OPINION OF MR ADVOCATE GENERAL GULMANN
delivered on 19 January 1994 *

Mr President,
Members of the Court,

1. The Commission has brought these proceedings for a declaration that, by applying a system whereby solely Spanish citizens, foreigners resident in Spain and nationals of other Member States under 21 years of age benefit from free admission to national museums, while tourists from other Member States are required to pay an entrance fee, the Kingdom of Spain has infringed Articles 7 and 59 of the EEC Treaty.

2. The Regulation on State-Owned Museums and on the Spanish Museum System was adopted by Royal Decree No 620/1987 of 10 April 1987. Article 22, which concerns free public admission, contains the following provisions:

'1. Persons of Spanish nationality may visit State museums without charge subject to the conditions laid down by the Council of Ministers, and in any event on four days a month, one day each week ... .

...

3. The Government may, by decision of the Council of Ministers, extend the conditions for public visits referred to in paragraph 1 of this article to nationals of other States'.

Pursuant to decisions of the Council of Ministers of 7 December 1982 and 21 February 1986 the right of free admission to museums was granted, in addition to Spanish nationals, to foreigners resident in Spain and young persons under 21 years of age.

3. The Commission points out that the free movement of services pursuant to Article 59 of the Treaty entails the right for recipients of services, including tourists, to go to another Member State in order to receive a service there on the same footing as nationals of that Member State. That right to equal treatment covers not just actual access to the services in question, in this case physical access to museums, but also ancillary advan-

* Original language: Danish.

tages, in this instance admission without charge.

The Commission points out that visiting museums may be one of the determining reasons for which tourists, as recipients of services, decide to visit a Member State. It therefore considers that access to museums is one of the decisive factors for a tourist's visit to the territory of a Member State. It is closely and indissolubly linked to the right to freedom of movement enjoyed by tourists. In the Commission's view, the legal position in Spain reveals manifest discrimination against nationals of other Member States on grounds of their nationality which is clearly contrary to Articles 7 and 59 of the Treaty.

The Commission bases its view in particular on the judgment of the Court of Justice in Case 186/87 *Cowan* [1]

4. In the administrative procedure before this case was brought — initiated in July 1987 — the Spanish Government originally disputed the Commission's legal position. It claimed in particular that the rules at issue fell outside the scope of the Treaty. Following the judgment in *Cowan*, however, the Spanish Government has abandoned that argument.

However, it still contends that the case against it should be dismissed and points out that a proposal for an amendment of Article 22 of the Royal Decree has been formulated and that that provision 'merely specifies in unequivocal terms what was already the substance of the article which it amends in so far as that article does not envisage discriminatory treatment of nationals of Member States of the Community other than Spain as regards free admission to museums since paragraph 3 thereof expressly provided for the extension of the treatment afforded to Spanish nationals to nationals of other Member States by decision of the Council of Ministers'.

5. That argument is quite clearly untenable. In its application the Commission claims that Spanish law does not in fact ensure equal treatment of nationals of other Member States and that is not denied by the Spanish Government. It is established that the Spanish Council of Ministers has not yet made use of the existing power to grant equal treatment and that there is therefore still no such equal treatment.

1 — Case 186/87 *Cowan* [1989] ECR 195. The Court held *inter alia* that: '... the freedom to provide services includes the freedom for the recipients of services to go to another Member State in order to receive a service there, without being obstructed by restrictions, and that tourists, among others, must be regarded as recipients of services' (paragraph 15) and that: 'When Community law guarantees a natural person the freedom to go to another Member State the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materializes' (paragraph 17).

Conclusion

6. Since the Commission is right in maintaining that for the reasons it has given there is a duty under the Treaty to afford equal treatment to nationals of other Member States with regard to payment for admission to museums, I would propose that the Court make a declaration against the Kingdom of Spain in the terms sought by the Commission and that the Kingdom of Spain should be ordered to pay the costs.