

JUDGMENT OF THE COURT
24 March 1994 *

In Case C-2/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Ministry of Agriculture, Fisheries and Food,

ex parte Dennis Clifford Bostock,

on the interpretation of the Community rules on the system of additional levies on milk established by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (Official Journal 1984 L 90, p. 10), Council Regulation (EEC) 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 Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the

* Language of the case: English.

application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal 1984 L 132, p. 11), and of the general principles of Community law,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and D. A. O. Edward (Presidents of Chambers), R. Joliet, F. Grévisse, M. Zuleeg (Rapporteur), P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. Gulmann,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Dennis Clifford Bostock, by Michael Burton QC and Nicholas Green, Barrister,

— the United Kingdom, by Sue Cochrane, of the Treasury Solicitor's Department, acting as Agent, and Stephen Richards, Barrister,

— the Commission of the European Communities, by Gérard Rozet, Legal Adviser, and Christopher Docksey, a member of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the applicant in the main proceedings, the United Kingdom and the Commission at the hearing on 17 February 1993,

after hearing the Opinion of the Advocate General at the sitting on 20 April 1993,

gives the following

Judgment

- 1 By order of 14 October 1991, received at the Court on 6 January 1992, the High Court of Justice, Queen's Bench Division, referred to the Court under Article 177 of the EEC Treaty two questions on the interpretation of the Community rules on the system of additional levies on milk established by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (Official Journal 1984 L 90, p. 10), Council Regulation (EEC) 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 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), and of the general principles of Community law.
- 2 Those questions arose in the context of a dispute between Mr Bostock, a former tenant farmer, and the Ministry of Agriculture, Fisheries and Food concerning an application for compensation for the loss incurred by reason of the transfer to the landlord of the farm, on expiry of the tenancy, of a reference quantity originally allocated to the tenant under the system of additional levies on milk.
- 3 Mr Bostock had been the tenant on the farm since 1962. At that time, the farm had 40 cows and corresponding facilities. Over the years Mr Bostock made

substantial improvements to the farm. In particular, he increased the milk production capacity in 1967.

- 4 Following introduction of the system of additional milk levies by Regulation No 856/84 of 31 March 1984 and the implementing provisions, Mr Bostock received a reference quantity under the new arrangements. On 25 March 1985 he surrendered his tenancy. The reference quantity was accordingly transferred to the landlord of the farm pursuant to Article 5 (3) of Regulation No 1371/84.
- 5 No compensation was paid to Mr Bostock in respect of that transfer. At the time when the tenancy was surrendered, the 'outgoers' scheme' of the milk quota system, established pursuant to Article 4 (1) (a) of Regulation No 857/84 by the United Kingdom legislation (the Milk Supplementary Levy (Outgoers) Scheme 1984 and the Milk (Cessation of Production) Act 1985), did not provide for any such compensation. However, section 13 of and Schedule I to the Agriculture Act 1986, which came into force on 25 September 1986, provide from that date for payment of compensation by a landlord to a tenant.
- 6 In May 1990 Mr Bostock brought proceedings against the Ministry of Agriculture, Fisheries and Food in which, in essence, he sought a declaration that the United Kingdom was under an obligation to provide for payment of compensation to tenants whose leases had expired between April 1984 and September 1986. He submits that in failing to implement a compensation scheme for outgoing tenants during the period from April 1984 to September 1986 the United Kingdom was in breach of the above Community regulations and/or the fundamental principles of respect for property, unjust enrichment and non-discrimination. He goes on to argue that, in the absence of such a scheme, an outgoing tenant may rely directly on the provisions of Community law in support of a claim for compensation from his landlord.

7 The Ministry of Agriculture, Fisheries and Food contends that those submissions are without foundation.

8 The High Court of Justice, Queen's Bench Division, took the view that the decision in the case depended on the interpretation of the Community rules on the additional milk levy and the general principles of Community law. It therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'(a) Are Council Regulation (EEC) No 804/68, Council Regulation (EEC) No 857/84, Commission Regulation (EEC) No 1371/84 and/or the general principles of Community law to be interpreted as having placed on a Member State the obligation to adopt in respect of the period April 1984 (when the system of reference quantities came into force) to September 1986 (when the compensation provisions of the Agriculture Act 1986 came into force in the United Kingdom) measures similar to those adopted in the United Kingdom by means of the Agriculture Act 1986 in respect of the period from September 1986 entitling a tenant to receive compensation from his landlord in circumstances where:

- (i) a reference quantity had been allocated to the tenant in respect of the holding pursuant to the said regulations,
- (ii) the tenant surrendered his lease to the landlord during the period in question,
- (iii) on the surrender of the lease the reference quantity passed with the holding to the landlord,
- (iv) the situation fell outside Article 7 (4) of Regulation No 857/84 as amended by Council Regulation (EEC) No 590/85 and in any event the Member State concerned had not exercised the power conferred by that

provision to put some or all of the reference quantity at the disposal of the departing tenant,

(v) the Member State concerned operated an “outgoers’ scheme” pursuant to Article 4 (1) (a) of Regulation No 857/84 but the tenant was required to obtain the permission of the landlord to participate in the scheme, applications to participate in the scheme were not being accepted at the time when the tenant surrendered the lease and the scheme was limited in terms of the money available in outgoers’ compensation?

(b) In the absence of national measures of the kind referred to in question (a), are Regulation No 804/68, Regulation No 857/84, Regulation No 1371/84 and/or the general principles of Community law to be interpreted as conferring on a tenant a directly enforceable right to claim compensation from his landlord in the circumstances aforesaid?’

9 By its two questions, which can be taken together, the High Court of Justice, Queen’s Bench Division, asks in essence whether, in circumstances where the reference quantity acquired by a tenant during his tenancy is transferred to the landlord on the expiry of that tenancy, the Community rules on the additional levy on milk and/or the general principles of Community law impose on a Member State an obligation to introduce a scheme for payment by a landlord of compensation to an outgoing tenant, or directly confer on the tenant a right to such compensation.

The Community rules on the additional levy on milk

10 Nothing in the regulations referred to by the national court requires Member States to introduce a scheme for the payment by a landlord of compensation to an

outgoing tenant, or directly confers on a tenant a right to such compensation, in respect of the reference quantity transferred to the landlord on the expiry of a lease.

The general principles of Community law

- 11 The general principles of Community law relied on by Mr Bostock include in particular the right to property and the principle of non-discrimination. He contends that those principles are breached where, in a position such as that in the main proceedings, a tenant is unable to obtain any compensation for the loss flowing from the transfer of the reference quantity. Mr Bostock adds that the relationship between private parties constitutes, in relation to milk quotas, a 'natural context' for application of the principle of respect for property and avoidance of unjust enrichment.

- 12 In so far as Mr Bostock infers from the alleged breach of those general principles that a Member State is under an obligation to adopt national provisions enabling a tenant to obtain compensation, the national court seeks further information on the meaning and scope of the Court's judgment in Case 5/88 *Wachauf v Germany* [1989] ECR 2609, which it considers decisive for the resolution of the issues before it.

- 13 In *Wachauf*, the Court was asked to interpret Commission Regulation No 1371/84. The national court in that case asked in particular whether that regulation could be interpreted in a manner compatible with the constitutional guarantees that precluded a lessee from being deprived, without compensation, of the fruits of his labour on expiry of the lease.

- 14 The Court held that the Community regulation in question left the competent national authorities a sufficiently wide margin of appreciation to enable them to apply that regulation without depriving the lessee, on the expiry of the tenancy, of

the fruits of his labour and his investments in the let holding without any compensation (paragraph 22), that is, without disregarding the requirements of the protection of fundamental rights in the Community legal order (paragraph 23).

15 The judgment in *Wachauf* does not therefore address the question, raised by the national court in this case, of the rights to compensation which a tenant may in appropriate circumstances derive from Community law when he surrenders his lease.

16 However, the Court pointed out earlier in its judgment in *Wachauf* (paragraph 19) that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules and that the Member States must therefore, as far as possible, apply those rules in accordance with those requirements. In that connection the Court held in its judgment in Case C-260/89 *ERT v DEP* [1991] ECR I-2925, at paragraph 42, that where such national rules fall within the scope of Community law and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights whose observance the Court ensures.

17 It is therefore necessary to examine the fundamental rights relied on by Mr Bostock in order to enable the national court to decide whether the rules in question are compatible with those rights.

The right to property

18 Mr Bostock argues that the right to property is a fundamental right which requires a Member State to introduce a scheme for payment by a landlord of compensation to an outgoing tenant, or indeed confers directly on the tenant a right to compensation from the landlord.

- 19 That argument cannot be accepted. The right to property safeguarded by the Community legal order does not include the right to dispose, for profit, of an advantage, such as the reference quantities allocated in the context of the common organization of a market, which does not derive from the assets or occupational activity of the person concerned (judgment in Case C-44/89 *Von Deetzen v Hauptzollamt Oldenburg (Von Deetzen II)* [1991] ECR I-5119, paragraph 27).
- 20 It follows that the protection of the right to property guaranteed by the Community legal order does not require a Member State to introduce a scheme for payment of compensation by a landlord to an outgoing tenant and does not confer a right to such compensation directly on the tenant.

The principle of non-discrimination

- 21 The plea in law put forward by the applicant in the main proceedings alleging that he is the victim of discrimination in comparison with tenants whose leases expired on or after 25 September 1986 is equally ill-founded.
- 22 On the basis of the principle of equal treatment, Mr Bostock seeks compensation under the same conditions as those provided under the Agriculture Act 1986 for tenants whose leases expired after the entry into force of that statute.
- 23 The second subparagraph of Article 40 (3) of the Treaty provides that the common organization of agricultural markets to be established under the common agricultural policy 'shall exclude any discrimination between producers or consumers within the Community.' That prohibition of discrimination is simply a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law (see, in particular, the judgment in Joined Cases 201/85 and 202/85 *Klensch v Secrétaire d'Etat* [1986] ECR 3477, paragraph 9).

24 However, the principle of equality of treatment cannot bring about retroactive modification of the relations between the parties to a lease to the detriment of the lessor by imposing on him an obligation to compensate the outgoing lessee, whether under national provisions which the Member State in question might be required to adopt, or by means of direct effect.

Unjust enrichment

25 Mr Bostock argues that the fruits of his labour and his investments contributed to the acquisition or the increase in the reference quantity which reverted to his landlord on the expiry of the lease and that in those circumstances the landlord is under an obligation to pay compensation to Mr Bostock in respect of his unjust enrichment.

26 Suffice it to say, on that point, that legal relations between lessees and lessors, in particular on the expiry of a lease, are, as Community law now stands, still governed by the law of the Member State in question. Any consequences of unjust enrichment of the lessor on the expiry of a lease are therefore not a matter for Community law.

27 It follows from all the foregoing that the Community rules on the system of additional levies on milk established by Council Regulation No 856/84 of 31 March 1984, Council Regulation No 857/84 of 31 March 1984, Commission Regulation No 1371/84 of 16 May 1984 and the general principles of Community law do not require a Member State to introduce a scheme for compensation of the outgoing lessee by the lessor or confer directly on the lessee a right to such compensation in respect of a reference quantity transferred to the lessor on the expiry of a lease.

Costs

- 28 The costs incurred by the United Kingdom and the Commission of the European Communities, which have 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,

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 14 October 1991, hereby rules:

The Community rules on the system of additional levies on milk established by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products, Council Regulation (EEC) 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, 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, and the general principles of Community law do not require a

BOSTOCK

Member State to introduce a scheme for compensation of the outgoing lessee by the lessor or confer directly on the lessee a right to such compensation in respect of a reference quantity transferred to the lessor on the expiry of a lease.

Due

Mancini

Moitinho de Almeida

Edward

Joliet

Grévisse

Zuleeg

Kapteyn

Murray

Delivered in open court in Luxembourg on 24 March 1994.

R. Grass

O. Due

Registrar

President