

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 14 May 1985

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling under Article 177 of the EEC Treaty, dated 16 December 1983, by the Tribunal de grande instance, Briey, in criminal proceedings pending before the Tribunal.

In those proceedings Christian Gratiot, the managing director of a company operating a 'Leclerc' supermarket, is charged with infringing the French legislation fixing minimum prices for the retail sale of petrol, in particular Ministerial Decree No 82-13/A of 29 April 1982. Mr Gratiot pleaded by way of defence that the provisions of that decree were in conflict with the rules of Community law, and in order to resolve that question, the Tribunal referred the following questions to the Court for a preliminary ruling:

'Are Articles 3 (f) and 5 of the (EEC Treaty) to be interpreted as prohibiting the laying down in a Member State by law or regulation of binding minimum prices for the sale of "super" and "regular" petrol?

May 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?'

The same national legislation was at issue in Case 231/83 *Cullet v Centre Leclerc*, in which the Court gave judgment on 29 January 1985. Apart from the fact that *Cullet* arose from civil proceedings for an order restraining breach of that legislation whereas the present case arises from criminal proceedings thereunder, the cases involve essentially the same issues of Community law. Although the questions referred by the national court in this case do not mention all the articles of the Treaty which were dealt with in the *Cullet* judgment, those questions are clearly intended to establish whether the national legislation in question accords with the principles and objectives of the EEC Treaty and with the particular provisions of the Treaty which implement them.

The observations submitted by the French Government, the defendant and the Commission add nothing of substance to the arguments put to the Court in the *Cullet* case. The Court's judgment in that case covered all the issues involved.

In my view, for the reasons given in the judgment of 29 January 1985 in *Cullet*, the answer to the questions referred by the Tribunal de grande instance, Briey, should be as follows:

- '(1) Articles 3 (f), 5, 85 and 86 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.'

The costs of the parties to the main proceedings fall to be dealt with by the national court. No order should be made as to the costs of the French Republic and of the Commission.