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

In Case 149/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'appel [Court of Appeal], Rennes, for a preliminary ruling in the criminal proceedings brought before that court by

Procureur de la République [Public Prosecutor], Saint-Nazaire,

Direction interdépartementale de la concurrence et de la consommation [Directorate-General for Competition and Consumer Affairs]

against

Jacques Binet, Roland Rigault and Yvonne Joly, née Jan,

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, 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. Binet, the accused in the main proceedings, by R. Brunois, of the Paris Bar,

the French Government by S. C. de Margerie, acting as Agent, assisted by I. Knock, Administrator,

the Commission of the European Communities by its Legal Adviser, R.-C. Béraud, 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 13 June 1984, which was received at the Court on 18 June 1984, the Cour d'appel, Rennes, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 3, 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 crimimal proceedings brought against three persons who are accused, *inter alia*, of having charged unlawful prices by offering regular and super-grade fuel for sale at prices below the minimum price fixed on a monthly basis under Ministerial Decrees Nos 82-10/A, 82/11/A, 82-12/A and 82-13/A of 29 April 1982. The Tribunal correctionnnel [Criminal Court], Saint-Nazaire, acquitted the three accused of that charge but the Public Prosecutor appealed against the decisions of acquittal.

3 The Cour d'appel, after examining the minimum price system for fuel established by the aforementioned ministerial decrees, took the view that it would appear that any fall in supply prices on the markets of the other Member States of the Community could be passed on in retail prices only to the extent to which this was authorized by the Government. In those circumstances the question arose whether such a system is compatible with Community law.

4 In order to resolve that question the Cour d'appel, Rennes, referred to the Court of Justice the following two questions for a preliminary ruling:

'(1) Is it compatible with Articles 3, 5 and 30 of the Treaty establishing the European Economic Community for one of the Member State to introduce rules imposing maximum discounts for the sale of motor fuels to the consumer?

(2) Does Article 36 of the EEC Treaty allow a Member State to introduce such rules concerning the production, distribution and consumption of motor fuels on grounds of public policy?'

5 In its judgment of 29 January 1985 in Case 231/83 (*Cullet* v *Centre Leclerc Toulouse* [1985] ECR 315), the Court has already examined the same questions which were raised in the context of proceedings relating to the same national rules. The details of the rules were given to the Court on that occasion and it was then able to give an interpretation of the relevant provisions of Community law.

6 At the end of that examination 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% above 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 Cour d'appel, Rennes, 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 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, 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 Cour d'appel, Rennes, by judgment of 13 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 Europeal 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