

Case C-533/20

Request for a preliminary ruling

Date lodged:

21 October 2020

Referring court:

Kúria (Supreme Court, Hungary)

Date of the decision to refer:

20 October 2020

Applicant and respondent:

Upfield Hungary Kft.

Defendant and appellant:

Somogy Megyei Kormányhivatal (Government Delegation in the Somogy county, Hungary)

Decision

of the Kúria (Supreme Court, Hungary),

as the appellate court

[...]

Applicant: Upfield Hungary Kft. ([...] Budapest, Hungary [...])

[...]

Defendant: Somogy Megyei Kormányhivatal (Government Delegation in the Somogy county, Hungary) ([...] Kaposvár, Hungary [...])

[...]

Subject matter of the proceedings: administrative-law consumer protection proceedings

Appellant: the defendant

[...] [procedural considerations of domestic law]

Decision

The Kúria (Supreme Court) [...] requests a preliminary ruling from the Court of Justice of the European Union, to which it refers the following question:

‘Must the provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, and specifically Article 18(2) thereof, be interpreted as meaning that, where vitamins are added to foods, the list of the ingredients of the food must include not only the names of the vitamins, but also their designation in accordance with the vitamin formulations which may be added to foods?’

[...] [procedural considerations of domestic law]

Grounds

Arguments of fact

- 1 The applicant markets margarines, and has been the first company to distribute the product known as ‘Flóra ProActiv, a 35% fat vegetable spread containing added plant sterols’ (‘the product’) in the Hungarian market. In the list of the product’s ingredients, the applicant included ‘vitamins (A, D)’, to indicate that the product contains added vitamins A and D.
- 2 The defendant authority noted that, in listing the ingredients on the product labelling, the applicant had failed to comply with Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, since, in the case of vitamins, and having regard also to Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods, the list of ingredients should have included the names of the formulations used. It therefore issued a warning to the applicant, ordering it to cease the infringement with immediate effect.

- 3 The court of first instance which heard the administrative-law action brought by the applicant annulled the defendant's decision with retroactive effect from the date of notification, declaring that Regulation No 1169/2011 does not define the concept of 'their specific name' and contains no further provisions on this matter, and that Article 7 of Regulation No 1925/2006 establishes rules on labelling, presentation and advertising, but does not regulate the naming of ingredients. Given that all the formulations listed in Annex II to Regulation No 1925/2006 [under the relevant headings] constitute vitamin A or vitamin D, and that neither Regulation No 1169/2011 nor any other provision of law defines the concept of 'their specific name', the court concluded that there is no provision that prevents the inclusion of the names vitamin A or vitamin D in the list of the product's ingredients.
- 4 The court of first instance also referred to Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods, which includes an annex containing nutrition claims and conditions applying to them. In the view of the court, provided that the quantitative requirements are satisfied, a statement that the product contains vitamin A or vitamin D is equivalent to and has the same meaning as a designation of the sources of the vitamin A or vitamin D. The court of first instance added that the statement is clear and comprehensible only if the distributor designates the vitamins included in the ingredients by their common everyday names — in this case, vitamin A and vitamin D — rather than by the vitamin formulation; this is also the most consumer-friendly interpretation.
- 5 The defendant authority lodged an appeal against the final judgment with the Kúria (Supreme Court), arguing that any substance, and therefore any component of a compound ingredient within the meaning of Article 2(2)(f) and (h) of Regulation No 1169/2011, must be stated on the packaging and that, since Regulation No 1925/2006 expressly includes the names of such substances, these must be deemed 'their specific name'. It also argues that Regulation No 1924/2006 is not relevant to the case, since that regulation is concerned with claims that provide consumers with information about the product's vitamin content and cannot affect the application of mandatory requirements regarding composition. Lastly, it states that the formulations used in the composition are important to the authority for measurement methodology and technology reasons in connection with analytical testing of food.
- 6 In its appeal, the defendant states that the case-law on this matter is not uniform, and submits a judgment by a different court which, based on the same legislation, comes to a different conclusion from that in the judgment under appeal in the present case before the referring court.
- 7 In its defence to the appeal, the applicant asks for the final judgment to be upheld, noting that it would not aid consumer understanding to state the composition or chemical name of the vitamin or mineral and that, in its view, normal market practice is to state the name of the vitamin rather than its formulation. The

applicant also contends that the practice of Hungarian administrative authorities is not uniform on this matter.

- 8 With regard to the arguments of fact, the referring court notes that it has been made aware through official channels that, as a general rule, the packaging of foods on sale includes only the name of the vitamins (for example, vitamin C), but that in certain cases the vitamin formulations are included among the ingredients. It also wishes to point out that there is no Kúria (Supreme Court) case-law on naming vitamins as food ingredients, and that the case-law of the lower courts is not uniform.

The question referred

- 9 The Kúria (Supreme Court) considers that in the present proceedings an answer is needed to the question of what is meant, in the case of vitamins, by ‘their specific name’ for the purposes of the application of Article 18(2) of Regulation No 1169/2011; this requires an interpretation of the regulation.
- 10 Pursuant to Article 10(1) of the az élelmiszerláncról és hatósági felügyeletéről szóló 2008. évi XLVI. törvény (Law XLVI of 2008 on the food chain and the official supervision thereof), food may only be placed on the market if the labelling contains, in Hungarian, the information specified in the legislation implementing Law XLVI and in EU law with direct effect, and the information is comprehensible, clear and legible, in accordance with the provisions of the legislation.
- 11 Article 18(i) of Regulation No 1169/2011 stipulates that the list of ingredients must include all the ingredients of the food. The concept of ingredient is defined in Article 2(2)(f) as any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form; residues are not considered as ingredients. Article 2(2)(h) specifies that a compound ingredient means an ingredient that is itself the product of more than one ingredient.
- 12 Article 18(2) of Regulation No 1169/2011 stipulates that ingredients must be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 and in Annex VI.
- 13 Annex I of Regulation No 1925/2006 lists the vitamins and minerals which may be added to foods, and Annex II lists the vitamin formulations and mineral substances which may be added to foods.
- 14 The Kúria (Supreme Court) notes that, pursuant to Article 7(3) of Regulation No 1925/2006, nutrition labelling of products to which vitamins and minerals have been added and which are covered by the regulation is compulsory. The information to be provided consists of that specified in Article 4(1), Group 2 of

Directive 90/496/EEC and of the total amounts present of the vitamins and minerals when added to the food. Article 7(5) establishes that the article applies without prejudice to other provisions of food law applicable to specified categories of food. Article 1(4) of Directive 90/496 refers to vitamins in its definition of ‘nutrition labelling’, and Article 6 and the annex to the directive expressly require the vitamins to be declared, rather than their formulations.

- 15 The concept of ‘their specific name’ is not defined in legislation.
- 16 In the light of the above, the referring court considers that, for the purposes of the application of Article 18(2) of Regulation No 1169/2011, in the case of vitamins it is not clear what constitutes ‘their specific name’. This problem of interpretation is corroborated by the lack of uniformity in the practices followed by distributors, administrative authorities and the courts.
- 17 Under subparagraph (b) of the first paragraph of Article 267 of the Treaty on the Functioning of the European Union (‘TFEU’), the Court of Justice of the European Union has jurisdiction to give rulings concerning the interpretation of acts of the institutions of the Union.
- 18 Pursuant to the third paragraph of Article 267 TFEU, where a question of interpretation is raised before a national court against whose decisions there is no judicial remedy under national law, and the court considers that a decision on the question is necessary to enable it to give judgment, the court must bring the matter before the Court of Justice. Since there is no judicial remedy against the decision of the Kúria (Supreme Court) under Hungarian law, the Kúria (Supreme Court) must make a reference for a preliminary ruling on the interpretation of EU law (judgment of 18 July 2013, *Consiglio Nazionale dei Geologi*, C-136/12, EU:C:2013:489, paragraph 25).
- 19 With regard to its obligation to make a reference for a preliminary ruling, the referring court notes that, in view of the contradictory practices referred to above, it considers there is a need to avert the risk of an incorrect interpretation of EU law (judgment of 9 September 2015, *Ferreira da Silva e Brito and Others*, C-160/14, EU:C:2015:565, paragraphs 41 to 45).

Final section

[...] [procedural considerations of domestic law]

Budapest, 20 October 2020.

[...] [signatures]