JUDGMENT OF THE COURT (Fifth Chamber)

13 December 2001 *

In Case C-131/00,

REFERENCE to the Court under Article 234 EC by the Länsrätten i Norrbottens län (Sweden) for a preliminary ruling in the proceedings pending before that court between

Ingemar Nilsson

and

Länsstyrelsen i Norrbottens län,

on the interpretation of Article 5 of Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1),

* Language of the case: Swedish

THE COURT (Fifth Chamber),

composed of: S. von Bahr, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, L. Sevón (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Länsstyrelsen i Norrbottens län, by G. Plym Forshell, acting as Agent,

— the Commission of the European Communities, by J. Guerra Fernandez and L. Parpala, acting as Agents.

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2001,

gives the following

Judgment

1 By order of 28 March 2000, received at the Court on 6 April 2000, the Länsrätten i Norrbottens län (Norrbotten County Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 5 of Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1).

2 The question has been raised in proceedings between Mr Nilsson, a keeper of bovine animals, and the Länsstyrelsen i Norrbottens län (Norrbotten county administration, 'the Länsstyrelsen') concerning a compensatory allowance for mountain and hill farming and farming in certain less-favoured areas.

Legal background

Community law

3 Article 5 of Regulation No 3508/92 provides:

'The system for the identification and registration of animals to be taken into account for the granting of aid governed by this Regulation shall be set up in accordance with Articles 4, 5, 6 and 8 of Directive 92/102/EEC.'

4 Article 8(1) and (2) of Regulation No 3508/92 provides:

'1. Member States shall carry out administrative checks on aid applications.

2. Administrative checks shall be supplemented by on-the-spot checks covering a sample of agricultural holdings. For all these checks, Member States shall draw up a sampling plan.'

5 Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals (OJ 1992 L 355, p. 32) provides, in Article 4(1)(a):

'Member States shall ensure that:

(a) any keeper of bovine... animals... keeps a register stating the number of animals present on the holding.

This register shall include an up-to-date record of all births, deaths and movements (numbers of animals concerned by each entering and leaving operation) at least on the basis of aggregate movements, stating as appropriate their origin or destination, and the date of such movements.

...'

6 Articles 5 and 6 of Directive 92/102 concern identification marks for animals. Article 8 of that directive concerns animals imported from non-member countries.

7 Article 9 of Directive 92/102 provides:

'Member States shall adopt necessary administrative and/or penal measures to punish any infringement of Community veterinary legislation, where it is established that the marking or identification or the keeping of registers provided for in Article 4 has not been carried out in conformity with the requirements of this Directive.'

8 Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36), as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995 (OJ 1995 L 156, p. 27) ('Regulation No 3887/92 as amended'), provides, in Article 1:

'This Regulation lays down detailed rules for applying the integrated administration and control system introduced by Regulation (EEC) No 3508/92. It shall be without prejudice to specific provisions adopted in the Regulations covering the individual aid schemes.'

9 Article 5(1) of Regulation No 3887/92 as amended provides:

'Without prejudice to the requirements pertaining to application for aid under individual schemes the "livestock" aid application shall contain all necessary information, in particular:

...

— the number of animals of each species in respect of which any aid is applied for,

...

— a statement by the farmer that he is aware of the requirements pertaining to the aids in question.

...'

10 Article 6 of Regulation No 3887/92, as amended, provides:

'1. Administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms under which aids and premiums are granted.

2. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year without justification.

...

5. On-the-spot checks shall be unannounced and cover all the agricultural parcels and animals covered by one or more applications. Advance warning limited to the strict minimum necessary may however be given, although as a general rule, this should not exceed 48 hours.

At least 50% of the minimal checks on animals shall be made during the retention period. Checks may be effected outside that period only if the register provided for in Article 4 of Council Directive 92/102/EEC... is available.

6. Notwithstanding the second subparagraph of the preceding paragraph, where a special premium on slaughter or on the first placing on the market of animals with a view to their slaughter is granted in accordance with the provisions foreseen in... each on-the-spot check shall comprise:

— verification on the basis of the private register kept by the producer that all the animals for which aid applications were submitted prior to the on-the-spot check have been kept throughout the retention period, and

...

9. Every animal covered by an application for a compensatory allowance provided for under Regulation (EEC) No 2328/91 must be held by the applicant for a minimum period of two months from the day following submission of the application.'

11 Article 10(2) to (5) of Regulation No 3887/92, as amended, provides:

'2. If the number of animals declared in an aid application exceeds that found during checks the aid shall be calculated on the number of animals found.

However, except in cases of force majeure and after paragraph 5 has been applied, the unit amount of the aid shall be reduced:

(a) in cases where an application concerns a maximum of 20 animals:

— by the percentage corresponding to the difference found if this is not more than two animals,

— by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no aid shall be granted;

(b) in other cases:

...

The percentages mentioned under (a) are calculated on the basis of the number declared, and those mentioned under (b) on the basis of the number found.

However, where it is found that a false declaration was made intentionally or as a result of serious negligence:

— the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question, and

— in the case of a false declaration made intentionally, from the same aid scheme for the following calendar year.

If a farmer has been unable to comply with his retention undertaking as a result of force majeure he shall retain his right to a premium in respect of the number of animals actually eligible at the time when the case of force majeure occurred.

In no case may premiums be granted on a greater number of animals than that shown in the aid application.

...

3. Without prejudice to the preceding paragraph, where an on-the-spot check effected by virtue of Article 6(6) reveals that the number of animals present on the holding and for which an application is likely to be submitted does not correspond to the number of animals entered in the private register the total amount of the special premiums to be granted to the applicant during the calendar year concerned shall, except in cases of force majeure, be reduced proportionately.

...

4. Male bovine animals present on the holding shall not be counted unless identified in the aid application, or, in the case where paragraph 3 is applied, those identified in the register.

However, a suckler cow declared for the premium or a bovine declared for the compensatory allowance provided for in Regulation (EEC) No 2328/91 may be replaced by another suckler cow or bovine respectively provided that replacement occurs within 20 days of the animal's departure from the holding and that the replacement is entered in the private register not later than three days after the day of replacement.

...

5. In cases where owing to the impact of natural circumstances the farmer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period he shall be entitled to the premium for the number

of eligible animals actually kept throughout the period, provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals.'

12 Article 13 of Regulation No 3887/92 as amended provides:

'Except in cases of force majeure, if an on-the-spot check cannot be made through the fault of the farmer the application shall be rejected.'

13 Article 14(1) of Regulation No 3887/92 as amended provides that, in cases of wrong payment, the farmer will be required to reimburse the amount in question plus interest.

National law

14 Under the Förordningen (1995:1174) om kompensationsbidrag till jordbruk i bergsområden och mindre gynnade områden (Swedish Regulation on compensatory allowances for mountain and hill farming and farming in less-favoured areas), a compensatory allowance may be granted to a farmer in respect of milk cows and other bovine animals which are older than six months. As regards the

control measures and penalties relating to compensatory allowances for animals, Article 15 of the Swedish regulation refers to the provisions of Regulations No 3508/92 and No 3887/92.

15 Article 7 of the Statens jordbruksverks föreskrifter (SJVFS 1994:190) om märkning och registrering av djur (Regulations of the State Agriculture Office on the marking and registration of animals), as amended by the Statens jordbruksverks föreskrifter (SJVFS 1995:194), provides that the keeper of bovine animals is obliged to record their number in a register, also called a 'stall journal', which must be approved by the Jordbruksverket.

The main proceedings and the question referred for a preliminary ruling

16 On 2 April 1997, Mr Nilsson applied, for the retention period mentioned in Article 6(9) of Regulation No 3887/92 as amended, namely two months from the day following submission of the application to the Länsstyrelsen, that is, 4 April to 3 June 1997, for a compensatory allowance for nine milk cows, three bovine animals of more than two years and three bovine animals aged between six months and two years.

17 An on-the-spot check was made on 16 October 1997, in other words more than four months after the end of the retention period referred to in Article 6(9) of Regulation No 3887/92 as amended. According to the order for reference, it is common ground that when the check was made Mr Nilsson in fact had seven milk cows, three bovine animals of more than two years and three bovine animals aged between six months and two years. However, while Mr Nilsson did have an approved register of animals, he had not entered in it any information on his animals.

18 In those circumstances, the Länsstyrelsen fixed at zero the number of animals satisfying the conditions for the grant of the aid and, by decision of 17 December 1997, sought from Mr Nilsson repayment of the allowance of SEK 22 632 which had been paid to him. Mr Nilsson appealed against that decision to the Statens Jordbruksverket, which dismissed his appeal by decision of 1 July 1998.

19 Mr Nilsson thereupon appealed against the decision of the Statens Jordbruksverket to the Länsrätten.

20 According to the Länsrätten, in order to decide the main proceedings, it must be determined whether the refusal to grant Mr Nilsson a compensatory allowance may be justified solely by the absence of information on the animals in the register of animals.

21 The Länsrätten refers in this connection to Article 10(2) of Regulation No 3887/92, which it appears to cite in the version of Regulation No 1648/95. It observes that, under that provision, if, in the case of an aid application concerning a maximum of 20 animals, the number of animals declared in the application exceeds that found during a check, no aid is to be granted if the difference is greater than four animals.

22 On the basis of those considerations, the Länsrätten i Norrbottens län stayed proceedings and referred the following question to the Court for a preliminary ruling:

'[Must] Article 5 of Council Regulation (EEC) No 3508/92... be understood as meaning that entitlement to the [compensatory] allowance is excluded where entries have not been made in the animal keeper's register (stall journal)?'

The question referred

23 The Commission considers that Article 5 of Regulation No 3508/92 must be interpreted as meaning that entitlement to the allowance is excluded and the amounts wrongly paid must be repaid where the keeper of the animals does not enter the required information in the register of animals. It observes that Article 5 of Regulation No 3508/92 does not provide for penalties in the event of a breach. Those penalties are laid down by Regulation No 3887/92 as amended, in particular Article 10(3) and (4).

24 In this respect, it must be noted that Regulation No 3508/92 defines the principles according to which the Community and the Member States are to ensure the implementation of Community decisions on the agricultural intervention financed by the EAGGF and combat fraud and irregularities in relation to those operations.

25 Article 5 of Regulation No 3508/92 merely lays down a general requirement for a system to be set up for the identification and registration of the animals to be taken into account for the grant of aid. For the details of that system, it refers to Articles 4 to 6 and 8 of Directive 92/102.

26 As regards Directive 92/102, Articles 4 to 6 and 8 state that the Member States are obliged to ensure that keepers of animals have a register of animals, make the entries in it required by that directive, keep it in accordance with certain provisions, and keep it available. The register is of primary importance in the Community system of the identification and control of animals. That system is intended to make it possible to identify every animal and monitor all its movements from birth to death, so as thus to be able to monitor trade in animals

and, above all, to improve the management and control of the Community aid schemes.

27 As to Regulation No 3887/92, the Court has already held that its object is to introduce provisions which effectively prevent and penalise irregularities and fraudulent acts (Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 51).

28 Article 10(3) of Regulation No 3887/92, as amended, expressly refers to the situation where 'the number of animals present on the holding and for which an application is likely to be submitted does not correspond to the number of animals entered in the private register'. However, that paragraph constitutes an exception which applies only in a specific case, namely on-the-spot checks carried out under Article 6(6) of Regulation No 3887/92 for the grant of the 'special premium on slaughter or on the first placing on the market of animals with a view to their slaughter', which is not the case in the main proceedings. Article 10(3) does not therefore apply here.

29 It is in fact Article 10(2) of Regulation No 3887/92 as amended which contains the general provisions relating to cases where the number of animals declared in an application for aid exceeds the number of animals found during a check.

30 It follows from the control system established that the proper keeping of the register of animals plays an essential part. The number of animals present during a check and counted on that date is not in itself decisive for ascertaining whether the application for aid is correct. The register is what makes it possible to determine, during a check, the number and identity of the animals which are present during the retention period and for which aid may be granted.

31 In those circumstances, the absence of any entries in the animal register constitutes a serious infringement of the rules on the identification and registration of animals, in that it prevents the integrated system of management and control under Regulation No 3508/92 from functioning and makes effective management of the Community aid schemes impossible. That conclusion is confirmed by the provision in the second sentence of the second subparagraph of Article 6(5) of Regulation No 3887/92 as amended, which reflects the importance which the legislature attaches to that register.

32 Where it is not possible to carry out an effective on-the-spot check because of complete failure to keep the register of animals, it must be considered that the check cannot be made owing to the fault of the farmer and, except in cases of force majeure, the application for aid must therefore be rejected in accordance with the provisions of Article 13 of Regulation No 3887/92 as amended.

33 Consequently, the answer to the national court's question must be that Article 5 of Regulation No 3508/92, read together with Directive 92/102 and Articles 6(5) and 13 of Regulation No 3887/92 as amended, must be interpreted as meaning that entitlement to a compensatory allowance must be refused, except in cases of force majeure, solely because of the absence of any entries in the register of animals kept by the farmer.

Costs

34 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Fifth Chamber),

in answer to the question referred to it by the Länsrätten i Norrbottens län by order of 28 March 2000, hereby rules:

Article 5 of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes, read together with Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals and Articles 6(5) and 13 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995, must be interpreted as meaning that entitlement to a compensatory allowance must be refused, except in cases of force majeure, solely because of the absence of any entries in the register of animals kept by the farmer.

von Bahr Edward La Pergola

Sevón Timmermans

Delivered in open court in Luxembourg on 13 December 2001.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber