

In Case 104/79

Reference to the Court under [Article 267 TFEU] by the Pretura [District Court], Bra, for a preliminary ruling in the action pending before that court between

PASQUALE FOGLIA, San Vittoria d'Alba,

and

MARIELLA NOVELLO, Magliano Alfieri,

on the interpretation of [Articles 107 and 110 TFEU]

THE COURT

composed of: H. Kutscher, President, A. O'Keefe and A. Touffait, (Presidents of Chambers) J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Decision

- 1 By an order of 6 June 1979 which was received at the Court on 29 June 1979 the Pretura di Bra referred to the Court pursuant to [Article 267 TFEU] five questions on the interpretation of [Articles 107, 110 and 267 TFEU].
- 2 The proceedings before the Pretura di Bra concern the costs incurred by the plaintiff, Mr Foglia a wine-dealer having his place of business at Santa Vittoria d'Alba, in the province of Cuneo, Piedmont, Italy in the dispatch to Menton, France of some cases of Italian liqueur wines which he sold to the defendant, Mrs Novello.
- 3 The file on the case shows that the contract of sale between Foglia and Novello stipulated that Novello should not be liable for any duties which were claimed by the Italian or French authorities contrary to the provisions on the free movement of goods between the two countries or which were at least not due. Foglia adopted a similar clause in his contract with the Danzas undertaking to which he entrusted the transport of the cases of liqueur wine to Menton; that clause provided that Foglia should not be liable for such unlawful charges or charges which were not due.
- 4 The order making the reference finds that the subject-matter of the dispute is restricted exclusively to the sum paid as a consumption tax when the liqueur wines were imported into French territory. The file and the oral argument before the Court of Justice have established that that tax was paid by Danzas to the French authorities, without protest or complaint; that the bill for transport which Danzas submitted to Foglia and which was settled included the amount of that tax and that Mrs Novello refused to reimburse the latter amount to Foglia in reliance on the clause on unlawful charges or charges which were not due

expressly included in the contract of sale.

- 5 In the view of the Pretura the defences advanced by Novello entail calling in question the validity of French legislation concerning the consumption tax on liqueur wines in relation to [Article 110 TFEU].
- 6 The attitude of Foglia in the course of the proceedings before the Pretura may be described as neutral. Foglia has in fact maintained that he could not in any case be liable for the amount corresponding to the French consumption tax since, if it was lawfully charged, it should have been borne by Novello whilst Danzas would be liable if it were unlawful.
- 7 This point of view prompted Foglia to request the national court to increase the scope of the proceedings and to summon Danzas as a third party having an interest in the action: The court nevertheless considered that before it could give a ruling on that request it was necessary to settle the problem whether the imposition of the consumption tax paid by Danzas was in accordance with the provisions of the [FEU] Treaty or not.
- 8 The parties to the main action submitted a certain number of documents to the Pretura which enabled it to investigate the French legislation concerning the taxation of liqueur wines and other comparable products. The court concluded from its investigation that such legislation created a "serious discrimination" against Italian liqueur wines and natural wines having a high degree of alcoholic strength by means of special arrangements made for French liqueur wines termed "natural sweet wines" and preferential tax treatment accorded certain French natural wines with a high degree of alcoholic strength and bearing a designation of origin. On the basis of that conclusion the court formulated the questions which it has submitted to the Court of Justice.
- 9 In their written observations submitted to the Court of Justice the two parties to the main action have provided an essentially identical description of the tax

discrimination which is a feature of the French legislation concerning the taxation of liqueur wines; the two parties consider that that legislation is incompatible with [Union] law. In the course of the oral procedure before the Court Foglia stated that he was participating in the procedure before the Court in view of the interest of his undertaking as such and as an undertaking belonging to a certain category of Italian traders in the outcome of the legal issues involved in the dispute.

- 10 It thus appears that the parties to the main action are concerned to obtain a ruling that the French tax system is invalid for liqueur wines by the expedient of proceedings before an Italian court between two private individuals who are in agreement as to the result to be attained and who have inserted a clause in their contract in order to induce the Italian court to give a ruling on the point. The artificial nature of this expedient is underlined by the fact that Danzas did not exercise its rights under French law to institute proceedings over the consumption tax although it undoubtedly had an interest in doing so in view of the clause in the contract by which it was also bound and moreover of the fact that Foglia paid without protest that undertakings bill which included a sum paid in respect of that tax.
- 11 The duty of the Court of Justice under [Article 267 TFEU] is to supply all courts in the [Union] with the information on the interpretation of [Union] law which is necessary to enable them to settle genuine disputes which are brought before them. A situation in which the Court was obliged by the expedient of arrangements like those described above to give rulings would jeopardize the whole system of legal remedies available to private individuals to enable them to protect themselves against tax provisions which are contrary to the Treaty.
- 12 This means that the questions asked by the national court, having regard to the circumstances of this case, do not fall within the framework of the duties of the Court of Justice under [Article 267 TFEU].
- 13 The Court of Justice accordingly has no jurisdiction to give a ruling on the questions asked by the national court.

Costs

- 14 The costs incurred by the Government of the French Republic and by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions submitted to it by the Pretura di Bra, by an order of 6 June 1979, hereby rules:

The Court of Justice has no jurisdiction to give a ruling on the questions asked by the national court.

Kutscher	O'Keefe	Touffait	Mertens de Wilmars	Pescatore
Mackenzie Stuart		Bosco Koopmans		Due

Delivered in open court in Luxembourg on 11 March 1980.

A. Van Houtte
Registrar

H. Kutscher
President