

Case 20/87

Ministère public

v

André Gauchard

(reference for a preliminary ruling
from the tribunal de police, Falaise)

(Freedom of establishment — Prior authorization
for the operation of a retail outlet)

Report for the Hearing	4880
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Summary of the Judgment

- 1. Preliminary questions — Jurisdiction of the Court — Limits — Identification of the subject-matter of the question*
(EEC Treaty, Art. 177)
- 2. Free movement of persons — Freedom of establishment — Directives 68/363/EEC and 68/364/EEC — Retail trade — Not applicable outside the context of freedom of establishment*
(EEC Treaty, Art. 52; Council Directives 68/363/EEC and 68/364/EEC)

1. Although the Court has no jurisdiction under Article 177 of the Treaty to apply a rule of Community law to a particular case and thus to judge a provision of national law by reference to such a rule it may, in the framework of the judicial cooperation provided for by that article and on the basis of the material

presented to it, provide a national court with an interpretation of Community law which may be useful to it in assessing the effects of that provision.

Where the question asked may be understood as requesting an interpretation of Community law but does not

state which provision or provisions of Community law are in issue, the Court must extract from all the factors provided by the national court, and in particular from the statement of grounds contained in the reference, the elements of Community law requiring an interpretation, having regard to the subject-matter of the dispute.

2. Article 52 of the EEC Treaty and Council Directives 68/363/EEC and 68/364/EEC implementing Article 52 in the field of activities of self-employed persons in retail trade do not apply to situations which are purely internal to a Member State, such as that of a national of a Member State who has never resided or worked in any other Member State.

REPORT FOR THE HEARING delivered in Case 20/87 *

I — Facts and written procedure

A. Gauchard, the manager of a supermarket with an authorized surface area of 1 660 m², was charged before the tribunal de police, Falaise, with extending that area by 890 m² in 1979 without obtaining the authorization required for that purpose under the French Law of 27 December 1973 (the 'loi Royer').

'Is the French town-planning legislation relating to commercial premises, in particular Articles 28 to 36 of the law of 27 December 1973, compatible with European Community law?'

The reference was lodged at the Court Registry on 26 January 1987.

Before the court the accused claimed that the French rules on authorization to open and extend supermarkets were contrary to the provisions of the EEC Treaty in so far as they discriminated between commercial undertakings.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Mr Gauchard, represented by F. Roussel, of the Caen Bar, by the Government of the French Republic, represented by Gilbert Guillaume, acting as Agent, and by Catherine Colonna, acting as Deputy Agent, and by the Commission of the European Communities, represented by Étienne Lasnet, Legal Adviser, acting as Agent.

By judgment of 11 December 1986 the tribunal de police, Falaise, referred to the Court the following question on the interpretation of Community law:

* Language of the Case: French.