of powers, are of the same general nature as those provisions. The suspension by the said article of the application of the directive, which is itself of general application, affects equally all air carriers wishing to operate a direct inter-regional air service between another Community airport and Gibraltar airport and, more generally, all those using the latter airport. Furthermore, apart from the fact that Gibraltar airport is not the only airport to have been temporarily excluded from the scheme of the directive, the said suspension merely reflects the consequences of the existence of an objective obstacle, arising from differences between two Member States, to the immediate application of the directive to Gibraltar airport.

REPORT FOR THE HEARING
in Case C-298/89 *

I — Legal background and facts

By Council Directive 83/416/EEC of 25 July 1983 (OJ 1983 L 237, p. 19), as amended by Directives 86/216/EEC of 26 May 1986 (OJ 1986 L 152, p. 47) and 89/463/EEC of 18 July 1989 (OJ 1989 L 226, p. 14), and by Council Decision 87/602/EEC of 14 December 1987 (OJ 1987 L 374, p. 19), the Council established a Community programme for authorization by the Member States of scheduled inter-regional air services between Member States.

The programme seeks to develop air services, expand the intra-Community network and contribute to attainment of the internal market.

Directive 83/416 of 25 July 1983 lays down the authorization procedure to be followed, the potential grounds for refusal and the detailed arrangements for approving the tariffs charged. It provides that airports in the Greek islands are to be temporarily exempted from the application of that directive.

Decision 87/602 of 14 December 1987 concerns the sharing of passenger capacity between air carriers on scheduled air services between Member States and access for air carriers to scheduled air service routes between Member States. It contains a provision suspending its application to Gibraltar airport, in the same terms as those used in subsequent measures, which has not been challenged at any time.

Directive 83/416 has been amended on two occasions: in 1986 in order to exempt temporarily from its application, as in the case of the Greek islands, the airports of the Atlantic islands comprised in the autonomous region

* Language of the case: English.

of the Azores and the airport of Oporto and, in 1989, to promote the development of direct services between the different regions of the Community.

Essentially, Directive 89/463 of 18 July 1989 extends the application of the arrangements laid down for services operated using aircraft with more than 70 passenger seats and eliminates several of the grounds for refusal of authorization for scheduled interregional air services contained in the initial directive.

Directive 89/463 also contains a provision suspending its application to Gibraltar airport: Article 2(2) reads as follows:

'Application of the provisions of this directive to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of the Kingdom of Spain and the United Kingdom will so inform the Council on that date.'

The Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 provides in particular (paragraph 8) that the arrangements for the joint use of Gibraltar airport will come into operation when the British authorities have notified their Spanish counterparts that the legislation necessary to give effect to paragraph 3.3 (customs and immigration controls in the respective terminals) have come into operation or on completion of the construction of the Spanish terminal, whichever is the later, but in any event not more than one year after the notification referred to above.

In its application, which was received at the Court Registry on 29 September 1989, the Government of Gibraltar, relying on the second paragraph of Article 173 of the EEC Treaty, seeks the annulment of Article 2(2) of Directive 89/463.

Pursuant to the first subparagraph of Article 91(1) of the Rules of Procedure of the Court, the Council lodged an objection of inadmissibility and asked the Court to give a decision on it without considering the substance of the case.

Pursuant to Article 93(1) and (2) of the Rules of Procedure, the Court gave leave to the Kingdom of Spain by order of 15 November 1989, to the United Kingdom by order of 17 January 1990 and to the Commission of the European Communities by order of 21 February 1990 to intervene in support of the submissions of the defendant.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure on the objection of inadmissibility without any preparatory inquiry. However, it put certain questions to the applicant and the United Kingdom.

II — Forms of order sought by the parties

The *Council* claims that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

The *Government of Gibraltar* contends that the Court should:

— dismiss the objection of inadmissibility;

— order the Council and the interveners to pay the costs;

— in the alternative, consider the objection at the same time as the substance of the case.

The *Kingdom of Spain*, the *United Kingdom* and the *Commission*, intervening in support of the Council, claim that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

III — Summary of the pleas in law and arguments of the parties

The arguments contained in the Council's objection of inadmissibility under the second paragraph of Article 173 of the EEC Treaty are based on four pleas:

A — The applicant is not qualified to bring an action

B — The nature of the contested measure

C — The contested provision is not of direct concern to the applicant

D — The contested provision is not of individual concern to the applicant

A — *The applicant's lack of locus standi*

1. *The Council* claims that the Government of Gibraltar has no legal personality or capacity to bring proceedings under British law. It maintains that the power to bring an action of the kind with which these proceedings are concerned is vested in the Governor.

2. *The Government of Gibraltar* contends that it has legal capacity and the capacity to institute legal proceedings before the courts of Gibraltar and the United Kingdom.

More specifically, it is apparent from an opinion to which it refers that, whilst the applicant government may not possess legal personality in strict law, it is qualified to commence proceedings as a matter of British court practice, the expression 'the Government' being synonymous with 'the Crown'.

Referring to the same opinion, the Government of Gibraltar contends that the decision to bring the present proceedings is within its powers since the contested provision relates to a defined domestic matter pursuant to section 55 of the Gibraltar Constitution of 23 May 1969 and the Despatch of the Secretary of State for Foreign Affairs of the same date. Head III, sub-heading (d), and Head IV, sub-heading (a), of the list annexed to the Despatch refer to tourism and the civil air terminal. It adds that the authority of the Chief Minister to represent his government is conferred by sections 45(2), 50 and 55 of the Gibraltar Constitution.

Furthermore, the Government of Gibraltar considers that the Court of Justice cannot be regarded as a 'foreign tribunal' and that the action is not one of an international character falling within the powers of the Governor of Gibraltar.

3. In its observations in support of the objection of inadmissibility, *the United Kingdom* submits that whilst the Government of Gibraltar may have a certain capacity to act before the British courts, which was granted to it merely to facilitate actions by and against the Crown, that procedural capacity does not give it the status of a 'legal person' for the purposes of the second paragraph of Article 173 of the Treaty.

The United Kingdom considers that the power granted to the authorities indicated in the first paragraph of Article 173 of the Treaty presupposes that the legal persons referred to in the second paragraph of Article 173 of the Treaty exercise functions which are manifestly different from those of the institutions referred to in the first paragraph.

In its view, the applicant does not fulfil that requirement, since it exercises certain executive functions of the Crown. In view of the Constitutional Order and the Secretary of State's Despatch of 23 May 1969, the United Kingdom considers that only the Governor of Gibraltar has the capacity to initiate such proceedings.

Finally, the United Kingdom states that the Court has held that the meaning of 'legal person' in the second paragraph of Article 173 of the EEC Treaty is not necessarily the same as in the various legal systems of the Member States (judgment in Case 135/81 *Groupement des Agences de Voyages* v *Commission* [1982] ECR 3799, in particular paragraph 10 at p. 3808).

4. Relying on the case-law of the Court, *the Kingdom of Spain* observes that *locus standi* to bring proceedings must be considered in relation to the rights with which the present proceedings are concerned.

It submits that, since the contested directive relates to air traffic between the airports of Member States and not between terminals, the Government of Gibraltar's reliance on its ownership of the terminal does not render the application admissible.

Moreover, the Kingdom of Spain considers that the Chief Minister can represent only the Council of Ministers and not the Government of Gibraltar within the meaning of the Gibraltar Constitutional Order.

B — *The nature of the contested measure*

1. *The Council* refers in the first place to the terms of the second paragraph of Article 173 of the Treaty and states that a legislative measure of general application may not be challenged by a natural or legal person.

More specifically, under Article 189 directives are binding on the Member States only as to the result to be achieved and they must be transposed into the national law of a Member State in order to take legal effect as regards individuals. In the Council's opinion, the remedy open to individuals is to bring proceedings before the national courts against national implementing measures.

The Council also points out that the issue in the present case is different from that of the recognition of the direct effect of a directive.

2. *The Government of Gibraltar* considers that the legality of a provision of a directive may be reviewed under Article 173 of the Treaty. In support of that view, it refers both to Article 164 of the Treaty, concerning the duties entrusted to the Court of Justice, and to the exhaustive interpretation of its powers of review set out in the judgment in Case 22/70 *Commission* v *Council* [1971] ECR 263.

Referring to the judgments in Case 69/69 *Alcan* v *Commission* [1970] ECR 385 and Joined Cases 789 and 790/79 *Calpak* v *Commission* [1980] ECR 1949, the Government of Gibraltar considers that the choice of the form of a Community measure cannot change its nature and, consequently, the Community institutions cannot frustrate an application under Article 173 merely by choosing the form of a directive.

The applicant claims that since Article 2(2) of Directive 89/463 is identical to Article 1(6) of Decision 87/602 of 14 December 1987, it in fact constitutes a decision which does not form an integral part of the directive. Thus, the contested provision, separated from the remainder of the directive, represents a decision of individual application.

3. In its observations in support of the objection of inadmissibility, *the United Kingdom* states that the draughtsman of the Treaty did not omit directives from the second paragraph of Article 173 by mistake or oversight but because the very nature of a directive, which is binding only on the Member States and must be implemented by national measures, precludes natural or legal persons other than the institutional bodies referred to in the first paragraph of Article 173 from seeking the annulment of such measures. For the United Kingdom, that omission is consistent with the scheme of Article 189, which defines the various categories of measures adopted by Community institutions and the judicial remedies available under the Treaty.

4. *The Kingdom of Spain* also states that directives are excluded from the scope of the second paragraph of Article 173. Relying on the order of the Court of 13 July 1988 in Case 160/88 R *Fédération Européenne de la Santé Animale* [1988] ECR 4121, it also considers that the contested measure is, by its nature, a directive and not an individual decision concerning the airport of Gibraltar, since the article in question cannot be isolated from the legislative measure as a whole.

5. *The Commission* considers that the remedy open to private persons in order to obtain a review of the lawfulness of directives is recourse to Article 177 of the Treaty, governing preliminary rulings by the Court.

It rejects the view that Article 2(2) of the directive in question constitutes a decision addressed to the Member States which is of direct and individual concern to the applicant.

The Commission considers, on the contrary, that the contested provision affects all air carriers who wish to operate a direct interregional air service between Gibraltar airport and another Community airport.

It also relies on previous decisions of the Court (Case 30/67 *Industria Molitoria Imolese* v *Council* [1968] ECR 115, Case 6/68 *Zuckerfabrik Watenstedt GmbH* v *Council* [1968] ECR 409 and Case 64/69 *Compagnie Française Commerciale et Financière* v *Commission* [1970] ECR 221) in support of its view that Article 2(2) of the directive, which relates to the territorial application and the application in time of Community directives, forms an integral part of the said directive and partakes of its general nature.

C — *The contested provision is not of direct concern to the applicant*

1. *The Council* considers that the rights claimed by the applicant fall within the interests of bringing an action and not within the test of 'direct concern'.

As regards the authorization for air services, the Council maintains that the Government of Gibraltar is not concerned as of right.

The Council considers that the right to promote the well-being of the people of Gibraltar claimed by the Government of Gibraltar in its application is too uncertain and accordingly it cannot be directly affected by the temporary suspension of the application of the directive.

Similarly, the loss of potential revenue is, of its very nature, too indirect to create a situation in which the applicant is directly concerned.

2. *The Government of Gibraltar* contends that the exemption of Gibraltar airport from the application of the directive is of immediate effect and that less favourable treatment derives directly from the directive. It divides the rights which it claims to have lost into two groups: governmental rights and pecuniary rights.

First, the applicant refers to its right to be involved in the process established for the approval of inter-regional air services. It states in particular that, whilst the applicable rules place an obligation on the Civil Aviation Authority (CAA) of the United Kingdom to consult the Secretary of State, the convention of consulting the Government of Gibraltar is so well established that the CAA has expressed its understanding that it is required to consult the Gibraltar authorities.

Secondly, the Government of Gibraltar refers to its right to improve the well-being of its people. Relying on the case-law of the Court (Order in Joined Cases 91 and 200/82 *Chris International Foods Ltd* [1983] ECR 417, the applicant considers that it has a sufficient interest in the protection of the well-being of the inhabitants of its territory for the government to be directly concerned.

As regards its pecuniary rights, the Government of Gibraltar contends that it suffers a direct loss of revenue as owner of the airport terminal (rental and other income), and also the income which it receives by levying a departure tax on each passenger, storage charges on freight deposited at the airport and, finally, benefits in the form of tax from all the commercial operators at the airport which are amenable to its jurisdiction in that respect.

The applicant considers that the economic interest in having the directive applied is sufficient to constitute direct concern.

3. Referring to the Order of the President of the Court in Case 160/88 R *Fédération Européenne de la Santé Animale*, cited above, the *United Kingdom* considers that a legal person can never be directly concerned by a directive of general application and that in the present case the conditions for the authorization of air services is of concern only to the Secretary of State for Transport.

The United Kingdom states that it would be inconsistent with the very nature of the directive to hold that a harmonizing instrument of that kind, which must be implemented in the form of a national measure, can directly concern natural or legal persons within the meaning of Article 173.

Alternatively, the Government of Gibraltar cannot be directly concerned in its governmental capacity since responsibility for international civil aviation in Gibraltar rests with the United Kingdom authorities.

4. Relying on the case law of the Court (judgment in Joined Cases 103 to 109/78 *Société des Usines de Beauport* v *Council* [1979] ECR 17, *the Kingdom of Spain* maintains that there is no causal link between the Community measure and the interests of the applicant. First, in order to lift the suspension of the directive, intervention will be required by the two Member States as provided for in the 1987 Joint Declaration in order to achieve the result pursued by the directive and, secondly, the implementation of that declaration would not entail the automatic opening of inter-regional air links.

5. In its observations in support of the objection of inadmissibility, *the Commission* does not see how the applicant can claim a 'loss of rights' since the rules applicable to Gibraltar airport are still the same.

As regards the procedure for authorization of air services, the Commission maintains that the applicant does not have any rights of its own which could be directly affected. It adds that suspension of the directive in no way precludes the United Kingdom authority from granting authorization for flights on the basis of a bilateral air services agreement. Moreover, the Commission considers that the rights claimed are derived rights since use of the airport terminal is not regulated by the directive. Finally, the Commission submits that the conditions laid down by Directive 83/416 continue to apply to Gibraltar airport and consequently the terminal is able to obtain revenue.

As regards future revenue, the Commission considers that it is too hypothetical for the Government of Gibraltar to be regraded as directly affected in that respect.

D — *The contested measure is not of individual concern to the applicant*

1. *The Council* draws a distinction between the management of the airport and the purpose of the directive in question, namely authorization of air services. It states that Article 2(2) of the directive also concerns all the other Community airports in categories 2 and 3 likely to have air links with Gibraltar. Finally, it claims that the applicant owns only the airport terminal and is not responsible for the airport itself.

2. Referring to the judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, *the Government of Gibraltar* considers itself to be individually concerned as the authority responsible, in conjunction with the CAA, for the authorization of air services, as the authority responsible for the promotion of the well-being of the people of Gibraltar, as the owner of the terminal and, finally, as the authority having exclusive competence to levy departure and other taxes and receive income from commercial operations.

The applicant concedes that other parties might also have an economic interest in the present case, but points out that it alone is affected by Article 2(2) of Directive 89/463 to such a great extent. The applicant observes that the air service to which the directive relates cannot be operated without terminals and the associated services. Consequently, the distinction between the authorization of air services and management of the airport is too formalistic.

Finally, the Government of Gibraltar contends that the mere fact that Gibraltar airport is identified by name in Article 2(2) of the directive itself constitutes sufficient indicia of individuality.

3. *The United Kingdom* observes, relying on the judgment of the Court in Joined Cases 103 to 109/78 *Société des Usines de Beauport*, cited above, that Article 2(2) of the directive is not framed to take account of the situation

of the Government of Gibraltar but is framed to take account of the circumstances of the territory of Gibraltar and in particular the application of the Joint Declaration of 2 December 1987. Moreover, the United Kingdom considers that a measure of general application does not cease to be such simply because it is possible to ascertain the identity of the persons to whom it applies.

4. *The Kingdom of Spain* considers in the first place that the directive is general and abstract in scope. The possibility of determining the identity of the persons concerned does not mean that an individual interest can be ascertained.

It considers, secondly, that only the two Member States mentioned in the contested provision can have an individual interest regarding the issue of the authorizations provided for by the directive, and in any event a local authority such as the Council of Ministers of Gibraltar has no powers in that regard.

Furthermore, the Kingdom of Spain considers that the defence of the general interests of Gibraltar is a matter for the United Kingdom.

Finally, the Spanish Government observes that the applicant, as owner of the airport terminal, could be individually concerned since its situation is no different from that of the concessionaire of a shop situated in that airport.

5. *The Commission* considers, as already indicated in its analysis of the nature of the contested measure, that all the airports open to inter-regional air services are concerned by the contested measure.

It adds that the levying of taxes and charges at the airport, relied on by the applicant to justify its interest in bringing an action, is not within the subject-matter of the directive.

Thus, according to the Commission, the Government of Gibraltar is not affected by the contested provision by reason of certain attributes which are peculiar to it or circumstances in which it is differentiated from all other persons.

IV — Answers to the questions put to the parties

A — *First question*

The applicant and the United Kingdom are asked to state whether, in their view, the territory of Gibraltar is, as a dominion, vested with legal personality and/or whether that personality is recognized as being possessed by certain institutions of the territory, in particular by the Council of Ministers.

In the event of an affirmative answer to the first part of the question, is it possible to indicate which authority has the capacity to represent the territory of Gibraltar and to act in its name?

As regards the land on which the airport terminal is built, does the fact that it is registered in the name of the Government signify that it is the property of the all the organs which constitutionally form the executive

authority in Gibraltar, of the Council of Ministers only, or even the property of the territory and not of that of the organs which represent the territory?

Can the parties also state the name under which the land which is the property of other public bodies in Gibraltar is registered.

Answers

1. In the *applicant's* view, the territory of Gibraltar, as a dominion, is not vested with legal personality. Under British law, legal personality is possessed by natural persons or by artificial persons created by statute or by the Crown. In Gibraltar, it is the Crown in right of Gibraltar, under the name 'Government of Gibraltar', which is vested with such legal personality.

Representation of the Government of Gibraltar is assured, for 'defined domestic matters' by the Chief Minister or the Council of Ministers and, for other matters, by the Governor.

As regards ownership of the airport land, a distinction must be drawn between the land belonging to the Crown in right of the United Kingdom for defence purposes (the airport runway) and the land which belongs to the Crown in right of the Government of Gibraltar for other purposes (the airport terminal).

2. *The United Kingdom*, like the applicant, states that legal personality is possessed not by Gibraltar but by the Crown; British law distinguishes between the functions of the Crown in right of the Government of Gibraltar and the functions of the Crown in right of the Government of the United Kingdom.

By analogy with the procedure applicable before the courts of Gibraltar, it may be stated that proceedings by the Crown in right of the Government of Gibraltar are, if concerned with 'a defined domestic matter', to be instituted by the Attorney General on the instructions of the Council of Ministers or the competent ministry. But since the present proceedings are not, in the United Kingdom's view, analogous to proceedings on a 'defined domestic matter', they can be validly initiated only upon the instructions of the Governor of Gibraltar.

In addition, the land upon which the airport terminal is built was, at the time these proceedings were initiated, vested in the Crown in right of the United Kingdom. It was on licence by the United Kingdom Secretary of State for Defence to the Government of Gibraltar, which at the time owned the airport terminal.

B — *Second question*

The applicant and the United Kingdom are requested to state the legal basis on which the Chief Minister represents the Government of Gibraltar. More generally, they are

requested to identify the organs referred to by the Constitution of Gibraltar when it mentions 'the Government of Gibraltar'. Is it referring to the administration set up by the Crown as a whole? Or all the organs mentioned in the chapter devoted to the executive authority, that is to say the Governor, the Council of Gibraltar, the Council of Ministers, the Chief Minister and the Ministers? Or a combination of those organs, or even just one of them?

If 'the Government of Gibraltar' refers to a number of organs, can the parties to which these questions are addressed state whether they consider that each of those organs is empowered, as regards matters falling within its jurisdiction, to bring suit in the name of that government or whether they believe that only some of them have such a prerogative and can they indicate the provisions or practices on which they base their belief?

Answers

1. In the *applicant's* view, the legal basis on which the Chief Minister represents the Government of Gibraltar rests upon the provisions of Chapter IV of the Constitution, according to which the executive authority is vested in the Governor, to be exercised by him directly or indirectly, and, in addition, other persons or authorities may exercise such functions as may be conferred upon them by law. The sequence of provisions in that chapter establish that the Chief Minister has legal authority to carry out decisions of the Council of Ministers relating to defined domestic matters.

The 'Government of Gibraltar' as referred to in the Constitution comprises the institutions therein mentioned. The power of each such organ to bring suit in the name of the Government of Gibraltar within the sphere of that organ's constitutional responsibility is implicit in the grant to it of its share of executive power. Certain institutions also possess their own natural legal personality, namely the Governor, the Chief Minister, the Council of Ministers and the Attorney General, who may institute legal proceedings on matters falling within their respective spheres of competence, either in their own names or in the name of the Government of Gibraltar.

2. *The United Kingdom* states that section 45 of the Gibraltar Constitution vests the executive authority of the Government of Gibraltar in the Governor.

For defined domestic matters, he must consult the Council of Ministers or the responsible minister and act in accordance with their advice. In such matters, the Council of Ministers or the responsible minister direct the Government of Gibraltar.

For other matters, even though the Governor may be required to consult the Council of Ministers of Gibraltar, the Council of Ministers and the Chief Minister do not direct the Government of Gibraltar.

C — *Third question*

The Governments of Gibraltar and the United Kingdom are requested to state whether it is solely for the Governor, acting on instructions from Her Majesty, to define the 'defined domestic matters' within the meaning of section 55 of the Constitution of Gibraltar, whether the Governor has adopted, in the fields forming the subject matter of the dispute, the written directions which the United Kingdom mentions and, if so, to indicate upon which public authorities of Gibraltar those directions confer powers. The parties are requested to produce those instruments.

Answers

1. In the *applicant's* view, the list of 'defined domestic matters' referred to in section 55 of the Gibraltar Constitution was originally attached to the Secretary of State's Despatch to the Governor of 23 May 1969. It included 'Economic Development', 'Tourism' and 'Civil Air Terminal', matters which evidently relate to the subject-matter of the present action.

The Governor, who is the only person empowered by section 55 of the Gibraltar Constitution to determine whether any matter is a defined domestic matter, did not exercise his power in the present case. That inaction indicates that he does not intend to contest the legal power of the Chief Minister and the Council of Ministers to act in this matter.

2. According to *the United Kingdom*, since no directions were given under section 55 of the Gibraltar Constitution after the issue of the Secretary of State's Despatch of 23 May 1969, the practice thereafter was to treat the civil air terminal mentioned in that despatch as a 'defined domestic matter'. [1]

But it is clear from the fourth paragraph of the Secretary of State's Despatch that the general exceptions to be made to the list of such matters included: 'the application to Gibraltar of international agreements, the implementation in Gibraltar of international obligations and the participation of Gibraltar in specialized international bodies'. The present proceedings specifically concern the application of the EEC Treaty and implementation of the obligations arising from it, together with the application of existing and future bilateral air services agreements. A legal action in the name of the Government of Gibraltar which relates to inter-regional air services between Member States under Directive 89/463 could only be initiated, in the hypothesis most favourable to the applicant, on the instructions of the Governor of Gibraltar.

1 — The United Kingdom has since stated that directions were published in the *Gibraltar Gazette* of 12 September 1969 reproducing verbatim the provisions on the civil air terminal in the Despatch of 23 May 1969.

D — *Fourth Question*

Can the applicant and the United Kingdom, producing any relevant provisions in this regard, specify which domestic authorities are involved, and on which precise conditions, in the procedure for authorizing air services to Gibraltar?

Answers

1. The *applicant* states that the Government of Gibraltar is regularly consulted by the Civil Aviation Authority (CAA) on all applications for air transport approval affecting Gibraltar. In that connection, it produces the text of Article 16 of the Civil Aviation Authority Regulations and two letters, dated 29 April 1991 and 1 May 1991, and a decision of 25 June 1991 on applications concerning the London-Gibraltar route. It appears in particular that, in the present case, the Government of Gibraltar submitted written and oral observations and that its opinion was largely taken into account by the competent authority.

2. *The United Kingdom* states, producing copies thereof, that the main relevant statutory provisions are contained in the Civil Aviation Act 1982 (sections 64 to 70 and 105) and in the Civil Aviation Authority Regulations 1991. According to those instruments, where the CAA, the competent authority for authorizations concerning aircraft registered in the United Kingdom or in a dependent territory, receives an application in respect of a licence authorizing flights to or from Gibraltar, it must consult the Secretary of State for Foreign Affairs. At the time the present action was initiated, the practice was for the Secretary of State to consult the Government of Gibraltar. However, as a matter of administrative convenience, for some 18 months the CAA has been sending its consultation letters both to the Secretary of State for Foreign Affairs and to the Government of Gibraltar. It has always taken the points made by the Government of Gibraltar fully into account in reaching its decisions. [2]

Other instruments, also produced, are applicable, showing in particular that the Secretary of State for Transport is the authority responsible for conferring permission for aircraft registered otherwise than in the United Kingdom or any of its Territories to operate commercially in Gibraltar. The Secretary of State, who may partially delegate that power to the Governor, adopts his decisions after receiving an assessment from the Gibraltar authorities and after consulting the CAA. As regards civil scheduled commercial air services from Gibraltar to foreign countries, the task of negotiating traffic rights rests primarily with the Secretary of State for Transport, with the assistance of the United Kingdom Foreign and Commonwealth Office.

E — *Fifth question*

The applicant and the United Kingdom are requested to provide the Court with all relevant information, producing any relevant documents in this regard, on the status of Gibraltar airport on the date of the contested provision and to reply in particular to the following questions: Who is or was the owner of the airport as a whole (and not only of the terminal) at that date? Pursuant to which provisions or principles? Who is or

2 — ixThe United Kingdom has since stated that it was already the practice of the CAA at the time when these proceedings were brought to send its consultation letters to the Government of Gibraltar.

was responsible for operating it, in particular for the maintenance of runways and other facilities? In which legal form is or was the airport managed? Which authority is or was responsible for policing the airport? On what basis are taxes and charges related to the operation of the airport and its terminal charged? If the United Kingdom authorities do not have direct responsibility in such matters, do they still have rights, and which rights, regarding the disposition and operation of the airport terminal or the use of the monies flowing from its operation?

Gibraltar policemen are responsible for keeping order inside the civil air terminal. Ministry of Defence personnel are responsible for policing the runway.

Under the Imports and Exports Ordonnance 1986, the Government of Gibraltar levied tax in 1989 on fuel sold to aircraft, customs duty on imported goods and tax on sales in the duty free shop. Furthermore, landing charges were levied by the Ministry of Defence, which paid rates to the Government of Gibraltar in respect of the runway.

Answers

1. According to the *applicant*, on the date of the contested provision, two parties owned separate parts of the airport: the Government of Gibraltar owned the terminal, whilst the Secretary of State for Defence of the United Kingdom owned the runway and the control tower.

The respective owners were responsible for operating and keeping in service each of those parts of the airport. Management of the air terminal was entrusted to Gibraltar Airport Services Ltd, in which 50% of the capital belongs to the Government of Gibraltar (the other 50% belonging to British Airport Services), which rented check-in facilities to airlines and commercial premises to independent operators. Two lease agreements have been produced as examples.

Finally, according to the applicant, the United Kingdom authorities have no 'direct responsibility' concerning the disposition and operation of the airport terminal or the use of the monies flowing from its operation.

2. *The United Kingdom* states that when the present proceedings were initiated the airport terminal building was owned by the Crown in right of the Government of Gibraltar. The land on which the terminal stood was occupied by the Government of Gibraltar on licence from the British Secretary of State for Defence dated 30 January 1980 (copy produced). The remainder of the airport was vested in the Crown in right of the Government of the United Kingdom (British Secretary of State for Defence).

Operation of the airfield was the responsibility of the Government of Gibraltar as regards the terminal and of the British Secretary of State for Defence as regards provision of the principal equipment (air navigation aids, ambulances and supply vehicles, fuel storage) and the maintenance of the runways and other facilities.

The legal form in which the airport was managed was as follows: the air terminal was managed by Gibraltar Air Services Ltd, whilst the airport activities not affecting the terminal were managed by the Royal Air Force; handling services for civilian aircraft were provided by a civilian private company, Blands Ltd, under contract to the Ministry of Defence.

The Ministry of Defence was responsible for policing all of the airport except the civil air terminal and the road approaches to the terminal, which were the responsibility of the Government of Gibraltar. However, it must be emphasized that the Gibraltar police force do not constitute a 'defined domestic matter' and fall within the responsibility of the Governor of Gibraltar, as do customs and immigration procedures.

As to the basis for charging the taxes and charges relating to the operation of the airport, the position was as follows: landing and parking fees were payable to the Ministry of Defence and handling charges were payable to Blands Ltd; on purchasing their tickets, passengers paid charges to Gibraltar Airport Services, including a levy paid to the Government of Gibraltar; the Ministry of Defence paid rental to the Government of Gibraltar for the use of some office space within the civil air terminal building but the Government of Gibraltar did not pay any charge to the Ministry for the land on which the terminal stood.

Finally, it is to be noted that since the initiation of the present proceedings, the ownership of the terminal building and the land on which it stands has been transferred to the Gibraltar Development Corporation, set up on 3 May 1990. The transfer of ownership, effected in several stages, was completed on 11 October 1990.

F — *Request for the production of documents*

The Court requested the applicant, the United Kingdom and the Kingdom of Spain to produce plans enabling the location of Gibraltar airport, the existing terminal and the new terminal, whose construction is envisaged by the Joint Declaration of 2 December 1987, to be precisely identified, and those parties produced various cartographic and photographic documents.

F. Grévisse
Judge-Rapporteur