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Press and Information

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Judgment of the Court of Justice in Case C-531/07

Fachverband der Buch- und Medienwirtschaft v. LIBRO Handelsgesellschaft mbH

COMMUNITY LAW PRECLUDES PROVISIONS SUCH AS THE AUSTRIAN PROVISIONS ON THE OBLIGATION TO SELL BOOKS AT A FIXED PRICE

The prohibition on importers of German-language books from fixing a price below the retail price fixed or recommended by the publisher in the State of publication constitutes a restriction on the free movement of goods which cannot be justified

The Austrian provisions on the obligation to sell German-language books at a fixed price provide that the publisher or importer is to fix and publish a retail price and the importer is not to fix a price below the retail price fixed or recommended by the publisher for the State of publication, less any value added tax comprised in it.

Those provisions grant the Fachverband der Buch- und Medienwirtschaft (trade association of the chamber of commerce for the book and media trade) the power to publish the retail prices to which the booksellers are subject for the sale in Austria of German-language books.

LIBRO Handelsgesellschaft mbH operates 219 branches in Austria, 80% of the books it sells come from abroad.

From August 2006, LIBRO advertised books published in Germany for sale in Austria at prices which were lower than the minimum set for Austria on the basis of German prices.

The Fachverband lodged an application for interim measures with the competent Austrian court seeking an order directing LIBRO to cease such advertising. The court of first instance granted that application holding that even if the Austrian binding price scheme constitutes a restriction on the free movement of goods, it is 'justified for cultural reasons and by the need to maintain media diversity'. That decision was confirmed by a judgment of the appellate court.

LIBRO disputed the judgment of the appellate court before the Oberster Gerichtshof, which asks the Court whether the Austrian rules on the price of imported books are compatible with Community law.

In that connection, the Court recalls first of all that, according to settled case-law, all trading rules enacted by Member States which are capable of hindering intra-Community trade are to be considered to be measures having equivalent effect to quantitative restrictions. However,

national provisions restricting or prohibiting certain selling arrangements for products from other Member States are not such as to constitute a hindrance to such trade, on condition that they apply to all relevant traders operating within the national territory and that they affect in the same manner the marketing of domestic products and those from other Member States.

In the present case, the Court finds that, even if the Austrian provisions concern selling arrangements, they do not, by prohibiting importers from fixing a price below that of the State of publication, affect in the same manner the marketing of domestic books and those from other Member States.

The provisions at issue provide for a less favourable treatment for German-language books from other Member States than for domestic books, given that they prevent Austrian importers and foreign publishers from fixing minimum retail prices according to the conditions of the import market, whereas the Austrian publishers are free to fix themselves, for their goods, such minimum retail prices for the national market.

Such provisions constitute therefore a **restriction on the free movement of goods**.

The Court states, moreover, that that restriction **is not justified**. It notes in particular that the protection of books as cultural objects can be considered to be an overriding requirement in the public interest capable of justifying measures restricting the free movement of goods, on condition that those measures are appropriate for achieving the objective fixed and do not go beyond what is necessary to achieve it. However, in the present case, the objective of the protection of books as cultural objects can be achieved by measures less restrictive for the importer, for example, by allowing the importer or the foreign publisher to fix a retail price for the Austrian market which takes the conditions of that market into account.

Consequently, the Court considers that **the Austrian provisions** which prohibit importers of German-language books from fixing a price below the retail price fixed or recommended by the publisher in the State of publication **constitute a restriction on the free movement of goods which cannot be justified under Community law**.

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Languages available: ES DE EL EN FR HU IT NL PT RO

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-531/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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