

## Case 5/88

Hubert Wachauf

v

Federal Republic of Germany

(reference for a preliminary ruling  
from the Verwaltungsgericht Frankfurt am Main)

(Additional levy on milk)

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### Summary of the Judgment

- 1. Agriculture — Common organization of the markets — Milk and milk products — Additional levy on milk — 'Holding' — Concept — Leased agricultural production units — Not utilized for milk production — Inclusion  
(Council Regulation No 857/84, Art. 12(d))*
- 2. Community law — Principles — Fundamental rights — Restrictions — Permissibility — Conditions — Tenant of a farm — Expiry of tenancy — Lessee's right to compensation for his labour and investments — Application in the context of the scheme for an additional levy on milk — Alternative offered to Member States  
(Council Regulation No 857/84)*
- 3. Agriculture — Common organization of the markets — Milk and milk products — Additional levy on milk — Rules relating to transfers of reference quantities following a change of ownership or occupancy — Scope — Surrender on expiry of a lease of a holding not utilized for milk production at the time when lease was granted — Inclusion  
(Commission Regulation No 1371/84, Art. 5(3))*

1. The term 'holding' in Article 12(d) of Council Regulation No 857/84 relating to the application of the additional levy on milk covers all the agricultural production units which are the subject of a lease, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.

2. The fundamental rights recognized by the Court are not absolute, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.

In the light of those criteria, Community rules which, upon the expiry of the lease, had the effect of depriving the lessee, without compensation, of the fruits of his labour and of his investments in the tenanted holding would be incompatible with the requirements of the protection of fundamental rights in the Community legal order. Those requirements are also

binding on the Member States when they implement Community rules.

In the context of the transmission, on expiry of the lease of a tenanted holding, of reference quantities attached to the holding and exempt from the additional levy on milk, Regulation No 857/84 leaves the competent national authorities a sufficiently wide margin of appreciation to enable them to ensure that that regulation is applied in a manner consistent with the requirements of the protection of fundamental rights, either by giving the lessee the opportunity of keeping all or part of the reference quantity if he intends to continue milk production, or by compensating him if he undertakes to abandon such production definitively.

3. Article 5(3) of Regulation No 1371/84 relating to the transmission, in the context of the scheme for an additional levy on milk, of reference quantities exempt from the levy in the case of a change of ownership or occupancy of a holding, must be interpreted as applying to the surrender, upon the expiry of the lease, of all the agricultural production units leased, even if those units, as leased, had neither dairy cows nor the technical facilities necessary for milk production and the lease provided for no obligation on the part of the lessee to engage in milk production.