

An exploratory research on the jurisprudence related to PDO wine specifications

Elsa GATELIER

PhD student in Economics
REGARDS laboratory, University of Reims
elsa.gatelier@univ-reims.fr

Clémence GEORGELIN

PhD student in Wine Law
Wine and Law Program, University of Reims
clemence.georgelin@wine-law.org

Purpose: *The aim of this paper is to propose an explanation of judge decisions in case of conflict on a “Protected Denomination of Origin” (PDO) wine production delimitation. Sometimes natural factors (climate, soil, etc.) appear to be predominant to determine a new delimitation, but other times human factors (know-how, history, methods, etc.) are taken into account first. We think economic history of local wine production may give an explanation to these differences.*

Design/methodology/approach: *In an exploratory work, we want to reveal a link between the nature of judge decisions (priority to natural or human factors) and the economic history of the local wine production. To do this, we analyze two PDO wine located in two distinct French regions: Burgundy and Champagne. More precisely, we compare for each region judge decisions to wine economic history.*

Findings: *Natural factors are predominant to revise PDO delimitation in Burgundy whereas the judge gives a priority to human ones in Champagne. This can be explained, at least in part, by their different wine economic history. The struggle for PDOs recognition has been led differently: wanted by plot owners in Burgundy and by merchants in Champagne. This allows each kind of actors to legitimate its position in wine production what lead to differences in winegrowing and winemaking between the two regions. If Burgundy region is characterized by a “micro-terroir” wine production, Champagne region is characterized by blending and an industrial dimension of its wine production. This can explain the trend to give a priority to natural factors in Burgundy, and to human factors in Champagne.*

Keywords: exploratory research, PDO wine, jurisprudence, economic history, hierarchisation of natural and human factors

Introduction

Within a competition in international wine sector, a differentiation based on the origin of the wine is a strategy traditionally used in Europe. This strategy resulted notably from the Protected Denomination of Origin (PDO) system creation. The term of “terroir” is also often used to describe the link between a wine and the territory in which it is produced. However, no legally act allows defining “terroir”¹. That’s why the only way to analyze this link is to explore PDO specifications. These specifications are built by the local wine producers, the latter have to define how their wine is embedded in the territory. To express it, they have two cumulative options: considering the human factors and/or the natural factors that contribute to the production of the PDO wine. If this regulation seems to give the equal importance to human and natural conditions to identify a wine on its origin, this is not easy to turn into practice. The analysis of jurisprudence cases shows that some factors are predominant, the kind of which (natural or human) varies from a wine region to another. This leads us to wonder where these legal differences come from. In other words, the issue remains in what is mandatory to identify the origin of a wine and how the notion of “terroir” is understood. Is there another way to differentiate wines between those that are mainly defined in the PDO specifications by human factors and those that are mainly by natural factors? To explore these questions, we suggest (1) to present the European PDO system and demonstrate that there is a trend to prioritize one kind of factor instead of another when judges have to make decisions dealing with the delimitation of a PDO production area; (2) to show that the hierarchisation of natural and human factors may vary from one wine region to another, or more precisely from one PDO wine to another. We will attempt to explain it in an exploratory analysis based on the economic wine history of each region.

1. From PDO regulation to a hierarchisation of the ways to link a product to its origin

The PDO system has to be regarded as an efficient legal tool to protect products for which typicity arises from their origin. To understand how this recognition functions, both the French national regulation on “Appellation d’Origine Contrôlée” and the European regulations on PDOs has to be analyzed (1.1). However, these regulations do not explain what these factors are and do not give an exhaustive list of what they can be. The only way to give more details about natural and human factors is to analyze the PDO specifications. Moreover, French and European regulations seem to give the same importance to each factor, but when they are turned into practice, one factor may become predominant (1.2).

1.1. A regulation in favor of an equality of scientific factors

What the drafter of the Act intends is to develop an effective legal tool based on homogeneous factors to protect products. This means that the typicity is founded on the origin of the products, and that this origin can be appreciated with the same type of factors from a region to another. In France, the article L115-1 from the Consumer Code establishes that “*a denomination of origin from a region or a territory is used to designate a product which is*

¹ OIV in its “RESOLUTION OIV/VITI 333/2010” gives a definition of “terroir”, but it has no legal recognition.

native of this place and whose quality or characteristics are due to its geographic location, a geographic location being defined as natural and human factors” (personal translation). European regulation describes PDO in Article 34 from the Common Organization of the Market (479/2008) as follows “*a designation of origin means the name of a region, a specific place or, in exceptional cases, a country used to describe a product referred to Article 33 that complies with the following requirements: its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors*”. These two definitions show that geographical delimitation is the principal element used to identify the product, but we understand that it is also necessary to take into account scientific factors i.e. natural and human factors.

By analyzing French and European regulations on denominations of origins, it is easy to identify an equality principle between natural and human factors. In the French regulation, we even notice coordination between the two kinds, which means that one cannot function without of taking the other. The French judge² recently reminded the importance to take into account the two simultaneously when dealing with a case of denomination of origin. He asked the “Institut National de l’Origine et de la Qualité” (National institute for origin and quality products) to take into account the significance of that homogeneity when their technicians analyze an upgrading or downgrading of a plot. If natural factors (geological and climate characteristics for example) are often analyzed in these cases, the judge reminded that human factors have to be taken into account with the same level of consideration.

Despite the fact that the judge pointed out the importance of describing the two scientific factors and of highlighting their interaction, this is not sufficient to remove a hierarchisation between them when the regulation is applied.

1.2. From the enforcement of the regulation to the hierarchisation of scientific factors

An unequal status between natural and human factors emerges when the rules are applied. In most cases, natural factors seem to become predominant. Several examples of jurisprudence cases demonstrate the existence of a hierarchisation between natural and human factors characterized by the predominance of one factor (Georgelin, 2013). Here we make the choice to refer to the decision of the “Conseil d’Etat” concerning Margaux PDO in the Bordeaux region. Two judge decisions show that for this PDO, natural factors are always taken into account first:

- In the Château d’Arsac case³ in France, the judge uses only the natural factor to justify that this “château” belongs to the Margaux PDO. He demonstrates that geological conditions, tilt, sun exposure, etc., respect the characteristics described in the Margaux PDO specifications.
- Much has been written on the second case, which concerns the Château Marquis de Terme⁴. This case deals with the integration of the Château Prieuré Lichine in the

² European Commission, June the 12th, 2013, n°350214, Inédit au recueil Lebon.

³ European Commission, from 1993 to 1998, Château d’Arsac case.

⁴ European Commission, 30th december 2009, n°311113, Société Château Marquis de Terme, JurisData n°2009-018990.

Margaux PDO area of production. The judge was asked to delete the decision n°2007/1412 taken the 1st of October 2007, which ambition was to remove some plots of this château from the Margaux PDO. To take his decision, the judge has determined which characteristics have to be highlighted for a wine to become a PDO. He concludes that natural factors are the first to be taken into account, before historical facts or other human factors.

We have found many examples of jurisprudence both in France and Europe⁵ that allow us to think that there is a systematic hierarchisation between natural and human factors. Even if there are lots of examples where natural factors are predominant, this doesn't mean that the human factor is never the first to be taken into account. Another question has to be pointed out: are the judges really legitimate to give more importance to one factor rather than another? This means that there is a legal vacuum in the PDO specifications that gives the judge a large opportunity to interpret the rule. To conclude this first part, a real antagonism between jurisprudence and regulation appears. This leads us to think that a hierarchisation between scientific factors is unavoidable.

2. An explanation of differences in the judge's interpretation of PDO specifications: case studies

In the first part, we showed that the jurisprudence tends to induce a hierachisation between natural and human factors. In this part, we will show that if natural factors are often preponderant, we can find at least one case in which human factors are predominant. This case is the Champagne PDO. This leads us to a new question: how can this exception and/or these differences in the judge's interpretation from one wine region to another be explained? (2.1.). Answers can be found in the diversity of ways local wine productions are built and promoted. In order to illustrate our idea, we will make a comparison between two French PDOs: the Champagne PDO, for which the judge takes firstly human factors into account, and the Aloxe-Corton PDO in Burgundy, for which the judge considers natural factors first (2.2.).

2.1. Case studies of judge decision

It is thanks to the human and natural factors written in its specifications that each PDO wine is recognized as legally embedded in a territory. However, when a judge is required, we notice that one of the two factors becomes dominant. As explained in the first part, the judge seems to refer systematically to natural factors. But we found a ruling concerning the Champagne PDO showing that human factors are considered first. We would like to give an explanation of these differences between jurisprudence cases. In this part, we will thus present two contradictory cases: the Judgment N°241332 of the 13th of June, 2003 relative to the Champagne PDO and the Judgment N°279775 of the 25th of October, 2006 relative to Aloxe-Corton PDO.

We will first consider the Judgment N°241332 of the 13th of June, 2003 relative to the Champagne PDO. One of the champagne professional unions asked the "Conseil d'Etat" to

⁵ European Court of Justice, 7th November 2000, aff. C-312-98 Warsteier Breuerein, Rec. CJCE 2000, I, p.9187.

cancel the 23rd of October, 2001 decision which included some plots of Fontaine-sur-Ay in the Champagne PDO. But the judge decided to maintain these plots in the appellation by asserting that the vineyard had always been implanted in the village, even before the phylloxera period. Indeed, this reason is a principle notified in the article n°17 of the 6th of May, 1919 Law defining the boundaries of the Champagne production area. This is the reason the reason why no research on soil characteristics or other natural conditions has been done, but only historical research providing evidences of wine production. Human factors have primarily been taken into account.

But the analysis of the Judgment N°279775 of the 25th of October, 2006 relative to Aloxe-Corton PDO shows us that this predominance of one kind of factor may differ from one PDO wine to another. The Burgundy case will help us to illustrate this statement. The conflict is the same as in Champagne, because it concerns the cancellation of a decision relative to the integration of a plot in the Aloxe-Corton appellation. However, although the plot owner gave the judge a geological study, the latter decided nonetheless to downgrade the plot. On the basis of this study, he concluded that the link with the natural conditions required by the Aloxe-Corton PDO specifications was too weak. The decision was thus based on natural factors without trying to look for evidences of human factors.

Although both natural and human factors have to be taken with same consideration in order to acknowledge the origin of a product, these two jurisprudence cases show us that one of them always tends to be predominant. Moreover this hierarchisation may differ from one PDO wine to another.

2.2.How to explain these variations in the interpretations of PDO specification?

We will now seek to understand where these disparities come from. We will hence propose an exploratory work in order to try and understand what may influence judges' decisions. Indeed, we wish to highlight the link between these decisions and the economic history of the wine producing region. In other words, we will compare the economic history of two wine regions in order to explain why judges argue differently when dealing with the Champagne PDO and the Aloxe-Corton PDO. We want to link the results of these case studies (natural factors are dominant in the judge decision in Burgundy whereas human factors come first in Champagne) with their respective economic history. The European PDO system regulates Champagne and Burgundy productions and requires natural and human factors both to be described in their specifications. We will first show that despite this European effort to homogenize wine productions, each of them retains its particular nature: each wine has specific characteristics. We will then show that these disparities depend also on the way the local actors asked for PDO recognition, which occurred differently in the two regions.

The Burgundy⁶ wine region is characterized by a “micro-terroir” wine production (Delaplace, Gatelier, et Pichery, 2012 ; Delaplace et Gatelier, 2014). This implies that the wine has to be produced on very small plots defined by localized natural conditions and specialized cultural practices (Pitiot et Servant, 2010). In other words, wine is produced with a unique grape

⁶ Especially in « Côte de Nuits » and « Côte de Beaune » in Côte d'Or French department.

variety harvested on a given year and on a unique plot. This specificity allows Burgundy producers to benefit from a “natural” differentiation of their wines that is “culturally kept” to promote the local wines, it can be seen in the collective marketing “Small plots, high reputation”⁷. In the Champagne wine region, the promotion of wines is different. The Champagne wine is characterized by a large area of production and strong commercial brands. Each brand is recognizable by its own style and its own taste. This taste is built by blending different grapes varieties harvested in different plots and different years. Each brand aims at providing bottles with a constant taste. The way to promote Champagne wines is radically different as Burgundy producers do.

These contradictions also reflect the way by which the struggle for PDOs recognition has been led. In Burgundy, the PDO recognition has been wanted by the plot owners because wine merchants labeled their wines with the already famous plot without producing them with local grapes. Burgundy vineyard owners suffered from this prejudice and decided to ask for a legal protection of their wines (Jacquet, 2004). This PDO strategy allows the diversity of the burgundy wines to be protected, *i.e.* its “micro-terroir” particularity. In the Champagne region, the strategy leading to the recognition of the appellation was totally different. This strategy was implemented by some merchants who had detected the opportunity to give more renown to Champagne wines by improving their quality and maintaining their scarcity (Barrère, 2007). These merchants wanted other local wine actors to follow them in this strategy, which was later formalized as a quest for the recognition of the appellation. It also contributed to define Champagne wines as “white blended sparkling wines”, a definition that implies the use of innovative means of winemaking that only these merchants were able to provide (Barrère, Ditter, et Brouard, 2010). This gives us some insights on why they were really active in this definition: they wanted to protect their position in Champagne production.

To sum up, in the Champagne region, human factors of production (know-how, legal delimitation of the area, etc.) seem to be predominant to identify a bottle, whereas natural factors (localization and name of the plot) are the most important criteria to characterize Burgundy wines. This is due to a long historical construction of the characteristics of the local wines that have since been legally recognized in the PDO specifications. These differences in the historical construction of local wines have led to differences between PDO specifications. This particularly contributes to the hierarchisation of natural or human factors in the jurisprudence. Indeed, the judges may be influenced by the fact that a factor may be more developed in PDO specifications and/or by the fact that local wines are promoted by either human or natural factors of production.

Conclusion

In this paper we have shown that even if the PDO regulation requires the human and the natural factors to be equally important to define a wine, in practice, one of the two is often predominant over the other. Moreover, that hierarchisation appears to be different from one

⁷ Collective marketing of Burgundy wines by the Bureau Interprofessionnel des vins de Bourgogne, 2011.

wine region to another. In this paper, we aimed at giving an exploratory framework to understand these differences through an analysis of the economic history of wine regions. Beyond the PDO system, the way by which local wine productions have been built and are today promoted may influence the jurisprudence and the importance given to one factor or the other. In other words, if the hierarchisation is certainly unconscious for the lawyer, it becomes very explicit when we analyze the economic positioning of local wines and their history. This may be the cause of the differences in the importance given to either natural factors or human factors when there is a conflict on the extension of the area of an appellation.

During our research, we also discovered that for the same PDO, the hierarchisation of human and natural factors may vary over time. That is the case of the Champagne PDO which bases its claim for an “Appellation d’Origine Contrôlée” on historical facts (human factors). On the contrary, Champagne actors ask for a revision of their production area invoking natural factors of their PDO specifications. This leads us to wonder if the relationship between a wine and its origin may evolve as time passes in order to bring an answer to new issues. This also confirms the relevance of building a more precise framework highlighting the existence of a link between the dynamics of the wine sector and the criteria that influence the decisions of the judges.

Bibliography

Barrère C., Ditter J.-G., Brouard J. « La compétitivité des modèles de terroir dans le contexte de la globalisation des marchés du vin ». *Colloque joint ASRDLF AISRe « identité, qualité et compétitivité territoriale »*. Aoste, 2010.

Barrère C. « Le Champagne, d’un vin aristocratique à un produit du luxe marchand ». In : *Le Champagne, journée internationale d’étude sur le champagne, approches pluridisciplinaires*. Presses Universitaires de Reims, 2007.

Delaplace M., Gatelier E., Pichery M.-C. « Patrimonialisation de la vitiviniculture et développement du tourisme dans les régions viticoles : une comparaison Bourgogne / Champagne ». *Colloque de l’ASRDLF*, Belfort, 2012.

Delaplace M., Gatelier E. « Patrimonialisation individuelle et collective et développement de l’oenotourisme en Bourgogne ». *Territoires en mouvement*. N°21, 2014.

Georgelin C. "Fonction identitaire et protection juridique du terroir: rapport entre les sciences du vin et le droit vitivinicole". *Ières rencontres du Réseau Vignes et Vins Septentrional*. 1er et 2 juillet 2013, Colmar.

Jacquet O. « De la Bourgogne à l’international : construction et promotion des normes d’appellation d’origine ou l’influence des syndicats professionnels locaux ». *Anthropology of Food Online*. décembre 2004.

Pitiot S., Servant J.-C. *Les vins de Bourgogne*. Collection Pierre Poupon. Beaune, 2010. 360p.