OPINION OF ADVOCATE GENERAL STIX-HACKL delivered on 9 November 2004 [1]

I — Introductory remarks

1. In these infringement proceedings the Commission claims that the Kingdom of Spain has breached Directives 68/360/EEC, [2] 73/148/EEC, [3] 90/365/EEC, [4] and 64/221/EEC, [5] which have since been repealed. In particular the case concerns the grant of residence permits to nationals of non-Member States who are members of the family of a Community national who has exercised his right to freedom of movement.

II — Legal framework

A — *Community law*

1. Provisions relating to entry and residence

2. Article 1 of Directive 73/148 provides that Member States must abolish restrictions on the movement and residence of self-employed persons who are established or wish to establish themselves in another Member State in order to pursue activities as self-employed persons, or who wish to provide services in that State, and of their spouses, irrespective of their nationality.

3. Article 1 of Directive 90/365 provides that Member States are to grant the right of residence to all nationals of Member States who have pursued an activity in the Community as an employee or self-employed person and to members of their families, provided that they are recipients of an invalidity or early retirement pension, or old age benefits, or of a pension in respect of an industrial accident or disease, of an

1 — Original language: German.

2 — Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485).

3 — Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14).

4 — Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28).

5 — Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117).

amount sufficient to avoid becoming a burden on the social security system of the host Member State during their period of residence and provided they are covered by sickness insurance in respect of all risks in the host Member State.

4. Article 3, which also applies mutatis mutandis to the beneficiaries of Directive 90/365 in accordance with Article 2(2) of the latter Directive, and Article 4 of Directive 68/360 provide as follows in relation to the formalities:

'Article 3

(1) Member States shall allow the persons referred to in Article 1 to enter their territory simply on production of a valid identity card or passport.

(2) No entry visa or equivalent document may be demanded save from members of the family who are not nationals of a Member State. Member States shall accord to such persons every facility for obtaining any necessary visas.

Article 4

(1) Member States shall grant the right of residence in their territory to the persons referred to in Article 1 who are able to produce the documents listed in paragraph 3.

(2) As proof of the right of residence, a document entitled "Residence Permit for a National of a Member State of the EEC" shall be issued. This document must include a statement that it has been issued pursuant to Regulation (EEC) No 1612/68 and to the measures taken by the Member States for the implementation of the present Directive. The text of such statement is given in the Annex to this Directive.

(3) For the issue of a Residence Permit for a National of a Member State of the EEC, Member States may require only the production of the following documents by the worker:

...

— by the members of the worker's family:

(c) the document with which they entered the territory;

(d) a document issued by the competent authority of the State of origin or the State whence they came, proving their relationship;

(e) in the cases referred to in Article 10 (1) and (2) of Regulation (EEC) No 1612/68, a document issued by the competent authority of the State of origin or the State whence they came, testifying that they are dependent on the worker or that they live under his roof in such country.

(4) A member of the family who is not a national of a Member State shall be issued with a residence document which shall have the same validity as that issued to the worker on whom he is dependent.'

5. Articles 3, 4 and 6 of Directive 73/148 also apply with regard to entry and residence formalities.

6. Article 2 of Directive 90/365 provides that for the purposes of issuing the residence permit or document the Member State may require only that the applicant presents a valid identity card or passport and provides proof that he or she meets the conditions laid down in Article 1.

7. Directive 64/221 provides for certain exceptions to the right of entry and the right of residence. Articles 2, 3 and 5(1) state:

'Article 2

(1) This Directive relates to all measures concerning entry into their territory, issue or renewal of residence permits, or expulsion from their territory, taken by Member States on grounds of public policy, public security or public health.

(2) Such grounds shall not be invoked to [serve] economic ends.

Article 3

(1) Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.

(2) Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

Article 5

(1) A decision to grant or to refuse a first residence permit shall be taken as soon as possible and in any event not later than six months from the date of application for the permit.

The person concerned shall be allowed to remain temporarily in the territory pending a decision either to grant or to refuse a residence permit.'

2. Visa provisions

8. To begin with Council Regulation (EC) No 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States applied.[6] Article 5 of this regulation provided as follows:

' For the purposes of this Regulation "visa" shall mean an authorisation given or a decision taken by a Member State which is required for entry into its territory with a view to:

— an intended stay in that Member State or in several Member States of no more than three months in all;

— transit through the territory of that Member State or several Member States, except for transit through the international zones of airports and transfers between airports in a Member State.'

9. That Regulation was replaced by Council Regulation (EC) No 539/2001 of 15 March 2001 — which has since been amended again — listing the third countries whose nationals must be in possession of visas when crossing

6 — OJ 1999 L 72, p. 2.

the external borders and those whose nationals are exempt from that requirement. [7] Article 2 of this Regulation reads:

'For the purposes of this Regulation, "visa" shall mean an authorisation issued by a Member State or a decision taken by such State which is required with a view to:

— entry for an intended stay in that Member State or in several Member States of no more than three months in total;

— entry for transit through the territory of that Member State or several Member States, except for transit at an airport.'

B — *National law*

10. The provisions of national law can be found in the appendix to this Opinion. The legal position set out in the appendix changed as a result of Royal Decree No 178/2003 of 14 February 2003. [8]

7 — OJ 2001 L 81, p. 1.

8 — BOE No 46 of 22 February 2003, No 3708.

III — Facts, pre-litigation procedure and court procedure

11. The Treaty-infringement proceedings originate from complaints by two Community nationals.

12. Mr Weber, a German who is resident in Spain, is self-employed in Spain and holds a residence permit. His wife, a United States citizen, was unable to obtain a residence document because she had not applied for a residence visa at the consulate in her previous place of residence. She obtained a leaflet, setting out the documents required, from the Spanish consulate in Düsseldorf. The files do not establish that Ms Weber initiated the relevant procedure.

13. Mr van Zijl, a Netherlands national resident in Luxembourg, wished to establish himself in Spain with his wife, Ms Rotte Ventura, a Dominican citizen. The Spanish consulate in Luxembourg gave him the information that there were no formalities affecting him. The married couple arrived in Spain in April 1999 and on 14 April they applied for residence documents. On 3 May Mr van Zijl received a residence permit for five years. Only after repeated inquiries did

Ms Rotte Ventura receive her residence permit on 28 February 2000.

14. By letter of 26 April 1999 the Commission entered into correspondence with the Spanish authorities. In their reply dated 5 July 1999 the Spanish authorities referred to the requirement for a residence visa.

15. As the Commission was not satisfied with the reply and in the light of the facts of the cases described above, the Commission sent a letter of formal notice on 16 March 2000. In the letter of formal notice the Commission raised complaints concerning the incompatibility of Spanish legislation and practice with regard to the issue of residence permits to nationals of non-Member States who are members of the family of a Community national, firstly in respect of the requirement for an immigration visa and secondly in respect of the failure to adhere to the time-limit for granting residence permits.

16. As the Spanish Government did not reply to the letter of formal notice, the Commission, by letter of 3 April 2002, addressed a reasoned opinion to the Kingdom of Spain, in which the Commission complained of infringement of Directives 68/360, 73/148, 90/365 and 64/221 and called upon Spain to adopt the necessary measures within two months. The Spanish Government responded to this in a letter dated 10 October 2002.

17. Since the Commission considered that the Kingdom of Spain had failed to fulfil its obligations, it brought the present proceedings, in accordance with Article 226 EC, by an application dated 31 March 2003, entered in the Court Register on 7 April 2003, in which it claimed that the Court should:

(1) declare that, by making, contrary to Directives 68/360/EEC, 73/148/EEC and 90/365/EEC, the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his right to freedom of movement dependent upon obtaining an immigration visa, and by not granting, contrary to Directive 64/221/EEC, a residence permit as soon as possible and in any event not later than six months from the date of application for the permit, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty;

(2) order the Kingdom of Spain to pay the costs of the proceedings.

IV — Assessment

A — *Preliminary remark: the subject-matter of the proceedings*

18. It is necessary at the outset to establish the subject-matter of the proceedings under Article 226 EC. Firstly, it is necessary to examine whether in addition to the way the rules are put into practice, namely the two complaints alleged by the Commission, the general legal position also forms the subject-matter of the Treaty-infringement proceedings pending before the Court. If this is the case, a second question arises as to what national provisions are included.

19. With regard to the inclusion of the general legal provisions, it must be noted that in paragraph 14 of its application the Commission specifies only two complaints as the grounds for bringing the proceedings. In contrast to this, the letter of formal notice also includes the express assertion that Article 10(2)(d) of Royal Decree No 766/92 infringes Community law. In the Commission's reasoned opinion it specifies several provisions of Spanish law which it considers to be contrary to Community law. However, in its application (paragraphs 40 and 51) the Commission examines Royal Decree No 178/2003. The references to the system provided for by the Spanish legislation (paragraph 47 of the application) and to the problem which exists regardless of the situation in relation to the cases complained of (paragraph 56 of the application) certainly imply that the Commission is including the Spanish legal provisions in the proceedings without further particularisation.

20. It must be remembered that, in so far as the Spanish legislation forming the subject-matter of these proceedings is concerned, that subject-matter is determined as at a particular date, which is the expiry of the deadline given in the reasoned opinion. [9]

21. If one takes this principle, which is now undisputed, as a starting point, then the legal position under Royal Decree No 178/2003 is excluded. That Decree was in fact only passed on 14 February 2003 and published on 22 February 2003. Both dates fall after the expiry of the two-month time-limit given in the reasoned opinion of 3 April 2002. Accordingly, the present infringement proceedings must be restricted to the previous legal position in Spain.

9 — Case C-200/88 *Commission* v *Greece* [1990] ECR I-4299, at paragraph 13; Case C-362/90 *Commission* v *Italy* [1992] ECR I-2353, at paragraph 10; Case C-29/01 *Commission* v *Spain* [2002] ECR I-2503, at paragraph 11; and Joined Cases C-20/01 and C-28/01 *Commission* v *Germany* [2003] ECR I-3609, at paragraph 32.

B — *First plea: condition for entry*

22. In the context of the first plea, the *Commission* claims that Directives 68/360, 73/148 and 90/365 are being infringed. A national of a non-Member State who is the member of the family of a Community national exercising his right of freedom of movement cannot be equated with a national of a non-Member State without that family tie; on the contrary, that national of a non-Member State is the beneficiary of derived rights under Community law and thus enjoys the same rights of entry into and residence in the territory of another Member State as a Community national.

23. The formalities which may be required by a Member State of a Community national exercising his right to freedom of movement or of a member of his family (regardless of his nationality) are clearly laid down in the relevant Community legislation, with the result that it is plainly contrary to the letter and spirit of Community law, as derived from Directives 68/360, 73/148 and 90/365, for a Member State to require any other formality in connection with entry or residence.

24. The Weber complaint concerns Directive 73/148, which is applicable to the members of the family of self-employed persons; the van Zijl complaint concerns Directive 90/365, which applies to the members of the family of Community nationals who have pursued an activity in the Community as an employee or self-employed person.

1. The requirement for an immigration visa

25. The Commission is of the view that the residence visa required under Spanish legislation is an instrument enabling the national authorities to examine — *prior to* entry into Spanish territory — the reasons why a national of a non-Member State wishes to reside for more than three months on national territory.

26. That national of a non-Member State should not be required to show any independent reason for entering into the territory. His right, as a matter of Community law, is derived from the right enjoyed by the Community national, so that to require that person to fulfil formal conditions prior to entry into national territory constitutes not only a restriction on his (derived) right but also a restriction on the principal right of the Community national.

27. As the Commission and Spain correctly state, by virtue of the reference in Directive 90/365 the provisions of Article 3 of Directive 68/360 and Article 3 of Directive 73/148 are relevant to the present proceedings. These provisions expressly determine the conditions which Member States may

require to be fulfilled on entry. They provide an exhaustive list. This means that in relation to persons falling within these provisions Member States may require only that the conditions laid down in these provisions are fulfilled on entry.

28. Therefore only the documents specified in Article 3 of Directives 68/360 and 73/148 may be required. The Court has confirmed this, stating as follows: 'Consequently, the only precondition which Member States may impose on the right of entry into their territory for the persons covered by the abovementioned directives is the production of a valid identity card or passport'. [10]

29. Furthermore, for both cases which form the basis of these proceedings the case-law of the Court is relevant, according to which: 'More generally, the obligation to answer questions put by frontier officials cannot be a precondition for the entry of a national of one Member State into the territory of another'. [11]

30. The Court further states: 'It is apparent from the system established by those directives, and in particular from Article 4 of Directive 68/360 and Article 6 of Directive 73/148, that it is only upon the issue of a residence card or permit that the authorities of a Member State may ask the persons concerned, under the conditions laid down in those articles, to furnish evidence of their right of residence.' [12]

31. It is therefore apparent from the provisions of the directives on the entry of members of the family, as interpreted by the Court, that entry formalities must be restricted to the expressly specified documents and that any further immigration procedure is not permissible.

32. In relation to family members who are nationals of non-Member States, additional reference should be made to the judgment in the *MRAX* case cited by the parties, in which the Court stated as follows:

'Nevertheless, in accordance with Article 3 (2) of Directive 68/360 and Article 3(2) of

10 — Case 321/87 *Commission* v *Belgium* [1989] ECR 997, at paragraph 11.

11 — Case C-68/89 *Commission* v *Netherlands* [1991] ECR 2637, at paragraph 13.

12 — Case C-68/89 (cited in footnote 11), at paragraph 12.

Directive 73/148, when a national of a Member State moves within the Community with a view to exercising the rights conferred upon him by the Treaty and those directives, the Member States may demand an entry visa or equivalent document from members of his family who are not nationals of a Member State. The list of third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States was determined by Regulation No 2317/95, which was replaced by Regulation No 574/1999, itself since replaced by Regulation No 539/2001.' [13]

33. The Court inferred from this that although third-country nationals married to a Community national have the right to enter the territory of the Member States, the fact remains that, according to the very wording of Article 3(2) of Directive 68/360 and Article 3(2) of Directive 73/148, exercise of that right may be made conditional on possession of a visa. [14]

34. However, the Spanish Government is of the opinion that the Community visa rules regulate only visas of a short duration. It can be inferred from this that Member States continue to have competence as regards long-term visas, in relation to which there is of course no harmonisation. Therefore Spain is able to demand such visas for the entry of nationals of non-Member States.

35. That view must be firmly opposed. It does not of course follow from the fact that the visa rules apply only to short-term visas that Member States may require immigration visas for the entry of nationals of non-Member States who are married to Community nationals.

36. It certainly does not follow from the fact that a legal measure does not contain provisions affecting a particular aspect that Community law does not have any rules on that aspect at all. The provisions in relation to the category of persons affected in this case are found in other legal measures, namely in Directives 68/360, 73/148, and 90/365. The provisions laid down in these directives in relation to nationals of non-Member States who are members of the family of Community nationals must be characterised as *leges speciales*. For this reason those persons are regarded as so-called privileged non-Member State nationals.

37. The existence of legal bases in respect of the crossing of external borders (Article 62

13 — Case C-459/99 *MRAX* v *Belgian State* [2002] ECR I-6591, at paragraph 56.

14 — Case C-459/99 (cited in footnote 13), at paragraph 59.

(2)(b) EC) and in respect of long-term visas (Article 63(3)(a) EC), which were cited by Spain, does not change anything in relation to this.

38. Hence the prohibition on Member States requiring nationals of non-Member States, who are members of the family of Community nationals to fulfil conditions other than those which are laid down in the special measures relating to that category of persons follows from the abovementioned special measures, in particular from Article 3 of Directives 73/148 and 90/365; as previously stated, these provisions regulate the conditions exhaustively.

2. The requirement for a residence permit

39. The Commission considers that entry may not be made dependent upon the issue of a residence permit. Therefore the approach of the Kingdom of Spain is in breach of Community law, because nationals of non-Member States who are married to Community nationals are treated as normal immigration cases. Of course such nationals of non-Member States should not be regarded as foreigners for the purposes of Spanish law. Further, every obstacle affecting this category of persons infringes, at the same time, the rights of the Community national to whose family they belong.

40. In this connection it is necessary to consider the conditions which a Member State may impose for the issue of a residence permit. Article 2 of Directive 90/365, Article 4(3)(c), (d) and (e) of Directive 68/360 and Article 6 of Directive 73/148 are relevant in this regard.

41. It follows from these provisions that Member States may impose the following requirements on the issue of a residence permit:

Firstly, the Member States can require the production of an identity card or passport which fulfils certain conditions. However, these conditions are at variance with each other (compare Article 2 of Directive 90/365, Article 4(3)(c) of Directive 68/360 and Article 6(a) of Directive 73/148).

Secondly, the Member States can demand proof of belonging to the class of beneficiaries (Article 2 of Directive 90/365, Article 4 (3)(d) of Directive 68/360 and Article 6(b) of Directive 73/148). The present proceedings concern the condition of being the spouse of a Community national.

Thirdly, Member States may require that the conditions laid down in Article 2 of Directive 90/365 are fulfilled and the production of a document in accordance with Article 4(3)(e) of Directive 68/360.

42. The conditions laid down in the above-mentioned provisions are exhaustive in nature. The Court has confirmed this in a series of judgments.

43. Thus the Court stated in the *Royer* case, that 'Article 4 of Directive 68/360 entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories set out in Article 1 of the Directive'. [15]

44. In the *Roux* [16] and *Giagounidis* [17] cases the Court emphasised that no conditions other than the prescribed conditions may be imposed and that no other proof, namely the production of other documents, may be required.

45. In addition, there is a series of examples in the Court's case-law, from which it can be inferred that, in general, the fulfilment of conditions other than those expressly provided for may not be required.

46. According to the judgment in the *Roux* case [18] 'prior registration of a self-employed person in the social security scheme cannot be regarded as a condition of the issue of a residence permit', because neither Article 4 of Directive 68/360 nor Article 6 of Directive 73/148 makes the recognition of the rights granted thereby dependent on proof of prior registration of such a person with a social security scheme. [19]

47. In the *MRAX* case the Court expressly denied Member States the power to refuse a residence permit because of 'the failure of the person concerned to comply with legal formalities concerning the control of aliens'. [20]

48. The Court further stated that: '[w]hile Article 4(3) of Directive 68/360 and Article 6 of Directive 73/148 authorise the Member States to demand, for the purpose of issue of

15 — Case 48/75 *Royer* [1976] ECR 497, at paragraph 37.

16 — Case C-363/89 *Roux* [1991] ECR I-273, at paragraphs 14 and 15.

17 — Case C-376/89 *Giagounidis* [1991] ECR I-1069, at paragraph 21.

18 — Case C-363/89 (cited in footnote 16), at paragraph 16.

19 — Case C-363/89 (cited in footnote 16), at paragraph 20

20 — Case C-459/99 (cited in footnote 13), at paragraph 78.

a residence permit, production of the document with which the person concerned entered their territory, they do not lay down that that document must still be valid. Accordingly, where a third-country national requires a visa, issue of a residence permit to him cannot be made subject to the condition that his visa is still valid'. [21] 'Consequently, a Member State cannot make issue of a residence permit under Directives 68/360 and 73/148 conditional upon production of a valid visa'. [22]

49. It can be inferred from this case-law that Member States may make the issue of a residence permit to nationals of non-Member States who are members of the family of a Community national dependent only on the conditions expressly laid down in the Community legal provisions referred to above. Therefore, in the present proceedings, proof of marital status, production of an identity card or passport and, where Directive 90/365 applies, proof of the additional requirements under Article 2 of the latter directive, may be required.

50. However, the Spanish practice does not correspond to these standards, in that the immigration formalities required by Spain must already be fulfilled abroad, usually in the country of origin of the third-country national or of the Community national. This means that Spain requires conditions to be fulfilled prior to entry which should be checked only in relation to the issue of a residence permit.

51. It follows from the fact that the requirements imposed by Spain are permitted only for the issue of a residence permit but not for entry into national territory, that Spain is using powers which are not available to Member States, because the fact that the directives stipulate the existence of certain conditions for the issue of a residence permit does not mean that these conditions also apply to entry into national territory.

52. The provisions of Article 63(3)(a) EC relating to long-term visas and Article 18 of the Schengen Agreement Implementation Convention of 19 June 1990 [23] cited by Spain do not change the situation either.

53. For the class of persons benefited — nationals of non-Member States who are

21 — Case C-459/99 (cited in footnote 13), at paragraph 89.

22 — Case C-459/99 (cited in footnote 13), at paragraph 90.

23 — Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19).

members of the family of Community nationals — provisions apply that are different from those which apply to other nationals of non-Member States.

54. Consequently, by making the issue of a residence permit to nationals of non-Member States who are members of the family of a Community national who has exercised his right to freedom of movement dependent on their obtaining an immigration visa before entry into national territory, the Kingdom of Spain has infringed its obligations under Directives 68/360, 73/148 and 90/365.

C — *Second plea: period for the issue of the residence permit*

55. As a second plea the *Commission* complains that Directive 64/221 is being infringed. It refers to the fact that under the general system of the Community rules on the issue of residence permits and, in particular, under Article 5 of Directive 64/221, the Member State must adopt the decision concerning the residence permit as soon as possible and in any event not later than six months from the date of the application, it being understood that this maximum period of six months is justified only in cases where examination of the application involves public policy considerations.

56. Even if the Spanish legal provisions were to be regarded as correctly implementing the Community law provisions, there then arises the question as to whether the Spanish authorities are also applying Community law correctly. This is because the Member States must not only meet their obligations to transpose Community law correctly, but must also apply it correctly, that is to say, they must also ensure that it is enforced in the individual case.

57. Consequently, independently of the possible conformity of the Member State's legal provisions with Community law, the Commission is still at liberty, in infringement proceedings, to raise complaints about the defective application of those provisions.

58. In such proceedings the Commission is not restricted to raising complaints only about the settled practice of the Member State involved, but may also confine itself to

certain individual cases.[24] The frequency of actual breaches of Community law is then relevant only in the calculation of the penalty payment in possible proceedings pursuant to Article 228 EC.

59. In the present proceedings the Commission complains that in certain individual cases the Spanish authorities did not comply with the time-limit stipulated in Article 5 of Directive 64/221.

60. In that connection, reference should be made to the Court's case-law, according to which it follows, as a result of the obligation in Article 3(2) of Directive 68/360 and Article 3(2) of Directive 73/148 to accord to certain persons every facility for obtaining any necessary visas, that 'if those provisions of Directives 68/360 and 73/148 are not to be denied their full effect, a visa must be issued without delay and, as far as possible, at the place of entry into national territory'.[25]

61. There is no dispute between Spain and the Commission as to the fact that the residence permit of Ms Rotte Ventura, a national of a non-Member State who is the spouse of a Community national who has exercised his right of freedom of movement, was issued only after 10 months.

62. Spain has therefore in any case exceeded the six-month time-limit laid down in Article 5 of Directive 64/221.

63. That alone must be characterised as a breach of Spain's obligation. It is irrelevant for these purposes whether exceeding the time-limit constitutes an obstacle to taking up residence or to pursuing activities.

64. Consequently, by not granting a residence permit as soon as possible and in any event not later than six months from the application for the permit, the Kingdom of Spain has infringed its obligations under Directive 64/221.

24 — See for instance the judgments in Joined Cases C-20/01 and C-28/01 (cited in footnote 9) and in Case C-117/02 *Commission* v *Portugal* [2004] ECR I-5512.
The stricter requirements established in the Court's judgment in Case C-129/00 *Commission* v *Italy* [2003] ECR I-14637, at paragraph 32, relate to acts of the courts and not — as in the present case — to administrative acts. There is also support for this in the judgment in Case C-224/01 *Köbler* [2003] ECR I-10239, at paragraphs 33, 50 and 52, in which the Court even allowed a single court decision to suffice to found the liability of Member States.

25 — Case C-459/99 (cited in footnote 13), at paragraph 60.

V — Conclusion

65. In the light of the foregoing it is proposed that the Court should hold as follows:

(1) By making the issue of a residence permit to nationals of non-Member States who are members of the family of a Community national who has exercised his right to freedom of movement dependent on their obtaining an immigration visa before entry into national territory, the Kingdom of Spain has infringed its obligations under Directives 68/360/EEC, 73/148/EEC and 90/365/EEC.

By not granting a residence permit as soon as possible and in any event not later than six months from the application for the permit, the Kingdom of Spain has infringed its obligations under Directive 64/221/EEC.

(2) The Kingdom of Spain shall bear the cost of these proceedings.

APPENDIX

National legal provisions

At the time when the facts forming the basis of the present application occurred [26] the following Spanish legal provisions were applicable: Article 10(3) of Real Decreto No 766/1992 of 26 June 1992 concerning the entry and residence of nationals of Member States of the European Communities (amended by Reales Decretos Nos 737/95 of 5 May 1995 and 1710/1997 of 14 November 1997) and Article 23(1) and (6) and Article 28(2) and (6) of Real Decreto No 155/1996.

Real Decreto No 766/1992

'Article 10

...

3. Where the persons concerned are members of the family of the persons referred to in the preceding paragraphs, in the context envisaged in Article 2, they must submit documents issued by the competent authorities to prove:

26 — The general law relating to foreigners was changed after the time the facts of the cases forming the basis of these complaints occurred. At present the Real Decreto No 178/2003 of 14 February 2003 concerning the entry and residence of nationals of Member States of the European Union and of the States of the European Economic Area applies (*Boletín Oficial del Estado* No 46 of 22 February 2003, No 3708). In accordance with the repeal provisions of this Real Decreto, the Real Decreto No 766/1992 of 26 June 1992, the Real Decreto No 737/1995 of 5 May 1995 and the Real Decreto No 1710/1997 of 14 November 1997 and 'all provisions of the same or lesser status as the present Real Decreto which are contrary to it' were repealed.

(a) the family relationship;

(b) that they are supported by or dependent on the national to whom they are related, in cases where that condition is applicable;

(c) with regard to members of the family of the residents referred to in paragraphs 1 (e), (f) and (g), that the resources and sickness insurance mentioned in those provisions are sufficient to cover the person entitled to residence and the members of his family in accordance with the rules laid down therein;

(d) family members who are not nationals of a Member State of the European Communities must produce, in addition to the documents mentioned above, a residence visa stamp in their passport, which may be waived in exceptional cases.'

Real Decreto No 155/1996

'Article 23

Residence visas: Types

...

2. Residence visas for family reunification may be granted following a favourable report from the competent administrative authority, to foreign nationals in one of the cases listed in Article 54 of this regulation who request a residence visa in order to join a family member residing in Spain. That report shall be binding as regards the conditions to be fulfilled by the applicant, in accordance with Article 28(1) of this regulation.

...

6. Non-working residence visas may be granted to retired foreign nationals, if they are entitled to a retirement pension or benefits, or to foreign nationals of working age who will not pursue in Spain an activity requiring a work permit or in respect of which the requirement to obtain such a permit is waived.'

...

Article 28

Specific documents required for a residence visa

1. When applying for a residence visa for family reunification, the sponsor residing in Spain shall ask, before lodging his application, for a report from the administrative authority of the province in which he resides, certifying that he satisfies the conditions laid down in Article 56(5) and (7) of the present regulation, and that he has a residence permit which has already been renewed. A family member falling within one of the categories referred to in Article 54(2) of this regulation shall submit, with the visa application, a copy of the request for the report, registered by that administrative authority, together with the documents certifying the family relationship and, where necessary, legal and financial dependency.

...

6. In the case of an application for a non-working residence visa, a foreign national shall provide documents certifying that he has adequate resources or that he will receive regular income that is sufficient and adequate for him and the members of his family for whom he is responsible. Such resources or regular income must be sufficient to cover accommodation, maintenance and health care for the applicant and the members of his family for whom he is responsible.'