

Joined Cases C-267/91 and C-268/91 Keck v Mithouard [1993]

Facts: Mr Keck and Mr Mithouard were being prosecuted for reselling alcohol products, in an unaltered state, at prices lower than their actual purchase price. In connection with these criminal proceedings, the Tribunal de Grande Instance, Strasbourg, referred for a preliminary ruling whether the prohibition of resale at a loss under French law was compatible with the principles of the free movement of goods, services and capital, free competition in the Common Market and non-discrimination on grounds of nationality.

Held: The fact that undertakings selling in different Member states are subject to different legislative provisions, some prohibiting and some permitting resale at a loss, does not constitute discrimination. The application to products from other Member States of national provisions restricting or prohibiting certain selling arrangements does not hinder trade between Member States as long as those provisions apply to all relevant traders operating within the national territory and as long as they affect in the same manner to domestic products and to those from other Member States.