JUDGMENT OF THE COURT (Sixth Chamber)
16 January 2003 *

In Case C-388/01,

Commission of the European Communities, represented by M. Patakia and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, and M. Fiorilli, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within

* Language of the case: Italian.

the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 October 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 8 October 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC.

National legislation

2 Article 1(1) of Decree No 507 of the Ministry of Cultural Assets and Natural Sites of 11 December 1997, entitled 'Regulation introducing the ticket for admission to monuments, museums, galleries, archaeological digs, parks and gardens classified as national monuments' (GURI No 35 of 12 February 1998, p. 13), states:

'Admission to monuments, museums, galleries, archaeological digs, parks and gardens classified as national monuments shall be authorised in exchange for payment for a ticket whose validity may be independent of the date of issue.'

3 Article 4(3) of that decree provides:

'Free admission shall be granted:

...

(e) to Italian citizens aged under 18 years or over 60 years. Visitors aged under 12 years must be accompanied;

...'.

4 The sole article of Decree No 375 of the same ministry of 28 September 1999, entitled 'Regulation amending Ministerial Decree No 507 of 11 December 1997 introducing the ticket for admission to monuments, museums, galleries, archaeological digs, parks and gardens classified as national monuments' (GURI No 253 of 27 October 1999, p. 20), provides:

'1. The following amendments shall be made to Article 4 of Decree No 507 of 11 December 1997:

(a) in paragraph 3(e), the first phrase shall be replaced by the following: "to citizens of the European Union aged under 18 years or over 65 years";

...'.

Pre-litigation procedure

5 After several complaints had been referred to the Commission during 1998, it undertook inquiries which led to the conclusion that the scheme of preferential rates applicable to persons aged over 60 or 65 years for admission to the Doges' Palace, Venice (Italy), and, in particular, to the municipal museums of the Italian cities of Treviso, Padua and Florence entailed discrimination on the ground of either nationality or residence affecting nationals of Member States other than the Italian Republic.

6 Since there was no reply to the several letters from the Commission by which it requested the Italian Government to supply it with information on that matter, on 1 July 1999 the Commission sent a formal letter of notice to the Italian Republic.

7 By letter of 5 October 1999, the Italian authorities informed the Commission of an imminent amendment to Decree No 507 which would extend to all citizens of the Member States the scheme of preferential rates for admission to Italian museums, which until then had been allowed only for Italian citizens. Those authorities also stated that a broad interpretation of the legislation in force in fact enables the advantageous rates at issue to be applied to all Community citizens.

8 Taking the view that the Italian Government's reply was not satisfactory, on 2 February 2000, the Commission sent a reasoned opinion to the Italian Republic

stating, in particular, that the amendment referred to concerned national museums and monuments and not municipal museums and monuments including the museums of Florence, Padua, Treviso and Venice. Furthermore, a broad interpretation of the legislation in force would not be enough to remedy the failure to fulfil obligations. In addition, according to Ministerial Circular No 1560 of 11 March 1998, whose purpose is to interpret Decree No 507, whether to extend the benefit of the advantageous rates allowed by the legislation in force only for Italian citizens would be left to the discretion of the person running the tourist site in question.

9 On 12 October 2000, the Commission received a further complaint about the Doges' Palace, to the effect that the free admission granted to persons aged over 60 years benefits only Italian citizens.

10 On 13 November 2000, the Commission sent a letter to the Italian Republic asking it for explanations on that matter and a copy of the rules on admission to the various museums in Italy. Furthermore, by letter of 2 April 2001, the Commission in particular requested the Italian authorities to state the means by which they intended to bring an end to the discrimination against Community nationals other than Italian citizens in respect of the Italian cultural heritage sites owned by communes.

11 Since the Commission received no response within the two-month time-limit set by the reasoned opinion, it decided to bring the present action.

The action

12 The Court has already held that national legislation on admission to the museums of one Member State which entails discrimination affecting only foreign tourists is, for nationals of other Member States, prohibited by Articles 7 and 59 of the EEC Treaty (which became Articles 6 and 59 of the EC Treaty, now, after amendment, Articles 12 EC and 49 EC) (Case C-45/93 *Commission* v *Spain* [1994] ECR I-911).

13 It is also clear from the Court's case-law (see, *inter alia*, Case C-3/88 *Commission* v *Italy* [1989] ECR 4035, paragraph 8) that the principle of equal treatment, of which Article 49 EC embodies a specific instance, prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result.

14 That is true, in particular, of a measure under which a distinction is drawn on the basis of residence, in that that requirement is liable to operate mainly to the detriment of nationals of other Member States, since non-residents are in the majority of cases foreigners (see, *inter alia*, Case C-224/97 *Ciola* [1999] ECR I-2517, paragraph 14). In that context, it is immaterial whether the contested measure affects, in some circumstances, nationals of the State in question resident in other parts of the national territory as well as nationals of other Member States. In order for a measure to be treated as being discriminatory, it is not necessary for it to have the effect of putting at an advantage all the nationals of the State in question or of putting at a disadvantage only nationals of other Member States, but not nationals of the State in question (see, to that effect, *inter alia*, Case C-281/98 *Angonese* [2000] ECR I-4139, paragraph 41).

15 In the present case, it is common ground that the free admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised authorities, is only in favour of Italian nationals and persons resident within the territory of the authorities running the museum or public monument in question, in particular where they are aged over 60 or 65 years, so that the benefit of free admission is denied to tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements.

16 The Italian Government does not deny that the amendments made to Article 4 of Decree No 507 by Decree No 375, in order to extend to the nationals of all Member States the benefit of the advantageous rates at issue, do not apply to the museums or other monuments run by local or decentralised State authorities.

17 The Commission thus acknowledges that Decree No 375 brought to an end the failure to fulfil obligations invoked in respect of the museums and monuments run by the State and it points out that the present application relates solely to the rules on rates applicable to the museums and monuments run by local and decentralised State authorities.

18 The Italian Republic none the less puts forward various reasons in the general interest in order to justify the advantageous rates at issue. First, in the light of the cost of managing cultural assets, free admission to the sites cannot be granted in disregard of economic considerations. Second, the favourable treatment afforded only to Italian nationals and certain residents is justified by reasons of cohesion of the tax system, in that those advantages constitute consideration for the payment of the taxes by which those nationals and residents contribute to the running of the sites concerned.

19 First of all, to the extent that the advantageous rates at issue provide for a distinction on the basis of nationality, it should be recalled that such advantages

are compatible with Community law only if they can be covered by an express derogating provision, such as Article 46 EC, to which Article 55 EC refers, namely public policy, public security or public health. Economic aims cannot constitute grounds of public policy within the meaning of Article 46 EC (see, *inter alia*, Case C-484/93 *Svensson and Gustavsson* [1995] ECR I-3955, paragraph 15).

20 Consequently, since neither the necessity to preserve the cohesion of the tax system nor the economic considerations put forward by the Italian Government come within the exceptions allowed by Article 46 EC, the advantageous rates at issue, in so far as they are allowed only for Italian nationals, are incompatible with Community law.

21 Next, in so far as those advantageous rates provide for a distinction on the basis of residence, it is appropriate to examine whether the justifications on which the Italian Government relies constitute overriding reasons in the general interest which may justify such advantages.

22 As regards, first, the economic grounds put forward by the Italian Government, suffice it to note that they cannot be accepted, since aims of a purely economic nature cannot constitute overriding reasons in the general interest justifying a restriction of a fundamental freedom guaranteed by the Treaty (see, *inter alia*, Case C-35/98 *Verkooijen* [2000] ECR I-4071, paragraph 48).

23 As regards, second, the necessity to preserve the cohesion of the tax system, which, in Case C-204/90 *Bachmann* [1992] ECR I-249, was acknowledged as capable of justifying rules restricting the fundamental freedoms guaranteed by the Treaty, it should be recalled that, in the cases which led to the judgment in *Bachmann* and to the judgment delivered on the same day in Case C-300/90 *Commission* v *Belgium* [1992] ECR I-305, there was a direct link between the

deductibility of contributions and the taxation of sums payable by insurers under pension and life assurance contracts, and that link had to be maintained to preserve the cohesion of the tax system in question (see, in that regard, *inter alia*, *Svensson and Gustavsson*, paragraph 18; Case C-107/94 *Asscher* [1996] ECR I-3089, paragraph 58; Case C-264/96 *ICI* [1998] ECR I-4695, paragraph 29, and Case C-55/98 *Vestergaard* [1999] ECR I-7641, paragraph 24).

24 In the present case, there is no direct link of that kind between any taxation and the application of preferential rates for admission to the museums and public monuments referred to in the action for failure to comply with obligations under the Treaty. That is all the more true given that the benefit of the advantageous rates at issue depends on the beneficiary's residence within the territory of the authority running the museum or public monument concerned, to the exclusion of other persons resident in Italy who, as such, are also subject to tax in that Member State.

25 Accordingly, the advantageous rates at issue, in so far as they are allowed only for persons resident within the territory of the authorities running the museum or public monument concerned, are also incompatible with Community law.

26 Finally, the Italian Government contends that the regulations which introduced the advantageous rates at issue are not within its competence. They concern museums or other exhibition spaces run by local authorities, whereas, in accordance with Article 47 of Presidential Decree No 616 of 24 July 1977 (GURI No 234 of 29 August 1977, Ordinary Supplement, III, p. 3), 'all services and activities relating to the existence, conservation, functioning, public enjoyment and development of museums, collections of artistic, historic or bibliographic interest... belonging to the region or to other local authorities including

non-territorial authorities subject to its control or, in any event, of local interest' come within the exclusive competence of the regions.

27 In that regard, suffice it to recall that a Member State cannot plead conditions existing within its own legal system in order to justify its failure to comply with obligations arising under Community law. While each Member State may be free to allocate areas of internal legal competence as it sees fit, the fact still remains that it alone is responsible towards the Community under Article 226 EC for compliance with its obligations (see, *inter alia,* Case C-33/90 *Commission* v *Italy* [1991] ECR I-5987, paragraph 24).

28 In the light of the foregoing considerations, it must be declared that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC.

Costs

29 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Declares that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC;

2. Orders the Italian Republic to pay the costs.

Puissochet Schintgen Skouris

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 16 January 2003.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber