



Press and Information

Court of Justice of the European Union

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Judgment in Case C-663/18

*B S and C A v Ministère public et*

*Conseil national de l'ordre des pharmaciens*

**A Member State may not prohibit the marketing of cannabidiol (CBD) lawfully produced in another Member State when it is extracted from the *Cannabis sativa* plant in its entirety and not solely from its fibre and seeds**

*That prohibition may however be justified by the objective of protecting public health but must not go beyond what is necessary in order to attain it*

B S and C A are the former directors of a company whose object was the marketing and distribution of a cannabidiol ('CBD') oil electronic cigarette, a molecule present in hemp (or *Cannabis sativa*) and part of the cannabinoid family. In the case at hand, the CBD was produced in the Czech Republic from hemp plants grown lawfully and using the entirety of the plant, the leaves and flowers included. It was then imported into France to be packaged in electronic cigarette cartridges.

Criminal proceedings were instituted against B S and C A, since, under French legislation,<sup>1</sup> only the fibre and seeds of hemp may be put to commercial use. Sentenced by the Tribunal correctionnel de Marseille (Criminal Court, Marseille, France) to suspended terms of imprisonment of 18 and 15 months, together with EUR 10 000 fines, they lodged appeals before the Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France). That court thus questions the conformity with EU law of the French legislation, which prohibits the marketing of CBD lawfully produced in another Member State, when it is extracted from the *Cannabis sativa* plant in its entirety and not solely from its fibre and seeds.

In today's judgment, the Court finds that EU law, in particular the provisions on the free movement of goods, precludes national legislation such as that at issue.

As a first step, the Court rules on the law applicable to the situation at issue.

In that regard, it leaves aside the regulations relating to the common agricultural policy (CAP).<sup>2</sup> That secondary legislation applies only to the 'agricultural products' listed in Annex I to the Treaties. CBD, extracted from the *Cannabis sativa* plant in its entirety, cannot be regarded as an agricultural product, unlike, for example, raw hemp. It therefore does not fall within the scope of those regulations.

On the other hand, the Court observes that the provisions on the free movement of goods within the European Union (Articles 34 and 36 TFEU) are applicable, since the CBD at issue in the main proceedings cannot be regarded as a 'narcotic drug'. In arriving at that conclusion, the Court first recalls that persons who market narcotic drugs cannot rely on the freedoms of movement since

<sup>1</sup> Order of 22 August 1990 implementing Article R. 5132-86 of the Public Health Code in respect of cannabis (JORF of 4 October 1990, p. 12041), as interpreted by the circular of the Ministry of Justice concerning the legal regime applicable to establishments offering cannabis products for public sale (coffee shops) (2018/F/0069/FD2).

<sup>2</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608); Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 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 (OJ 2013 L 347, p. 671)

such marketing is prohibited in all the Member States, with the exception of strictly controlled trade to be used for medical and scientific purposes.

The Court notes, next, that, to define the terms 'drug' or 'narcotic drug', EU law<sup>3</sup> makes reference inter alia to two United Nations conventions: the Convention on Psychotropic Substances<sup>4</sup> and the Single Convention on Narcotic Drugs.<sup>5</sup> CBD, however, is not mentioned in the former and, while it is true that a literal interpretation of the latter might lead to its being classified as a drug, in so far as it is a cannabis extract, such an interpretation would be contrary to the general spirit of that convention and to its objective of protecting 'the health and welfare of mankind'. The Court notes that, according to the current state of scientific knowledge, which it is necessary to take into account, unlike tetrahydrocannabinol (commonly called THC), another hemp cannabinoid, the CBD at issue does not appear to have any psychotropic effect or any harmful effect on human health.

As a second step, the Court finds that the provisions on the free movement of goods preclude legislation such as that at issue. The prohibition on marketing CBD constitutes a measure having equivalent effect to quantitative restrictions on imports, prohibited by Article 34 TFEU. The Court nevertheless points out that that legislation can be justified on one of the grounds of public interest laid down in Article 36 TFEU, such as the objective of protecting public health invoked by the French Republic, provided that that legislation is appropriate for securing the attainment of that objective and does not go beyond what is necessary in order to attain it. While that latter assessment is for the national court to carry out, the Court provides two insights in that regard. First, it notes that it would seem that the prohibition on marketing would not affect synthetic CBD, which would have the same properties as the CBD at issue and which could be used as a substitute for the latter. If that circumstance were proved, it would be such as to indicate that the French legislation was not appropriate for attaining, in a consistent and synthetic manner, the objective of protecting public health. Second, the Court accepts that the French Republic is indeed not required to demonstrate that the dangerous property of CBD is identical to that of certain narcotic drugs. However, **the national court must assess available scientific data in order to make sure that the real risk to public health alleged does not appear to be based on purely hypothetical considerations. A decision to prohibit the marketing of CBD, which indeed constitutes the most restrictive obstacle to trade in products lawfully manufactured and marketed in other Member States, can be adopted only if that risk appears sufficiently established.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery.*

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<sup>3</sup> Reference made inter alia by Article 1(1)(a) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8).

<sup>4</sup> United Nations Convention on Psychotropic Substances, 1971, concluded in Vienna on 21 February 1971 (*United Nations Treaty Series*, vol. 1019, No 14956).

<sup>5</sup> United Nations Single Convention on Narcotic Drugs, 1961, concluded in New York on 30 March 1961, as amended by the 1972 Protocol (*United Nations Treaty Series*, vol. 520, No 7515).