JUDGMENT OF THE COURT (Third Chamber)
27 June 1989 *

In Case 113/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Baden-Württemberg for a preliminary ruling in the proceedings pending before that court between

Karl Leukhardt

and

Hauptzollamt (Principal Customs Office) **Reutlingen,**

on the interpretation and validity of Article 3(3) and the interpretation of Article 2(1) and (2) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5(c) of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984, L 90, p. 13),

THE COURT (Third Chamber)

composed of: F. Grévisse, 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:

K. Leukhardt, the plaintiff in the main proceedings, by Lutz Frauendorf, Rechtsanwalt, Tübingen,

* Language of the case German

the Government of the Federal Republic of Germany, by Martin Seidel, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

the Commission of the European Communities, by its Legal Adviser Peter Karpenstein, acting as Agent, in the written procedure, and by its Legal Adviser Dierk Booss, acting as Agent, in the oral procedure,

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 9 March 1989,

gives the following

Judgment

1 By order of 8 April 1988, which was received at the Court on 11 April 1988, the Finanzgericht Baden-Württemberg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation and validity of Article 3(3) and the interpretation of Article 2(1) and (2) of Council Regulation No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5(c) of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984, L 90, p. 13).

2 The questions were raised in proceedings brought by Karl Leukhardt, a farmer, against Hauptzollamt Reutlingen concerning the reference quantity allocated to him under the scheme for the additional levy on milk.

3 Mr Leukhardt delivered 188 954 kg of milk in 1980, 160 707 kg in 1981, 142 417 kg in 1982 and 142 747 kg in 1983 to the dairy Milchwerk Tübingen. On the basis of a certificate issued to him on 26 October 1984 by the competent German authorities, stating that from March 1981 onwards his dairy herd had suffered losses

which had appreciably affected its milk production, Mr Leukhardt was awarded a reference quantity of 155 500 kg of milk, corresponding to the quantity delivered by him in 1981, less 4%.

4 By Regulation No 856/84 of 31 March 1984 amending Regulation No 804/68 on the common organization of the market in milk and milk products (Official Journal 1984, L 90, p. 10), the Council introduced an additional levy charged on quantities of milk delivered in excess of a reference quantity to be determined; it is payable either by the milk producers (Formula A) or by the purchasers of milk or other milk products, who are to pass it on to those producers who have increased their deliveries in proportion to their contribution to the purchaser's reference quantity being exceeded (Formula B).

5 The method of calculating the reference quantity, that is to say the quantities exempt from the additional levy, was laid down in Council Regulation No 857/84. Pursuant to Article 2(1), the reference quantity is to be equal to the quantity of milk or milk equivalent delivered or purchased during the 1981 calendar year, plus 1%. However, Member States may provide that on their territory the reference quantity is to be equal to the quantity of milk or milk equivalent delivered or purchased during the 1982 calendar year or the 1983 calendar year, weighted by a percentage established so as not to exceed the guaranteed quantity for the Member State concerned.

6 Exceptions to those rules are allowed in respect of certain special situations in Articles 3, 4 and 4(a) of the same regulation. More particularly, Article 3(3) of Regulation No 857/84 provides that 'producers whose milk production during the reference year referred to under Article 2 has been affected by exceptional events occurring before or during that year shall obtain, on request, reference to another calendar reference year within the 1981 to 1983 period'.

7 In implementing the Community regulations on the additional levy on milk, the Federal Republic of Germany chose 1983 for the purposes of Formula A (producer

levy). The reference quantity for producers established on German territory was, in principle, equal to the quantity of milk delivered by them in 1983, less 4%, in accordance with the method laid down in Article 2(2) of Regulation No 857/84.

8 In his action before the Finanzgericht Baden-Württemberg, Mr Leukhardt seeks primarily to have his reference quantity calculated on the basis of the quantity of milk delivered by him in 1980. In support of his application, he claims that his milk production was appreciably affected throughout the period from 1981 to 1983 and that in those circumstances the principle of equality requires account to be taken of his milk deliveries during the year preceding that period, namely 1980. In the alternative, he asks that his reference quantity be calculated on the basis of the quantity of milk delivered by him in 1981 plus 1%, pursuant to Article 2(1) of Regulation No 857/84.

9 Considering that the decision to be given depended on the interpretation and validity of certain provisions of the Community regulations applicable to the additional levy on milk, the Finanzgericht Baden-Württemberg stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Is Article 3(3) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5(c) of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal L 90, 1.4.1984, p. 13) to be interpreted as meaning — or, if it is in part invalid, to be supplemented so as to provide — that a milk producer whose milk production was affected by an exceptional event in every year from 1981 to 1983 may choose as the calendar reference year a different year, such as the next earliest, in which his milk production was not affected by an exceptional event?

(2) If Question 1 is answered in the negative: are Article 2(1) and (2) and Article 3(3) of Regulation No 857/84 to be interpreted as meaning that a producer delivering to a purchaser whose milk production was affected by an exceptional event in the reference year chosen (in the Federal Republic of

Germany, 1983) may require the delivery reference quantity to be granted to him to be calculated either, according to the method laid down in Article 2(2) of Regulation No 857/84, on the basis of another calendar reference year (1981 or 1982), or, according to the method laid down in Article 2(1) of Regulation No 857/84, on the basis of the quantity of milk delivered during the 1981 calendar year plus 1%?'

10 Reference is made to the Report for the Hearing for a fuller account of the facts, the Community provisions and national legislation at issue, 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

11 The first question has two limbs.

12 The first limb seeks essentially to determine whether Article 3(3) of Regulation No 857/84 must be interpreted as meaning that a producer whose milk production has been appreciably affected by an exceptional event throughout the period from 1981 to 1983 may have the quantity of milk or milk equivalent delivered by him in a year prior to 1981 taken into account.

13 As the Court held in its judgment of 17 May 1988 in Case 84/87 *Erpelding* [1988] ECR 2647, the structure and purpose of the regulations concerned indicate that they contain an exhaustive list of the situations in which reference quantities or individual quantities may be granted and set out precise rules concerning the determination of those quantities. Since none of those provisions makes it possible for producers to obtain reference to milk deliveries made by them outside the 1981 to 1983 period it must be held that such an option is excluded, even in cases where the persons concerned had no representative production throughout that period.

14 That interpretation is all the more compelling inasmuch as Article 3(3) of Regulation No 857/84, the only provision which enables producers to choose a reference year other than that selected by the Member State concerned within the 1981 to 1983 period, expressly limits that option to one or other of the two remaining years in that period.

15 The answer to the first limb of the first question must therefore be that Article 3(3) of Council Regulation No 857/84 of 31 March 1984 must be interpreted as meaning that a producer whose milk production was appreciably affected by an exceptional event throughout the 1981 to 1983 period may not have the quantity of milk or milk equivalent which he delivered in a year prior to 1981 taken into account.

16 The second limb of the first question concerns the validity of the rules in question, in the light of the interpretation given in answer to the first limb of the question.

17 Mr Leukhardt maintains that the limitation of his choice of reference year exclusively to the period from 1981 to 1983, even though his milk production was appreciably affected throughout that period, constitutes a breach of the prohibition of discrimination contained in Article 40(3) of the Treaty, the general principle of equality, the right to enjoy property, the right to pursue an occupation and the general principles of legal certainty and protection of legitimate expectations.

18 That argument cannot be upheld.

19 With regard first of all to the argument based on discrimination as between Community producers, it must be borne in mind, as the Court held in its judgment in *Erpelding*, *supra*, that the difference of treatment of which the plaintiff in the main proceedings complains stems from the fact that by not allowing producers whose milk production has been significantly reduced throughout the 1981 to 1983 period to obtain an individual reference quantity based on a representative production, the rules in question affect that category of producers adversely in

comparison with those who are able to rely on a representative production during that period. However, such an effect is justified by the need to limit the number of years which may be taken as reference years, in the interests of both legal certainty and the effectiveness of the additional levy system. The resulting difference in treatment is therefore objectively justified and consequently may not be held to be discriminatory within the meaning of Article 40(3) of the Treaty, as interpreted by the Court.

20 As regards the claims based on infringement of the right to enjoy property, the right to pursue a profession or occupation and the principles of legal certainty and protection of legitimate expectations, the Court has consistently held that when a situation necessitates the evaluation of a complex economic situation, as is the case concerning the common agricultural policy, the Community legislature enjoys a wide discretion as to the nature and scope of the measures to be taken. There is nothing in the documents before the Court to support the view that the limits of that discretion have been exceeded in this case and therefore those claims too must be rejected.

21 Accordingly, the answer to the second limb of the first question must be that consideration of Article 3(3) of Council Regulation No 857/84 of 31 March 1984 has disclosed no factor of such a kind as to affect the validity of that provision.

The second question

22 The second question seeks essentially to determine whether Article 2(1) and (2) and Article 3(3) of Regulation No 857/84 must be interpreted as meaning that a producer whose milk production was appreciably affected by an exceptional event during the reference year adopted by the Member State concerned may require his reference quantity to be calculated, at his option, either according to the method laid down in Article 2(2) of Regulation No 857/84, taking another reference year as the basis, or according to the method laid down in Article 2(1) of that Regulation, taking as the basis the quantity of milk or milk equivalent delivered in 1981, plus 1%.

23 Article 3(3) of Regulation No 857/84 provides, under the conditions which it lays down for that purpose, for 'reference to another calendar reference year within the 1981 to 1983 period'. As the Court held in its judgment of 28 April 1988 in Case 61/87 *Thevenot* [1988] ECR 2375, the structure of that provision and its place in the context of Regulation No 857/84 require it to be interpreted as providing for the complete substitution of the reference year chosen by the producer within the 1981 to 1983 period for the reference year designated by the Member State concerned. However, that provision does not affect the application of the other rules concerning the determination of reference quantities and individual quantities and, more particularly, the rules contained in Article 2 of Regulation No 857/84.

24 It follows that where, as in the present case, a Member State has chosen 1982 or 1983 as the reference year, under Article 2(2) of Regulation No 857/84, it must observe all the rules on the determination of reference quantities laid down in that provision, except with regard to substitution of a different reference year in accordance with Article 3(3) of that Regulation.

25 Consequently, if a producer meeting the conditions laid down in Article 3(3) obtains, at his request, reference to his deliveries of milk in a calendar year other than that designated by the Member State concerned, the percentage generally applicable in that Member State must be applied to those deliveries. The reference quantity to which he is entitled is therefore equal to the quantity of milk or milk equivalent which he delivered during the reference year chosen by him under Article 3(3), subject however to application of the percentage specified in Article 2(2), adjusted if necessary on the terms laid down in the last sentence of that article.

26 It follows from the foregoing that the answer to the second question must be that Article 2(1) and (2) and Article 3(3) of Council Regulation No 857/84 of 31 March 1984 must be interpreted as meaning that a producer whose milk production was appreciably affected by an exceptional event in the reference year chosen by the relevant Member State may not require that his reference quantity be calculated, at his option, either according to the method laid down in Article 2(2) of Regulation No 857/84, taking another reference year as the basis, or

according to the method laid down in Article 2(1), taking as the basis the quantity of milk or milk equivalent delivered in 1981, plus 1%.

Costs

27 The costs incurred by the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in reply to the questions submitted to it by the Finanzgericht Baden-Württemberg, by order of 8 April 1988, hereby rules:

(1) Article 3(3) of Council Regulation No 857/84 of 31 March 1984 must be interpreted as meaning that a producer whose milk production was appreciably affected by an exceptional event throughout the 1981 to 1983 period may not have the quantity of milk or milk equivalent which he delivered in a year prior to 1981 taken into account.

(2) Consideration of Article 3(3) of Council Regulation No 857/84 of 31 March 1984 has disclosed no factor of such a kind as to affect the validity of that provision.

(3) Article 2(1) and (2) and Article 3(3) of Council Regulation No 857/84 of 31 March 1984 must be interpreted as meaning that a producer whose milk production was appreciably affected by an exceptional event in the reference year chosen by the relevant Member State may not require that his reference quantity be calculated, at his option, either according to the method laid down

in Article 2(2) of Regulation No 857/84, taking another reference year as the basis, or according to the method laid down in Article 2(1), taking as the basis the quantity of milk or milk equivalent delivered in 1981, plus 1%.

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 27 June 1989.

J.-G. Giraud
Registrar

F. Grévisse
President of the Third Chamber