JUDGMENT OF THE COURT (Seventh Chamber)

13 March 2008 *

In Case C-78/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Consiglio di Giustizia amministrativa per la Regione siciliana (Italy), made by decision of 18 May 2006, received at the Court on 13 February 2007, in the proceedings

Ispettorato Provinciale dell'Agricoltura di Enna,

Assessorato all'agricoltura e foreste della Regione Sicilia,

Regione Sicilia

v

Domenico Valvo,

* Language of the case: Italian.

THE COURT (Seventh Chamber),

composed of U. Lõhmus, President of the Chamber, P. Lindh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Italian Government, by I.M. Braguglia, acting as Agent, and G. Aiello, avvocato dello Stato,

— the Commission of the European Communities, by C. Cattabriga, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 17 and 18 of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures (OJ 1997 L 142, p. 1).

2 The reference has been made in the course of proceedings between Mr Valvo, on the one hand, and the Ispettorato Provinciale dell'Agricoltura di Enna (Agricultural Inspection Service for Enna), the Assessorato all'agricoltura e foreste della regione Sicilia (Regional Ministry of Agriculture and Forestry for the Region of Sicily) and the Régione Sicilia, on the other, concerning the Agricultural Inspection Service's refusal of Mr Valvo's applications for compensatory allowances for the years 1996 to 1998.

Legal context

Community legislation

3 In the course of the years 1996 to 1998 the payment of a compensatory allowance in less-favoured agricultural regions was governed, originally, by Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agriculture structures (OJ 1991 L 218, p. 1), as amended by Council Regulation (EC) No 3669/93 of

22 December 1993 (OJ 1993 L 338, p. 26) ('Regulation No 2328/91'), and subsequently, by Regulation No 950/97 which repealed and replaced Regulation No 2328/91.

4 Articles 17 to 19 of Regulation No 950/97, which appear under Title IX of that regulation, entitled 'Aid scheme to benefit less-favoured agricultural areas', and the subheading 'Compensatory allowances', replace in essence the provisions of Articles 17 and 18 of Regulation No 2328/91. Those articles provide:

'*Article 17*

1. In order to ensure the continuation of farming, thereby maintaining a minimum population level or conserving the countryside in certain less-favoured areas, the list of which is determined in accordance with the procedure laid down in Article 21, Member States may introduce an aid scheme to encourage farming and to raise incomes in these areas.

The application of the measures provided for in this scheme should take into account the situation and development objectives particular to each region.

2. In the areas referred to in paragraph 1, Member States may grant an annual compensatory allowance to assist farming activities, such allowance to be fixed according to the permanent natural handicaps.

Article 18

1. Member States may grant compensatory allowances to farmers who work at least three hectares of usable agricultural area (UAA) and who undertake to pursue a farming activity in accordance with the aims of Article 17 for at least five years from the first payment of a compensatory allowance; where a farmer gives up farming and the area concerned continues to be worked, he may be released from such undertaking; he shall be released from such undertaking in cases of force majeure, for example where his property is compulsorily purchased or purchased in the public interest; in addition, farmers in receipt of a retirement or early-retirement pension shall be released from such undertaking.

However, in the Italian Mezzogiorno region, including the islands, in the regions in the French overseas departments and in the Greek, Portuguese and Spanish regions, the minimum UAA per holding shall be two hectares.

2. Member States may lay down additional or limiting conditions for the grant of the compensatory allowance, including conditions which encourage the use of practices compatible with the need to safeguard the environment and preserve the countryside.

Article 19

...

3. Expenditure in respect of the compensatory allowances shall not be eligible for part-financing by the [European Agricultural Guidance and Guarantee] Fund where the farmer is in receipt of a retirement or early-retirement pension.

The granting of a compensatory allowance which exceeds the limits or fails to satisfy the conditions laid down in this Title shall be prohibited.

…'

National legislation

5 The Community Law provisions on compensatory allowances were transposed into the law applicable in the Region of Sicily by the multifund operational programme (MOP 2) (Official Journal of the Region of Sicily of 13 January 1996) ('the operational programme').

6 The beneficiaries of those allowances are defined in the operational programme as farmers who work at least two hectares of usable agricultural area and undertake to pursue their farming activity for at least five years from the first application for and grant of the allowance and who are not in receipt of a retirement or early retirement pension.

7 According to the operational programme, the following may be released from the five-year undertaking referred to in the previous paragraph: farmers who:

— give up farming, on condition that farming activity continues;

— give up farming in cases of force majeure and in particular in cases of compulsory purchase or purchase in the public interest;

— during the period of the undertaking receive a retirement or early-retirement pension.

The dispute in the main proceedings and the question referred for a preliminary ruling

8 Mr Valvo, a former bank employee, resigned from his post at the age of 44 in order to devote himself to his farming activities. Since his resignation, he has received the length-of-service social insurance benefit awarded by his former employer's pension fund, which is made up of contributions paid by employees.

9 Mr Valvo applied for a compensatory allowance for the years 1994 to 1998. He received the allowance for the years 1994 and 1995, but he was refused the aid for the three subsequent years. By a decision of 4 June 1999 the Ispettorato Provinciale dell'Agricoltura di Enna refused his application for the compensatory allowance for the three years 1996 to 1998 on the ground that he was in receipt of an early retirement pension.

10 Mr Valvo brought an action for annulment of that decision before the Tribunale amminstrativo regionale per la Sicilia (Regional Administrative Court for Sicily), which upheld the action. That court held that the length-of-service pension paid to Mr Valvo is not comparable to a retirement or early-retirement pension and that Mr Valvo meets all the necessary requirements to receive the compensatory allowance. The Ispettorato Provinciale dell'Agricoltura di Enna, the Assessorato all'agricoltura e foreste della Regione Sicilia and the Regione Sicilia appealed to the referring court against that judgment at first instance.

11 As it is uncertain regarding the interpretation which should be given to Articles 17 and 18 of Regulation No 950/97, the Consiglio di Giustizia amministrativa per la Regione siciliana (Council of Administrative Justice for the Region of Sicily) decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May a farmer be refused the compensatory allowance when he is also in receipt of a pension, in particular, a length-of-service pension?'

The question referred

Preliminary observation

12 The facts of the main proceedings are governed, in respect of one part of the period concerned, by Regulation No 950/97 and, in respect of the other part, by Regulation No 2328/91. However, since the relevant provisions of the two regulations are substantially identical and the referring court, the Italian Government and the Commission of the European Communities refer only to Regulation No 950/97, it is sufficient to reply to the question referred on the basis of the provisions of that regulation alone.

Observations submitted to the Court

13 The Italian Government and the Commission both consider that Regulation No 950/97 confers on Member States the right to pay a compensatory allowance to a farmer who is also in receipt of a retirement pension or another social insurance benefit.

14 Nevertheless, the Italian Government contends that, in cases where the Member State concerned has chosen not to grant a compensatory allowance where the farmer is in receipt of a retirement or early-retirement pension, payment of that allowance is precluded if the farmer is receiving a pension, in particular a length-of-service pension. The Commission, for its part, considers that the regulation does not preclude a Member State from granting a compensatory allowance to a farmer who, while pursuing his farming activity, is at the same time in receipt of a pension, including a length-of-service pension.

The reply of the Court

15 Under Article 17 of Regulation No 950/97 Member States may introduce an aid scheme, in the form of a compensatory allowance, to encourage farming and to raise incomes in certain less-favoured areas.

16 Article 18(1) of that regulation provides that Member States may grant that compensatory allowance to farmers provided that they fulfil two conditions, that is, first, that they work a minimum usable agricultural area, which is two hectares in the Italian Mezzogiorno region including the islands, and, second, that they undertake to pursue a farming activity for at least five years in accordance with the aims of Article 17 of that regulation.

17 It is apparent from the actual wording of Articles 17 and 18, and, in particular, the use of the word 'may' on a number of occasions, that Member States have the right to grant a compensatory allowance to farmers who fulfil the conditions laid down in those articles. Moreover, Article 18(2) of Regulation No 950/97 expressly authorises Member States to lay down additional or limiting conditions for the grant of that allowance. The Community legislature thus conferred on Member States a discretion in that area (see Joined Cases C-9/97 and C-118/97 *Jokela and Pitkäranta* [1998] ECR I-6267, paragraphs 36 and 37).

18 Furthermore, the first subparagraph of Article 18(1) and the first subparagraph of Article 19(3) of Regulation No 950/97 contain specific provisions relating to the receipt by farmers of a retirement or early-retirement pension. Where a farmer is in receipt of such a pension, he is released from the undertaking to pursue a farming activity for five years. Further, no Community part-financing of the compensatory allowance is possible in those circumstances.

19 Those provisions concern not the right of Member States to grant a compensatory allowance where a farmer is in receipt of a retirement or early-retirement pension, but only the consequences of the receipt of such a pension both for the farmer and for the European Community.

20 It follows that the Member States have the right to grant a compensatory allowance, or not, in cases where the farmer is in receipt of a retirement or early-retirement pension. That finding applies equally where the farmer is in receipt of other social insurance benefits, such as a length-of-service pension, which are not covered by a specific scheme under Regulation No 950/97 and are therefore subject to the scheme referred to in Articles 17 and 18 of that regulation. Consequently, where a farmer is in receipt of another type of benefit, such as a length-of-service pension, the Member States retain the right to grant him, or not, a compensatory allowance.

21 It is apparent from the national legislation, as it was presented to the Court, that the compensatory allowance is not granted where a farmer is in receipt of a retirement or early-retirement pension. By contrast, it does not appear that such an exclusion extends to a case where the farmer is in receipt of a length-of-service pension such as that at issue in the main proceedings.

22 However, it is not for the Court to rule on the scope of national provisions, since that task is for the referring court. The national court will therefore have to determine whether the national legislature, which exercised the right to grant a compensatory allowance to farmers who fulfil the conditions restated in paragraph 16 of this judgment and the power to include additional conditions for payment of that allowance, has precluded the grant of that allowance not only in cases where the farmer is in receipt of a retirement or early retirement pension, but also where he is in receipt of a length-of-service pension.

23 Having regard to the foregoing observations, the reply to the question referred must be that Articles 17 and 18 of Regulation No 950/97 confer on Member States the right to grant a compensatory allowance to a farmer who fulfils the conditions laid down in those two articles. However, those articles do not preclude a Member State from refusing payment of such an allowance where that farmer is in receipt of a pension, in particular, a length-of-service pension.

Costs

24 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Articles 17 and 18 of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures confer on Member States the right to grant a compensatory allowance to a farmer who fulfils the conditions laid down in those two articles. However, those articles do not preclude a Member State from refusing payment of such an allowance where that farmer is in receipt of a pension, in particular, a length-of-service pension.

[Signatures]