

EDITORIAL

IS WINE LAW THREATENED WITH EXTINCTION?

No matter how embarrassing this question may appear to be in the columns of a legal journal dedicated to wine (and spirits) law, it cannot be ignored by specialist scholars. Certainly, it seems to be counter to the current development of wine law: educational programs, legal journals, books, conferences, and more than 400 members of the International Wine Law Association (AIDV) suggest a landscape in which wine law scholarship is blooming.

Nonetheless, if one pays attention to the evolution of the legal framework applying to wine, at least from a European perspective, there are reasons to doubt the future of wine law as a distinctive branch of modern law. By “distinctive branch of law” we mean a set of rules that are substantially different from those of “neighboring” legal subsystems, apply to a well-defined field, and are based upon common principles, and whose enforcement responds to a real need for regulation in society.¹

Indeed, various fields of wine law that were traditionally governed by specific rules are under pressure to align to general legal regimes. The case of wine PDO/PGIs is one of the most significant. If appellations of origin for wine have served as a paradigm for the protection of geographical indications in general, the procedural rules on the registration, amendment and cancellation of wine PDO/PGIs, as well as the clauses on their protection, are nowadays, with few exceptions, the same for wines, spirits (especially after Regulation 2019/787),² and agri-food products.

With regard to labelling too, the European Commission has given priority to the alignment of the rules applying to wine with the general legal regime for food products. The addition of nutritional information and ingredients to the list of compulsory particulars borne by a wine label proves the priority given to the consumer’s status, to the detriment

1 See F. Grua, « Les divisions du droit », 92 (1993) *RTD Civ.* p. 59.

2 Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (OJ L 130, 17.5.2019, p. 1).

of the privileges that the wine (and spirits) industry were enjoying until recent days.

The most spectacular example of the denial of a specific legal status for wine is probably to be found in the various restrictions related to the consumption and advertisement of alcohol.³ When the former French Minister of Health, Agnès Buzyn, declared that wine was an alcoholic beverage like any other, this was not simply a scientific statement.⁴ It was, much more, a major political choice, one which is widely shared in western countries and which governs the choices of regulators and judges. There is no derogation in positive law to be based on any specific nature of wine alcohol.

Besides, the regulatory mechanisms and institutions that constitute the cornerstones of the wine sector seem nowadays to lack their previous dynamism. The status of wine organizations, at least from the perspective of European law, is subject to rules on competition, leaving little margin for specific rules when compared with the trade bodies of other agricultural products. In the same way, we cannot omit to underline the scarcity of “wine agreements” over the last decade. Wine trade is covered by horizontal settlements in trade, such as the FTAs.⁵

To put it in plain words: is wine law heading towards its absorption by food law?

One may argue that, despite these trends, there will always be rules explicitly referring to the wine-making process or to wine as a product. The scheme of planting authorizations, the regulation of oenological practices and the regime of traditional terms guarantee, to a certain point, the perseverance of specific rules reserved to the wine sector. However, as long as the center of gravity of our legal systems is moving toward the protection of the consumer rather than the regulation of the production process, the specific field of wine law will get narrower, from a quantitative point of view.

In fact, it seems that the underpinning of the wine sector is likely to resist trivialization. Practices, economic relationships, and established legal and factual situations related to wine still call for the specific interpretation and enforcement of the rules that apply horizontally, in principle, to trade or foodstuff products.

3 Editorial, “Is Prohibition Over?”, 2 (2019) *Jus Vini – J Wine & Spirits Law*. p. 159.

4 Interview on TV, France 2 (7 February 2017).

5 I. Bosse-Platière and C. Rapoport (eds), *The Conclusion and Implementation of EU Free Trade Agreements: Constitutional Challenges*, Edward Elgar – Cheltenham, 2019.

Take the example of trademarks of wine estates (“marques domaniales”), which can be sold together with the winery but whose use is restricted for reasons of protection of the consumer and of fair competition;⁶ or the legal regime for grape varieties, including hybrids; or, finally, the rules applying to the registers and accompanying documents of vine products, dictated by the need to ensure traceability of a category of products subject to complex settlements among producing actors and ageing for shorter or longer periods. In all these examples, it is not the rule that is special but rather the reality of the sector that calls for tailored solutions. For this reason, wine law is not about to lose its specificity.

Besides, the phenomenon of alignment mainly concerns the situation in Europe, where wine law has already been systematically practiced for at least a hundred years. Other producing areas are rising fast in wine-making as well as wine trading and, consequently, there are developments in their legal systems with respect to the relevant questions. And, of course, their interaction with “old world” legal systems will inevitably also make the latter evolve. From a global perspective, it seems that the journey is far from having been completed. In fact, it has just started.

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⁶ See E. Agostini, « La police des secondes marques viticoles ou les excès de l'oncologie juridique », in T. Georgopoulos (ed), *Les contrôles administratifs du vin – Administrative controls in the wine sector*, Mare & Martin (collection Vin & Droit) – Paris, 2021, p. 31.