

JUDGMENT OF THE COURT (Third Chamber)

2 July 1987 *

In Case 188/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'appel (Court of Appeal), Paris, for a preliminary ruling in the criminal proceedings pending before that court between

Ministère public

and

Régis Lefèvre, residing in Melun,

on the interpretation of certain provisions of the EEC Treaty with regard to national rules fixing a gross profit margin on the retail sale of beef and veal,

THE COURT (Third Chamber),

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

Advocate General: M. Darmon

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Régis Lefèvre, the accused in the main proceedings, by P. Baudoin, of the Paris Bar, in writing,

the Commission of the European Communities, by Denise Sorasio, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 5 February 1987,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 10 March 1987,

gives the following

Judgment

- 1 By a judgment of 25 June 1986, which was received at the Court on 24 July 1986, the Cour d'appel (Court of Appeal), Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of certain provisions of the EEC Treaty with regard to national rules fixing a profit margin on the retail sale of beef and veal.
- 2 The question was raised in the course of criminal proceedings brought against Régis Lefèvre, a retail butcher in Melun, for charging unlawful prices during the month of June 1983 by offering beef and veal for sale at prices higher than those fixed by the relevant French rules. Those rules which, at the material time, comprised essentially Ministerial Orders Nos 82-99/A and 83-20/A supplemented by prefectoral orders, provide for the regulation of prices for the retail sale of beef and veal and in particular fix a retail margin, net of value-added tax, of a fixed amount and a flat-rate amount for the costs of transport to the butcher's shop.
- 3 Those rules require butchers to establish each month weighted average purchase prices net of value-added tax, based on their purchases of meat during the previous month. To that variable component are added the two abovementioned fixed amounts, namely the retail margin, which at that time was FF 5.65 per kilogram for the departments of the Paris area and the flat-rate amount of FF 0.35 per kilogram for the costs of transportation. Retailers may not, without becoming liable to a penalty, charge more than the prices permitted under those rules.

- 4 In a judgment of 11 December 1985 the Tribunal correctionnel (Regional Criminal Court), Melun, discharged the accused on the ground that the abovementioned price rules were contrary to Community law and therefore inapplicable. On appeal by the Public Prosecutor, the Cour d'appel, Paris, held that it was necessary to refer the following question to the Court for a preliminary ruling:
- 'Are the French legislative provisions [referred to above] . . . compatible with the provisions of Articles 30, 3(f) and 85 of the EEC Treaty?'
- 5 Reference is made to the Report for the Hearing for the national rules in question and the observations of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 6 First, it must be borne in mind that in proceedings under Article 177 of the EEC Treaty, the Court may not give a ruling on the compatibility of a national legislative provision with Community law. The Court may, however, provide the national court with an interpretation of all relevant points of Community law so as to enable that court to determine whether the national provisions are compatible with the rules of Community law referred to.
- 7 As regards the application of Article 3 (f) and Article 85 of the EEC Treaty to price rules such as those referred to by the national court, it must also be observed that the purpose of such rules is not to compel traders to conclude agreements or to take any other action of the kind prohibited by Article 85 (1) of the EEC Treaty but to entrust responsibility in pricing matters to the public authorities. As the Court has already ruled in its judgment of 29 January 1985 in Case 231/83 *Cullet v Leclerc* [1985] ECR 305, Article 3 (f) and Article 85 do not prohibit the adoption by Member States of such national rules providing for retail sale prices to be fixed by the public authorities.
- 8 The question referred to the Court must therefore be construed as asking whether the provisions of the EEC Treaty concerning the free movement of goods and in particular Article 30 of the Treaty preclude national rules regulating the retail prices of beef and veal which prohibit retailers from selling those products at a

price exceeding the average purchase price plus a fixed gross profit margin and a flat-rate amount for the costs of transportation.

- 9 Although the question raised by the national court only mentions the articles of the Treaty referred to above, nevertheless in order to provide the national court with an interpretation of all relevant points, it must be pointed out that the compatibility of national measures regulating prices for products subject to a common market organization must be appraised primarily with regard to that organization (see the judgment of 6 November 1979 in Joined Cases 16 to 20/79 *Joseph Danis* [1979] ECR 3327). A further question to be examined is therefore whether national price rules such as those in question in these proceedings are in conformity with Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition, 1968 (I), p. 187).
- 10 When appraising the price-fixing system in question it must be borne in mind first of all that the Court has consistently held that national price rules which apply without distinction to domestic and imported products do not *per se* constitute measures having equivalent effect to a quantitative restriction within the meaning of Article 30 of the EEC Treaty, but may have such an effect if prices are at such a level that imported products are at a disadvantage in comparison with identical domestic products (see the judgment of 26 February 1976 in Case 65/75 *Tasca* [1976] ECR 291; of 24 January 1978 in Case 82/77 *Openbaar Ministerie v van Tiggele* [1978] ECR 25; of 29 January in Case 231/83 *Cullet v Leclerc*, cited above, and of 13 November 1986 in Joined Cases 80 and 159/85 *Edah* [1986] ECR 3359). The same applies to the prohibition of measures having equivalent effect to a quantitative restriction laid down in Article 22 of Regulation No 805/68.
- 11 Secondly, it must be pointed out that in its judgment of 17 January 1980 in Joined Cases 95 and 96/79 *Kefer and Delmelle* [1980] ECR 103, the Court held that the provisions of a Community agricultural regulation comprising a price system applicable at the production and wholesale stages leave intact the power of Member States to take appropriate measures relating to price formation at the retail and consumption stages, provided that they do not jeopardize the objectives or functioning of the common organization of the market. Consequently, the fixing of a profit margin which the retailer must observe when he sells to the

consumer is not, in principle, likely to endanger the objectives and functioning of such an organization, provided that the profit margin is calculated essentially on the basis of purchase prices charged at the production and wholesale stages in a way which does not affect the functioning of the price system on which the common organization of the market concerned is based.

- 12 Those requirements, laid down in the Court's case-law cited above, are not satisfied if the maximum gross profit margin does not take into account the costs of procurement and importation actually incurred by retailers. A profit margin which did not meet those conditions would limit the opportunities for retailers to obtain their supplies from the producer or trader of their choice and would thus affect the functioning of the common organization of the markets and more specifically trade within the Community.
- 13 Consequently, rules of a Member State for regulating retail prices of beef and veal which prohibit retailers from selling their products to consumers at a price exceeding the wholesale price plus a maximum gross profit margin covering *inter alia* any importation costs incurred by the retailers constitute a measure having an effect equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty and to Article 22 of Regulation No 805/68 (see the judgment of 5 June 1985 in Case 116/84 *Roelstraete* [1985] ECR 1705).
- 14 It is true that in the price-control system described in the reference for a preliminary ruling the costs of transportation are listed separately from the fixed retail profit margin. Those costs, however, are included in the maximum retail selling price at an amount fixed at a flat rate and calculated on the basis of the costs of transportation from the wholesale market at Rungis to the retail shops. To the extent to which the costs of importation actually incurred by retailers exceed that amount, such a flat rate has a restrictive effect on imports because the profit of the retailer concerned is reduced by the difference between the two amounts.
- 15 As regards the costs of obtaining supplies on the national market, it must be noted that their incorporation in the maximum gross profit margin is incompatible with Regulation No 805/68 if that incorporation affects the distribution network for

beef and veal in certain regions (see the judgment of 5 June 1985 in Case 116/84 *Roelstraete*, cited above).

16 The same applies if the costs of transportation are fixed on a flat-rate basis which is insufficient to cover the costs actually incurred by retailers in obtaining supplies on the national market and which consequently affects the distribution network for beef and veal in certain regions.

17 It is for the national court to assess the extent to which the system provided for by the national legislation, which it has to apply, has such an effect.

18 The answer to the question submitted to the Court by the Cour d'appel, Paris, must therefore be that national rules regulating the retail prices of beef and veal requiring retailers not to sell their products to consumers at a price exceeding the average purchase price plus a fixed gross profit margin and a flat-rate amount for the costs of transportation:

- (i) constitute a measure having an effect equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty and to Article 22 of Regulation No 805/68 of the Council on the common organization of the market in beef and veal if the fixed profit margin and the flat-rate amount for the costs of transportation do not take sufficient account of the costs of importation actually incurred by retailers;
- (ii) are incompatible with Regulation No 805/68 of the Council if the costs of transportation are fixed on a flat-rate basis which is insufficient to cover the costs actually incurred by retailers in obtaining supplies on the national market and which consequently affects the distribution network for beef and veal in certain regions.

Costs

19 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, in the nature of a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question submitted to it by the Cour d'appel, Paris, by a judgment of 25 June 1986, hereby rules:

National rules regulating the retail prices of beef and veal requiring retailers not to sell their products to consumers at a price exceeding the average purchase price plus a fixed gross profit margin and a flat-rate amount for the costs of transportation:

- (i) constitute a measure having an effect equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty and to Article 22 of Regulation No 805/68 of the Council on the common organization of the market in beef and veal if the fixed profit margin and the flat-rate amount for the costs of transportation do not take sufficient account of the costs of importation actually incurred by retailers;
- (ii) are incompatible with Regulation No 805/68 of the Council if the costs of transportation are fixed on a flat-rate basis which is insufficient to cover the costs actually incurred by retailers in obtaining supplies on the national market and which consequently affects the distribution network for beef and veal in certain regions.

Galmot

Everling

Moitinho de Almeida

Delivered in open court in Luxembourg on 2 July 1987.

P. Heim

Registrar

Y. Galmot

President of the Third Chamber