

JUDGMENT OF THE COURT (Third Chamber)
13 July 1989

In Case 5/88

REFERENCE to the Court under [Article 267 TFEU] by the Verwaltungsgericht (Administrative Court) Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between

Hubert Wachauf

and

Federal Republic of Germany, represented by the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry),

on the interpretation of Article 12(d) of Council Regulation No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984, L 90, p. 13), and of Article 5(3) of Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal 1984, L 132, p. 11),

THE COURT (Third Chamber)

composed of: F. Grevisse, President of Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs
Registrar: S. Hackspiel, Administrator

after considering the observations submitted on behalf of: Hubert Wachauf, by B. Rusch,

the Government of the Federal Republic of Germany, by Dr Apelt and Mrs Lausch, acting as Agents,

the Government of the United Kingdom, by H. R. L. Purse, of the Treasury Solicitor's Department, and B. Kerr, QC, acting as Agents,

the Commission of the European [Union], by its Legal Advisers,

P. Karpenstein and D. Booss, acting as Agents, and by C. Boon-Falleur, acting as an expert,

having regard to the Report for the Hearing and further to the hearing on 28 February 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 27 April 1989,

gives the following

Judgment

- 1 By an order of 17 December 1987, which was received at the Court on 8 January 1988, the Verwaltungsgericht Frankfurt am Main referred to the Court for a preliminary ruling under [Article 267 TFEU] two questions on the interpretation of Article 12(d) of Council Regulation No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984, L 90, p. 13) and Article 5(3) of Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal 1984, L 132, p. 11).
- 2 Those questions were raised in proceedings between Mr Hubert Wachauf, a farmer, and the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry, hereinafter referred to as 'the Federal Office'). Mr Wachauf was a tenant farmer. Upon the expiry of his tenancy, he requested compensation for the definitive discontinuance of milk production pursuant to the German Law of 17 July 1984 on compensation for the discontinuance of the production of milk for sale and its implementing order of 20 July 1984. That legislation, which is based on a power contained in Article 4(1)(a) of Regulation No 857/84, mentioned above, essentially provides that a milk producer within the meaning of Article 12(c) of Regulation No 857/84 may apply for compensation if he undertakes to discontinue milk production definitively within a period of six months from the grant of the compensation. If the person making that application is the tenant of a farm within the meaning of Article 12(d) of Regulation No 857/84 his application must also be accompanied by the lessor's written consent.
- 3 On the basis of the latter provision, the Federal Office refused to grant to Mr Wachauf the compensation requested, since the landlord of the farm in question had withdrawn the consent which he had originally given.
- 4 Mr Wachauf brought an action against the decision of the Federal Office before

the Verwaltungsgericht Frankfurt am Main. That court has doubts about whether Mr Wachauf was the tenant of a 'holding' within the meaning of Article 12(b) of Regulation No 857/84, since the landlord of the farm had never himself carried on milk production on the farm leased and, moreover, the essential elements of a farm intended for milk production, namely a dairy herd and the technical facilities necessary for milk production, had always been the property of the tenant. Should such a farm nevertheless be deemed to be a 'holding', the national court asks whether Article 5(3) of Regulation No 1371/84 also applies in the case of the surrender of a tenanted farm.

- 5 Under those circumstances, the Verwaltungsgericht Frankfurt am Main stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'Is an agricultural production unit having neither dairy cattle nor facilities (such as milking parlours) capable of being used exclusively for milk production a "holding" within the meaning of Article 12(d) of Council Regulation (EEC) No 857/84 of 31 March 1984 (Official Journal L 90, 1.4.1984, p. 13)?'

Is the surrender of leased property upon the expiry of the lease a case having "comparable legal effects" within the meaning of Article 5(3) of Commission Regulation (EEC) No 1371/84 of 16 May 1984 (Official Journal L 132, 18.5.1984, p. 11), if the leased property is an agricultural undertaking without dairy cattle and without any facilities capable of being used only for milk production (for example, milking parlours) and where the lease provided for no obligation on the part of the lessee to engage in milk production?'

- 6 Reference is made to the Report of the Hearing for a more detailed account of the facts of the case, the applicable [Union] and national provisions, the course of the procedure, and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

- 7 Regard being had to the facts of the main proceedings, the first question must be construed as seeking to ascertain whether the term 'holding' in Article 12(d) of Council Regulation No 857/84 refers to all the agricultural production units which are the subject of a lease, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.
- 8 A 'holding' is defined in Article 12(d) of Regulation No 857/84 as 'all the production units operated by the producer and located within the geographical territory of the [Union]'.

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- 9 The very wording of that provision shows that it relates to production units which satisfy two conditions, namely that they should be operated by a producer, that is to say a person who sells milk or other milk products directly to the consumer or who supplies the purchaser (Article 12(c) of Regulation No 857/84) and that they should be located within the geographical territory of the [Union]. The concept of a 'holding' does not, however, presuppose that, in the event of the production units in question being leased, the dairy herd and the technical facilities necessary for milk production have been provided by the lessor or that, under the terms of the tenancy agreement, those production units are to be utilized specifically for milk production.
- 10 The correctness of that interpretation, which is based on the wording of Article 12(d) of Regulation No 857/84, is borne out by the purpose of that provision. In fact, as the United Kingdom and the Commission rightly point out, Article 12(d) is intended to define the scope of the rules relating to transfers of reference quantities following a change of ownership or occupancy of the holding. Consequently, a restrictive interpretation of the provision, to the effect that only agricultural production units specifically adapted to, or intended for, milk production are covered, would have the effect of excluding from the scope of those transfer rules a large number of farms, and, more particularly, 'mixed' farms combining milk production with arable farming or with other types of agriculture. Such an exclusion would impair the effectiveness of those rules.

- 11 The reply to be given to the first question must therefore be that the term 'holding' in Article 12(d) of Council Regulation No 857/84 of 31 March 1984 covers all the agricultural production units which are the subject of a lease, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.

The second question

- 12 The second question seeks to ascertain whether Article 5(3) of Regulation No 1371/84 must be interpreted as applying to the surrender, upon the expiry of the lease, of all the agricultural production units leased, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.
- 13 According to Article 7(1) of Regulation No 857/74, as amended by Council Regulation No 590/85 of 26 February 1985 (Official Journal 1985, L 68, p. 1), 'where a holding is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity (that is to say the quantity exempt from the additional levy) shall be transferred to the purchaser, tenant or heir according to procedures to be determined'. However, paragraph (4) of that article provides that 'in the case of rural leases due to expire, where the lessee is not entitled to an extension of the lease on similar terms, Member States may provide that all or part of the reference quantity corresponding to the holding or the part thereof which forms the subject of the lease shall be put at the disposal of the departing lessee if he intends to continue milk production'. It is apparent from the provisions quoted, considered as a whole, that the [Union] legislature intended that at the end of the lease the reference quantity should in principle return to the lessor who retakes possession of the holding, subject, however, to the Member States' power to allocate all or part of the reference quantity to the departing lessee.
- 14 Article 5 of Commission Regulation No 1371/84 laid down the detailed rules

governing the transfer of reference quantities following a change in the ownership or occupancy of a holding. Paragraph (1) of that article provides in this connection that 'where an entire holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be transferred in full to the producer who takes over the holding'. Article 5(3) provides that the provisions of paragraph (1) 'shall also be applicable in other cases of transfer which, under the various national rules, have comparable legal effects as far as producers are concerned'.

- 15 The surrender of a tenanted holding upon the expiry of a lease has comparable legal effects, within the meaning of Article 5(3) of Regulation No 1371/84, to those brought about by the transfer of the holding upon the grant of the lease, for both transactions entail a change in the possession of the production units in question within the contractual relations created by the lease. Consequently, the surrender, upon the expiry of the lease, of leased agricultural production units is a case covered by Article 5(3) of Regulation No 1371/84, provided that upon the grant of the lease their transfer falls under Article 5(1), which is the case when a 'holding' within the meaning of Article 12(d) of Regulation No 857/84, as interpreted above in reply to the first question, is involved.
- 16 In its order for reference, the Verwaltungsgericht states that, should the rules in question be interpreted as meaning that they provide for the reference quantity to be returned to the lessor, those rules could have the effect of precluding the lessee from benefiting from the system of compensation for discontinuance of milk production if the lessor is opposed to it. However, such a consequence would be unacceptable if, as in the present case, the lessor has never engaged in milk production or contributed to the setting up of a dairy farm, since the lessee, who would have acquired the reference quantity by his own labour, would then be deprived, without compensation, of the fruits of that labour, which would constitute an infringement of constitutional guarantees.
- 17 The Court has consistently held, in particular in its judgment of 13 December 1979 in Case 44/79 *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727, that fundamental rights form an integral part of the general principles of the law, the observance of which is ensured by the Court. In safeguarding those rights, the Court has to look to the constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States may not find acceptance in the [Union]. International treaties concerning the protection of human rights on

which the Member States have collaborated or to which they have acceded can also supply guidelines to which regard should be had in the context of [Union] law.

- 18 The fundamental rights recognized by the Court are not absolute, however, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the [Union] and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.
- 19 Having regard to those criteria, it must be observed that [Union] rules which, upon the expiry of the lease, had the effect of depriving the lessee, without compensation, of the fruits of his labour and of his investments in the tenanted holding would be incompatible with the requirements of the protection of fundamental rights in the [Union] legal order. Since those requirements are also binding on the Member States when they implement [Union] rules, the Member States must, as far as possible, apply those rules in accordance with those requirements.
- 20 In the present case, it is clear from Article 7(4) of Regulation No 857/84, as amended, that in the case of rural leases due to expire where the lessee is not entitled to an extension of the lease, the Member States may decide to allow the departing lessee to keep all or part of the reference quantity if he intends to continue milk production. It is also clear from Article 4(1)(a) of Regulation No 857/84 that in order to complete the restructuring of milk production Member States may grant compensation to producers who undertake to discontinue milk production definitively. It is true that, if that provision is read in conjunction with Article 4(2) of the same regulation, pursuant to which the reference quantities thereby freed are to be added, as necessary, to the national reserve, it may be inferred that, in so far as the reference quantity corresponding to the holding returns to the lessor, it cannot be taken into account when compensation is granted.

- 21 However, that conclusion does not preclude the possibility for a departing lessee to obtain compensation calculated on the basis of all or part of the relevant reference quantity when that is justified by the extent of the lessee's contribution to the building-up of milk production on the holding. In that event, the quantity taken into consideration for the purposes of calculating the compensation must be treated as a freed quantity and, consequently, may not be put at the disposal of the lessor who repossesses the holding.
- 22 The [Union] regulations in question accordingly leave the competent national authorities a sufficiently wide margin of appreciation to enable them to apply those rules in a manner consistent with the requirements of the protection of fundamental rights, either by giving the lessee the opportunity of keeping all or part of the reference quantity if he intends to continue milk production, or by compensating him if he undertakes to abandon such production definitively.
- 23 The submission that the rules in question conflict with the requirements of the protection of fundamental rights in the [Union] legal order must therefore be rejected.
- 24 It follows from all the foregoing considerations that the reply to the second question must be that Article 5(3) of Commission Regulation No 1371/84 of 16 May 1984 must be interpreted as applying to the surrender, upon the expiry of the lease, of all the agricultural production units leased, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.

Costs

- 25 The costs incurred by the United Kingdom and by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions submitted to it by the Verwaltungsgericht Frankfurt am Main, by order of 17 December 1987, hereby rules:

- (1) The term 'holding' in Article 12(d) of Council Regulation No 857/84 of 31 March 1984 covers all the agricultural production units which are the subject of a lease, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.**
- (2) Article 5(3) of Commission Regulation No 1371/84 of 16 May 1984 must be interpreted as applying to the surrender, upon the expiry of the lease, of all the agricultural production units leased, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.**

Grevisse

Moitinho de Almeida

Zuleeg

Delivered in open court in Luxembourg on 13 July 1989.

J.-G. Giraud

Registrar

F. Grevisse

President of the Third Chamber