



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 97/12

Luxembourg, 12 July 2012

Judgment in Case C-59/11

Association Kokopelli v Graines Baumaux SAS

The directives on the marketing of vegetable seed are valid

The directives do take into account the economic interests of sellers of 'old varieties' in so far as they allow such varieties to be marketed under certain conditions

The directive on the marketing of vegetable seed¹ makes the marketing of such seed subject to the prior acceptance of varieties of the seed in one or more Member States. A variety is, moreover, accepted for inclusion in the official catalogues of the Member States only if it is distinct², stable³, and sufficiently uniform⁴. However, another directive⁵ provides for certain derogations from that scheme of acceptance for inclusion in the national catalogues, in respect of 'conservation varieties'⁶ and 'varieties developed for growing under particular conditions'⁷. Those 'old varieties' may be grown and marketed under certain conditions, even if they do not comply with the general requirements for acceptance for inclusion in the official catalogues.

By judgment of 14 January 2008, the tribunal de grande instance de Nancy (Nancy Regional Court, France) ordered Kokopelli, a non-profit-making association, to pay damages to Graines Baumaux, a seed company, for unfair competition. It found that Kokopelli and Baumaux were operating in the sector of old seed or collectors' seed, that, of the products which they were marketing, 233 were identical or similar, and that they were supplying the same customers (amateur gardeners) and were therefore competitors. It therefore considered that Kokopelli was engaging in acts of unfair competition by selling vegetable seed which was neither in the French catalogue nor in the common catalogue of varieties of vegetable species.

Kokopelli appealed against that judgment to the cour d'appel de Nancy (Nancy Court of Appeal), which is asking the Court of Justice about the validity of the directive on the marketing of vegetable seed and of the directive authorising certain derogations in respect of 'conservation varieties' and 'varieties developed for growing under particular conditions'.

¹ Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (OJ 2002 L 193, p. 33).

² A variety is to be regarded as distinct if, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable in one or more important characteristics from any other variety known in the European Union.

³ A variety is to be regarded as stable if, after successive propagation or multiplications or at the end of each cycle (where the breeder has defined a particular cycle of propagation or multiplications) it remains true to the description of its essential characteristics.

⁴ A variety is to be regarded as sufficiently uniform if, apart from a very few aberrations, the plants of which it is composed are, account being taken of the distinctive features of the reproductive systems of the plants, similar or genetically identical as regards the characteristics, taken as a whole, which are considered for this purpose.

⁵ Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties (OJ 2009 L 312, p. 44).

⁶ 'Conservation varieties' cover vegetable species of landraces and varieties which have been traditionally grown in particular localities and regions and threatened by genetic erosion.

⁷ 'Varieties developed for growing under particular conditions' are varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions.

By today's judgment, the Court rules that the validity of the two directives is not affected by certain principles of EU law or by the EU's commitments arising from the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)⁸.

Thus, the Court observes, first of all, that **the principle of proportionality** requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by that legislation and must not go beyond what is necessary to achieve them.

The Court finds that the primary objective of the rules relating to the acceptance of vegetable seed is to improve productivity in vegetable cultivation in the EU. As a means of guaranteeing increased productivity in cultivation, the establishment of a common catalogue of varieties of vegetable species on the basis of national catalogues is capable of ensuring that that objective is attained. Such an acceptance regime, which requires the seed of vegetable varieties to be distinct, stable and uniform, allows appropriate seed to be used and, consequently, agricultural productivity to be increased, on the basis of the reliability of the characteristics of the seed.

Furthermore, that acceptance regime contributes to the attainment of the second objective, which is to establish the internal market for vegetable seed by ensuring its free movement within the EU. Such a regime ensures that seed marketed in the various Member States will satisfy the same requirements.

In addition, the derogating acceptance regime implemented for 'conservation varieties' and 'varieties developed for growing under particular conditions' is capable of guaranteeing the conservation of plant genetic resources – the third objective covered by EU law.

Thus, the Court rules that the acceptance regime for vegetable seed does not go beyond what is necessary to achieve those objectives. The requirement of listing in the official catalogues and the related acceptance criteria ensure that seed of a given variety has the qualities necessary to ensure a high level of agricultural production that is of good quality, reliable and maintained over time. In those circumstances, and particularly in light of the broad discretion which the EU legislature has in the area of the common agricultural policy, it could legitimately take the view that other measures, such as labelling, would not enable the same result to be achieved. A less restrictive measure, such as labelling, would not be as effective, since it would allow the sale and, therefore, the sowing of seed that is potentially harmful or not conducive to optimum agricultural production. Therefore, the principle of proportionality has not been breached.

Next, the Court observes that the directives at issue take into account the economic interests of traders, such as Kokopelli, who offer for sale 'old varieties' that do not satisfy the conditions for inclusion in the official catalogues, in that those directives do not rule out the marketing of such varieties. Admittedly, geographical, quantitative and packaging restrictions are provided for with regard to seed of conservation varieties and of varieties developed for growing under particular conditions, but those restrictions nevertheless fall within the scope of the conservation of plant genetic resources. The Court observes that the EU legislature was not pursuing the liberalisation of the market for seed of 'old varieties' but was seeking to ease the rules of acceptance while preventing the emergence of a parallel market for such seed, which was likely to constitute an impediment to the internal market for seed of vegetable varieties.

Furthermore, the Court finds that the directives at issue do not breach the **principles of equal treatment, the freedom to pursue an economic activity and the free movement of goods**, or the **EU's commitments arising from the ITPGRFA**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

⁸ International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the conclusion of which, on behalf of the European Community, was approved by Council Decision 2004/869/EC of 24 February 2004 (OJ 2004 L 378, p. 1).

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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