JUDGMENT OF THE COURT (Third Chamber)
10 July 1986 *

In Case 95/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de police [Local Criminal Court], Martigues, for a preliminary ruling in the criminal proceedings pending before that court between

Mr Boriello, Commissaire principal de police [Chief Police Commissioner] at Martigues, carrying out the duties of the Ministère public [Public Prosecutor], and the **Syndicat des libraires du Sud-Est** [South-Eastern Booksellers Federation], whose registered office is in Aix-en-Provence, civil party, on the one hand,

and

Alain Darras and Dominique Tostain, residing at Vitrolles, on the other,

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

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges,

Advocate General: Sir Gordon Slynn
Registrar: K. Reichenberg, acting as Administrator

after considering the observations submitted on behalf of

(i) Alain Darras, by Philippe Jousset, of the Laval Bar, in the oral procedure,

(ii) the Commission of the European Communities, by Daniel Jacob, a member of its Legal Department, assisted by Nicole Coutrelis in the written procedure, and by Daniel Jacob, in the oral procedure;

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 26 June 1986,

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 29 March 1984, which was received at the Court on 6 April 1984 and confirmed on appeal by the Cour d'appel [Court of Appeal], Aix-en-Provence, by judgment of 24 April 1985 which was received at the Court on 11 March 1986, the tribunal de police, Martigues, referred several questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Articles 30 and 36 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 Those questions were raised in criminal proceedings against Mr Darras and Mr Tostain, who were prosecuted for having sold in supermarkets in Vitrolles under their management books at prices below the retail selling price fixed under French Law No 81-766 of 10 August 1981 on book prices (*Journal Officiel de la République Française* of 11 August 1981).

3 Under the Law of 10 August 1981 all publishers or importers 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 tribunal de police, Martigues, referred the following questions to the Court for a preliminary ruling:

'1. Does the legislation on the price of books, in particular the fixing of an actual minimum retail price, as enacted in Law No 81-766 of 10 August 1981 and Decree No 82-1176 of 29 December 1982, constitute a measure having an effect equivalent to quantitative restrictions on intra-Community trade?

2. If so, is that legislation capable of falling within the exceptions laid down in Article 36 of the Treaty of Rome?

3. If not, may it be justified on the grounds of the protection of certain national interests, for instance that of bookshops threatened by competition from other forms of distribution?

4. If so, are the measures adopted the most appropriate for protecting those interests and the least limitative of freedom of trade?'

6 It should be noted that a question for a preliminary ruling relating, in particular, to the interpretation of Articles 30 and 36 of the EEC Treaty was submitted by the Cour d'appel, Poitiers, in proceedings concerning failure to observe the retail price fixed in accordance with the Law of 10 August 1981 and was the subject of the judgment of the Court of 10 January 1985 (Case 229/83 *Association des centres distributeurs Leclerc* v *SARL Au blé vert and Others* [1985] ECR 1).

7 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.

8 Consequently Questions 1, 2 and 3 submitted by the tribunal de police, Martigues, must be answered in the following terms:

(i) In the context of national legislation whereby the retail price of books must be fixed by the publisher or the importer and is binding on all retailers, 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 price;

(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.

(ii) Such measures are not justified by Article 36 of the EEC Treaty or by the overriding requirements of the safeguarding of consumers' interests or the protection of creativity and cultural diversity in the realm of publishing.

9 In view of the answers given to the other questions, there is no need to answer Question 4.

Costs

10 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As the 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 questions referred to it by the tribunal de police, Martigues, by judgment of 29 March 1984, hereby rules:

(1) **In the context of national legislation whereby the retail price of books must be fixed by the publisher or the importer and is binding on all retailers, the following constitute measures equivalent in effect to quantitative restrictions on imports, contrary to Article 30 of the 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 price;**

(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.**

(2) **Such measures are not justified by Article 36 of the EEC Treaty or by the overriding requirements of the safeguarding of consumers' interests or the protection of creativity and cultural diversity in the realm of publishing.**

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 10 July 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber