JUDGMENT OF THE COURT (Third Chamber)
11 July 1985 *

In Case 299/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Nantes, for a preliminary ruling in the case pending before that court between

SA Saint Herblain distribution, Centre distributeur Leclerc, Saint Herblain, and SA **Paris distribution, Centre distributeur Leclerc,** Nantes, and

Association des Centres distributeurs Édouard Leclerc, Paris,

and

Syndicat des libraires de Loire-Océan, Angers,

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

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: C. O. Lenz

Registrar: J. A. Pompe, Deputy Registrar,

after considering the observations submitted on behalf of

Saint Herblain distribution SA and Paris distribution SA, by Yves Menard, of the Nantes Bar,

Association des Centres distributeurs Édouard Leclerc, by Philippe Jousset, of the Laval Bar,

* Language of the Case: French.

the French Government (represented by the Secretary General of the Interministerial Committee for Questions of European Economic Cooperation), by Jean-Paul Costes, in the written procedure, and S. C. de Margerie, in the oral procedure,

the Commission of the European Communities, by D. Jacob and N. Coutrelis,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 July 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 a judgment of 22 November 1983, which was received at the Court on 29 December 1983, the Tribunal de Grande Instance, Nantes, referred a question to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of various rules of Community law, in particular the provisions relating to free competition in the Common Market and Articles 3 (f) and 5 of the EEC Treaty, so as to enable it to assess the compatibility with Community law of national legislation requiring all retailers to abide by the selling prices for books fixed by the publisher or importer.

2 The question was raised in proceedings between, on the one hand, Syndicat des Libraires de Loire-Océan and, on the other hand, the companies Saint Herblain Distribution SA and Paris Distribution SA, which run shops under the name 'Centre Distributeur Leclerc', and Association des Centres Distributeurs Edouard Leclerc, which has shops under the same name with a reputation for pursuing a policy of low prices. The dispute concerns the failure by the Centres Distributeurs

Leclerc to observe the retail prices fixed pursuant to Law No. 81-766 of 10 August 1981 (Journal Officiel de la République Franßaise of 11 August 1981).

3 Under the Law of 10 August 1981 all publishers or importers of books are required to fix retail prices for the books which they publish or import. Retailers must charge an effective price for sales to the public of between 95% and 100% of that price. The Law exempts certain private and public entities, such as libraries and educational establishments, from having to pay that price and it authorizes clearance sales, subject to certain conditions. If the provisions of the Law are contravened competitors and various types of association may seek an injunction or claim damages; criminal proceedings may also be brought.

4 As far as imported books are concerned, the last paragraph of Article 1 of the Law provides that 'where imported books were published in France the retail price fixed by the importer shall be no less than that fixed by the publisher'. Decree No. 81-1068 of 3 December 1981 (*Journal Officiel de la République Française* of 4 December 1981), issued pursuant to the Law of 10 August 1981, further provides that the principal distributor of imported books who must comply with the requirement laid down in Article 8 of the Law of 21 June 1943 — namely the requirement that a complete copy must be deposited with the Ministry of the Interior — is deemed to be the importer.

5 The Syndicat des libraires de Loire-Océan applied to the Tribunal de Grande Instance, Nantes, for an injunction against the companies Saint Herblain Distribution and Paris Distribution — which issued a third-party notice against Association des Centres Distributeurs Edouard Leclerc — to restrain the defendants from charging prices lower than those fixed pursuant to the above-mentioned legislation; the Tribunal de Grande Instance thereupon referred the following question to the Court for a preliminary ruling:

'Must Articles 3 (f) and 5 of the EEC Treaty be interpreted as prohibiting the setting up in a Member State, by law or by regulation, in respect of books published in that Member State and books imported into that State, in particular from other Member States, of a system which compels retailers to sell the books at the price fixed by the publisher or the importer without being able to reduce that price by more than 5%?'

6 It should be noted that a question for a preliminary ruling in identical terms was submitted by the Cour d'Appel, Poitiers, in similar proceedings and was the subject of the judgment of the Court of 10 January 1985 (Case 229/83, *Association des Centres distributeurs Leclerc* v *Au Blé Vert Sàrl and Others* [1985] ECR 17).

7 When it was informed of that judgment the Tribunal de Grande Instance, Nantes, notified the Court that it did not wish to withdraw the request for a preliminary ruling.

8 Consideration of the present case has revealed nothing that was not already known to the Court in Case 229/83. In those circumstances it is sufficient to refer to the grounds of the judgment of 10 January 1985, a copy of which shall be annexed to the present judgment.

9 The questions submitted by the Tribunal de Grande Instance, Nantes, must be answered in the same terms as in the judgment of 10 January 1985:

As Community law stands, the second paragraph of Article 5 of the EEC Treaty, in conjunction with Articles 3 (f) and 85, does not prohibit Member States from enacting legislation whereby the retail price of books must be fixed by the publisher or by the importer and is binding on all retailers, provided that such legislation is consonant with the other specific provisions of the Treaty, in particular those relating to the free movement of goods.

In the context of such national legislation, the following constitute measures equivalent in effect to quantitative restrictions on imports, contrary to Article 30 of the EEC Treaty:

(a) provisions whereby the importer responsible for complying with the statutory requirement to deposit one copy of each imported book with the authorities, that is to say the principal distributor, is responsible for fixing the retail prices;

(b) provisions requiring the retail price fixed by the publisher to be applied to books published in the Member State concerned and re-imported following

exportation to another Member State, unless it is established that those books were exported for the sole purpose of re-importation in order to circumvent the legislation in question.

Costs

10 The costs incurred by the French Government and the Commission of the European Communities, 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, in the nature of 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 (Third Chamber),

in answer to the question referred to it by the Tribunal de Grande Instance, Nantes, by judgment of 22 November 1983, hereby rules:

(1) As Community law stands, the second paragraph of Article 5 of the EEC Treaty, in conjunction with Articles 3 (f) and 85, does not prohibit Member States from enacting legislation whereby the retail price of books must be fixed by the publisher or by the importer and is binding on all retailers, provided that such legislation is consonant with the other specific provisions of the Treaty, in particular those relating to the free movement of goods.

(2) In the context of such national legislation, the following constitute measures equivalent in effect to quantitative restrictions on imports, contrary to Article 30 of the EEC Treaty:

(a) provisions whereby the importer responsible for complying with the statutory requirement to deposit one copy of each imported book with the authorities, that is to say the principal distributor, is responsible for fixing the retail prices;

(b) provisions requiring the retail price fixed by the publisher to be applied to books published in the Member State concerned and re-imported following exportation to another Member State, unless it is established that those books were exported for the sole purpose of re-importation in order to circumvent the legislation in question.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber