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

In Case 201/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de grande instance [Regional Court], Orléans, for a preliminary ruling in the criminal proceedings brought before that court by

Procureur de la République [Public Prosecutor]

against

Jean-Pierre Gontier,

on the interpretation of Articles 3 (f), 5, 30 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:

J.-P. Gontier, the accused in the main proceedings, by A. Sacaze, of the Orléans Bar, and P. Jousset, of the Laval Bar,

the French Government by J. C. Antonetti and S. C. de Margerie, acting as Agents, assisted by I. Knock, Administrator,

the Commission of the European Communities by D. Jacob, acting as Agent, 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

* Language of the Case: French.

JUDGMENT

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

Decision

1 By judgment of 27 June 1984, which was received at the Court on 8 August 1984, the Tribunal de grande instance, Orléans, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 3 (f), 5, 30 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 are compatible with Community law.

2 The questions were raised in the context of criminal proceedings brought against Jean-Pierre Gontier in his capacity as the manager of the Leclerc d'Olivet supermarket which operates a petrol station. Mr Gontier is charged with having, in relation to the retail selling price of fuel in force at the relevant time, applied discounts at rates exceeding the maximum discounts provided for by the rules applicable in May 1984.

3 The accused did not dispute the substance of the facts alleged against him but asked to be acquitted on the ground that the maximum discounts with which he had failed to comply were based on Ministerial Decree No 83-58/A of 9 November 1983 concerning retail fuel prices, whereas those rules were, he maintained, incompatible with Community law, in particular Articles 3 (f), 5 and 30 of the EEC Treaty and were not justified on any of the grounds set out in Article 36 of that Treaty.

4 In those circumstances the Tribunal de grande instance, Orléans, considered it necessary to refer 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 sale prices for regular-grade and high-grade petrol?

Can the fixing of such minimum prices constitute a quantitative restriction on imports or a measure having equivalent effect within the meaning of Article 30 of the Treaty and may it be regarded as justified on grounds of public policy within the meaning of Article 36 of the Treaty?'

5 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). 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.

6 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% or below those prices.

7 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.

8 Since there appears to be no new factor in the present case, reference should be made, with regard to the replies to be given to the Tribunal de grande instance, Orléans, 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

9 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 Tribunal de grande instance, Orléans, by judgment of 27 June 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