OPINION OF ADVOCATE GENERAL JACOBS

delivered on 17 February 1993 *

My Lords,

1. In the present case the Finanzgericht München asks whether national rules providing for the remission, on equitable grounds based on personal circumstances, of debts due to the national fiscal authorities may also be applied where the obligation in question arises under the Community legislation on milk quotas.

2. It will be recalled that Article 5c of Council Regulation (EEC) No 804/68, inserted by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), instituted an additional levy on milk production which was payable on quantities of milk exceeding a certain reference quantity or 'quota'. The levy was to be paid either by milk producers or, at the discretion of the Member State concerned, by purchasers taking deliveries from a producer. Article 1 of Council Regulation (EEC) No 857/84 of 31 March 1984 (OJ 1984 L 90, p. 13) fixed the amount of the levy, and Article 2 determined the size of the quotas to be allocated to each producer or purchaser concerned. The quotas are fixed with reference to the quantity of milk delivered or purchased in a specified year. The milk quota legislation also makes special provision for particular categories of cases. Thus, by Article 3 of Regulation No 857/84, producers who adopted milk production development plans under Directive 72/159/EEC of 17 April 1972 (OJ 1972 L 96, p. 1) may in certain cases obtain a special quota, as may young farmers setting up after 31 December 1980; furthermore, producers whose milk production during the reference year was affected by certain exceptional events are entitled to substitute another reference year within the 1981 to 1983 period. Article 4 of the regulation permits additional quotas to be granted in certain circumstances, and the new Article 3b inserted by Council Regulation (EEC) No 3880/89 of 11 December 1989 (OJ 1989 L 378, p. 3) enables additional or special quotas to be granted, in particular, to new entrants to milk production and to producers whose individual quotas do not exceed 60 000 kg.

3. Although, as we have just seen, the legislation on milk quotas enables special or additional quotas to be awarded in certain cases, a producer will not necessarily obtain the full amount of the quota he requires in order to carry on a profitable dairy-farming business. The allocation of quotas may therefore result in hardship in individual cases, and even in driving a producer out of business. As the Court has held, however, such consequences may be justified in the interests of the effectiveness of the quota system, which is in turn justified by the need to stabilize the market in milk: see Case 84/87 *Erpelding* [1988] ECR 2647, at paragraph 30 of the

* Original language: English.

judgment, Case C-311/90 *Hierl* [1992] ECR I-2061, at paragraph 14, and Case C-85/90 *Dowling* [1992] ECR I-5305, at paragraph 23. It will be recalled that there is no unfettered prerogative under Community law to pursue a particular trade or professional activity: see Case 44/79 *Hauer* v *Land Rheinland-Pfalz* [1979] ECR 3727, at paragraph 32 of the judgment.

4. Mr Peter, the applicant in the main proceedings, is a dairy farmer. He was awarded a milk quota of 9 100 kg for the 1984/85 marketing year, under the German legislation implementing the quota system (the 'Milchgarantiemengenverordnung'). At his request, and following legal proceedings, he was allocated an additional quota for subsequent marketing years; contrary to his expectations, however, no increase was made in the quota awarded for the year 1984/85 itself. The applicant was consequently liable to pay a levy on his deliveries of milk in 1984/85 which exceeded his quota for that year; the levy payable was assessed at DM 2 144.83.

5. On 6 September 1989 Mr Peter applied to the defendant customs office to be released from liability to pay that amount, in view of his precarious financial position. Mr Peter relied upon a provision of German law, namely Paragraph 227 of the Abgabenordnung 1977 (the Regulation on Levies), which provides for the remission on grounds of equity of sums due to the national fiscal authorities. The application was however rejected on the ground that such a remission in the present case would be contrary to Community law. The applicant appealed to the Finanzgericht, which has referred the following question to the Court:

'Does Community law preclude the application of a national provision such as Paragraph 227 of the Abgabenordnung which empowers the national authorities to remit in the individual case on grounds of personal equity levies payable under Article 5c of Regulation (EEC) No 804/68?'

6. For a better understanding of the issues raised by the question referred, it will be helpful briefly to consider the effect of Paragraph 227 of the Abgabenordnung. I will then turn to the question whether national provisions of that nature may be invoked where the liability in question arises pursuant to a Community regulation, and in particular where it arises under the Community's milk quota legislation.

Paragraph 227 of the Abgabenordnung

7. By Paragraph 1(1) of the Abgabenordnung, its provisions apply to all fiscal levies ('Steuern') imposed under federal German law or under European Community law.

8. Paragraph 227 of the Abgabenordnung provides that the fiscal authorities may remit the whole or a part of a sum due to them, if the collection of the sum would be inequitable ('unbillig') in the circumstances of the individual case; they may, under the same

conditions, reimburse or give credit for amounts already paid.

9. German law recognizes two species of circumstances in which Paragraph 227 may apply, namely where there are 'material' or 'objective' grounds for equitable remission, on the one hand ('sachliche Billigkeitsgründe'), and where the grounds are 'personal' or 'subjective', on the other ('persönliche Billigkeitsgründe'); see Tipke/Kruse, *Abgabenordnung* (14th edition; Cologne 1991), Paragraph 227, at Nos 19 to 40 and 41 to 54 respectively. In the former kind of circumstances, the debtor is released from the obligation to pay by virtue of his falling within a category of cases for which the legislature should have made provision, whether in order to do justice to fundamental rights or to fulfil its own legislative intention, but has in fact failed to do so. The effect of applying such a principle of 'objective' equity may accordingly be to limit the range of situations in which a payment must be made, and hence to modify, by implication, the scope of the provisions imposing the relevant liability.

10. In contrast, the grounds for equitable remission are 'personal' or 'subjective' where release is granted by virtue of the personal circumstances of the debtor. The criterion for the application of the principle of 'subjective' equity is not whether the legislature would, or should, have made provision for a category of cases which includes the debtor, but rather whether it would be unjust to recover the sum due in the light of his financial position. Grounds for such remission can include the case where to recover the debt would put at risk the debtor's ability to continue his current business or employment: see Tipke/Kruse, cited above, at No 45. In applying the principle of subjective equity, however, the conduct, as well as the circumstances, of the applicant for release may be taken into consideration. An applicant who has for instance heedlessly let debts accumulate over a number of years, or otherwise acted negligently, might find it difficult to obtain remission of his debt; conversely, the applicant who is the victim of a natural catastrophe or illness, rather than of his own negligence or profligacy, will usually be regarded as worthy of relief: see Tipke/Kruse, cited above, at Nos 49 to 51.

11. A refusal by the national authorities to give remission under Paragraph 227 is subject to judicial control by the national court. According to one interpretation of Paragraph 227 that control is complete, in the sense that the decision whether the discretion should be exercised is, in the final instance, a matter for the judicial rather than the administrative authorities: see Tipke/Kruse at No 10. The provision may be invoked in a challenge to a decision by the national authorities to enforce payment, as well as in proceedings challenging a refusal to grant remission: ibid. at No 74.

12. In what follows I shall first discuss the general question whether national principles of equity may be applied in the collection of Community levies. I will then consider the particular position of levies imposed under the Community's milk quota legislation. I will say at the outset that the need for effective enforcement of that legislation justifies,

in my opinion, an exceptionally stringent application of any national rules authorizing remission.

Principles of equity and Community law

13. The Court has already had occasion to consider the extent to which national rules concerning the equitable remission of sums due can be applied to liabilities arising under Community legislation. The cases previously considered by the Court have however involved the application of principles of 'objective' rather than of 'subjective' equity.

14. Case 118/76 *Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [1977] ECR 1177 concerned the application of a provision substantially identical to Paragraph 227 of the Abgabenordnung which was previously contained in Paragraph 131 of the Reichsabgabenordnung. The question to be decided was whether such a provision could be applied to sums due under Community legislation which imposed monetary compensatory amounts on the importation of certain agricultural products. The plaintiff argued that the monetary compensatory amounts were imposed in order to compensate for exchange-rate fluctuations, and in particular for the revaluation of the German mark, and they should not therefore be levied in a case where the transaction in question had been concluded on the basis of the German currency. The Court stated the following principles at paragraph 5 of the judgment:

'Although all questions concerning the basis of assessment, the manner of imposition and the amount of the charge in dispute were fixed by Community law, the recovery of the charge, together with all the formalities attaching thereto, was entrusted to the competent authorities in the Member States ... .

Although that distribution of functions between the Community and the Member States may justify the application, by a tax authority, of a rule of natural justice for which provision is made under its national legislation in connection with the formalities applicable to the imposition of a charge introduced by Community law, such a rule may not be applied in so far as its effect would be to modify the scope of the provisions of Community law concerning the basis of assessment, the manner of imposition or the amount of a charge introduced by that law.'

In that passage, by the words 'the formalities applicable to the imposition of a charge' it appears that the Court intended to refer to rules governing the collection and enforcement of the charge, as opposed to those governing the imposition of liability. [1]

15. As Advocate General Reischl pointed out in his Opinion in the *Balkan-Import-*

1 — The distinction is perhaps clearer in the German and French versions of the judgment. Thus, 'manner of imposition' corresponds to the German 'Voraussetzungen der Veranlagung' and to the French 'conditions d'imposition'; 'formalities applicable to the imposition of a charge', on the other hand, corresponds respectively to 'Formalitäten bei der Erhebung einer ... Abgabe' and 'formalités applicables à la perception d'une redevance'. It is also to be noted that the term 'natural justice' in the passage cited corresponds to the German term 'Billigkeit' and to the French term 'équité', rendered in more recent judgments (more accurately) as 'equity' or 'fairness': see Case 299/84 *Neumann* v *BALM*, cited below in paragraph 15, at paragraph 24 of the judgment, and Case C-174/89 *Hoche*, also cited below in paragraph 15, at paragraph 30.

Export case, the question at issue there concerned the application of a principle of 'objective' rather than 'subjective' equity. He explained the difference between the two principles as follows (at p. 1192):

'In German law such a discretionary exemption from taxation imposed by the State may be granted on several grounds. First, it may be granted on grounds of natural justice of a subjective nature ["persönliche Billigkeitsgründe"], such as, for example, personal living circumstances or financial difficulty. Secondly, it may be based on grounds of natural justice which are said to be objective in nature ["sogenannte sachbezogene Billigkeitsgründe"] . Such grounds exist, first ... where it may be concluded from the will of the legislature that if the question to be settled had been dealt with expressly, it would have been settled along the lines of the measure of natural justice envisaged. The aim is to arrive at a just solution in specific cases and unusual situations which were not foreseeable by the legislature. Secondly, so-called objective grounds of natural justice cover cases in which a failure to observe the proper procedure or the expiry of a time-limit for bringing an action give rise to the imposition of a sum owed by way of tax which is materially unjustified.'

Advocate General Reischl then went on to observe that:

'In making its application the plaintiff relied solely on objective grounds of natural justice.

...

[It] is clear from the facts that the question may be confined to the problem of the grant of exemption on objective grounds of natural justice, in particular, in cases where the imposition of the charge is alleged to conflict with the aim of the law and is contrary to the intention of the legislature. In the present case, therefore, it is unnecessary to discuss the question whether an exemption may be granted on grounds of a subjective nature or by reason of the effects of provisions of a formal and procedural nature.' (see pp. 1192-3)

The Court held that the plaintiff could not be released from the obligation to pay monetary compensatory amounts for reasons which related to the economic justification for the charge in question: see paragraph 5 of the judgment, final sentence. It is clear, in fact, that to permit remission on such a ground would be equivalent to altering the circumstances in which the charge could be imposed, and would accordingly be inconsistent with the rules laid down by the Community regulation. Similarly, the Court has held that a national rule of equity cannot be applied so as to modify the application of a regulation imposing a Community import levy: see Case 18/72 *Granaria* [1972] ECR 1163 at p. 1171. The Court has also stated that no general principle of objective equity is included in the general principles of Community law: see Case 299/84 *Neumann* v *BALM* [1985] ECR 3663, at paragraphs 23 to 25 and 33 of the judgment, and Case C-174/89 *Hoche* [1990] ECR I-2681, at paragraph 31 of the judgment. On the other hand, where the claim for remission relates to sums paid in excess of the amount due under the Community provisions, and in the

absence of relevant provisions of Community law governing remission in such a case, national law providing for remission on equitable grounds may be applied: see Case 113/81 *Reichelt* v *Hauptzollamt Berlin-Süd* [1982] ECR 1957, at paragraphs 7 to 10 of the judgment.

16. It is clear, therefore, that national rules providing for the equitable remission of sums due cannot be applied where the effect would be to alter the content or scope of an obligation arising under Community law. On the other hand, the circumstances in which such a remission may be granted may themselves be laid down by Community legislation. For example, Commission Regulation (EEC) No 926/80 of 15 April 1980 (OJ 1980 L 99 p. 15), which was repealed by Commission Regulation (EEC) No 1084/84 of 18 April 1984 (OJ 1984 L 106, p. 26), provided for an exemption in certain cases from the payment of monetary compensatory amounts. The exemption was designed to protect the position of operators who had concluded a contract before the announcement of a monetary measure leading to the introduction of the compensatory amount in question, and is described in the third recital to Regulation No 926/80 as an 'equity clause'. Similarly, Council Regulation (EEC) No 1430/79 of 2 July 1979 (OJ 1979 L 175, p. 1) lays down the circumstances in which the national authorities are to repay or remit import duties. Such circumstances include, for instance, where the duties charged relate to goods entered in error for free circulation instead of being placed under another customs regime: see Article 3(1) of the regulation. No such provisions of Community law are however relied upon in the present case; although, as we have already seen, the rules laid down for the allocation of milk quotas do permit the exercise of a measure of discretion in allocating special and additional quotas, so that justice may be done in particular to the circumstances of small farmers.

17. It will be recalled that in the *Balkan-Import-Export* case the Court distinguished 'questions concerning the basis of assessment, the manner of imposition and the amount of the charge', on the one hand, from matters relating to 'the recovery of the charge, together with all the formalities attaching thereto', on the other (see paragraph 14 above). As we have seen, the application of a principle of objective equity may affect the range of situations in which a charge is imposed, and may therefore be inconsistent with the rules of Community law under which the charge arises. To that extent the employment of such a principle is precluded. The same reasoning would not however appear to extend to the application of a principle of 'subjective' or 'personal' equity. Such a principle takes into account, not the objective circumstances in which liability to make payment arises, but rather the personal situation of those against whom payment may be enforced; it can accordingly be understood as relating to the recovery of the charge, rather than to the basis of assessment, manner of imposition or amount of the charge.

18. There is no doubt that certain matters relating to the recovery of sums due to the

national authorities fall to be determined according to national law, even where the liability to pay the sums in question arises pursuant to Community legislation. National rules of procedure, including limitation periods, will in general be applicable, just as they are applicable in the case of an individual invoking Community rights in the national Courts: compare Case C-208/90 *Emmott* [1991] ECR I-4269, at paragraph 16 of the judgment. As the Commission suggests in its written observations, national rules will also be applicable with regard to such matters as the protection of the assets of a defaulting debtor in enforcement proceedings. National rules governing the priority of claims by creditors in insolvency proceedings will also apply, at least in the absence of Community provision to the contrary: see, as regards levies enforced directly by the Community, Case 168/82 *ECSC* v *Ferriere Sant'Anna* [1983] ECR 1681, at paragraph 15 of the judgment, and compare Case C-221/88 *ECSC* v *Busseni* [1990] ECR I-495. It is to be noted that, as regards decisions of the Council or the Commission which impose a pecuniary obligation, Article 192 of the EEC Treaty provides that 'enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out', and Article 92 of the ECSC Treaty makes similar provision as regards decisions of the Commission. National rules governing criminal penalties will also be applicable, for example in the event of the fraudulent evasion of a Community levy; here again the principle is that fraud on the Community budget is to be prosecuted with the same degree of vigilance as in a comparable case of evasion of national taxes, although it is to be noted that the penalties imposed must in any event be effective, proportionate and dissuasive: see Case 68/88 *Commission* v *Greece* [1989] ECR 2965, at paragraphs 24 and 25 of the judgment.

19. In the same way, it seems to me that national rules governing the exercise by the national authorities of a discretion to waive recovery of a debt on grounds of subjective equity may under certain conditions be applied, even where the debt arises under Community legislation. It is true that such rules are not procedural provisions governing the recovery of the sum due, but govern the substantive decision whether or not to enforce payment. For the present purposes, however, it does not seem to me that a distinction can be drawn between the two cases. Such a distinction would be particularly difficult where, as in the present instance, the discretion to waive or enforce payment is subject to judicial control, so that the principle of subjective equity may be invoked in a challenge to the decision to recover the sum due, and hence in effect as a defence to any enforcement proceedings.

20. In the Commission's view, however, the application of a principle of subjective equity can be distinguished from other cases in which the Court has permitted the application of national rules governing the recovery of sums due. In its written observations the Commission refers, in particular, to Joined Cases 205/82 to 215/82 *Deutsche Milchkontor* v *Germany* [1983] ECR 2633. In that case the Court held that sums unduly paid by way of aids under Community regulations are, in principle, to be recovered by the national authorities according to the rules and procedures laid down by national legislation, and that regard may be had in particular to such considerations as the protection of legitimate expectations, provided that in the latter case the interests of the Community are taken fully into account. As the Commission points out, in its reasoning the

Court placed some emphasis on the fact that certain principles, such as the protection of legitimate expectations and the assurance of legal certainty, are common to the laws of the Member States: see paragraph 30 of the judgment. Moreover, as the Court observed in the same paragraph, those principles also form part of the Community legal order. In contrast, a principle of subjective equity is neither common to the laws of the Member States nor a part of Community law itself.

21. I accept that the principles governing the recovery, by the national authorities, of sums unduly paid under Community law may also apply to the collection by a national authority of Community levies. However, it does not seem to me that the Court's reasoning in the *Deutsche Milchkontor* case is to be so narrowly construed as the Commission appears to suggest. It is to be noted that the considerations put forward in paragraph 30 of the Court's judgment relate specifically to the protection of legitimate expectations and the assurance of legal certainty (see paragraphs 27 to 33 of the judgment). However, paragraphs 15 to 25 of the judgment deal in more general terms with the question of which national rules, both procedural and substantive, may be applied to the recovery of unduly paid Community aids. At paragraphs 19 to 22, the Court stated the following principles:

'... the Court has repeatedly held ... that in the absence of provisions of Community law disputes concerning the recovery of amounts unduly paid under Community law must be decided by national courts pursuant to their own national law subject to the limits imposed by Community law inasmuch as the rules and procedures laid down by national law must not have the effect of making it virtually impossible to implement Community regulations and national legislation must be applied in a manner which is not discriminatory compared to procedures for deciding similar but purely national disputes.

...

Although as a result of such reliance on national law the conditions for the recovery of unduly-paid aids may vary to some extent from one Member State to another, the effect of such differences, which moreover in the present state of development of Community law are inevitable, is reduced by the limits to which the Court has subjected the application of national law ... .

In the first place the application of national law must not affect the scope and effectiveness of Community law. That would be the case in particular if the application of national law made it impossible in practice to recover sums irregularly granted. Furthermore, the exercise of any discretion to decide whether or not it would be expedient to demand repayment of Community funds unduly or irregularly granted would be inconsistent with the duty to recover such sums [imposed by the relevant regulation] .'

22. It seems to me that those principles are relevant, in particular, to the application of a principle of subjective equity contained in

national law. Thus, for such a principle to be applicable in the case of levies due under Community legislation, three conditions must be satisfied: (1) the principle must be applied in a manner which is not discriminatory as compared with the remission of equivalent national levies, (2) its application must not impair the effectiveness of the Community legislation or affect its scope, and (3) the relevant Community legislation must not itself contain exhaustive provisions regulating the circumstances in which levies due may be waived in the light of the personal circumstances of the debtor. Moreover, enforcement of payment must not be based on the exercise of any discretion to decide whether enforcement would be expedient: see the last sentence of the passage from *Deutsche Milchkontor* cited above. By that proviso, it appears that the Court intended to exclude decisions of the national authorities based on considerations of convenience, rather than excluding a discretion exercised according to a legal rule or principle. As long as those conditions are satisfied, it seems to me that a national rule of subjective equity is applicable in principle.

23. It is true that the application of such a national rule may lead to differences in the enforcement of the levies in different Member States. As the Court pointed out in the *Deutsche Milchkontor* case, however, such differences are inevitable in the present state of Community law, and their effect is mitigated by the limits imposed on the application of the national rules. Their operation must not in any event substantially affect the scope, or impair the effectiveness, of the Community regulations. Furthermore, even though the principle of subjective equity is not recognized as such in all the Member States, it can be presumed that the national authorities of most, and perhaps all, Member States enjoy some discretion to waive the recovery of a debt in exceptional circumstances involving individual hardship.

24. The Commission also refers to Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen* [1991] ECR I-415, in which the Court considered the extent of a national court's power to suspend the enforcement of a national measure which implemented a Community regulation, where the validity of the regulation had been put in issue. The Court stated, at paragraphs 26 and 27 of the judgment, that the uniform application of Community law required that such a suspension could only be granted on the same conditions as those which apply to the exercise of the Court's own power to suspend the operation of a contested measure pursuant to Article 185 of the Treaty. It seems to me however that the question at issue in the *Zuckerfabrik Süderdithmarschen* case can be distinguished from the one with which we are presently concerned. The question there was under what conditions a national court could suspend the operation of a measure implementing a Community act which had not yet been declared invalid, although its validity had been contested. In the present case, in contrast, the validity of the Community regulation, and hence its applicability within the legal order of the Member State concerned, is not at issue. To decline to enforce payment of a levy in the

light of the personal circumstances of the debtor does not, in my opinion, pose th e same threat to the uniform application of Community law as a decision to suspend the applicability in national law of a Community regulation. Furthermore, the remission of a levy on grounds of subjective equity does not correspond to any power enjoyed by the Court itself from which appropriate uniform conditions could be derived. The Court's reasoning in *Zuckerfabrik Süderdithmarschen* cannot therefore be extended to the question raised in the present case.

25. Finally, it might be argued that, in the case of a payment due under Community legislation, the discretion enjoyed by the national authorities should be limited to a discretion to suspend enforcement of the payment, rather than to grant permanent release from the obligation to pay. It does not seem to me however that such a limitation would be appropriate. The national authorities are in my view entitled to take steps either to enforce payment or to write off the debt, when the inability to pay appears to be more than merely temporary, rather than being obliged to keep the financial situation of the debtor under continuous review. That is not to say that provisions of national law may not be applied which under certain conditions allow the national authorities temporarily to suspend enforcement of payments due; and it appears that such provisions are to be found in Paragraph 222 of the Abgabenordnung. Where such provisions exist, the decision whether to write off the debt or merely to suspend enforcement must have regard to the principles mentioned above: namely those of non-discrimination as compared with equivalent national charges, and non-interference with the scope and effectiveness of the Community measures.

26. I accordingly reach the conclusion that a provision of national law which permits the remission of a levy on grounds of subjective equity may in certain circumstances be applied, even where the liability in question arises under a Community regulation. The question however remains whether such a principle of subjective equity can be applied where the levy is imposed under the Community's milk quota legislation.

The principle of subjective equity and the system of milk quotas

27. The first question to consider is whether the milk quota legislation itself contains any provision regulating the recovery of levies due under Article 5c of Regulation No 804/68. Detailed rules for the application of the levy are laid down by Commission Regulation (EEC) No 1546/88 of 3 June 1988 (OJ 1988 L 139, p. 12). Articles 15 and 16 of that regulation provide for the levy to be paid by the producers or purchasers concerned within the time-limits laid down in those articles. Those provisions determine when the liability to pay the levy arises, but do not, it seems to me, regulate the circumstances in which the levy must be recovered. Article 19(1) provides that 'Member States shall adopt whatever additional measures are required: (a) to ensure collection of the levy ...'. The regulation does not itself lay down any further rules relating to the collection or enforcement of the levy.

28. It follows, in my view, that the rules governing the recovery of the levy are to be laid down by national law. As we have seen, in such circumstances Member States are permitted to apply their national rules governing the recovery of payments due to the fiscal authorities, provided that those rules are applied in a non-discriminatory manner and that they provide an effective means of collection of the levy: see the passages from the *Deutsche Milchkontor* case which are cited above in paragraph 21. Accordingly, in recovering the levies imposed under Article 5c of Regulation No 804/68, the national authorities must apply their national rules in a manner which (1) is no less stringent than in the case of equivalent levies due under national law, and (2) does not affect the scope or effectiveness of the milk quota system. If those conditions can be satisfied, there will be no obstacle to applying a principle of subjective equity of the kind contained in Paragraph 227 of the Abgabenordnung.

29. It must be emphasized, however, that where such a principle is applied in the recovery of the additional levy on milk, the objectives of the system of milk quotas must be taken fully into consideration. It may accordingly be necessary to enforce payment of that levy in circumstances where the payment of other taxes might not be enforced. For it will be recalled that the milk quota system was introduced by the Community with the specific aim of limiting milk production. The principal purpose of the additional levy is not therefore to raise revenue, but to deter farmers from producing milk without regard to their allotted quota.

30. It follows that a producer who has been allocated a quota which is insufficient to maintain the profitability of his farm, and who for that reason delivers in excess of his quota, cannot be released from the obligation to pay the levy merely on account of financial hardship. To allow remission of the levy in such circumstances would undermine the whole basis of the quota system, which is to limit producers to the amount of their quota.

31. It might be argued that the position is different where, as here, the producer overproduces in the genuine but mistaken belief that he will be awarded an additional quota for the relevant year. It is true that in such a case the producer has not produced milk regardless of his quota, but rather produced on an erroneous assumption as to the amount of the quota to which he will be entitled. Such factors may, as we have seen (paragraph 10), be relevant in the application of the principle of subjective equity in German law. It seems to me however that to take into consideration a subjective factor of that kind would introduce a degree of uncertainty which would unduly prejudice the enforcement of the levy. In my opinion, therefore, a producer will only be able to avoid paying the levy where the belief in question has been induced by some official representation on the part of the national authorities. In that case, however, he will be relying upon the principle of the protection of legitimate expectations, which is recognized by Community law, and not upon any principle of subjective equity.

32. None the less, even where the principle of subjective equity cannot be invoked to obtain a remission from the obligation to pay, the national authorities may still be able to apply national provisions which permit them temporarily to suspend enforcement of the debt: see paragraph 25 above. Similarly, national provisions may also be applicable which permit the payment of the debt by instalments in cases of genuine hardship, provided that they are applied in such a way as to ensure so far as possible the prompt and effective recovery of the levy. In my view, payment by instalments in such circumstances is unlikely to prejudice the objectives of the milk quota system, and may therefore provide the solution in cases such as the present one.

Conclusion

33. I am accordingly of the opinion that the question referred by the Finanzgericht should be answered as follows:

(1) Community law in its present state does not absolutely preclude the application of a provision of national law which permits the national fiscal authorities, in exceptional cases and on equitable grounds based on the personal circumstances of the debtor, to waive enforcement of a levy arising under Article 5c of Council Regulation No 804/68.

(2) Such a provision must however be applied in a manner which (a) is not discriminatory as compared with the waiver of equivalent payments due to the fiscal authorities under national law, and (b) does not prejudice the objectives of the system of milk quotas introduced by that regulation. It follows in particular that financial hardship alone is not a sufficient ground, and that enforcement cannot be waived on the ground that the producer believed he would be awarded an additional quota.

(3) In cases of genuine hardship national provisions permitting payment by instalments may be applied, provided that they are applied in such a way as to ensure so far as possible the prompt and effective collection of the levy.