

JUDGMENT OF THE COURT (Third Chamber)
9 April 1987 *

In Case 160/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de police (Local Criminal Court), Reims, for a preliminary ruling in the proceedings pending before that court between

Ministère public (Public Prosecutor)

and

Jacques Verbrugge

on the interpretation of certain rules of the EEC Treaty concerning competition and on the principle of non-discrimination,

THE COURT (Third Chamber),

composed of: Y. Galmot, President of the Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Jacques Verbrugge, by Ph. A. Lefèbvre, Avocat, in writing and orally,

the Commission of the European Communities, by D. Jacob and D. Gouloussis, members of its Legal Department, in writing and orally,

having regard to the Report for the Hearing and further to the hearing on 19 March 1987,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 19 March 1987,

gives the following

Judgment

- 1 By a judgment of 16 June 1986, which was received at the Court on 1 July 1986, the tribunal de police, Reims, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of certain rules of the EEC Treaty concerning competition and on the principle of non-discrimination in order to enable it to determine whether national legislation requiring retailers to apply a fixed price to sales of books to the public was compatible with Community law.
- 2 That question arose in the context of criminal proceedings brought against Jacques Verbrugge, manager of the 'Continent', a shop in Reims, who was prosecuted for having sold in the shop of which he was in charge books at discounts of more than 5% on the price fixed by the publisher, contrary to the provisions of Law No 81-766 of 10 August 1981 on the price of books (*Journal Officiel de la République Française* of 11.8.1981).
- 3 Under that law, retail booksellers must apply an actual selling price to the public of between 95 and 100% of the price on sale to the public which all publishers or importers are required to fix. According to an amendment of that law, introduced by Law No 85-500 of 13 May 1985, those provisions do not apply to books imported from a Member State of the European Economic Community unless objective factors, in particular the fact that the books are not actually marketed in that State, show that the purpose of the operation was to remove the sale to the public from the ambit of the provisions concerning the selling price which retailers must apply. Except in the latter case, the selling price of books published in France is therefore unregulated if those books are marketed after being exported to another Member State and subsequently re-imported.

- 4 Since it considered that the effect of that legislation was to place in an unfavourable position books published and marketed in France without having been placed in free circulation in another Member State in so far as they are subject to competition from books exported and re-imported, the tribunal de police referred the following question to the Court for a preliminary ruling:

‘Do the Community law principles of equality and non-discrimination to be found in the Treaty establishing the European Economic Community prohibit the enactment of legislation in a Member State creating in a single sector, namely the book trade, for identical or similar products a dual system of prices consisting, on the one hand, of fixed prices which may not be reduced by more than 5% for books published and sold within that Member State without crossing an internal Community border during the marketing chain and, on the other hand, of uncontrolled prices for, in particular, books published in France and re-imported from another Member State?’

- 5 It should be mentioned that a question in similar terms, referred to the Court by the tribunal d’instance (District Court), Bressuire, in the context of criminal proceedings for failure to comply with the selling price fixed in accordance with the same legislation, was the subject of the judgment of the Court of 23 October 1986 (Case 355/85 *Driancourt v Cognet* [1986] ECR 3231).
- 6 Consideration of the present case has not revealed any factor which was not present in Case 355/85. In those circumstances, it is sufficient to refer to the grounds of the judgment of 23 October 1986 ([1986] ECR 3231).
- 7 The reply to the question referred to the Court by the tribunal de police, Reims, should therefore be, in the terms of the judgment of 23 October 1986, that neither Article 7 of the EEC Treaty nor any other provision or principle of that Treaty applies to a difference of treatment under legislation which provides that the retail selling price of books is to be fixed by the publisher or the importer of a book, which is binding on all retailers and according to which the price of books published and printed in the Member State concerned may be freely determined if the books are re-imported after having first been exported to another Member

State whereas the price is fixed by the publisher where the books have not crossed a border within the Community in the course of being marketed.

Costs

- 8 The costs incurred by the Commission of the European Communities, which has 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 pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the tribunal de police, Reims, by judgment of 16 June 1986, hereby rules:

Neither Article 7 of the EEC Treaty nor any other provision or principle of that Treaty applies to a difference of treatment under legislation which provides that the retail selling price of books is to be fixed by the publisher or the importer of a book, which is binding on all retailers and according to which the price of books published and printed in the Member State concerned may be freely determined where the books are re-imported after having first been exported to another Member State, whereas the price is fixed by the publisher where the books have not crossed a border within the Community in the course of being marketed.

Galmot

Everling

Moitinho de Almeida

Delivered in open court in Luxembourg on 9 April 1987.

P. Heim

Registrar

Y. Galmot

President of the Third Chamber