OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 26 June 1986

My Lords,

Mr Cognet is the manager of a Centre Leclerc. He was prosecuted for selling books at a 20% discount in breach of Article 1 of French Law 81-766 of 10 August 1981 as subsequently amended.

The law, before the amendment, provided that every natural or legal person who publishes or imports books shall fix a price for sale to the public in respect of the books which he publishes or imports. Retailers are obliged to charge a retail selling price of between 95 and 100% of the price fixed by the publisher or importer. There is a special provision that where the importation in question is of books published in France, the selling price to the public fixed by the importer shall be at least equal to that which has been fixed by the publisher.

In the Court's decision of 10 January 1985 in Case 229/83 *Association des centres distributeurs Édouard Leclerc* v *'Au blé vert' Sarl* it was held that certain provisions of that law were contrary to Article 30 of the Treaty. Accordingly, by French Law 85-500 of 13 May 1985, the basic law was amended to include the following: 'The provisions of the preceding paragraph do not apply to books imported from a Member State of the European Economic Community unless it is established, *inter alia* by the fact that the books have not been genuinely marketed in that State, that the aim of the operation was to effect the retail sale of the books outside the scope of the provisions of the fourth paragraph of this article.'

Mr Cognet, although admitting that he had sold books at a discount in breach of the law, contended that the provisions of the Law in question were contrary to the Treaty of Rome. His basic argument is that the amending Law makes a distinction between imported books and French books, which is to the disadvantage of the French distributor or retailer who sells books produced and only marketed in France and which is contrary, in particular, to Article 7 of the Treaty. The argument runs that the prices of books published in France and re-imported from another Member State are not regulated, whereas the prices of books published in France which have not been circulated outside France are subject to a system of imposed prices.

Accordingly, it was argued before the tribunal de police of Bressuire in France, before whom these criminal proceedings are pending, that French distributors are exposed to external competition which they have no means to combat. Therefore, there is discrimination between French traders and foreign exporters.

That court has referred to the Court this question:

'Do the Community principles of equal treatment and non-discrimination, as

expressed in particular in Articles 3(f) and 7 of the EEC Treaty, prohibit the enactment of legislation in a Member State creating in a single sector, namely the book trade, for products which are identical or similar, a double system of prices consisting of:

(i) imposed prices, which may not be reduced by more than 5% for books published and sold as such without having crossed a Community border at the marketing stage;

(ii) and non-regulated prices, in principle without any limit, *inter alia* for books published in France and re-imported from another Member State?'

In its written submissions, the only submissions put in writing in the case, the Commission submitted that a negative answer should be given to this question.

At the hearing it was submitted, on behalf of Mr Cognet, that the French rule in question does impede competition. It makes the book market less flexible, it disables the French retailer from reacting to consumer pressure. It is said, on the basis of the Court's decision in Case 13/77 *INNO* v *ATAB* [1977] ECR 2115, that this is the kind of interference with competition which can fall within the Treaty and with which the Court is able to deal.

Secondly, it has been argued on behalf of Mr Cognet, that in addition to Article 7 of the Treaty which is relied on there is a general principle of equality, and that if the result of what is done is to discriminate against a national producer or a national retailer, nothing in the Court's decisions in such cases as Case 86/78 *Peureux* [1979] ECR 897 and Joined Cases 314 to 316/81 and 83/82 *Waterkeyn* [1982] ECR 4337 prevents the Court from holding that what is sometimes called 'reverse discrimination' is unlawful.

It seems to me that the answer to the national court's questions can be put relatively shortly.

The first question which arises concerns the significance of Article 3(f) of the Treaty, which provides that the activities of the Community are to include the institution of a system ensuring that competition in the common market is not distorted.

In its decision in the *Leclerc* case, the Court, in my view, made it quite plain that Article 3(f) of the Treaty cannot and does not have direct effect itself. It only operates through substantive provisions on competition such as those in Article 85.

The Court also made it clear that Article 85 does not apply to situations such as those concerned in the present case where national legislation is involved. That article is concerned with concerted practices and agreements between undertakings which do not arise here. Therefore, despite what has been said about the effect on competition, it seems to me that the principle in Article 3(f) does not apply in the present case.

The second specific article of the Treaty which is relied on is Article 7. Article 7 provides that, within the scope of the application of the Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

It seems to me that what is really involved here is not discrimination on the grounds of nationality but the adoption of different rules in relation to the pricing of different goods. There is here no discrimination against persons on the grounds of

nationality. The difference which exists is between those French traders who deal in books published in France which have never left France, and those French traders who seek to deal with books which have been re-imported from another country.

As to the general principle of equality which is relied upon, the argument has centred on Article 30 of the Treaty. The Court has, in the judgments to which I have referred, made it plain that Article 30 is dealing with the removal of barriers on the entry of goods into one Member State from another Member State. Whether or not, as the Commission argues, there is a general rule that reverse discrimination is not covered by the Treaty, it does not seem to be necessary to decide. What is plain here is that the new French rule does remove the pre-existing barrier to the importation of goods which existed. If it is right that, as a result, French traders selling books published in France which have not been re-imported are at a disadvantage, it seems to me that that is entirely a matter for national law to deal with and that no breach of Community law has been shown.

Accordingly, in my opinion, the answer to the question referred by the national court should be on the lines that the Community principles of equal treatment and non-discrimination, as expressed in particular in Articles 3(f) and 7 of the Treaty, do not prohibit the enactment of legislation in a Member State creating in a single sector, namely the book trade, for products which are identical or similar, a double system of prices consisting of:

(i) imposed prices, which may not be reduced by more than 5% for books published and sold as such, without having crossed a Community border at the marketing stage; and

(ii) non-regulated prices, in principle without any limit, *inter alia* for books published in the Member State concerned and re-imported from another Member State.

The costs of the Commission in this case are not recoverable; the costs of the parties to the main action fall to be dealt with by the national court.