JUDGMENT OF THE COURT (Fifth Chamber)
16 May 1989 *

In Case 382/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel (Court of Appeal), Paris (Ninth Criminal Appeal Chamber) for a preliminary ruling in the proceedings pending before that court between

R. Buet and Educational Business Services SARL

and

Ministère public (Public Prosecutor)

on the interpretation of Article 30 of the EEC Treaty in order to enable the said court to decide the compatibility with that article of the prohibition of canvassing resulting from Law No 71/556 on the establishment and functioning of private bodies providing home study courses (*Journal officiel de la République française*, 13.7.1971, p. 6907) and from Law No 72-1137 on the protection of consumers with respect to canvassing and to selling at private dwellings (*Journal officiel de la République française*, 23.12.1972, p. 13348),

THE COURT (Fifth Chamber)

composed of: R. Joliet, President of Chamber, Sir Gordon Slynn, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Zuleeg, Judges,

Advocate General: G. Tesauro
Registrar: H. A. Rühl, Principal Administrator, for the Registrar

* Language of the case: French.

after considering the observations submitted on behalf of

R. Buet and Educational Business Services, a limited liability company, represented by D. de Holmsky, of the Paris Bar, and at the hearing by Mr Granrut, of the Paris Bar,

the French Government, by R. de Gouttes and C. Chavance, acting as Agents,

The Danish Goverment, by M. J. Molde, acting as Agent,

the Commission, by its Legal Adviser, J. C. Seché, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 24 January 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 February 1989,

gives the following

Judgment

1 By a judgment of 27 November 1987, which was received at the Court on 23 December 1987, the cour d'appel de Paris referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 30 of the Treaty in order to enable it to determine whether a prohibition on canvassing in connection with the sale of educational material was compatible with that provision.

2 The question was raised in proceedings between the Ministère public and Mr Buet, the manager of the French company Educational Business Services (hereinafter referred to as 'EBS'). Representatives of that company went to the homes of potential clients for the purpose of selling them English-language teaching material. EBS earned 90% of its turnover in this way and the remainder at trade fairs and exhibitions.

3 The tribunal de grande instance (Regional Court), Paris, sentenced Mr Buet to a term of imprisonment and a fine and held EBS liable in civil law for having infringed Article 8 II of Law No 72-1137 of 22 December 1972 on the protection of consumers with respect to canvassing and to selling at private dwellings (JORF, 23.12.1972, p. 13348), which prohibits canvassing for the purpose of selling educational material. That provision was intended to supplement a prohibition of canvassing for the subscription to a contract of instruction contained in Article 13 of Law No 71-556 of 12 July 1971 on the establishment and functioning of private bodies providing home study courses and on advertising and canvassing by educational establishments (JORF, 13.7.1971, p. 6907). Some of those establishments had attempted to circumvent that prohibition by proposing at private dwellings, not subscription to a contract of instruction, but the sale of educational material.

4 Mr Buet, EBS and the Ministère public appealed against the judgment of the tribunal de première instance. The essence of Mr Buet's contentions before the cour d'appel de Paris was that in the absence of pedagogical supervision by the vendor, the home sale of material for learning a foreign language did not fall under the prohibition of canvassing laid down in Article 8 II of the aforementioned Law No 72-1137. He also claimed that application of the prohibition on canvassing to his case was contrary to the provisions of Article 30 *et seq.* of the Treaty inasmuch as it forced him to abandon a particularly effective sales technique and thus restricted the marketing in France of products from another Member State.

5 The cour d'appel rejected Mr Buet's argument relating to the scope of the prohibition in question but nevertheless stayed the proceedings and requested a preliminary ruling on the compatibility with Article 30 of the Treaty of the prohibition of canvassing laid down in Article 13 of Law No 71-556 of 12 July 1971 and Article 8 II of Law No 72-1137 of 22 December 1972.

6 Reference is made to the Report for the Hearing for a fuller statement of the relevant legislation and the facts of the main proceedings, the course of the procedure and the written observations lodged before the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

(a) *The existence of an obstacle to the free movement of goods*

7 As the Court held in its judgment of 15 December 1982 in Case 286/81 *Oosthoek* [1982] ECR 4575, the possibility cannot be ruled out that to compel a trader either to adopt advertising or sales promotion schemes which differ from one Member State to another or to discontinue a scheme which he considers to be particularly effective may constitute an obstacle to imports even if the legislation in question applies to domestic and imported products without distinction.

8 That finding applies *a fortiori* when the rules in question deprive the trader concerned of the possibility of using not a means of advertising but a method of marketing whereby he realizes almost all his sales.

9 Application of a prohibition on canvassing in order to sell foreign-language teaching material from another Member State must therefore be regarded as constituting an obstacle to imports.

(b) *The possibility of justifying the obstacle in question by the need to protect consumers*

10 The Court has consistently held (see primarily the judgment of 20 February 1979 in Case 120/78 *Rewe-Zentral AG* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649) that in the absence of common rules, obstacles to movement within the Community resulting from disparities between the national rules must be accepted, provided the rules are applied without distinction to domestic and imported products, as being necessary in order to satisfy mandatory requirements such as the protection of consumers and fair trading.

11 It is common ground that the French legislature adopted the prohibition of canvassing in question out of concern to protect consumers against the risk of ill-considered purchases. However, as the Court has repeatedly held (see in particular the judgment of 14 July 1988 in Case 407/85 *3 Glocken GmbH* [1988] ECR 4233) such rules must be proportionate to the goals pursued, and if a Member State has at its disposal less restrictive means of obtaining the same goals, it is under an obligation to make use of them.

12 In that respect canvassing at private dwellings exposes the potential customer to the risk of making an ill-considered purchase. To guard against that risk it is normally sufficient to ensure that purchasers have the right to cancel a contract concluded in their home.

13 It is necessary, however, to point out that there is greater risk of an ill-considered purchase when the canvassing is for enrolment for a course of instruction or the sale of educational material. The potential purchaser often belongs to a category of people who, for one reason or another, are behind with their education and are seeking to catch up. That makes them particularly vulnerable when faced with salesmen of educational material who attempt to persuade them that if they use that material they will have better employment prospects. Moreover, as is apparent from the documents, it is as a result of numerous complaints caused by such abuses, such as the sale of out-of-date courses, that the legislature enacted the ban on canvassing at issue.

14 Finally, it needs to be stressed that since teaching is not a consumer product in daily use, an ill-considered purchase could cause the purchaser harm other than mere financial loss that could be longer lasting. Thus it has to be acknowledged that the purchase of unsuitable or low-quality material could compromise the consumer's chances of obtaining further training and thus consolidating his position on the labour market.

15 In those circumstances it is permissible for the national legislature of the Member State to consider that giving consumers a right of cancellation is not sufficient protection and that it is necessary to ban canvassing at private dwellings.

16 Moreover, while the Council Directive of 20 December 1985 on the protection of consumers in respect of contracts negotiated away from business premises (Official Journal 1985, L 372, p. 31) requires Member States to ensure that consumers have the right to cancel a contract of sale concluded at their home, Article 8 allows the State to adopt or maintain more favourable provisions to protect

consumers. In the last recital in the preamble to the directive the Council expressly recognized that Member States might introduce or maintain a total or partial prohibition on the conclusion of contracts away from business premises.

17 In those circumstances the answer to the question submitted by the national court must be that the application to imported products of a prohibition on canvassing in relation to the sale of educational material, such as that laid down by the law on the protection of consumers with respect to canvassing and to selling at private dwellings, is not incompatible with Article 30 of the Treaty.

Costs

18 The costs incurred by the French and Danish Governments and by 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, in the nature of a step in the action before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question submitted to it by the cour d'appel de Paris, by a judgment of 27 November 1987, hereby rules:

The application to imported products of a prohibition on canvassing in relation to the sale of educational material such as that laid down by the law on the protection

of consumers with respect to canvassing and to selling at private dwellings is not incompatible with Article 30 of the Treaty.

Joliet Slynn

Moitinho de Almeida Rodríguez Iglesias Zuleeg

Delivered in open court in Luxembourg on 16 May 1989.

J.-G. Giraud
Registrar

R. Joliet
President of the Fifth Chamber