

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 102/04

16 December 2004

Advocate General's Opinion in Case C-347/03

Regione Autonoma Friula-Venezia Giulia & Agenzia Regionale per lo Sviluppo Rurale (ERSA) v Ministero per le Politiche Agricole e Forestali & Regione Veneto

ACCORDING TO ADVOCATE GENERAL JACOBS A PROHIBITION ON THE USE OF "TOCAI" TO DESIGNATE CERTAIN ITALIAN WINES ARISING FROM A 1993 AGREEMENT BETWEEN THE EC AND HUNGARY IS LAWFUL

Whereas "Tokaj" constitutes a geographical indication in Hungary, "Tocai" is not an Italian geographical indication, but a grape variety and as such cannot benefit from the protection granted to these indications.

"Tocai friulano" or "Tocai italico" is a vine variety traditionally cultivated in the Italian region of Friuli-Venezia Giulia. In 1993, an Agreement on the reciprocal protection and control of wine names was concluded between the European Community and Hungary. In order to protect the Hungarian geographical indication "Tokaj," the Agreement imposed a prohibition on the use of the name Tocai, effective from March 2007. The applicants in the present case (the Region of Friuli-Venezia Giulia and the Regional Agency for Rural Development) seek to annul the national law which puts into effect the prohibition set out in the agreement. They have brought proceedings in an Italian court, which has referred the matter to the Court of Justice.

Today, Advocate General Jacobs delivered his opinion.

The Advocate General considers that for the purposes of both the Agreement on wine names and the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPs Agreement), Tokaj is a geographical indication whereas Tocai is not.

The Agreement on wine names provides that in the case of homonymous or identical geographical indications, both names can in general continue to be used. It further defines a geographical indication as an indication recognised for a wine where a given quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin. The name **Tocai** is recognised as a **vine variety** and is **not a geographical indication**, since it has no such special quality, reputation or characteristic. (63) Since

Tocai is not a geographical indication, no conflict can therefore arise between the rules set out in the Agreement relating to geographical homonyms and the prohibition on the use of the name Tocai. Moreover, even if Tocai were a geographical indication, the provisions purport to apply only to geographical indications that are "protected by virtue of [the] Agreement" and at no point is any reference made in the Agreement to Tocai as a protected Italian wine. Therefore the prohibition is not rendered invalid by virtue of any inconsistency between it and the other provisions of the Agreement.

Insofar as the validity of the prohibition might be affected by TRIPs, Article 23 of the TRIPs Agreement provides *inter alia* that in the case of homonymous geographical indications for wines, protection shall be accorded to each indication. The applicants argue that the TRIPs Agreement establishes a parallel between "geographical indication" and "name of a grape variety" and accordingly prevents the geographical indication Tokaj being invoked by Hungary to prohibit the use of the name Tocai. (84) The Advocate General disagrees. He considers that the name Tocai is not a geographical indication within the meaning of TRIPs, since, as noted above, Tocai wine has no specific quality, reputation or other characteristic that is essentially attributable to its geographical origin (the definition given by the TRIPs Agreement). Therefore the prohibition on the use of the name Tocai is not incompatible with the relevant provisions of the TRIPs Agreement.

The Court has also been asked to consider whether the right to use a grape variety name in marketing wine is a "possession" within the meaning of Article 1 of the First Protocol of the European Convention on Human Rights or Article 17 of the Charter of Fundamental Rights of the European Union, such as to render unlawful the prohibition on the use of the name Tocai. The Advocate General concedes that the notion of "possessions" could extend to incorporeal goods of economic value. (96) However, in the present case, even if there had been an interference with the right to property, the principle of proportionality has been observed, insofar as the vine growers have been allowed a transitional period of 13 years to adapt to the new situation created by the Agreement on wine names and since also there are alternative vine names available to the producers. Furthermore, even if the wine producers were deprived of a "possession", this deprivation is "in the public interest and subject to the conditions provided for by law and by the general principles of international law" and hence permitted by the Convention (104.)

Therefore, the Advocate General concludes that **the prohibition on the use of the Italian grape variety name Tocai arising from the Agreement** between the European Community and the Republic of Hungary **is lawful**.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: EN FR DE IT HU

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731