



Reports of Cases

Case C-509/10

Josef Geistbeck and Thomas Geistbeck
v
Saatgut-Treuhandverwaltungs GmbH

(Reference for a preliminary ruling from the Bundesgerichtshof)

(Intellectual and industrial property — Community plant variety rights — Regulation (EC) No 2100/94 — ‘Farmer’s privilege’ — Concept of ‘reasonable compensation’ — Compensation for damage suffered — Infringement)

Summary of the Judgment

1. *Agriculture — Uniform legislation — Plant variety rights — Article 94(1) of Regulation No 2100/94 — Determination of reasonable compensation payable by a farmer who has used the propagating material of a protected variety and has not fulfilled his obligations — Basis of calculation*

(Council Regulation No 2100/94, Arts 14(3) and 94(1); Commission Regulations No 1768/95, Art. 8, and No 2605/98)

2. *Agriculture — Uniform legislation — Plant variety rights — Article 94(1) of Regulation No 2100/94 — Determination of reasonable compensation payable by a farmer who has used the propagating material of a protected variety and has not fulfilled his obligations — Calculation*

(Council Regulation No 2100/94, Art. 94(1))

1. In order to determine the ‘reasonable compensation’ payable, under Article 94(1) of Regulation (EC) No 2100/94 on Community plant variety rights, by a farmer who has used the propagating material of a protected variety obtained through planting and has not fulfilled his obligations under Article 14(3) of that regulation, read in conjunction with Article 8 of Regulation No 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94, as amended by Regulation No 2605/98, it is appropriate to base the calculation on the amount of the fee payable for the licensed production of propagating material of protected varieties of the plant species concerned in the same area.

(see para. 43, operative part)

2. The payment of compensation for costs incurred for monitoring compliance with the rights of the plant variety holder cannot enter into the calculation of the ‘reasonable compensation’ provided for under Article 94(1) of Regulation No 2100/94 on Community plant variety rights.

(see para. 51, operative part)