

## 42 DISPUTE ON THE ‘TOKAJ’

*But Whose Property is the ‘Tokaji’?*

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### 42.1 INTRODUCTION

Wine is a constant dilemma between beauty and emotions, boundedness and freedom, belonging and solitude. The revival of this dilemma day by day is the engine of life. Ending the dilemma, on the other hand, means resignation. Loving wine indicates courage; the victory of the moment over eternity,

the founding editor-in-chief and wine spectator of the wine magazine *Borbarát*, László Alkonyi wrote in the welcome words of the journal.<sup>1</sup>

It was exactly wine, the “wonder”<sup>2</sup> of Tokaj and “*the wine of kings and the king of wines*”<sup>3</sup> that aroused a growing conflict between Hungary and Slovakia in the past years. The two countries have engaged in a dispute for many years because Slovakia has bottled – and continues bottling – its Tokaj wine produced in its own territories with reference to the fact that, before the Treaty of Trianon, the Hungarian wine act<sup>4</sup> listed Viničky, Malá Trňa and Nové Mesto to the Tokaj wine region.<sup>5</sup> The parties to the dispute have attempted to find a solution to the conflict but no meaningful progress has been made. The issue has been put forward to the European Commission and the Court of Justice of the European Union several times, until the latter organ reached a decision probably *determinative in the longer run*.<sup>6</sup>

In Case T-194/10 *Hungary v. Commission*, on 1 August 2009, the expression ‘Tokajská vinohradnícka oblasť’ was listed as a protected designation of origin in respect of Slovakia

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1 M. Frech: ‘Bor-ászok’, *Magyar Nemzet*, 25 December, 2001.

2 In his *Faust*, Goethe writes about the Tokaji wine the following way: “I’ll pour an instant Tokay for you, yes? [...] Look deeper into Nature! Have faith, and here’s a wonder. Now draw the stoppers and drink up!”.

3 A famous saying from the court of the French king Louis XIV.

4 Cf. in what follows.

5 Z. Kelemen: ‘Vita a magyar-szlovák boralkuról’, *HVG*, p. 116, 15 May, 2004.

6 Z. Hajdú: ‘Tokaj-Hegyalja – egy államhatár-metszete világorökségi jellegű szőlő- és bortermelő táj – a magyar-szlovák kétoldalú és az európai uniós szabályozási hálóban’, Pécs, Mta Krtk, 2014, 7.

in what is referred to as the E-Bacchus register compiled by the European Commission and replacing the list of quality wines produced in specified regions (QWpsr),<sup>7</sup> specifying among others Member States' designations of origin and geographical indications.<sup>8</sup> The listing in the electronic register further aggravated the long-standing conflict between Hungary and its northern neighbour. In the E-Bacchus database it was designations of origin protected by virtue of the legislations of Member States on 1 August 2009 that were registered.<sup>9</sup>

On 30 November 2009 Slovakia requested the Commission to replace the protected designation of origin 'Tokajská vinohradnícka oblasť' with the designations of origin 'Vinohradnícka oblasť Tokaj' and 'Tokaj' in the EBacchus register. The designation 'Tokajská vinohradnícka oblasť' had been entered in the register of QWpsr by mistake, Slovakia explained, while the national legislation in effect on 1 August 2009 in fact included the designations 'Vinohradnícka oblasť Tokaj' and 'Tokaj'.<sup>10</sup>

In a letter written to Slovakian authorities in February 2010 the Commission established that the wording of the above provisions included only the expression 'Vinohradnícka oblasť Tokaj'; it therefore rejected the Slovakian government's request to register the designation of origin 'Tokaj' in the above register.<sup>11</sup> "On 26 February 2010, [...] having regard to the Slovak provisions in force on 1 August 2009, the Commission amended the information contained in the E-Bacchus database to make it compatible with the exact wording of the Slovak provisions in question".<sup>12</sup>

The Slovaks significantly 'enlarged' the size of the production area as they reported a Tokaj production area of 1,474 hectares. Although in March 2010 the Hungarian government expressed its disagreement with the amendment,<sup>13</sup> this was rejected by the European Commission.<sup>14</sup>

On 28 April 2010, the Hungarian government, which, according to Tokaji winemakers, had been over-patient before,<sup>15</sup> brought an action by its application lodged at the Registry of the General Court.<sup>16</sup>

7 Court of Justice of the European Union PRESS RELEASE No. 17/14 Luxembourg, 13 February 2014.

8 *E-Bacchus database*, [www.ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pwelcome&language=EN](http://www.ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pwelcome&language=EN).

9 P.L. Láncoš: *A Törvényszék ítélete a Tokaj-ügyben*, Luxembourgi joggyakorlat, 2013/1 JeMa, p. 64.

10 Judgement of the Court (Seventh Chamber) of 8 November, 2012, Point 4.

11 *Id.*, Point 5.

12 *Id.*, Point 6.

13 *Id.*, Point 7.

14 Hajdú *Id.*, p. 5.

15 HVG.hu: 'Tokaji borvita: 2011-ig csak egy maradhat.' *HVG*, [www.hvg.hu/gazdasag/20100317\\_ujra\\_kielezodott\\_a\\_tokaji\\_borvita](http://www.hvg.hu/gazdasag/20100317_ujra_kielezodott_a_tokaji_borvita) [downloaded on: 26.01.2016].

16 Judgement of the Court (Seventh Chamber) of 8 November, 2012, Point 9.

## 42.2 TOKAJI WINE: THE SPIRIT OF THE HUNGARIAN GENIUS EXPRESSED IN WINE

When analysing the spirit of Hungarian wines, the geographical characteristics of Hungarian wine regions and the viticultural and winemaking factors must be considered. Since as early as ancient times, four factors have been taken into consideration as regards quality wines: soil, climate, the characteristics of the grapevine and the human expertise in viticulture and winemaking. A renowned winemaker of Tokaj-Hegyalja István Szepsy believes the uniqueness of the Tokaji wines is primarily thanks to the rhyolite-volcanic soil and the two *Hungaricum* grapevine species: Furmint and Hárslevelű. His opinion has some truth in it since the decisive majority of our “most unique, most elegant and most Hungarian” wines grow on volcanic soils and most of the grapevine species are *Hungaricum* grapevines. Beyond the volcanic soil and the *Hungaricum* grapevine species, a decisive role in the uniqueness of the Tokaji Aszú is played by the special micro climate of the Tokaj-Hegyalja region and the unexampled viticulture and winemaking technology of the Aszú making.<sup>17</sup>

The Tokaji wines have a great reputation and have been very successful contenders at many international wine competitions for more than a hundred and fifty years. In 2014 the fantastic ‘Tokaj Kereskedőház Áts Selection Tokaji Sárgamuskotály fészáráz 2013’ got a Gran Menzione prize in the framework of the significant Vinitaly competition. Furthermore, in 2016 the so-called ‘Château Imperial Tokaj Aszú 5 Puttonyos’ won a gold medal at the International Wine Challenges. In the same year, the ‘Béres Tokaji Aszú 5 puttonyos’ won a gold medal and a trophy just to mention the latest success of our world famous products. Only at that competition the various products of great producers of ‘Tokaji’ beverages received nearly a dozen of medals and trophies.<sup>18</sup> These tremendous results justify a high price range for products and as a result of this phenomenon, rival products are likely to emerge.

Quoting the words of Róbert Gyula Cey-Bert, the only Hungarian member of the International Wine Academy considered the highest ranking organisation in the world of wine: “if the Hungarian genius, the genuine Hungarian spirit is to be expressed with a single concept, this concept is Tokaji Aszú. The Tokaj Wine Region constitutes an exceptional paradise island among Hungarian wine regions, the royal prestige of which makes it one of the greatest wine regions in the world”.<sup>19</sup>

At the time of the Hungarian conquest, our ancestors arriving in the 9th century established their base around Tokaj where, according to sources passed down by the notary

17 R. Gy. Cey-Bert: *A magyar bor szellemisége*, Budapest, HUN-idea Szellemi Hagyományörző Műhely, 2006, p. 137.

18 internationalwinechallenge.com.

19 Cey-Bert Id., p. 138.

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Anonymus, they celebrated their victories by feasts. These included “the drink blessing the feast, i.e. wine”. Later on, with the appearance of the Aszú wine in the 16th century, the Tokaji wine played an increasingly important role in expressing the prestige of Hungarian spirit and culture: it became the favourite wine of popes, emperors, kings and aristocrats. Over time, the Tokaji wine has become part of our history; its spirit has meant “the hope of national rebirth” for Hungarians even at the most hopeless time: the Tokaji Aszú wine was an important income for Rákóczi’s war of independence.<sup>20</sup> This famous wine appears repeatedly also in Hungarian literature, suffice it to recall the lines of the poet Ferenc Kölcsey: “For us let the golden grain grow upon the fields of Kún, and let Nectar’s silver rain ripen grapes of Tokay soon.”<sup>21</sup>

Today there are approximately fifty countries in the world where wine is produced, but only 15-16 countries that have their own characteristic grapevine species: France, Spain, Portugal, Italy, Germany, Austria, Hungary, Greece, Turkey and the countries in the Caucasus and Central-Asia.<sup>22</sup>

#### 42.3 TOKAJI ASZÚ, THE HUNGARICUM

*Act XXX of 2012 on Hungarian national values and Hungaricums* defines the concept of Hungaricums the following way:

a collective term indicating a value worthy of distinction and highlighting within a unified system of qualification, classification and registry, which represents the high performance of Hungarian people thanks to its typically Hungarian attribute, uniqueness, specialty and quality.<sup>23</sup>

The Hungaricums entered into the Collections of Hungaricums can be classified into subject categories. From these categories, “the Tokaji Aszú produced in the Hungarian Tokaji wine region” is listed into the category agriculture and food economy.<sup>24</sup>

Tokaj has a microclimate unexampled in the world, which is especially conducive to Aszú formation and thanks to this the making of high quality sweet and dry Aszú wines has a tradition dating back to the 17th century.

20 Cey-Bert Id., pp. 140-141.

21 F. Kölcsey: Himnusz.

22 Cey-Bert Id., p. 155.

23 Act XXX of 2012 on Hungarian national values and Hungaricums, Section 1.

24 Hungarikum.hu: *Collection of Hungaricums*, Repository of Hungarian Values – Collection of Hungaricums, [www.hungarikum.hu/node/86](http://www.hungarikum.hu/node/86), [downloaded on 20.01.2016].

In Tokaj, August and early September are usually still dry; this is when grapevine gradually reaches the phase of complete ripeness, after which, as an effect of over-ripening, the skin of the berries start shrinking.

This is usually followed by wetter and rainier weather, enabling the 'Botrytis cinerea' infection required for Aszú formation to unfold.

Tokaj-Hegyalja is one of the wine regions in the world where the beneficial effect of the fungus *Botrytis cinerea*, referred to as noble rotting by our ancestors, is able to unfold.<sup>25</sup>

Tokaj-Hegyalja constitutes a geographical area of a length of approximately 80 km and an average width of merely 3-4 km, whose historically developed territory has not changed within Hungary. On a multi-year average, the amount of wine produced in the area may reach up to 200-230 thousand hectolitres.<sup>26</sup>

#### 42.4 THE SPECIAL PROVISIONS FOR THE TOKAJ WINE REGION

With the appearance of Aszú making approximately in the first half of the 1600s, a product *unique to the world* emerged among the Hegyalja wines. In view of the economic and commercial role as well as the regional significance of the sector, there appeared regulations for the production and distribution in the region from an early stage. First there were local 'mountain regulations'; later on county and national-level regulations passed. This was followed by the gradual development of the area of the closed wine region, the origin and the quality protection system, and the control and regulation of distribution. The national regulation based on a county proposal and passed in the 18th century (1737) clearly determined all the elements of wine growing and winemaking. "At the level of national regulation, the Tokaj wine region became one of the first, geographically precisely delimited wine regions of protected origin in the world."<sup>27</sup>

25 Hungarikum.hu: *Hungaricum Tokaji Aszú*, Repository of Hungarian Values – Collection of Hungarikums, [www.hungarikum.hu/ertek/bc457d46814444bb198b906a6d25c11fc4868120](http://www.hungarikum.hu/ertek/bc457d46814444bb198b906a6d25c11fc4868120) [downloaded on: 20.01.2016].

26 Hajdú Id. 4.

27 Hajdú Id., p. 2.



A special feature of Act XVIII of 2004 on viticulture and wine industry is that it has a whole chapter<sup>31</sup> devoted to the Tokaj wine region, which indicates the significance of the region. By virtue of Section 36 of the act “the ‘Tokaji másolás’, ‘Tokaji fordítás’, ‘Tokaji szamorodni’, ‘Tokaji aszú’ and ‘Tokaji eszencia’ produced in the Tokaj wine region qualify as Tokaj wine specialties and are authorised to use their own independent brand names”.<sup>32</sup> Section 39 of the act furthermore makes it clear that

it is forbidden to market for public consumption under a name alluding to the Tokaj wine region grape juice or wine if blended with grape juice or wine originating from other production sites.<sup>33</sup>

Mention must also be made of the *Fundamental Law of Hungary*, which provides that “natural resources, in particular arable land, [...] native plant and animal species [...] form the common heritage of the nation; it is the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations”.<sup>34</sup>

#### 42.5 PROTECTION OF ORIGIN<sup>35</sup>

Hungary has excellent natural assets and varied production traditions so in the course of time the issue of the protection of origin has become especially determinative. This is one of the reasons why the Ministry of Agriculture launched its origin protection policy, the primary goals of which, according to Deputy State Secretary for Origin Protection Péter Gál were to exploit the opportunities involved in geographical indication protection to a greater extent and to increase the number of Hungarian geographical product indicators. Today there are 58 product indicators under EU protection for Hungary, of which 37 refer to wine names. In the EU there are about 3,000 names under protection, compared to which the number of Hungarian appellations of origin is thus very low. The state secretary believes Hungary has numerous production traditions that are closely related to certain regions, and among these there are numerous names that may represent values at the market in future or even today.<sup>36</sup>

Geographical product indicators have significant *competitive functions*. In this respect mention must be made of *appellations of origin*, which have significant economic functions,

31 Chapter V.

32 Art. 36 of Act XVIII of 2004 on viticulture and the wine industry.

33 Art. 39 of Act XVIII of 2004 on viticulture and the wine industry.

34 The Fundamental Law of Hungary, Art. P.

35 B. Herpay, Dr.: ‘A magyar borgazdaság kihívásai’, Budapest, *Mezőgazdasági Szaktudás Kiadó*, 1998, 25.

36 Duna World: *Magyar gazda*, 08.02.2016. [www.mediaklikk.hu/video/magyar-gazda-2016-02-08-i-adas-2/](http://www.mediaklikk.hu/video/magyar-gazda-2016-02-08-i-adas-2/) [downloaded on: 10.02.2016].

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too. The production and distribution of Bavarian beers, French wines and Italian vermouths are deservedly associated with good reputation. Geographical product indicators are effective means of advertising and also serve as authentic recommendations for consumers. Considering the prestige consumption of the above products, their popularity has price raising effects. You can clearly set higher prices for brand-name drinks than for regular products. As regards competitors, geographical product indicators clearly have vitalising effects. Competitors make all reasonable efforts to attain similar quality and reputation. In order to facilitate this, they give their products well-sounding names reminiscent of the original ones or complemented with tags like -style, -type or -kind.

Special mention must be made of the *crowding out, competition restricting* effects of geographical product indicators. As a result of this effect competitors can be partly or totally crowded out of the market of a given product or forced to implement considerable price reductions and trade discounts.

Geographical product indicators have several functions<sup>37</sup> in addition to the above mentioned competitive function, of which the *source indicator, differentiation, quality indicator and protection functions* have decisive roles.

Special provisions for geographical indications are included in the Act on Trade marks.<sup>38</sup> The Act on Trade Marks provides: “Geographical indications and appellations of origin used in the course of trade to identify the geographical origin of the product shall be granted protection as geographical product indicators”.<sup>39</sup> Thus, appellations of origin can also be listed in the category of geographical product indicators. This concept, too, is precisely defined in the law, under Article 103 (3): “Appellation of origin means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein the specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area”.<sup>40</sup>

#### 42.6 THE INTERNATIONAL PROTECTION OF GEOGRAPHICAL PRODUCT INDICATORS<sup>41</sup>

The protection of our appellations of origin and indications of source abroad is guaranteed by numerous international agreements.

37 L. Tattay: A bor és az agrártermékek eredetvédelme, Budapest, *Mezőgazda Kiadó*, 2001, p. 21.

38 Act XI of 1997 on the protection of trade marks and geographical indications.

39 Art. 103(1) of Act XI of 1997 on the protection of trade marks and geographical indications.

40 Id. Art. 103(3).

41 Herpay, 1998. Id. pp. 25-26.



The significance of the Paris Convention for the Protection of Industrial Property signed in 1883 is that it lists, among others, appellations of origin and indications of source under objects of industrial protection.<sup>42</sup> The convention precisely defines the concept of industrial property as well:

Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agriculture and extractive industries and to all manufactured and natural products, for example, to wines [...].<sup>43</sup>

Mention must certainly be made of the Lisbon Agreement signed on 31 October 1958 for the protection of appellations of origin and their international registration,<sup>44</sup> which basically regulates two geographical product indicators or indication categories: appellations of origin and indication of source. By virtue of the agreement: “the countries to which this agreement applies constitute a special Union within the framework of the Union for the Protection of Industrial Property”,<sup>45</sup> and

they undertake to protect on their territories [...] the appellations of origin of products of the other countries of the Special Union, recognised and protected as such in the country of origin and registered at the International Bureau of Intellectual Property [...] referred to in the Convention establishing the World Intellectual Property Organisation.<sup>46</sup>

It makes it clear furthermore that “the country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation”.<sup>47</sup>

#### 42.7 THE TOKAJ CASE

The use of the appellation of origin ‘Tokaj’ by Slovakia has been a long disputed issue between Hungary and Slovakia. The Treaty of Trianon in 1920 split the until then single Tokaj wine region, but the bigger (90%) and most valuable part of the historic wine region

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42 Paris Convention, Art. 1(2).

43 Paris Convention, Art. 1(3).

44 Legislative Decree 1982/1 on the promulgation of the Lisbon Agreement for the protection of appellation of origin and their international registration, as revised at Stockholm on July 14, 1967.

45 Art. 1(1), Lisbon Agreement.

46 Id. Art. 1(2).

47 Id. Art. 2(1) and (2).

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stayed under the authority of Hungary. The two cut off settlements, Malá Třňa and Viničky and the self-contained Slovakian municipality of Nové Mesto (Slovenské Nové Mesto) established from 'Kis-Újhely' cut off from the Hungarian Sátoraljaujhely, together having a cultivated wine area of 132 hectares, were annexed to Czechoslovakia and, after the dissolution of the country, to Slovakia, which was established on 1 January 1993.<sup>48</sup> This change of the border is also known as 'Wine-Trianon' or 'Grapes-Trianon'.<sup>49</sup>

Neither the world wars<sup>50</sup> nor the socialist<sup>51</sup> period brought about a significant change or solution in the issue of the divided wine region.<sup>52</sup>

In 1968, Czechoslovakia wished to obtain the appellation of origin 'Tokaji' for itself. Within the framework of the Lisbon Agreement, on 20 April 1968 it had the indication 'Tokaji' placed under international protection under the name 'Tokajské vino de la Region Slovaque' and the registration number AO 0545. It was a huge mistake to give priority to our neighbours in the question of the registration. Due to this incidence, Czechoslovakia, and from 1993 on the Slovakia had the right to refer to the international protection and its priority. Hungary did not recognise this protected indication. On 15 September 1970 – so, unfortunately later than Slovakia – Hungary had the indications Tokaj, Tokay, Tokayer etc. placed under protection for itself, under the registration number AO 0527.<sup>53</sup>

The processes after 1990 and privatisation involved a significant transformation in production conditions on both sides. By the year 2000, the cultivated area of the wine region shrank to approximately 5500-5600 hectares. Privatisation created the opportunity for setting up new private wineries, which put greater emphasis on quality and keeping traditions.<sup>54</sup>

From 1993, after the establishment of the new Slovakia, Hungarian-Slovakian relations became acute several times when the 'wine issue', too, was reevaluated.<sup>55</sup>

In 1995, Tokaj Wine Region Council of Wine Communities was set up, with a growing number of players joining the debate: major producers, professional organisations and interest representation organs, agricultural sectors, the two governments and finally the EU, too, made their stances.<sup>56</sup>

Prior to EU accession, by virtue of a so-called *wine agreement* between the Republic of Hungary and the European Community signed in November 1993, Hungary had

48 HVG.hu/MTI: 'Húsz éve bomlott fel Csehszlovákia', HVG, www.hvg.hu/vilag/20130101\_Husz\_eve\_bomlott\_fel\_Csehszlovakia [downloaded on: 21.01.2016].

49 Hajdú Id., p. 1.

50 1914-1948, 1938-1945.

51 No. 19.

52 Hajdú Id., p. 1.

53 Hajdú Id., p. 3.

54 Hajdú Id., p. 3.

55 Hajdú Id., p. 1.

56 Hajdú Id., p. 1.

exclusive right to use the appellation of origin 'Tokaj' and its derived forms in the territory of the European Union.<sup>57</sup> Thus, Slovakia was not allowed to ship wine to the EU under the same name. This agreement also made it clear that, from 2007 on, the use of the Italian name 'Tocai' and the French name 'Tokay' was prohibited.<sup>58</sup>

The accession document amended Council Regulation 1493/1999/EC on the common organisation of the market in wine in that 'the Tokaj region in Slovakia' was added to the wine producing regions listed therein.<sup>59</sup> At the same time, the Slovakian area of the Tokaj wine region was not clearly delimited so it became uncertain in which territories of Slovakia the production of Tokaji was permitted.<sup>60</sup>

In 1997, Slovakia asked the European Union to recognise, within the framework of an agreement to be worked out on the trademark protection of wines and the control on the quality protection of wines, the Slovak designation 'Tokaj'. Hungary protested against the planned agreement maintaining that the agreement between Hungary and the EU signed in 1993 excluded the opportunity of such an agreement.<sup>61</sup>

At the same time, the stance of the Ministry of Agriculture and Regional Development (hereinafter MARD) was that the agreement on 'wine designation' of 1993 had been signed between the EU and Hungary, but lost effect as a consequence of EU accession. Numerous legal experts were of the opinion, however, that the Hungarian stance could nevertheless have been tenable since it was the contents of the agreement that were decisive, which favoured Hungary. Furthermore, the EU had a similar agreement with Slovakia, in which it was not included, however, that they were authorised to use the designation Tokaji. With respect to this, the final argument of the MARD was that the EU regulation on the basis of which Brussels recognised winery products with ten years' past in distribution had been in force since 2002. And, unless a compromise was reached in the possibly soonest time, the Slovaks might come up with several high quality wines that would detract from the reputation of the Tokaji. The fact that the name Tokaj was on the list of Slovakia's wine regions was also favourable for Slovakia.<sup>62</sup>

The new Slovakian regulation determined the area of the 'Slovakian Tokaj wine region' in 1401 hectares; it specified seven settlements as 'winemaking municipalities' and three as 'the borderland of the wine region'.

57 P.L. Láncoš: *A Törvényszék ítélete a Tokaj-ügyben*, Luxembourgi joggyakorlat, 2013/1 JeMa, p. 62.

58 Kelemen Id., p. 117.

59 Láncoš Id., p. 62.

60 E. Fábrián: *Szlovák-magyar küzdelem a Tokaji borért*. Jogi Fórum. [www.jogiforum.hu/hirek/27202](http://www.jogiforum.hu/hirek/27202) [downloaded on: 21.01.2016].

61 Hajdú Id., p. 4.

62 Kelemen Id., p. 117.

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The greatest opposition to the decision came from the above mentioned Tokaj Wine Region Council of Wine Communities.<sup>63</sup>

In 2002, as a result of the decision of the UNESCO World Heritage Committee, the Hungarian part of the Tokaj wine region became part of the world heritage as a historic cultural landscape.<sup>64</sup>

In 2004, the Ministry of Agriculture of the Slovak Republic and the Ministry of Agriculture and Regional Development of the Republic of Hungary signed an agreement in which the two countries declared that the Tokaj wine region lay in the area of the two countries and formed a single, cross-border wine region. “The name of the part lying in Hungary is ‘Tokaji borvidék’, while the part lying in Slovakia is referred to as ‘Tokajská vinohradnícka oblasť’ (which latter also means ‘Tokaj wine region’ in Hungarian).”<sup>65</sup>

They agreed in a *coordinated aide-memoire* signed by the ministers of agriculture of the two Member States and a representative of the Commission under what conditions Slovaks were allowed to use the above appellation of origin. In this agreement the parties stated that in a short time they would agree on uniform production and control conditions to be applied in the cross-border wine region, as well as on the territorial delimitation of the Slovakian part of the region.<sup>66</sup>

Chairman of the Tokaj Wine Region Council of Wine Communities Ferenc Marcinkó said in an interview he gave on the issue that, according to the contents of the *coordinated aide-memoire*:

[...] the wines produced on the other side of the border [...] will only be allowed to be called ‘Tokaji’ if there are uniform legal provisions, uniform regulatory provisions and uniform local regulations applicable for winemaking, but such provisions and regulations were not made because in the course of the 4-5 years of the bilateral discussions Slovakia repeatedly tried to escape the implementation of the discussions and in 2009 announced that they would suspend the discussions [...] and wished to operate as a totally independent wine region and submit an independent product specification.

In the interview Ferenc Marcinkó revealed Hungary’s suggestion according to which, if setting up a common wine region failed, there were the following two solutions:

[...] on the Slovakian side, the Slovakian designation must be used, and on the Hungarian side the Hungarian designation must be put on the product. Thereby

63 Hajdú Id., p. 4.

64 Hajdú Id., p. 1.

65 Angyal – Asztalos – Fazekas – Gyeney – Metzinger – Milassin – Osztovtovits – Szabó Id., p. 308.

66 Láncoš Id., p. 62.

it is made clear to the consumer that these are products produced in two absolutely separate wine regions. As long as there are no common regulations, joint control or joint product specifications, you cannot speak of identical products.<sup>67</sup>

The chairman of the Council of Wine Communities also said that the agreement signed in 2004 determined the size of the area in Slovakia where wines under the name Tokaji were allowed to be produced in 565.2 hectares. He opined there was a compromise on Hungary's side in this respect since in November 2003 a Hungarian expert delegation had found that an area of 330 hectares was suitable for wine growing in the Slovakian territory in question. Hungary nevertheless agreed to a Tokaji production area beyond the three communities annexed to Slovakia as a result of the Trianon Peace Treaty, on 565.2 hectares altogether.<sup>68</sup>

Although not all the agreements included in the *coordinated aide-memoire* had been met and the delimitation of the Slovakian part of the wine region had not been implemented, either, Slovakia's authorisation to use the appellation of origin referring to the Tokaj region was enacted in the EU legislation as well.<sup>69</sup>

The Commission failed to inform Hungary on the amendment of the data in the E-Bacchus register, although it affected Hungary's interests, too.<sup>70</sup>

The primary problem was the deceptive nature of the Slovak word 'Tokaj', since these Hungarian wines are produced based on strict Hungarian professional requirements and are not to be mixed with other wines in whose production the prescribed requirements are not met. Hungary opines that the designation of origin including the name "Tokaj" and the label on the bottles referring to this are deceptive: consumers may believe that the wine marketed by Slovakia is identical with the wine bearing the protected designation of origin for Hungary.<sup>71</sup> Thereby, under the world reputation of 'Tokaji' earned with long-time efforts, wine consumers may get imitations whose quality is nowhere near the original.<sup>72</sup> Based *Ferenc Marcinkó's* opinion, this does not raise so much concern, however, because yields in the area are insignificant and only for domestic consumption.<sup>73</sup>

A bigger problem is posed by the fact that

67 F. Marcinkó: *Egységes szabályozás kell*, mandiner.bor. www.bor.mandiner.hu/cikk/20121114\_marcinko\_egyseges\_tokaji\_szabalyozas\_kell [downloaded on: 21.01.2016].

68 A. Medveczky: Véget ér-e a Tokaj-borháború? *Magyar Fórum*, 27 January, 2011.

69 Láncoš Id., p. 62.

70 Láncoš Id., p. 63.

71 Angyal – Asztalos – Fazekas – Gyeney – Metzinger – Milassin – Osztoivits – Szabó Id. pp. 308-309.

72 E. Fábrián: *Szlovák-magyar küzdelem a Tokaji borért*. Jogi Fórum, www.jogiforum.hu/hirek/27202 [downloaded on: 21.01.2016].

73 Medveczky, 27 January 2011, p. 4.

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in Slovakia it is not clear even in professional circles an area of what size they wish to carve out for themselves. In 1959, the three settlements mentioned above were complemented by the then Czechoslovak state [...] with four villages. Thereby the area of the wine region was increased to 908 hectares [...] To the EU, the Slovak state always communicates an area of 1,474 hectares as wine region [...] We stick to the 565<sup>74</sup> hectares.<sup>75</sup>

In March 2010 Hungarian authorities sent a letter to the Commission complaining about the amendment in the listing, claiming the correct designation of origin would be not ‘Vinohradnícka oblasť Tokaj’ but ‘Tokajská vinohradnícka oblasť’.<sup>76</sup> Hungary also complained that on 30 June 2009, i.e. prior to the date relevant for establishing the register on 1 August 2009, Slovakia had passed a new law<sup>77</sup> in which the designation ‘Tokajská vinohradnícka oblasť’ had been granted protection.<sup>78</sup>

Since in Hungary’s opinion the Commission breached the EU law when amending the previous designation of origin ‘Tokajská vinohradnícka oblasť’ to ‘Vinohradnícka oblasť Tokaj’ in the E-Bacchus register, on 28 April 2010 Hungary brought an action before the Registry of the General Court for the annulment of the latter designation.<sup>79</sup>

In their application, the Hungarian government argued, among others, that the protected designations of origin to be registered in the E-Bacchus should reflect the information included in Member States’ legal provisions in force on 1 August 2009. At that time there existed a Slovakian act already, even though it became effective only on 1 September 2009, which changed the designation of origin ‘Vinohradnícka oblasť Tokaj’ to ‘Tokajská vinohradnícka oblasť’.<sup>80</sup>

The then Hungarian government argued that, even if the date of taking effect was determinative, the contested designation of origin should not be listed in the EU register of designations of origin. The reason is that “since the new Slovakian act adopted prior to 1 August 2009 qualifies as an amendment in product specification in the sense of Article 73 (2) of Regulation 607/2009/EC, E-Bacchus must contain the specification included in this very act”. Accordingly, the E-Bacchus register mistakenly included the designation of origin ‘Vinohradnícka oblasť Tokaj’.<sup>81</sup>

74 According to the agreement included in the coordinated aide-memoire.

75 Medveczky 27 January 2011, p. 4.

76 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 7.

77 Act 313/2009.

78 Láncoš Id., p. 6.

79 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 9.

80 Láncoš Id. 64.

81 Láncoš Id. 64.

In the light of the events it is important to note that on 27 April 2010 Slovakia adopted an act that repealed Act 313/2009 and introduced the protected designation of origin 'Tokaj'. The new law took effect on 1 June 2010.<sup>82</sup>

The two parties had to submit the product specifications of the wines by the end of 2011, whereby it was examined if wines with the same designation of origin could have different product specifications. Hungary opined that Slovakia could not lawfully use the designation 'Tokaj'; at most it could be authorised to use the term 'Tokajská'.<sup>83</sup>

Hungary also relied on the legal ground based on the breach of *the principles of sound administration, cooperation in good faith and legal certainty*.<sup>84</sup> Hungary takes the view that, having regard to the principle of sound administration, the Commission is required to guarantee that the E-Bacchus register contains "authentic, reliable and accurate" data. "If in doubt, [...] the Commission (...) is entitled to ask for and receive information from the Member States concerned." Moreover, Hungary indicated to the Commission several times that it considered the disputed registration was unlawful in view of the new Slovakian wine act passed on 30 June, 2009, which included the designation 'Tokajská vinohradnícka oblasť'.<sup>85</sup>

The Republic of Hungary opined the Commission breached the principle of *cooperation in good faith* in that it did not notify the Hungarian government of the amendment in the entries in the E-Bacchus register, although the interests of the applicant could be affected. Finally, the Commission infringed the principle of *legal certainty* by changing the entries with retrospective effect.<sup>86</sup>

In its application Hungary asked the Court to annul the Commission's registration in the E-Bacchus database of the designation of origin 'Vinohradnícka oblasť Tokaj' in place of the protected designation of origin 'Tokajská vinohradnícka oblasť' and order the Commission to pay the costs.<sup>87</sup>

In a communication filed with the Registry of the General Court in August 2010 the Republic of Slovakia asked for permission to participate as an intervener in support of the Defendant, the Commission.<sup>88</sup>

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82 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 8.

83 Hajdú Id., p. 6.

84 Case T-194/10 *Republic of Hungary v. European Commission*, Republic of Slovakia, intervener – Report for the hearing, Point 16.

85 Id. Point 20.

86 Case T-194/10 *Republic of Hungary v. European Commission*, Republic of Slovakia, intervener – Report for the hearing, Point 20.

87 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 14.

88 Case T-194/10 *Republic of Hungary v. European Commission*, Republic of Slovakia, intervener – Report for the hearing, Point 10.

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The Commission and the Republic of Slovakia asked the Court to dismiss the action and order Hungary to pay the costs.<sup>89</sup>

#### 42.8 THE CUVÉE PALOMAR CASE<sup>90</sup>

In order to support its argumentation, Hungary referred, among others, to the judgement of the General Court in the *Cuvée Palomar* Case.<sup>91</sup>

In Case No. T-237/08, the Applicant Abadía Retuerta brought an action against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 2 April 2008 (Case R 1185/2007-1) concerning the registration of the word sign Cuvée Palomar as a Community trade mark.<sup>92</sup>

The trade mark for which registration was sought is the word sign Cuvée Palomar.<sup>93</sup> “The goods in respect of which registration of the mark was sought are in Class 33 under the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond to the following description: “wines”.<sup>94</sup> The examiner, taking the view that the mark applied for was inadmissible on the basis of the absolute ground for refusal referred to in Article 7(1)(j) of Regulation No. 40/94, refused the application for registration by decision of 5 June 2007.<sup>95</sup>

By virtue of Article 7(1)(j) of Regulation 40/94 “trade marks for wines which contain or consist of a geographical indication identifying wines [...] with respect to such wines [...] not having that origin” shall not be registered.<sup>96</sup>

The applicant not accepting the judgement appealed against the decision. By decision of 2 April 2008 the First Board of Appeal dismissed the appeal and ordered the applicant to pay the costs incurred relating to the procedure.<sup>97</sup>

The Board of Appeal states among others that el Palomar is the name of a local administrative area in the subregion and considers that there is a large degree of similarity between the local administrative area name Palomar, protected by the registered designation of origin ‘valencia’ and the word ‘palomar’ included in the mark applied for, its use is therefore prohibited. Given that the goods in question do not have that origin, the Board of Appeal takes the view that “registration of the Community mark applied for to designate

89 Judgement of the Court (Seventh Chamber), 8 November 2012, Point 15.

90 Judgement T-237/08.

91 Láncoš Id., p. 64.

92 Judgement T-237/08.

93 Judgement T-237/08, Point 16.

94 Id. Point 17.

95 Id. Point 18.

96 Council Regulation 207/2009/EC on the Community trade mark (codified version), Art. 7(1)(j).

97 Judgement T-237/08, Points 19-20.



wines should be refused pursuant to Article 7(1)(j) of Regulation No. 40/94, since it contains a false geographical indication".<sup>98</sup>

The applicant brought an action to the Court and asked that the Court annul the contested decision and order OHIM to pay the costs. The defendant certainly asked the Court to dismiss the action and order the applicant to pay the costs.<sup>99</sup>

In its judgement in the case the Court established that enforceability against third parties of national measures serving as bases for designations of origin results from the publication of those provisions in the Official Journal of the respective Member States.<sup>100</sup>

#### 42.9 THE ARGUMENTATION IN THE COURT JUDGEMENT<sup>101</sup>

In the course of the hearing before the Court, the Commission raised an objection of inadmissibility with reference to the fact that the disputed entry in the E-Bacchus register did not qualify as a 'challengeable act'.<sup>102</sup> Drawing on Point 101 of the judgement in the *Cuvée Palomar* case<sup>103</sup> the Court claimed that the protected designation of origin 'Vinohradnícka oblasť Tokaj' originated in the national laws of the Republic of Slovakia, so the disputed entry did not produce any independent legal effects.<sup>104</sup> According to Point 101 of the above judgement, the publication of the wine names and the references to the national provisions in the C series of the Official Journal constitute only a way of informing the public.<sup>105</sup>

The Commission also referred to Article 113 of the Rules of Procedure of the General Court according to which the court may at any time during the proceedings, 'of its own motion', examine the conditions of admissibility of an action.<sup>106</sup>

The Court finally considered the Commission's objection to be admissible and in November 2012 it dismissed Hungary's action. The justification by the Court had three *aspects* basically: the aspect concerning the lack of legal effects, the one concerning the time factor as well as notes and remarks concerning the Commission's administration in the case.<sup>107</sup>

98 Id. Points 23-27.

99 Id. Points 29-30.

100 Judgement T-237/08, Point 99.

101 Láncoš Id. pp. 64-65.

102 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 16.

103 Judgement T-237/08, Point 101.

104 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 16.

105 Judgement T-237/08, Point 101.

106 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 17.

107 Láncoš Id., p. 64.

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(I) Entering the protected designation of origin in the E-Bacchus register “does not produce any legal effects”.<sup>108</sup> The Community protection of certain wine names established in Regulation 1493/1999 was originally based on the wine names established in the legislations”.<sup>109</sup> The Court thereby referred back to what was established under Point 97 of the Judgement of the *Cuvée Palomar* case: “That protection does not result from an autonomous Community procedure”.<sup>110</sup>

It is not justified to enter designations in the E-Bacchus register in order to be granted EU level protection since, by virtue of Regulation 1234/2007, protection is automatically valid. Considering this, since the protected designation of origin ‘Vinohradnícka oblast Tokaj’ was already among protected wine names by virtue of Regulation 1493/1999, its registration in the E-Bacchus registry was not required for the designation of origin to enjoy EU-level protection.<sup>111</sup>

The Court noted that the Official Journal of 2009 did not adopt the national legislation in force at the time correctly, but the publication of the wine names and the references to the national provisions in the C series of the Official Journal “constitutes only a way of informing the public”.<sup>112</sup> In view of this they thus dismissed Hungary’s argument that the E-Bacchus register generated legal effects since “it does not significantly change the legal status of those concerned”.<sup>113</sup>

Hungary’s argument according to which the technical documentations submitted by Member States and the data mandatory to display when labelling and presenting products depend on the contents of the E-Bacchus was rejected by the Court with the same justification.<sup>114</sup> They argued that the technical documentation to be submitted by Member States and the designation of origin mandatory to display when labelling and presenting products “do not depend on what was entered in the E-Bacchus register but on what is in fact under protection”.<sup>115</sup>

(II) Hungary’s argument according to which the date of passing the act was of decisive significance the Court rejected the following way: for the designations of origin entered in the register the relevant date was 1 August 2009, and only designations of origin that were in fact protected at that time could be entered into the register. The Commission

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108 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 19.

109 *Id.* Point 23.

110 *Láncos Id.*, p. 65.

111 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Point 21.

112 *Id.* Point 26.

113 *Id.* Point 33.

114 *Láncos Id.*, p. 65.

115 *Id.* Point 37.

pointed out that “the existence of not merely the legislation but of the protection as well is a prerequisite” of entering designations of origin in the register. Thus “it is the legislation of the Member State concerned in force on 1 August 2009 that can be considered as relevant”, while national provisions passed on the date of expiry but not yet entered into force are not.<sup>116</sup>

The General Court also rejected the argument according to which “even if we assume that the date of entry into force of the new Slovakian act must be considered” for compiling the register, Slovakia initiated amending the product specification before the date of the expiry already.<sup>117</sup> According to the Court the Slovakian act No. 313/2009 in force at the time of the expiry and serving as the basis of the entry cannot be interpreted as an amendment affecting the product specification since the change it included did not affect more than the name of the designation of origin and in that case Article 73 (2) was not applicable.<sup>118</sup> Considering these the register correctly included the designation of origin established by the Slovakian act.<sup>119</sup>

(III) The Court also summarised its position on the Commission’s administration considering the applicant’s argument that the Commission had failed to exercise its control powers granted by the principle of sound administration.<sup>120</sup> Hungary claimed that “the Commission must determine whether the designation registered as a protected designation of origin was in fact under protection based on earlier legislation”.<sup>121</sup>

The Court pointed out that even though, by virtue of Article 118s (4) of the Regulation on the Common organisation of agricultural markets the Commission may cancel protection of existing protected wine names if they do not meet the conditions laid down in the regulation, it may actually exercise this right only after it has submitted the technical documentation including the product specification. However, Slovakia did not submit a technical documentation including a product specification when the E-Bacchus register was amended, so the Commission was unable to exercise its right of control.<sup>122</sup>

According to Hungary’s justification “having regard to the principle of sound administration, the Commission is required to check if the data provided by Member States are accurate, up-to-date, reliable and suitable”. The Court opines, however, that irrespective of whether this obligation exists or not, it would not involve any significant effects on the

116 Id. Point 28.

117 Láncoš Id., p. 65.

118 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission*, Points 29-30.

119 Láncoš Id., p. 65.

120 Láncoš Id., p. 65.

121 Judgment of the General Court (Seventh Chamber) of 8 November 2012 in Case T-194/10 *Hungary v. Commission* Point 34.

122 Id., p. 34.

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legal situation of third persons. Since the protection of designations of origin follows from national legislation, the Commission's control of the data provided by Member States would not change which wines names are under protection; it would merely establish which are these.<sup>123</sup>

Thus, the Court rejected the action on 8 November 2012 and ordered Hungary to bear its own costs and those incurred by the European Commission, while it ordered the Republic of Slovakia to bear its own costs.<sup>124</sup>

#### 42.10 THE APPEAL OF THE HUNGARIAN GOVERNMENT AND THE JUDGEMENT OF THE COURT

Hungary did not resign itself to the decision made by the General Court of the European Union. In its appeal it asked the Court of Justice of the European Union to set aside the judgement made in the case on 8 November 2012 and, in accordance with Article 61a of the Statute of the Court of Justice of the European Union, give final judgement as to the substance.<sup>125</sup>

The appellant relied on three grounds this time: the first was that the General Court erred in law in its interpretation of the term 'actionable measure' for the purposes of Article 263 TFEU. Secondly it complained that the principle of *equal treatment* was violated. The third ground of appeal was "a failure to state reasons in the judgement under appeal".<sup>126</sup>

(I) Hungary opined that the Commission was wrong to establish that the entry at issue did not produce legal effects.<sup>127</sup> It supported this arguing, among others that by performing the entry at issue, protection was granted to a wine name that could not, in accordance with the relevant EU rules, benefit from protection as at 1 August 2009. According to Hungary, this had the legal effect that the protection of wine names which beforehand existed only at the national level was elevated to EU level of protection.<sup>128</sup> Hungary also continued to uphold its stance that when making an entry to the register, the Commission is obliged to check the wine names to be registered.<sup>129</sup>

The Commission refuted the argument on the legal effect claiming that, since the E-Bacchus database has only a purely informative role, "it is not such as to change the legal

123 Id. Point 35.

124 Id. Point 41.

125 Judgement of the Court (Third Chamber), Case C-31/13. P, *Hungary v. European Commission*, 13 February 2014, Point 39.

126 Id. Point 42.

127 Id. Point 43.

128 Id. Point 44.

129 Id. Point 46.

situation of a third party".<sup>130</sup> In its response to the arguments related to the control powers the Commission emphasised "the automatic nature of the listing of wine names already protected and the absence of any procedure at the European level".<sup>131</sup>

The Court admitted that on 26 February 2010 the Commission amended the designation of origin to 'Vinohradnícka oblasť Tokaj' without changing the reference to the relevant national law.<sup>132</sup> However, it pointed out to the fact that the transitional system for protecting designations of origin put in place by Article 118s of Regulation 1234/2007 was based on the wine names as recognised by national legislation on 1 August 2009. And the aim of the system was to remove designations of origin and geographical indications already existing in the European Union from the application of the new examination procedure and to maintain "the protection of wine names already protected" under national law. Therefore the General Court rightly concluded that the protection given to existing wine names was automatic.<sup>133</sup>

Concerning the control power the Court maintained that the Commission was allowed to exercise that power only after the Member States had sent their product specification and technical files in accordance with regulations, but "the Slovak Republic had not submitted a technical file to the Commission" by the date of the disputed entry".<sup>134</sup>

(II) By its second ground of appeal Hungary emphasised that "the General Court, in finding that the entry at issue is not an 'actionable measure' for the purposes of Article 263 TFEU, infringed the principle of equal treatment" in that it treated every entry differently from the new entries.<sup>135</sup> Hungary stated that the E-Bacchus register was a single database and accordingly it rejected the conclusion that only entries relating to new names were to have legal effect.<sup>136</sup>

The Commission rejected this argument pointing out that wine names currently enjoying protection and new names were not comparable as "they come under different legal and factual circumstances".<sup>137</sup>

The Court found that "the principle of equal treatment [...] requires that comparable situations must not be treated differently and that different situations must not be treated in the same way".<sup>138</sup> The Court, however, rejected the Appellant's argument and the second

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130 Id. Point 50.

131 Id. Point 51.

132 Id. Point 56.

133 Id. Points 57-58.

134 Id. Points 60-61.

135 Id. Point 69.

136 Id. Point 70.

137 Id. Point 71.

138 Id. Point 73.

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ground of appeal claiming that the legal context and the Commission's powers were "not comparable".<sup>139</sup>

(III) By its third ground of appeal Hungary opined that the General Court failed to provide sufficient reasons in its judgement because it did not respond to the arguments advanced by Hungary.<sup>140</sup>

According to the appellant the existence of a protected name in a Member State is proven by its publication in the official journal of that Member State and not the date on which that legislation entered into force.<sup>141</sup>

Secondly the General Court did not respond to the Hungarian argument that in Member States where it was not mandatory to draw up a product specification before the EU legislation,

the amendment of law or a regulation relating to the information to be included in the product specification may constitute an amendment of the kind referred to in Article 73 (2)<sup>142</sup> of Regulation No. 607/2009.<sup>143</sup>

In this issue the Court rejected the arguments claiming that the General Court was not bound to deal with the issue of whether the regulation required for the entry in the E-Bacchus database had to be published or enter into force by the cut-off date. It was not bound to make a decision as regards Regulation 607/2009, either, since the General Court established that the entry at issue was "not capable of producing legal effects".<sup>144</sup>

Since the Court upheld none of the grounds raised, it dismissed Hungary's appeal in the case.<sup>145</sup>

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139 Id. Point 75.

140 Id. Point 77.

141 Id. Point 78.

142 Any amendment to the product specification referred to wine names protected pursuant to Art. 51(1) of Regulation EC No. 479/2008, or wine names not protected pursuant to Art. 50(1) of Regulation No. EC 479/2008, which has been filed with the Member State at the latest on 1 August 2009, shall be subject to the procedure referred to in Art. 51(1) of Regulation EC No. 479/2008 provided that there is an approval decision by the Member State and a technical file as provided for in Art. 35(1) of Regulation EC No. 479/2008 communicated to the Commission at the latest on 31 December 2011.

143 Judgement of the Court (Third Chamber) – 13 February 2014, Point 79.

144 Id. Point 83.

145 Id. Point 85.

#### 42.11 CONCLUDING THOUGHTS

The decision made by the Court meant maintaining the *status quo* in the issue of the designation of origin 'Tokaj'. After the lengthy struggles, the decision of the European Court probably determined the situation and resolved the dispute between the two countries for the longer run. Although the Hungarian and the Slovakian sides differed in their evaluations of the Court judgement, both countries considered in their official press that the events had clearly been a defeat for Hungary.<sup>146</sup>

"The European Commission's rejection of the Hungarian appeal in the 'Tokaj' brand name case may have the deception of consumers as a consequence', the Tokaj Wine Region Council of Communities opined commenting on the events. The council is of the view that the court decision enables producers in Slovakia to continue marketing their wines of poorer quality than Hungarian wines under a brand name rather similar to the designation 'Tokaj' protected in Hungary. Even though they are not allowed to use the designation 'Tokaj' per se in future either, since they have been granted legal basis for using the designation 'Vinohradnicka oblast Tokaj' only. The decision is nevertheless a disadvantage for Hungarian producers since it may have market disturbing effects", Tokaj Wine Region Council of Communities noted sharing their stance.<sup>147</sup>

While the Hungarian party was disappointed at the court decision, Slovak winemakers welcomed it:

in this region, the conditions of viticulture and winemaking on this side of the border are exactly the same as on the other side, and winemaking methods, too, are similar, so it is unfortunate that there was a dispute at all,

small-scale producer Géza Nagy, member of the professional organisation of the viticulturists and winemakers of the Slovakian Tokaj region pointed out.<sup>148</sup>

Petra Lea Láncoš opines that, for Hungarian wine producers,

the protection by the EU of the Slovakian designation of origin including a word identical with the Hungarian designation of origin clearly constitutes a

<sup>146</sup> Hajdú Id., p. 7.

<sup>147</sup> Felvidék.ma: *Elutasította Luxemburg a magyar fellebbezést a "Tokaj" márkanév ügyében*, Felvidék.ma, [www.felvidek.ma/kitekinto/karpat-medence/44104-elutasította-luxemburg-a-magyar-fellebbezest-a-qtokajj-markanev-ugyeben](http://www.felvidek.ma/kitekinto/karpat-medence/44104-elutasította-luxemburg-a-magyar-fellebbezest-a-qtokajj-markanev-ugyeben) [downloaded on: 26.01.2016].

<sup>148</sup> Felvidék.ma: *Elutasította Luxemburg a magyar fellebbezést a "Tokaj" márkanév ügyében*, Felvidék.ma, [www.felvidek.ma/kitekinto/karpat-medence/44104-elutasította-luxemburg-a-magyar-fellebbezest-a-qtokajj-markanev-ugyeben](http://www.felvidek.ma/kitekinto/karpat-medence/44104-elutasította-luxemburg-a-magyar-fellebbezest-a-qtokajj-markanev-ugyeben) [downloaded on: 26.01.2016].

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serious violation of interests since in respect of designations of origin it is crucial that protected wine names should be distinguishable.<sup>149</sup>

Being in complete agreement with this position I believe that even though the sets of requirements for wine production and the qualities of the wine regions in Slovakia and Hungary are different,<sup>150</sup> there was clearly a need to reach a compromise decision in the case with consequences acceptable for both parties, considering that the three above mentioned Hungarian settlements were annexed to Slovakia as a consequence of the Trianon and the Paris Peace Treaties. I wish to note at the same time that it is with reference to these municipalities primarily that I consider the use of the designation absolutely justified. Although the two countries have been unable to reach a satisfying solution to the problem between themselves, I think that the decision of the institutions of the European Union can be considered to have resolved the struggles of the past years.

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149 Láncoš Id., p. 67.

150 E. Fábrián: *Szlovák-magyar küzdelem a Tokaji borért*. Jogi Fórum, [www.jogiforum.hu/hirek/27202](http://www.jogiforum.hu/hirek/27202) [downloaded on: 21.01.2016].