

JUDGMENT OF THE COURT (Sixth Chamber)  
11 July 1989 \*

In Case C-23/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by Chelmsford Crown Court for a preliminary ruling in the proceedings pending before that court between

**Quietlynn Ltd and Brian James Richards**

and

**Southend Borough Council**

on the interpretation of Articles 30 and 36 of the EEC Treaty,

THE COURT (Sixth Chamber)

composed of: C. N. Kakouris, President of Chamber, F. A. Schockweiler,  
G. F. Mancini, T. F. O'Higgins and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz

Registrar: D. Louterman, Principal Administrator,

after considering the observations submitted on behalf of

Quietlynn Ltd and Brian James Richards, by N. Peters, barrister, instructed by  
Kaye Tesler & Co., solicitors,

Southend Borough Council, by S. Reid, barrister, instructed by the Borough  
Solicitor of Southend Borough Council,

\* Language of the case: English.

the United Kingdom, by N. Paines, barrister, instructed by S. J. Hay, Treasury Solicitor,

the Commission, by E. L. White, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 27 March 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 3 May 1990,

gives the following

### Judgment

- 1 By order dated 7 September 1988 which was received at the Court on 30 January 1989, Chelmsford Crown Court referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Articles 30 and 36 of the EEC Treaty in order to determine whether national legislation prohibiting the sale of lawful sex articles from unlicensed sex establishments was compatible with those provisions.
- 2 Those questions were raised in proceedings brought against Quietlynn Ltd and Brian James Richards, its Managing Director, who operate retail shop premises selling *inter alia* sex articles, by Southend Borough Council.
- 3 Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 (hereinafter referred to as 'the Act') provides local authorities in England and Wales with the power to control sex shops in their area. In particular, it empowers them to resolve that Schedule 3 to the Act, which provides for the sale of such articles to be subject to licensing, is to apply to their area.

- 4 Southend Borough Council exercised that power, with effect from 23 June 1983. It subsequently brought a prosecution against Quietlynn Ltd and Mr Richards for using their premises without a licence on 13 March and 11 April 1985. They were found guilty of two offences by Southend Magistrates Court on 11 February 1986, fined UKL 1 000 in respect of each offence, and ordered to pay costs.
- 5 Quietlynn Ltd and Mr Richards appealed to Chelmsford Crown Court against the convictions, their sole defence being that the provisions of the Act relating to the licensing system for sex establishments were incompatible with Article 30 of the EEC Treaty inasmuch as they constituted a measure having an effect equivalent to a quantitative restriction on imports from other Member States and fell neither within one of the exceptions provided for in Article 36 nor under any other derogation.
- 6 Chelmsford Crown Court considered that the dispute raised questions relating to the interpretation of Community law and has therefore asked the Court for a preliminary ruling on the following questions:

*'Question 1*

Where a Member State (once a Local Authority has resolved that the legislation is to apply to their area subject to the requirement for premises which are sex establishments to be licensed) prohibits the sale (*inter alia*) of lawful sex articles from unlicensed sex establishments, and where the effect of such a prohibition is to enable the Local Authority to exercise control over sex establishments within their area, and where the effect is to have restricted the appellants from selling goods from other Member States since they have been attempting not to contravene the Act by their stocking policy and in doing so have been selling less imported material from Member States than would otherwise have been the case and thus to restrict the availability of sex articles manufactured in other Member States; is such a prohibition a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty?

*Question 2*

If the answer to Question 1 is in the affirmative, does such a measure benefit from the justification set out in Article 36?

*Question 3*

If the prohibition referred to in Question 1 contravenes Article 30 and is not justified under Article 36, is it totally unenforceable against a trader in the Member State or only unenforceable to the extent that it prohibits transactions involving goods manufactured in or imported from other Member States?

- 7 Reference is made to the Report for the Hearing for a fuller account of the relevant provisions, the facts of the case in the main proceedings, the course of the procedure and the written observations submitted to the Court, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

**Question 1**

- 8 By its first question, the national court seeks to ascertain whether provisions prohibiting the sale of lawful sex articles from unlicensed sex establishments constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.
- 9 First, it must be noted that national legislation prohibiting the sale of sex articles from unlicensed sex establishments applies without distinction to imported and domestic products. It thus does not constitute an absolute prohibition on the sale of the products in question, but merely a rule regarding their distribution, regulating the outlets through which the products may be marketed. In principle, therefore, the marketing of products imported from other Member States is not rendered any more difficult than that of domestic products.

- 10 It must be pointed out that in similar cases concerning rules governing the marketing of certain products the Court has held Article 30 of the Treaty not to be applicable. In its judgment in Case 155/80 *Oebel* [1981] ECR 1993, the Court held that national rules governing working hours in bakeries and the hours of delivery and sale of baker's wares were compatible with Article 30 of the Treaty since trade within the Community remained possible at all times. Likewise, in its judgment in Case 75/81 *Blesgen v Belgium* [1982] ECR 1211, the Court considered that a legislative provision that concerned only the sale of strong spirits for consumption on the premises in all places open to the public and did not concern other forms of marketing the same drinks had in fact no connection with the importation of the products and for that reason was not of such a nature as to impede trade between Member States.
- 11 It must also be pointed out that the provisions prohibiting the sale of sex articles from unlicensed sex establishments have in fact no connection with intra-Community trade, since the products covered by the Act may be marketed through licensed sex establishments and other channels, that is to say through shops in which sex articles account for only an insignificant proportion of sales and which are therefore not required to be licensed, or by mail order. Moreover, those provisions are not intended to regulate trade in goods within the Community and they are therefore not of such a nature as to impede trade between Member States.
- 12 The answer to the first question must therefore be that Article 30 of the Treaty should be construed as meaning that national provisions prohibiting the sale of lawful sex articles from unlicensed sex establishments do not constitute a measure having an effect equivalent to a quantitative restriction on imports.

### Questions 2 and 3

- 13 In view of the answer to the first question, the second and third questions do not require an answer.

## Costs

- <sup>14</sup> The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by Chelmsford Crown Court, by order of 7 September 1988, hereby rules:

**Article 30 of the Treaty should be construed as meaning that national provisions prohibiting the sale of lawful sex articles from unlicensed sex establishments do not constitute a measure having an effect equivalent to a quantitative restriction on imports.**

Kakouris

Schockweiler

Mancini

O'Higgins

Díez de Velasco

Delivered in open court in Luxembourg on 11 July 1990.

J.-G. Giraud

C. N. Kakouris

Registrar

President of the Sixth Chamber