JUDGMENT OF THE COURT
25 July 1991 *

In Joined Cases C-1/90 and C-176/90,

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal Superior de Justicia de Cataluña for a preliminary ruling in the proceedings pending before that court between

Aragonesa de Publicidad Exterior SA

and

Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña

and between

Publivía SAE

and

Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña,

on the interpretation of Articles 30 and 36 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Louterman, Principal Administrator,

* Language of the case: Spanish.

after considering the written observations submitted

— In Case C-1/90 on behalf of:

— the applicant in the main proceedings, by Juan Pascual Planas and Joaquín Masramón Fontanals, of the Barcelona Bar, and by Jaime Gassó i Espina, Avoué, Barcelona;

— the defendant in the main proceedings, by Marta Moix i Puig, Abogado in the Litigation Department of the Central Legal Office of the Autonomous Community of Catalonia, acting as Agent;

— the Belgian Government, by R. van Havere, Chief Inspector, Director at the Ministry for Foreign Affairs, External Trade and Development Cooporation, acting as Agent;

— the Commission of the European Communities, by Blanca Rodríguez Galindo, a member of its Legal Service, acting as Agent;

— in Case C-176/90 on behalf of:

— the applicant in the main proceedings, by Eduardo Vivancos Comes and Enrique Vendrell Santiveri, of the Barcelona Bar, and by Araceli García Gómez, Avoué, Barcelona;

— the defendant in the main proceedings, by Mercè Corretja i Torrens, Abogado in the Litigation Department of the Central Legal Office of the Autonomous Community of Catalonia, acting as Agent;

— for the United Kingdom, by Hussein A. Kaya, of the Treasury Solicitor's Department, acting as Agent;

— for the Commission of the European Communities, by Blanca Rodríguez Galindo, a member of its Legal Service, acting as Agent;

having regard to the Report for the Hearing,

after hearing the oral observations of the applicants in the main proceedings, represented by Juan Pascual Planas, Joaquín Masramón Fontanals, Enrique Vendrell Santiveri and Josep Moltó Darner, of the Barcelona Bar, and the Commission of the European Communities, at the hearing on 24 April 1991,

after hearing the Opinion of the Advocate General at the sitting on 11 June 1991,

gives the following

Judgment

1 By order of 7 November 1989, which was received at the Court on 2 January 1990 and rectified by order of 8 January 1990, received at the Court on 5 February 1990, and by order of 29 November 1989, which was received at the Court on 7 June 1990 and rectified by order of 28 June 1990, received at the Court on 12 July 1990, the Tribunal Superior de Justicia de Cataluña (High Court of Catalonia) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Articles 30 and 36 of the EEC Treaty.

2 Those questions were raised in the course of proceedings between, on the one hand, Aragonesa de Publicidad Exterior and Publivía, which operate advertising hoardings, and the Departamento de Sanidad y Seguridad Social (Department of Health and Social Security) of the Autonomous Community of Catalonia.

3 It is apparent from the documents before the Court that administrative fines were imposed on those companies for infringing the provisions of Law No 20/85 enacted on 25 July 1985 by the Parliament of the Autonomous Community of Catalonia on prevention and assistance with regard to substances likely to lead to dependency (DOG No 572, of 7 August 1985, p. 465), which prohibit the advertising of beverages having an alcoholic strength of more than 23 degrees in the media, on streets and highways (except to indicate centres of production and sale) and in cinemas and on public transport.

4 Aragonesa de Publicidad Exterior and Publivía appealed against those fines to the Tribunal Superior de Justicia de Cataluña. Before that court they contended in particular that the Catalan law on which the decision was based was contrary to Article 30 of the Treaty, inasmuch as by virtue of the advertising restrictions which it imposed, it affected marketing opportunities for beverages originating in other Member States.

5 Those were the circumstances in which the Tribunal Superior de Justicia decided to stay the proceedings until the Court had given a preliminary ruling on the following questions:

'(1) Does a law of a Member State (or, in this case, of the parliament of an autonomous community of a Member State with powers, under domestic legislation, to legislate on particular matters) which prohibits, within the territory under its jurisdiction, the advertising of beverages having an alcoholic strength of more than 23 degrees in (a) the mass media (b) streets and highways, with the exception of signs indicating centres of production and sale (c) cinemas (d) public transport, constitute a measure having an effect equivalent to a quantitative restriction on exports within the meaning of Article 30 of the EEC Treaty?

(2) If the answer is in the affirmative, must the first sentence of Article 36 of the EEC Treaty be interpreted as meaning that a Member State may lawfully impose a partial prohibition on the advertising of beverages having an alcoholic strength of more than 23 degrees for the protection of the health of humans in accordance with domestic law?

(3) May a prohibition on grounds of public health as described above constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 With these three questions, which must be examined together, the national court is seeking to ascertain whether Articles 30 and 36 of the EEC Treaty preclude rules, such as those contained in the law at issue in the main proceedings, which in the cases therein specified prohibit the advertising of beverages having an alcoholic strength of more than 23 degrees.

8 It should first be pointed out that Article 30 of the Treaty may apply to measures adopted by all the authorities of the Member States, be they the central authorities, the authorities of a federal State, or other territorial authorities.

9 Under Article 30 of the Treaty 'quantitative restrictions on imports and all measures having equivalent effect shall . . . be prohibited between Member States'. In accordance with the settled case-law of the Court, any measure capable of hindering, directly or indirectly, actually or potentially, intra-Community trade is to be deemed to be a measure having equivalent effect.

10 As the Court held, *inter alia*, in its judgment in Case C-362/88 *GB-INNO-BM* v *Confédération du Commerce Luxembourgoise* [1990] ECR 667, paragraph 7, legislation which restricts or prohibits certain forms of advertising and certain means of sales promotion may, although it does not directly affect trade, be such as to restrict the volume of trade because it affects marketing opportunities.

11 Accordingly, national legislation such as that at issue in the main proceedings, which prohibits the advertising in certain places of beverages having an alcoholic strength of more than 23 degrees may constitute a hindrance to imports from other Member States and, therefore must in principle be regarded as a measure having equivalent effect within the meaning of Article 30.

12 However, in its observations to the Court, the Commission argues that such legislation, which applies without distinction to domestic and imported products, must be upheld by reference to Article 30 alone without its being necessary to have recourse, as the national court does, to Article 36, because that legislation is justified by an imperative requirement, namely the protection of public health.

13 That form of reasoning cannot be accepted. The protection of public health is expressly mentioned amongst the grounds of public interest which are set out in Article 36 and enable a restriction on imports to escape the prohibition laid down in Article 30. In those circumstances, since Article 36 also applies where the contested measure restricts only imports, whereas according to the Court's case-law the question of imperative requirement for the purposes of the interpretation of Article 30 cannot arise unless the measure in question applies without distinction to both national and imported products, it is not necessary to consider whether the protection of public health might also be in the nature of an imperative requirement for the purposes of the application of Article 30.

14 In those circumstances it is first of all necessary to ascertain whether the legislation at issue is of such a nature as to protect public health and, secondly, is proportionate to the objective to be attained.

15 On the first point it is sufficient to observe, as the Court pointed out in its judgment in Case 152/78 *Commission* v *France* [1980] ECR 2299, paragraph 17, that advertising acts as an encouragement to consumption and the existence of rules restricting the advertising of alcoholic beverages in order to combat alcoholism reflects public health concerns.

16 On the second point it must be stated that in the present state of Community law, in which there are no common or harmonized rules governing in a general manner the advertising of alcoholic beverages, it is for the Member States to decide on the degree of protection which they wish to afford to public health and on the way on which that protection is to be achieved. They may do so, however, only within the limits set by the Treaty and must, in particular, comply with the principle of proportionality.

17 A national measure such as that at issue restricts freedom of trade only to a limited extent since it concerns only beverages having an alcoholic strength of more than 23 degrees. In principle, the latter criterion does not appear to be manifestly unreasonable as part of a campaign against alcoholism.

18 On the other hand, the measure at issue does not prohibit all advertising of such beverages but merely prohibits it in specified places some of which, such as public highways and cinemas, are particularly frequented by motorists and young persons, two categories of the population in regard to which the campaign against alcoholism is of quite special importance. It thus cannot in any event be criticized for being disproportionate to its stated objective.

19 Secondly, in order to benefit from the derogation provided for in Article 36, a national provision must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, to use the precise terms of the second sentence of that article.

20 As the Court held in Case 34/79 *Regina* v *Henn and Darby* [1979] ECR 3795, paragraph 21, the function of the second sentence of Article 36 is to prevent restrictions on trade based on the grounds mentioned in the first sentence from being diverted from their proper purpose and used in such a way as to create discrimination in respect of goods originating in other Member States or indirectly to protect certain national products.

21 In that connection, Aragonesa de Publicidad Exterior and Publivía argue that, in assessing the discriminatory and protective nature of the measure, it is necessary to take more into account than the fact that the Catalan law makes no formal distinction between the domestic or foreign origin of the beverages in question. It should be borne in mind that that law applies only within the territorial jurisdiction of the parliament of Catalonia.

22 According to the applicants in the main proceedings, what should be compared, therefore, is not the situation of imported products with that of products from Spain as a whole but the situation of imported products with that of Catalan products. Since the majority of Catalan-produced alcoholic beverages have an alcohol content of less than 23 degrees, the measure at issue should be regarded as discriminatory and protective in nature, inasmuch as it seeks to discourage the

consumption of beverages with a high alcohol content and thus places at a disadvantage beverages originating outside Catalonia, and inasmuch, on the other hand, as it does not restrict the advertising of beverages with a lower alcohol content, thus protecting locally-produced beverages.

23 Those arguments cannot be upheld.

24 It is true that, when a national measure has limited territorial scope because it applies only to a part of the national territory, it cannot escape being characterized as discriminatory or protective for the purposes of the rules on the free movement of goods on the ground that it affects both the sale of products from other parts of the national territory and the sale of products imported from other Member States. For such a measure to be characterized as discriminatory or protective, it is not necessary for it to have the effect of favouring national products as a whole or of placing only imported products at a disadvantage and not national products.

25 However, national legislation such as that in question in the main proceedings does not constitute arbitrary discrimination or a disguised restriction on intra-Community trade. On the one hand, it is clear from the documents before the Court that such legislation does not distinguish between products according to their origin. The restrictions which it imposes do not apply to beverages having an alcoholic strength of less than 23 degrees and therefore do not restrict imports of such beverages from other Member States. In regard to beverages having an alcoholic strength of more than 23 degrees, those restrictions affect both products, in not inconsiderable quantities, originating in the part of the national territory to which they apply and products imported from other Member States. On the other hand, the fact that that part of the national territory produces more beverages having an alcoholic strength of less than 23 degrees than beverages with a higher alcohol content is not in itself sufficient to cause such legislation to be regarded as liable to give rise to arbitrary discrimination or a disguised restriction on intra-Community trade.

26 Accordingly, the reply to be given to the questions submitted for a preliminary ruling should be that Articles 30 and 36 of the EEC Treaty, viewed together, do not preclude legislation such as the law at issue in the main proceedings which, in part of the territory of a Member State, prohibits the advertising of beverages having an alcoholic strength of more than 23 degrees, in the media, on streets and highways (with the exception of signs indicating centres of production and of sale) in cinemas and on public transport, where that legislation, even if it constitutes a measure having equivalent effect within the meaning of Article 30 of the EEC Treaty, can be justified under Article 36 of that Treaty on grounds of the protection of public health, and where, in view of its characteristics and the circumstances set out in the documents before the Court, it does not appear to be a means, even an indirect means, of protecting certain local products.

Costs

27 The costs incurred by the Belgian Government, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunal Superior de Justicia de Cataluña, by orders of 7 November 1989 and 29 November 1989, rectified respectively by orders of 8 January 1990 and 28 June 1990, hereby rules:

Articles 30 and 36 of the EEC Treaty, viewed together, do not preclude legislation such as the law at issue in the main proceedings which, in part of the territory of a Member State, prohibits the advertising of beverages having an alcoholic strength of more than 23 degrees in the media, on streets and highways (with the exception of signs indicating centres of production and sale) in cinemas and on public

transport, where that legislation, even if it constitutes a measure having equivalent effect within the meaning of Article 30 of the EEC Treaty, can be justified under Article 36 of that Treaty on grounds of the protection of public health, and where, in view of its characteristics and the circumstances set out in the documents before the Court, it does not appear to be a means, even an indirect means, of protecting certain local products.

Due Mancini O'Higgins Rodríguez Iglesias

Slynn Joliet Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 25 July 1991.

J.-G. Giraud
Registrar

O. Due
President