# JUDGMENT OF THE COURT (Fourth Chamber)
25 September 1985 *

In Joined Cases 114 and 115/84

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal de commerce [Commercial Court], Melun, for preliminary rulings in the actions pending before that court between

**SA Établissements Piszko, J. Maroccini and Chambre syndicale nationale du commerce et de la réparation automobile (CSNCRA)** [National Automobile Trade and Repair Association], on the one hand,

and

**SA Dammarie Distribution 'Centre Leclerc'** (Case 114/84)

and

**SA Carrefour Supermarché** (Case 115/84), on the other,

on the interpretation of Articles 3 (f), 5 and 36 of the EEC Treaty,

THE COURT (Fourth Chamber)

composed of: G. Bosco, President of Chamber, P. Pescatore, T. Koopmans, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Dammarie Distribution 'Centre Leclerc' SA, the defendant in the main proceedings in Case 114/84, by P. Jousset, of the Laval Bar,

the French Government by S. C. de Margerie, acting as Agent, assisted by I. Knock, Administrator,

* Language of the Case: French.

the Commission of the European Communities by its Legal Advisers, R.-C. Béraud and G. Marenco, acting as Agents, assisted by N. Coutrelis, a member of its Legal Department,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 May 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

## Decision

1 By two interlocutory orders of 12 March 1984, which were received at the Court on 26 April 1984, the President of the Tribunal de commerce, Melun, referred to the Court for preliminary rulings under Article 177 of the EEC Treaty a number of questions concerning the interpretation of Articles 3 (f), 5 and 36 of the EEC Treaty, in order to enable it to determine whether national rules imposing a minimum price on the sale of fuel to consumers were compatible with Community law.

2 The questions were raised in the context of proceedings between Établissements Piszko SA, whose registered office is at Pringy, J. Maroccini, a garage proprietor residing at Pringy, and Chambre syndicale nationale du commerce et de la réparation automobile, on the one hand, and two companies operating supermarkets, namely Dammarie Distribution 'Centre Leclerc' SA and Carrefour Supermarché SA, on the other hand. The plaintiffs in the main proceedings requested the Tribunal de commerce, Melun, to adopt by interlocutory order the interim measures needed to restore the *status quo* and bring to an end a manifestly unlawful mischief and to restrain the two companies from offering for sale and selling fuel at unlawful discounts at prices below the minimum prices fixed by Ministerial Decree.

3 The two defendant companies did not deny that in February 1984 they sold regular and super-grade petrol at prices below those applicable under Ministerial Decree No 83-58/A of 9 November 1983 concerning the retail selling price of

fuel. However, they contended that that decree was in conflict with Community law and therefore illegal.

4 In Case 114/84 the Tribunal de commerce, Melun, referred to the Court of Justice the following question for a preliminary ruling:

'Must Articles 3 (f) and 5 of the Treaty of 25 March 1957 establishing the European Economic Community be interpreted as prohibiting the introduction in a Member State, by the adoption of laws or regulations, of minimum prices for the retail sale at petrol pumps of regular grade and high-grade petrol?'

5 The questions referred to the Court in Case 115/84 are as follows:

'(1) Is the practice of imposing minimum prices lawful in view of the fundamental principle of free competition enunciated in Article 3 of the Treaty of Rome?

(2) In the case of motor fuels, may legislation imposing minimum prices be regarded as justified on grounds of public policy within the meaning of Article 36 of the Treaty?'

6 The questions concerning the interpretation of Articles 3 (f) and 5 of the EEC Treaty have already been examined by the Court in its judgment of 29 January 1985 in Case 231/83 (*Cullet* v *Centre Leclerc Toulouse* [1985] ECR 315). On that occasion the Court found itself obliged to extend its examination to the provisions which give effect to the principles set out in Articles 2 and 3 of the EEC Treaty, especially in the field of the free movement of goods. In particular, the Court interpreted Article 30 of the Treaty, an examination of which must necessarily precede an examination of Article 36, which is referred to in the second question raised in Case 115/84.

7 The price system at issue in the main proceedings is the same as that which gave rise to Case 231/83 except that Ministerial Decree No 83-58/A of 9 November 1983, which is applicable to the facts of these cases, increased, with regard to regular and super-grade petrol, the margin within which the minimum retail selling

price fixed under the rules in force could be reduced. However, with regard to the application of Community law, that factor does not raise problems which differ from those resolved by the aforementioned judgment of 29 January 1985.

8 In that judgment the Court came to the following conclusions:

Articles 3 (f) and 5 of the EEC Treaty do not prohibit national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuel;

Article 30 of the EEC Treaty prohibits such rules where the minimum price is fixed on the basis solely of the ex-refinery prices of the national refineries and where those ex-refinery prices are in turn linked to the ceiling price which is calculated on the basis solely of the cost prices of national refineries when the European fuel rates are more than 8% above or below those prices.

9 With regard to the interpretation of Article 36 of the EEC Treaty, the view was taken in that judgment that legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of that provision.

10 Since there appears to be no new factor in the present cases reference should be made, with regard to the replies to be given to the Tribunal de commerce, Melun, and to the considerations which led to those replies, to the text of the aforementioned judgment of 29 January 1985, a copy of which is annexed hereto.

## Costs

11 The costs incurred by the French Government and the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings brought before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

in answer to the questions referred to it by the President of the Tribunal de commerce, Melun, by two orders of 12 March 1984, hereby rules:

**(1) Articles 3 (f) and 5 of the EEC Treaty do not prohibit national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuel;**

**(2) Article 30 of the EEC Treaty prohibits such rules where the minimum price is fixed on the basis solely of the ex-refinery prices of the national refineries and where those ex-refinery prices are in turn linked to the ceiling price which is calculated on the basis solely of the cost prices of national refineries when the European fuel rates are more than 8% above or below those prices.**

**(3) Legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of Article 36 of the EEC Treaty.**

Bosco Pescatore

Koopmans Bahlmann O'Higgins

Delivered in open court in Luxembourg on 25 September 1985.

P. Heim
Registrar

G. Bosco
President of the Fourth Chamber