JUDGMENT OF THE COURT
18 March 1992 *

In Case C-24/91,

Commission of the European Communities, represented by R. Pellicier, a member of its Legal Service, acting as Agent, with an address for service at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented initially by C. Bastarreche Sagues, then by A. Navarro Gonzalez, Director General for Legal, Institutional and Community Co-ordination, and R. Silva de Lapuerta, Abogado del Estado, Head of the Legal Service, appointed to represent the Spanish Government before the Court of Justice of the European Communities, 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, inasmuch as the governing council of the Universidad Complutense, Madrid, decided to award by private treaty contracts for works connected with the extension and renovation of the university's Faculty of Political Science and Sociology and the School of Social Work, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (Official Journal, English Special Edition 1971 (II), p. 682),

* Language of the case: Spanish.

THE COURT,

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

Advocate General: C. O. Lenz,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 January 1992 at which the Kingdom of Spain was represented by G. Calvo Diaz, Abogado del Estado, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 6 February 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 January 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, inasmuch as the governing council of the Universidad Complutense, Madrid, decided to award by private treaty contracts for works connected with the extension and renovation of the university's Faculty of Political Science and Sociology and the School of Social Work, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (Official Journal, English Special Edition 1971 (II), p. 682).

2 Title III of the directive lays down, *inter alia*, rules relating to the adequate advertising of invitations to tenders, so that all interested contractors in the Community

may be given the possibility of being informed of an award procedure and of participating in it.

3 In accordance with Article 12 of the directive, notices of tender must be sent to the Office for Official Publications of the European Communities which is to publish them in the *Official Journal of the European Communities* not later than nine days after the date of dispatch. The fourth paragraph of that Article provides, however, that, in the case of accelerated procedure provided for in Article 15, publication is to be not later than five days after the date of dispatch.

4 In accordance with Article 14 of the directive concerning restricted procedures, the time-limit for receipt of requests to participate and for the receipt of tenders which the selected candidates are invited to submit are in each case to be fixed at not less than 21 days from the date of sending the notice and the date of sending the written invitation to the candidates respectively. However, Article 15 provides that, in cases where urgency renders impracticable the time-limits laid down in Article 14, the authorities awarding contracts may apply shorter time-limits, namely 12 days from the date of sending the notice for requests to participate and 10 days from the invitation to tender for the receipt of tenders.

5 Article 9 of the directive provides for a number of exemptions from the application of the provisions on advertising. In particular, Article 9(d) provides for a derogation 'in so far as is strictly necessary when, for reasons of extreme urgency brought [about] by events unforeseen by he authorities awarding contracts, the time-limit laid down in other procedures cannot be kept.'

6 On 9 February 1989 the governing council of the Universidad Complutense, Madrid, declared that it was urgent for works to be carried out for the extension and renovation of the Faculty of Political Science and Sociology and the School of Social Work for a total budgeted amount of PTA 430 256 250. That amount was made available to it by the Ministry of Education in January 1989.

7 On 27 February 1989 the governing council of the university opened a competitive tender for those works in the form of a notice of tender published in four Spanish newspapers.

8 It is apparent from the documents before the Court that the completion of the works contemplated would, according to the architect in charge, take seven and a half months and would be completed before the beginning of the 1989 academic year.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 The Commission considers that in the present case there was no warrant for having recourse to the award of contracts on a private-treaty basis, since the conditions for the application of Article 9(d) of the directive were not met. In that connection, it explains that the growing number of students is a problem which has existed for years, with the result that the intake of new students in October 1989 could not be deemed to be an unforeseen circumstance of extreme urgency for the purposes of that provision.

11 The Commission argues, moreover, that the governing council of the university could have published the notice of the invitation to tender in the *Official Journal of the European Communities* in accordance with the accelerated procedure provided for in Article 15 of the directive, the shorter time-limits under that procedure enabling the authorities awarding contracts to comply with the advertising obligations in less than one month. It considers that time-limit to have been entirely consistent with the timetable of works drawn up by the governing council.

12 On the other hand, the Spanish government considers that recourse to Article 9(d) of the directive was justified. It insists that it was necessary to complete the works

before 1 October 1989 and stresses the delay which the Community publication procedures would have caused. It states in that connection that the faculty and school premises concerned were entirely inappropriate for receiving the large number of new students expected at the beginning of the 1989 academic year.

13 It should first be observed that the conditions for the application of Article 9(d) are concurrent. Consequently, if one of those conditions is not satisfied, the authorities awarding contracts may not derogate from the provisions of the directive, in particular those relating to advertising.

14 In the present case the extreme urgency relied on by the Spanish Government was not incompatible with the time-limits provided for in the context of the accelerated procedure under Article 15 of the directive.

15 The requisite budgetary appropriations had been granted to the university in January 1989 and the extension and renovation works, which were expected to last for seven-and-a-half months, were due to be completed before the academic year beginning in October 1989. Sufficient time was thus available to it to organize the invitation to tender under the accelerated procedure which is laid down in Article 15 of the directive and under which the time-limits may, as pointed out at paragraph 4 above, be restricted to 22 days, namely 12 days for requests to participate and 10 days for the receipt of tenders.

16 Accordingly, as a result of the decision of the governing council of the Universidad Complutense, Madrid, to award by private treaty contracts for works connected with the extension and renovation of the Faculty of Political Science and Sociology and the School of Social Work, the Kingdom of Spain has failed to fulfil its obligations under the directive, in particular Articles 9 and 12 to 15.

Costs

17 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, as a result of the decision of the governing council of the Universidad Complutense, Madrid, to award by private treaty contracts for the extension and renovation of the Faculty of Political Science and Sociology and the School of Social Work, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts, and in particular Articles 9 and 12 to 15 thereof;**

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

Due Grévisse Kapteyn Mancini

Kakouris Moitinho de Almeida Díez de Velasco Zuleeg Murray

Delivered in open court in Luxembourg on 18 March 1992.

J.-G. Giraud
Registrar

O. Due
President