JUDGMENT OF THE COURT
15 March 1994 *

In Case C-45/93,

Commission of the European Communities, represented by Blanca Rodríguez Galindo, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by Alberto José Navarro González, Director General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

defendant,

APPLICATION for a declaration that, by applying a system whereby solely Spanish citizens, foreigners resident in Spain and nationals of other Member States of the EEC under 21 years of age benefit from free admission to national muse-

* Language of the case: Spanish.

ums, while nationals of other Member States more than 21 years of age are required to pay an entrance fee, the Kingdom of Spain has failed to fulfil its obligations under Articles 7 and 59 of the EEC Treaty,

THE COURT,

composed of: G. F. Mancini, President of Chambers, for the President, J. C. Moitinho de Almeida (Rapporteur) and D. A. O. Edward (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 19 January 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 February 1993, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by applying a system whereby solely Spanish citi-

zens, foreigners resident in Spain and nationals of other Member States of the EEC under 21 years benefit from free admission to national museums, while nationals of other Member States more than 21 years of age are required to pay an entrance fee, the Kingdom of Spain has failed to fulfil its obligations under Articles 7 and 59 of the EEC Treaty.

2 Article 22 (1) of Real Decreto (Royal Decree) No 620/1987 of 10 April 1987 laying down the Reglamento de los Museos de Titularidad Estatal y del Sistema Español de Museos (Regulation on State-Owned Museums and the Spanish Museum System, hereinafter referred to as 'the Regulation') provides that Spanish nationals can visit State museums without charge subject to the conditions laid down by the Council of Ministers. Article 22 (3) empowers the government, by decision of the Council of Ministers, to extend the conditions for public visits referred to in Article 22 (1) to nationals of other Member States.

3 By virtue of two decisions of the Council of Ministers of 7 December 1982 and 21 February 1986, apart from Spanish nationals, foreigners residing in Spain and persons under 21 years of age also enjoy free admission to State museums.

4 The Commission considers that in so far as they discriminate between Spanish nationals and nationals of other Member States who are not resident in Spain and are over 21 years of age, those rules are in breach of Article 7 and 59 of the Treaty.

5 Referring to the judgment of the Court of Justice in Case 186/87 *Cowan* v *Trésor Publique* [1989] ECR 195, the Commission points out that the freedom to provide services recognized by Article 59 of the Treaty includes the freedom for the recipients of services, including tourists, to go to another Member State in order to

enjoy those services under the same conditions as nationals. The Commission maintains that that right relates not only to access to services envisaged in the EEC Treaty but also to all the ancillary advantages which affect the conditions under which those services are provided or received.

6 In that respect it points out that since visiting museums is one of the determining reasons for which tourists, as recipients of services, decide to go to another Member State, there is a close link between the freedom of movement which they enjoy under the Treaty and museum admission conditions.

7 The Commission further considers that discrimination with regard to admission to museums may have an effect on the conditions under which services are provided, including the price thereof, and may therefore influence the decision of some persons to visit a country.

8 The Kingdom of Spain merely contends that the rules in question are not discriminatory in so far as Article 22 (3) specifically allows for the treatment afforded to Spanish nationals to be extended to nationals of other Member States.

9 That argument cannot be accepted. While for Spanish nationals the right of free admission stems directly from the Regulation, the grant of that advantage to foreigners requires a decision of the Council of Ministers. At the time when the appli-

cation was brought, the Council of Ministers had not made use of its power under Article 22 (3) with the result that only foreigners living in Spain and persons under 21 years of age enjoyed free admission to Spanish museums.

10 It follows from the foregoing that the Spanish rules on admission to State museums entail discrimination affecting only foreign tourists over 21 years of age which, for Community nationals, is prohibited by Articles 7 and 59 of the EEC Treaty and the Kingdom of Spain has thereby failed to comply with its obligations under those articles.

Costs

11 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by applying a system whereby Spanish citizens, foreigners resident in Spain and nationals of other Member States of the EEC under 21

years of age benefit from free admission to national museums, while nationals of other Member States more than 21 years of age are required to pay an entrance fee, the Kingdom of Spain has failed to fulfil its obligations under Articles 7 and 59 of the EEC Treaty;

2. Orders the Kingdom of Spain to pay the costs.

Mancini Moitinho de Almeida Edward

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Murray

Delivered in open court in Luxembourg on 15 March 1994.

R. Grass

Registrar

G. F. Mancini

President of Chambers for the President