JUDGMENT OF THE COURT
28 February 1991 *

In Case C-312/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the President of the Tribunal de Grande Instance (Regional Court), Saint-Quentin, for a preliminary ruling in the proceedings before that court between

Union départementale des syndicats CGT de l'Aisne (Federation of CGT Trade Unions in the Department of Aisne)

and

SIDEF-Conforama,

Société Arts et Meubles,

Société JIMA

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

THE COURT,

composed of: O. Due, President, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco (Presidents of Chambers), R. Joliet, F. Grévisse and M. Zuleeg, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Louterman, Principal Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: French

the Union Départementale des Syndicats CGT de l'Aisne, by Arnaud Lyon-Caen, Françoise Fabiani and Louis Liard, Avocats at the Conseil d'Etat (State Council) and the Cour de Cassation (Court of Cassation),

Sidef Conforama, by Michel Distel, of the Paris Bar,

the French Government, by Edwige Belliard, Deputy Director of Legal Affairs at the Ministry of Foreign Affairs, and Géraud de Bergues, Deputy Principal Secretary at the Ministry of Foreign Affairs, acting as Agents,

the Commission of the European Communities, by its Legal Adviser Richard Wainwright and by Hervé Lehman, a French civil servant on secondment to its Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral submissions of the Union Départmentale des Syndicats CGT de l'Aisne, represented by F. Thiriez, Avocat at the Conseil d'Etat and the Cour de Cassation, Conforama and Jima, represented by J.-C. Fourgoux, of the Paris Bar, the French Government and the Commission at the hearing on 26 September 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 November 1990,

gives the following

Judgment

1 By an order of 5 October 1989, which was received at the Court on 11 October 1989, the President of the Tribunal de Grande Instance, Saint-Quentin, sitting in interlocutory proceedings, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 30

and 36 of that Treaty, in order to assess whether national legislation prohibiting the employment of workers on Sundays was compatible with those articles.

2 Under Articles L.221-2, L.221-4 and L.221-5 of the Code du Travail (Labour Code) in force in France, the weekly rest period to be granted to employees, a minimum of 24 consecutive hours, must be allowed on Sunday.

3 On the ground that Sidef Conforama, Arts et Meubles and Jima were opening their shops on Sundays and employing their staff on those days, the Union Départmentale des Syndicats CGT de l'Aisne submitted an interlocutory application to the Tribunal de Grande Instance, Saint-Quentin, for an injunction to restrain the respondent companies from opening their shops on Sundays, subject to a fine for contravention.

4 The President of the Tribunal de Grande Instance, Saint-Quentin, referred to the Court for a preliminary ruling two questions worded as follows:

'Can the concept of "measures having equivalent effect" to quantitative restrictions on imports contained in Article 30 of the EEC Treaty be applied to a general provision whose effect is to prohibit Sunday working for employees, *inter alia* in a sector such as furniture retailing, when:

(1) that sector deals to a large extent in products imported, *inter alia*, from Member States of the EEC;

(2) a considerable proportion of the sales of undertakings in that sector is made on Sundays in cases where those undertakings have taken the step of contravening the provisions of national law;

(3) closure on Sundays has the effect of reducing the volume of sales effected and thus the volume of imports from Member States of the Community; and, finally,

(4) the obligation to allow employees their weekly rest period on Sundays does not apply in all the Member States?

If so, can the characteristics of the sector in question be regarded as meeting the criteria set out in Article 36 of the EEC Treaty?'

5 Reference is made to the Report for the Hearing for a fuller account of the legal context and the facts of the dispute before the national court, the course of the procedure and the written submissions lodged with the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 It must be observed *in limine* that although the Court has no jurisdiction, in preliminary reference proceedings, to rule on the compatibility of a national provision with the Treaty, it is nevertheless empowered to provide the national court with all the criteria for the interpretation of Community law which will enable the latter to assess that compatibility for the purpose of giving judgment in the case before it.

First question

7 In its first question the Tribunal de Grande Instance seeks to establish whether provisions prohibiting the employment of workers on Sundays, in particular in a business such as selling furniture to the public, constitute a measure having equivalent effect to quantitative restrictions within the meaning of Article 30 of the Treaty.

8 National legislation which prohibits the employment of staff on Sundays in a sector such as furniture retailing is not designed to control trade. None the less, it may entail restrictive effects on the free movement of goods. Although it is improbable that the closure of certain types of shop on Sundays will cause consumers to refrain altogether from purchasing products which are available on week-days, the fact remains that such a prohibition may have negative repercussions on the volume of sales and hence on the volume of imports.

9 Furthermore, legislation of that kind affects the sale of both domestic and imported products. In principle, the marketing of products imported from other Member States is not therefore made more difficult than the marketing of domestic products (see the judgment of the Court of 23 November 1989 in Case 145/88 *Torfaen Borough Council* v *B & Q* [1989] ECR 3851).

10 In the *Torfaen* judgment the Court ruled, in relation to similar national legislation prohibiting the opening of retail shops on Sundays, that such a prohibition was not compatible with the principle of the free movement of goods provided for in the Treaty unless any obstacle to Community trade thereby created did not exceed what was necessary in order to ensure the attainment of the objective in view and unless that objective was justified with regard to Community law.

11 That being so, it must first be stated that legislation such as the legislation at issue pursues an aim which is justified with regard to Community law. The Court has already held, in its judgment of 23 November 1989 in the *Torfaen* case, that national rules governing the opening hours of retail premises reflect certain political and economic choices in so far as their purpose is to ensure that working and non-working hours are so arranged as to accord with national or regional socio-cultural characteristics, and that, in the present state of Community law, is a matter for the Member States.

12 It must further be stated that the restrictive effects on trade which may stem from such rules do not seem disproportionate to the aim pursued.

13 In answer to the first question submitted it must therefore be held that the prohibition contained in Article 30 of the Treaty, properly construed, does not apply to national legislation prohibiting the employment of staff on Sundays.

Second question

14 In view of the answer given to the first question there is no need to answer the second question.

Costs

15 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 before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the President of the Tribunal de Grande Instance, Saint-Quentin, by order of 5 October 1989, hereby rules that:

The prohibition contained in Article 30 of the Treaty, properly construed, does not apply to national legislation prohibiting the employment of staff on Sundays.

Due Moitinho de Almeida Rodríguez Iglesias

Díez de Velasco Joliet Grévisse Zuleeg

Delivered in open court in Luxembourg on 28 February 1991.

J.-G. Giraud
Registrar

O. Due
President