

JUDGMENT OF THE COURT (Fifth Chamber)
22 October 1998 *

In Joined Cases C-9/97 and C-118/97,

REFERENCES to the Court under Article 177 of the EC Treaty by the Maaseutelinkeinojen Valituslautakunta (Finland) for a preliminary ruling in the proceedings brought by

Raija-Liisa Jokela (C-9/97)

and

Laura Pitkäranta, represented by her guardian Anne Pitkäranta (C-118/97),

on the interpretation of Articles 17 and 18 of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1), and Article 1 of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (OJ 1975 L 128, p. 1),

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, P. Jann (Rapporteur),
J. C. Moitinho de Almeida, C. Gulmann and M. Wathelet, Judges,

* Language of the case: Finnish

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted:

- by Mrs Jokela,

- on behalf of the Finnish Government, by Holger Rotkirch, Ambassador, Head of Legal Affairs in the Ministry of Foreign Affairs (Case C-9/97), and Tuula Pynnä, Legal Adviser in the same Ministry (Case C-118/97), acting as Agents,

- on behalf of the French Government (Case C-9/97), by Kareen Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Central Administration Attaché in the same Directorate, acting as Agents, and

- on behalf of the Commission of the European Communities (Case C-9/97 and Case C-118/98), by Esa Paasivirta and James Macdonald Flett, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Jokela, of the Finnish Government and of the Commission at the hearing on 10 February 1998,

after hearing the Opinion of the Advocate General at the sitting on 24 March 1998,

gives the following

Judgment

- 1 By orders of 9 January 1997 (Case C-9/97) and 12 March 1997 (Case C-118/97), received at the Court on 16 January 1997 and 20 March 1997 respectively, the Maaseutuelinkeinojen Valituslautakunta (Rural Businesses Appeals Board) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 17 and 18 of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1), and Article 1 of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (OJ 1975 L 128, p. 1).
- 2 Those questions were raised in proceedings brought respectively by Mrs Jokela and by Laura Pitkäranta, represented by her guardian Anne Pitkäranta, concerning the refusal of the administrative authorities to grant them a compensatory allowance intended to offset the handicap caused by farming in less-favoured agricultural areas.
- 3 By order of the President of the Court of 4 November 1997, the two cases were joined for the purposes of the oral procedure and judgment.

Legal background

Community provisions

4 Under the first subparagraph of Article 1 of Directive 75/268, 'in order to ensure the continuation of farming, thereby maintaining a minimum population level or conserving the countryside in certain less-favoured areas', the Member States are authorised to introduce a special system of aid 'to encourage farming and to raise farm incomes in these areas'. The second subparagraph states that 'the application of the measures provided for in this system should take into account the situation and development objectives particular to each region'. Article 4 provides that the special system of aid is to include, *inter alia*, 'the granting ... of an allowance to compensate for permanent natural handicaps'.

5 Articles 17 to 20 of Regulation No 2328/91 set out the circumstances in which Member States may take specific measures to assist mountain and hill farming and farming in certain less-favoured areas.

6 Article 17(1) provides:

'In regions which appear on the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC, Member States may grant an annual compensatory allowance to assist farming activities, such allowance to be fixed according to the permanent natural handicaps described in Article 3 of that Directive within the limits and subject to the conditions laid down in Articles 18 and 19 of this Regulation.'

7 Article 18 provides:

'1. Where Member States grant a compensatory allowance, farmers with at least three hectares of usable agricultural area who undertake to pursue a farming activity in accordance with the aims of Article 1 of Directive 75/268/EEC for at least five years from the first payment of a compensatory allowance shall be eligible for such an allowance ...

...

2. ...

3. 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.'

8 Article 29 of Regulation No 2328/91 requires the Member States to forward to the Commission both the drafts of all laws, regulations or administrative provisions which they propose to adopt pursuant to the Regulation and also the texts of any existing provisions. The Commission is then to examine those provisions to determine whether they satisfy the conditions for a financial contribution by the Community. If so, the Member States are to forward to the Commission the text of the provisions adopted.

9 In accordance with Article 30 of that regulation, after the provisions adopted have been forwarded, the Commission is to decide whether, in the light of their compliance with the regulation, they satisfy the conditions for a financial contribution by the Community.

The Finnish legislation

10 The conditions for granting a compensatory allowance for permanent natural handicaps ('the compensatory allowance') were laid down by the Finnish Council of State's Decision No 861/1995 of 15 June 1995. By decision of 29 August 1995, taken in accordance with Articles 29 and 30 of Regulation No 2328/91, the Commission found that the provisions adopted satisfied the conditions for a financial contribution by the Community, with the exception of Paragraph 5(3), which required the recipient of the allowance to be permanently resident in Finland. By Decision No 1097/1995 of 31 August 1995, the Finnish Council of State repealed that provision.

11 In accordance with Paragraph 2 of Decision No 861/1995, the compensatory allowance is intended to ensure the continuation of farming and thereby maintain a minimum population level and conserve the viability of the countryside in certain areas which are less suitable for farming. Paragraph 6 of Decision No 861/1995 lays down rules concerning the residence of the recipient. Under the first subparagraph, the compensatory allowance may be paid to a farmer who lives on the farm or within 12 kilometres, measured along a practicable road, from its operational centre. However, the third subparagraph authorises the municipal authority to decide, by way of derogation and on 'special grounds', also to pay the allowance to a farmer who does not satisfy the residence requirement in the first subparagraph. In that case, the farmer is required to work the farm himself and obtain at least 50% of his total income from agriculture, horticulture, forestry or the other rural activities referred to in that subparagraph.

Case C-9/97

- 12 Mrs Jokela is the owner, in part jointly with her husband, of a farm in the municipality of Laihia (Finland), which is classed as a less-favoured area. Since 1994 she has lived in Bonn (Germany) with her husband, an official in the Finnish Ministry of Foreign Affairs. The couple took care of the farm during their summer holidays in 1995, with the help of members of their family. On 10 May 1995, Mrs Jokela applied for the compensatory allowance.
- 13 By decision of 14 December 1995, the relevant municipal authority refused her application on the grounds that she did not live on or within 12 kilometres of the farm and that there were no 'special grounds' for granting her application. Mrs Jokela appealed against that decision to the Etelä-Pohjanmaan Maaseutuelinkeinopiiri (District Rural Businesses Committee for Southern Pohjanmaa) which, by decision of 10 April 1996, also rejected her claim; she then appealed to the Maaseutuelinkeinojen Valituslautakunta, which decided to stay the proceedings and to refer two questions to the Court of Justice for a preliminary ruling.

Case C-118/97

- 14 Laura Pitkäranta, who was born in 1989, inherited a farm situated in the municipality of Nummi-Pusula (Finland), which is classed as a less-favoured area. She has never lived in that municipality and now lives about 70 kilometres from the farm. The farm work is done by her paternal relatives, with help from outside. On 14 May 1995 Laura Pitkäranta's legal guardian applied for the compensatory allowance.

- 15 By decision of 14 December 1995, the relevant municipal authority refused her application on the ground that she did not live on or within 12 kilometres of the farm and was not herself a farmer. Her guardian appealed against that decision to the Uudenmaan Maaseutuelinkeinopiiri (District Rural Businesses Committee for Uusimaa) which, by decision of 3 June 1996, dismissed her appeal; she then appealed to the Maaseutuelinkeinojen Valituslautakunta, which decided to stay the proceedings and to refer two questions to the Court of Justice for a preliminary ruling.

The questions

- 16 The first question is identically worded in the two cases:

'1. Is it compatible with the aims of Articles 17 and 18 of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures, and of Article 1 of Council Directive 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas, for a compensatory allowance for natural handicaps to be granted to a farmer, if he does not live on a farm owned or controlled by him in Finland in a less-favoured area within the meaning of the said directive, but lives for most of the year outside the said area?

If the answer to the above question is affirmative, even partly or conditionally:

- (a) is it permissible, having regard to the said provisions and the principles embodied in Article 5, the second subparagraph of Article 40(3), and indent (a) of the second paragraph of Article 42 of the EC Treaty, and in particular to the principle of equal treatment of farmers and the associated prohibition of discrimination set out there, to require a farmer who wishes to obtain the compensation

for natural handicaps referred to in Paragraph 6 of the decision of the national Council of State (861/1995) and who lives outside the farm and more than 12 kilometres by road from its operational centre, to receive at least half his total income from agriculture, horticulture and forestry and other activities carried out on the farm and also to work the farm himself; and

(b) is it consistent in particular with the principle of legal certainty to be observed in the Community legal order always also to require that special grounds should exist?’

The second question, however, has two variants:

‘2. Is it contrary in particular to the principles of non-discrimination and proportionality, or to other applicable principles of Community law, to exclude from the compensation in question

— a farmer who lives for the greater part of the year in another Member State with her husband, who is a diplomat representing the Finnish State and who is also the owner of part of the farm concerned? (Case C-9/97)

— a minor, permanently residing with her legal guardian some 70 kilometres from the operational centre of the farm, which is not worked either by her or by her guardian? (Case C-118/97)’.

Admissibility

- 17 Before the Court can reply to the questions referred, it must determine whether the Maaseutuelinkeinojen Valituslautakunta is to be regarded as a court or tribunal within the meaning of Article 177 of the Treaty.
- 18 In order to determine whether a body is a court or tribunal for the purposes of that provision, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether procedure before it is *inter partes*, whether it applies rules of law, and whether it is independent (Case 61/65 *Vaassen (née Göbbels)* [1966] ECR 261; Case C-54/96 *Dorsch Consult v Bundesbaugesellschaft Berlin* [1997] ECR I-4961, paragraph 23, and Joined Cases C-69/96 to C-79/96 *Garofalo and Others v Ministero della Sanità* [1997] ECR I-5603, paragraph 19).
- 19 The Maaseutuelinkeinojen Valituslautakunta was established under Finnish Law No 1203/1992 of 4 December 1992.
- 20 It appears, furthermore, from the documents before the Court, that it is composed of three members, two of whom are full-time appointees. They are appointed by public authority for a five-year term and enjoy the same guarantees as judges against removal from office.
- 21 The legal basis for the Maaseutuelinkeinojen Valituslautakunta's jurisdiction in respect of aid for rural activities is Finnish Law No 1336/1992 of 18 December 1992 concerning the procedure to be followed in that regard. That Law provides that a decision of the municipal authority responsible for rural activities refusing to grant an application for aid may be challenged before the Maaseutuelinkeinopiiri, with an appeal, where appropriate, to the Maaseutuelinkeinojen Valituslautakunta.

- 22 The Maaseutuelinkeinojen Valituslautakunta gives legal rulings in accordance with the applicable rules and the general rules of procedure.
- 23 In certain circumstances, an appeal will lie against its decision to the Korkein Hallinto-oikeus (Supreme Administrative Court).
- 24 It follows that the Maaseutuelinkeinojen Valituslautakunta must be regarded as a court or tribunal for the purposes of Article 177 of the Treaty, and that the questions referred are therefore admissible.

The first part of the first question

- 25 The national court wishes to know, in substance, whether it is contrary to Regulation 2328/91 or Directive 75/268 to grant a compensatory allowance to a farmer whose home is not on the farm.
- 26 The Finnish Government, while stressing both the importance to be given to the objective of maintaining the rural population and the discretion enjoyed by the Member States in laying down further conditions, acknowledges that it may, in certain circumstances, be compatible with the objectives of the Community rules to grant the compensatory allowance to a farmer who does not live on a farm which he works.
- 27 In the view of the French Government, a reading of Article 18 of Regulation No 2328/91 in conjunction with Article 1 of Directive 75/268 clearly shows that the

purpose of the compensatory allowance is to maintain in less-favoured areas a farming population to whom a specific payment is made to compensate for the problems arising from the situation of those areas. On that reading, the French Government submits that the Community rules implicitly subject the grant of compensation to the condition that the farmer should have his permanent residence in the less-favoured area.

- 28 The Commission considers that the purpose of the compensatory allowance is to ensure the continuation of farming, which does not necessarily require permanent residence on a farm.
- 29 Mrs Jokela maintains that her temporary presence on the farm enables her to ensure that the farm continues to operate, which is the objective of the Community rules.
- 30 As a preliminary point, it must be borne in mind that under Article 177 of the Treaty the Court has no power to apply a rule of Community law to a particular case, but only to rule on the interpretation of the Treaty and of acts adopted by Community institutions (see, in particular, Case 100/63 *Kalsbeek v Sociale Verzekeringsbank* [1964] ECR 565, at p. 572, and Case 137/84 *Mutsch* [1985] ECR 2681, paragraph 6).
- 31 In examining this question, it must be noted that Article 18 of Regulation No 2328/91 simply states that the persons eligible for the compensatory allowance are 'farmers ... who undertake to pursue a farming activity in accordance with the aims of Article 1 of Directive 75/268/EEC', which itself refers to 'the continuation of farming, thereby maintaining a minimum population level or conserving the countryside in certain less-favoured areas'. The fifth recital of the preamble to Directive 75/268, also relied on by the French Government in support of its analysis, states that the system of aid to be introduced is to combat 'the steady decline in agricultural incomes' and 'the particularly poor working conditions prevalent' in less-favoured areas, which are causing 'large-scale depopulation of farming and rural

areas, which will eventually lead to the abandonment of land which was previously maintained, and moreover jeopardising the viability and continued habitation of those areas the population of which is predominantly dependent on an agricultural economy’.

- 32 It is apparent from those provisions that, as the Advocate General has observed at point 33 of his Opinion, the objective of the Community rules is essentially to support the continuation of farming in areas where it would be jeopardised without such support, with all the adverse consequences which that would involve for population levels and conservation in the areas concerned.
- 33 A farmer thus achieves the essential objective of the Community legislation if he keeps his farm running. By contrast, and contrary to the view put forward by the French Government, the objective of maintaining population levels, to which the continuation of farming undoubtedly contributes, cannot of itself imply a requirement of permanent residence.
- 34 The answer to the first part of the first question must therefore be that it is not contrary to Articles 17 and 18 of Regulation No 2328/91 or Article 1 of Directive 75/268 to grant a compensatory allowance to a farmer whose home is not on the farm.

The second part of the first question, points (a) and (b)

- 35 The national court asks next whether it is contrary to Community law, in particular the principles of equal treatment and legal certainty, to apply national legislation such as that in issue in the main proceedings.

36 Before addressing that question, it must be noted that Article 18(3) of Regulation No 2328/91 expressly authorises the Member States to lay down additional or limiting conditions for the grant of the compensatory allowance.

37 That discretion must therefore be borne in mind in assessing whether Paragraph 6 of Decision No 861/1995 of the Finnish Council of State is compatible with Community law. The first subparagraph of that provision requires, as a general rule, that a farmer claiming the compensatory allowance must reside on or within 12 kilometres of the farm. By way of derogation from that general rule, the third subparagraph allows the compensatory allowance to be granted even to a person who does not satisfy the residence requirement, where that person satisfies additional requirements guaranteeing the existence of at least some connection with the farm.

The general residence requirement

38 In this connection, the Finnish Government has claimed that the features of Finland's geographical situation and the fact that it is so sparsely populated justify its including a general requirement of residence on or very close to the farm among the additional conditions which Article 18(3) of Regulation No 2328/91 expressly authorises the States to lay down.

39 As pointed out above at paragraphs 31 to 33, the system of aid in question is also intended to help maintain a minimum population level in certain less-favoured areas. Furthermore, according to the second paragraph of Article 1 of Directive 75/268, the system introduced should 'take into account the situation and development objectives particular to each region'. It follows that the detailed rules governing the residence requirement laid down in the Finnish legislation for eligibility for the compensatory allowance fall within the objectives pursued by the system of aid and, consequently, within the limits of the discretion left to the Member States

by Article 18(3) of Regulation No 2328/91, in so far as they help maintain a minimum level of population which, as the Finnish Government has argued, is necessary for the maintenance of essential services for the inhabitants of areas which would otherwise be threatened by rural exodus.

- 40 Mrs Jokela, however, has claimed that by laying down in the first subparagraph of Paragraph 6 of Decision No 861/1995 a condition of residence within 12 kilometres of the farm, the Finnish Council of State has implicitly reintroduced the condition of residence in Finland, which was initially contained in Paragraph 5(3) of the decision and subsequently deleted as a result of objections raised by the Commission.
- 41 Mrs Jokela has also argued that the residence condition imposed by the Finnish rules is contrary to the principle of freedom of movement for persons.
- 42 That view cannot be upheld. As both the Finnish Government and the Commission have pointed out, a farmer who lives in Finland but more than 12 kilometres away from his farm is in the same position as one who lives in another Member State, since both must satisfy the particular conditions laid down in the Paragraph 6(3) of Decision No 861/1995 in order to qualify for the compensatory allowance.

The exception to the general residence requirement

- 43 The Finnish legislation frees a farmer claiming the compensatory allowance from any condition as to residence, provided that he can establish both the existence of special grounds and the fact that he works the farm himself and derives at least 50% of his income from farming or similar activities.

- 44 The national court has expressed doubts as to the compatibility of that system with the principle of equal treatment.
- 45 That principle precludes comparable situations from being treated differently, unless such treatment is objectively justified (*Case C-63/93 Duff and Others v Minister for Agriculture and Food, Ireland, and the Attorney General* [1996] ECR I-569, paragraph 26).
- 46 It is sufficient to observe here that, as the Finnish Government has stated, of the farmers in a position to claim the compensatory allowance — namely those farming in a less-favoured area of Finland — those who live on or very close to their farms always contribute directly to the attainment of the objectives of that allowance, including the maintenance of a minimum population in the less-favoured area. This is not the case where a farmer lives for most of the year at a greater distance, and it is thus justifiable to impose on him conditions intended to ensure that there is at least some connection between him and his farm, such as requiring him to work it himself and to derive at least 50% of his income from farming or similar activities.
- 47 In connection with the condition relating to special reasons, the national court has referred to a possible breach of the principle of legal certainty.
- 48 That principle requires that legal rules be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable (*Duff*, cited above, paragraph 20).
- 49 Admittedly, the concept of special grounds is imprecise and the legal situations it may cover are not clearly defined. However, that lack of precision reflects the

Finnish legislature's intention to provide the competent authority with an instrument flexible enough to enable it to resolve, after objective and complete examination of each case, particular problems which cannot be provided for in advance on account of their diversity. It is, moreover, bound to be significantly reduced as soon as there is a body of precedents enabling the criteria used to be identified and systematically categorised and thus to be known in advance.

- 50 The answer to the second part of the first question, points (a) and (b), must therefore be that it is not contrary either to the principle of equal treatment or to that of legal certainty for a farmer claiming the compensatory allowance who does not live on his farm but more than 12 kilometres by road from its operational centre to be required to work the farm himself and to derive at least 50% of his income from farming or similar activities and, in addition, to establish the existence of special grounds.

The second question

- 51 In Case C-9/97 the national court asks whether it is contrary to the principles of non-discrimination and proportionality, or any other principles of Community law, for a farmer who lives for most of the year in another Member State, in which her husband, who is also a part-owner of the farm in question, holds a diplomatic appointment, to be excluded from eligibility for the compensatory allowance.
- 52 In Case C-118/97, the national court asks whether it is contrary to those principles for a minor, living permanently with her legal guardian some 70 kilometres from the farm, which is not worked either by her or by her guardian, to be excluded from eligibility for the compensatory allowance.

53 That second question concerns the application to a particular case of Community rules the interpretation of which has been dealt with in the first question, and it is, as the Court has pointed out in paragraph 30 of this judgment, for the national court to determine, in the light of the ruling on the interpretation of Community law given in answer to the first question, the effects of the provisions of national law which it has to apply.

Costs

54 The costs incurred by the Finnish and French Governments and by the Commission, 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 proceedings 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 questions referred to it by the Maaseutuelinkeinojen Valituslautakunta by orders of 9 January 1997 and 12 March 1997, hereby rules:

- 1) It is not contrary to Articles 17 and 18 of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures or to Article 1 of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas to grant a

compensatory allowance for permanent natural handicaps to a farmer whose home is not on the farm.

- 2) It is not contrary either to the principle of equal treatment or to that of legal certainty for a farmer claiming the compensatory allowance who does not live on his farm but more than 12 kilometres by road from its operational centre to be required to work the farm himself, to derive at least 50% of his income from farming or similar activities and, in addition, to establish the existence of special grounds.**

Puissochet

Jann

Moitinho de Almeida

Gulmann

Wathelet

Delivered in open court in Luxembourg on 22 October 1998.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber