JUDGMENT OF THE COURT (Sixth Chamber)

3 October 2000 *

In Case C-9/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour d'Appel de Grenoble, France, for a preliminary ruling in the proceedings pending before that court between

Échirolles Distribution SA

and

Association du Dauphiné and Others,

on the interpretation of Articles 3(c) and (g) of the EC Treaty (now, after amendment, Article 3(c) and (g) EC), 3a and 5 of the EC Treaty (now Articles 4 EC and 10 EC), the second paragraph of Article 7a of the EC Treaty (now, after amendment, the second paragraph of Article 14 EC) and 102a and 103(3) and (4) of the EC Treaty (now Articles 98 EC and 99(3) and (4) EC),

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, R. Schintgen, C. Gulmann, J.-P. Puissochet and V. Skouris, Judges,

Advocate General: S. Alber,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Échirolles Distribution SA, by P. Clément-Cuzin, of the Grenoble Bar,

— Association du Dauphiné, Association des Libraires de Bandes Dessinées, Momie Folie SARL and Union des Libraires de France, by P. Simoneau and C. Cochet, of the Lille Bar,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and F. Million, Chargé de Mission in that Directorate, acting as Agents,

— the Greek Government, by G. Kanellopoulos, Deputy Legal Adviser to the State Legal Council, and E.-M. Mamouna, of the European Community Law Department of the Ministry of Foreign Affairs, acting as Agents,

— the Austrian Government, by C. Pesendorfer, Oberrätin in the Austrian Chancellery, acting as Agent,

— the Norwegian Government, by J. Bugge-Mahrt, Deputy Director-General in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by W. Wils, of its Legal Service, and O. Couvert-Castéra, a national civil servant on secondment to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Échirolles Distribution SA, represented by L. Germain Phion, of the Grenoble Bar, of Association du Dauphiné and others, represented by P. Simoneau and C. Cochet, of the French Government, represented by F. Million, of the Greek Government, represented by G. Paraskevopoulou, Deputy Legal Adviser to the State Legal Council, acting as Agent, of the Austrian Government, represented by T. Kramler, Magister in the Constitutional Law Department of the Chancellery, acting as Agent, and of the Commission, represented by W. Wils, at the hearing on 6 April 2000,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2000,

gives the following

Judgment

1 By judgment of 19 January 1999, received at the Court on 18 January 1999, the Cour d'Appel (Court of Appeal), Grenoble, referred to the Court for a preliminary ruling under Article 177 of the EC treaty (now Article 234 EC) a question on the interpretation of Articles 3(c) and (g) of the EC Treaty (now, after amendment, Article 3(c) and (g) EC), 3a and 5 of the EC Treaty (now Articles 4 EC and 10 EC), the second paragraph of Article 7a of the EC Treaty (now, after amendment, the second paragraph of Article 14 EC) and 102a and 103(3) and (4) of the EC Treaty (now, after amendment, Articles 98 EC and 99(3) and (4) EC).

2 The question has been raised in proceedings between Échirolles Distribution SA, which runs a business under the name 'Centre Leclerc' (hereinafter 'Échirolles'), and Mr Corbet, a bookseller, and Association du Dauphiné and others, regarding the sale by Échirolles of books at a price more than 5% lower than that fixed by the publisher or importer.

The national legislation

3 Article 1 of Law No 81-766 of 10 August 1981 on book prices (JORF of 11 August 1981, hereinafter 'the Law of 10 August 1981') provides:

'Any natural or legal person who publishes or imports books is required to fix the price for sale to the public of the books published or imported by him.

That price shall be brought to the notice of the public. A decree shall specify, in particular, the conditions under which that price is to be indicated on the book and shall also set out the obligations of the publisher and the importer regarding the use of wording enabling the book to be identified and calculation of the time limits provided for by the present law.

Every retailer must offer free of charge a service whereby individual books can be ordered. However, and only in this case, the retailer may add to the actual price which he charges expenses or remuneration for exceptional additional services expressly requested by the purchaser, the amount of which has been agreed in advance.

The actual selling price charged by retailers to the public shall be between 95 and 100% of the price fixed by the publisher or importer.

Where the import involves books published in France, the price for sale to the public shall be at least equal to that fixed by the publisher.

(Law No 85-500 of 13 May 1985, Article 1) The provisions of the foregoing paragraph shall not apply to books imported from a Member State of the European Economic Community unless objective factors, in particular the lack of marketing in that State, make it clear that the aim of the transaction was to remove the sale to the public from the scope of the provisions of the fourth paragraph of the present article.'

The main proceedings

4 By judgment of the Tribunal de Commerce (Commercial Court), Grenoble, of 12 December 1997, Échirolles was ordered to pay certain amounts, by way of damages, to the defendants in the main proceedings for having offered books for sale at a price more than 5% lower than that fixed by the publisher or importer, contrary to the fourth paragraph of Article 1 of the Law of 10 August 1981.

5 In the appeal which it brought against that judgment before the Cour d'Appel, Grenoble, Échirolles asked that a question be referred to the Court of Justice for a preliminary ruling on the compatibility of the French legislation with the rules on 'an internal market extending throughout the States of the Union', as provided for in Articles 3(g), 5 and 7a of the Treaty.

6 The defendants in the main proceedings contended that, according to the case-law of the Court, the Law of 10 August 1981 conforms with Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28 EC, 29 EC and 30 EC) and that the Court has held that, in the absence of a Community competition policy in the book sector, the obligations of the Member States deriving from Articles 3, 5 and 85 of the EC Treaty (now Article 81 EC) were not sufficiently defined to prohibit them from enacting legislation providing for the fixing of book prices.

7 The national court states that, according to the case-law of the Court of Justice, the practice of imposing book prices is regarded by Community law as being contrary both to Article 85 of the Treaty where it derives from concertation between members of the trade (Joined Cases 43/82 and 63/82 *VBVB and VBBB* v *Commission* [1984] ECR 19) and to Articles 30 and 36 of the Treaty where it impedes trade between Member States. The national court also states that the French legislation has already been amended on several occasions as a result of preliminary rulings given by the Court (some of which gave rise to Decree No 90-

73 of 10 January 1990 and a circular of the same date) and that the fact that the Commission has taken no action supports the conclusion that that legislation no longer infringes the Community rules on the free movement of goods.

8 The national court goes on to say that the Court held in Case 229/83 *Leclerc* v *Au Blé Vert* [1985] ECR 1 that, as Community law stands, the second paragraph of Article 5, in conjunction with Article 3(f), of the EEC Treaty (which became Article 3(g) of the EC Treaty and is now, after amendment, Article 3(g) EC) and Article 85 of that Treaty do not preclude the Member States from adopting legislation under which the retail price of books must be fixed by their publisher or importer and is binding on all retailers. It observes that in paragraph 20 of that judgment the Court referred to the lack of any Community competition policy relating to purely national systems and practices in the book trade with which the Member States are required to comply by virtue of their duty to abstain from any measure which might jeopardize the attainment of the objectives of the Treaty. It draws attention to the fact that the Court was careful to refer to Community law as it stood at the time when it gave that judgment.

9 Referring to the question framed by Échirolles, the national court states that, when the Court gave its decision as to the compatibility of the French legislation with Community law, Article 3(c) of the Treaty did not mention the internal market and Article 7a of the Treaty did not exist. It considers that, in order to assess the relevance of any question referred for a preliminary ruling, it is necessary to determine whether the concept of the internal market is limited to a market in which goods circulate freely from one Member State to another or whether it is concerned with a single market in which the rules governing its functioning are binding both on the Member States and on individuals.

10 In that connection, the Cour d'Appel deduces from the fact that the principle of free movement of goods was contained in Article 3(c) of the EEC Treaty before the concept of the internal market came into being that the latter cannot be assimilated to an area in which there is free movement of goods, since that would fall short of the wishes of the Community legislature. Moreover, such a market had already been considered in paragraph 33 of the judgment in Case 15/81 *Schul*

v *Inspecteur der Invoerrechten en Accijnen* [1982] ECR 1409 as constituting a merger of the national markets which appeared to end the power of a State to constitute within its territory an area devoid of competition in relation to a particular product by requiring manufacturers (publishers) to fix a price from which retailers (booksellers) could not depart significantly by taking account of the position of the purchaser in the market.

11 It also considers that the finding contained in paragraph 20 of the *Leclerc* judgment, cited above, ceased to be relevant when the 'internal market', by contrast with the common market referred to in Article 2 of the EC Treaty (now, after amendment, Article 2 EC), became, by virtue of Article 3(c) and (g) of the Treaty, a concept of positive law.

12 That court adds that the 'internal market' appears already to have become established as a means of attaining the objective of 'economic and social cohesion' referred to in the first indent of Article B of the Treaty on European Union (now, after amendment, the first indent of Article 2 EU) and also refers to 'observance of the principle of an open market economy where competition is free' (envisaged in Articles 3a and 102a of the Treaty and given effect by Article 103(3) and (4) thereof), taking the view that those rules appear to impose on the Member States clear and unconditional obligations characteristic of positive law.

13 Next, the Cour d'Appel states that the single internal market, governed by the principle of an open market economy with free competition, does not appear to be subject to any exception in favour of the book trade, as is clear from paragraph 30 of *Leclerc*, cited above. It also observes that Council Decision 97/C 305/02 of 22 September 1997 on cross-border fixed book prices in European linguistic areas (OJ 1997 C 305, p. 2), which recognises 'the dual character of books as the bearers of cultural values and as merchandise', takes account of 'the inclusion in the Treaty of Article 128(4)' which gives a definition of culture that is oriented primarily towards artistic and literary creation. According to the national court, the French legislation on books is of a general nature and includes technical books, thereby increasing the cost of the activities of undertakings for which information from books is necessary and important and which are denied the benefits arising from the existence of a right to engage in competition (lawyers,

doctors, architects). The Commission has been requested to take those factors into account in 'carrying out a balanced assessment of the cultural and economic aspects of books'.

14 However, the Cour d'Appel, considering itself unable to await some future amendment of Community law on book prices and taking account of Échirolles's assertion that the creation of the internal market might prompt the Court of Justice to depart from its earlier decisions which were given 'as Community law [stood]', stayed proceedings pending a preliminary ruling from the Court of Justice on the question:

'whether the French legislation requiring publishers to impose on booksellers fixed prices for the resale of books, regardless of their contents, to consumers and to purchasers for occupational purposes is compatible with the internal market established on 1 January 1993, and in particular with Articles 3(c) and (g), 3a and 5, the second paragraph of Article 7a and Articles 102a and 103(3) and (4) of the Treaty establishing the European Economic Community, as amended by the Single European Act and the Treaty on European Union.'

The question referred to the Court for a preliminary ruling

15 According to settled case-law, in proceedings brought under Article 177 of the Treaty, the only questions which may be validly referred to the Court are those on the interpretation and validity of Community law, appraisal of provisions of national law being a matter for the national court, having regard to the preliminary ruling given (see, in particular, Joined Cases C-37/96 and C-38/96 *Sodiprem and Others* v *Direction Générale des Douanes* [1998] ECR I-2039, paragraph 22).

16 Accordingly, the request for a preliminary ruling must be construed as seeking to ascertain whether Articles 3(c) and (g), 3a and 5, the second paragraph of Article 7a and Articles 102a and 103 of the Treaty preclude the application of national legislation which requires publishers to impose on booksellers a fixed price for the resale of books.

17 Échirolles maintains, first, that the Law of 10 August 1981, having created a non-competition area, is contrary to the concept of a market involving the interaction of supply and demand. Although the adoption of a law establishing a system of fixed prices for books meets the concerns of the French legislature regarding the protection of books as a medium for artistic and literary creation, the adoption of such a law nevertheless fails to take account of the fact that, being of general scope, it also applies to technical books which do not need such protection.

18 Échirolles also observes that there is a link between books, which are regarded as a cultural medium, and the economy, as is apparent, in particular, from the increase in book prices, and the rise in the value of shares in companies which publish works regarded as being of a literary nature, brought about by the Law of 10 August 1981.

19 Second, Échirolles refers to the fact that, when the Court, in its judgments concerning the French system of book pricing, held that the principle of prices imposed by publishers was compatible with Community law, it did so referring expressly to Community law as it then stood (*Leclerc*, cited above), before the creation of the internal market on 1 January 1993. However, the introduction of provisions on the internal market may mean that the abovementioned system is incompatible with the relevant provisions of the EC Treaty.

20 Third, Échirolles, like the national court, considers that the internal market cannot be assimilated to an area characterised by the free movement of goods without distorting the wishes of the legislature and that such a market, being the

result of a merger of national markets (*Schul*, cited above), must be defined as a single market, an area where competition is free and the rules for its functioning are binding on the Member States and on individuals. It adds, referring to the principles contained in Articles 3(c) and (g), 3a, 5a and 102a of the Treaty, to which Article 103(3) and (4) of the Treaty are intended to give effect, that the internal market must be regarded as a concept of positive law.

21 Lastly, Échirolles contends that the French legislation does not conform with Article 30 of the Treaty since it applies where a book is purchased in France for dispatch to another Member State, with the result that nationals of that Member State have to pay a price fixed by the French publisher, which constitutes an encroachment upon the free movement of goods. It considers that to be the case even if the barrier is only potential (Joined Cases C-321/94 to C-324/94 *Pistre and Others* [1997] ECR I-2343).

22 In answering the question submitted by the national court, it must first be pointed out, as the Court has already done in its judgment in Case C-341/95 *Bettati* v *Safety Hi-Tech* [1998] ECR I-4355, paragraph 75, that Article 3 of the Treaty, which determines the fields and objectives to which the activities of the Community are to relate, lays down the general principles of the common market, which are to be applied in conjunction with the respective chapters of the Treaty devoted to their implementation.

23 The Single European Act inserted an Article 8a (which became Article 7a of the EC Treaty, and then, after amendment, Article 14 EC), which defines the internal market and provides for measures for its establishment. The internal market now constitutes one of the objectives of the Community (Article 3(c) of the Treaty).

24 As the Commission has rightly pointed out, those provisions also define general objectives and must be read in conjunction with the provisions of the Treaty designed to implement those objectives. Since Articles 30, 36 and 85 of the Treaty

have not been amended, the Court's interpretation of them in *Leclerc*, in conjunction with Article 5 of the Treaty, cannot be called in question.

25 As regards Articles 3a, 102a and 103 of the Treaty, which refer to economic policy, the implementation of which must comply with the principle of an open market economy with free competition (Articles 3a and 102a), those provisions do not impose on the Member States clear and unconditional obligations which may be relied on by individuals before the national courts. What is involved is a general principle whose application calls for complex economic assessments which are a matter for the legislature or the national administration.

26 The answer to the question referred to the Court must therefore be that Articles 3(c) and (g), 3a and 5, the second paragraph of Article 7a and Articles 102a and 103 of the Treaty do not preclude the application of national legislation requiring publishers to impose on booksellers fixed prices for the resale of books.

Costs

27 The costs incurred by the French, Greek, Austrian and Norwegian Governments and by the Commission, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred by the Cour d'Appel de Grenoble by judgment of 13 January 1999, hereby rules:

Articles 3(c) and (g) of the EC Treaty (now, after amendment, Article 3(c) and (g) EC), 3a and 5 of the EC Treaty (now Articles 4 EC and 10 EC), the second paragraph of Article 7a of the EC Treaty (now, after amendment, the second paragraph of Article 14 EC) and Articles 102a and 103 of the EC Treaty (now Articles 98 EC and 99 EC) do not preclude the application of national legislation requiring publishers to impose on booksellers fixed prices for the resale of books.

Moitinho de Almeida Schintgen

Gulmann Puissochet Skouris

Delivered in open court in Luxembourg on 3 October 2000.

R. Grass J.C. Moitinho de Almeida

Registrar President of the Sixth Chamber