JUDGMENT OF THE COURT (Grand Chamber)

31 January 2006 *

In Case C-503/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 27 November 2003,

Commission of the European Communities, represented by C. O'Reilly and L. Escobar Guerrero, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by M. Muñoz Pérez, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans, A. Rosas, J. Malenovský, Presidents of Chambers, S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges,

Advocate General: J. Kokott,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2005,

gives the following

Judgment

1 By its application the Commission of the European Communities seeks a declaration that, by refusing to issue a visa and allow entry into Spanish territory to two nationals of a third country who are members of the family of European Union citizens, on the sole ground that they appear on the list in the Schengen Information

System ('SIS') of persons not to be permitted entry (at the request of a Member State) and, by failing to give adequate reasons for refusing to issue a visa and allow entry, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 to 3 and 6 of Council Directive 64/221/EEC of 25 February 1964 on the coordination 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) ('the Directive').

Legal background

Directive 64/221

2 Under Article 1 of the Directive:

'1. The provisions of this Directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a recipient of services.

2. These provisions shall apply also to the spouse and to members of the family who come within the provisions of the regulations and directives adopted in this field in pursuance of the Treaty.'

3 According to Article 2 of the Directive:

'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 service economic ends.'

4 Article 3 of the Directive provides:

'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.

...'

5 Article 6 of the Directive provides:

'The person concerned shall be informed of the grounds of public policy, public security, or public health upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State involved.'

The Schengen acquis

The Schengen Agreements

6 On 14 June 1985 the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic signed at Schengen (Luxembourg) the agreement on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 13) ('the Schengen Agreement').

7 That agreement was implemented by the signature of a convention on 19 June 1990 at Schengen (OJ 2000 L 239, p. 19) ('CISA') laying down cooperation measures designed to ensure, as compensation for the abolition of internal borders, the protection of all the territories of the Contracting Parties. The Kingdom of Spain acceded to the Schengen Agreement and the CISA on 25 June 1991 (OJ 2000 L 239, p. 69).

8 Article 1 of the CISA defines an 'alien' as 'any person other than a national of a Member State of the European Communities'.

9 Title II of the CISA contains provisions on the abolition of checks at internal borders and the movement of persons. Article 5 of the CISA governs the entry of aliens into the territories of the States party to the Schengen Agreement ('the Schengen Area'). It provides:

'1. For stays not exceeding three months, aliens fulfilling the following conditions may be granted entry into the territories of the Contracting Parties:

...

(d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;

...

2. An alien who does not fulfil all the above conditions must be refused entry into the territories of the Contracting Parties unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds, on grounds of national interest or because of international obligations. In such cases authorisation to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

...'

10 Articles 15 and 16 of the CISA contain rules, corresponding to those in Article 5, for the issue of visas. Visas may in principle be issued only if, inter alia, the condition referred to in Article 5(1)(d) of the CISA is satisfied. Exceptionally, however, a visa may be issued on one of the grounds listed in Article 5(2) of the CISA, even where an alert has been issued for the purposes of refusing entry. Its geographical validity must then be restricted to the territory of the Member State which issued the visa.

11 Title IV of the CISA deals with the SIS. According to Article 92(1) of the CISA, the SIS is to consist of a national section in each of the Contracting Parties and a technical support function. It is to enable the competent national authorities, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, in the case of alerts issued for the purposes of refusing entry, for the purposes of issuing visas and residence permits and, more generally, the administration of legislation on aliens in the context of the application of the provisions of the CISA relating to the movement of persons.

12 Article 96 of the CISA governs alerts for the purpose of refusing entry. It states:

'1. Data on aliens for whom an alert has been issued for the purposes of refusing entry shall be entered on the basis of a national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law.

2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose.

This situation may arise in particular in the case of:

(a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;

(b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.

3. Decisions may also be based on the fact that the alien has been subject to measures involving deportation, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens.'

13 Article 94 of the CISA concerns the data which may be entered into the SIS. According to Article 94(1), it is for the State issuing an alert to determine whether the case is important enough to warrant entry of the alert in the SIS. Article 94(3) gives an exhaustive list of the information that may be included, covering inter alia:

'(g) whether the persons concerned are armed;

(h) whether the persons concerned are violent;

(i) the reason for the alert;

(j) action to be taken'.

14 According to Article 105 of the CISA, the State issuing the alert is to be responsible for ensuring that the data entered in the SIS is accurate, up-to-date and lawful. Under Article 106, only that State is authorised to modify, add to, correct or delete data which it has entered. In accordance with the second sentence of Article 112(1) it must review the need for continued storage of such data not later than three years after they were entered.

15 Pursuant to Article 134 of the CISA the provisions of that convention are to apply only in so far as they are compatible with Community law.

16 The conditions for entering an alien in the SIS have been set out in more detail by the Declaration of the Executive Committee established by the CISA of 18 April 1996 defining the concept of alien (OJ 2000 L 239, p. 458) ('the Declaration of 18 April 1996'). According to the latter:

'In the context of Article 96 of the [CISA],

persons who are covered by Community law should not in principle be placed on the joint list of persons to be refused entry.

However, the following categories of persons who are covered by Community law may be placed on the joint list if the conditions governing such placing are compatible with Community law:

(a) family members of European Union citizens who have third-country nationality and are entitled to enter and reside in a Member State, pursuant to a decision made in accordance with the Treaty establishing the European Community;

(b) ...

If it emerges that Community law covers a person included on the joint list of persons to be refused entry, that person may only remain on the list if it is compatible with Community law. If this is not the case, the Member State which placed the person on the list shall take the necessary steps to delete his or her name from the list.'

17 By decision SCH/Com-ex (99) 5, of 28 April 1999, the Executive Committee established by the CISA adopted the Sirene Manual concerning the setting up and operation of a procedure for transmitting the supplementary information required by an end-user for further action when the SIS has been consulted and a hit established. In the version published following Council Decision 2003/19/EC of 14 October 2002 on declassifying certain parts of the Sirene Manual (OJ 2003 L 8, p. 34), the latter provides, in paragraph 2.2.1, that the system put in place must enable requests for information made by the other contracting parties to be answered as soon as possible (OJ 2003 C 38, p. 1). The response must be given within 12 hours.

The Schengen Protocol

18 Under Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam ('the Schengen Protocol'), 13 Member States, including the Federal Republic of Germany and the Kingdom of Spain, were authorised to establish closer cooperation among themselves within the scope of the Schengen *acquis*, as set out in the Annex to the Protocol. That cooperation must be conducted within the legal and institutional framework of the European Union and the EU and EC Treaties.

19 In accordance with the Annex to the Schengen Protocol, the Schengen Agreement, the CISA and the decisions of the Executive Committee established by the CISA form part of the Schengen *acquis*.

20 Pursuant to the first sentence of Article 2(1) of the Schengen Protocol the Schengen *acquis* is to apply immediately to the 13 Member States referred to in Article 1 from the date of entry into force of the Treaty of Amsterdam.

21 Pursuant to the second subparagraph of Article 2(1) of the Schengen Protocol, on 20 May 1999 the Council adopted Decision 1999/436/EC determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis* (OJ 1999 L 176, p. 17). Article 62(2)(a) EC was designated as the legal basis for Article 5 of the CISA (with the exception of Article 5 (1)(e)) and Article 62(2)(b) EC was designated as the legal basis for Articles 15 and

16 of the CISA. Since no legal basis was determined for Articles 92 to 119 and 134 of the CISA and for the Declaration of 18 April 1996 those provisions are, in accordance with the fourth subparagraph of Article 2(1) of the Schengen Protocol, regarded as acts based on Title VI of the EU Treaty.

Pre-litigation procedure

22 The Commission initiated the pre-litigation procedure provided for in the first paragraph of Article 226 EC following two complaints from Algerian nationals, Mr Farid and Mr Bouchair, to whom the Spanish authorities refused entry into the Schengen Area.

23 At the time of the refusal in his case, Mr Farid was married to a Spanish national and lived with his family in Dublin (Ireland). When he arrived at Barcelona Airport (Spain) on 5 February 1999 on a flight from Algeria Mr Farid was refused entry into the Schengen Area. The reason given for that refusal was the fact that Mr Farid was the subject of an alert issued for the purposes of refusing him entry and introduced in the SIS following a declaration by the Federal Republic of Germany. A visa application lodged on 17 September 1999 at the Spanish Consulate in Dublin was rejected by letter of 17 December 1999 for the same reason.

24 At the time of the refusal in his case, Mr Bouchair was also married to a Spanish national and lived with her in London. When he was preparing to go on holiday and to see family with his wife, Mr Bouchair applied to the Spanish Consulate in London for a visa for entry into the Schengen Area. The visa application was rejected on 9 May 2000 on the ground that Mr Bouchair did not satisfy the conditions laid down in Article 5(1) of the CISA. A second application was rejected on 19 June 2001. During the pre-litigation procedure it emerged that the visa had not been issued because in his case too an alert had been issued by the Federal Republic of Germany for the purposes of refusing him entry.

25 It is clear from the file that no indication of the reason for the alert was given in the SIS in either case.

26 By letter of 23 April 2001 the Commission requested the Kingdom of Spain to submit its observations on those complaints. The Spanish Government confirmed the account of the facts. However, it denied that the administrative practice complained of was contrary to Directive 64/221.

27 Since the Spanish Government maintained that position in its reply to the reasoned opinion sent by the Commission on 26 June 2002, the Commission brought the present proceedings.

28 The Kingdom of Spain contends that the action should be dismissed and the Commission should be ordered to pay the costs.

The action

Preliminary observations

29 The Commission submits that, by refusing entry into its territory and refusing to issue visas to two nationals of a third country who are married to Member State nationals on the sole ground that they are persons who are the subject of an alert entered in the SIS for the purposes of refusing them entry, the Kingdom of Spain has failed to fulfil the requirements of Directive 64/221 as interpreted by the Court.

30 The Spanish Government contends that an administrative practice which complies with the provisions of the CISA cannot be contrary to Community law, since the provisions of the CISA have been part of Community law since the integration of the Schengen *acquis* into the framework of the European Union by the Treaty of Amsterdam.

31 It submits that the practice of the Spanish authorities complies with the rules of the CISA. Entering an alert for a person in the SIS for the purposes of refusing him entry falls exclusively within the competence and the responsibility of the State which issued it. By refusing entry into its territory and to issue visas to persons who are the subject of such an alert the Kingdom of Spain has simply carried out its obligations under Articles 5 and 15 of the CISA.

32 In the light of the Spanish Government's arguments it is appropriate, first of all, to define the relationship between the CISA and Community law on freedom of movement for persons.

33 As far as concerns the period prior to the integration of the Schengen *acquis* into the framework of the European Union, that relationship was governed by Article 134 of the CISA, according to which the provisions of the CISA were to apply only in so far as they were compatible with Community law.

34 That rule was reproduced in the Schengen Protocol which, in the third paragraph of its preamble, confirms that the provisions of the Schengen *acquis* are applicable only if and as far as they are compatible with European Union and Community law. Article 1 of the Protocol states that closer cooperation within the scope of the Schengen *acquis* must be conducted within the legal and institutional framework of the European Union and with respect for the Treaties. That provision is a specific expression of the principle laid down in Article 43(1) EU, according to which closer cooperation must respect the Treaties, the institutional framework of the Union and the Community *acquis*.

35 It follows that the compliance of an administrative practice with the provisions of the CISA may justify the conduct of the competent national authorities only in so far as the application of the relevant provisions is compatible with the Community rules governing freedom of movement for persons.

36 The Spanish Government argues that, in both the cases which are the subject of these proceedings, the Spanish authorities acted in accordance with the mechanism laid down by the CISA. Under Articles 94(1) and 105 of the CISA the assessment of whether there are circumstances justifying entry of an alert for an alien into the SIS falls within the competence of the State which issued the alert, in this case the Federal Republic of Germany, which is responsible for ensuring that the data entered into the SIS is accurate, up-to-date and lawful, and is the only State authorised to add to, correct or delete that data. In the absence of exceptional circumstances which are irrelevant in the context of these proceedings, the other Contracting States, for their part, are obliged, in accordance with Articles 5 and 15 of the CISA, to refuse entry or a visa to an alien for whom an alert has been issued for the purposes of refusing him entry.

37 The fact that such a refusal is automatic reflects the principle of cooperation between the Contracting States; this underpins the Schengen *acquis* and is essential to the operation of an integrated management system intended to ensure a high and uniform level of checks and surveillance along external borders which is the corollary of the freedom to cross internal borders within the Schengen Area.

38 However, in so far as the automatic refusal provided for in Articles 5 and 15 of the CISA does not distinguish as to whether or not the alien concerned is married to a Member State national, it is appropriate to consider whether the conduct of the

Spanish authorities was compatible with the Community rules governing freedom of movement for persons, in particular with Directive 64/221.

The first complaint

Arguments of the parties

39 The Commission complains that the Kingdom of Spain disregarded the provisions of Directive 64/221 by refusing entry into its territory and to issue a visa to two nationals of a third country who are the spouses of Member State nationals on the sole ground that they were the subject of an alert entered in the SIS for the purposes of refusing them entry. According to settled case-law, access to the territory of a Member State may be refused to a citizen of the European Union or a member of his family only where the person concerned represents a genuine and sufficiently serious threat affecting one of the fundamental interests of society (Case 36/75 *Rutili* [1975] ECR 1219, paragraph 28, and Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 35).

40 The Spanish Government points out that, apart from the particular case of applications for residence permits, there are no rules in the CISA requiring a Contracting State to consult the State which issued an alert for the purposes of refusing entry as to the grounds which justified that alert being entered into the SIS. As is clear from the Declaration of 18 April 1996, the Contracting States have accepted the principle that the names of persons covered by Community law may be entered and kept in the SIS only if that entry is compatible with Community law. Therefore, the existence of such an entry may reasonably be regarded as evidence of a genuine and serious threat.

Findings of the Court

41 Recognising the importance of ensuring the protection of the family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the EC Treaty (Case C-60/00 *Carpenter* [2002] ECR I-6279, paragraph 38, and Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 53), the Community legislature has considerably expanded, in the regulations and directives on freedom of movement for persons, the application of Community law on entry into and residence in the territory of the Member States to nationals of third countries who are the spouses of Member State nationals. Although Member States may, where a Member State national travels within the Community in order to exercise the rights which are conferred on him by the Treaty and the measures adopted for its application, require an entry visa for his spouse who is a national of a third country, the Member States must nevertheless accord to the latter every facility for obtaining the necessary visa.

42 In this case it is common ground that Mr Farid and Mr Bouchair, who are third country nationals, derived from their status as spouses of Member State nationals the right to enter the territory of the Member States or to obtain a visa for that purpose.

43 The right of Member State nationals and their spouses to enter and remain on the territory of another Member State is not, however, unconditional. Among the limits laid down or authorised by Community law, Article 2 of Directive 64/221 enables Member States to prohibit nationals of other Member States or their spouses who are nationals of third countries from entering their territory on grounds of public policy or public security (see, with respect to spouses, *MRAX*, paragraphs 61 and 62).

44 The Community legislature has nevertheless made reliance by the Member States on such grounds subject to strict limits. Article 3(1) of Directive 64/221 states that measures taken on grounds of public policy or public security are to be based exclusively on the personal conduct of the individual concerned. Article 3(2) states that previous criminal convictions are not in themselves to constitute grounds for the taking of such measures. The existence of a previous criminal conviction can, therefore, only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy (*Bouchereau*, paragraph 28, and Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 24).

45 The Court, for its part, has always emphasised that the public policy exception is a derogation from the fundamental principle of freedom of movement for persons which must be interpreted strictly and that its scope cannot be determined unilaterally by the Member States (*Rutili*, paragraph 27; *Bouchereau*, paragraph 33; *Calfa*, paragraph 23; and Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraphs 64 and 65).

46 Consequently, according to settled case-law, reliance by a national authority on the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society (*Rutili*, paragraph 28; *Bouchereau*, paragraph 35; and *Orfanopoulos and Oliveri*, paragraph 66).

47 In the case of a national of a third country who is the spouse of a Member State national a strict interpretation of the concept of public policy also serves to protect the latter's right to respect for his or her family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, to that effect, *Carpenter*, paragraph 41, and Case C-109/01 *Akrich* [2003] ECR I-9607, paragraph 58).

48 In those circumstances, it is clear that the concept of public policy within the meaning of Article 2 of Directive 64/221 does not correspond to that in Article 96 of the CISA. According to the latter, an alert in the SIS for the purposes of refusing entry may be based on a threat to public policy where the person concerned has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year (Article 96(2)(a)), or if he has been subject to a measure based on a failure to comply with national regulations on the entry or residence of aliens (Article 96(3)). Unlike the rules laid down by Directive 64/221, as interpreted by the Court, such circumstances justify in themselves an alert irrespective of any specific assessment of the threat represented by the person concerned.

49 Under Articles 5 and 15 of the CISA, entry into the Schengen Area or the issue of a visa for that purpose cannot in principle be granted to an alien for whom an alert has been issued for the purposes of refusing entry.

50 It follows that, under the mechanism provided for by the CISA, a person falling within the scope of Directive 64/221, such as a national of a third country who is the spouse of a Member State national, risks being deprived of the protection provided for by that directive where an alert has been issued for the purposes of refusing him entry.

51 It is in order to avoid that risk that the Contracting States undertook, in the Declaration of 18 April 1996, not to issue an alert for the purposes of refusing entry in respect of a person covered by Community law unless the conditions required by the latter are fulfilled.

52 That means that a Contracting State may issue an alert for a national of a third country who is the spouse of a Member State national only after establishing that the presence of that person constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society within the meaning of Directive 64/221.

53 In those circumstances, the inclusion of an entry in the SIS in respect of a national of a third country who is the spouse of a Member State national does indeed constitute evidence that there is a reason to justify refusing him entry into the Schengen Area. However, such evidence must be corroborated by information enabling a Member State which consults the SIS to establish, before refusing entry into the Schengen Area, that the presence of the person concerned in that area constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In that regard, it should be pointed out that Article 94(i) of the CISA expressly authorises the reason for the alert to be stated.

54 In both the cases which are the subject of these proceedings the Spanish authorities, to whom Mr Farid and Mr Bouchair, who are nationals of a third country, had duly provided proof of their status as spouses of Member State nationals, merely recorded the existence of alerts in the SIS issued for the purposes of refusing admission which did not contain any indication of the reasons for those alerts, in order to refuse them entry into the Schengen Area.

55 In such circumstances, the Spanish authorities were not justified in refusing entry to the persons concerned without having first verified whether their presence constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

56 As regards that verification, it must be observed that, although the principle of genuine cooperation underpinning the Schengen *acquis* implies that the State consulting the SIS should give due consideration to the information provided by the State which issued the alert, it also implies that the latter should make supplementary information available to the consulting State to enable it to gauge, in the specific case, the gravity of the threat that the person for whom an alert has been issued is likely to represent.

57 The network of Sirene Bureaux was set up specifically to provide information to national authorities faced with difficulties in enforcing an alert. According to Paragraph 2.2.1 of the Sirene Manual, the system put in place must enable requests for information made by the other contracting parties to be answered as soon as possible, and the response must be given within 12 hours.

58 In any event, the time within which a response to a request for information is given cannot exceed what is reasonable with regard to the circumstances of the case, which may be assessed differently according to whether a visa application or the crossing of a border is involved. In the latter case, it is essential that the national authorities who, having established that a national of a third country who is the spouse of a Member State national is the subject of an alert entered in the SIS for the purposes of refusing him entry, have requested additional information from the State which issued the alert receive it from the latter rapidly.

59 In the light of all of the foregoing, the Court finds that, by refusing entry into the Schengen Area to Mr Farid and by refusing to issue a visa for the purpose of entry into that area to Mr Farid and Mr Bouchair, nationals of a third country who are the spouses of Member State nationals, on the sole ground that they were persons for whom alerts were entered in the SIS for the purposes of refusing them entry, without first verifying whether the presence of those persons constituted a genuine, present and sufficiently serious threat to one of the fundamental interests of society, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 to 3 of Directive 64/221.

The second complaint

Arguments of the parties

60 By this complaint the Commission criticises the Spanish authorities for failing to indicate in their decisions the grounds of public policy and public security on which they relied in order to refuse Mr Farid and Mr Bouchair entry into Spanish territory and to issue them with a visa.

61 The Spanish Government relies in its defence on the same arguments as for the first complaint.

Findings of the Court

62 As regards the first complaint, it was held in paragraph 59 of this judgment that, by refusing entry into the Schengen Area to Mr Farid and by refusing to issue a visa for the purpose of entry into that area to Mr Farid and Mr Bouchair, nationals of a third country who are the spouses of Member State nationals, on the sole ground that they were persons for whom alerts were entered in the SIS for the purposes of refusing them entry, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 to 3 of Directive 64/221.

63 Since that refusal by the Spanish authorities was the only fact constituting the infringement of Community law alleged by the Commission, there is no need to give a ruling on the second complaint.

Costs

64 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Spain has been unsuccessful in its pleas, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that, by refusing entry into the territory of the States party to the Agreement on the gradual abolition of checks at their common borders, signed on 14 June 1985 at Schengen, to Mr Farid, and by refusing to issue a visa for the purpose of entry into that territory to Mr Farid and Mr Bouchair, nationals of a third country who are the spouses of Member State nationals, on the sole ground that they were persons for whom alerts were entered in the Schengen Information System for the purposes of refusing them entry, without first verifying whether the presence of those persons constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 to 3 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health;**

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

[Signatures]