Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-159/20
Commission v Denmark

Advocate General Ćapeta: by failing to stop the use by Danish producers of the registered name 'Feta' for cheese intended for export to third countries, Denmark has failed to fulfil its obligations under EU law

Nevertheless, Denmark has not infringed the duty of sincere cooperation as additionally claimed by the Commission

'Feta' was registered as a protected designation of origin ('PDO') in 2002.[1] Since then, the name 'Feta' can be used only for cheese originating in the specified geographical area in Greece and complying with the relevant product specification.

In these infringement proceedings, the Commission, supported by Greece and Cyprus, claims that Denmark has breached its obligations under Regulation No 1151/2012[2] by failing to prevent or stop the use of the name 'Feta' for cheese produced in Denmark but intended to be exported to third countries.

Denmark claims, however, that Regulation No 1151/2012 applies only to products sold in the EU, and does not cover exports to third countries. It, therefore, does not deny that it does not prevent or stop the producers on its territory from using the name 'Feta' if their products are intended to be exported to third countries where the EU has not yet concluded an international agreement guaranteeing the protection of that name.

In her Opinion delivered today, Advocate General Tamara Ćapeta considers that Regulation No 1151/2012 covers such exports to third countries. She offers several reasons responding to the parties' arguments.

First, the Advocate General acknowledges that, from Denmark's perspective, such a reading might represent an obstacle to trade. However, the prohibition of exports to third countries of cheese under the name 'Feta' produced on Danish territory can be justified by reasons based on the protection of intellectual property rights.

Second, the Advocate General considers that the intellectual property interpretive perspective, as advanced by the Commission and the interveners, adequately explains the legislative intent behind Regulation No 1151/2012. The purpose of PDOs as intellectual property rights is to enable fair competition to producers of PDO products in exchange for their efforts to maintain and guarantee the high quality of their products. That enables survival of traditional businesses and ensures the diversity of products in the market. **While free trade is undoubtedly one of the values respected by the EU legal order, the proposed interpretation takes into consideration other interests besides economic interests, which are also part of EU citizens' perceptions as to what is a good quality of life**.

The Advocate General adds that Regulation No 1151/2012 was adopted on the dual legal basis of Articles 43(2) (the common agricultural policy) and 118 TFEU (the European intellectual property

[1] Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10).
[2] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1).

rights). That indicates that the main idea behind that regulation is the improvement of the situation of EU agricultural producers through providing intellectual property protection to products involving traditional ways of production.

Furthermore, there is a record of EU actions on both the internal and international levels which form a credible and coherent EU policy aimed at the highest possible level of protection of EU products whose quality can be recognised by their connection to a defined geographical area.

Consequently, when placed within the overall EU policy aimed at the protection of PDOs, the understanding of Regulation No 1151/2012 to the effect that it prohibits the exports of products unlawfully using registered names even to third countries where such protection is not (yet) offered, seems to be the interpretation that best reflects the will of the EU legislature.

The Advocate General therefore proposes to the Court to declare that Denmark has failed to fulfil its obligations under Regulation No 1151/2012 by not preventing or stopping the use of the name 'Feta' on cheese produced in Denmark but intended for export to third countries.

In response to the second claim brought by the Commission, Advocate General Ćapeta considers that Denmark has not breached its duty of loyal cooperation, as envisaged in Article 4(3) TEU, either alone or in conjunction with the provisions of Regulation No 1151/2012.

In particular, she emphasises that **the fact that a Member State has a different understanding of EU law than the Commission does not amount in itself to infringement of the principle of sincere cooperation** on the part of that Member State. Systems based on the rule of law resolve interpretive disputes by empowering courts to say what the meaning of the law is. In liberal democracies, the meaning of the law has to be open for contestation, and the party whose understanding is not upheld by the court cannot be deemed disloyal to the system of the law only for being 'wrong'. It would be different if, after the Court pronounces what the law is, a Member State continued to apply it contrary to that pronouncement.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. 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 are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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