JUDGMENT OF THE COURT
22 March 1994 *

In Case C-375/92,

Commission of the European Communities, represented by Rafael Pellicer and subsequently by María Blanca Rodríguez Galindo, members of its Legal Service, acting as Agents, 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 Miguel Bravo-Ferrer Delgado, State Attorney in the Legal Department for Matters before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration by the Court that by restricting access to the profession of tourist guide and guide-interpreter to persons who have passed examinations open solely to Spanish citizens; by failing to establish a procedure for examining qualifications acquired by a Community national who holds a diploma

* Language of the case: Spanish.

as tourist guide or guide-interpreter issued in another Member State and comparing them with those required by Spain, thus enabling the diploma issued by that other Member State to be recognized, or the holder of the diploma to be tested solely on matters which he has not studied; by requiring possession of a licence as evidence of having acquired training confirmed by passing an examination as a condition for working as a tourist guide and guide-interpreter travelling with a group of tourists from another Member State when that work is performed in Spain, within a particular geographical area, and consists of accompanying those tourists to places which are not museums or historical monuments where a guide with special qualifications is required; and, finally, by failing to communicate to the Commission the information requested concerning the rules applied by the Autonomous Communities regarding the activities of tourist guide and guide-interpreter, the Kingdom of Spain has failed to fulfil its obligations under Articles 5, 48, 52 and 59 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, M. Zuleeg, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 November 1993,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 1 October 1992, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that:

— by restricting access to the profession of tourist guide and guide-interpreter to persons who have passed examinations open solely to Spanish citizens,

— by failing to establish a procedure for examining qualifications acquired by a Community national who holds a diploma as tourist guide or guide-interpreter issued in another Member State and comparing them with those required by Spain in order to enable the diploma issued by that other Member State to be recognized, or the person holding the diploma to be tested solely on matters not studied, if his or her training is incomplete in accordance with Spanish criteria,

— by requiring possession of a licence as evidence of having acquired training confirmed by passing an examination as a condition for working as a tourist guide and guide-interpreter travelling with groups of tourists from another Member State, when that work is performed in Spain, within a particular geographical area, and consists in accompanying those tourists to places other than museums or historical monuments where a guide with special qualifications is required, and

— by failing to communicate to the Commission the information requested concerning the rules applied by the Autonomous Communities with regard to the activities of tourist guide and guide-interpreter,

the Kingdom of Spain has failed to fulfil its obligations under Articles 5, 48, 52 and 59 of the EEC Treaty.

2 According to the Spanish Order of 31 January 1964 approving the Rules on the Exercise of the Activity of Private Tourist Guide (BOE of 26 February 1964, hereinafter the '1964 Order'), in order to exercise the profession of tourist guide and guide-interpreter a person must have passed the examinations organized for that purpose by the Ministry of Information and Tourism (Article 12). Only persons with Spanish nationality are admitted to those examinations (Article 13 (a] and success in those examinations leads to the issue of a licence (Article 21). Moreover, although groups of tourists may be accompanied by a guide (*correo de turismo*) from their own country, the latter must use the services of a guide-interpreter of Spanish nationality (Article 11 (3] . The exercise of those activities by unauthorized persons is subject to sanctions (Article 7).

3 It is not disputed that the 1964 Order is still in force in each of the 17 Autonomous Communities of which Spain is comprised, and which have certain legislative powers in the field of tourism, until the legislative organs of those communities adopt rules derogating from it. Furthermore, it is agreed that two Autonomous Communities have adopted provisions on the exercise of the profession of tourist guide and guide-interpreter.

4 By letter of 30 July 1990 the Commission informed the Spanish Government that it considered the provisions of the 1964 Order, cited above, to be incompatible with Articles 48, 52 and 59 of the Treaty, and stated that the information requested concerning the relevant rules adopted by the Autonomous Communities had not been communicated to it. Consequently, the Commission gave the Kingdom of

Spain formal notice to submit observations to it within a period of two months. Since that letter did not achieve the desired result, the Commission sent a reasoned opinion to the Kingdom of Spain on 14 October 1991. After having stated that the Kingdom of Spain had not put an end to the infringements referred to in the opinion within the required period, the Commission decided to bring the matter before the Court on the basis of Article 169 of the Treaty.

The first complaint

5 The Commission complains that, by making access to the examinations for guide-interpreter and tourist guide subject to possession of Spanish nationality, Article 13 (a) of the 1964 Order is incompatible with Articles 48, 52 and 59 of the Treaty. With regard to Article 48, the Commission referred in its pleadings to Articles 55 and 56 of the Act concerning the conditions of accession of the Kingdom of Spain (Official Journal 1985 L 302, p. 23) and therefore restricts its complaint to workers who were already pursuing their activities in that State at the date of its accession to the Community.

6 Furthermore, at the hearing the Commission explained that its first complaint must be understood as an application for the Court to declare that the 1964 Order has infringed the Treaty, but that the Court should not comment on the provisions of the two Autonomous Communities concerning the profession of tourist guide and guide-interpreter.

7 In its pleadings the Spanish Government admitted that the nationality requirement imposed by Article 13 (a) of the 1964 Order still applied in Spain.

8 In those circumstances, it should be observed that that provision restricts access to the profession of tourist guide and guide-interpreter to persons of Spanish nationality, whether that profession is pursued on a self-employed basis or under a contract of employment.

9 Secondly, it should be noted that Articles 48, 52 and 59 of the Treaty require the elimination of any discrimination against Community nationals on grounds of nationality with regard to access to employment, establishment and the provision of services.

10 Accordingly, it must be held that, by making access to the profession of tourist guide and guide-interpreter subject to the possession of Spanish nationality, the Kingdom of Spain has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty.

The second complaint

11 The Commission claims that the Kingdom of Spain has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty, by failing to establish, for Community nationals who have obtained a diploma as tourist guide or guide-interpreter in another Member State, a procedure for examining their qualifications and comparing them with those required by Article 12 of the 1964 Order in order to enable the diploma issued by that other Member State to be recognized, or the person holding the diploma to be tested solely on the matters not studied, if his or her training is judged in accordance with the Spanish criteria to be incomplete.

12 In that respect, it should be recalled that the Court has consistently held that a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a profes-

sional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State, by making a comparison between the specialized knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.

13 That examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be carried out exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates (see judgments in Case C-340/89 *Vlassopoulou* v *Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraphs 16 and 17, and Case C-104/91 *Aguirre Borrell and Others* v *Colegio Oficial de Agentes de la Propriedad Immobiliaria* [1992] ECR I-3003).

14 In the present case, it is common ground that the 1964 Order does not establish a procedure enabling qualifications acquired by Community nationals in other Member States to be assessed.

15 The Spanish Government contends that the requirement imposed by the above-mentioned provisions of the Treaty has, however, been satisfied by the national provisions adopted in application of Council Directive 75/368/EEC of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities (Official Journal 1975 L 167, p. 22) and Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (Official Journal 1989 L 19, p. 16).

16 In reply to that argument, it should be first stated that, in accordance with Article 2 (5) of Directive 75/368, cited above, Article 2 (f) of Royal Decree No 439 of 30 April 1992 (BOE No 111 of 8 May 1992) excludes the profession of tourist guide from the matters covered.

17 It should then be pointed out that the Commission has claimed, without contradiction by the Spanish Government on that point, that although the profession of Técnico de Empresas y Actividades Turísticas (Adviser in Tourist Business and Activities) was added by Royal Decree No 767 of 26 June 1992 (BOE No 170 of 16 July 1992) to the list of professions appearing in the annexes to Decree No 1665 of 25 October 1991 (BOE No 80 of 22 November 1991), which transposes Directive 89/48 into Spanish law, that profession is not the same as that of tourist guide.

18 In those circumstances, it should be held that, by failing to establish a procedure for examining qualifications acquired by a Community national who holds a diploma as tourist guide or guide-interpreter issued in another Member State and comparing them with those required by Spain, the Spanish State has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty.

The third complaint

19 Under Articles 7 and 11 of the 1964 Order, cited above, tourist information services provided by a tourist guide or guide-interpreter may be supplied on a professional basis only by guides who have passed the necessary examination and who can prove it by means of the licence provided for in Article 21 of that order.

20 Basing itself on the previous case-law of the Court of Justice, the Commission considers that the requirement for a licence, the acquisition of which is subject to

the completion of vocational training confirmed by passing an examination, is contrary to Article 59 of the Treaty because it prevents tourist agencies from having recourse to independent guides not holding a licence, even if they exercise that profession in another Member State, and it obliges tourist agencies to recruit guides who hold the licence.

21 In that respect, it is sufficient to note that, as the Court of Justice has held in its judgments in Case C-154/89 *Commission* v *France* [1991] ECR I-659, C-180/89 *Commission* v *Italy* [1991] ECR I-709 and Case C-198/89 *Commission* v *Greece* [1989] ECR I-727, a Member State fails to fulfil its obligations under Article 59 of the Treaty where it makes the provision of services by tourist guides travelling with a group of tourists from another Member State, where those services consist in guiding such tourists in places other than museums or historical monuments which may be visited only with a specialized professional guide, subject to possession of a licence which requires specific training evidenced by a diploma.

22 Applying that case-law, the third complaint must be considered to be well founded.

The fourth complaint

23 The Commission claims that in its letters of 8 July and 11 October 1989 it requested the Kingdom of Spain to communicate to it the text of the regulations adopted by the Autonomous Communities with regard to the matters governed by the 1964 Order. Since the Kingdom of Spain did not reply to those requests, the Commission considers that it has infringed Article 5 of the Treaty.

24 In that respect, it should be pointed out that the Spanish Government produced the text of those regulations for the Court only when it lodged its defence.

25 Moreover, it should be noted that the failure to reply to the Commission's requests has made the achievement of its task under the Treaty more difficult, and that it therefore breaches the obligation of cooperation laid down by Article 5 of the Treaty.

26 It follows that, by failing to provide the Commission with the information requested, the Kingdom of Spain has failed to fulfil its obligations under Article 5 of the EEC Treaty.

Costs

27 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 been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that

— by making access to the profession of tourist guide and guide-interpreter subject to the possession of Spanish nationality;

— by failing to establish a procedure for examining qualifications acquired by a Community national who holds a diploma as tourist guide or guide-interpreter issued in another Member State and comparing them with those required by Spain;

— by making the provision of services by tourist guides travelling with a group of tourists from another Member State, where those services consist in guiding such tourists in places other than museums or historical monuments which may be visited only with a specialized professional guide, subject to possession of a licence which requires specific training evidenced by a diploma; and

— by failing to provide to the Commission the information requested concerning the regulations of the Autonomous Communities regarding the activities of tourist guide and guide-interpreter,

the Kingdom of Spain has failed to fulfil its obligations under Articles 48, 52, 59 and 5 of the EEC Treaty;

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

Due Mancini Moitinho de Almeida Díez de Velasco

Kakouris Schockweiler Zuleeg Kapteyn Murray

Delivered in open court in Luxembourg on 22 March 1994.

R. Grass
Registrar

O. Due
President