

Case C-189/01

H. Jippes and Others

v

Minister van Landbouw, Natuurbeheer en Visserij

(Reference for a preliminary ruling
from the College van Beroep voor het bedrijfsleven)

(Agriculture — Control of foot-and-mouth disease —
Prohibition of vaccination — Principle of proportionality —
Taking animal welfare into account)

Judgment of the Court, 12 July 2001 I-5693

Summary of the Judgment

1. *Community law — Principles — Taking animal welfare into account — General principle — None — Obligation to take account of animal welfare requirements in the formulation and implementation of the Community's policy — Scope (Arts 2 EC and 33 EC; Protocol on protection and welfare of animals; Council Decision 78/923)*

2. *Agriculture — Approximation of laws — Control of foot-and-mouth disease — Directive 85/511 — Ban on preventive vaccination — Infringement of the principle of proportionality — None*
(Council Directive 85/511, Art. 13)

1. Ensuring the welfare of animals does not form part of the objectives of the Treaty, as defined in Article 2 EC, and no such requirement is mentioned in Article 33 EC, which sets out the objectives of the common agricultural policy.

As to the Protocol on protection and welfare of animals, adopted at the same time as the Treaty of Amsterdam and annexed to the Treaty establishing the European Community, it is apparent from its very wording that it does not lay down any well-defined general principle of Community law which is binding on the Community institutions. Although it provides that 'full regard' must be had to the welfare requirements of animals in the formulation and implementation of the Community's policy, it limits that obligation to four specific spheres of Community activity and provides that the legislative or administrative provisions and customs of the Member States must be respected as regards, in particular, religious rites, cultural traditions and regional heritage.

Nor is it possible to infer any principle of general application from the 1976

European Convention on the Protection of Animals kept for Farming Purposes, approved on behalf of the Community by Decision 78/923, which does not impose any clear, precisely defined and unqualified obligation, or from Declaration No 24 on the protection of animals, annexed to the Final Act of the Treaty on European Union, which has been superseded by the Amsterdam Protocol and the wording of which is even less binding than that of the Protocol. Similarly, Article 30 EC refers to the 'life of... animals' only by way of exception to the prohibition of measures having equivalent effect, and there is nothing in the Court's case-law to indicate that the Court has accepted any plea of justification based on that provision.

Lastly, although there exist various provisions of secondary legislation referring to animal welfare, they likewise contain no indication that the need to ensure animal welfare is to be regarded as a general principle of Community law.

The Court has however held on several occasions that the interests of the

Community include the health and protection of animals, ruling that efforts to attain the objectives of the common agricultural policy cannot disregard requirements of public interest, such as the protection of the health and life of animals, which the Community institutions must take into account in exercising their powers.

The Protocol on protection and welfare of animals seeks to reinforce the obligation to take the health and protection of animals into consideration by providing that full regard must be had to the welfare requirements of animals in the formulation and implementation of the Community's policy, particularly in relation to the common agricultural policy, whilst at the same time recognising that differences currently exist between the legislation of the respective Member States and the various sentiments harboured within those Member States. Fulfilment of that obligation can be verified, in particular, in the context of a review of the proportionality of the measure.

(see paras 71, 73-79)

2. Bearing in mind the wide discretionary power enjoyed by the Community

legislature in matters concerning the common agricultural policy, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue; moreover, since the legality of a Community act cannot depend on retrospective assessment of its efficacy, where the Community legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question.

The ban on preventive vaccination imposed by Article 13 of Directive 85/511 introducing Community measures for the control of foot-and-mouth disease does not exceed the limits of what is appropriate and necessary in order to attain the objective pursued by the Community rules. When instituting the policy of non-vaccination, the Council carried out a global assessment of the advantages and drawbacks of the system to be established and that policy, corresponding to the recommendations of the International Office of Epizootics and the practice followed by numerous countries worldwide, was not on any view manifestly inappropriate in the light of the objective of controlling foot-and-mouth disease.

In addition, the ban on a general system of preventive vaccination does not preclude recourse, where the circumstances so require, to selective emergency vaccination in accordance

with the requirements of a particular situation.

(see paras 82, 84, 95-96, 100)