CASE LAW OF THE COURT OF JUSTICE OF EUROPEAN UNION: A VISIT TO THE WINE CELLAR

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Abstract

It must be observed that a quality wine is a very specific product. Its particular qualities and characteristics, which result from a combination of natural and human factors, are linked to its geographical area of origin and vigilance must be exercised and efforts made in order for them to be maintained. (Court of Justice of European Union, Rioja Wine Judgement)[1]

The present paper will consider some of the most relevant judgements of the Court of Justice of European Union regarding wine. Coincidentally or not many of these cases are also landmark decisions of the European Union law.

The purpose of this paper is to present the variety of European Union law areas enriched through the Court wine judgments: intellectual property, free movement of goods, fiscal barrier to trade, EU legal order, fundamental rights, public health and external relations.

Surveying the wine jurisprudence of the Court of Justice of European Union resembles a wine testing. One can sense the savours rich bouquet that the case law expresses, on strong cultural choices, policies, lifestyle or identity at national and European level.

Keywords: *wine, Court of Justice of European Union, intellectual property, international agreement, taxation.*

1. Introduction

The European Union is the world leading producer of wine[1]. Almost half of the world's vineyards are in the European Union (EU) and the EU produces and consumes around 60% of the world's wine[2].

Therefore, wine is a complex and vivid area of EU law. A simple search of word "wine" on EUR-Lex shows 19066 results. When refined, EUR-Lex displays 2466 results on Legislation and wine subject, of which 2120 regulations and 12 directives. If the search is refined by author (Council of the European Union) and regarding only regulations the result is 547[3]. When search

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[1] Judgment of the Court of 16 May 2000, *Kingdom of Belgium v Kingdom of Spain (Rioja wine)*, Case C-388/95, ECLI:EU:C:2000:244, p. 57.

[1] According to European Commision, it accounts for 45% of world wine-growing areas, 65% of production, 57% of global consumption and 70% of exports in global terms, https://ec.europa.eu/agriculture/wine_en.

[2] Meloni, Giulia and Swinnen, Johan F. M., *The Political Economy of European Wine Regulations* (October 17, 2012). Available at SSRN: https://ssrn.com/abstract=2279338 or http://dx.doi.org/10.2139/ssrn.2279338.

[3] The basic two regulations are: Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December, establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (CMO Regulation): and Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

for the subject matter "wine" in the EU case law, in the form of Judgments, the number of results is 120. This paper is, accordingly, only a survey of the case law, based on an ample specialized literature.

The present paper will consider only some of the most relevant judgements of the Court of Justice of European Union regarding wine. Coincidentally or not many of these cases are also landmark decisions, shaping the EU law. What we find remarkable is the relevance and impact of the wine cases over different fields of EU law.

The purpose of this paper is to present this variety of EU law areas enriched through the Court wine judgments: intellectual property (Capitol 2), fundamental rights (Capitol 3), EU legal order (Capitol 4), external relations (Capitol 5), fiscal barrier to trade (Capitol 6) and public health (Capitol 7).

2. Intellectual property

2.1. Protection of protected designations of origin

The EU legislation for quality wine consists of two types of classification: Protected Denomination of Origin (PDO) regarding "quality wines produced in a specified region" and Protected Geographical Indication (PGI) regarding "quality wines with geographical indication". In the specific case of the wine industry, protection by origin plays an imperative role, since it is not only a 'labeling' issue, as wine quality is strongly linked to the place where the grape is harvested in terms of the terroir of the vineyard[4].

The Court had occasion to define the concepts related to protected **designations of origin in many cases.**

In a recent judgement of 20th December 2017, *Champagner Sorbet*[5], the Court held that a sorbet may be sold under the name 'Champagner Sorbet' if it has, as one of its essential characteristics, a taste attributable primarily to champagne. If that is the case, that product name does not take undue advantage of the protected designation of origin 'Champagne'.

At the end of 2012, Aldi, a company distributing, inter alia, foodstuffs, began to sell a frozen product, distributed under the name 'Champagner Sorbet' and contained, among its ingredients, 12% champagne. Taking the view that the distribution of that product under that name constituted an infringement of the PDO 'Champagne', the Comité Interprofessionnel du Vin de Champagne, an association of champagne producers, brought proceedings before the Landgericht München.

In this respect, the CJEU, first of all, rejected the position of the Comité that the protection granted under these provisions was absolute. The Court stated that the use of a protected designation of origin as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that designation but contains an ingredient which does correspond to those specifications cannot be regarded, in itself, as an unfair use and, therefore, as a use against which protected designations of origin are protected in all circumstances by virtue of the applicable provisions of EU law[6]. It is true that the use

[4] Jazmín Muñoz and Sofía Boza, *Protection by origin in Chile and the European markets: the case of the wine sector, SECO/WTI Academic Cooperation Project*, Working Paper No. 14/2017, https://www.wti.org/media/filer_public/8d/23/8d234fa5-d456-483f-8def-79ea8009392d/munozbozasecowp.pdf.

[5] Judgment of 20 December 2017**,** Vin de Champagne v Aldi Süd, Case C-393/16, ECLI:EU:C:2017:991.

[6] https://www.bardehle.com/ip-news-knowledge/ip-news/news-detail/court-of-justice-of-the-european-union-champagne-sorbet-does-not-infringe-champagne-if-the-sorb.html.

of the name 'Champagner Sorbet' to refer to a sorbet containing champagne is liable to extend to that product the reputation of the PDO 'Champagne', which conveys an image of quality and prestige, and therefore to take advantage of that reputation. However, such use of the name 'Champagner Sorbet' does not take undue advantage (and therefore does not exploit the reputation) of the PDO 'Champagne' if the product concerned has, as one of its essential characteristics, a taste that is primarily attributable to champagne.

The decision ***Port Charlotte***[7]**,** in Case C-56/16 P, provides guidance in situations which give rise to exploitation of the reputation regarding a protected designation of origin. The Scottish company Bruichladdich Distillery Co. Ltd. Filed, a trade mark application for "Port Charlotte, for whisky. Instituto dos Vinhos e do Porto filed an application with the European Union Intellectual Property Office (EUIPO) for a declaration that the mark was invalid.

The Court held that national law on PGIs cannot be used to provide supplementary protection above and beyond that provided under EU law. It was also settled that a PGI for "port" cannot be used to prevent registration of other trademarks containing the word "port", if the use is legitimate and without confusion with the PGI.

The Court has turned its attention to the labelling of wine in many cases, interpreting the use of terms 'méthode champenoise', "cremant" and "chateu[8]".

The case ***Méthode champenoise***[9] concerns a dispute between SMW Winzersekt GmbH ('Winzersekt') and the Land Rheinland-Pfalz on the use after 31 August 1994 of the term 'Flaschengärung im Champagnerverfahren' ('bottle-fermented by the champagne method') to describe certain quality sparkling wines produced in a specified region ('quality sparkling wines PSR'). Winzersekt is an association of wine-growers who produce sparkling wine from wines of the Mosel-Saar-Ruwer region using a process referred to as 'méthode champenoise', which means in particular that fermentation takes place in the bottle and the cuvée is separated from the lees by disgorging.

The Court held that a wine producer cannot be authorized to use, in descriptions relating to the method of production of his products, geographical indications which do not correspond to the actual provenance of the wine.

In Case C-309/89, ***Codorníu***[10] successfully challenged the validity of a regulation which allowed the use of the word "Crémant" only in respect of sparkling wines from France or Luxembourg and thus forbad its use in respect of wines emanating from Spain.

The Court held in *Codorníu* that the reservation of the term "crémant" to wines produced in two Member States cannot validly be justified either on the basis of traditional use, since it disregards the traditional use of that mark in the third State for wines of the same kind, or by the indication of origin associated with the mark

[7] Judgment of the Court of 14 September 2017, European Union Intellectual Property Office (EUIPO) v Instituto dos Vinhos do Douro e do Porto, IP (Port Charlotte), Case C-56/16 P, ECLI:EU:C:2017:693.

[8] Judgment of the Court of 29 June 1994, Claire Lafforgue, née Baux and François Baux v Château de Calce SCI and Coopérative de Calce (*Château de Calce*), Case C-403/92, ECLI:EU:C:1994:269.

[9] Judgment of the Court of 13 December 1994, SMW Winzersekt GmbH v Land Rheinland-Pfalz, Case C-306/93, ECLI:EU:C:1994:407,

[10] Judgment of the Court of 18 May 1994, Codorníu SA v Council of the European Union, Case C-309/89, ECLI:EU:C:1994:197.

in question, since it is in essence attributed on the basis of the method of manufacture of the product and not its origin. It follows that the different treatment has not been objectively justified and the said provision must therefore be declared void.

On the other hand, the Court clearly ruled out in case ***Tocai friulano***[11] that the Italian name Tocai friulano' and its synonym Tocai italico are not a protected geographical indication within the meaning of the EC-Hungary Agreement.

'Tocai friulano' or 'Tocai italico' is a vine variety traditionally grown in the region of Friuli- Venezia Giulia (Italy) and used in the production of white wines marketed inter alia under geographical indications such as 'Collio' or 'Collio goriziano'. In 1993, the European Community and the Republic of Hungary concluded an agreement on the reciprocal protection and control of wine names. In order to protect the Hungarian geographical indication 'Tokaj', the agreement prohibited the use of the term 'Tocai' to describe the abovementioned Italian wines at the end of a transitional period expiring on 31 March 2007. In 2002, the autonomous region of Friuli-Venezia Giulia and the regional agency for rural development asked the Tribunal amministrativo regionale del Lazio to annul the national legislation implementing the prohibition provided for by the agreement. In that context, the Italian court made a reference to the CJEU.

The Court clearly ruled out that as the Italian name Tocai friulano' and Tocai italico' are not a protected geographical indication and the Hungarian name Tokaj' is, the EC-Hungary Agreement do not apply.

In case ***Kingdom of Belgium v Kingdom of Spain (Rioja wine)***[12] the Court turned its attention to the Spanish rules govern the bottling of wines bearing the designation of origin "Rioja".

Belgium considered that those rules which, in particular, require the wine to be bottled in cellars in the region of production in order to qualify for the "controlled designation of origin" (denominación de origen calificada) were detrimental to the free movement of goods.

The Court finds that national rules applicable to wines bearing a designation of origin which make the use of the name of the production region conditional upon bottling in that region constitute a measure having an effect equivalent to quantitative restrictions on exports.

However, the requirement of bottling in the region of production, whose aim is to preserve the considerable reputation of the wine bearing the designation of origin by strengthening control over its particular characteristics and its quality, is justified as a measure protecting the designation of origin which may be used by all the wine producers in that region and is of decisive importance to them, and it must be regarded as being in conformity with Community law despite its restrictive effects on trade, since it constitutes a necessary and proportionate means of attaining the objective pursued in that there are no less restrictive alternative measures capable of attaining it[13].

In the case ***Abadía Retuerta- Cuvée Palomar***[14], the applicant, Abadía Retuerta

[11] Judgment of the Court of 12 May 2005, Regione autonoma Friuli-Venezia Giulia and Agenzia regionale per lo sviluppo rurale (ERSA) v Ministero delle Politiche Agricole e Forestali (Tocai friulano) Case C-347/03, ECLI:EU:C:2005:285.

[12] Judgment of the Court of 16 May 2000, *Kingdom of Belgium v Kingdom of Spain (Rioja wine)*, Case C-388/95, ECLI:EU:C:2000:244

[13] Judgment of the Court of 16 May 2000, *Rioja wine*, Case C-388/95.

[14] Judgment of the General Court of 11 May 2010, Abadía Retuerta, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Abadía Retuerta), Case T-237/08, ECLI:EU:T:2010:185.

SA, filed a Community trade mark application at the Office for Harmonisation in the Internal Market (OHIM), pursuant to Regulation No 40/94. The trade mark for which registration was sought is the word sign *Cuvée Palomar* for wines.

OHIM takes the view that the mark applied for was inadmissible. The reason was an obligation to interpret the Community trade-mark legislation, as far as possible, in the light of the wording and purpose of TRIPs Agreement, which lays down a specific prohibition on registration of geographical indications identifying wines and spirits.

Under Spanish law the area of production protected by the registered designation of origin 'Valencia' consists of, inter alia, the sub-region Clariano, which includes, inter alia, a local administrative area with the name *el Palomar*. The name *el Palomar* thus constitutes a geographical indication for a quality wine produced in specified regions (psr). Under Spanish law and, accordingly, under Article 52 of Regulation No 1493/1999 on the common organisation of the market in wine, which provides that, if a Member State uses the name of a specified region, including the name of a local administrative area, to designate a quality wine psr, that name may not be used to designate products of the wine sector not produced in that region and/or products not designated by the name in accordance with the provisions of the relevant Community and national rules[15].

2.2. Distinctive character of trademarks

In case ***Freixenet***[16], the Spanish sparkling wine producing company seeks to set aside the judgments of the General Court of the European Union concerning applications for registration of signs representing a frosted white bottle and a frosted black matt bottle as Community trademarks. Freixenet's trademark application for the both bottles provided the following disclaimer: "The applicant states that through the mark now being applied for he does not want to obtain restrictive and exclusive protection for the shape of the packaging but for the specific appearance of its surface",

It rarely happens that the Court of Justice annuls a decision of the General Court, and, thus, the decision is per se remarkable. It becomes even more remarkable when considering that the decision appears to broaden the scope of signs that are protectable under the category of "other" marks[17]. The Court held that when assessing protectability of the surface of a product as a trademark, a significant departure from the norm or customs in the sector concerned is sufficient to confer distinctiveness on the mark.

It was commented[18] that as well as the visual aspect, the matt finish bottle could be regarded as a tactile sign.

[15] Judgment of the General Court of 11 May 2010, *Abadía Retuerta*, Case T-237/08, , P. 82, 86-88, 110-112.

[16] Judgment of the Court of 20 October 2011, Freixenet, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Freixenet). Joined cases C-344/10 P and C-345/10 P., ECLI:EU:C:2011:680.

[17] Philipe Kutschke, *Court of Justice of the European Union on the protectability of the shading of a bottle as a trademark* (decision of October 20, 2011 Joined Cases C-344/10 P and C-345/10 P – Freixenet v OHIM), BARDEHLE PAGENBERG IP Report 2011/V.

[18] Graeme B. Dinwoodie, Mark D. Janis, *Trademark Law and Theory: A Handbook of Contemporary Research*, Edward Elgar Publishing, 2008, p. 521.

3. Fundamental rights

It would appear useful to mention a series of judgments ***Liselotte Hauer***, ***Méthode champenoise* (*Winzersekt)***, ***Tokai firuliano***, in which the Court, while affirming its concern to fundamental right protection, noted the limits imposed to the right to property or to the freedom to pursue a trade or profession

3.1. Right to property

Liselotte Hauer[19] was the owner of a plot of land forming part of the administrative district of Bad Dürkheim. Mrs. Hauer applied for authorization to undertake the new planting of vines on the land which she owns. The Land Rheinland-Pfalz refused to grant her that authorization. While the application was pending, the European Commission issued an order prohibiting the planting of that type of vine for three years.

The Court declare that fundamental rights form an integral part of the general principles of the law, the observance of which is ensured by the court. In safeguarding those rights, the latter is bound to draw inspiration from constitutional traditions common to the member states, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those states are unacceptable in the Community. International treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can also supply guidelines which should be followed within the framework of community law.

The scope of that right should be measured in relation to its social function; the substance and enjoyment of property rights are subject to restrictions which must be accepted by each owner on the basis of the superior general interest and the general good.

The Court clearly ruled out that the measure in question does not adversely affect the "substance" of the right to property: it does not restrict the owner's power to make use of his land except in one of the numerous imaginable ways and is of limited duration.

In the case ***Méthode champenoise* (*Winzersekt)***[20] the designation 'méthode champenoise' is a term which, prior to the adoption of the regulation, all producers of sparkling wines were entitled to use. The prohibition of the use of that designation cannot be regarded as an infringement of an alleged property right vested in Winzersekt. The use of terms relating to a production method may refer to the name of a geographical unit only where the wine in question is entitled to use that geographical indication.

In ***Tocai friulano***[21] the Court holds that, since it does not exclude any reasonable method of marketing the Italian wines concerned, *the prohibition does not constitute deprivation of possessions* for the purposes of the European Convention on Human Rights (ECHR).

Consequently, the lack of compensation for the winegrowers concerned is not in itself a circumstance demonstrating incompatibility between the prohibition and the right to property. In addition, even if that prohibition constitutes control of the use of property as referred to in the ECHR, the interference which it involves may be justified.

[19] Judgment of the Court of 13 December 1979, *Liselotte Hauer v Land Rheinland-Pfalz*, Case 44/79, ECLI:EU:C:1979:290.

[20] Judgment of the Court of 13 December 1994, *Méthode champenoise* (*Winzersekt)*, Case C-306/93.

[21] Judgment of the Court of 12 May 2005, *Tocai friulano*, Case C-347/03.

In that regard, the Court observes that the objective of the prohibition is to reconcile the need to provide consumers with clear and accurate information on products with the need to protect producers on their territory against distortions of competition. The prohibition therefore pursues **a** *legitimate aim of general interest.*

The Court rules that the prohibition is also proportionate to that aim, given, inter alia, that a transitional period of thirteen years was provided for and that alternative terms are available to replace the names 'Tocai friulano' and 'Tocai italico'[22].

3.2. Freedom to pursue a trade or profession

In the same way as the right to property, in **Liselotte Hauer*[23]*,** the right of freedom to pursue trade or professional activities, far from constituting an unfettered prerogative, must be viewed in the light of the social function of the activities protected thereunder.

To the extent to which it affects the second aspect, the prohibition on planting in question does not constitute an unacceptable interference with the fundamental right freely to pursue economic activity; *the latter is not an absolute individual right, excluding any restriction; it must be seen in a social context.*

So far as concerns the impairment of the freedom to pursue a trade or profession, the Court held in ***Méthode champenoise* (*Winzersekt)*[24]*,*** that the EU legislation do not impair the very substance of the right freely to exercise a trade or profession relied on by Winzersekt since those provisions affect only the arrangements governing the exercise of that right and do not jeopardize its very existence. It is for that reason necessary to determine whether those provisions pursue objectives of general interest, do not affect the position of producers such as Winzersekt in a disproportionate manner and, consequently, whether the Council exceeded the limits of its

4. EU legal order

4.1. Supremacy

***Liselotte Hauer*[25]** addresses the question of supremacy of EU law regarding constitutional law of member states. The Court declare that: **"**the question of a possible infringement of fundamental rights by a measure of the community institutions can only be judged in the light of community law itself. The introduction of special criteria for assessment stemming from the legislation or *constitutional law* of a particular member state would, by damaging the substantive unity and efficacy of community law, lead inevitably to the destruction of the unity of the common market and the jeopardizing of the cohesion of the community"[26].

4.2. Direct application of a regulation

The Court had the occasion to rule on the direct application of a regulation in **Bureau national interprofessionnel du**

[22] CJE/05/42 12 May 2005, Press Release No 42/05, 12 May 2005.
[23] Judgment of the Court of 13 December 1979, *Liselotte Hauer*, Case 44/79.
[24] Judgment of the Court of 13 December 1994, *Méthode champenoise* (*Winzersekt)*, Case C-306/93.
[25] Judgment of the Court of 13 December 1979, *Liselotte Hauer*, Case 44/79.
[26] *Ibidem*.

Cognac[27]**.** In that regard, the Court affirms that in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of EU law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them[28].

In that connection, it should be recalled that the direct application of a regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law, strict compliance with that obligation being an indispensable condition for the simultaneous and uniform application of regulations throughout the European Union.

4.3. The notion of 'individual concern'

Codorniu[29] sought to challenge a Regulation reserving the word "cremant" for high-quality sparkling wines from specific regions in France and Luxembourg.

Codorniu is a Spanish company manufacturing and marketing quality sparkling wines psr. It is the holder of the Spanish graphic trade mark "Gran Cremant de Codorniu", which it has been using since 1924 to designate one of its quality sparkling wines. Codorniu is the main Community producer of quality sparkling wines, the designation of which includes the term "crémant". Other producers established in Spain also use the term "Gran Cremant" to designate their quality sparkling wines.

The Court held, departing from the previous case law[30], that the applicant was *individually concerned* because the reservation to producers in France and Luxembourg interfered with Codorniu's intellectual property rights[31].

Although it is true that according to the criteria in the second paragraph of Article 263 of TFUE the contested provision is, by nature and by virtue of its sphere of application, of a legislative nature in that it applies to the traders concerned in general, that does not prevent it from being of individual concern to some of them[32].

Natural or legal persons may claim that a contested provision is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons. By reserving the right to use the term "crémant" to French and Luxembourg producers, the contested provision prevents Codorniu from using its graphic trade mark. It follows that Codorniu has established the existence of a situation which from the point of view of the contested provision differentiates it from all other traders[33].

[27] Judgment of the Court of 14 July 2011, *Bureau national interprofessionnel du Cognac*, Joined cases C-4/10 and C-27/10, ECLI:EU:C:2011:484.
[28] *Ibidem*, p. 26.
[29] Judgment of the Court of 18 May 1994, *Codorníu*, Case C-309/89, ECLI:EU:C:1994:197.
[30] Paul Craig, Gráinne de Búrca, *EU Law, Text, Cases, and Materials*, Oxford University Press, 2015, p. 497.
[31] http://www.eulaws.eu/?p=171.
[32] Judgment of the Court of 18 May 1994, *Codorníu*, p. 19.
[33] *Ibidem*, p. 22.

4.4. Non-contractual liability of the Community

The case ***Cantina sociale di Dolianova***[34] involved wine cooperatives which were producers of wine in Sardinia (Italy). Following a series of disputes concerning the payment of Community subsidies between wine producing cooperatives, the distiller and the Italian authorities responsible for the management of such subsidies, those cooperatives – since there were unable to obtain the full amount of the payments required before the national courts after the distiller went bankrupt – had brought an action before the Court of First Instance for a declaration that the Commission was non-contractually liable and for the Commission therefore to pay for the damage which they had suffered[35].

In the case ***Cantina sociale di Dolianova*** the Court of Justice set aside the Court of First Instance"s ruling which had taken a subjective approach according to which the damage caused by an unlawful legislative act could not be regarded as certain as long as the allegedly injured party did not perceive it as such[36].

The court underline that the rules on limitation periods which govern actions for damages must be based only on strictly objectives criteria. If it were otherwise, there would be a risk of undermine the principle of legal certainty on which the rules on limitations periods specifically rely and the point in time at which those proceedings become time-barred varies according to the individual perception[37].

4.5. Preliminary ruling

The court declined jurisdiction

Foglia v. Novello[38] is the only case to date where the court declined jurisdiction in a preliminary ruling case on account of the spurious nature of the main proceedings[39]. The questions concerned the legality under Union law of an import duty imposed by the French on the import of wine from Italy[40].

Mr. Foglia, having his place of business at Santa Vittoria D ' Alba, in the province of Cuneo, Piedmont, Italy, made a contract to sell Italian liqueur wines to the defendant, Mrs. Novello. The contract provided that the parties would not be liable for any taxes levied by French or Italian authorities which were contrary to EC law. The parties to the contract were, in fact, concerned to obtain a ruling that a tax system in one Member State was invalid by expedient the proceedings before a court in another member state. The court decline its jurisdiction.

The Court states that it does not have jurisdiction to reply to questions of interpretation which are submitted to it within the framework of procedural devices arranged by the parties in order to induce the Court to give its views on certain problems of Community law which do not correspond to an objective requirement inherent in the resolution of a dispute. The duty assigned to

[34] Judgment of the Court (Fourth Chamber) of 17 July 2008., Commission of the European Communities v Cantina sociale di Dolianova Soc. coop. arl and Others, (*Cantina sociale di Dolianova*) Case C-51/05 P, ECLI:EU:C:2008:409.

[35] European Commision, Summary of important judgements, http://ec.europa.eu/dgs/legal_service/ arrets/05c051_en.pdf

[36] Koen Lenaerts, Ignace Maselis, Kathleen Gutman, *EU Procedural Law*, OUP Oxford, 2014, p.546.

[37] Judgment of the Court of 17 July 2008., *Cantina sociale di Dolianova*, Case C-51/05 P, p 59-60.

[38] Judgment of the Court of 11 March 1980, *Pasquale Foglia v Mariella Novello*, Case 104/79, ECLI:EU:C:1980:73.

[39] Koen Lenaerts, Ignace Maselis, Kathleen Gutman, *EU Procedural Law*, Oxford University Press, Oxford, 2014, p. 93.

[40] Lorna Woods, Philippa Watson, *Steiner & Woods EU Law*, Oxford University Press, Oxford, 2014, p. 231.

the Court by is not that of delivering advisory opinions on general or hypothetical questions but of assisting in the administration of justice in the Member States.

Consequences of an earlier judgment giving a preliminary ruling

In case ***Kingdom of Belgium v Kingdom of Spain (Rioja wine)***[41], the most interesting issue however arises not from the interpretation of the Treaty free movement provisions but from the unclear relationship between the *Delhaize ruling*[42] and the case at issue; from a first reading it seems that the Court, without saying it, overruled itself: however a more careful reading of the two judgments does not seem to support this view[43].

Both in the *Delhaize case* and in the *Rioja* one, the Court found the Spanish legislation to constitute a measure having equivalent effect to a restriction on exports. As far as the issue of justification is concerned, in the Delhaize case the Court clearly stated that it had not been *shown* that the Spanish legislation was justified. The Court points out that in the *Rioja* proceedings, the Spanish, Italian and Portuguese Governments and the Commission have produced new information to demonstrate that the reasons underlying the contested requirement are capable of justifying it. It is necessary to examine this case in the light of that information[44].

Use of art. 259 TFEU: State vs. State

The ***Rioja case*** is also interesting for the use of art. 259 TFEU which enables a Member State to bring an action against another Member State.

In the history of European integration only six times a Member State has directly brought an action for failure to fulfil the obligations before the CJEU against another State[45]. Of the sixth cases, only four proceeded to judgment, the other two were settled amicably[46].

5. External relations

5.1. Principles of international law relating to treaties

The Court held in ***Tocai friulano***[47] that the European Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, is not the legal basis of Decision 93/724 concerning the conclusion of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.

The appropriate legal basis for the conclusion by the Community alone of the latter agreement is Article 133 EC, an article which confers on the Community competence in the field of the common commercial policy. That agreement is part on the common organisation of the market in

[41] Judgment of the Court of 16 May 2000, *Kingdom of Belgium v Kingdom of Spain (Rioja wine)*, Case C-388/95, ECLI:EU:C:2000:244

[42] Judgment of the Court of 9 June 1992. Établissements Delhaize frères and Compagnie Le Lion SA v Promalvin SA and AGE Bodegas Unidas SA (*Delhaize*), Case C-47/90, ECLI:EU:C:1992:250.

[43] Eleanor Spaventa, *'Case C-388/95, Belgium v. Spain'*, 38 Common Market Law Review, Issue 1, 2001, p. 211–219.

[44] Judgment of the Court of 16 May 2000, *Rioja wine*, Case C-388/95, p.52.

[45] Case 141/78, France v United Kingdom, Case C-388/95, Belgium v Spain, Case C-145/04, Spain v United Kingdom, Case C-364/10, Hungary v Slovakia, Case 58/77, Ireland v France, Case C-349/92, Spain v United Kingdom.

[46] Dimitriu Ioana Mihaela, *State versus state: who applies better EU law?*, Challenges of the Knowledge Society, Volume 5, Number 1, 2015, p. 404-410 (7).

[47] Judgment of the Court of 12 May 2005, *Tocai friulano*, Case C-347/03.

wine and its principal objective is to promote trade between the Contracting Parties

The Court then points out that in the case of homonymity between a geographical indication of a third country and a name incorporating the name of a vine variety used for the description and presentation of certain Community wines, the provisions on homonyms contained in the Agreement on Trade-Related Aspects of Intellectual Property (the TRIPs Agreement) do not require that the name of a vine variety used for the description of Community wines be allowed to continue to be used in the future[48].

5.2. Direct effect of TRIPS Agreement

The Court upholds in ***Abadía Retuerta***[49] that although the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) do not have direct effect, it is nevertheless true that the trade−mark legislation, must, as far as possible, be interpreted in the light of the wording and purpose of that agreement.[50]

5.3. International agreement to which the European Union is not a party

The case ***International Organisation for Vine and Wine (OIV)***[51] is notable from several perspectives: the emergence and proliferation of informal means of co-operation challenging the monopoly of traditional forms of international law-making and, secondly, the competence of EU to act externally.

In *OIV* case the Court was confronted with the question of the legal character and effects of an informal act issued by an international organisation to which the EU is not a member.

The OIV is an intergovernmental organisation of technical and scientific nature. It allows for discussions and eventually adopts non-binding recommendations on vine, wine marketing and wine production standards. The EU is not a member of the OIV, and only 21 of its Member States are. Issues dealt with in the OIV fall within the area of agriculture, a shared competence. The Member Statesand the Commission initially coordinated OIV positions informally prior to OIV meetings. Later, the procedure was formalised and the Council started adopting common positions on recommendations by the Commission through art. 218(9) TFEU, a Treaty provision concerning procedures on international agreements.49 In other words, EU institutions and Member States found ways to cooperate to assure unity of representation in the OIV, thereby fulfilling the duty of art. 4(3) TEU.

Germany, challenged this practice by arguing that the legal basis of art. 218(9) TFEU could not be used when the international organisation does adopt legally binding acts and the EU is not a member[52].

The case the discussion focuses on the scope and interpretation of the sole Article 218(9) TFEU because, as Germany points out, no other substantive legal basis was indicated in the contested decision. This case

[48] CJE/05/42 12 May 2005, Press Release No 42/05, 12 May 2005.

[49] Judgment of the General Court of 11 May 2010, *Abadía Retuerta*, Case T-237/08.

[50] *Ibidem*, p 67-72.

[51] Judgment of the Court (Grand Chamber), 7 October 2014, Federal Republic of Germany v Council of the European Union (OIV), Case C 399/12, ECLI:EU:C:2014:2258.

[52] Johan Bjerkem, *Member States as 'Trustees' of the Union? The European Union and the Arctic Council*, College of Europe, EU Diplomacy Papers, 12/2017, (http://aei.pitt.edu/92758/1/edp-12-2017_bjerkem.pdf).

raises crucial issues not only for the European Union (EU) and its Member States, but also for the proper functioning of the international organisations in which they operate[53].

First, this case may be seen as one of the exponents of the vivid academic debate over norm creation that occurs outside the classic international law framework[54].

Overall, the declining importance of form and formalities, treaty-fatigue, and the proliferation of new actors, outputs and processes have accentuated the phenomenon of informal international law-making, and thus, the problem of distinguishing between law and non-law. Also, recent years have also witnessed the proliferation of informal instruments issued by private actors. The trend towards privatisation manifests itself through the increased engagement of private actors with autonomous self-regulation, the emergence of mixed public-private acts (coregulation) and the proliferation of standard-setting instruments[55]

The *OIV* case is also relevant for the debates on the autonomy[56] of EU law.

Also, the Court made it plain that a clear distinction must be drawn between the existence (and qualification) of a competence on the one hand, and its exercise on the other. The fact that, given these circumstances, the Union cannot exercise its competence on the international forum through its own external actors[57], in particular the Commission or the High Representative, has no implications whatsoever for the issue of the existence of a competence (or even its qualification as being exclusive or not), which the Court had no difficulty accepting in this case. As the Court recalls: "in such circumstances the Union must act via its Member States, members of that organization, acting jointly in the interest of the Union".

6. Taxation

The CJEU decisions on duties and taxation made a significant contribution to the realization of a single market. The Court interpreted the relevant Treaty articles in the manner best designed to ensure the Treaty objectives are achieved. In relation to taxation the issues are more complex. The original Rome Treaty left a considerable degree of autonomy to Member States in the fiscal field, albeit subject to constraints imposed by Articles 30 and 110 TFEU[58].

In this area, as in many others, there is a link between judicial doctrine and legislative initiatives. The very fact that a challenged national tax policy will, according to Court decision in ***French Sweet***

[53] Govaere, Inge. 2014. "*Novel Issues Pertaining to EU Member States Membership of Other International Organisations: The OIV Case*." In The European Union in the World: Essays in Honour of M. Maresceau, ed. Inge Govaere, Erwoan Lannon, Peter Van Elsuwege, and Stanislas Adam, 225–243. Leiden, The Netherlands: Martinus Nijhoff Publishers.

[54] Eva Kassoti, The EU and the Challenge of Informal International Law-Making: The CJEU's Contribution to the Doctrine of International Law-Making, Geneva Jean Monnet Working Paper 06/2017, https://www.ceje.ch/files/3615/1748/7746/kassoti_6-2017.pdf .

[55] *Ibidem.*

[56] R.A. Wessel and S. Blockmans (Eds.), Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations, The Hague: T.M.C. Asser Press/Springer, 2013, p. 1-9; Konstadinides, Theodore, In the Union of Wine: Loose Ends in the Relationship between the European Union and the Member States in the Field of External Representation (2015). 21 (4) European Public Law (Forthcoming). Available at SSRN: https://ssrn.com/abstract=2584995.

[57] Roxana-Mariana Popescu, *Place of international agreements to which the European Union is part within the EU legal order*, Challenges of the Knowledge Society, Volume 5, Number 1, 2015, p. 489-494(6).

[58] Paul Craig, Gráinne de Búrca, *EU Law, Text, Cases, and Materials*, Oxford University Press, Oxford, 2015, p. 636.

Wines case[59], be upheld if the court deems it to be compatible with the Treaty can lead to paradoxical results. The absence of harmonization has led to the ironic result that the Commission, abetted by the CJEU, has managed to wield perhaps more influence over Member States" tax policies, and their economic and social policies, than would be the case if the Council had agreed a uniform tax regime.

"Article 110 TFEU purpose is to prevent Member States to introduce new taxes which had the purpose or effect of discouraging the sale of imported products in favour of the sale of similar products available on the domestic market and, in this way, to circumvent the prohibitions in Articles 28 TFEU, 30 TFEU and 34 TFEU"[60].

The prohibition laid down in article 110(1) applies if two cumulative conditions are met: first, relevant imported product and the relevant domestic product must be *similar* and, secondly, there must be *discrimination*[61].

Article 110(2) TFEU applies if two cumulative conditions are met: first, the imported product and the domestic product must be in *competition*, and, secondly, the tax must *protect* the domestic product[62].

In some cases, the **Spirits cases**[63], the Court follows a "holistic" approach[64], which does not distinguish between the two paragraphs of article 110 TFEU.

6.1. Similar products - Art. 110 (1) TFEU

The Court has turned its attention to the concept of similarity between wine and other alcoholic beverages in several cases. It was underline[65] that in terms of production conditions and characteristics, whilst wine is an agricultural product, with an elevated cost of production and subject to climate vicissitudes, beer is an industrial product.

The Court endorsed a broad interpretation of the concept of similarity in its judgment of 27 February 1980, in Case 168/78[66], ***Commission v French Republic***.

The Court stated that "it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 110 on the basis not of the criterion of the strictly identical nature of the products

[59] Judgment of the Court of 7 April 1987, *Commission v French Republic (French sweet wines)*, Case 196/85, ECLI:EU:C:1987:182.

[60] Judgment of the Court of 7 April 2011, *Ioan Tatu v Statul român prin Ministerul Finanţelor şi Economiei* and Others, Case C-402/09, p.53.

[61] Catherine Barnard and Steve Peers, *European Union Law*, Oxford University Press, Oxford,2014, p. 348.

[62] *Ibidem*, p. 350.

[63] Judgment of the Court of 27 February 1980, *Commission v French Republic*, Case 168/78, ECLI:EU:C:1980:51; Judgment of the Court of 27 February 1980, *Commission v Ireland*, Case 55/79, ECLI:EU:C:1980:56; Judgment of the Court of 12 July 1983, Case 170/78, ECLI:EU:C:1983:202; Judgment of the Court of 27 February 1980, *Commission v Kingdom of Denmark*, Case 171/78, ECLI:EU:C:1980:54; Judgment of the Court of 27 February 1980, *Commission v Italian Republic*, Case 169/78, ECLI:EU:C:1980:52.

[64] Catherine Barnard and Steve Peers, *European Union Law*, Oxford University Press, Oxford, 2014, p. 348.

[65] Theodore Georgopoulos, *Taxation of alcohol and consumer attitude is the ECJ sober?*, American Association of Wine Economists Working Paper, No. 37, June 2009, http://www.wine-economics.org/aawe/wp-content/uploads/2012/10/AAWE_WP37.pdf.

[66] Judgment of the Court of 27 February 1980, *Commission v French Republic*, Case 168/78, ECLI:EU:C:1980:51.

but on that of their similar and comparable use".

The court interpreted the meaning of similar products in case ***Johnny Walker*** [67], where it was able to assess the compatibility with the provision of a system of differential taxation applied under Danish tax legislation to Scotch whisky and fruit wine of the liqueur type. Consequently, the Court held that in order to determine whether products are similar "it is necessary first to consider certain objective characteristics of both categories of beverages, such as their origin, the method of manufacture and their organoleptic properties, in particular taste and alcohol content, and secondly to consider whether or not both categories of beverages are capable of meeting the same needs from the point of view of consumers"[68].

In case ***Commission v Kingdom of Denmark (Fruit wine)*** the court asses weather Denmark infringe the treaty imposing a higher rate of duty on wine made from grapes than on wine made from other fruit.

"As the concept of similarity must be given a broad interpretation, the similarity of products must be assessed not according to whether they are strictly identical but according to whether their use is similar and comparable"[69].

The court takes a dynamic interpretation concluded that the point of view of consumers must be assessed on the basis not of existing consumer habits but of the prospective development of those habits.

The concept of *indirect discrimination* was applied by the Court in ***Marsala*** case[70], without mentioning it expressly[71]. In the context of identical rates applied to manufacture of nationally and foreign produced wine alcohol, a reduction was granted by the Italian legislation to alcohol distilled from wine and used in the production of liqueur wines which qualify for the designation "Marsala", a beverage made in western Sicily. The Court observed that no imported liqueur wine can ever qualify for the preferential treatment accorded to Marsala and that imported liqueur wines accordingly suffer discrimination.

6.2. Goods not similar but in competition – Art. 110(2) TFEU

In the case ***Commission v French Republic***, Case 168/78, the court held "that the function of the second paragraph of Article 110 TFEU is to cover all forms of indirect tax protection in the case of products which, *without being similar* within the meaning of the first paragraph, *are nevertheless in competition*, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the

[67] Judgment of the Court of 4 March 1986, *John Walker & Sons Ltd v Ministeriet for Skatter og Afgifter*, Case 243/84. ECLI:EU:C:1986:100

[68] *Ibidem*, p.11.

[69] Judgment of the Court of 4 March 1986, *Commission v Kingdom of Denmark (Fruit wine)*, Case 106/84, ECLI:EU:C:1986:99.

[70] Judgment of the Court of 3 July 1985, *Commission v Italian Republic (Marsala)*, Case 277/83, ECLI:EU:C:1985:285.

[71] Christa Tobler, *Indirect Discrimination: A Case Study Into the Development of the Legal Concept of Indirect Discrimination Under EC Law*, Intersentia nv, 2005, p. 127.

purposes of the first paragraph of Article 95 is not fulfilled[72]".

The case ***Wine and Beer[73]*** concerns the great difference between the rate of excise duty on still light wine produced in other Member States and the rate of excise duty on beer produced in the United Kingdom that, according to the Commission, afforded indirect protection to beer and was contrary to the second paragraph of Article 110 of the Treaty.

The Court emphasized that "the second paragraph of Article 110 applied to the treatment for, tax purposes of products which, without fulfilling the criterion of similarity, were nevertheless in competition, either partially or potentially, with certain products of the importing country".

As regards the question of competition between wine and beer, the Court considered that, to a certain extent at least, the two beverages in question were capable of meeting identical needs, so that it had to be acknowledged that there was a degree of substitution for one another[74]. In view of the substantial differences in the quality and, therefore, in the price of wines, the decisive competitive relationship between beer, a popular and widely consumed beverage, and wine must be established by reference to those wines which are the most accessible to the public at large, that is to say, generally speaking, the lightest and cheapest varieties[75].

The Court concluded that the United Kingdom's tax system has the effect of subjecting wine imported from other Member States to an additional tax burden so as to afford protection to domestic beer production. Since such protection is most marked in the case of the most popular wines, the effect of the United Kingdom tax system is to stamp wine with the hallmarks of a luxury product which, in view of the tax burden which it bears, can scarcely constitute in the eyes of the consumer a genuine alternative to the typical domestically produced beverage[76]. So, the emphasis is on the considerably higher tax burden applied to the wines.

In a more recent case, ***Commission v Kingdom of Sweden[77]***, the Court was once again called to give answers to the question of taxation of wine and beer in the light of Article 110 TFEU. The Court took a different view, considering that the Swedish measure was compatible with EU law. This can reflect the accent on the possibility of the measure to have protectionist effect[78].

In this case the major issue was the consumer's attitude towards selling prices of alcoholic beverages.

The Court applied the method of relationship of final selling prices between a litter of strong beer and a litter of wine in competition and compared this relationship with the one that would apply if tax rates of beer were applied to wine. Thus, the Court found that the relationship between final selling prices of beer and wine would be 1: 2.1 instead of the actual 1: 2 .3. In this sense, the CJEU considered that the impact of

[72] Judgment of the Court of 27 February 1980, *Commission v French Republic*, Case 168/78, ECLI:EU:C:1980:51.

[73] Judgment of the Court of 12 July 1983, *Commission v United Kingdom of Great Britain and Northern Ireland (Wine and Beer)*, Case 170/78, ECLI:EU:C:1983:202.

[74] *Ibidem*, p.8.

[75] Judgment of the Court of 12 July 1983, Wine and Beer, Case 170/78, ECLI:EU:C:1983:202, p.12.

[76] *Ibidem*, p.27.

[77] Judgment of the Court (Grand Chamber) of 8 April 2008, *Commission v Kingdom of Sweden*, Case C-167/05, ECLI:EU:C:2008:202

[78] Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law*, Cambridge University Press, 2014, p. 91.

higher taxation on wine would be "virtually the same". According to the Court's reasoning, given the important difference of the final selling prices the fluctuation of the ratio is not likely to change the consumer's attitude[79].

6.3. Exceptions

In ***French sweet wines*** **case**[80], the Court accepted France was not in violation of the community law treating sweet wine production more favourably under the domestic taxation regime on account of being a need to sustain the production in areas of country where growing conditions were poor and unpredictable[81].

The Court held that Community law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products, even products which are similar on the basis of *objective criteria*, such as the *nature of the raw materials* used or the production processes employed. "Such differentiation is compatible with Community law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products".

The aim of offsetting the more *severe conditions under which certain products are produced*, in order to sustain the output of quality products which are of particular economic importance for certain regions of the Community must be regarded as compatible with the requirements of Community law[82]

The ***Joustra***[83] case offers the Court the occasion to rule on interpretation of Directive 92/12/EEC on the general arrangements for products subject to excise duty.

Mr. Joustra is a Dutch national and together with some 70 other private individuals formed a group called the 'Circle des Amis du Vin'.

Each year, on behalf of the circle, Mr. Joustra orders wine in France for his own use and that of the other members of the group. On his instructions, that wine is then collected by a Netherlands transport company which transports it to the Netherlands and delivers it to Mr. Joustra's home. The wine is stored there for a few days before being delivered to the other members of the circle on the basis of their respective shares of the quantity purchased. Mr. Joustra pays for the wine and the transport and each member of the group then reimburses him for the cost of the quantity of wine delivered to that member and a share of the transport costs calculated in proportion to that quantity. It is common ground that Mr. Joustra does not engage in that activity on a commercial basis or with a view to making a profit[84].

The Dutch tax authorities nevertheless charged excise duty on the wine and Mr. Joustra submitted an appeal against this decision.

[79] Theodore Georgopoulos, *Taxation of Alcohol and Consumer Attitude: Is The ECJ Sober?*, AAWE WORKING PAPER, no. 37, 2009, p. 2-6.

[80] Judgment of the Court of 7 April 1987, *Commission v French Republic (French sweet wines)*, Case 196/85, ECLI:EU:C:1987:182.

[81] Dermot Cahill, Vincent Power, Niamh Connery, *European Law*, Oxford University Press, Oxford, 2011, p. 64.

[82] Robert Schütze, *An Introduction to European Law*, Cambridge University Press, 2015,p.230.

[83] Judgment of the Court of 23 November 2006, *Staatssecretaris van Financiën v B. F. Joustra (Joustra)*, Case C-5/05, ECLI:EU:C:2006:733.

[84] *Ibidem*, p.17.

In the course of the ensuing proceedings, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) raised questions concerning the interpretation of Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

Joustra is interesting for the literal interpretation method applied by the Court. The court held that only products acquired on a person's own behalf fall within the application of Article 8, while those purchased for other individuals do not. Furthermore, transportation must be effected personally by the purchaser.

The Court expressly mention that it is for the Community legislature to remedy the legal lacuna, if necessary, by adopting the measures required in order to amend that provision[85].

7. Public health

The EU's main competencies are in creating a single European market rather than making health policy. We may therefore expect that alcohol policy has seen the dominance of economic over health interests. However this might be a simplistic picture[86].

The case ***Commission v French Republic***[87] regarded a French law which interdict the advertising of grain-based spirits (mainly foreign) while allowing advertising of wine based spirits (mainly French).

National legislation restricting the advertising of some alcoholic drinks it constitutes arbitrary discrimination in trade between Member States where it authorises advertising in respect of certain national products whilst advertising in respect of products bearing comparable characteristics but originating in other Member States is restricted. Legislation restricting advertising in respect of alcoholic drinks complies with the requirements of Article 30 EEC only if it applies in identical manner to all the relevant drinks whatever their origin.

The Court held that by subjecting advertising in respect of alcoholic beverages to discriminatory rules and thereby maintaining obstacles to the freedom of intra-Community trade, the French Republic had failed to fulfil its obligations under Article 30 EEC. The Court recognize in ***Commission v French Republic***[88] that national legislation restricting the advertising of some alcoholic drinks may in principle be justified by concern relating to the protection of public health.

In case ***Deutsches Weintor***[89] the court examined the definition of *health claims*. In this case the reference to the Court has been made in proceedings between Deutsches Weintor, a German winegrowers' cooperative, and the department responsible for supervising the marketing of alcoholic beverages in the *Land* of Rhineland-Palatinate concerning the description of a wine as 'easily digestible' ('bekömmlich'), indicating reduced acidity levels. The German authority objected to the use of the description 'easily digestible' on the ground that it is a *'health claim'*, which, pursuant to the regulation 1924/2006, is not permitted for alcoholic beverages.

[85] Judgment of the Court of 23 November 2006, *Joustra*, Case C-5/05, ECLI:EU:C:2006:733, 46.

[86] Ben Baumberg, Peter Anderson, *Health, alcohol and EU law: understanding the impact of European single market law on alcohol policies*, Oxford University Press, European Journal of Public Health, Vol. 18, No. 4, 392–398.

[87] Judgment of the Court of 10 July 1980, Commission v French Republic, Case 152/78, ECLI:EU:C:1980:187.

[88] *Ibidem*.

[89] Judgment of 6 September 2012, Deutsches Weintor, Case C–544/10, ECLI:EU:C:2012:526.

The court specifies that the concept of a 'health claim' is deemed to refer not only to the *effects* of the consumption – in a specific instance – of a precise quantity of a food which is likely, normally, to have only *temporary* or fleeting effects, but also to those of the *repeated, regular, even frequent* consumption of such a food, the effects of which are, by contrast, not necessarily only temporary and fleeting[90]. On the other hand, the concept of a 'health claim' must cover not only a relationship implying an *improvement* in health as a result of the consumption of a food, but also any relationship which implies the absence or reduction of effects that are adverse or *harmful* to health and which would otherwise accompany or follow such consumption, and, therefore, the mere preservation of a good state of health despite that potentially harmful consumption[91].

8. Conclusion

Defending wines shaped landmark decisions of EU law.

The Court declare, in *Liselotte Hauer*, that "*fundamental rights form an integral part of the general principles of the law*, the observance of which is ensured by the court". Furthermore, the Court affirms the supremacy of EU law vis-à-vis *constitutional law* of Member states.

In the field of EU procedural law, in *Codorníu*, the Court recognize, for the first time, the *individual concern* of the applicant in the action for annulment of *a legislative act*. "

Foglia v. Novello is the only case to date where the Court declined jurisdiction in a preliminary ruling case on account of the spurious nature of the main proceedings[92].

The *Rioja Wine case* is one of the six cases in the history of European integration when a state use the art. 259 TFEU and directly brought an action for failure to fulfil the obligations before the CJEU against another State.

In the case of an informal act issued by an international organisation to which the EU is not a member, *the Union must act via its Member States*, members of that organization, *acting jointly in the interest of the Union (International Organisation for Vine and Wine).*

A long series of decisions, such as *Spirits cases*, *Wine and Beer, Johnny Walker or French Sweet Wines case, on* duties and taxation made a substantial contribution to the realization of the single market

We may say wine is one of the key ingredients that creates law and, thus, defines who the EU is. Indeed, no efforts were saved or vigilance rest in protecting the Europe"s wine cellar.

In any case… *in vino veritas.*

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[90] *Ibidem*, para. 36.
[91] *Ibidem*, para. 35.
[92] Koen Lenaerts, Ignace Maselis, Kathleen Gutman, *EU Procedural Law*, OUP Oxford, 2014, p. 93.

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