its particular characteristics and its quality, is justified as a measure protecting the 'denominación de origen calificada' which may be used by all the producers concerned and is of decisive importance to them.

76. Finally, it must be recognized that the measure is necessary for attainment of the objective pursued, in that there are no less restrictive alternative measures capable of attaining it.

77. In that regard, the 'denominación de origen calificada' would not enjoy comparable protection if operators established outside the region of production were placed under an obligation to inform consumers by means of appropriate labelling that the wine had been bottled outside that region. Any deterioration in the quality of a wine bottled outside the region of production, resulting from materialization of the risks associated with transport in bulk or subsequent bottling operations, might harm the reputation of all wines marketed under the Rioja 'denominación de origen calificada', including those bottled in the region of production under the control of the group of producers entitled to use that designation. More generally, the very coexistence of two different bottling processes, inside or outside the region of production, with or without systematic monitoring by that group, might reduce the degree of consumer confidence in the designation based on the conviction that the production of quality wines must at every stage be carried out under the control and responsibility of the relevant group of producers.

78. In those circumstances, it must be concluded that the contested requirement is not contrary to Article 34 of the Treaty. Consequently, the action must be dismissed.

Costs

79. Under Article 69(3) of the Rules of Procedure, the Court may order that, where the circumstances are exceptional, each of the parties should bear its own costs. It is appropriate to apply that provision in this case.

80. Under Article 69(4) of the Rules of Procedure, interveners are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the action;
2. Orders the Kingdom of Belgium and the Kingdom of Spain to bear their own costs;
3. Orders the Kingdom of Denmark, the Italian Republic, the Kingdom of the Netherlands, the Portuguese Republic, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own costs.

Delivered in open court in Luxembourg on 16 May 2000.